



**Right to Asylum  
in the Republic of Serbia  
Periodic Report  
for July - September 2018**



**Belgrade Centre  
for Human Rights**

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# INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) continued implementing the *Support to Asylum Seekers in Serbia* project in the third quarter of 2018 with the support of the United Nations High Commissioner for Refugees (UNHCR). The BCHR legal team legally represented foreigners considering the Republic of Serbia (RS) a country of asylum. It provided legal aid to foreigners residing at the Asylum and Reception Centres, the Belgrade Airport “Nikola Tesla” and institutions charged with providing alternative care to unaccompanied foreign children.<sup>1</sup>

In mid-September, Serbian Interior Minister Nebojša Stefanović and European Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos initialled an agreement between Serbia and the European Union on the activities the European Agency for Border and Coast Guard Agency (Frontex) will conduct in the territory of Serbia.<sup>2</sup> They noted that the agreement aimed to facilitate control of EU’s external borders and improve migration management. However, neither the Serbian Interior Minister nor its Prime Minister outlined the details of the agreement submitted for ratification to the Serbian Assembly. The scarce information provided at the news conference after the agreement was initialled remained the only information on changes in managing Serbia’s borders the general public had heard.

Nationals of Pakistan, Afghanistan and the Islamic Republic of Iran (Iran) accounted for most of the migrants seeking international protection in Serbia or passing through it on their way to other states in the third quarter of 2018. The

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<sup>1</sup> Notably, the Centre for Accommodating Foreign Minors at the Vasa Stajić Child and Youth Centre in Belgrade and the Youth Centre in Niš.

<sup>2</sup> See: <https://beta.rs/en/97463-serbia-initials-agreement-with-frontex-on-better-migration-management>.

number of Iranian nationals entering Serbia via Belgrade Airport “Nikola Tesla” continued growing due to changes in the Serbian/Iran visa regime, elaborated in BCHR’s prior periodic reports.<sup>3</sup> Serbia had also abolished tourist visas for nationals of India. During the reporting period, BCHR received a number of telephone calls from Indian nationals, seeking its legal aid and assistance because they were detained at the Belgrade Airport and not allowed to enter the country.

The BCHR had unimpeded access to the Airport border zone throughout the reporting period. Its professionals visited foreign nationals detained in the transit zone and not allowed to enter Serbia and extended them legal advice. The BCHR lawyers were, however, unable to obtain precise information on the specific reasons for denying entry to each foreign national who had sought BCHR’s assistance.

The new Law on Asylum and Temporary Protection<sup>4</sup> lays down the deadline by which an asylum application must be filed, i.e. the asylum procedure initiated. The enforcement of the new provisions has resulted in unequal treatment of foreigners perceiving Serbia as a country of asylum in practice. Namely, under the new Law on Asylum and Temporary Protection, foreigners who express the intention to seek asylum, i.e. before they file their asylum applications, shall be informed of their rights and obligations, in particular, of their right to residence, free interpretation during the asylum procedure, right to legal aid and right to access the UNHCR.<sup>5</sup> However, potential asylum seekers are not systematically provided with the information in practice. Consequently, many foreigners, who had expressed the intention to seek asylum but were not provided by the Asylum Office with the possibility to do so within 15 days,<sup>6</sup> missed the additional eight-day deadline prescribed by the Law<sup>7</sup> to submit their asylum applications themselves. This mostly

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<sup>3</sup> Available at: <http://azil.rs/en/periodic-reports/>.

<sup>4</sup> *Official Gazette of the RS*, 24/18. The Law came into force on 3 April 2018 and it has been implemented as of 3 June 2018.

<sup>5</sup> *Ibid.*, Article 36(5)

<sup>6</sup> *Ibid.*, Article 36(1)

<sup>7</sup> *Ibid.*, Article 36(2)

occurred in situations where organisations working in the field failed to interview them and refer them to organisations that can extend them legal aid and help them fill the asylum application forms and submit them to the Asylum Office within the eight-day deadline. The BCHR, therefore, intensified its visits to Asylum and Reception Centres in the reporting period to promptly extend legal aid to foreigners in need of it, with a view to facilitating their access to the asylum procedure.

When the school year started, 344 children of school age living in Asylum and Reception Centres started attending 33 schools in municipalities in which the Centres are located.<sup>8</sup> Twenty-seven of the children were unaccompanied.<sup>9</sup> The children were enrolled in school in accordance with the Professional Guidelines on Enrolment of Refugee/Asylum Seeking Children in School, which the Ministry of Education, Science and Technological Development adopted in May 2017.<sup>10</sup>

This Periodic Report analyses the relevant authorities' treatment of the refugee and migrant population based on information the BCHR team obtained whilst legally representing asylum seekers during the asylum procedure, extending legal advice to migrants in the field and supporting their realisation of their integration-related rights. The statistical data on the work of the Ministry of the Interior (MoI) were obtained from the UNHCR Office in Belgrade and the other data in response to BCHR's requests for access to information of public importance. This Report was prepared by the BCHR team.

*Cover: Robert Delaunay, Windows Open Simultaneously (First Part, Third Motif)*

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<sup>8</sup> "344 Migrant Children Starting School in Serbia This Year," *NI online*, 2 September 2018. Available in Serbian at: <http://rs.n1info.com/a416792/Vesti/Komesarijat-U-33-skole-upisano-344-dece-migranata.html>.

<sup>9</sup> *Ibid.*

<sup>10</sup> See: <http://azil.rs/en/migrant-children-in-serbia-and-the-right-to-education/>. The Guidelines are available in Serbian at: <http://www.mpn.gov.rs/wp-content/uploads/2017/06/STRUCNO-UPUTSTVO.pdf>.

