RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2018

Belgrade Centre for Human Rights

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RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2018

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ACRONYMS

AC – Asylum Centre

AL – Asylum Law

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

CAT – Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CCPR/HRC – UN Human Rights Committee

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRC – Committee on the Rights of the Child

CRM – Commissariat for Refugees and Migration, Republic of Serbia

DRC – Danish Refugee Council

ECtHR – European Court of Human Rights

EU – European Union

European Convention – European Convention on Human Rights and Fundamental Freedoms

FL – Foreigners Law

Government Decision – Decision of the Government of the Republic of Serbia on Establishment of the List of Safe Countries of Origin and Safe Third Countries, 2009

IOM – International Organisation for Migration

IRC – International Rescue Committee

LAD – Law on Administrative Disputes

LATP – Law on Asylum and Temporary Protection

LGAP – Law on General Administrative Procedure

LIACM – Law on International Legal Assistance in Criminal Matters

MOI – Ministry of Interior, Republic of Serbia

NPM – National Preventive Mechanism

PA – Police Administration

PS – Police Station

Refugee Convention – 1951 UN Convention Relating to the Status of Refugees

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RS	– Republic of Serbia
RTC	– Reception/Transit Centre
UASC	– Unaccompanied and Separated Children
UN	– United Nations
UNHCR	– United Nations High Commissioner for Refugees
UNICEF	– United Nations International Children's Emergency Fund
SIA	– Security Information Agency

1. INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) in 2018 continued to implement the project "Support to Refugees and Asylum-Seekers in Serbia" with the support of the United Nations High Commissioner for Refugees (UNHCR). The seventh annual report on the right to asylum in the Republic of Serbia before you was prepared by a BCHR project team which monitored the treatment of refugees and migrants by the competent authorities. The report is based on the information that the BCHR team collected while representing asylum-seekers in the asylum procedures, and providing legal advice to migrants in the field and support in exercise of integration-related rights. The statistical information related to the work of the Ministry of Interior was obtained from UNHCR office in Belgrade, and the other data was gathered following requests for access to information of public importance.

The crucial novelty in the domain of migration management in 2018 was certainly the adoption and the beginning of implementation of new legislation – the Law on Asylum and Temporary Protection, the Foreigners Law and the Law on Border Control – pending for the last two years. Seeking to improve and align these laws with the international standards, BCHR provided comments and proposals in writing during the public consultations on the draft laws. In our view, prerequisites for improvement of the asylum system in the Republic of Serbia have been met by the adoption of the new law. The main positive solutions introduced by the Law on Asylum and Temporary Protection are the introduction of new procedural guarantees, detailed provisions on application of the safe third country concept, introduction of new steps into the procedure related to granting asylum, suspensive effect of complaints, clear differentiation between the rights and obligations of asylum-seekers and those of the persons granted protection, as well as equalisation of the rights of persons granted subsidiary protection and those granted refugee protection, etc. Among the most important novelties are those related to the procedure of awarding asylum – certain procedures have been merged, and the possibility of submission of asylum applications without an Asylum Office official present was introduced. The timeframes have been set for initiation of certain procedures and decision-making, and the possibility of voice and video recording of hearings was introduced. In addition, the Law stipulates an accelerated asylum procedure and the possibility for the entire asylum procedure to take place at border crossings or in transit zones of airports or inland ports.

Endorsement of the new Law on Asylum and Temporary Protection resulted in changes of the legal framework for exercise of the integration-related rights and obligations of the persons granted the right to asylum. In this respect, the most important novelty introduced by the Law is equalisation of rights and obligations of the persons granted refugee status with those of the persons granted subsidiary protection. The beginning of implementation of the Law was accompanied by a change of the Decree on the Inclusion of Foreigners Granted the Right to Refugee Status into the Social, Cultural and Economic Life, implemented since 2017. The changed version entitled Decree on the Inclusion of Foreigners Granted the Right to Asylum into the Social, Cultural and Economic Life entered into effect in late July 2018 and it now applies also to the persons who have been granted subsidiary protection.

The Belgrade Centre for Human Rights in 2018 cooperated with the state authorities in finding systemic solutions for a more successful integration of persons granted the right to asylum. The BCHR and UNHCR continued to cooperate with the Serbian business sector. Since the asylum-seekers and persons granted asylum are not sufficiently visible to the general public and employers in Serbia as yet, this type of activities proved very beneficial. Most of the employers were not aware of the legal status of persons granted asylum, the conditions for their employment stipulated in the Law on Employment of Foreigners, personal documents issued to these persons by the authorities of the Republic of Serbia, etc. Employment of numerous BCHR clients, those granted the right to asylum as well as the eligible asylum-seekers represents a tangible result of these activities.

Though the Law on Asylum and Temporary Protection stipulates that accommodation will be provided to asylum-seekers only and until the completion of the asylum procedure, persons who neither expressed the intention to seek asylum in Serbia nor wanted to do that also stayed in the asylum centres and other facilities designated for accommodation of asylum-seekers in 2018. In all, 19 asylum centres and other facilities designated for accommodation of asylum-seekers were operational in 2018 and most of them were taking the asylum-seekers all the year. Due to the decrease in the number of refugees and migrants in 2018, three reception/transit centres were placed on temporary standby. One reception/transit centre, temporarily closed in May 2017, was reopened in early December 2018.

The trend of increased influx of nationals of the Islamic Republic of Iran which began in September 2017 persisted in 2018 due to the changes in visa regime between the Republic of Serbia and the Islamic Republic of Iran. The nationals of Iran were issued 1,891 certificates on expressed intention to seek asylum and registration certificates in the period September 2017 – end October 2018. On the eve of re-introduction of visas in late October 2018, an average

of 150–200 newly arrived Iranians were registered a month relative to 5–30 a month in the pre-September 2017 period.

As for the ethnic structure of the migrants who applied for international protection in the Republic of Serbia or transited on their way to other countries in 2018, the nationals of Pakistan, Afghanistan and Islamic Republic of Iran were the most numerous. In all, 7,651 certificates on the expressed intention and registration certificates were issued from the beginning of 2018 and until late November. The BCHR opines these do not reflect the realistic number of persons who genuinely wished to initiate the asylum procedure in Serbia. Only 292 persons applied for asylum in the period January and end November 2018, including those who were issued certificates in the past. Consequently, one may assume that many foreigners continue to perceive Serbia as a transit country although they formally express the intention to apply for asylum. Registration Certificates are very often used for the purpose of temporary regulation of legal status and for accommodation purposes. In other words, the foreigners who did not wish to seek asylum in Serbia but legalised their stay pending departure to some other state also expressed intention to seek asylum. In practice, this puts excessive burden on the asylum system and makes it impossible for the competent authorities to deal efficiently with the cases of genuine asylum-seekers who wish to be granted asylum in Serbia, to take up residence and integrate in it.

This report was prepared by: Vladica Ilić, Nikola Kovačević, Bogdan Krasić, Nikolina Milić, Anja Stefanović, Bojan Stojanović, Senka Škero Koprivica, Marko Štambuk, Milana Todorović, Sonja Tošković, Ana Trifunović and Ana Trkulja.

2. STATISTICS[1]

2.1. Statistics on the Number of Expressed Intentions

In the period 1 January – 30 November 2018, 7,651 persons expressed intention to seek asylum and to submit an asylum application in the Republic of Serbia.[2] This represents an increase relative to 2017 when 5,702 persons intending to seek asylum were registered in the same period.

Of the number of persons who expressed intention to seek asylum and to submit an asylum application in Serbia in 2018, 6,776 were men and 875 were women. According to the age structure, 2,200 were children of whom 666 unaccompanied and separated children. The majority of unaccompanied and separated children arrived from Afghanistan (541), Pakistan (73) and Iran (18).

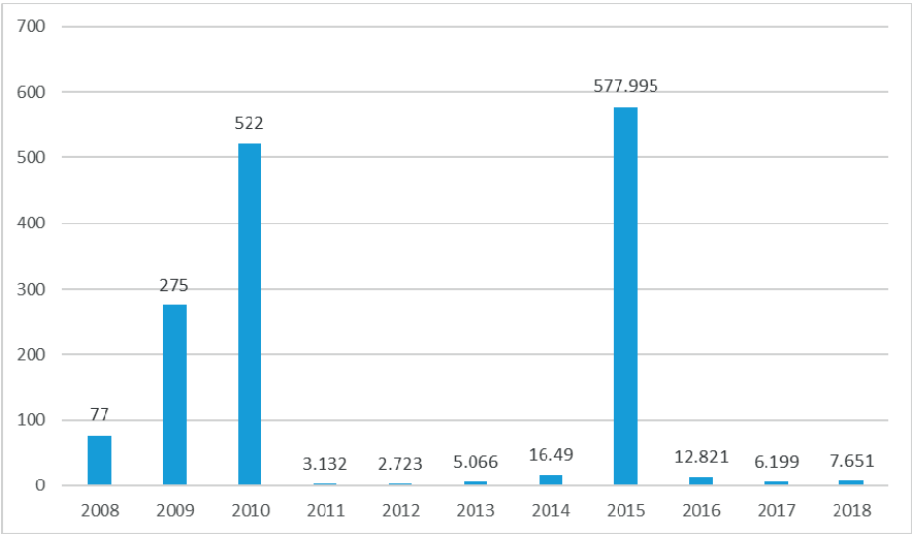
Throughout the year, the number of persons who expressed intention to seek asylum and to submit an asylum application was almost consistent by month, and so 427 persons applied in January, 594 in February, 710 in March, 642 in April, 582 in May, 739 in June, 1,021 in July, 856 in August, 628 in September, 700 in October, and 752 in November.

Table 1: Location of registration of intention to seek asylum in 2018 by 30 November 2018

Regional Police Stations	6,814
Border Crossings	412
Reception Centre in Preševo	70
Airport "Nikola Tesla"	324
Shelter for Foreigners	17
Asylum Office	14

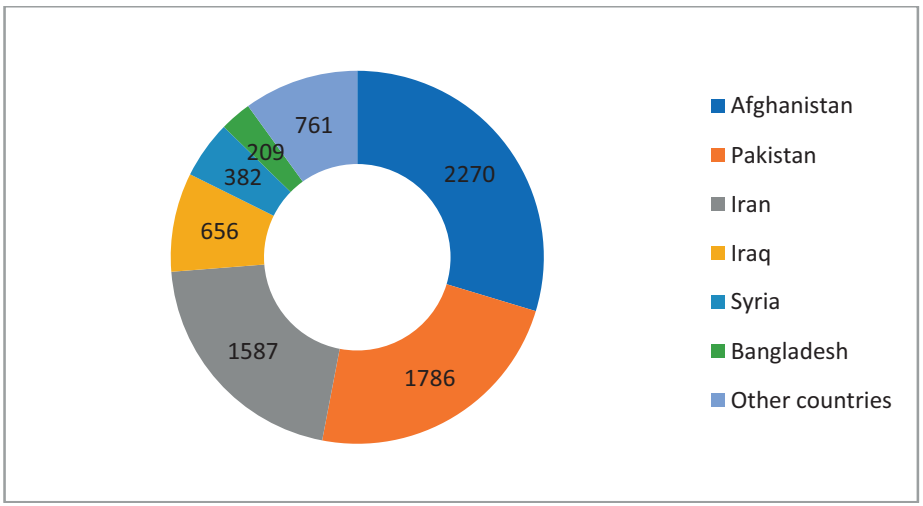
1 All statistics obtained from UNHCR Office in Belgrade which receives official activity reports and statistics from the Ministry of Interior, and refer to the period 1 January to 30 November 2018. The Asylum Office does not publish the data and the activity reports on the Internet page of the Ministry of Interior.

2 Until 3 June 2018 when the Law on Asylum and Temporary Protection came into effect, the competent authority recorded the foreigners who wished to apply for asylum in the Republic of Serbia, and issued certificates on expressed intention to seek asylum to them in line with the Asylum Law. Since LATP came into effect, these persons express interest to apply for asylum and are registered in the same procedure, whereby they are issued certificates on registration of foreigners who have expressed intention to seek asylum in the Republic of Serbia.



Graph 1: Number of expressed intentions to seek asylum, i.e., intentions to submit asylum applications since the establishment of the national asylum system in 2008, by 30 November 2018

Most of the foreigners who expressed intention to seek asylum i.e., to submit an asylum application in Serbia in 2018 were nationals of Afghanistan (2,270), followed by Pakistan (1,786), Iran (1,587), Iraq (656) and Syria (382). In addition to these, the countries of origin of asylum-seekers were also Bangladesh (209), India (183), Libya (144), Palestine (86), Somalia (70), Algiers (41), Tunisia (29), Morocco (25), Ghana, Sri Lanka and Turkey (18 from each), Lebanon (13), Nepal (12), Eritrea (11), Russia (10), Cameroon and Nigeria (nine from each), Yemen (7), Guinea (5), Democratic Republic of Congo and Mali (four from each), Albania, Bulgaria, Egypt, China and Kuwait (three from each) FYRO Macedonia, Burundi, Israel, Kazakhstan, Myanmar, Cote d'Ivoire and Vietnam (two from each) and Austria, BiH, Montenegro, Gabon, Greece, Holland, Croatia, Jordan, Qatar, Cuba, Liberia, Peru, Romania, Sudan, Ukraine and Zimbabwe (one from each).



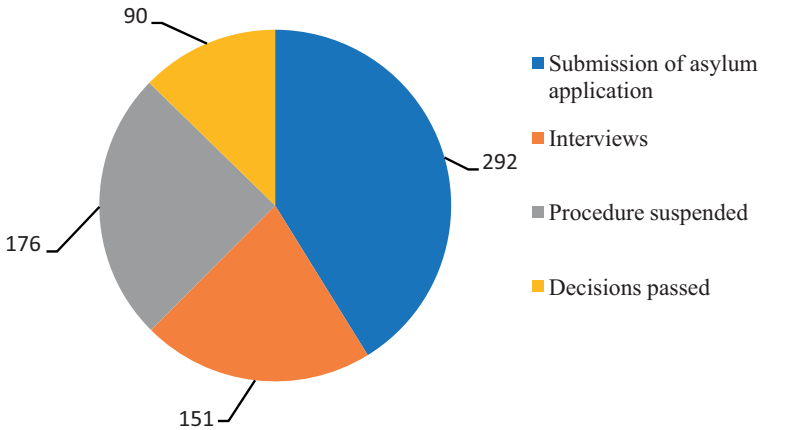
Graph 2: Countries of origin of asylum-seekers in the first 11 months of 2018

2.2. Statistics on the Actions Taken in the Asylum Procedure

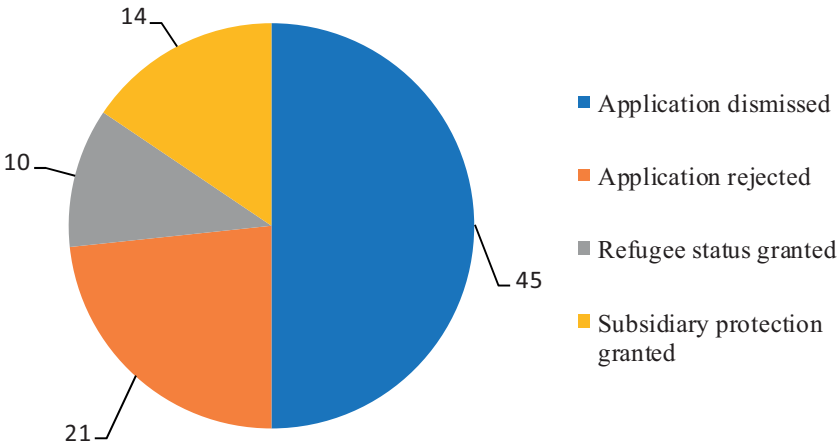
In the first eleven months of 2018, 292 persons submitted asylum applications. The majority were nationals of Iran (159), followed by Afghanistan (27), Pakistan (25) and Iraq (18). The Asylum Office interviewed 151 people in the asylum procedure during the same period. In all, 24 asylum applications were upheld, 38 applications for 45 persons were dismissed on merits and 20 asylum applications for 21 persons were rejected. The procedures were suspended in 126 cases for 176 persons, most often because the asylum-seekers had left Serbia or the place of residence in the meantime.

Of the 24 applications upheld, refugee status was granted in ten cases, and subsidiary protection was granted in 14 cases. Refugee status was granted to nationals of Afghanistan (5) and Iran (5). Subsidiary protection was granted to the nationals of Libya (10), Bangladesh (1), Pakistan (1), Syria (1) and Somalia (1). Most of the applications dismissed on the merits were submitted by the nationals of Pakistan (14) and Ghana (7), while the majority of those rejected had been filed by nationals of Afghanistan (6) and Pakistan (5).

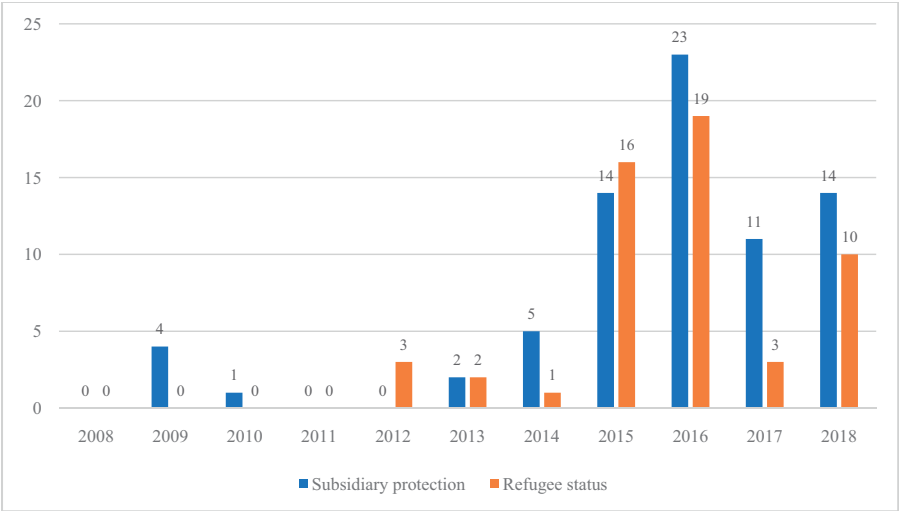
The Asylum Office granted refugee status to 54 persons and subsidiary protection to 74 persons since establishment of the national asylum system in 2008 and until 30 November 2018.



Graph 3: Procedures conducted by 30 November 2018 (number of persons)



Graph 4: Decisions passed by 30 November 2018 (number of persons)



Graph 5: Positive decisions passed in the asylum procedure by year

3. ACCESS TO THE ASYLUM PROCEDURE AND COMPLIANCE WITH THE PRINCIPLE OF *NON-REFOULEMENT*

3.1. General

Being a signatory of the Convention Relating to the Status of Refugees[3] and other international conventions,[4] the Republic of Serbia is obliged to allow access to the asylum procedure with full respect for the principle of *non-refoulement*.[5] By allowing foreigners to access the territory and the asylum procedure, the competent authorities of Serbia enable them to present – in a legally prescribed procedure – all the relevant facts on threats they would be exposed to if they were to be returned to the country of origin or a third country they transited on their way to Serbia.

The Law on Asylum and Temporary Protection (LATP)[6] provides that foreigners inside the territory of Serbia have the right to express intention to seek asylum and submit asylum applications pursuant to the law.[7] Foreigners may express intention to seek asylum to authorised MOI police officers at Serbia's borders or inside its territory either verbally or in writing,[8] whereupon they are registered and referred to asylum centres or other facilities designated for accommodation of asylum-seekers which they have to report at within 72 hours from the moment of issuance of the registration certificate.[9] Exceptionally,

3 Pursuant to Article 33 of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, the states shall not expel or return refugees in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

4 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment prohibit forced removal of an individual to the territory of the country where he would be exposed to the threat of torture, inhuman or degrading treatment or punishment.

5 Within the meaning of the international human rights law, the principle of *non-refoulement* represents the absolute norm of international common law and includes prohibition of return of an individual to the territory of the country where he would be at risk of torture, inhuman or degrading treatment or punishment.

6 *Sl. glasnik RS*, 24/18.

7 Article 4 (1), LATP.

8 Article 35 (1), LATP.

9 Article 35 (3), LATP.

foreigners may express intention to seek asylum in asylum centres or other designated facilities for accommodation of asylum-seekers, as well as in the Shelter for Foreigners.[10]

An authorised police officer shall photograph and fingerprint a foreigner,[11] who will thereafter be issued a certificate on registration of a foreigner who has expressed intention to seek asylum.[12] The manner and the procedure of registration, as well as the content of the registration certificate are defined in the Rulebook on the Procedure of Registration, Design and Content of the Certificate on Registration of a Foreigner Who Expressed Intention to Seek Asylum (Rulebook on Registration).[13] This Rulebook introduces several novelties relative to the previous Rulebook on Design and Content of Asylum Application Forms and Documents issued to asylum-seekers and persons granted asylum or temporary protection,[14] which prescribes, *inter alia*, the design and content of certificates for foreigners who expressed intention to seek asylum. The novelties introduced by the new rulebook mainly relate to the fact that LATP provided for integration of the process of recording of the intention to seek asylum and the act of registration of foreigner into one action and not two as in the past. In line with that and under the new rulebook, a certificate on registration of a foreigner who expressed intention to seek asylum (Registration Certificate) is issued to a foreigner who has expressed the intention and registered. In the past, having expressed intention to seek asylum, a foreigner was issued the certificate on the expressed intention to seek asylum, while the registration represented a separate action conducted prior to submission of the asylum application.[15]

The rulebook elaborates on the LATP provision stipulating that foreigners may express intention to seek asylum in asylum centres or other designated facilities for accommodation of asylum-seekers, as well as in the Shelter for Foreigners in exceptional cases. Namely, the Asylum Office officers register, in line with the procedure prescribed by this rulebook, foreigners who express intention to seek asylum in asylum centres or other designated facilities for accommodation of asylum-seekers, or in the Shelter for Foreigners. However, if registration cannot be conducted in an asylum centre or other designated facility for accommodation or in the Shelter for Foreigners, foreigners will be referred to the competent regional police administration to register. Foreigners who express the intention to seek asylum at border crossings shall be registered

10 Article 35 (2), LATP.

11 Article 35 (5), LATP.

12 Article 35 (11), LATP.

13 *Sl. glasnik RS*, 42/18.

