



**Right to Asylum
in the Republic of Serbia
Periodic Report
for January - March 2019**



**Belgrade Centre
for Human Rights**

INTRODUCTION

In 2019, the Belgrade Centre for Human Rights (hereinafter: BCHR) has continued extending free legal aid to refugees and asylum seekers and representing them before the relevant authorities in Serbia within the *Support to Asylum Seekers in Serbia* project implemented with the support of the United Nations High Commissioner for Refugees (hereinafter: UNHCR). It has also engaged in their strategic representation before international institutions, including the European Court of Human Rights and United Nations human rights treaty bodies with a view to systemically improving the protection of refugees in Serbia. Apart from extending legal aid, BCHR's team has continued assisting asylum seekers and refugees in order to facilitate their integration in the country's social, economic and cultural life. In the forthcoming period, it will devote particular attention also to young people and intercultural activities fostering their communication and integration in Serbian society. The programme will encourage communication among young people of diverse ethnic and cultural backgrounds with a view to advancing multiculturalism in Serbia's society, in which every young person will be fully integrated and actively involved in social life.

On 19 February 2019, United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereinafter: UN Special Rapporteur on torture) Nils Melzer published a Report on his visit to Serbia in November 2017.¹ Part of the report was devoted to the status of asylum seekers and refugees in Serbia, which we analyse in details in this Report.

Nationals of Pakistan, Afghanistan, Iran and Iraq accounted for the greatest number of refugees and migrants who sought international protection in Serbia or transited through it on their way to other countries in the first quarter of 2019. Serbia's decision to lift the visa regime for Burundi citizens resulted in a mild increase in the number of nationals from that African state, most of whom entered Serbia *via* Belgrade Airport Nikola Tesla.

The Asylum Office adopted an unusually high number of decisions upholding asylum applications in the reporting period – twelve decisions regarding 21 applicants. It granted subsidiary protection to 10 and refugee status to 11 applicants. Twenty of the 21 applicants were represented by BCHR lawyers. Some of the decisions

¹ UN Human Rights Council, Doc A/HRC/40/59/Add.1 of 25 January 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/18/PDF/G1901918.pdf?OpenElement>.

testify to the commendable changes in the practice of the Asylum Office, including its more frequent reviews of the merits of the cases.

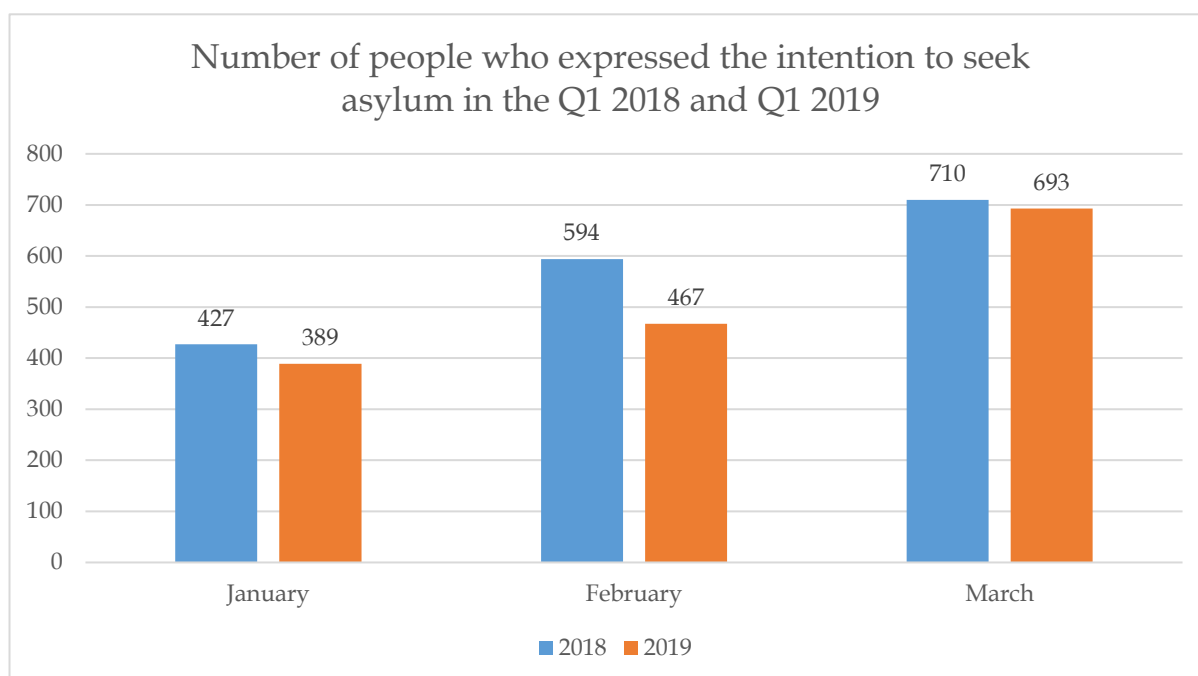
The Serbian authorities commendably granted temporary residence on humanitarian grounds to several applicants, in accordance with the new Foreigners Law; the asylum claims of some of them had been dismissed by a final decision, but they have been unable either to return to a safe third country or their country of origin.