# 1. STATISTICAL OVERVIEW

Whilst perusing the available statistical data, BCHR's team noted that the Asylum Office had deleted information on asylum granted to three Bulgarian nationals from the official statistics it published in its May 2018 report. The BCHR provided more information on asylum granted to these three Bulgarian nationals in its prior Periodic Report.<sup>11</sup>

The BCHR team also identified an inconsistency between publicly available information published by the Belgrade Higher Court on its website and the Asylum Office's official statistics. Namely, the Higher Court posted a press release on its website saying that its Criminal Division on 6 July 2018 issued a ruling dismissing the Romanian Justice Ministry's request for the extradition of a Romanian national charged with eight crimes. The Belgrade Court specified that the said national had been granted asylum in Serbia under an Asylum Office ruling of 1 June 2018, which became final on 18 June 2018 and that the Asylum Office had concluded he was at risk of persecution in his country of origin because of his political opinion, wherefore it found that he fulfilled the requirements to be granted asylum in Serbia.<sup>12</sup> However, the Asylum Office official statistics do not include information on asylum granted to this Romanian national.

All the statistical data presented in the text below are official data the BCHR had access to at the time it prepared this Report.

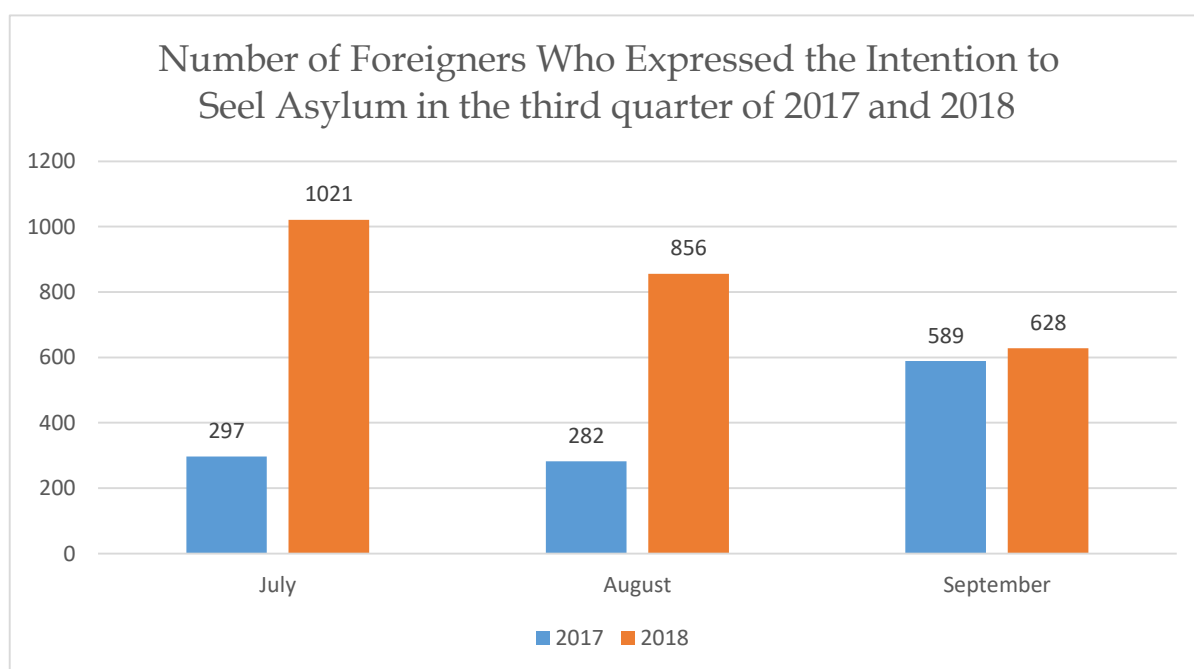
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<sup>11</sup> *Right to Asylum in the Republic of Serbia, Periodic Report for April-June 2018*, July 2018, p. 8, available at: <http://azil.rs/en/wp-content/uploads/2018/08/Right-to-asylum-April-June-2018-periodic-report.pdf>.

<sup>12</sup> Belgrade Higher Court press release "Decision on the Romanian Justice Ministry's Request for the Extradition of Ghita Sebastian Aurelian" of 27 July 2018, available in Serbian at: <https://www.bg.vi.sud.rs/vest/1441/odluka-o-molbi-ministarstva-pravde-rumunije-za-izrucenja-ghita-sebastian-aureliana.php>.

## 1.1. STATISTICAL DATA ON THE NUMBER OF FOREIGNERS WHO EXPRESSED THE INTENTION TO SEEK ASYLUM IN THE REPUBLIC OF SERBIA

A total of 2,505 foreigners expressed the intention to seek asylum in Serbia in the reporting period; 2,264 of them were male and 241 female; 691 were children, 57.9% of whom were unaccompanied by their parents or guardians. The breakdown per month is as follows: 1,021 in July, 856 in August and 626 in September.



Around 90% of the intentions to apply for asylum in Serbia in Q3 2018 were registered by the regional police administrations. Officials at Belgrade Airport “Nikola Tesla” registered 189 foreigners who expressed the intention to seek asylum in Serbia; 53 foreigners expressed the intention to seek asylum at border crossings and only one foreigner was registered at the Shelter for Foreigners. The Asylum Office issued certificates to seven foreigners confirming registration of their intention to seek asylum.

A total of 631,499 foreigners expressed the intention to seek asylum in Serbia in the past decade. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577, 995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017 and 6,199 foreigners by the end of September 2018.

## **1.2. ASYLUM PROCEDURE STATISTICS**

A total of 102 asylum applications were submitted and applications by 33 asylum seekers were reviewed in the first nine months of the year. Asylum was granted two Iranian nationals and subsidiary protection to five Libyan nationals. Six asylum applications regarding seven applicants were dismissed on the merits and another three applications regarding four applicants were dismissed as ill-founded. Thirty-six reviews of asylum applications regarding 61 asylum seekers were discontinued, mostly because these foreigners had in the meantime left the country or withdrawn their applications for other reasons.