14 *Sl.glasnik RS*, 53/08.

15 See more in *Right to Asylum 2017*, p. 41.

at the border police stations by authorised police officers in those border police stations, in line with the procedure of registration stipulated by the Rulebook.[16] So the Law provides for the possibility to express intention in one of the above-mentioned facilities. However, the intention itself is recorded and a foreigner is registered either in an asylum centre by the Asylum Office officer or by the police officers of a competent police administration. MOI data show that not a single foreigner expressed the intention to seek asylum in the asylum centres or other facilities designated for accommodation of asylum-seekers in the first eleven months of 2018.[17]

Pursuant to the rulebook, registration certificates shall be issued in two copies, one of which is handed to the foreigner and the second one to be archived in the MOI organizational unit where the officer who issued the Registration Certificate is employed.[18] Under the previous rulebook, the certificates on expressed intention to seek asylum were issued in three copies, one of which was delivered to the Asylum Office. Registration certificates issued to foreigners who expressed intention are in Serbian and in Cyrillic alphabet. Given that the majority of these foreigners do not understand Serbian and do not use Cyrillic alphabet as well as that interpreters are seldom present at issuance of the certificate, the possibility of the certificates being issued in English or some other languages should be considered in order to avoid potential dilemmas related to understanding of the rights specified therein.

In a letter sent to the BCHR, MOI stated that, when issuing registration certificates and referring persons to one of the asylum centres or transit/reception centres, the police officers advise the persons who express intention to seek asylum about their right to apply for asylum and about the other rights and obligations, in line with Art. 56. of the LATP. The letter also indicates that a brochure on asylum-seekers' rights and obligations is being drafted and that it will be made available to all the organizational units of MOI which issue registration certificates, and to the facilities for accommodation of asylum-seekers and migrants.[19] Consequently, if the said brochures in languages that asylum-seekers understand have not been distributed as yet, it remains unclear how the foreigners are advised about their rights and obligations given the language barrier between them and the police officers, and the fact that interpreters are rarely present in these cases.

16 Article 3, Rulebook on Registration.

17 See more in: *Statistics*.

18 Article 8, Rulebook on Registration.

19 Letter of the Ministry of Interior, Police Directorate, Border Police Administration, 03/8/4 No: 26–1991/18 of 6 December 2018.

By the end of November 2018, 7,651 person expressed intention to seek asylum in Serbia which represents a considerable increase relative to the same period last year when 5,702 certificates on expressed intention were issued. Most of the certificates were issued to the nationals of Afghanistan (2,270), Pakistan (1,786) and Iran (1,587). The foreigners expressed intention to seek asylum at police stations most often, and these issued 6,814 certificates (89% of all the certificates issued) in the said period.

The decision of the Government of the Republic of Serbia to abolish visas for the nationals of the Islamic Republic of Iran[20] and the Republic of India,[21] which came into effect on 2 September 2017, had a significant impact on the increase of the number of persons from these countries who applied for asylum in Serbia. Thus, for instance, 1,891 certificate on expressed intention and registration certificates were issued to the nationals of Iran in the period September 2017 – end October 2018. However, on 25 October 2018, a Government decision on abolishment of visa-free regime with the Islamic Republic of Iran came into effect[22] as, according to the Minister of Interior, a number of citizens of that state had violated the visa-free regime.[23] In the period preceding the reintroduction of visas, an average of 150–200 Iranians registered per month as compared to 5–30 Iranians per month who expressed the intention to seek asylum prior to September 2017.

It is paramount to note that the figure of 7,651 issued certificates does not reflect a realistic number of persons who genuinely wish to start an asylum procedure in Serbia. Only 292 foreigners applied for asylum, including persons who were issued certificates in the previous years, by the end of November 2018.[24] Based on this information one may assume that Serbia continues to be a country of transit for many people who formally express the intention to seek asylum. Oftentimes, registration certificates are used for temporary regulation of legal status of these persons as well as for accommodation purposes. In other words, the intention to seek asylum is also expressed by the foreigners who do not wish to seek asylum in Serbia, but legalise their stay pending departure to some other

20 Decision on abolition of visas for the nationals of the Islamic Republic of Iran *Sl. glasnik RS*, 79/17.

21 Decision on the abolition of visas for the nationals of the Republic of India, *Sl. glasnik RS*, 79/17.

22 Decision on termination of the validity of the Decision on the abolition of visas for entry into the Republic of Serbia for the nationals of the Islamic Republic of Iran, *Sl. glasnik RS*, 75/18.

23 "Serbia abolishes visa-free regime with Iran", *N1 Info*, 10 October 2018. Available at: http://rs.n1info.com/a426860/Vesti/Srbija-ukinula-bezvizni-rezim-sa-Iranom.html.

24 So, for instance, a BCHR client who expressed intention to seek asylum in 2015, applied for asylum only in July 2018.

country in this way. In practice, this puts an excessive burden on the asylum system and makes it impossible for the competent bodies to deal, without delay, with the cases of asylum-seekers who perceive Serbia as a country where they wish to be granted asylum, take up residence and integrate in. Therefore, foreign citizens who genuinely wish to stay and apply for asylum must be identified in order to improve the quality of the asylum procedure in the Republic of Serbia. That being said, foreigners who do not see Serbia as a country of asylum certainly need to be assisted on humanitarian grounds, but need not necessarily be taken into the asylum procedure. Thereby, the capacities of the relevant state authorities and NGOs assisting the asylum-seekers would be focused on the concrete category of persons in genuine need of international protection who wish to apply for asylum.

This may be the reason for the Foreigners Law[25] (which came into effect on 3 October 2018) to have provided the possibility of passing an ordinance regulating tolerated presence of foreigners on the territory of the Republic of Serbia in its transitional and final provisions.[26] Namely, the Law provides that the Government shall, at the proposal of the Minister of Interior, in case of special circumstances related to illegal presence of an increased number of foreigners in the territory of Serbia who cannot not be returned to the country of origin due to application of the principle of *non-refoulement*, or who cannot leave Serbia due to circumstances beyond their control, adopt an ordinance regulating their tolerated presence on the territory of the Republic of Serbia, with limited time of implementation. The problem with the above legal provision is reflected in the fact that on the one hand the Government has been given wide discretionary powers to adopt this regulation, while on the other hand it remains unclear what is meant by a "tolerated presence", as this term has not been explained anywhere.

The important novelties introduced by the LATP refer to introduction of deadlines to start an asylum procedure and the possibility of a foreigner who expressed intention to file an application in writing. The asylum procedure is initiated on submission of an application to the authorised Asylum Office officer on a prescribed form no later than 15 days from the date of registration.[27] Should an authorised officer of the Asylum Office fail to enable the applicant to submit an application within the set 15-day deadline, the applicant may do so by filling in the asylum application form within eight days deadline after the

25 *Sl. glasnik RS*, 24/18.

26 Article 124 (2), Foreigners Law.

27 Article 36 (1), LATP.

expiry of the 15-day time limit.[28] However, in order for foreigners to fulfill their obligation and fill in the forms in the additional 8-day timeframe, in cases when they are unable to submit applications within 15 days, they must be provided asylum application forms in a language they understand. With UNHCR assistance, the Asylum Office translated the forms into eight languages (Arabic, Farsi, Urdu, Pashtu, French, Spanish, Russian and English). These were made available to the Commissariat for Refugees and Migration which sent them to the asylum centres and transit/reception centres.[29] Still, these application forms were distributed in asylum centres and facilities designated for accommodation of asylum-seekers only in mid-November 2018.[30] Given that the translated asylum application forms had not been available in the first five months of implementation of the Law, we may assume that the foreigners could fill in the forms and send them to the Asylum Office within the prescribed timeframe, solely with the assistance of legal representatives who ensured interpreters at the same time.

3.2. Access to the Asylum Procedure in Police Administrations and Regional Border Police Centres

Most of the certificates on expressed intention to seek asylum and registration certificates – 6,814 – were issued at the police stations attached to regional border police centres. In all, 412 foreigners expressed intention to seek asylum in the border zone of the Republic of Serbia by end November 2018. BCHR recorded no major irregularities in the work of the police officers employed in police administrations and regional border police centres.

3.3. Access to the Asylum Procedure at the Airport "Nikola Tesla"

The Belgrade Border Police Station (BPS) issued 324 certificates on expressed intention to seek asylum and registration certificates in the period 1 January – 30 November 2018,[31] representing a considerable increase relative to 2017 when only 84 certificates were issued. This increase is mostly due to the already mentioned visa liberalization regime for the nationals of Iran and India, who ar-

28 Article 36 (2), LATP.

29 Letter of the Ministry of Interior, Police Directorate, Border Police Administration, 03/8/4 No: 26–1991/18 of 6 December 2018.

30 This information was received from the CRM representatives during regular field visits to the asylum centres in Krnjača and Bogovađa and the reception/transit centre in Pirot in the period 12 to 16 November 2018.

31 Of these, 64 certificates were issued after the BCHR lawyers intervened, personally or by phone, with the staff of Border Police Station at the "Nikola Tesla" airport.

rived in Serbia by air. The majority of foreigners expressed the intention to seek asylum only after they were denied entry into Serbia. Therefore, it is debatable whether these persons truly wished to apply for asylum in Serbia or whether they had asked for international protection only to avoid being returned to the country of origin or a country of transit. Nevertheless, regardless of the moment when a person asked for international protection, Serbia has an obligation to examine – thoroughly and in each individual case – the existence of risk from persecution,[32] and treatment contrary to the prohibition of abuse[33] prior to his/her forced removal. In other words, the police officers must register a foreigner's intention to seek asylum and issue a registration certificates even in presence of doubt about the abuse of the right to asylum. Pursuant to the LATP, only the authorities competent for this procedure may examine asylum applications in substance.[34] Furthermore, the Asylum Office may decide to limit the movement of a foreigner and refer him/her to the Shelter for Foreigners in Padinska Skela in case of a suspected abuse of the right to asylum.[35]

The Law on Asylum and Temporary Protection introduces the possibility for the entire asylum procedure to be conducted at a border crossing or in the transit area of airports and inland ports, complying with the main principles defined therein.[36] The Law allows for the asylum procedure to take place at the above locations only if the asylum-seeker is provided with adequate accommodation and subsistence; if the asylum application or a subsequent asylum application may be refused as inadmissible because the applicant does not fulfill conditions for refugee status or subsidiary protection and the circumstances prevail that require the decision to be passed in and accelerated procedure, and if the asylum application or a subsequent application may be dismissed without examining the merits of the case, in line with Art. 42 of the LATP.[37] The Asylum Office shall decide on an asylum application no later than 28 days from the date of the application.

32 Within the meaning of Article 1 of the 1951 Convention on Refugee Status and 1967 Protocol providing for persecution on the grounds of race, religion, ethnic affiliation, political opinion or membership to a certain social group.

33 Pursuant to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment prohibit forced removal of an individual to the territory of the country where he would be exposed to the threat of torture, inhuman or degrading treatment or punishment.

34 Articles 20–22, LATP.

35 Articles 77–78, LATP.

36 Article 41, LATP.

37 Pursuant to Article 42, LATP, the decision dismissing an asylum application without examining it on the merits shall be rendered if it is possible to apply the concept of the first country of asylum in accordance with Article 43 of the LATP, and when it is possible to apply the safe third country concept in accordance with Article 45 of the LATP.

Should it fail to do so, it shall allow the applicant access to the territory of Serbia pending completion of the procedure on the submitted asylum application. This time limit is in line with the Directive 2013/32/EU.

The LATP defines a shorter deadline for appealing the first instance decision to the Asylum Commission – five days from the date of serving the decision. It also sets down that the asylum procedures initiated on the applications of minors or unaccompanied children may not be conducted at the borders or in transit zones. Representatives of organizations providing legal assistance to asylum-seekers and persons granted asylum have enjoyed efficient access to border crossings and the transit area at the airport and inland ports, in line with the provisions governing protection of state borders. Access to asylum-seekers may be temporarily restricted to proxies or representatives of organisations providing legal assistance to asylum-seekers and persons granted asylum, when required for reasons of protection of national security or public order of the Republic of Serbia. This limitation of access does not apply to UNHCR representatives.[38]

However, the legislator seems to have lost sight of the fact that the asylum-seekers who stay in the border area during the asylum procedure are particularly at risk of *refoulement* because they are in a place from where they can easily be returned to the country from which they came to Serbia, and subsequently to the country of origin. Therefore, the law unjustly deprives these persons of the right to information and legal aid by restricting their access to proxies and representatives of legal aid organizations. Thus, the position of these persons is less favourable than that of the foreigners in need of international protection inside the territory of Serbia.

Although the Law came into effect on 3 June 2018, there is still no adequate accommodation at the airport indispensable for implementation of the above mentioned Art. 41 of the LATP. Therefore, in 2018 the BCHR insisted on the need for the airport "Nikola Tesla" and the Asylum Office to build their capacity and create conditions conducive to implementation of the entire asylum procedure in the Belgrade airport transit zone.[39]

The BCHR lawyers were enabled direct legal counseling of potential asylum-seekers at the "Nikola Tesla" airport since April 2018 on the basis of provisional permits issued by MOI. In addition, BCHR provided free legal aid by telephone to the persons who expressed intention to seek asylum at the "Nikola Tesla" airport. All the persons who contacted BCHR from the "Nikola Tesla" airport in 2018 were accommodated in a detention room located at the airport. Some of them remained in it for several days.

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38 *Right to Asylum, January – March 2018*, p. 26. Available at: http://azil.rs/azil_novi/wp-content/uploads/2018/05/Periodicni-izvestaj-januar-March-2018.pdf .

39 *Right to Asylum, July – September 2018*, p. 13. Available at: http://azil.rs/azil_novi/wp-content/uploads/2018/11/periodicni-izvestaj-jul-septembar-2018.pdf.

The National Preventive Mechanism (NPM) stated that the above room is not adapted in line with the earlier recommendations and that it does not fully comply with the applicable standards.[40] According to the data that NPM obtained during the visit to BPS Belgrade, 1,679 foreigners were denied entry into Serbia at the "Nikola Tesla" airport since the beginning of 2018 and until 18 October 2018. This number includes 165 foreigners who were denied entry when the new Foreigners Law came into effect on 3 October 2018.[41] By the day of concluding this report, the BCHR has not managed to obtain the information on the country of origin of foreigners who were denied entry into Serbia, i.e., how many persons among them could have been assumed *prima facie* to be in need of international protection.

3.4. Access to the Asylum Procedure in the Shelter for Foreigners

The Foreigners Law defines Shelter for Foreigners as a facility for accommodation of foreign nationals who have not been allowed entry into the country, or against whom expulsion or removal, or return orders have been issued, but cannot be enforced immediately, and who have been, in accordance with the law, imposed detention under close police watch.[42] One of the measures of restricting movement of asylum-seekers provided by the LATP is their accommodation in the Shelter for Foreigners as per decision of the Asylum Office.[43] In 2018, the Asylum Office passed only two decisions (both with respect to nationals of Iran) on restriction of the freedom of movement and accommodation in the Shelter for Foreigners. Although this measure was seldom implemented, it is important to note that such a legal solution is controversial.

Namely, this measure can be applied for a maximum of three months and may be extended by a further three months. The decision on restriction of movement may be appealed to the competent higher court within eight days from the day the decision was served but the appeal does not suspend the enforcement of the decision. Ordering of accommodation in the Shelter for Foreigners may be considered detention, bearing in mind the level of restriction of the rights of asylum-seekers accommodated therein (impossibility to leave dormitory or a small circle at one's will, limited contact with the outer world, duration of

40 *Ibid.*

41 Report on the visit to the Border Police Station Belgrade at "Nikola Tesla" airport, NPM – Protector of Citizens RS, 281–83/18, 25 October 2018, p. 4, Available at: https://npm.rs/attachments/article/796/Izvestaj%20Aerodrom.pdf.

42 Article 3 (1.28), Foreigners Law.

43 Article 78, LATP.

measure for several months, etc.).[44] Therefore, the procedure of pronouncing this measure would need to be in line with the relevant provisions of the Constitution of the Republic of Serbia[45] and the European Convention for the Protection of Human Rights and Fundamental Freedoms on the right to freedom and safety.

The said provisions do not fulfill the constitutional and international guarantees to the right to freedom and safety, as they do not provide for mandatory and immediate judicial review of the decision of administrative authority (MOI) on detention of asylum-seekers. Optional review of decisions of administrative authority on detention of asylum-seekers on their appeal (which may be lodged within eight days from the date of its serving and for the deciding on which not time limit has been prescribed) that has been stipulated, is unsatisfactory. The above provisions are deficient for at least two more reasons. First, no time limit has been stipulated in which the police officers must serve the decision on the measure of accommodation in the Shelter for Foreigners to a foreigner in a language he/she understands. Second, there is no obligation of the decision-maker to periodically review the decision on accommodation in the Shelter for Foreigners with a view to extending or revoking it, nor to present it to the asylum-seeker. Thereby, they are unfairly put into a less favourable position than the persons who were ordered detention in pre-investigative or criminal procedures.

The accommodation capacities in the Shelter for Foreigners were decreased in 2018 due to reconstruction and extension of the facility. According to the data obtained by the BCHR in October 2018,[46] the Shelter for Foreigners had 14 places. The operation of the Shelter in 2018 represents a best practice example with respect to the asylum procedure. As previously mentioned, LATP provides for foreigners to be able to apply for asylum in this facility as well.[47] In all, 17 foreigners expressed intention to seek asylum in the Shelter for Foreigners in the period 1 January – 30 November 2018. BCHR lawyers enjoyed unimpeded access to all the foreigners who requested free legal aid, most often via telephone.

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44 ECtHR took the stand that in cases when it is not clear whether a person has been deprived of liberty in a way as to avail himself of the protection stipulated in Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or if his freedom of movement is only restricted, deprivation of liberty is not ascertained by invoking classification in the national law, but actual restrictions imposed on the person in question are taken into consideration. Consequently, also the persons accommodated in a facility classified as a centre for reception, detention or accommodation may be persons actually deprived of freedom if it results from a (protracted) duration of restrictions imposed on them, the manner of implementation of the measure and its summary effects on the person in question. See more in: *Migrations and International Human Rights Law*, *A Practitioners' Guide no. 6*, updated edition, International Commission of Jurists, 2014, p. 201 and on.

45 Constitution of the Republic of Serbia, *Sl. glasnik RS,* 83/06.

46 The information given by the police officers at the Shelter for Foreigners Padinska skela on 11 October 2018.

47 Article 35 (2), LATP.

3.5. Access to the Asylum Procedure during Misdemeanor Proceedings

The prohibition of punishment of refugees for illegal entry or stay in the territory of Serbia is governed by international regulations and national legislation. Thus, Article 31 of the 1951 Refugee Convention provides that *the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence*. In continuation, LATP provides that *a foreigner shall not be punished for unlawful entry or stay in the Republic of Serbia, provided that he/she expresses the intention to submit an asylum application without any delay and offers a reasonable explanation for his/her unlawful entry or stay.*[48]

A similar definition is contained in the Asylum Law (AL) which sets out that *an asylum– seeker shall not be punished for unlawful entry or stay in the Republic of Serbia, provided that he/she submits an application for asylum without delay and offers a reasonable explanation for his/her unlawful entry or stay.*[49] The definition notwithstanding, during the first six months of 2018, the practice of punishing refugees for illegal entry[50] or stay in the territory of Serbia[51] persisted. Although progress was made in the practice of misdemeanor courts, the fact is that these persons continue to be punished.

According to the information obtained by BCHR,[52] referring to the period 1 January – 30 June 2018, 428 foreigners were fined for illegal border crossing and 630 for illegal stay in Serbia. Of these, a protective measure of removal of a foreigner from the territory of Serbia was pronounced in 90 cases. Only three appeals were filed. Most of the procedures were conducted before the courts in Novi Sad (161), Sremska Mitrovica (140) and Loznica (134).[53]

48 Article 8, LATP.

49 Asylum Law, *Sl. glasnik RS*, 109/07, Article 8.

50 Law on Protection of State Border, *Sl. glasnik RS*, 97/08 and 20/15 – other law (in effect until April 2018), Article 65; Foreigners Law, *Sl. glasnik RS*, 97/08, Article 84 (1); and Law on Border Control, *SI. glasnik RS*, 24/18, Article 71 (1). Importantly, in early April 2018, the Law on Border Control which replaced the Law on Protection of State Border came into effect.