This Report, covering the 1 January - 31 March 2019 period, analyses the relevant authorities' treatment of the refugees and asylum seekers. The BCHR associates obtained the data and information presented in the Report during their direct work with refugees and asylum seekers, their legal representation in the asylum procedure, field work and whilst extending them support in exercising their integration-related rights. The statistical data on the work of the Ministry of the Interior (hereinafter: MoI) were obtained from UNHCR, whilst the other data were obtained in response to BCHR's requests for access to information of public importance. This Report has been prepared by the BCHR project team.

1. STATISTICAL OVERVIEW

1.1. NUMBER OF PEOPLE WHO EXPRESSED THE INTENTION TO SEEK ASYLUM IN SERBIA

A total of 1,549 people expressed the intention to seek asylum in Serbia in the first quarter of the year; 1,457 of them were male and 92 were female. The intention to seek asylum was expressed by 376 children, 124 of whom were unaccompanied by their parents or guardians. Viewed by month, the intention to seek asylum was expressed by 389 people in January, 467 people in February and 693 people in March 2019.



In Q1 2019, most certificates of the intention to apply for asylum (hereinafter: certificate of registration) in Serbia - to 1,197 foreigners - were issued in the regional police administrations. Such certificates were also issued to 339 foreigners at border crossings and four of them at the Shelter for Foreigners. Certificates of intention were issued to two foreigners by the Asylum Office.

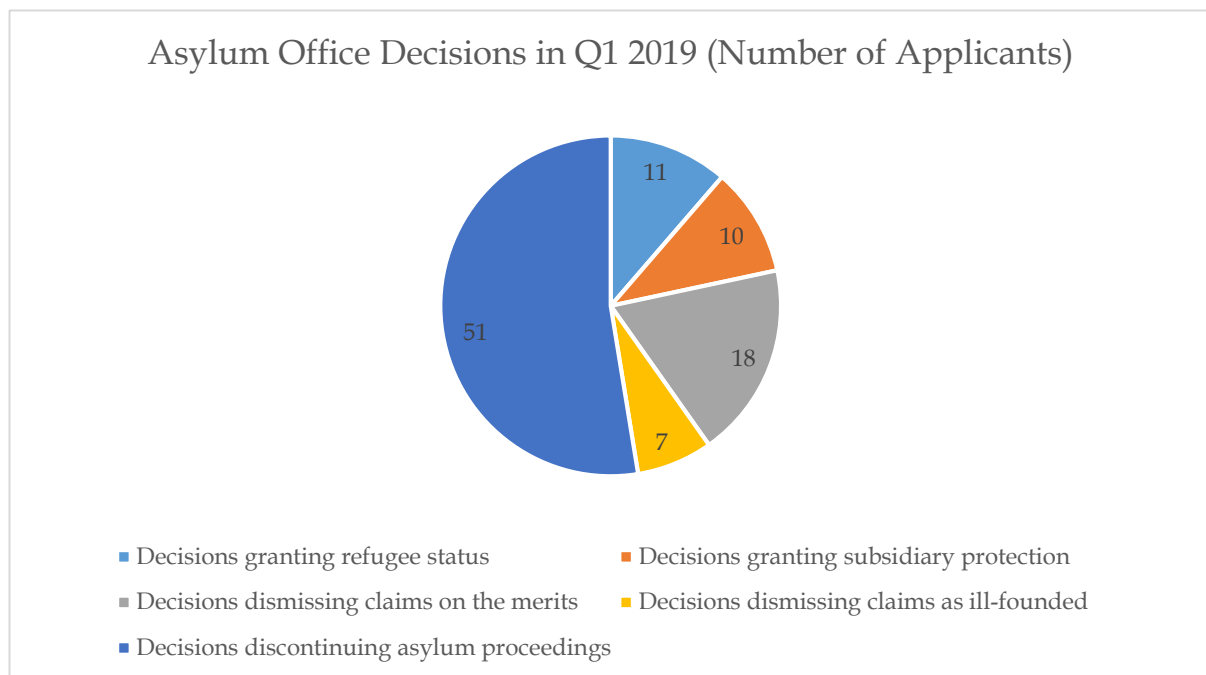
A total of 635,285 people expressed the intention to seek asylum in Serbia from 2008 until 31 March 2019. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577,

995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018 and 1,549 foreigners in the first quarter of 2019.