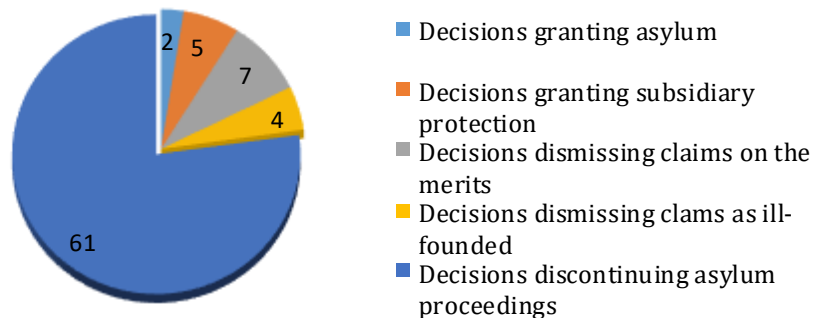
Overall, the relevant Serbian authorities granted asylum in 53 cases and subsidiary protection in 74 cases since the prior Asylum Law<sup>13</sup> came into force ten years ago.

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<sup>13</sup> *Sl. glasnik RS*, 109/07.



### Odluke Kancelarije za azil donete u periodu jul - septembar 2018.



### 1.3. COUNTRIES OF ORIGIN OF FOREIGNERS WHO EXPRESSED THE INTENTION TO SEEK ASYLUM IN THE REPUBLIC OF SERBIA

Most of the foreigners, who expressed the intention to seek asylum in Serbia in Q3 2018, were nationals of Afghanistan (734), Pakistan (559), Iran (543), Iraq (158) and Bangladesh (136). The intention to seek asylum was expressed in the reporting period also by nationals of India (112), Syria (103), Palestine (39), Somalia (24), Libya (20), Algeria (15), Morocco (12), Eritrea (7), Russia (7), Sri Lanka (7), Turkey (6), Tunisia (4), Nepal (3), Yemen (2), Lebanon (2), Macedonia (2) and one each from Egypt, Gabon, Ghana, Greece, Qatar, China, Liberia, Mali, Nigeria and Croatia.

## 2. ACCESS TO THE ASYLUM PROCEDURE

A number of problems in accessing the asylum procedure in Serbia were identified during the reporting period. They can definitely be ascribed to lack of information provided to foreigners, who have expressed the intention to seek asylum, about their rights and obligations related to obtaining international protection in the Republic of Serbia.<sup>14</sup> It is crucial that foreigners who wish to remain in Serbia and avail themselves of international protection are familiar with the asylum procedure rules, particularly given that a new asylum law (Law on Asylum and Temporary Protection) is in place and that it lays down a deadline by which they have to apply for asylum.

Authorised MoI officers issue certificates of registration to foreigners who express the intention to apply for asylum. These certificates specify the Asylum Centre or another facility designated for accommodating asylum seekers the foreigners must report to within the following 72 hours. Given that the certificates are issued in Serbian and written in Cyrillic, the foreigners often do not know what the document they are issued says and make their way to the wrong Centre or report to the Centre they have been referred to but after the expiry of the 72-hour deadline. According to a view the Asylum Office took in one case,<sup>15</sup> such actions by asylum seekers engage Article 35(13) of the Law on Asylum and Temporary

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<sup>14</sup> Under Article 36(5) of the Law on Asylum and Temporary Protection, before they apply for asylum, foreigners shall be informed by the relevant authorities of their rights and obligations, in particular, of their right to residence, free interpretation during the asylum procedure, right to legal aid and right to access the UNHCR.

<sup>15</sup> Asylum Office letter Ref. No. 26-1434/18 of 24 August 2018.

Protection.<sup>16</sup> In order to avoid lack of clarity resulting in such adverse consequences in practice, the Serbian authorities should at the very least ensure that the certificates of registration are translated into English and other languages spoken by most foreigners in need of international protection in Serbia, notably, French, Persian, Arabic and Urdu. Furthermore, they need to be provided with access to free legal aid and lawyers who can represent them in asylum proceedings. This will ensure greater legal certainty in the asylum proceedings and, in turn, greater respect for the rights of asylum seekers in Serbia.

During the reporting period, the Asylum Office performed official actions exclusively in Asylum Centres, but did not provide for the submission of asylum applications or interview asylum seekers in any other facilities they are accommodated in. Consequently, the foreigners, who had reported to these facilities they had been referred to by the legal deadline, were forced to themselves launch the asylum procedure, pursuant to the new rules laid down in the Law on Asylum and Temporary Protection. Namely, in the event the authorised Asylum Office staff member does not provide a foreigner with the possibility to apply for asylum within 15 days from the day of registration, the foreigner is entitled to do so himself/herself, by filling the asylum application and submitting it to the Asylum Office within the following eight days.<sup>17</sup> The foreigner is not entitled to initiate the asylum procedure upon the expiry of that eight-day deadline.

These provisions are particularly concerning in view of the fact that the asylum application form has not been translated into any languages and is unavailable in the facilities which foreigners who expressed the intention to seek asylum are referred to. The question thus arises how foreigners, who have expressed the intention to apply for asylum, can access the application forms, and

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<sup>16</sup> Under Article 35 of the Law on Asylum and Temporary Protection, regulations on the legal status of foreigners shall apply to foreigners whose intention to seek asylum has been registered but who have failed to report to the designated Asylum Centre or other facility within 72 hours.