51 Article 85, Foreigners Law.

52 All statistics were collected by sending requests for access to information of public importance to misdemeanor courts in Serbia and refer to the period 1 January – 30 June 2018.

53 The statistics do not include data from misdemeanor courts in Kosovska Mitrovica and Raška, which did not respond to our requests for access to information of public importance.

In all, 81 foreigner was fined on the grounds of Art 84 (1.1) of the Foreigners Law,[54] in the first six months of 2018, and 347 foreigners were fined on the basis of Art. 65 (1) of the Law on Protection of State Border and Art. 71 (1) of the Law on Border Control.[55] The majority of foreigners fined in misdemeanor courts came from Afghanistan (85), Iran (74), Pakistan (66), Syria (21) and Libya (20). The others were nationals of Iraq (12), Turkey (9), China (6), Morocco (5), India (5), Tunisia (4), Bangladesh (3), Russia (2), Lebanon (2), Palestine (1), Ghana (1) and other countries (112).

In the first six months of 2018, 630 foreigners were fined for illegal stay in the Republic of Serbia, on the basis of Art. 85 (1.3) of the Foreigners Law.[56] The majority of these persons were nationals of Pakistan (87), Iran (35), Afghanistan (25) and Iraq (15), followed by nationals of Russia (10), India (8), China (7), Syria (6), Tunisia (5), Turkey (5), Libya (5), Ukraine (3), Cameroon (2), Bangladesh (2), Morocco (1), Nigeria (1), Jamaica (1), Israel (1), Mali (1) and other countries (410).

On the basis of the replies to the requests for access to information of public importance one cannot ascertain whether the interpreters for languages understood by the defendants had been engaged in each of the above procedures. However, the replies leave no doubt that the interpreters for English, Arabic, Farsi, Turkish, Russian, Chinese, Albanian, French, Hungarian, Czech, Romanian and German were provided in minimum 307 cases. Of 1,058 foreigners fined for the above misdemeanors, only two foreigners (in Jagodina) applied for asylum in the Republic of Serbia, indicating lack of awareness of these persons about the rights and the asylum procedure in Serbia.

3.6. Access to the Asylum Procedure in the Extradition Proceedings

In absence of a ratified international treaty or when certain issues are not governed by it, the provision of international legal aid in criminal procedures is governed by the Law on International Legal Assistance in Criminal Matters (LIACM).[57] Pursuant to this Law, international legal aid includes: extradition of the

54 "A fine amounting to RSD 10.000 to 50.000 shall be imposed for an offence to a foreigner who unlawfully entered the territory of the Republic of Serbia."

55 "A fine amounting to RSD 10.000 to 100.000 or 30 days of confinement shall be imposed for an offence to a person if he tries to cross the state border outside the designated border crossing, the official working hours of the border crossing, or contrary to the purpose of the border crossing or if he crosses or tries to cross the state border at the crossing without valid travel or other documents regulated for the crossing of the state border."

56 "A fine amounting to RSD 6.000 to 30.000 shall be imposed for an offence of a foreigner who stays unlawfully in the Republic of Serbia."

57 *Sl. glasnik* RS, 20/09.

defendants or convicted persons, assumption and transfer of criminal prosecution, execution of criminal judgments, as well as other forms of international legal assistance. An asylum-seeker subject to simultaneous asylum and extradition procedures cannot be extradited to a requesting state until the procedure on his asylum application has been completed or until the competent asylum authorities establish whether the foreigner is deserving of international protection. Although the Criminal Procedure Code[58] and LIACM contain no such provision, the obligation of the decision-making authority and the enforcement authorities result from the directly applicable provisions of the Constitution as well as from the international agreements ratified by Serbia.

Namely, Article 3 of the UNCAT ratified by Serbia prohibits forcible removal of any person into the state where he/she is at risk of torture, while the Articles 7 and 10 of the ICCPR and Article 3 of the ECHR contain an equal prohibition. In addition to the said provisions, Article 33 of the 1951 Refugee Convention is also significant as it proclaims prohibition of expulsion and return of persons to the territory where they would be at risk of torture, inhuman or degrading treatment or punishment (*non-refoulement*).[59] Furthermore, the suspensive effect of appeals lodged with the Administrative Court against Asylum Office decisions are now explicitly prescribed by the LATP, so it remains to be seen whether this provision will prevent the competent authorities from extraditing asylum-seekers to the authorities of other states even before the effective asylum procedure completion, a situation we bore witness to in the past years.

In 2018, BCHR lawyers represented one foreigner in the asylum procedure who was subject of the extradition procedure at the same time. The entire first instance asylum procedure was conducted while the applicant was held in extradition detention that had been pronounced since the beginning of the extradition procedure. The competent court rejected the request for extradition to the requesting state, and detention was cancelled. On the other hand, at the time of drafting this report, the effective decision in the asylum procedure had not been made yet. Namely, after the Asylum Office rejected the application of the asylum-seeker[60] and the Asylum Commission confirmed the first instance decision,[61] an appeal was lodged with the Administrative Court. The Administrative Court upheld the appeal, overruled the decision of the Asylum Commission and remanded the case for further consideration.[62]

58 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

59 See more in *Right to Asylum 2017*, p. 33.

60 Asylum Office Decision No. 26–1598/17 of 24 May 2018.

61 Asylum Office Decision No Až-27–1/18 of 3 July 2018.

62 Administrative Court Ruling No. U.15143/18 of 19 October 2018.

Importantly, this case differs from the other cases in which the BCHR represented asylum-seekers who were simultaneously subject of asylum and extradition procedures before the competent courts of the Republic of Serbia. Namely, the first instance authority in this asylum case rejected the application for the first time. In other words, it examined the merits of the case and concluded that the applicant was not at risk of persecution in his country of origin. Nevertheless, bearing in mind that the extradition request was rejected in an effective decision, the situation of the BCHR client is more favourable than that of certain asylum-seekers who were subject of simultaneous criminal extradition proceedings in the past. Let us not forget that the BCHR lawyers acted as proxies in two other cases in which the applications of asylum-seekers were unlawfully dismissed due to application of the safe third country concept. After that, the asylum-seekers were returned – not to the countries that in the opinion of the administrative authorities were competent to examine their asylum applications, but to their countries of origin. Therefore, these persons were extradited to the states that requested their extradition and the authorities of the Republic of Serbia had not even examined the risks associated with returning the asylum-seekers into their countries of origin though they were obliged to do so in line with the provisions of the ratified international treaties.[63]

63 See more in *Right to Asylum, 2017*, p. 33. Available at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2018/04/Pravo-na-azil-u-Republici-Srbiji-2017.pdf.

4. ASYLUM PROCEDURE

4.1. First Instance Procedure

The asylum procedure in Serbia is governed by the Law on Asylum and Temporary Protection and the Asylum Law, applied as *lex specialis* relative to Law on General Administrative Procedure.[64] LATP stipulates that the Asylum Law shall continue to apply on the procedures initiated prior to its coming into effect, unless its provisions are more favourable for the applicants.[65] Bearing in mind that the asylum procedure defined in the AL was described thoroughly in the previous reports, we will focus only on the most important solutions provided for in the LATP only.

The novelties introduced by the LATP with respect to the asylum procedure are, *inter alia*, in that Asylum Office actions differ during regular asylum procedures, accelerated asylum procedures and the asylum procedures at the borders or in the transit zones. Another novelty is that LATP allows, under certain conditions, submission of subsequent asylum applications and that the deadlines for the decision of the first instance authority have been set. Actions at the border or in transit zones have already been discussed in the part of the report explaining access to the asylum procedure at "Nikola Tesla" airport. Therefore, regular and accelerated asylum procedures as well as other significant changes introduced by the LATP will be analysed on the following pages.

Regular asylum procedure. – The asylum procedure is initiated by submitting an application to an authorised Asylum Office officer, on the prescribed form within 15 days of the date of registration at the latest.[66] If the authorised Asylum Office officer does not enable a foreigner who expressed intention to submit his/her asylum application within this time limit, a foreigner may himself fill in the asylum application form within eight days after the expiry of the 15 day time limit.[67] The asylum procedure shall be considered initiated after the submission of the asylum application form to the Asylum Office.[68] This solution is contestable because of the short period left from the moment of registration and until

64 *Sl. glasnik RS*, 18/16.
65 Article 103, LATP.
66 Article 36 (1), LATP.
67 Article 36 (2), LATP.
68 Article 36 (3), LATP.

the expiry of the first deadline for asylum application submission, practically impeding the work of Asylum Office staff bearing in mind the number of asylum centres and other facilities designated for accommodation of asylum-seekers in Serbia and the number of staff in the Asylum Office. Furthermore, the subsequent, eight-day deadline for asylum applications submission is also very short, in particular because the majority of applicants are legally ignorant parties.

The next phase of the procedure is an interview which takes place at the earliest possible time before the Asylum Office officer who has undergone the necessary training.[69] The applicant is interviewed about all the facts and circumstances relevant to deciding on his/her application and particularly to establish his/her identity, the grounds for his/her asylum application, his/her travel routes after leaving the country of origin or habitual residence, and whether the asylum-seeker had previously sought asylum in any other country.[70] An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the factual situation.[71] In the case that a large number of asylum applications has been submitted to the extent that the authorised officers of the Asylum Office are not able to interview all the applicants in good time, the LATP provides that the Government may, at the request of the competent authority, decide on temporary involvement in the interviewing process of officers from other departments of the competent authority or officers from other authorities.[72] However, although prescribed that they must undergo the necessary training before engaging in the process, it remains unclear whether this training can provide the officers from other departments of the competent authority or officers of other authorities with the sufficient level of knowledge as required for interviewing the applicants given the specific characteristics of the asylum procedure.

The LATP also specifies three situations when interviewing of applicants may be omitted. The first situation happens if a decision may be adopted upholding the application and granting the right to asylum on the basis of the available evidence. The second situation is when the applicant is unable to give a statement due to circumstances of non-temporary nature beyond his control. In this case it is possible for the applicant or a member of his/her family to adduce evidence and give statements relevant to deciding on his asylum application.[73] The third situation occurs if the admissibility of the subsequent asylum application is being

69 Article 37 (1), LATP.

70 Article 37 (1. 1–4), LATP.

71 Article 37 (2), LATP.

72 Article 37 (12), LATP.

73 Article 37 (11), LATP.

assessed.[74] LATP provides the possibility of audio or audio-video recording of the interviews provided that the applicant has been informed about it.[75]

Accelerated asylum procedure. – An accelerated procedure is yet another novelty prescribed by the LATP which sets out that a decision on the asylum application shall be passed in an accelerated procedure in cases prescribed by the Law.[76] The Asylum Office shall inform the applicant that the decision on his application shall be made in an accelerated procedure and this decision shall be passed within 30 days from the date of application submission or the admissible subsequent asylum application.[77] The appeals time limit has been curtailed, and so the decision of the Asylum Office made in an accelerated procedure may be appealed to the Asylum Commission within eight days from the date of serving of the decision.[78] LATP sets down that an accelerated procedure shall not be applied to asylum applications submitted by unaccompanied minors.[79]

Subsequent asylum applications. – Another novelty introduced by the LATP, that was not stipulated by the AL, is the possibility to submit a subsequent asylum application if the applicant provides evidence that the circumstances relevant to recognizing his/her right to asylum have changed substantially or if he/she is able to provide any evidence that he/she did not present in the previous procedure due to justified reasons.[80] The applicant may do so after the effectiveness of the decision rejecting the previous application or discontinuing the procedure because

74 Article 37 (10), LATP.

75 Article 37 (9), LATP.

76 Pursuant to Article 40 (1) of the LATP, a decision on the asylum application shall be rendered in the accelerated procedure if it has been established that the Applicant has presented only the facts that are irrelevant to the examination of the asylum application in substance; the Applicant has consciously misled the Asylum Office by presenting false information or forged documents, or by failing to present relevant information or by concealing documents that could have had a negative effect on the decision; the Applicant has destroyed or concealed documents that establish his/her identity and/or nationality in bad faith so as to provide false information about his/her identity and/or nationality; the Applicant has presented manifestly inconsistent, contradictory, inaccurate, or unconvincing statements, contrary to the verified information about the country of origin, rendering his/her application non-genuine; the Applicant has submitted a subsequent asylum application that is admissible; the Applicant has submitted this/her asylum application for the clear purpose of postponing or preventing the enforcement of a decision that would result in his/her removal from the Republic of Serbia; the Applicant presents a threat to national security or public order; it is possible to apply the safe country of origin concept.

77 Article 40 (2) (3), LATP.

78 Article 40 (5), LATP.

79 Article 40 (4), LATP.

80 Article 46 (1), LATP.

the applicant withdrew his application in a written statement.[81] The subsequent asylum application shall be comprehensible and shall contain all the relevant facts and evidence that arose after the effectiveness of the decision, or relevant facts and evidence that the applicant did not present for justified reasons during the previous procedure, and which relate to the establishment of his/her eligibility for asylum. If established that the asylum application is admissible, the competent authority shall revoke the previous decision and decide again on the merits of the application.[82] The Asylum Office shall decide on a subsequent asylum application no later than within 15 days from the date of the application.[83]

Other substantial changes. – The first instance procedure before the Asylum Office may be completed by a decision to uphold the application and recognise the right to refugee status or to subsidiary protection,[84] a decision to reject the asylum application,[85] a decision to discontinue the procedure[86] or a decision to dismiss the application.[87] The LATP introduces new deadlines for decision-making. Namely, the AL does not contain specific provisions on deadlines and thus provisions of the LGAP apply stipulating that the Asylum Office is to pass a decision no later than 60 days from the date of the application.[88] In practice, however, the first instance decisions often took more than 60 days, as discussed in the reports analysing the practice of the Asylum Office in the past.[89] The LATP now stipulates that a decision on asylum application in the regular procedure must be passed within maximum three months from the date of asylum application or the admissible subsequent asylum application.[90] Furthermore, the possibility to extend the time limit by three months in case the application includes complex factual or legal issues or in case of a large number of foreigners submitting asylum applications at the same time has been provided.[91] Exceptionally from these reasons, the time limit for deciding on an asylum application may be extended by further three months if necessary to ensure a proper and complete assessment thereof.[92] The applicant shall be informed on

81 Article 46 (1. 1, 1.2), LATP.
82 Article 46 (4), LATP.
83 Article 46, (6), LATP.
84 Article 38 (1.1, 1.2), LATP.
85 Article 38 (1.3, 1.4, 1.5), LATP.
86 Article 47, LATP.
87 Article 42, LATP.
88 Article 145 (3), LGAP.
89 See more in *Right to Asylum, 2017*, p. 43.
90 Article 39 (1), LATP.
91 Article 39 (2), LATP.
92 Article 39 (3), LATP.

the extension and about when he/she may expect the decision.[93] Finally, the LATP envisages a situation where one may reasonably expect that a decision on asylum application cannot be made within the above time limits due to temporary insecurity in the country of origin of the applicant. In that case, the authorised Asylum Office officers are to verify the situation in the country of origin of the applicant every three months and to duly inform the applicant about the deferral of the decision.[94] Notwithstanding, the decision must be passed no later than 12 months from the date of the application. [95]

The LATP thus granted the Asylum Office a discretionary power to decide on the extension of the time limit for the decision. The provision allowing the Asylum Office the possibility to pass a decision nine months from the date of application if the application needs to be examined properly and completely deserves particular criticism. This wording may mean that only certain asylum applications need to be examined properly and completely, which certainly represents a reason for concern about the approach of the Asylum Office to deciding on other asylum applications. Similarly, it remains to be seen how the criteria for extension of the deadlines will be assessed by the first instance authority in practice.

In the first eleven months of 2018, 292 persons applied for asylum and the Asylum Office interviewed 151 persons. In all, 16 decisions were made to uphold 24 asylum applications, 38 applications in respect of 45 persons were dismissed and 20 applications in respect of 21 persons were rejected. The procedures were discontinued in 126 cases in respect of 176 persons, mostly because the applicants had left Serbia or the place of residence. Of the 24 applications upheld in 2018, the Asylum Office granted refugee status in 10 cases and subsidiary protection in 14 cases. Refugee status was granted to the nationals of Afghanistan (5) and Iran (5), and subsidiary protection to the nationals of Libya (10), Bangladesh (1), Pakistan (1), Syria (1) and Somalia (1).

With respect to the asylum applications of foreigners represented by the BCHR in 2018, the Asylum Office passed nine positive decisions in respect of 13 foreigners and rejected asylum applications of five foreigners in the first ten months of 2018.[96] Refugee status was granted to three nationals of Afghanistan and three nationals of Iran, and subsidiary protection was granted to one Nigerian, one Pakistani and five nationals of Libya. Ten decisions dismissing asylum applications in respect of 13 BCHR clients were passed. The majority of

93 Article 39 (4), LATP.

94 Article 39 (5), LATP.

95 Article 39 (6), LATP.

96 A client of BCHR was granted subsidiary protection in late December 2017 and thus it was not included in 2017 Asylum Office statistical report. However, since BCHR received this decision on 10 January 2018, the decision is mentioned in this report.

applications were dismissed because the first instance body invoked Art 33 of the AL, which will be discussed in more detail in the part of the report about the application of the safe third country.

Since the individual cases were analysed in our periodic reports, this report will provide a thorough analysis of one decision that we consider the most significant one passed by the Asylum Office in 2018 in respect of BCHR clients. It concerns a five-member Libyan family A. whose asylum application was dismissed in June 2016 under the influence of Security Information Agency (SIA). Namely, family A. was cancelled stay in Serbia in February 2015 with the explanation that they represented a risk to security. All the three asylum procedure authorities, evidently guided by the SIA security assessment, maintained the family would not be at risk of persecution on any of the grounds stipulated in Art. 1 of the Refugee Convention, and that their fundamental human rights would not be threatened by the persisting general insecurity if they were forcibly removed to the country of origin.[97] However, this view reflected neither the practice of the Asylum Office nor that of the Asylum Commission, because the decisions they passed in all other cases of Libyan nationals asserted the situation of generalized violence and subsidiary protection was granted at the minimum.

After the Administrative Court dismissed the asylum application of the family A., the BCHR submitted a request for an interim measure to the European Court of Human Rights which indicated an interim measure on 1 July 2016. An application was submitted subsequently stressing that the family A. would be exposed to treatment contrary to Article 3 of the European Convention (*non-refoulement*) in case of forcible removal to Libya.[98] The case of family A. was sent to the Serbian Government for opinion on 21 December 2017.[99] After several months of deliberations on the application, the family A. was granted another hearing before the first instance body and awarded subsidiary protection in 2018.[100] It follows that the first instance body fully recognised all the claims the appellant had presented in the asylum procedure and in the procedure before the ECtHR and reasserted that there prevails a state of generalized insecurity in Libya which calls for the competent authority to grant some form of international protection to the nationals of Libya.

97 *UNHCR Position on Returns to Libya – Update II*, UNHCR, Geneva, September 2018. Available at: http://www.refworld.org/docid/5b8d02314.html.

98 *Right to Asylum, 2016*, p. 55–56. Available at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2017/03/Pravo-na-azil-u-Republici-Srbiji-2016-FINAL-za-stampu.pdf.

99 *A. And Others v. Serbia*, App. No.37478/16.

100 Decision of Asylum Office No. 26–222/15 of 3 July 2018.

4.2. Second Instance Procedure

Second instance procedures are conducted by the Asylum Commission which decides on appeals to the Asylum Office decisions.[101] The appeals stay the enforcement of the decisions and they may be submitted within 15 days from serving of the first instance decision, if not otherwise specified.[102] A time limit for appeals on the decisions of the Asylum Office made in accelerated procedures and the decisions dismissing asylum applications or subsequent asylum applications is shorter – 8 days from the date of serving the decision.[103] Also, appeals on the Asylum Office decisions made in the procedure conducted at a border crossing, airport transit zone and inland ports may be filed to the Asylum Commission within five days from the date of serving.[104] The legislator opted for a solution of the AL, thus missing the opportunity to designate courts as second instance authorities – a frequent solution in comparative law.

The Asylum Commission is composed of nine members appointed by the Government of the Republic of Serbia for a four-year term of office.[105] With respect to the qualifications of the members, the LATP kept the AL solution and provided it was necessary for an Asylum Commission member to be a citizen of the Republic of Serbia, to have a university degree in law and minimum five years of working experience and that he must have an understanding of the human rights legislation.[106] This legal solution cannot be considered good given that one of the conditions stipulated is that an Asylum Commission member should "have an understanding of the human rights legislation". It would have been better to provide that a member of the Asylum Commission should have a high level of knowledge of international human rights law and refugee law and experience in working in these domains. This would have helped avoid the situation whereby the persons who had no experience in working with this vulnerable category of persons nor had they worked in the areas of human rights and refugee law get appointed Asylum Commission members. Certainly, such a criterion of selection would significantly contribute to improvement of the quality of the Asylum Commission decisions.

The composition of the Asylum Commission changed in September 2018, with the hitherto three members being replaced by new members.[107] The Asylum

101 Article 21 (1), LATP.

102 Article 95, LATP.

103 Article 42 (4), LATP.

104 Article 41 (7), LATP.

105 Article 21 (2), LATP.

106 Article 21 (3), LATP.

107 Decision on Appointment of Chairman and Members of the Asylum Commission, no. 119–8644/2018 of 14 September 2018, *Sl. glasnik RS*, 69/18.