1.2. ASYLUM PROCEDURE STATISTICS

In the reporting period ninety-three asylum applications were filed, 42 of them in writing. Sixty-four asylum seekers were interviewed in the same period. The Serbian asylum authorities issued seven decisions granting refugee status to 11 asylum seekers (three Iranian nationals, three Russian nationals, three Cuban nationals and one Iraqi national) and five decisions granting subsidiary protection to ten applicants (four nationals of Iraq, three nationals of Syria, two nationals of Libya and one national of Afghanistan). Ten asylum applications concerning 18 applicants were dismissed in merits and another seven applications filed by seven foreigners as ill-founded. Reviews of 46 applications concerning 51 applicants were discontinued, mostly because the applicants had in the meantime left Serbia.

The Serbian asylum authorities have granted asylum in 66 cases and subsidiary protection in 84 cases since the first Asylum Law² entered into force.



² Sl. glasnik RS, 109/07.

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

Most of the foreigners, who expressed the intention to seek asylum in Serbia in the first quarter of 2019, were nationals of Afghanistan (575), Pakistan (275), Iran (123) and Iraq (109). The intention to seek asylum in the reporting period was also expressed by nationals of Algeria (44), Palestine (41), Bangladesh (30), Morocco (30), Burundi (25), India (19), Libya (15), Lebanon (11), Sudan (4), Jordan (3), Somalia (3), Turkey (3), Bosnia and Herzegovina (2), Egypt (2), Greece (2), Cameroon (2), Tunisia (2), Albania (1), Eritrea (1), South Sudan (1), Kazakhstan (1), Cuba (1), Mali (1), Nigeria (1), Romania (1), Togo (1) and Ukraine (1).

2. ACCESS TO THE ASYLUM PROCEDURE AT BELGRADE AIRPORT NIKOLA TESLA

A total of 24 people expressed the intention to seek asylum at Belgrade Airport Nikola Tesla in the reporting period.³

During the first quarter of 2019, the BCHR intervened several times with the MoI to facilitate efficient access to the asylum procedure to foreigners who had expressed the intention to seek international protection at the Belgrade Airport Nikola Tesla.

BCHR lawyers intervened and communicated with the border police officers at the airport six times on behalf of 11 nationals of Burundi and one national of Turkey, who had sought international protection. As a consequence of the BCHR intervention and correspondence with the Border Police they were issued certificates of registration, facilitating their access to Serbian territory and the asylum procedure. All of the asylum seekers were referred to the designated asylum or reception centres given that the adequate material conditions for implementing the entire procedure in the airport transit zone under Article 41 of the Law on Asylum and Temporary Protection (hereinafter: LATP)⁴ were not in place yet. Implementation of the asylum procedure at the airport, in which all procedural guarantees prescribed by law are respected, would ensure more efficient access to the procedure to all foreigners who seek asylum at the airport.

In his Report, the UN Special Rapporteur on torture noted a number of problems regarding access to the asylum procedure and the conduct of the border authorities at Belgrade Airport Nikola Tesla. Although the Report concerns the Rapporteur's visit in 2017,⁵ some of his recommendations are still valid, including the one that persons deprived of liberty in the transit zone be provided with conditions respecting their personal dignity and that the safeguards against *refoulement* must be complied with in the procedure for their forced removal.⁶

³ Data stem from the statistics obtained from the UNHCR.

⁴ *Sl. glasnik RS*, 24/2018.

⁵ UN Human Rights Council, Doc A/HRC/40/59/Add. of 25 January 2019.

⁶ *Ibid.*, p. 8, Section G.

The Special Rapporteur noted that the considerations underlying and informing the decision of the Border Police to refuse entry and initiate forcible return were not documented with sufficient precision in individual case files and that any such deportation decision did not appear to be subject to a legal remedy involving an individual assessment of the risk of *refoulement* to a place where the person in question might be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁷ Furthermore, he said that refusal of entry and, more importantly, deportation decisions, if not properly documented and subjected to independent judicial review, bore a great risk of arbitrariness and, in certain cases, may well amount to *refoulement* in violation of human rights law and, in particular, of the prohibition of torture and ill-treatment.⁸

The increase in the number of Burundi nationals, who expressed the intention to apply for asylum at Belgrade Airport Nikola Tesla in the reporting period, may be attributed to the Serbian Government's 2018 decision to abolish visas, *inter alia*, for the nationals of this African state.⁹ To recall, Serbia was forced to reintroduce visas for Iranian nationals in October 2018, because a number of them had abused the visa waiver to irregularly migrate to West European countries. Many of them had entered Serbia by seeking international protection at Nikola Tesla Airport.¹⁰ This is all the more reason why a functional system for assessing the merits of asylum claims must be established in the airport transit zone with a view to enabling the application of Article 41 of the LATP as soon as possible, in order to facilitate efficient identification of foreigners in need of international protection.