<sup>17</sup> Article 36(2), Law on Asylum and Temporary Protection

how they will fill them by themselves, given the great likelihood that they do not speak Serbian or read the Cyrillic script. Furthermore, even if the asylum application form were translated into one of the languages the foreigners know, it would be unreasonable to expect of them to be aware of the deadlines and obligations laid down in the Law on Asylum and Temporary Protection. In addition, given that Asylum Office staff are not present in the centres where asylum seekers are accommodated and that these centres do not have designated areas where foreigners can submit their asylum application forms and receive certificates of submission (receipt stamp with the date), it would be unreasonable to expect of foreign nationals unfamiliar with Serbian law or asylum authorities to send their forms to the Asylum Office's address and thus initiate the asylum procedure. This is why the vast majority of them are in need of free legal aid.

Therefore, the implementation of official actions just in Asylum Centres has *de facto* resulted in restricting access to the asylum procedure of foreigners accommodated in other facilities, as corroborated by Asylum Office statistics: during the reporting period, only three foreigners (one in August and two in September) independently applied for asylum by filling application forms and submitting them to the Asylum Office. It may therefore be concluded that, unless Asylum Office staff enable foreigners issued certificates of registration to apply for asylum within 15 days from the day of registration, the asylum procedure practically remains reserved for those who have legal representatives who will advise them of the application deadline, provide them with the application form and translate it, advise them on how to properly fill it and send it to the Asylum Office's address.

Access to the asylum procedure by foreigners in need of international protection has further been exacerbated by the poor coordination between the state authorities charged with accommodating foreigners, who have expressed the intention to apply for asylum, and the Asylum Office. A large number of foreigners who had expressed the intention to seek asylum called the BCHR during the

reporting period because of the problems they confronted due to lack of cooperation between the above-mentioned state authorities. For instance, one foreigner was referred in his certificate of registration to the Sjenica Asylum Centre, but the document went on to specify that, since that Centre was full, he was referred to the Reception-Transit Centre in Pirot. On the other hand, quite a few foreigners reported to the Centres they were referred to within the 72-hour deadline, but were then re-referred by the staff of the Commissariat for Refugees and Migration (CRM) to another centre under the CRM's jurisdiction. Although CRM staff have in the vast majority of cases had the best of intentions when they referred the foreigners to centres with better living conditions, they have either communicated their decisions orally or handwritten them on the certificates, without the CRM notifying the Asylum Office thereof. Given that the manner in which the foreigners are re-referred to other centres is usually informal in character, in the absence of an official CRM decision or proper notification of the Asylum Office, such a practice has placed a number of foreigners, who have expressed the intention to seek asylum but do not have legal representatives, at a disadvantage. First of all, they are at risk of missing the 72-hour deadline for reporting to the centre they are referred or re-referred to. Second, a number of them missed the deadline for submitting their applications through no fault of their own, due to the fact that they were insufficiently informed of their rights and obligations and that no asylum application forms in the languages they understand are available in Asylum Centres and other facilities for the accommodation of asylum seekers.

The BCHR contacted the Asylum Office on behalf of scores of foreigners, who had found themselves in such a situation, requesting they be provided with the possibility of applying for asylum in the presence of authorised Asylum Office staff. In its reply, the Asylum Office said that the specified foreigners had not reported to the centres they had been referred to in their certificates of registration. However, after the Asylum Office was communicated copies of some of the certificates, which

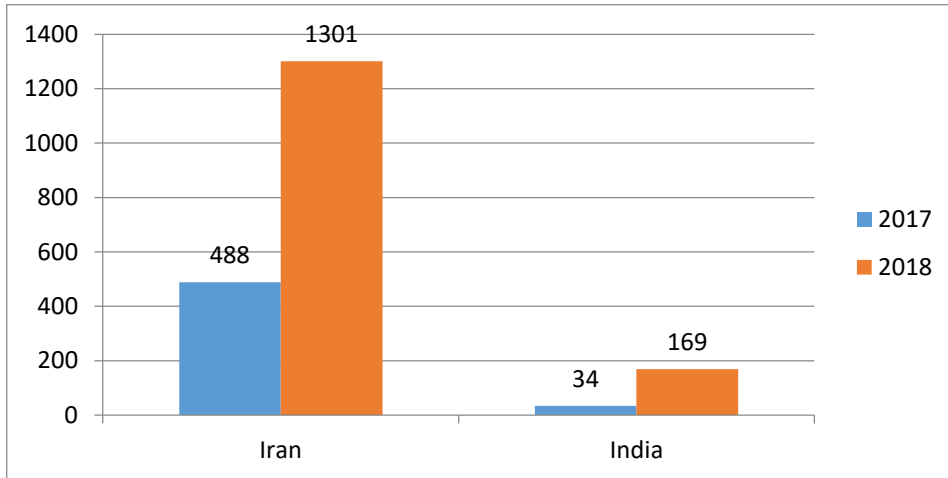
included handwritten re-referrals to other centres, the Office decided it would allow these foreigners to apply for asylum in the presence of its authorised officers. It needs to be stressed again that these foreigners had legal representatives, who communicated with the Office on their behalf and represented their interests in communication with the Office, in Serbian. Had these foreigners not had access to the legal aid extended free of charge by civil society organisations, they would undoubtedly have been unable to exercise their rights and access the asylum procedure in Serbia on their own.