Commission is composed of: Stana Ašanin, head of Department for Implementation of Readmission Agreement, Administrative Issues Directorate at the MOI – Chairwoman of the Commission, Ognjen Vugdelija, Chief Police Inspector at the Border Police Directorate at the MOI – member, Ljiljana Mandić, Border Police Directorate at the MOI – member, Zlatko Petrović, Senior Advisor at the Ministry of Justice – member, Nataša Gudović, Secretary of the Ministry of Health, a.i. – member, Sanja Gavranović, manager of the Group for Administrative and Supervisory Issues at the Ministry of Labour, Employment, Veteran and Social Issues – member, Aca Jovanović, Assistant Minister of Foreign Affairs, a.i. – member, Olivera Nikolić, manager of the Group for Property and Legal Issues at the Commissariat for Refugees and Migration – member, dr Ivana Krstić, Associate Professor at the Law School, University of Belgrade – member.

The Asylum Commission passed 20 decisions relating to the asylum-seekers represented by the BCHR in the first ten months of 2018. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 14 cases. In six cases the appeals were upheld and the cases were remanded for further consideration. Individual cases were analysed in our periodic reports. The practice of the second instance authority to uphold decisions on dismissal of asylum applications will be discussed in more detail in the part of the report dealing with the safe third country concept as well as in the chapter discussing the situation of unaccompanied and separated children.

4.3. Administrative Court

The Law on Asylum and Temporary Protection designates the Administrative Court as an authority in charge of adjudicating in administrative disputes challenging the final decisions of the Asylum Commission.[108] There is no change here, since the Administrative Court was mandated with ruling on appeals on final decisions of the Asylum Commission and in cases when the Asylum Commission did not rule on the appeal of a client in legally prescribed timeframe (the so called "silence of administration") – on the basis of Law on Administrative Disputes (LAD).[109] However, although the mandate of Administrative Court is not new, what certainly does represent a novelty is that it provides for the suspensive effect of the appeal on the Asylum Commission decision.[110] Namely, the AL did not provide for the suspensive effect of appeals but the LAD sets down the possibility for the prosecutor to request the Administrative Court to stay enforcement of the final administrative enactment challenged

108 Article 22, LATP.

109 *Sl. glasnik RS*, 111/09.

110 Article 96 (2), LATP.

by the appeal.[111] In hitherto practice, the Asylum Office overcame the problem of nonautomatic suspensive effect of appeals to the Administrative Court by stating in the reasoning of its decisions that they shall be enforced within a certain time limit from the date of their coming into effect.

According to the law, the Administrative Court is authorised to adjudicate in disputes of full jurisdiction.[112] This means that the Court solves administrative matters by a ruling when it finds that the challenged administrative decisions should be annulled, if the nature of things so allows and if the established facts provide reliable basis for it. This ruling replaces the repealed enactment. However, the Administrative Court never ruled in a dispute of full jurisdiction in the asylum procedure, nor has it held an oral hearing. Bearing in mind that the Administrative Court is overburdened and that it is to rule on legality of final administrative enactments in all administrative areas, as well as the fact that there are no specialized departments in it, the hitherto practice does not come as a surprise.

During the first eleven months of 2018, the Administrative Court decided in a total of six appeals filed by asylum-seekers represented by the BCHR in administrative proceedings. Three appeals were rejected in respect of the nationals of Iraq, Nigeria and Afghanistan. Also, three appeals were upheld and the cases were remanded for further consideration. Since the Administrative Court based all the three negative rulings on upholding decisions dismissing asylum applications due to the application of the safe third country concept by the first and the second instance authorities, we will not go into a detailed analysis of these cases. However, we do believe that the three positive decisions that the Administrative Court passed in 2018 issuing unambiguous instructions to the second instance authority as to the deficiencies to be removed in a repeated procedure deserve our attention.

The Administrative Court issued the first positive decision on the appeal of an unaccompanied child represented by BCHR in the asylum procedure. This case is analysed thoroughly in the part discussing unaccompanied and separated children.[113]

The second case is the decision on appeal of an asylum-seeker from China by which the Administrative Court annulled the challenged Asylum Commission[114] decision and remanded the case to that authority for further consideration. The judgment of the Administrative Court[115] states that the Asylum

111 Article 23, LAD.

112 Article 43, LAD.

113 See more in Chapter: Children in the Asylum Procedure in Serbia with Special Focus on Unaccompanied and Separated Children.

114 Decision of Asylum Commission no. Až-44–1/17 of 20 February 2018.

115 Ruling of Administrative Court no. U-6310/18 of 27 August 2018.

Commission when deciding on the appeal against the first instance decision of the Asylum Office[116] dismissing the asylum application (as Turkey was assessed as a safe third country for him) did not appraise all the statements that referred to the personality of the applicant made in the claim, as it had been bound to do, nor had it examined the risk of him being returned from Turkey to China and the potential risk to his life, safety or freedom in China. In this administrative and judicial procedure, the Administrative Court established that the Asylum Commission did not observe the principle of predictability from Art. 5(3) of LGAP. Specifically, when adopting a second instance decision, the Asylum Commission did not take into account the previously adopted decisions establishing that, due to the poor conditions for exercising the asylum seekers' rights, Turkey was not a safe third country, nor did the Asylum Commission find that the previously established factual situation that determined the application of the safe third country concept had changed.

Acting on the instruction of the Administrative Court, the Asylum Commission passed a new decision annulling the first instance decision of the Asylum Office which dismissed the asylum application and remanded the case to the first instance body for further consideration.[117] The Asylum Commission took the stand that, bearing in mind the view of the Administrative Court, the first instance body would remove the established deficiencies more efficiently and cost-effectively. It explained this decision by stating it did not have insight into most of the Asylum Office decisions on granting asylum or subsidiary protection and, therefore, it could not validly assess whether such a decision is in line with the earlier decisions of the Asylum Office, and whether the assessment of the situation in Turkey by first instance body had changed. The first instance body was also instructed to take into consideration claims that on his return to Turkey, the applicant would be exposed to the risk of being returned to China where his life, safety or freedom would be threatened. It was also ordered to explain deviation from its earlier stand that Turkey cannot be considered a safe third country.

In the third case, the Administrative Court upheld the appeal of the asylum-seeker from the Republic of Turkey, annulled the challenged decision of the Asylum Commission and remanded the case to that body for further consideration.[118] The Administrative Court stated in the reasoning that the second instance body had not offered sufficient and clear reasons for its assessment of the claims presented in the appeal referring to the personality of the asylum-seeker and of the risk that he would be subjected to torture by the Turkish police in case

116 Decision of Asylum Office no. 26–2050/17 of 4 December 2017.

117 Decision of Asylum Commission no. Až-44/17 of 18 October 2018.

118 Ruling of Administrative Court no. 15143/18 of 19 October 2018.

of return to the country of origin. This constituted a breach of the rules of procedure by the Asylum Commission. The Administrative Court also established a breach of procedure set down in Art. 141 (2) of LGAP, as the challenged decision does not include mandatory elements provided for by the said legal provision.

In this case also, the Asylum Commission passed a new decision annulling the negative decision of the Asylum Office and remanded the case for further consideration.[119] The Asylum Office was instructed to remove the procedural deficiencies related to the reasoning of the first instance decision, re-examine all the claims presented by the applicant in his appeal on the first instance decision, to properly and fully establish the factual situation and to offer unambiguous reasons for its decision.

119 Decision of Asylum Commission no. Až-27/18 of 19 November 2018.

5. APPLICATION OF THE SAFE THIRD COUNTRY CONCEPT

One of the key reasons for the rather low number of granted international protection statuses in Serbia since the establishment of the asylum system in 2008 is the inadequate and often automatic application of the safe third country concept. This problem, first identified by UNHCR in 2012,[120] was qualified as controversial in the numerous reports of the UN contracting bodies,[121] the national[122] and international non-governmental organisations[123] in the following years. Based on the statistics, it is clear that the inadequate practice was the reason why in the first five years of the asylum system international assistance was granted only to the persons (eight in total) who came to Serbia directly from the country of origin or from a third country that was not included in the list of safe third countries established by the 2009 Decision of the Government of the Republic of Serbia on Establishing the List of Safe Countries of Origin and Safe Third Countries (Government Decision).[124]

In the following years, there were sporadic cases of persons who entered Serbia from Macedonia and Bulgaria who had been given a possibility to have their asylum applications examined on the merits. Thus, the share of applications dismissed in the period 2013 to 2016 averaged 55%, only to reach 70% in 2017.[125]

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120 *Serbia as a Country of Asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, UNHCR, Geneva, August 2012, para. 10 and para. 79–80. Available at: http://www.unhcr.rs/media/Srbija_zemlja_azila.pdf.

121 *Concluding observations on the second periodic report of the Republic of Serbia*, UN Committee Against Torture, Geneva, 3 June 2015, CAT/C/SR.1322 and CAT/C/SR.1323, para. 11; Concluding observations on the third periodic report of the Republic of Serbia, UN Human Rights Committee, Geneva, 10 April 2017, CCPR/C/SRB/CO/3, para. 32 and 33; Concluding observations on the second to fifth periodic reports of the Republic of Serbia, Committee on the Rights of Persons with Disabilities, Geneva, 3 January 2018, CERD/C/SRB/CO/2–5, para. 26–27.

122 See more in *Right to Asylum, 2017*, p. 51–59.

123 *Europe's Borderlands – Violations against Refugees and Migrants in Macedonia, Serbia and Hungary*, Amnesty International, July 2015, p. 40–42. Available at: https://www.amnesty.org/download/Documents/EUR7015792015ENGLISH.PDF

124 *Sl. glasnik RS*, 67/09.

125 Percentage relative to the total number of negative decisions including decisions on rejection and decisions on dismissal on grounds other than application of the safe third country

Article 42 of the LATP prescribes that an asylum application may be dismissed without examining in on the merits if the concept of a safe third country can be applied. Although the new law specifies the concept of a "safe third country", there still remain ambiguities that may obstruct a proper application of this concept.

Namely, according to the Article 45 of the LATP, the safe third country is the country where the applicant is safe from persecution as defined in Article 24, as well as from the risk of suffering serious harm referred to in Article 25 (2) thereof. Additionally, the safe third country is only that country in which the applicant enjoys the guarantees from *refoulement*, which includes access to an efficient asylum procedure (Art. 45 (1)).

Interpreting the LATP on the whole, it follows from the Article 32 that the Asylum Office collects and considers all the relevant facts, evidence and circumstances when deciding on the merits of the asylum application as well as on the assessment of a certain third country as "safe". Under "facts, evidence and circumstances" it considers "current reports about the situation in [...] countries of transit [of the applicant], including the laws and regulations of these countries and the manner in which they are applied – as contained in various sources provided by international organizations including UNHCR and the European Asylum Support Office [...] and other human rights organisations."

Additional provisions binding on the asylum authorities with respect to the procedure of application of the safe third country concept have been provided in the Article 17 of LATP which refers to specific personal circumstances that must be taken into account in decision-making and relative to which individuals must be granted special procedural and reception guarantees. Specific circumstances are present if the applicant is a minor, unaccompanied minor, person with disabilities, elderly person, single parent with underage children, victim of human trafficking, severely ill person, a person with mental disorder and persons subjected to torture and other forms of abuse ("psychological, physical or sexual violence"). By analogy and the logical interpretation of the above provision, it is evident that a person falling into one of the above categories must be ensured equal reception guarantees in the receiving country ("safe third country") if subject to application of the safe third country concept. Whatsmore, the competent authorities must consider *proprio motu* the extent to which these special guarantees could be enjoyed in the receiving country.

In establishing conditions for application of the safe third country concept, each asylum application is assessed individually, examining whether the country

concept, See more in ECRE, *Report on Serbia*, Brussels, 2018. Available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_sr_2017update.pdf.

meets the conditions set by Art. 45 (1), and whether there is a connection between that country and the applicant on the basis of which it could be reasonably expected that he/she could seek asylum in that country.[126] This LATP solution is encouraging as it implies individual consideration of each case and not the application of the Government Decision or any other regulation proclaiming a country "safe" without transparent criteria.

Article 45 (3) states that the applicant will be informed in good time about the application of the safe third country concept so as to allow him/her the possibility to challenge it. It may be reasonable to assume that the information i.e., challenging of the safe third country concept would take place during the interview. This assumption is founded in the provision of Article 37 setting out that an officer of the Asylum Office authorised for interviewing, shall establish facts related to the travel routes of the applicant after leaving his/her country of origin or habitual residence, and whether he/she had previously sought asylum in any other country. If this is not the case, the future application of this provision by the Asylum Office remains to be seen.

The issue that remains unclear in the provisions regarding the safe third country concept is the certificate that the Asylum Office issues to the applicant having ruled on dismissing his/her application due to application of the above concept. Namely, the LATP only states that the certificate shall include an information for the authorities of a third state that the Republic of Serbia had not examined the asylum application in substance i.e., on the merits. Consequently, it is not clear whether the applicant himself will have to go to the border crossing and present the said certificate to the authorities of "the safe third country" or will the authorities of the safe third country be officially informed that the application of a certain individual had been dismissed as it was appraised that it could and should have been examined on the merits in that country. Practical ambiguities of this provision aside, the issue of major concern is the absence of clear and accurate provisions on individual guarantees, being the key institute relating to every forcible removal procedure. The issues that remain open after the beginning of implementation of LATP are the manner in which the said guarantees would be obtained from the states assessed to be safe, what exactly would these guarantees include, and to what extent would they be personalized relative to each individual. Based on above, however, it follows that, before the final evaluation, it is necessary to wait for the first decisions of the Asylum Office that will apply the safe third country concept in line with the LATP.

Finally, the LATP provides that the Republic of Serbia would examine a foreigner's application on the merits if a third country proclaimed safe refuses to admit him/her.

126 Article 45 (2), LATP.

Excluding the decisions suspending asylum procedures, 72 cases for 88 persons were decided on in the first ten months of 2018. Of that number, asylum applications were rejected in 19 cases for 20 persons (26%). In all, 38 decisions were made for 45 persons whose applications were dismissed (54%), most often by application of the safe third country concept relative to Macedonia, Greece, Turkey and Bulgaria. Finally, 15 decisions were made upholding asylum applications for 23 persons (20%).

With respect to BCHR clients subject to application of the safe third country concept, nine such decisions were made in the first three months relative to the same number of applicants. In cases of four Pakistanis and one Iranian, the Asylum Office took the stand that Bulgaria was a safe third country for them. The applications of two women – nationals of Iran were also dismissed on the grounds that they could have efficiently accessed the asylum procedure in Turkey and enjoyed international protection in it, if deserving. The applications of two Pakistanis who entered Serbia from Macedonia and one Cuban who entered from Montenegro were also dismissed.[127]

The practice of the Asylum Commission in the first three months also remained unchanged relative to the previous period. In the period January – March 2018, this authority upheld four decisions of the Asylum Office which were based on the application of the safe third country concept. This concept was applied in respect of Bulgaria (in two cases), Turkey (in one case) and Macedonia (in one case). Turkey was proclaimed a safe third country for the national of China, Bulgaria for the nationals of Nigeria and Afghanistan (female), and Macedonia for one national of Iraq.[128]

Seven decisions on dismissing asylum applications (10 persons) were made in respect of BCHR clients in the second quarter of 2018. Of these, the safe third country concept was applied in six cases in respect of seven applicants. In one case, Article 33 (1.4), that defines the situation in which the applicant applied for asylum in a state signatory of the Geneva Convention, was applied. Of these, the Asylum Office took the stand that Bulgaria is a safe third country for two nationals of Ghana and one national of Afghanistan. On the other hand, applications of two Cubans were dismissed on the grounds that they could have applied for international protection in Montenegro. The same decision was served to an Afghani who entered Serbia from Macedonia and a national of Ghana who flew in from Turkey. In the seventh case, a three-member family from Syria had their applications dismissed because they had applied for asylum in Greece prior to

127 See more in *Right to Asylum, January–March 2018*, p. 9–11.

128 *Ibid*.

arriving in Serbia.[129] During the same period the Asylum Commission passed one more decision continuing the practice of application of the safe third country concept in respect of Bulgaria.[130] The Commission maintained the same practice also in the following quarter.[131]

A common denominator for all the above procedures when applications were dismissed due to application of the safe third country concept is that the first instance authority did not obtain guarantees in any of the cases that a foreigner would be admitted back into the territory of a *safe third country* and that he/she would have access to the asylum procedure there. Other shortcomings refer to a selective and positive interpretation of parts of UNHCR reports on the situation in Macedonia[132] and Bulgaria,[133] although UNHCR points in all of them to the risks of treatment contrary to the absolute prohibition of abuse of asylum-seekers and refugees and recommends that the countries refrain from returning these persons into them.[134]

Hence, the consistent application of the new LATP could hopefully resolve the problem of inadequate application of the safe third country concept, at least relative to Macedonia, Bulgaria, Turkey and Greece. The positive practice of the Asylum Office granting international protection was granted to three Afghanis, three Iranians and one Pakistani though they had entered from Bulgaria and Macedonia in 2018 is promising. Nevertheless, the opinions of the Asylum Office in the above decisions are sometimes completely opposed to those stated in other decisions where these countries were proclaimed as safe, and the applications dismissed. So the absence of harmonized practice of the Asylum Office in this respect remains unclear.

Actually, of the 15 positive decisions on granting asylum in Serbia, eight applicants are guaranteed to have arrived in Serbia from Macedonia and Bulgaria because the BCHR lawyers acted as proxies. On the other hand, one could assume that five of the others (as the BCHR lawyers were not proxies) had entered Serbia from the same countries and that, therefore, the concept of the safe third

129 See more in *Right to Asylum, April – June 2018*, p. 10–15.

130 *Ibid*, p. 13–14.

131 See more in *Right to Asylum, July – September 2018*, p. 24–25.

132 *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, UNHCR, Geneva, August 2015. Available at: https://www.refworld.org/docid/55c9c70e4.html.

133 *Bulgaria as Country of Asylum: UNHCR Observations on the Current Situation of Asylum in Bulgaria*, UNHCR, Geneva, April 2014. Available at: https://www.unhcr.org/53198b489.pdf.

134 *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, UNHCR, Geneva, August 2015, paras. 45–47. Available at: https://www.refworld.org/docid/55c9c70e4.html.

country had not been applied. Taking into account that 38 decisions dismissing asylum applications were passed in 2018 and that there were 13 decisions when this could have happened but did not (international protection was granted), it follows that the probability of applicants who entered Serbia from one of the neighbouring countries (or had transited Turkey and Greece) to have their claims examined on the merits is 25%.

6. CHILDREN IN THE ASYLUM PROCEDURE IN SERBIA WITH SPECIAL FOCUS ON THE UNACCOMPANIED AND SEPARATED CHILDREN

The refugee population transiting Serbia in 2018 was characterized by a large number of women and children, unaccompanied and separated children in particular. The number of children who applied for asylum continued to be very low relative to the number of children who stayed in Serbia without regulating their legal stay and attempting, some even repeatedly, to cross the border illegally on their way to one of the countries in Western Europe.[135]

Legal solutions referring to unaccompanied and separated children (UASC) in the asylum procedure are largely in line with the international standards. High levels of protection of the right of the child are also guaranteed by the provisions of other laws. However, challenges arise when these provisions are put into practice, primarily due to insufficient coordination between various state authorities, ministries and institutions, and the insufficient capacities of different stakeholders in the protection system.[136]

As opposed to the AL which – within the principle of care of persons with specific needs – sets down that attention in the asylum procedure shall be paid to the specific situation of persons with special needs, including the UASC, the LATP prescribes the principle of best interest of a child. Hence, the best interest of a child in the centre of all the activities involving children provided for in the LATP. Importantly, the obligation of the competent agencies to take into consideration the best interest of a child in their decisions *per se* was not introduced with the beginning of LATP implementation and the assertion of this principle. Convention on the Rights of the Child ratified by the Republic of Serbia[137]

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135 Conclusion of a comparative analysis of the Asylum Office data based on reports submitted to UNHCR office and CRM data. The data were acquired upon request to access information of public importance.

136 This was noted, *inter alia*, in the latest concluding observations of the Committee for the Rights of the Child and the Human Rights Committee on implementation of the Convention on the Rights of the Child and the International Covenant on Civic and Political Rights in Serbia. See: *Concluding observations on the combined second and third reports of Serbia,* Committee for the Rights of the Child, CRC/C/SRB/CO/2–3, 7 March 2017; and *Concluding observations on the third periodic report of Serbia*, Human Rights Committee, CCPR/C/SRB/CO/3, 10 April 2017.

137 Law on Ratification of the UN Convention on the Rights of the Child, *Sl. list SFRJ* (*Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.

provides an unambiguous obligation of the state to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by administrative, judicial, public or private institutions which directly or indirectly impacts children.[138] In addition, all judicial and administrative decisions must contain assessment of the best interest of the child as well as a description of how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.[139]

When assessing the best interest of the child, the competent authorities must take into account wellbeing, social development and background, his or her views depending on his or her age and maturity, the principle of family unity and the need to provide assistance, particularly if suspected that the child might be a victim of human trafficking or a victim of family violence or other forms of gender-based violence.[140] This interpretation is in line with the Convention on the Rights of the Child, but the manner in which the competent authorities will assess the best interest of the child in their decisions now that this obligation is explicitly prescribed by the LATP, remains to be seen.

Although the LATP prescribes that minors for whom it can be determined reliably and unambiguously to be under 14 years of age shall not be fingerprinted at registration,[141] the legislator failed to prescribe how the age would be established, leaving it up to the competent authorities to arbitrarily ascertain the age of persons lacking personal documents form the country of origin. The legislator also defined that their *specific situation* will be taken into account by *providing appropriate assistance* and ensuring *special procedural and reception guarantees*.[142] Special procedural guarantees ensure "appropriate assistance to the applicant who, due to his/her personal circumstances is not able to benefit from the rights and obligations under this Law without appropriate assistance". However, the legislator did not specify the elements of the special process guarantees, so the the interpretation of this provision in respect of minor asylum-seekers by the competent authorities remains to be seen.

With respect to education, the LATP provides the applicants' right to free primary and secondary education, governed by separate regulations.[143] This right will be immediately provided to the applicants, and if this is not possible, then no later than three months from the date of their asylum application.[144]

138 *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, Committee on the Rights of the Child, CRC/C/GC/14, 29 May 2013, para. 14.

139 *Ibid.*

140 Article 10 (2), LATP.

141 Article 35, LATP.

142 Article 17, LATP.

143 Article 55, LATP.

144 *Ibid.*

6.1. Guardianship and the Role of Temporary Guardians

The LATP does not contain a provision explaining the concept of temporary guardian, so this concept is taken from the Family Law[145] that prescribes conditions and rules for placement of children without parental care under guardianship. The appointed guardians are persons with personal characteristics and abilities necessary to perform the duties of a guardian who have agreed to be guardians.[146] In order to establish whether one fulfills the conditions to be a temporary guardian of a child, a procedure defined in Family Law and the accompanying by-laws must be conducted. This decision may only be taken by a guardianship authority and it includes a guardianship plan.[147]

A temporary guardian must be appointed immediately after it has been established that the child is unaccompanied/separated and no later than prior to submission of his/her asylum application.[148] In view of the fact that police officers cannot register an UASC who expressed the wish to seek asylum in absence of a temporary guardian,[149] a guardian must be appointed immediately and before registration. Allowing the possibility for temporary guardians to be appointed "no later than before submission of an asylum application", the legislator is in breach of Art 12 (1) by para. 5 thereof which reads "an unaccompanied minor shall submit his/her asylum application *exclusively in the presence* of his/her temporary guardian".

The job of a temporary guardian is to accompany the UASC in all the procedures before the state authorities and to represent his/her interests until the moment a durable and sustainable solution is identified.[150] In view of this, a temporary guardian must be a person with personal characteristics and abilities necessary to perform the duty of a guardian, and this assessment is made by a competent territorial guardian authority, under the provisions of the Family Law and accompanying by-laws. A guardian may not be, *inter alia*, a person whose interests are adverse to the interest of a child put into his/her guardianship, and a person who due to different reasons cannot be expected to properly perform the activities of a guardian.[151]

One of the greatest challenges in the past practice has been the fact that the guardianship authorities lacked sufficient human resources to ensure effective

145 *Sl. glasnik RS*, 18/05, 72/11 – other laws 6/15.

146 Article 126 (1), Family Law.

147 Article 125 (2), Family Law.

148 Article 12 (1), LATP.

149 Article 11 (1), LATP.

150 This primarily means local integration, family reunification, repatriation of a child to the country of origin, resettlement of a child or, in certain cases, international adoption.

151 Article 128, LATP.

support to each individual child.[152] One guardian was sometimes appointed to dozens of UASC making it impossible for them to develop a meaningful and trusting relationship with the children notwithstanding their enormous efforts and motivation.[153] Communication with the UASC represents an additional problem. Namely, guardianship authority does not directly engage interpreters for the languages of unaccompanied and separated children in Serbia. Rather, the guardians communicate with them with the assistance of interpreters whose services are paid for by the non-governmental organizations engaged in protection of refugees and migrants. Since the presence of such NGOs in certain parts of Serbia is infrequent, temporary guardians in some municipalities could not establish even basic communication with the children.[154] That is why UNHCR in cooperation with the Ministry of Labour, Employment, Veteran and Social Affairs and the NGO *IDEAS* initiated a project of capacity building of guardianship authorities in Belgrade, primarily through funding the work of a certain number of professional guardians. These guardians are employed by the guardianship authority, and their work is governed by the Family Law and the accompanying by-laws.

With respect to the asylum procedure, appointment of a temporary guardian is the indispensable first step because the UASC themselves cannot express the intention to apply for asylum and get registered.[155] The UASC express the intention to seek asylum in the presence of parents or a guardian[156] appointed in the procedure under the Family Law.[157] A special instruction stipulates that field social workers inform the territorially competent guardianship authority immediately upon the information or direct knowledge about an UASC. The guardianship authority then *urgently*[158] appoints a temporary guardian to the UASC.[159]

152 See: *Concluding observations on the third periodic report of Serbia,* Human Rights Committee, CCPR/C/SRB/CO/3, 10 April 2017; *Concluding observations on the combined second and third reports of Serbia,* Committee for the Rights of the Child, CRC/C/SRB/CO/2–3, 7 March 2017. See also: *Situation of Unaccompanied and Separated Children in Serbia*, Belgrade Centre for Human Rights, may 2017 and *Right to Asylum, 2017*, p. 69–74.

153 *Ibid.*

154 *Ibid.*

155 An exception provided in Art.11(3) LATP whereby minors over 16 years of age who are married may participate in the asylum procedure independently.

156 Article 12 (5), LATP.

157 Article 132, Family Law.

158 Instruction of the Ministry of Labour, Employment, Veteran and Social Affairs on procedures of centers for social welfare – guardianship authorities in accommodation of minor migrants /unaccompanied refugees, no. 019–00–19/2010–05 of 12 April 2018, Chapter II.

159 Instruction on procedures of centers for social welfare – guardianship authorities in accommodation of minor migrants /unaccompanied refugees, no. 019–00–19/2018–05 of 12 April 2018.

In order to pass a decision on putting a child under temporary guardianship, the competent social welfare centre must first conduct the initial assessment of the situation and the needs of the child.[160] Depending on the number of children subject to initial evaluation at a certain point in time, this process may take up to one month.[161]

Working with the UASC registered in line with the above legal provisions in 2018, the BCHR noticed that the practice of the competent authorities was not in line with the legal provisions. Namely, the BCHR lawyers came upon several cases[162] where the police officers registered the UASC without a temporary guardian having been appointed to them at the moment of registration. For instance, on 4 September 2018, an unaccompanied child from Iran was issued a "certificate on registration of a foreigner who expressed the intention to submit an asylum application" by the Belgrade Border Police Station, Department for Borders, Border Police Administration which indicated that he was an "unaccompanied person." However, the child had not been appointed a guardian by the territorially competent guardianship authority, and he was not advised – in a language he understands – about his rights in Serbia and the following steps in the asylum procedure. The child was appointed a guardian only after he was accommodated in the Institute for Education of Youth in Niš, and it was the guardian that informed BCHR that the child wished to apply for asylum and needed legal counsel in the asylum procedure. It should be noted here that there is as yet no free legal aid and representation in procedures other than criminal in Serbia that would be provided by the state and available to all children in need of this form of assistance.

Four more Afghani boys were accommodated in the Institute for Education of Youth in Niš in the course of September who were appointed legal guardians only upon reception therein although the border police had already issued registration certificates to them.[163] This practically means that these UASC were registered contrary to Art. 12 (5) of the Law on Asylum and Temporary Protection, because they should not have accessed this procedure without a mandatory presence of temporary guardians appointed under the Family Law.

160 Article 56, Rulebook on the organisation, norms and standards of operation of the center for social work, *Sl. glasnik RS*, 59/08, 37/10, 39/11 –other rulebook and 1/12 – other rulebook.

161 Under the Rulebook on the organisation, norms and standards of operation of the center for social work, (Art. 53.2) the initial assessment may last up to seven days depending on the level of priority, but the process may last up to one month in practice. One of the reasons is lack of human resources in the competent centres for social welfare.

162 Conclusion based on six actual registration certificated that BPS Belgrade and BPS Gradina issued to the UASC from Afghanistan and Iran in September 2018.

163 The BCHR lawyer gained insight into the certificates during a regular visit to the Institute for Education of Youth in Niš on 18 September 2018 and legal counseling of children who were issued the certificates.

In its response to the request for access to information of public importance, sent to the BCHR on 16 November 2018, the MLESA stated that unaccompanied minors are, as a rule, appointed temporary guardians *after registration and issuance of registration certificates*, and that it was the obligation of the field social worker to accompany the child in the process of registration and before appointment of a temporary guardian.[164] However, in response to the same request, the Belgrade City Centre for Social Welfare stated that the foreign UASC are placed under direct guardianship of a territorially competent guardianship authority *prior to registration* of the child by the police officers and issuance of the registration certificate to a person who expressed intention to seek asylum. Consequently, it remains unclear whether the children are placed under temporary guardianship before or after they express the intention to seek asylum and the police officers register them.

Furthermore, in some cases the police officers registered UASC in presence of field social workers who are not their temporary guardians. Still, the instruction of the line ministry prescribes that a field social worker is only to coordinate provision of support to a child until arrival of a social welfare professional.[165] The field worker may also refer the child to the necessary services provided by other stakeholders in the system of protection and NGOs, ensure psycho-social support to a child and provide information relevant to his/her security and safety.[166] It follows that UASC should not be registered in the presence of field social workers only, but that registration should be carried out in the *presence of temporary guardians* as provided by the LATP in any case.

Mandatory presence of temporary guardians in all the procedures involving the UASC stems not only from the LATP and the FL, but also from the ratified international treaties, the Convention on the Right of the Child in the first place. The *raison d'ẽtre* of temporary guardians is to take care about child's welfare in all aspects of protection and to advocate, on his/her behalf, achievement of durable solutions and making decisions in line with the assessed best interest of the child. In addition, a temporary guardian is a child's connection to the legal system of Serbia because it is the guardian who, being a representative of the competent authority is able to advise the child with the relevant regulations and refer him/her to appropriate services with a view to enjoyment of a certain right.

164 Response of the Ministry of Labour, Employment, Veteran and Social Affairs at the request for information of public importance, no. 07–00–00989/2018–15 of 9 November 2018.

165 Instruction of the Ministry of Labour, Employment, Veteran and Social Affairs on procedures of centres for social welfare and social protection institutions for accommodation of beneficiaries in providing protection and care of unaccompanied migrants, no. 011-00–00682/2017–01 of 10 October 2017, p. 18, para. 3.

166 *Ibid.*

Efficient appointment of a temporary guardian is significant also in view of the short time limits accorded by the LATP to the foreigners who expressed intention to submit an asylum application. Though positive at first glance as it should contribute to accelerating the asylum procedure, this change additionally complicates the situations involving the unaccompanied or separated children. This is because they cannot access the asylum procedure without a mandatory presence of a temporary guardian appointed by a territorially competent social welfare centre and the procedure of placing the child under guardian may take up to a month. In practice, it means that unaccompanied children will probably not be able to apply for asylum within the legally prescribed timeframe. It remains to be seen whether the Asylum Office will interpret these provisions restrictively, given that above obstacles do not depend of the child, or will it allow children to apply for asylum even after the expiration of legally prescribed time limits.

6.2. Asylum Procedure

In asylum procedures, as in all other procedures involving children, attention must be paid to several important issues. Above all, compliance with the four key principles enshrined in the Convention on the Rights of the Child must be ensured: prohibition of discrimination, respect of the best interest of the child, right to life, survival and development and the right of the child to freely express his/her views.

In practice, asylum procedures on applications submitted by children are no different that those on applications submitted by adults. In some cases, the actions in the asylum procedures initiated on applications of UASC lasted more than seven hours, a practice which cannot be regarded as being in the best interest of the child, despite the breaks.[167] In addition, in our experience, most of the younger children who submitted asylum applications together with their parents were not interviewed in the asylum process. Rather, the interviews were conducted with one of the parents on their behalf. It is noteworthy that the children may be exposed to similar or identical forms of persecution as the adults.[168] Sometimes even the fact that a refugee is a child may be central to existence of a well-founded fear of persecution.[169] Also, other characteristics of the child's

167 The oral hearing in the case of a child K.P., represented by BCHR lawyers in the asylum procedure. The minutes of the Asylum Office 03/9 no. 26–2348/17 of 30 May 2018 state that the hearing started at 11:15 a.m. and finished at 6:40 p.m.

168 *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/09/08, 22 December 2009, para. 15.

169 *Ibid*., para. 18.

identity such as family history, membership of a certain social category or caste, medical status or needs, education and the level of personal income, may contribute to a higher risk of persecution, influence the type and manner of persecution of a child and aggravate the damage suffered by the child.[170] Bearing in mind that children are dependent on adults and that they have specific development needs, deprivation of economic, social and cultural rights may be key in the procedure of assessment of asylum applications submitted by them.[171]

Prior do making any decision pertaining to a child, its best interest at *a current time* must be considered and this is the obligation of the competent authorities irrespective of whether the child filed for asylum alone or with his/her family. Assessment of the child's best interests must also include consideration of the child's safety, i.e., the right of the child to protection against all forms of physical or mental violence, injury or abuse, as well as protection from sexual, economic or other exploitation, labour, armed conflict, etc.[172] Although the best interest assessment is conducted with a view to safety and integrity of the child at a given time, the precautionary principle also requires assessing the possibility of the *future* risk and harm and other consequences of the decision for the child's safety.[173] Furthermore, not a single decision related to a child may be passed without assessing the negative effects thereof on the child's right to life, survival and development on the whole.[174]

In 2018, the asylum authorities in Serbia maintained the practice of dismissing and rejecting asylum applications submitted by children, without giving due consideration to all the circumstances and provisions of laws protecting children. The provisions protecting the rights of children were only rarely mentioned in the decisions of competent asylum authorities,[175] and they were not given adequate attention in decisions relating to children.[176] The failure of the competent authorities to establish the best interests of the child at the very beginning of the asylum procedure results in their inability to assess whether other circumstances exceeding these interests exist.

170 *Ibid*., para. 12.

171 *Ibid*., para. 14.

172 *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art. 3. 1)*, Committee for the Rights of the Child, CRC/C/GC/14, 29 May 2013, para. 73.

173 *Ibid*, para. 74.

174 *General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44. 6)*, Committee for the Rights of the Child, CRC/GC/2003/5, 27 November 2003, para. 12.

175 Conclusion based on the analysis of decisions on asylum applications submitted by applicants represented by BCHR.

176 An obligation deriving from numerous international conventions, including the Convention on the Rights of the Child and the national law, including Family Law.

In accordance with the absolute prohibition of return of persons to the countries where they face the risk of abuse (*non-refoulement*), the states must get assurances that a country they wish to return a certain person to is safe and that this person may enjoy *effective protection* in it. With respect to children, the non-exhaustive list of requirements that a certain country must fulfill in order to be considered safe and which result from the practice of the ECtHR includes guarantees of adequate level of protection corresponding to the specific needs of a child in question,[177] adequate conditions of accommodation,[178] as well as absence of practice of detention of children. [179] Furthermore, the state to which a child is to be returned must agree to accept the child and allow him/her access to the asylum procedure, while the asylum system must be fulfill the international standards and not only in theory but in practice as well.

A negative decision on the asylum applications of children practically means that they must leave the territory of Serbia within a short period, which is problematic for several reasons. First, a child without a valid travel document can leave the country only *illegally*, using smugglers' networks. Second, the child is thus exposed to numerous risks to life and personal safety including the risk of falling pray to traffickers, in particular if he/she has no means nor is returning to a country where his/her parents or relatives can take care of him/her. It was because of a similar case that the ECtHR upheld a BCHR request and indicated an interim measure to Serbia in order to prevent deportation of a 17-year old boy into Bulgaria in 2017.[180]

One illustrative case before the competent asylum bodies in 2018 was a case of an UASC – an asylum-seeker from Afghanistan. The boy had applied for asylum back in December 2016 when he was 16. The Asylum Office dismissed his application on the grounds that Bulgaria he had entered Serbia from, was a safe country of asylum for him. The Asylum Commission upheld this decision whereafter an appeal was submitted to the Administrative Court. The Administrative Court remanded the case to the Asylum Commission in February 2018,[181] because in deciding on the appeal the Asylum Commission failed to take into consideration the fact that the applicant was a child nor had it, consequently, considered the best interest of the child. However, in the repeated proceeding, the Asylum Commission[182] rejected the appeal finding the best interest of the child had been observed by the sole fact that the authorities had taken into

177 *Rahimi v. Greece*, App. No. 8684/08.

178 *Tarakhel v. Switzerland*, App. No. 29217/12, para. 121.

179 *Housein v. Greece*, App. No. 71825/11; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, App. No. 13178/03.

180 See more: *Right to Asylum, 2017*, p. 67–68.

181 Ruling of Administrative Court No. 22 U 13309/17 of 8 February 2018.

182 Decision of Asylum Commission no. Až-09-T-1/17 of 22 March 2018.

consideration the fact that the applicant was a child and that a temporary guardian had been appointed to him during the asylum procedure. It is important to note here that the fact that the child had a temporary guardian in the procedure does not absolve the authorities in the asylum procedure from the *obligation to assess the effects of a negative decision on the development of a child* and to decide taking into consideration *the best interest of the child*. In other words, regardless of whether the competent authorities decide to grant refuge status or subsidiary protection to the child or pass a negative decision and order him/her to leave the territory of Serbia, they must offer substantive arguments showing that the decision was made upon assessment of the best interest of the child.

In the contested decision, the Asylum Commission noted that Bulgaria has a system of child protection established by the law, which is not contestable *per se*. However, what the Asylum Commission failed to demonstrate is whether that system is capable of providing protection to the child in practice and in the case in point. Namely, according to the opinion of the Committee for the Rights of the Child, respect of the best interest of the child principle is not only formal but must include a substantive element.[183] Evaluating the level of compliance with the Convention on the Rights of the Child in Bulgaria, the Committee for the Rights of the Child concluded there is a *formal* system of child protection with the best interest of the child at its heart, but that there were enormous challenges in implementation of that principle.[184] The Committee expressed concern with the erroneous understanding of the principle of the best interest of the child by the Bulgarian authorities and the practical responsibilities it implies.[185] This is particularly pronounced in the Bulgarian judicial system, among the professionals engaged in child protection and social workers.[186]

Given the absolute nature of Article 3 of the ECHR, the European Court noted the positive role of states to provide protection to the particularly vulnerable categories such as children separated from parents or guardians irrespective of their legal status.[187] Returning the children directly or indirectly into a third state without previously *conducting the procedure of assessment* of the risk of torture, inhuman or degrading treatment or punishment of a child in that country may constitute a violation of Article 3 in itself.[188] ECtHR has already asserted

183 See: *General Comment No. 14: on the right of the child to have his or her best interests taken as a primary consideration (Article 3.1)*, Committee for the Rights of the Child, CRC/C/GC/14, 29 May 2013.

184 *Concluding observations on the combined third to fifth periodic Report of Bulgaria*, Committee for the Rights of the Child, CRC/C/BGR/CO/3–5, 21 November 2016, para. 21.

185 *Ibid.*

186 *Ibid.*

187 *Rahimi v. Greece*, App. No. 8684/08.

188 *Ibid.*, *Housein v. Greece*, App. No. 71825/11, *Aarabi v. Greece*, App. No. 39766/09, *Elmi and Aweys Abubakar v. Malta*, App. Nos. 25794/13 and 28151/13.

that the obligations of states deriving from the ECHR must be interpreted in relation to the Convention on the Rights of the Child that lays down the "general principles of international law".[189] Consequently, in deciding on whether a child could have enjoyed effective protection in a country he/she transited, consideration should be given to several aspects at the minimum. The non-exhaustive list includes existence of adequate level of protection that corresponds to the individual needs of the particular child,[190] adequate accommodation,[191] and absence of practice of accommodating children into the closed facilities.[192] In addition, in order to instruct a child to return to a third country, this country must explicitely agree to accept the applicant and allow him/her access to the asylum procedure. Such a country should also respect the international refugee law standards and the human rights law in theory and in practice, and it should allow the asylum-seeker to receive international protection in an efficient and fair procedure with respect of the rights of the child. In the above case, both the Asylum Commission and the Asylum Office failed to conduct the assessment taking into consideration the above ECtHR standards. The procedure on appeal is ongoing at the moment of finalization of this report.

Several conclusions may be drawn from the analysis of the decisions made by the competent authorities on applications of accompanied and unaccompanied asylum-seekers under 18 whom the BCHR represented during the past several years. The negative and positive decisions alike included no assessment of the best interest of the child, and the specific situation of children as a vulnerable category was not considered crucial in the decision-making process. Negative decisions in asylum procedures in Serbia did not include explanations as to how the decision affected survival, development and personal safety of a child ordered to return into a *safe third country*.

6.3. Alternative Care[193] of Children in the Asylum Procedure

In 2017, the Committee for the Rights of the Child and the Human Rights Committee recommended that Serbia ensure full inclusion of children – asylum-seekers and the UASC into the system of child protection, and accommodation in foster families or other facilities adequate to their age, gender and needs in line with the individual assessment of the best interest of the child.[194]

189 *Harroudj v. France*, App. No. 43631/09.

190 *Rahimi v. Greece*, App. No. 8684/08.

191 *Tarakhel v. Switzerland*, App. No. 29217/12, para. 121.