## **2.1. ACCESS TO THE ASYLUM PROCEDURE AT AIRPORT “NIKOLA TESLA”**

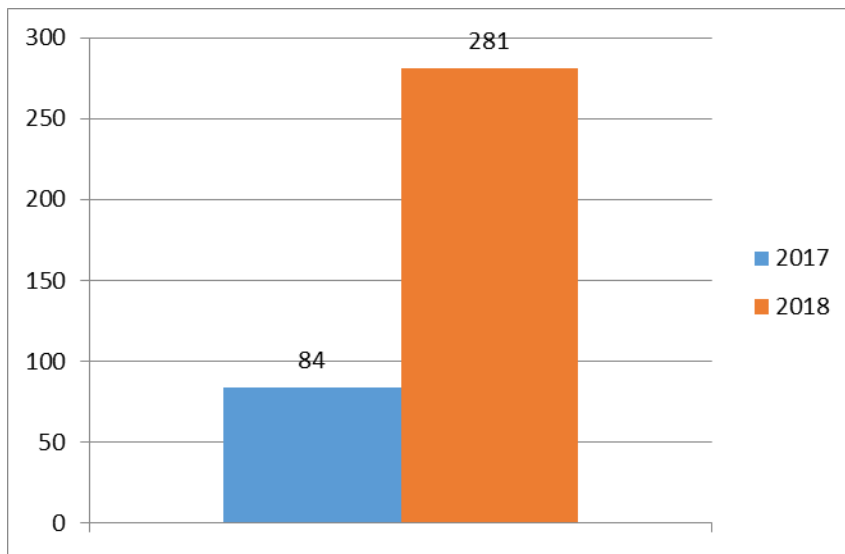
The abolition of 30-day entry, transit and residence visas for the nationals of Iran and India led to a significant increase in the number of asylum seekers from those countries, arriving in Serbia via Airport “Nikola Tesla”.<sup>18</sup> During the reporting period, BCHR lawyers met with and provided legal advice to a total of 11 Iranian nationals who expressed the intention to seek asylum in the airport transit zone. The airport Border Police station issued a total of 189 certificates of registration in the same period.

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<sup>18</sup> More above, in the section Statistical Overview.



Graph: Number of Iranian and Indian nationals who expressed the intention to seek asylum in Serbia in 2017 and the first nine months of 2018.



Graph: Total number of foreigners who expressed the intention to seek asylum at "Nikola Tesla" airport in 2017 and the first nine months of 2018.

Many of the foreigners landing at "Nikola Tesla" Airport BCHR was in contact with did not come to Serbia to seek asylum. Most, however, did express the intention to seek asylum only after they were denied entry under the Law on

Foreigners.<sup>19</sup> The question thus arises whether these people genuinely intended to seek asylum or sought international protection to avoid deportation. However, regardless of the moment a foreigner seeks international protection, the Serbian authorities are under the obligation to thoroughly review each individual case and any risk that the foreigners will be treated in contravention of the prohibition of torture in their countries of origin or third countries immediately before their refoulement.<sup>20</sup> Airport “Nikola Tesla” and the Asylum Office thus need to build their capacity to facilitate the implementation of the entire asylum procedure in the airport transit zone, pursuant to Article 41 of the Law on Asylum and Temporary Protection.

## **2.2. ACCESS TO THE ASYLUM PROCEDURE IN THE PADINSKA SKELA SHELTER FOR FOREIGNERS**

Under the Law on Foreigners, the Shelter for Foreigners in Padinska Skela is an MoI institution holding foreigners not fulfilling the requirements for lawful entry into Serbia pending their deportation and foreigners whose identity needs to be established. Foreigners are detained in the Shelter for Foreigners also on grounds laid down in other laws, e.g. the Law on Asylum and Temporary Protection. Given the likelihood that some foreigners in need of international protection may be detained in this Shelter, the BCHR continued regularly visiting this institution and extending legal advice to foreigners who needed it.

In the reporting period, only one foreigner held in the Shelter for Foreigners expressed the intention to seek asylum. The Asylum Office issued one ruling

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<sup>19</sup> *Sl. glasnik RS*, 97/08.

<sup>20</sup> Article 3 and Article 13 in conjunction with Article 3 of the European Convention on Human Rights impose an obligation on the State to review risks of torture, inhuman or degrading treatment or punishment with rigorous scrutiny (see the European Court of Human Rights judgments in the cases of *J. K. and Others v. Sweden*, Application no. 59166/12, paragraph 83, and *F. G. v. Sweden*, Application no. 43611/11, paragraph 115).



ordering the detention in and restricting the movement of an Iranian national to this Shelter in Q3 2018.

### **2.3. STATUS OF UNACCOMPANIED CHILDREN IN THE ASYLUM PROCEDURE**

The Law on Asylum and Temporary Protection contains novel provisions protecting the rights of children in the asylum procedure, which had not existed in the prior Law on Asylum. The new Law formally places the principle of the best interests of the child in the centre of all activities involving children in the asylum procedure<sup>21</sup> and lays down that account shall be taken of their *specific situation*, that they will be *extended adequate assistance* and provided with *special procedural and reception guarantees*.<sup>22</sup> Since the legislator failed to specify what exactly special procedural guarantees entail, it remains to be seen how the relevant asylum authorities will interpret this provision and enforce it with respect to asylum-seeking children.

Expression of the intention to apply for asylum is of crucial importance to children in need of international protection, given that this is the first step in the asylum procedure and prerequisite for identifying sustainable arrangements ensuring their life in dignity. It is thus critical to perform the preliminary identification of children in need of international protection as soon as they arrive in Serbia and that they express the intention to seek asylum and initiate the asylum procedure as soon as possible. The first representatives of the relevant authorities with whom children, who are probably in need of international protection,<sup>23</sup> have contact with upon their arrival should also inform the children of their rights in

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<sup>21</sup> Law on Asylum and Temporary Protection, Article 10.

<sup>22</sup> *Ibid.*, Article 17.

<sup>23</sup> For instance, the fact that a child comes from a country, such as Afghanistan, in which violence has raged for several decades now, might be indication that s/he is in need of international protection.

Serbia in a language they understand and in a manner appropriate to their age, and explain to them what asylum is and how they can exercise their right to asylum. In the event the children are unaccompanied by their parents or legal guardians, the said representatives need to notify the relevant guardianship authorities (Social Work Centres) thereof; the latter are to appoint temporary guardians to the children forthwith; these guardians are to protect them and their rights and interests<sup>24</sup> in all procedures and processes in which their wards are involved.