192 *Housein v. Greece*, App. No. 71825/11; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, App. No. 13178/03.

193 Care of children being an alternative to a child's family.

194 See: *Concluding observations on the second and the third report of Serbia,* Committee for the Right of the Child, CRC/C/SRB/CO/2–3, 7 March 2017, para. 56–57; and *Concluding*

6.3.1. Accommodation of Children in Asylum Centres and Other Facilities Designated for Accommodation of Asylum-Seekers

Until the passing of a effective decision in the asylum procedure, the applicants are provided material conditions of reception– accommodation, food, clothes and cash allowance for personal needs in one of the facilities designated for accommodation of asylum-seekers.[195] Under the LATP when placing foreigners who expressed intention to seek asylum due attention shall be given to their gender and age, and whether they are in need of special procedural or reception guarantees as well as on family unity.[196]

The LATP[197] provides that material conditions of reception of UASC are provided in asylum centres or other facilities designated for accommodation of asylum-seekers until passing of the final decision on the asylum application. Though the centres within the CRM competence cannot be considered adequate for accommodation of UASC – primarily because they are not social protection institutions – some headway has been made compared to the earlier years. Namely, CRM passed a decision to accommodate all UASC in one asylum centre located in the Belgrade settlement Krnjača. This decision is important as most of the organizations that provide various forms of support to children and their guardians (ranging from psychological counseling to access to education, legal aid and representation in asylum procedures) are based in Belgrade.

The CRM accommodates UASC in a special organizational unit in the Asylum Centre "PIM" Krnjača, separate from other asylum-seekers. According to the information the BCHR received in November 2018, UASC were accommodated in six separate buildings with 60 to 70 beds each, within the compound of the Asylum Centre Krnjača.[198] No permanent presence of guardianship authorities has been ensured in the Asylum Centre Krnjača, and the social workers come only when informed by CRM that an UASC has arrived into the centre.[199] Noting the ill practice of Serbia of accommodating UASC under 16 in asylum centres without adequate facilities and the staff trained to take care of them ef-

observations on the third periodic report of Serbia, Human Rights Commitee, CCPR/C/SRB/CO/3, 10 April 2017, para. 32–33.

195 Article 50 (1), LATP.

196 Article 50 (3), LATP.

197 Article 53, LATP.

198 Reply of the Commissariat for Refugees and Migration at the request for access to information of public importance, no. 019–4951/1–2018 of 6 November 2018.

199 *Ibid.*

ficiently, the Committee for the Rights of the Child recommended that Serbia provide accommodation of these children in foster families or in the facilities corresponding to their age, gender and needs of each individual child.[200]

6.3.2. Accommodation of Children in Social Protection Institutions

Exceptionally, an UASC who has applied for asylum may be provided accommodation in a social welfare institution, with another accommodation service provider or in another family, if the necessary conditions for his/her accommodation cannot be provided at the asylum centre or other designated accommodation facility for applicants.[201] This decision shall be passed by CRM on the basis of a decision of a centre for social welfare.[202] As there are no specialized institutions for alternative care of UASC in Serbia as yet, these children are most often accommodated in operational units of the Institute for Education of Children and Youth in Belgrade[203] and the Institute for Education of Youth in Niš, and occasionally also into other institutions such as Children Home "Jovan Jovanović Zmaj" at the Insitute for Protection of Infants, Children and Youth in Belgrade.

With respect to the Institute for Education of Children and Youth in Belgrade and the Institute for Education of Youth in Niš, the main problem is that their primary function is care, education, professional training and health care of delinquent children and youth who have behavioral problems. As these are semi-open institutions with the activities and staff specialised in reintegration of delinquent children, they cannot be considered completely appropriate for accommodation of UASC who require a different form of support.

With UNHCR support, an operational unit of the Child Home "Jovan Jovanović Zmaj" was adapted for accommodation of UASC in October 2018. The Home for Children and Youth with Developmental Problems "Kolevka" in Subotica, which has an UASC reception unit, did not accommodate any children from this category in 2018.[204]

The Institute for Education of Youth in Niš has a separate unit "Centre for Accommodation of Unaccompanied Underage Foreigners" (Centre) primarily

200 *Concluding observations on the second and the third report of Serbia,* Committee for the Right of the Child, CRC/C/SRB/CO/2–3, 7 March 2017, 56 (b) and 57(b).

201 Article 52 (2), LATP.

202 *Ibid.*

203 Operational Unit of the Centre for Accommodation of UASC is located in Vodovodska Street, Belgrade, in a building far off the building where minor delinquents are placed.

204 Response of the Home for Children and Youth with Developmental Problems "Kolevka" to the request for access to information of public importance, no. 01–1956 of 5 November 2018.

engaged in provision of accommodation to foreigners aged 10 to 18. Unlike other facilities where UASC were accommodated, the UASC here were appointed temporary guardians from among the staff employed at the Institute and not at a territorially competent guardianship authority.

In the past, if a child accommodated in the Centre expressed the intention to seek asylum, his/her temporary guardian would contact the Asylum Office requesting that the child be issued a certificate on the expressed intention, whereafter the child would be moved to one of the asylum centres. This practice changed in the meantime in line with the recommendation of the line ministry, and the children can now remain in the Centre until completion of the asylum procedure provided that the guardian and the case manager assess this to be in their best interest.[205]

The Centre can accommodate 15 children. In the first six months of 2018, the children stayed in this semi-open institution up to six days.[206] Due to the short stay at the Centre, they were not included into the mainstream education system.[207] On the other hand, the child accommodated in the Centre in September 2018 was very quickly included into the education system and got involved in extra-curricular activities.

The Institute for Education of Children and Youth in Belgrade [208] established an operational unit "Centre for Accommodation of Unaccompanied Underage Foreigners" in Vodovodska Street, Belgrade municipality of Žarkovo in 2011. This unit can take up to 15 UASC, and both unaccompanied boys and girls were placed there in 2018. All the children accommodated in the Centre were included into the education system.

The Children Home "Jovan Jovanović Zmaj" within the Centre for Protection of Infants, Children and Youth also accommodates children deprived of parental care aged 7 to 18. UNHCR funded reconstruction of the attic, increasing the capacity of this institution to ten.[209]

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205 Response of the Institute for Education of Youth, unit "Centre for Accommodation of Unaccompanied Underage Foreigners" to the request for access to information of public importance, no. 01–960, of 1 November 2018.

206 *Ibid.*

207 *Ibid.*

208 The BCHR tried to gather more information about the functioning of the Centre for Accommodation of Unaccompanied Underage Foreigners through a request for access to information of public importance no. 2597 of 5 November 2018, but the Institute responded these information may not be disclosed without prior consent of the MLESA. All other institutions contacted with the same request submitted the requested information to BCHR.

209 *Minutes from the Child Protection Working Group*, UNICEF, 4 May 2018.

6.3.3. Specialised Foster Care

Specialised foster accommodation as a form of alternative care of UASC began to develop in 2016 and the process continued in the following years. Despite the persisting, relatively low number of children accommodated in foster families,[210] this form of care about children proved very successful. Therefore, awareness raising activities and training of as many as possible foster families should continue.

Only four children were accommodated in foster families in the territory within the competence of the Centre for Family Accommodation and Adoption Belgrade with 29 foster families trained to care about UASC in the first six months of 2018.[211] All the UASC were male, ranging from infants to 15 and originating from Afghanistan, Pakistan and Syria.[212] The average length of their stay was four months, with one UASC remaining with the foster family more than 18 months.[213]

In the first six months of the year, no UASC were accommodated with foster families on the territory within the competence of the Centre for Family Accommodation and Adoption Novi Sad, though three foster families trained to take care about UASC are registered with this institution.[214] With respect to the territory within the competence of the Centre for Family Accommodation and Adoption Niš, there are still no trained foster families who could take care about UASC and thus none was in accommodated in foster families.[215]

One of the objective impediments to a wider implementation of this form of alternative care of children is that foster families are often not overly willing to accommodate older UASC,[216] and most of the UASC migrants and refugees in Serbia are adolescents.[217] Only one UASC over six was accommodated in a foster

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210 See: *Right to Asylum, 2017*, p. 70–72.

211 Response of the Centre for Family Accommodation and Adoption Belgrade to the request for access to information of public importance, no. 2518–560/19–2/18 of 29 November 2018.

212 *Ibid.*

213 *Ibid.*

214 Response of the Centre for Family Accommodation and Adoption Novi Sad to the request for access to information of public importance, no. 1587–560–2/2018–1 of 29 October 2018.

215 Response of the Centre for Family Accommodation and Adoption Niš to the request for access to information of public importance, no. 560–1163–19/18 of 26 October 2018.

216 *Specialized Foster Care for Unaccompanied and Separated Children in Serbia: A Case Study,* Save the Children, (2017) 8.

217 Conclusion based on the response of the Commissariat for Refugees and Migration to the request for access to information of public importance, no. 019–4951/1–2018 of 6 November 2018, bearing in mind that UNHCR estimates that more than 80% of all refugees and migrants on the territory of Serbia are accommodated in the centres within CRM jurisdiction.

family in the fist six months of 2018.[218] The reason for limited utilisation of foster accommodation as an alternative form of care for UASC lies not only in the fact that foster families are unwilling to take care of older children. The UASC themselves rarely wish to be accommodated with foster families; most often because they do not want to separate from the group they intend to continue their journey with.[219] In addition, Afghanistan and Pakistan, the countries of origin of the majority of UASC in Serbia, are the countries with a widespread practice of early marriages where boys are raised to bear financial responsibility for the rest of the family. Hence, these UASC consider themselves adults capable of fending for themselves, and therefore need not be accommodated with foster families.

See, e.g: *UNHCR Serbia Update 1–14 October 2018*, October 2018. Available at: https://data2.unhcr.org/en/documents/details/66323.

218 Response of the Centre for Family Accommodation and Adoption Belgrade to the request for access to information of public importance, no. 2518–560/19–2/18 of 29 November 2018.

219 *Specialized Foster Care for Unaccompanied and Separated Children in Serbia: A Case Study*, Save the Children, 2017, p. 8.

7. MATERIAL RECEPTION CONDITIONS OF APPLICANTS

7.1. Access to Material Reception Conditions

While waiting for the effective decision on their asylum application, the applicants are provided material reception conditions in asylum centres or other facilities designated for accommodation of asylum-seekers.[220] All the centres that the applicants are placed in are established and designated by a Government decision.[221] Though the law provides for accommodation of asylum-seekers only and until the completion of asylum-procedure, foreigners who did not express the intention to seek asylum in Serbia nor did they intend to do so were placed in asylum centres and other facilities designated for accommodation of asylum-seekers in 2018.[222] All the foreigners who express the intention to seek asylum, irrespective of their financial status, have the right to stay in the centres.

The asylum centres and other facilities designated for accommodation of asylum-seekers are managed by the Commissariat for Refugees and Migration (CRM), which regulates internal organization and job classification in asylum centres and other facilities designated for accommodation by an internal enactment.[223] The conditions of stay in the centres managed by CRM are governed by the Rulebook on house rules in asylum centres and other facilities designated for accommodation of asylum-seekers.[224] New regulations pay particular attention to placement of UASC. The chapter discussing the situation of unaccompanied and separated children in the asylum procedure analysed with this topic in greater detail.

Mandatory medical check-ups are conducted at admission into ACs and other facilities designated for accommodation of asylum-seekers. Pursuant to the Rulebook on medical examinations of asylum-seekers on admission in asylum centres or other facilities designated for accommodation of asylum-seek-

220 Article 5 (1), LATP.

221 Article 51 (2, 3), LATP.

222 Conclusion based on the regular field visits and conversations with the persons accommodated in five asylum centres and 13 RT centres.

223 Article 51 (4), LATP.

224 *Sl. glasnik RS*, 96/18.

ers (Rulebook on medical examinations),[225] medical examinations of asylum-seekers shall be conducted by medical doctors at the health care centres.[226] The examinations shall include anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations as needed.[227] Asylum-seekers originating from countries with cholera, malaria or other diseases that may pose a threat to public health shall be placed in quarantine or under medical supervision up to the period of maximum incubation for the suspected disease.[228]

In addition to accommodation in CRM-managed centres, the applicants may be accommodated at a private address if they are able to afford it. Still, the persons planning to live at a private address must first register at the centre they were referred to in their certificate, and only then contact the Asylum Office requesting permission for residence at the private address.

7.2. Types of Material Reception Conditions and the Right to Social Assistance

The applicants staying in the centres managed by CRM shall have the right to material reception conditions including accommodation, food, clothing and cash allowance.[229] LATP introduced the possibility of cash allowance for personal needs.[230] Though this provision is innovative in that it reduces the financial burden on the asylum-seekers, at the time of conclusion of this report BCHR was not aware of any single case when this allowance had been extended.

The persons who expressed the intention to seek asylum are also entitled to social assistance. Under the Rulebook on social assistance to asylum-seekers and persons granted asylum (Rulebook on social assistance),[231] social assistance shall take the form of monthly cash allowance provided that the person is not accommodated in an asylum centre and that he/she and the members of his/her

225 *Sl. glasnik RS*, 57/18.

226 Article 2, Rulebook on medical examinations.

227 Article 3, Rulebook on medical examinations.

228 Article 4, Rulebook on medical examinations.

229 Article 50 (1), LATP.

230 The amount of cash allowance for personal needs shall be equal to the amount of allowance received by adult social welfare beneficiaries with no income, accommodated in social welfare institutions, in accordance with the regulations governing social welfare. The allowance shall be provided for maximum four members of the applicant's family household, including the applicant.

231 *Sl. glasnik RS*, 44/08 and 78/11.

family have no other income, or that this income is below the legally prescribed threshold for establishment of the amount of social allowance.[232] The decision on nominal amounts of social assistance[233] of 27 April 2018 sets down that an individual or the holder of the rights in a family may receive an allowance amounting to RSD 8,283; that each adult family member may receive RSD 4,142, while a minor child may receive maximum RSD 2,485 a month.[234] The decision on the request to exercise the right to monthly allowance is made by a centre for social welfare in the municipality of residence of that person. The request is to be supplemented by an ID of an asylum-seeker or a person granted asylum and other supporting evidence.[235] The procedure itself is conducted in line with the LGAP provisions. The conditions for exercise of the right to monthly allowance are reviewed, *ex oficio*, once a year.[236]

7.3. Freedom of Movement

On admission into an asylum centre or other facility designated for accommodation, the applicants have the right to stay in the Republic of Serbia. During that time they may freely move inside its territory provided no reasons exist to restrict their movement.[237] Although all these centres are open, the asylum-seekers must observe House Rules which provide that the centres shall be locked from 10 p.m. in winter/11 p.m. in summer to 6 a.m. the following day ("quiet time").[238] Each night before the centre is locked, the CRM staff visits the applicants' rooms to verify their presence. CRM duly informs the Asylum Office of all unauthorised absences. The applicants found to be absent without permission from a centre at the time of its locking run the risk of having their asylum procedure suspended in line with the LATP provisions.[239]

Article 78 of the LATP defines the measures for restriction of movement of asylum-seekers that may take the form of a ban on leaving the AC, a certain

232 Article 3, Rulebook on social assistance.

233 *Sl. glasnik RS*, 31/18.

234 *Ibid.*, Article 1.

235 Article 8, Rulebook on social assistance.

236 *Ibid.*, Article 12.

237 Article 48, LATP.

238 Article 8, House Rules.

239 Article 47 (2.3), LATP "It shall be considered that the Applicant has withdrawn his/her application if: [...] 3) he/she, without providing a valid reason, fails to notify the Asylum Office of any change of address at which he/she resides within three days of the said change or if he/she otherwise prevents the service of a summons or another written official communication [...].

address or a designated area. In this case, the restriction of movement may last maximum three months.[240] Exceptionally, the restriction of movement may be extended for a further three months if necessary for establishment of relevant facts, evidence and circumstances that the asylum application is based on, and which cannot be established without restriction of movement of an applicant due to risk of absconding, for ensuring access to the applicant in presence of reasonable assumption that the he/she had submitted an asylum application in order to avoid deportation, and if required by the reasons of protection of security of the Republic of Serbia.[241] Applicants who do not observe the measure of the restriction of movement may be ordered to stay in the Shelter for Foreigners which is a closed institution.

7.4. Types of Accommodation

The foreigners who express intention to seek asylum have the right to stay in one of the five permanent asylum centres[242] and 14 reception/transit centres (RTC),[243] which were established in 2015 and later for humanitarian reception of an increased number of refugees and migrants staying in the Serbian territory. The asylum-seekers were placed in the majority of these centres throughout the year, while the RTCs in Preševo, Bela Palanka – Divljana and Dimitrovgrad were put on a temporary stand-by because of the drop in the number of refugees and migrants, and with a view to the rationalization of RTC network and cost optimization before the impending heating season and the winter.[244] According to CRM, these centres will become operational within a matter of several hours should the number of refugees and migrants rise.[245] The RTC in Šid, which was temporarily closed in May 2017, was reopened in early December 2018.

240 Article 78 (3), LATP.

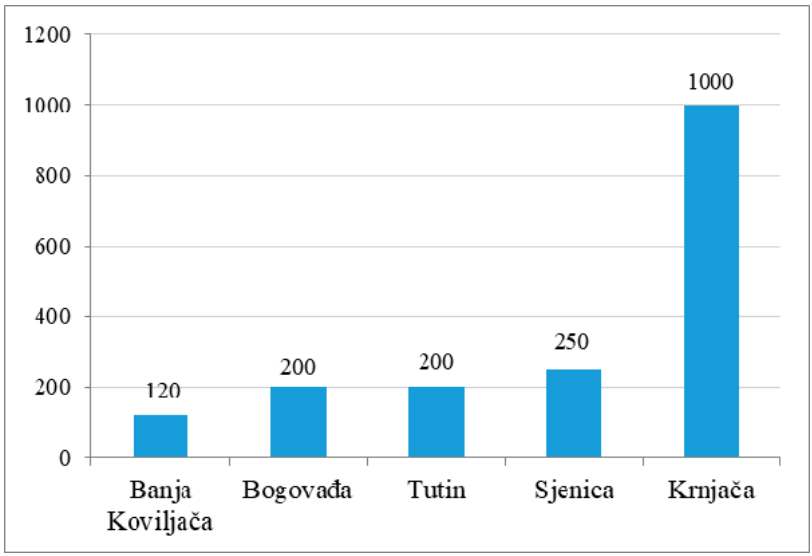
241 Article 78 (4), LATP.

242 These centres are located in Krnjača, Bogovađa, Banja Koviljača, Tutin and Sjenica.

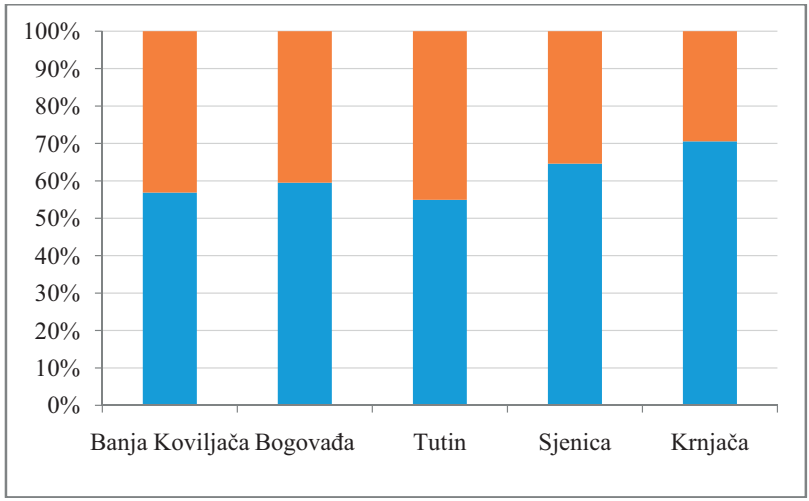
243 These centres are located in Subotica, Kikinda, Sombor, Adaševci, Principovac, Obrenovac, Bosilegrad, Divljana, Dimitrovgrad, Pirot, Bujanovac, Vranje, Preševo and Šid.

244 Response of CRM to the request for access to information of public importance, no. 019–4710/1–2018 of 22 October 2018.

245 *Ibid.*



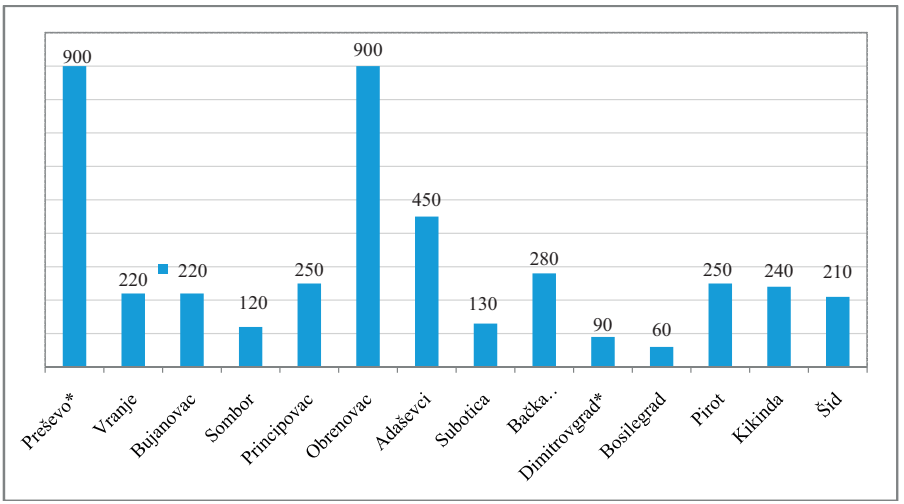
Graph 6: Asylum Centres capacity (total 1,770).[246]



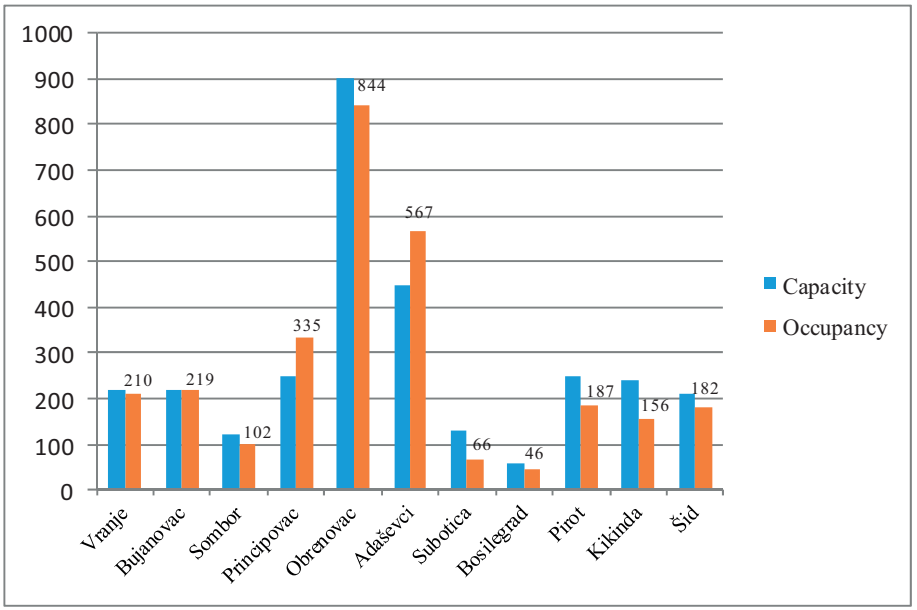
Graph 7: Occupancy, Asylum Centres in November 2018 (total 945 persons accommodated).[247]

246 CRM data of November 2018. Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2018–11.pdf.

247 *Ibid.*



Graph 8: Capacity of Reception/Transit Centres (total 4,110).[248]



Graph 9: Occupancy of active Reception/Transit Centres, November 2018 (total 2,914 persons accommodated).[249]

248 *Ibid.*
249 *Ibid.*

7.5. Accommodation in Asylum Centres and Other Centres

7.5.1. General

The conditions of accommodation in asylum centres and reception/transit centres differ considerably. In the experience of BCHR clients, the conditions are the best in the asylum centres in Banja Koviljača and Bogovađa. According to the November data available on the website of the Serbian Commissariat for Refugees and Migration, the reception/transit centres in Adaševci and Principovac are overcrowded (operating at 126% and 134% capacity respectively).

In all of the centres special attention is paid to accommodate families, as a rule, in separate premises or detached facilities within the centres, collectively or individually, depending on the capacities of the particular centre. Thus, for instance, the families in the reception/transit centre in Adaševci are accommodated together in rub halls installed as a provisional solution for accommodation of a higher number of persons in need of accommodation. On the other hand, all the families in the reception/transit centre in Principovac reside on one floor and in the reception/transit centre in Sombor, they have been placed in a separate building within the compound.

In the reception/transit centres where families are accommodated in dormitories, be it within the compounds or in rub halls in the courtyards, privacy is highly compromised. Since the beds are next to each other and there are no solid physical barriers, the families who reside in them use blankets and large sheets to isolate, if seemingly, the space they sleep in from the others. During his recent visit to Serbia, Ambassador Tomáš Boček expressed concern with the families living in these conditions for several months and for not being separated from single men.[250]

To BCHR knowledge, the only centre that had a separate building for unaccompanied and separated children is the asylum centre in Krnjača. Still, due to inadequate number of security staff, these children were at risk of violence and other forms of abuse even in this centre, as noted in the report of the Special Representative Tomáš Boček.[251] In order to ensure their safety, the CRM decided – in November – to move all the UASC from the other centres to the asylum centre in Sjenica. This centre was recently renovated, making the conditions in it considerably better. A downside of the centre is that the majority of organisations providing humanitarian and legal aid are based in Belgrade and not in Sjenica which is at several-hours drive from the capital.

250 *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12–16 June 2017*, Council of Europe, October 2017, SG/Inf(2017)33.

251 *Ibid.*

In practice, during the first three months of LATP implementation some persons issued registration certificates were referred to centres that had no vacant places. Therefore, these persons were *redirected* to other centres for accommodation of asylum-seekers. The *redirecting* proved to be problematic. Namely, oftentimes the CRM staff in certain centres did it informally, in absence of an official decision signed and stamped by authorised officials and without properly informing the Asylum Office thereof. These new referrals resulted in a certain number of asylum-seekers ending in a disadvantageous situation, although made in good faith with a view to placing the applicants into the centres with better accommodation conditions. This is because regulations governing foreigners' legal status and not LATP provisions apply in cases when foreigners, who have been issued registration certificates, fail to report at the centres designated in the certificate within 72 hours.[252]

LATP sets the deadline for asylum application which runs from the day a foreigner expresses the intention to submit an asylum application. However, in practice, foreigners who had expressed the intention to apply for asylum did not receive the necessary information about their rights and obligations in good time. Since the beginning of LATP implementation, the BCHR legal team visited all the asylum centres and other facilities designated for accommodation of asylum-seekers in order to provide free legal assistance to as many of these foreigners as possible and to advise them of all the statutory innovations relevant to their situation and legal status in Serbia. BCHR contacted MOI requesting access to information of public importance and was informed that the CRM developed a "Brochure for Asylum-Seekers" which was available in in Arabic, English and French in each of the centres for accommodation of migrants and asylum-seekers, and that the brochure is currently being updated.[253] Nevertheless, the BCHR clients accommodated in asylum and reception/transit centres claim they have never seen this CRM brochure in which their rights and obligations in the asylum procedure in Serbia have been explained.

BCHR visited numerous facilities for accommodation of asylum-seekers during 2018. For the sake of being systematic, we will review only the conditions of accommodation in five asylum centres.[254]

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252 Article 35 (13), LATP.

253 Letter of the Ministry of Interior, Police Directorate, Border Police Administration, 03/8/4 No: 26–1991/18 of 6 December 2018.

254 Information on the conditions of stay in other centres available at: http://www.unhcr.rs/CentreProfiling/overview.php and at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2018–11.pdf.

7.5.2. Asylum Centre in Banja Koviljača

The Asylum Centre in Banja Koviljača, which can take up to 120 persons, is the only centre established as permanent accommodation for asylum-seekers back in 2008 when the Asylum Law entered into force. The AC is open, but for the "night quiet" when the AC is locked for security reasons and no activities outside the rooms are allowed, in line with the above mentioned House Rules. The conditions in this AC are generally good, and the BCHR clients had no major objections to their stay in it. Some 90 persons on the average were accommodated in the AC at any given time during the first 11 months of 2018.

The AC in Banja Koviljača has three floors with eleven rooms each, and there are eight showers and eight toilets on each of the floors. The AC has a TV room and a children corner where various creative workshops and activities are organized every day. Care is taken of preservation of family unity and of ethnic affiliation on reception and placement of persons. This means that members of different ethnic communities are placed on different floors or that selection is made on the basis of the language the beneficiaries speak.

AC house rules are clearly displayed on the bulletin board in English, Arabic and Farsi as are the information on meals, bedding change, Internet and hot water use. An interpreter for Arabic is permanently present at the AC given that the majority of persons in it originate from the Farsi-speaking regions. The presence of a Farsi interpreter is ensured by NGOs only during their regular visits to this AC.

An auxiliary building within the AC was adapted for provision of DRC-funded medical services with a view to securing permanent presence of medical staff. By 1 October 2018, one doctor and one medical technician were present four hours on each work day. Ever since, only a medical technician is present in the AC. The practice remained unchanged in as far as specialist examinations are concerned, i.e., the asylum-seekers in need of such examinations are referred to the hospital in Loznica in the company of the AC staff.

The Asylum Centre in Banja Koviljača is the only asylum centre in Serbia with an MOI Officer on duty to register the asylum-seekers, issue registration certificates and identity cards. However, this officer does not conduct other actions in the asylum procedure. Rather, this is done by the Asylum Office officers who visit the centre on as needed basis. The Asylum Office officers conducted the actions of submission of asylum applications and hearings more often in 2018 than the year before. Consequently, since LATP came into force, more persons who wish to apply for asylum were referred to the AC in Banja Koviljača in 2018. A room has been designated for legal counsel and associations providing legal counselling to asylum-seekers.

7.5.3. Asylum Centre in Bogovađa

The Asylum Centre in Bogovađa was founded in May 2011 in the former Red Cross' children resort. In case of need, the capacity can be extended up to maximum 280 beds which is 80 beds more than the official capacity thereof. There were just over 130 persons on the average during the first eleven months of 2018, and according to the claims of the AC staff, families from Afghanistan and Iran represented the majority of the beneficiaries in 2018. The principle of family unity was observed at placement and the women travelling alone were accommodated in dormitories with other single women.

The AC is open, but for the "night quiet" when the AC is locked for security reasons and no activities outside the rooms are allowed, in line with the House Rules. The conditions in this AC have substantially improved bearing in mind that the main building was renovated last year. The AC has central heating and an adequate number of bathrooms, though they are unisex – for men and women. House rules are clearly displayed on the bulletin board in English, Arabic and Farsi.

There was no police officer continuously on duty in the AC Bogovađa to register foreigners who express intention to seek asylum, issue registration certificates and identity cards for asylum-seekers. When persons without registration certificates are admitted into the AC, the CRM staff provide transportation to the police stations in Valjevo or Lajkovac for them to register and get issued registration certificates. Since the AC in Bogovađa obtained technical equipment for registration of persons who express intention to seek asylum in 2018, it may be possible that the registration process will be conducted there in the future. In the course of 2018, the Asylum Office officers conducted actions in this AC more often than in the ACs in Banja Koviljača, Tutin and Sjenica, ensuring regular submission of asylum applications and hearings.

A medical team is present in the AC every work day. In case of interventions surpassing the capacities of the AC medical team, the asylum-seekers are transported to the outpatient clinic in Bogovađa, Health Centre in Lajkovac or the hospital in Valjevo, depending on the specific case. Mandatory medical examinations-ups are most often conducted several days within arrival, and depend on the availability of places at the competent health care centre.

7.5.4. Asylum Centre in Krnjača

The Asylum Centre in Krnjača was founded in the Belgrade municipality of Palilula in 2014 as a temporary centre for accommodation of asylum-seekers. The AC is located in the compound of workers' barracks used – since early 1990s – for accommodation of refugees from Croatia and Bosnia and Herzegovi-

na as well as of IDPs from Kosovo. It can optimally take up to 750 persons, and up to 1,000 at times of urgency, making it – in addition to the reception/transit centre in Preševo – the biggest centre for accommodation of migrants and asylum-seekers on the territory of Serbia. For its proximity to downtown Belgrade, this AC housed the greatest number of persons in the first eleven months of 2018 i.e., an average of 550 persons/day.

The AC is open, but for the "night quiet" when the AC is locked for security reasons and no activities outside the rooms are allowed in line with the House Rules. The newly arrived refugees and migrants were advised of the house rules which have been translated into several languages. CRM staff observed the principle of family unity at placement. The interpreters for Arabic and Farsi are present in the AC, and the interpreters for Pashtu and Urdu are available if needed. The work of the interpreters is funded by CRPC and IOM.

The conditions in the AC were partially improved after the 2017 renovation of the older barracks. However, there is no video surveillance in it as yet and the number of security staff is inadequate. Further to these, the BCHR clients most often complained of poor hygiene and lack of privacy.

As opposed to 2017, when the persons accommodated in the AC without certificates on expressed intention to seek asylum received dry food packages twice a day, all the residents regardless of their legal status were entitled to three cooked meals a day in 2018. Furthemore, the humanitarian organisation *Caritas* continued distributing additional food packages.

There is no permanent presence of police officers to register persons who express intention to seek asylum in the AC, but it received technical equipment for the registration of persons who express the wish to seek asylum in 2018. Therefore, one may reasonably expect that the registration process will be conducted in this AC in the future. The proximity of the seat of Asylum Office and the low travel costs involved contributed to the Asylum Office officers conducting numerous actions in the asylum procedure in 2018.[255] As in the other centres for accommodation of asylum-seekers, there is a designated room for legal counseling and confidential conversations between the clients and lawyers.

Free health care is equally available to all the persons residing in the AC in Krnjača, irrespective of their legal status. A medical team is present until 8 p.m. every day except Sunday in a designated area adapted for adequate provision of this type of services. Asylum-seekers and others in need of specialized examinations are referred to one of the hospitals in Belgrade, and are assisted by the interpreters and CRM representatives.

255 In the first eleven months of 2018, the Asylum Office carried out official actions only in respect of BCHR clients at the Asylum Centre in Krnjača.

7.5.5. Asylum Centre in Sjenica

The Asylum Centre in Sjenica was set up as a temporary centre in the former Hotel Berlin to accommodate an increased number of asylum-seekers in Serbia in August 2013. Later on, in March 2017, the former textile factory *Vesna* was added to the AC. The old hotel Berlin, with inadequate conditions and collective dormitories in the hall, was closed in July 2018. The AC in Sjenica is now located only in the former factory *Vesna* downtown Sjenica that can take up to 250 persons in 27 rooms. According to the management of the AC, the ongoing reconstruction works are to extend its capacity by an additional 160 places. An average of 150/day persons stayed in this centre in the course of the first eleven months of 2018. According to the latest information of November 2018, children comprised 93% of the residents of the centre, the majority of them being UASC.

The centre is open, but for the "night quiet" when the AC is locked for security reasons and no activities outside the rooms are allowed in line with the above mentioned House Rules. The house rules are clearly displayed on the bulletin board in English, Farsi and Arabic. The newly arrived refugees and migrants were advised of the house rules. The principle of family unity is observed at placement, so the families are always accommodated together. Interpreters for Arabic and Farsi are present in the AC.

As in the majority of other ACs, MOI officers were not permanently present in the AC Sjenica to register asylum-seekers and issue registration certificates. The Asylum Office officers conducted their activities less frequently in this AC than in the other asylum centres during 2018.

The centre has an outpatient clinic for provision of basic health care. Mandatory examinations on admission into the AC for assessment of health status or identification of potential contagious diseases are conducted at the local Health Centre. A doctor is present in the AC from 8:30 a.m. to 4:30 p.m. on work days. The asylum-seekers in need of specialized examinations and stationary treatment are transported to the hospitals in Novi Pazar or Užice.

7.5.6. Asylum Centre in Tutin

The Asylum Centre in Tutin was opened in January 2014 in a former furniture factory *Dalas.* It was located there until March 2018 when a new facility for accommodation of asylum-seekers was opened in Velje Polje, four kilometres away from downtown Tutin. The AC can accommodate 200 persons. The average number of persons in this centre was in the realm of 120/day in 2018, with this number increasing to 150 during the last quarter.

This being a newly erected building, the accommodation conditions in this centre have significantly improved compared to the earlier years. The centre

has 60 rooms and an adequate number of toilets. There is central heating and a drinking water tank has been installed.

On placement, care is taken about ethnic affiliation in as much as the accommodation capacities allow. The principle of family unity is respected and the families are always placed together into rooms with their own bathrooms. Security staff is present 24h/day and the centre is locked during the night in line with the House Rules in asylum centres and other facilities designated for accommodation of asylum-seekers. Interpreters for Arabic and Farsi are present in the centre, their work supported by NGOs implementing humanitarian activities in the south of Serbia.

The new building has an outpatient clinic with a doctor present every day, which is an improvement relative to 2017. In addition, a nurse and a Farsi interpreter are present in the outpatient clinic thus raising the level the medical services provided. The residents in need of specialised examinations are transported to the Health Care Centre in Tutin or to the hospital in Novi Pazar.

MOI staff are not present in the asylum centre permanently, but the Asylum Office staff visited the centre much more often in 2018 that in the previous year. Legal aid is provided by NGOs that regularly visit this centre.

8. INTEGRATION

The legal framework for exercise of the rights and obligations related to social integration of persons granted asylum changed when the LATP came into effect. The promulgation of LATP was followed by a change of the 2017 Decree on the Integration of Foreigners Granted Refugee Status in the Social, Cultural and Economic Life of the Republic of Serbia.[256] The changed version entitled[257] "Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia", (Integration Decree), entered into force on 26 July 2018.[258]

With respect to integration of persons granted asylum, the key novelty of the LATP relative to the AL is equalisation of the rights and obligations of persons granted refugee status with those of the persons granted subsidiary protection.[259] In keeping with this LATP solution, the changes of the above Decree extended its application to include also to the persons granted subsidiary protection. In its previous reports, the BCHR recommended the change of the Decree to include also the persons granted subsidiary protection, so we certainly consider it a positive development.

The guarantees accorded to persons granted asylum by LATP are: the right of residence, accommodation, freedom of movement, health care, education, access to the labour market, legal and social assistance, property, freedom of religion, family reunification and assistance during integration. The rights of these persons are equal to those of the nationals of the Republic of Serbia in the domain of access to education, the right to intellectual property and free access to courts, legal aid, exemption from payment judicial and other fees before the state authorities. Access to the labour market, health care and the right to movable and immovable property are governed by the relevant regulations on the status of foreigners. However, equalization of rights and obligations of the persons granted refugee status and the persons granted subsidiary protection does not include the right to a travel document. The LATP provides for issuance of this document to persons granted refugee status and only in exceptional humanitarian cases also to persons granted subsidiary protection.[260]

256 *Sl. glasnik RS*, 101/16.

257 The Decree on Changes and Amendments of Decree on the Integration of Foreigners Granted Refugee Status in the Social, Cultural and Economic Life of the Republic of Serbia, *Sl. glasnik RS*, 56/18.

258 *Sl. glasnik RS*, 101/16 and 56/18.

259 Article 59, LATP.

260 Article 91 (3), LATP.

Integration assistance has now been included among the rights guaranteed to the persons granted asylum, as opposed to the Asylum Law which guaranteed this assistance only to persons granted refugee status. At the proposal of CRM, the RS Government shall specify the terms and conditions for the inclusion of persons who have been granted the right to asylum in the social, cultural, and economic life, and shall enable the naturalisation of refugees.[261] The Asylum Office shall inform a person who has been granted the right to asylum at the earliest possible time about the rights and obligations that arise from that status, in a language he/she can understand.[262] The above mentioned Decree specifies the obligation of the Asylum Office with respect to informing. Under it, the Asylum Office shall verbally or by information leaflets inform the persons granted asylum to contact CRM so as to exercise their rights and duties stipulated in Art. 2 (1) thereof.[263] Given that none of the BHCR clients were granted asylum under tha LATP, the legal team does not know whether the Asylum Office established this practice.

LATP also provides for the obligation of the person granted the right to asylum to attend classes of the Serbian language and script. However, if the person, without a justified reason, fails to report to the CRM to attend Serbian language and alphabet courses within 15 days from the date of the effectiveness of the decision granting him/her the right to asylum or stops attending such courses, he/she shall lose the right to financial assistance for temporary accommodation, as well as the right to one-time financial assistance provided from the budget of the Republic of Serbia.[264] The legislator opted for the integration model in the segment of learning the language of the asylum country, after the similar models conditioning financial assistance by language lessons attendance. However, the Decree and the LATP are not harmonised in this part because the Decree only mentions that persons who, without justified reason, fail to report to CRM no later than 15 days from the date of the effectiveness of the decision in order to attend Serbian classes will lose the right to one-time financial assistance but not to accommodation assistance.[265] In addition, no obligation to take an examination in Serbian language has been provided for, unlike the alternative possibility for additional classes for persons who have conditions to perform jobs requiring university education, those who attend school regularly and for persons over 65.

261 Article 71, LATP.

262 Article 59 (6), LATP.

263 Under Article 2 (3) of the Integration Decree, integration into social, cultural and economic life of persons granted the right to asylum is provided through: full and timely informing about the rights, opportunities and obligations; Serbian language learning; learning about Serbian history, culture and Constitutional order; assistance in integration into the education system; assistance in exercise of the right to health care and social protection and assistance in inclusion into the labour market.

264 Article 59 (4), LATP.

265 Article 4 (10), Integration Decree.

Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia sets out that persons granted the right to asylum are also entitled to orientation classes about the Serbian culture, history and the constitutional order lasting up to 30 hours a year.[266] However, the only sanction stipulated for failure to take part in these is prohibition from attending new or additional classes.[267] The training curriculum is proposed by associations, and approved and funded by CRM.[268] Having launched the first pilot programme in September 2018, the BCHR identified the key challenges: the language barrier, given that it is not possible to ensure interpreters for all the languages, and the absence of incentives stipulated for participation in the programme. Also, a still distinctly low number of persons granted refugee status largely limits the opportunities for the adaptation of the programme.