The appointment of a guardian is the initial step that has to be taken in case of unaccompanied foreign children, because they cannot independently express the intention to seek asylum or be registered.<sup>25</sup> Those procedures are undertaken on their behalf by their parents or guardians<sup>26</sup> appointed in a procedure under the Family Law.<sup>27</sup> Bearing these considerations in mind and during its work with the unaccompanied children registered under the mentioned provisions in the reporting period, the BCHR noted that the relevant authorities' practice was not in compliance with the law. Namely, BCHR identified several cases,<sup>28</sup> in which unaccompanied children were registered by police officers although they had not first been appointed a temporary guardian. For instance, the Belgrade border police issued an unaccompanied Iranian child a certificate of registration of his intention to seek asylum, which specified that he was unaccompanied, without the guardianship authority first appointing him a guardian; furthermore, the child was not told in a language he understood about his rights in Serbia or the next steps in the asylum procedure. The border police authorities thus acted in contravention of the Law on Asylum and Temporary Protection. The child was appointed a guardian only after he was accommodated in Niš Youth Centre and it was his guardian who notified BCHR

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<sup>24</sup> Article 132 of the Family Law.

<sup>25</sup> Married foreigners over 16 years of age are entitled to apply for asylum themselves, pursuant to Article 11(3) of the Law on Asylum and Temporary Protection.

<sup>26</sup> Article 12(5), Law on Asylum and Temporary Protection.

<sup>27</sup> Article 132, Family Law.

<sup>28</sup> This conclusion was drawn on the basis of six specific certificates of registration issued to unaccompanied children from Afghanistan and Iran by the Belgrade and Gradina border police in September 2018.

that the child wanted to apply for asylum and was in need of legal counsel. It needs to be noted that the Serbian state still does not provide free legal aid and representation in non-criminal proceedings, which would be available to all children in need of such aid and representation.

Four other Afghani boys were referred to the Niš Youth Centre in September 2018. They, too, were appointed temporary guardians only upon arrival and after the border police had issued them certificates of registration.<sup>29</sup> This practically means that these unaccompanied children had been registered in contravention of Article 12(5) of the Law on Asylum and Temporary Protection, because they could not have accessed that procedural action in the absence of their temporary guardians appointed in accordance with the Family Law.

The mandatory presence of temporary guardians during all procedures regarding their wards is an obligation arising not only from the Law on Asylum and Temporary Protection, but also from the Family Law and ratified international treaties, above all the Convention on the Rights of the Child. Temporary guardians have been introduced to ensure that they look after and protect the children's welfare in all walks of life, pursue the identification of lasting arrangements and adoption of decisions in accordance with the children's best interests. In addition, temporary guardians are the children's link to the national legal order, because they, as representatives of the relevant guardianship authorities, can familiarise the children with the regulations affecting them and refer them to other services that can help them exercise their rights. Appointment of temporary guardians as soon as possible is relevant also given the short deadlines the Law on Asylum and

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<sup>29</sup> A BCHR lawyer perused the certificates during his regular visit to the Niš Youth Centre on 18 September 2018 to extend free legal aid to the children issued certificates.

Temporary Protection lays down for submitting asylum applications, as BCHR already noted in its January-March 2018 Periodic Report on the Right to Asylum.<sup>30</sup>

### **3. ACCOMMODATION OF ASYLUM SEEKERS AND FOREIGNERS WHO EXPRESSED THE INTENTION TO SEEK ASYLUM**

Under the Law on Asylum and Temporary Protection, asylum seekers shall be provided with material reception conditions in Asylum Centres or other facilities designated for the accommodation of asylum seekers pending final decisions on their asylum applications.<sup>31</sup> Asylum Centres are established under decisions of the Government, which also designates one or more other facilities for the accommodation of asylum seekers.<sup>32</sup> Although the Law provides only for the accommodation of asylum seekers i.e. persons who have applied for asylum, in such facilities, it may be inferred from the provisions and practice that accommodation is to be provided also to foreigners who expressed the intention to seek asylum; this is corroborated by the fact that the very certificates of registration of foreigners who expressed the intention to apply for asylum refer them to an Asylum Centre or another designated facility. BCHR lawyers, have, however, noticed that foreigners, who have not expressed the intention to seek asylum and those who have no intention of launching the asylum procedure, have also been living in these facilities.

The work of the Asylum Centres and other facilities designated for the accommodation of asylum seekers is managed by the Commissariat for Refugees and Migration, which adopts enactments governing also the internal organisation and staffing of these facilities. The Law on Asylum and Temporary Protection elaborates the material reception conditions in these accommodation facilities:

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<sup>30</sup> *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2018*, BCHR, April 2018, available at: <http://azil.rs/en/periodic-report-january-march-2018/>.

<sup>31</sup> Law on Asylum and Temporary Protection, Article 50.

<sup>32</sup> *Ibid.*, Article 51.

apart from the provision of accommodation, food and clothing, which the CRM has been in charge of, the Law now envisages the allocation of funding for the asylum seekers' personal needs.<sup>33</sup> It devotes particular attention to unaccompanied asylum-seeking children and allows for their accommodation in a social protection institution, another accommodation service provider or a foster family pending a final decision on their applications in the event the requisite conditions for their accommodation cannot be secured in an Asylum Centre or another facility designated for the accommodation of asylum seekers (such accommodation is provided by the CRM pursuant to a ruling of the Social Work Centre).<sup>34</sup>

Since the number of migrants coming to Serbia decreased over the previous period, the Reception Centres in Bela Palanka - Divljana, Dimitrovgrad and Preševo were temporarily closed in August,<sup>35</sup> and the asylum seekers and migrants who had been living in them were transferred to the nearby Reception Centres. Therefore, five Asylum Centres<sup>36</sup> and ten Reception-Transit Centres<sup>37</sup> were operating at the end of the reporting period.