A significant novelty introduced by the LATP refers also to the right to education. Namely, the persons granted asylum are entitled to pre-school, primary, secondary and higher education under the same conditions as the citizens of the Republic of Serbia.[269] The AL guaranteed the right to free primary and secondary education. Access to higher education institutions was possible under the conditions applicable to foreigners, which practically means school fees are several times higher than those paid by the citizens. With this solution, the LATP equalises the rights of foreigners granted asylum and those of the Serbian citizens with respect to access to higher education. Still, since the LATP came into force at the time of regular enrollment to faculties in RS – in June 2018, it is not yet possible to assess the practical implementation of this solution.

Legislation of RS is specific in that the rights of refugees are governed, in addition to the LATP, also by the 1992 Law on Refugees[270] which refers to the refugees from former SFR Yugoslavia. From the aspect of integration, this represents a particular challenge as the whole range of by-laws defining the rights to certain benefits that refugees and expellees are entitled to, is based on the provisions of the 1992 Law on Refugees. Thus for instance, in order for refugees to exercise the right to a transportation card in Belgrade they must present a "Refugee ID (blue)", but not the documents that the LATP lists such as IDs for persons granted refugee status or subsidiary protection. This condition is set out in the Rulebook on Tariffs in the Public Line Transport of Passengers on the Territory of the City of Belgrade.[271]

266 Article 5 (1), Integration Decree.

267 Article 5 (4), Integration Decree.

268 Article 5 (2), Integration Decree.

269 Article 64, LATP.

270 *Sl. glasnik RS*, 18/92.

271 *Sl. list grada Beograda*, 13/17 and 11/18.

8.1. BCHR Practice Related to Integration of of Persons Granted the Right to Asylm in Serbia

The BCHR cooperated with the state authorities in finding systemic solutions for a more successful integration of persons granted the right to asylum in 2018. These persons were also provided individualised support to overcome the everyday challenges they face. The BCHR team assisted in issuance of personal documents and exercise of the right to access the labour market (filing requests for issuance of work permits, contacts with the employers, drafting of CVs/motivation letters/job interview preparation, advising about work ethics in Serbia and the relevant regulations related to labour law). In addition, integration assistance was provided in the domains of education, access to the education system, through interpretation services, moving to a private address, submission of requests for financial assistance to CRM, UNHCR and for social assistance, etc.

The BCHR and UNHCR continued to cooperate with the Serbian business sector. Bearing in mind that asylum-seekers and persons granted asylum are not yet sufficiently visible to public and employers in Serbia, this type of activity proved very useful. Most of the employers had no information about the legal status of persons granted asylum, conditions of employment prescribed by the Law on Employment of Foreigners,[272] personal documents issued to these persons by the RS authorities, etc. A concrete outcome of these activities is employment of many BCHR clients, both those who were granted the right to asylum as well as the eligible asylum-seekers.

8.2. Right to Access the Labour Market

The Law on Asylum and Temporary Protection guarantees the right to labour market access to persons granted asylum[273] as well as to asylum-seekers.[274] In as much as the conditions for exercise of this right are concerned, the LATP refers to the implementation of the law governing employment of foreigners.[275] On the other hand, the Law on Employment of Foreigners interprets the term refugees as foreigners who were granted the right to asylum in line with the asylum-related regulations,[276] while categorising the asylum-seekers, the persons granted temporary protection, victims of trafficking and the persons granted subsidiary protection as

272 *Sl. glasnik RS*, 128/14, 113/17 and 50/18.

273 Article 65 (1), LATP.

274 Article 57, LATP.

275 Article 65 (2) and Article 57, LATP.

276 Law on Employment of Foreigners, Article 2 (1.8). The same provision of this Law sets out that this term does not refer to persons from former SFRY who were granted refugee status in line with regulations on refugees, on whom this law is not implemented.

a "special categories of foreigners".[277] A personal work permit is issued to a refugee for a period of validity of an identity card for persons granted asylum[278] i.e., five years in practice. A person granted subsidiary protection is issued an identity card for the duration of status of a person with subsidiary protection[279] i.e., one year in practice. An asylum-seeker may be issued a work permit nine months following submission of an asylum application, provided that the decision on the application was not passed through no fault of his, and for the period of six months with the possibility of extension for as long as the asylum-seeker status lasts. [280] In hitherto the practice, in view of the often long period between the moment of expression of interest to seek asylum and the submission of the asylum application, the time limit that runs only from the moment of submission of an asylum application represented a big obstacle. It is yet to be seen whether the new deadlines for submission of asylum applications, provided for by the LATP, will bring about certain changes in practice of exercise of the right to access the labour market.

Pursuant to the provisions of the Law on Employment and Insurance in Case of Unemployment,[281] the National Employment Service is in charge of, *inter alia*, issuance of work permits. The biggest challenge in exercise of this right remains the amount of the Republic administrative fee for issuance of a personal work permit. Namely, under the Law on General Administrative Procedure, a client may be exempted from payment of costs partially or in full, if he/she cannot bear the costs without damaging his/her subsistence or the subsistence of his/her family or if provided for in a ratified international treaty.[282] Nevertheless, the practice of NES in this respect is not uniform, and the decisions rejecting the requests for tax exemption did not fulfill the condition provided by the LGAP under which the reasoning must also include the explanation as to why the authority departed from the solutions passed in identical or similar administrative matters in the past.[283] Therefore, the BCHR filed a complaint on one of the decisions of NES that rejected the request for issuance of a personal work permit filed with the application for Republic administrative tax.[284] The complaint was upheld by the competent Ministry of Labour, Employment, Veteran and Social Affairs and the case was remanded. NES passed a new solution[285] exempting the applicant for payment of the Republic administrative tax. The future will show whether the practice will be aligned with the principle of predictability

277 Article 2 (1. 9), Law on Employment of Foreigners.

278 *Ibid*., Article 13 (2).

279 *Ibid*., Article 13 (6).

280 *Ibid*., Article 13 (3).

281 *Sl. glasnik RS*, 36/09, 88/10, 38/15, 113/17 and 113/17 – other law.

282 Article 89, LGAP.

283 Article 141(4), LGAP.

284 Decision of National Employment Service, no. 0700–103–19/2018 of 5 June 2018.

285 Decision of National Employment Service, no. 0700–103–32/2018 of 23 October 2018.

proclaimed in Art. 5 of LGAP. Issuance of a personal work permit is important also as it is a prerequisite for registration in the NES unemployment records, which in turn represents a precondition for exercise of other rights such as the right to financial assistance for accommodation.

When contracting employment, a practical problem often occurs related to outdated databases of the Central Register of Mandatory Social Insurance. Namely, when registering an employee at the Republic Fund for Pension and Disability Insurance, one must present a unique citizen registration number or, the so called foreigner registration number in case of foreigners. In numerous cases involving the BCHR clients, the right to labour market access was impeded as the competent authorities did not recognise their registration numbers, established by the MOI, due to inefficiency of the Central Register of Mandatory Social Insurance. Registration of employees at the Republic Fund for Pension and Disability Insurance is not possible if the foreigner personal number is not entered into the data base of the Central Register of Mandatory Social Insurance which receives this information from the MOI. In talking to the MOI and the Central Register representatives, it turned out that databases are not updated automatically. This problem aggravated the situation of refugees and asylum-seekers and additionally raised distrust of potential employers towards this vulnerable category of persons.[286]

At the moment, there are no vocational training programmes, advancement programmes/ programmes for acquisition of practical experience or labour market counselling services for persons enjoying international protection in Serbia. The Decree on the Integration of Foreigners Granted the Right to Asylum in the Social, Cultural and Economic Life of the Republic of Serbia designates CRM, in cooperation with NES, as providers of the employment support and assistance. However, the future will show how this activity will be implemented in practice.

8.3. Right to Education

The right to education is a constitutional right in Serbia further governed by a number of laws, primarily the Law on Basics of Education System.[287] Specific degrees of education are regulated by the Law on Primary Education,[288] the Law on Secondary Education[289] and the Law on Higher Education.[290] These laws also

286 In the course of 2018, BCHR repeatedly intervened because of the problems with databases of the Central Register of Mandatory Insurance by interceding between the Central Register, MOI and employers.

287 *Sl. glasnik RS*, 88/17 and 27/18 – other laws.

288 *Sl. glasnik RS*, 55/13, 101/17 and 27/18 – other laws.

289 *Sl. glasnik RS*, 55/13, 101/17 and 27/18 – other laws.

290 *Sl. glasnik RS*, 88/17, 27/18 – other laws and 73/18.

regulate the education of foreigners and stateless persons in the Republic of Serbia, and the validation of foreign school diplomas and certificates.

Under the Law on Basics of Education System, foreign nationals, stateless persons and persons applying for citizenship shall have the right to education on an equal footing and in the same manner as Serbian nationals.[291] The LATP also guarantees the right to education of asylum-seekers and persons granted asylum.[292] The Integration Decree provides for special assistance for inclusion into the Serbian education system by provision of school books and stationary, assistance in initiating school diplomas and certificates validation procedure, assistance in learning and financial assistance for participation in extracurricular activities.[293] Assistance for illiterate adults has also been provided with a view to their attendance of literacy programmes.

Access to education is provided to the applicant who is a minor within three months from the date of his/her asylum application at the latest.[294] Hence, the obligations set down in the New York Declaration[295] have been fulfilled by this LATP provision and its successful implementation in practice. In cooperation of the Ministry of Education, Science and Technological Development, UNICEF, CRM and other international and non-governmental organizations, all the minor applicants were included in mainstream education in the academic 2017/2018 in line with the regulations governing mandatory attendance of primary schools for all the children irrespective of their status or the status of their parents. A big practical challenge proved to be regular school attendance by underage asylum-seekers. Namely, the language barrier and limited number of interpreters for the languages spoken among the refugees resulted in lack of interest among the children to attend the classes they do not understand. An additional challenge is lack of interest of many parents in educational activities, as they are certain their stay in Serbia is only temporary. These data and conclusions are based in a research conducted by the BCHR, the IRC and partner organisations in the course of the school year.[296]

A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.[297] Equalisation

291 Article 3 (5), Law on Basics of Education System.

292 Articles 55 and 64, LATP.

293 Article 6, Integration Decree.

294 Article 55 (2), LATP.

295 *New York Declaration for Refugees and Migrants: resolution,* adopted by the General Assembly, 3 October 2016, A/RES/71/1, Article 32.

296 *Joint protection monitoring report: In focus – education of refugee children in Serbia, January – March 2018*, International Rescue Committee, Novi Sad Humanitarian Centre, Info Park, Belgrade Centre for Human Rights.

297 Article 64, LATP.

of rights to higher education represents a novelty because refugees could have access to higher education thus far only under the conditions applicable to all other foreign citizens, including the school fees. Though the issue of validation of foreign diplomas potentially concerns all the recognised refugees, still their validation is the most wanted in the sectors where employment is conditioned by possession of an adequate license such as medicine or law practice. This area was not adequately defined in local legislation in the past. However, the Law on Professions of Special Interest for the Republic of Serbia and Conditions for their Practice [298] enacted in September 2018, should contribute to overcoming the problem of validation of foreign university diplomas and certificates and to a clearer specification of additional conditions for acquisition of certain professional titles in line with the national law.[299]

With respect to financial support, no state support has been planned at the moment for persons who cannot afford the fees payable for validation procedure. If they wish to validate their diplomas, the refugees must themselves bear the costs of the procedure. In case they are unable to submit the requested documents for justified reasons, no other procedure has been provided such as verification of previously acquired competencies. Such a procedure would be welcome as it would allow these persons to acquire professional competencies and diplomas necessary for their inclusion into the labour market.

8.4. Right to Personal Documents

The Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum-Seekers and Persons Granted Asylum or Temporary Protection[300] defines forms of identity cards of asylum-seekers and recognized refugees. Although the BCHR pointed out repeatedly to the deficiencies of the forms provided for in the previous rulebook, no fundamental changes were

298 *Sl. glasnik RS*, 73/18.

299 Under this Law, the Government shall establish the list of professions of special interest for the Republic of Serbia in a certain area, and the conditions related to formal and professional qualifications for the professions of special interest shall be defined pursuant to the law governing the area i.e., industry wherein the profession of special interest in preformed. Work in such profession shall be possible only when the competent authority established by a ministry competent for the industry of profession of special interest, decides that a candidate fulfills the necessary conditions. The time limit stipulated for this decision is maximum 3 months. As for foreign professional qualifications, opinion of the education institution founded by the state, autonomous province of local government unit that will compare these to the relevant curricula of RS, shall be obtained. When the candidate does not have the required competencies, the competent authority may refer him/her to taking additional examinations or refuse the application if the application cannot be ammended by taking additional examinations or through practical work.

300 *Sl. glasnik RS*, 42/18.

made to the newly adopted rulebook. Namely, the documents issued still do not have even minimum security features, as they are issued on ordinary plasticized paper and the Asylum Office staff fills them in by hand. The identity cards do not have a field on foreigner registration number, meaning in practice that the persons granted asylum and asylum-seekers must have on them the proper certificate on possession of a foreigner registration number in order to access numerous rights. These certificates are issued for concrete purposes and cannot be used otherwise, and are subject to taxation except in the cases provided for by the Law on Republic Administrative Taxes.[301]

Though the AL stipulated that the Minister of Interior would adopt a by-law on the content and design of travel documents for persons granted refugee status within 60 days from the date of effectiveness of this Law, this enactment was never endorsed. An identical solution was prescribed by the LATP.[302] However, despite the fact that the 60-day time frame has elapsed, the appropriate by-law was not passed by the time of this report, although the competent minister adopted rulebooks on other forms such as ID card forms immediately after the Law entered into effect. The LATP also stipulates that, in the exceptional cases of a humanitarian nature, the travel document may also be issued to persons who have been granted subsidiary protection, and who do not possess a national travel document, with a validity of maximum one year.[303]

Deprivation of the right to freedom of movement through failure to issue travel documents to the persons granted asylum is a subject of the application *S.E. v. Serbia* before the ECtHR.[304] The BCHR represented a Syrian national, recognized as a refugee, before the ECtHR. The application asserts that the Border Police Administration informed this person – in a non-appealable letter that it was unable to issue a travel document to him for lack of a by-law. The Constitutional Court dismissed a constitutional appeal in that same case on 20 June 2016 stating that the constitutional appeal may be filed against an individual enactment or a decision only, and not for the fact that a certain by-law was not enacted. The BCHR lodged an application to the ECtHR stating violation of Art. 2 (2), 4th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms which provides that everyone shall be free to leave any country, and of para. 3 that no restrictions may be placed on the exercise

301 *Sl. glasnik RS*, 43/03, 51/03 – corr., 61/05, 101/05 – other law, 5/09, 54/09, 50/11, 70/11 – adjusted RSD sum, 55/12 – adjusted RSD sum, 93/12, 47/13 – adjusted RSD sum, 65/13 – other law, 57/14 – adjusted RSD sum, 45/15 – adjusted RSD sum, 83/15, 112/15, 50/16 – adjusted RSD sum, 61/17 – adjusted RSD sum, and 113/17, 3?2018 – corr., 50/18 – adjusted RSD sum and 95/18.

302 Article 101, LATP.

303 Article 91 (3), LATP.

304 *Mohammad Mawaheb Seraj Eddin v. Serbia*, App. No. 61365/16 of 19 October 2016 to the European Court of Human Rights submitted on 23 February 2018.

of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, etc. The parties are currently in the phase of responding to the question of the Court on whether there is a restriction of the freedom of movement and whether the conditions prescribed in Article 2 (3) of the 4th Protocol have been fulfilled.

8.5. Right to Accommodation

Under the LATP, Commissariat for Refugees and Migration is the authority in charge of provision of material conditions of reception of asylum-seekers and temporary accommodation of persons who have been granted asylum.[305] The right to temporary accommodation of persons who have been granted asylum is closely defined by the Decree on Criteria for Temporary Accommodation of Persons Granted Asylum or Subsidiary Protection and Conditions for Use of Temporary Housing.[306] The Decree specifies that the persons who have been granted asylum in a final decision but do not have any regular income to solve the housing issue, may apply for accommodation with CRM. The types of accommodation available are temporary use of housing or cash allowances for temporary accommodation. With respect to the persons with special needs and UASC, the accommodation shall be provided in social protection institutions, with other providers of the service of accommodation or in another family.

In practice, under this Decree, accommodation is provided by disbursement of cash allowances due to lack of adequate housing. The applicants enjoy the right to temporary housing for the period of one year from the date of final decision on granting the refugee status or subsidiary protection. The BCHR identified several practical challenges related to exercise of the rights under this Decree. First, it is the fact that the right to temporary accommodation is effective only up to one year from the date of the final decision on granting the right to asylum, whereby this right cannot be enjoyed in full – one year – having in mind the conditions for application. Namely, in order for one to submit an application for this type of support, one must present a photocopy on an identity card of a foreigner granted asylum proving that he/she lives at a private address and not in one of the facilities designated for accommodation of asylum-seekers. Since these requests are submitted by persons who generate no income, their impossibility to bear the initial costs of housing emerged as a particular challenge, as landlords often request an advance for several months. Having identified this problem, the CRM passed a decision, in mid-2018, approving assistance also to the persons who have not yet moved out of asylum centres provided they do so within 30 days.

305 Article 23, LATP.

306 *Sl. glasnik RS*, 63/15.

The second major challenge identified is verification of a statement on absence of regular income. Namely, all the notaries public refused to verify statements if these were not given in a language that the client understands. In such cases, personal presence of a sworn-to-court interpreter is indispensable. The record of sworn-to-court interpreters and translators[307] kept at the Ministry of Justice of the Republic of Serbia lists sworn-to-court interpreters for numerous languages used by the persons granted asylum. On the other hand, the Rulebook on Sworn-to-Court Interpreters[308] sets down that an advertisement for the appointment of interpreters shall be published by the Minister of Justice at the proposal of a president of a higher court. According to the information available to the BCHR, no advertisements were published despite at least one president of the higher court requesting appointment of a sworn-to-court interpreter for Farsi. At the moment, there is only one court interpreter for this language registered at the Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities of AP Vojvodina.[309]

8.6. Right to Family Reunification

The persons granted asylum have the right to family reunification.[310] Under the LATP, family members are the spouse, provided that the marriage was contracted before the arrival to the Republic of Serbia, the common-law partner in accordance with the regulations of the Republic of Serbia, their minor children born in legal or in common-law marriage, minor adopted children, or minor step-children. Exceptionally, the status of a family member may be granted also to other persons, taking into account particularly the fact that they had been supported by the person who has been granted asylum or subsidiary protection, their age and psychological dependence, including health, social, cultural, or other similar circumstances.[311]

At the BCHR request for family reunification of M.K. from Afghanistan who was granted refugee status in Serbia, the Asylum Office concluded that this issue is not specified in the Asylum Law and that regulations governing legal status of foreigners and migration management shall duly apply. Pursuant to Articles

307 *Elektronska evidencija stalnih sudskih prevodilaca i tumača*. Ministry of Justice of the Republic of Serbia. Available at: https://www.mpravde.gov.rs/tekst/13861/elektronska-evidencija-stalnih-sudskih-prevodilaca-i-tumaca.php.

308 *Sl. glasnik RS*, 35/10, 80/16 and 7/17.

309 Register of Court Interpreters. Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities of AP Vojvodina. Available at: http://www.puma.vojvodina.gov.rs/tumaci.php.

310 Article 70, LATP.

311 Article 2 (1.12), LATP.

28 and 32 of the Foreigners Law[312] and Article 2 (2; 3) of the Rulebook on the Fulfillment of Conditions for Approving Temporary Residence of a Foreigner for Family Reunification Purposes[313] the request for family reunification shall be supplemented by evidence confirming family relationship such as a photocopy of a valid foreigners ID, marriage certificate or a birth certificate. However, in view of the fact that this person had left Serbia during the family reunification procedure and that the procedure had been suspended on those grounds, the assessment of the possibility of exercising his/her right to family reunification in practice is not possible as yet.[314]

The possibility for accessing this right in some other cases such as marriage concluded upon arrival in Serbia (the so called *post-flight family)* on the basis of the Foreigners Law[315] represents a novelty. Namely, Art. 56 of Foreigners Law provides for temporary stay of a family member granted asylum. Accessing this right does not require fulfillment of all the general statutory conditions such as possession of passport or evidence on having means of subsistence. In cases of the close family members granted asylum in Serbia who do not have a travel document, temporary residence shall be granted by a decision. Pursuant to this law, close family members are spouses, common law partners and their minor children born in legal or in common-law marriage, minor adopted children, or minor step-children who are not married.

8.7. Right to Citizenship

Under the LATP, the Republic of Serbia shall, commensurate with its capacity, ensure conditions for naturalisation of refugees. The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government at the proposal of CRM. The 1951 Refugee Convention also sets down that the Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings. However, the relevant changes of the Citizenship Law[316] specifying the conditions for acquisition of citizenship of this vulnerable category of persons have not been adopted in the period since the LATP came into force. Thus, the persons granted asylum remain completely deprived of the possibility to naturalise, which largely affects their wish and motivation to integrate into the society of the Republic of Serbia.

312 In its response, the Asylum Office invokes the old Law on Foreigners (*Sl.glasnik*, 97/08) replaced by the new Law on Foreigners (*Sl. glasnik*, 24/18) by the day of publication of this report.

313 *Sl. glasnik RS,* 59/09.

314 Decision of Asylum Office, no. 26–77/17 of 27 July 2018.

315 *Sl. glasnik RS*, 24/18.

316 *Sl. glasnik RS*, 135/04, 90/07 and 24/18.

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