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<sup>33</sup> The amount of financial assistance to cover personal needs equals the amount of funding granted adult welfare beneficiaries accommodated in social protection institutions in accordance with social protection regulations. Such funding may be granted to an asylum seeker and up to three members of his/her family household.

<sup>34</sup> Law on Asylum and Temporary Protection, Article 52.

<sup>35</sup> CRM's letter in response to a request for access to information of public importance Ref. No. 019-4710/1-2018 of 22 October 2018.

<sup>36</sup> In Krnjača, Banja Koviljača, Bogovađa, Tutin and Sjenica.

<sup>37</sup> In Bujanovac, Vranje, Adaševci, Bosilegrad, Pirot, Principovac, Sombor, Kikinda, Subotica and Obrenovac.

# 4. PRACTICE OF SERBIAN ASYLUM AUTHORITIES AND ANALYSIS OF INDIVIDUAL DECISIONS

## 4.1. ASYLUM OFFICE

The Asylum Office granted asylum to two Iranian and five Libyan asylum seekers represented by the BCHR in the reporting period. It also issued two rulings dismissing asylum applications on the merits and three rulings discontinuing the asylum procedure.

In both decisions granting asylum to the Iranian nationals, the Asylum Office found they had reason to fear persecution in their country of origin because of their religion. In the first case,<sup>38</sup> the Asylum Office found that the asylum seeker had been ill-treated and subjected to persecution by the Iranian authorities because he was preaching Christianity. This Asylum Office decision is important because it found that Turkey could not be considered a safe third country for the applicant. The Asylum Office explained that the asylum seeker was not safe in Turkey because of his ethnic origin (Armenian). This decision is a good practice example given that the Asylum Office departed from its usual practice of applying the safe third country concept to dismiss asylum applications without reviewing them on the merits. The Asylum Office also commendably referred to reports by international and non-government organisations.

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<sup>38</sup> Asylum Office Ruling No. 26-2554/17 of 19 July 2018.

In its second decision,<sup>39</sup> the Asylum Office granted asylum to an Iranian national also because there were reasonable grounds to fear he would be persecuted in his country of origin because of his religion. Before arriving in Serbia, the asylum seeker passed through Bulgaria, which is also on the list of safe third countries,<sup>40</sup> but he proved during the procedure that he had not had access to the asylum procedure in Bulgaria and that it was not safe for him. Namely, the applicant claimed he had been subjected to police violence in Bulgaria; he corroborated his allegations of the dismal living conditions in the Voena Rampa camp with his own photographs and video footage.

One of the most important decisions the Asylum Office rendered in the reporting period was the one in the case of a five-member Libyan family A, whose asylum claim was dismissed by a final decision in June 2016<sup>41</sup> under the influence of the Security Intelligence Agency (BIA). Namely, family A. was asked to leave Serbia in February 2015 under the excuse that they posed a security risk. Evidently guided by BIA's assessment, all three asylum authorities held that, if they were refouled to their country of origin, the family would not be at the risk of persecution on any grounds under Article 1 of the Convention Relating to the Status of Refugees and that their fundamental human rights would not be in jeopardy due to the general insecurity there, which persists to this day.<sup>42</sup> However, such a view did not reflect the practice of either the Asylum Office or Asylum Commission, because they had noted the situation of generalised violence in all cases concerning Libyan nationals and granted them at least subsidiary protection.

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<sup>39</sup> Asylum Office Ruling No. 26-1081/17 of 4 July 2018.

<sup>40</sup> The list of safe third countries was determined in the Government Decision on Safe Countries of Origin and Safe Third Countries, *Sl. glasnik RS*, 67/09.

<sup>41</sup> *Right to Asylum in the Republic of Serbia 2016*, BCHR, March 2017, pp. 41-42, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>.

<sup>42</sup> *UNHCR Position on Returns to Libya - Update II*, UNHCR, September 2018, available at: <http://www.refworld.org/docid/5b8d02314.html>.

After the Administrative Court rendered a judgment dismissing family A.'s asylum application, the BCHR filed a request with the European Court of Human Rights to indicate an interim measure, which the ECtHR did on 1 July 2016. Subsequently, an application was filed with the ECtHR, noting that family A. would be subjected to treatment in contravention of the prohibition in Article 3 of the ECHR if it were refouled to Libya.<sup>43</sup> The case of family A. was communicated to the Serbian Government on 21 December 2017.<sup>44</sup> After several months in which the parties filed submissions, family A was provided with another hearing before the Asylum Office and granted subsidiary protection.<sup>45</sup> Its decision indicates it has accepted all the allegations the applicants made during the asylum procedure and before the ECtHR. In its decision, the Asylum Office again noted that the situation of general insecurity in Libya obligated the relevant authorities to grant a form of international protection to Libyan nationals.

The Asylum Office also issued two rulings dismissing asylum applications on the merits. In the first case,<sup>46</sup> the Asylum Office for the first time applied the newly-introduced accelerated procedure institute with respect to a BCHR client. Namely, pursuant to Article 40 of the Law on Asylum and Temporary Protection governing the accelerated procedure, decisions on asylum applications shall be rendered after a regular asylum procedure and within a maximum of 30 days from the day of submission of the application or the admissible subsequent application. The Asylum Office dismissed an asylum application by a national of Guinea on the merits, having found the requirements under Article 2(1(2)) of the Law on Asylum and Temporary Protection had been fulfilled – i.e. that it had been established that the applicant had intentionally misled the Asylum Office by presenting false information or forged

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<sup>43</sup> *Right to Asylum in the Republic of Serbia 2016*, BCHR, March 2017, pp. 55-56, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>.

<sup>44</sup> *A. and Others v. Serbia*, Application no. 37478/16.

<sup>45</sup> Asylum Office Ruling No. 26-222/15 of 3 July 2018

<sup>46</sup> Asylum Office Ruling No. 26-763/18 of 17 August 2018



documents, or by not providing relevant information or by concealing documents that could have had a negative effect on the decision.

The second case in which the Asylum Office dismissed the asylum application on the merits concerned an application filed by an Iraqi child.<sup>47</sup> Although the child had passed through a number of countries on Serbia's list of safe third countries before arriving in Serbia, the Office did not dismiss his asylum application. It took into account all the presented evidence and found that the countries he had passed through had not extended him procedural guarantees or provided him with adequate access to their asylum procedure, especially in view of the fact that he was a child. The Asylum Office's departure from the automatic application of the safe third country concept in this case is a good practice example. The appeal of the Asylum Office decision dismissing his claim on the merits was pending at the end of the reporting period.

During the reporting period, the Asylum Office discontinued reviews of asylum applications by three Afghani nationals ex officio. Appeals of all three cases were pending at the end of the reporting period. Two of these cases concerned adult asylum seekers<sup>48</sup> and the third an unaccompanied underage asylum seeker.<sup>49</sup> The decision to discontinue the review of the Afghani child's asylum application reached in September was problematic for several reasons. The Asylum Office offered only one explanation: that the child had left the Children and Youth Centre in Belgrade. It did not take into account the provisions protecting the rights of the child. Nor was it guided by the child's best interests as it is under the obligation to. It ordered the child to leave Serbia, although aware that he was unaccompanied, did not have a travel document or money to support himself. Therefore, he only could have left the country illegally. The Asylum Office's decision is a bad practice example of treatment

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<sup>47</sup> Ruling No. 26-2348/17 of 24 August 2018

<sup>48</sup> Asylum Office Rulings No. 26-888/17 of 22 August 2008 and No. 26-1278/17 of 10 September 2018

<sup>49</sup> Asylum Office Ruling No. 26-784/18 of 14 September 2018

of an unaccompanied child, in contravention of international law and international standards on the rights of the child.

## **4.2. ASYLUM COMMISSION**

In Q3 2018, the Asylum Commission rendered four decisions regarding asylum seekers represented by BCHR. In one case, it upheld the appeal and remitted the case to the Asylum Office. In the other three cases, it dismissed the appeals, thus upholding the Asylum Office's decisions.

The Asylum Commission upheld BCHR's appeal and voided the Asylum Office ruling dismissing the asylum application by a national of Ghana. It remitted the case to the Asylum Office due to procedural violations, reflected in the fact that the applicant had by herself applied for asylum although she was underage at the time. Namely, under Article 16(1) of the Law on Asylum in force at the time the asylum application was filed, unaccompanied minors and incapacitated persons without legal guardians shall be appointed guardians by the guardianship authority before they apply for asylum. The Asylum Commission overturned the Asylum Office's decision because this provision was violated. The Asylum Commission reflected on the initiation of asylum procedure in its decision. Namely, under Article 25(1) of the Law on Asylum valid at the relevant time, the asylum procedure shall be initiated by the submission of an asylum application. The Commission, however, took the view that this administrative procedure is launched when the relevant authority undertakes any procedural action to conduct it, pursuant to Article 115(1) of the General Administrative Procedure Law. In this case, it considered the procedure initiated by the service of summons to the parties, i.e. scheduling of the official action of asylum application submission. This interpretation by the Asylum Commission will be of relevance to future decisions, given that the Law on Asylum

and Temporary Protection retained the provision on the initiation of the asylum procedure in the prior Law on Asylum.<sup>50</sup>

In three cases, the Asylum Commission dismissed the appeals and upheld the Asylum Office's decisions dismissing the asylum applications. The first case<sup>51</sup> regarded an asylum application filed by a national of Afghanistan. The Asylum Office had dismissed his application because he had entered Serbia from Macedonia, which it qualified as a safe third country. The Asylum Commission found that the Asylum Office had properly applied the Government Decision on the list of safe third countries. In the other two cases,<sup>52</sup> concerning Cuban asylum seekers, the Asylum Commission dismissed the appeals and upheld the Asylum Office decisions to dismiss the applications because the asylum seekers had been in Montenegro, which can be considered a safe third country, before they entered Serbia. The asylum authorities thus consistently applied the safe third country concept pursuant to the Serbian Government's 2009 Decision. Proceedings in these two cases were pending before the Administrative Court at the end of the reporting period.

### **4.3. ADMINISTRATIVE COURT**

The Administrative Court ruled on a lawsuit filed by a Chinese asylum seeker and revoked the Asylum Commission's second-instance ruling<sup>53</sup> and remitted the case. In its judgment,<sup>54</sup> the Administrative Court upheld the plaintiff's complaint that the Asylum Commission, which had reviewed the appeal of the Asylum Office's first-instance decision dismissing his application because it held that Turkey was a safe

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<sup>50</sup> Law on Asylum and Temporary Protection, Article 36.

<sup>51</sup> Asylum Commission Ruling No. Až-34-1/18 of 27 July 2018.

<sup>52</sup> Asylum Commission Ruling No. Až-41-1/18 of 27 July 2018.

<sup>53</sup> Asylum Commission Ruling No. Až-44-1/17 of 20 February 2018.

<sup>54</sup> Administrative Court Judgment No. U-6310/18 of 27 August 2018.

third country for him,<sup>55</sup> had failed to fulfil its obligation and assess all the allegations in the appeal regarding the personality of the asylum seeker. The Court, in particular, noted that the Asylum Commission had failed to examine the risk of the asylum seeker's refoulement from Turkey to China or the risk to his life, security or liberty in China. The Administrative Court also found that the Asylum Commission had not complied with the foreseeability principle under Article 5(3) of the General Administrative Procedure Law, because it had not taken into consideration prior decisions stating that Turkey was not a safe third country because of impeded exercise of asylum-related rights and had not ascertained that the facts decisive for the application of the safe third country concept have changed.

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<sup>55</sup> Asylum Office Ruling No. 26-2050/17 of 4 December 2017.