In March 2019, the Ministry of the Interior issued the BCHR representatives temporary permits to access the border crossing area, like it did in 2018,¹¹ thus providing them with the opportunity to extend legal advice to asylum seekers who asked for the BCHR's advice at the airport. Notwithstanding, the authorities should provide all asylum seekers with access to information and legal advice, not only those who directly ask the BCHR for help.

⁷ *Ibid.*, para. 50.

⁸ *Ibid.*, para. 51.

⁹ Serbian Government Decision No. 27-4615/2018 of 24 May 2018, available in Serbian at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/odluka/2018/39/3/reg>.

¹⁰ More in: *Right to Asylum in the Republic of Serbia 2018*, Belgrade, 2018, p. 24-27, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right-to-Asylum-2018.pdf>.

¹¹ *Ibid.*

3. ANALYSES OF SPECIFIC DECISIONS BY ASYLUM AUTHORITIES

On 14 January 2019, the Asylum Office granted subsidiary protection to two Libyan nationals.¹² During its review of their asylum applications, the first-instance authority was guided by the UNHCR September 2018 report¹³, thus commendably continuing its good practice in explaining of decisions granting international protection. Namely, the UNHCR urged all States to suspend forcible returns to Libya, including of people who have had their asylum claim rejected. The Asylum Office also took into account a submission filed by applicants' legal representative, referring to relevant reports on the current situation in Libya and the risks they would be exposed to in case of return.¹⁴ The applicants and their legal representative also filed two submissions about individual and general circumstances demonstrating that the applicants would be exposed to the risk of persecution in their country of origin in the meaning of Article 1 of the 1951 Convention Relating to the Status of Refugees and of treatment violating fundamental their civil rights to life and liberty and the right to be free from torture.

In late January 2019, the Asylum Office issued a ruling granting asylum to an unaccompanied boy from Iraq.¹⁵ This decision can be qualified as one of the most relevant ones taken by the Asylum Office, given that only a few unaccompanied children have been granted international protection in Serbia since it established its asylum system. The Asylum Office applied the new LATP, although the procedure was launched when the 2008 Asylum Law was still in force. Therefore, it may be concluded that the Asylum Office was commendably guided by the best interests of the child when it held that the Asylum Law was less favourable for the asylum-seeking child and decided to apply Article 103 of the LATP.

¹² Asylum Office Rulings No. 26-1351/18 and 26-1352/18 of 14 January 2019.

¹³ UN High Commissioner for Refugees, *UNHCR Position on Returns to Libya - Update II*, September 2018, available at: <https://www.refworld.org/docid/5b8d02314.html>.

¹⁴ The submission primarily referred to reports by international non-government organisations, such as Amnesty International and Human Rights Watch, and, notably, UNHCR'S position on forcible returns to Libya published in September 2018. The applicant's legal representative also referred to several other publicly available reports on the human rights situation in Libya published by various UN agencies.

¹⁵ Asylum Office Rulings No. 26-2348/17 of 28 January 2019.

The Asylum Office issued its ruling upholding the Iraqi boy's asylum claim in a renewed procedure it conducted after the Asylum Commission referred the case back to it. The boy had initially applied for asylum on 19 January 2018, but his claim was rejected by the Asylum Office seven months later.¹⁶ The Asylum Commission quashed the decision on the appeal filed by his legal representative.¹⁷ During the subsequent proceedings before the Asylum Office, the BCHR submitted a report assessing the psychological wellbeing of the asylum-seeking child.¹⁸ Furthermore, at BCHR's request, the Asylum Office sought the findings and opinions of the guardianship authority, which it consulted during its assessment of the best interests of the child in this administrative matter. Consultation of the report prepared by a psychologist of the Psychosocial Innovation Network in this case is an example of the Asylum Office's good practice and has raised the level of standards that must be met whenever decisions are taken in which the principle of the best interests of the child must be the primary consideration.¹⁹ The applied multidisciplinary approach to reviewing the merits has significantly improved the quality of the Office's decision on the asylum claim.

Although the Iraqi boy had passed through a number of EU Member States on his way to Serbia, the Asylum Office found that none of them were safe for him after a thorough review, which it conducted in accordance with Article 45 of the LATP. The Office reached such a conclusion after reviewing all the individual and general circumstances in the states he had passed through on his way to Serbia that were of relevance to the underage asylum seeker. The Asylum Office also took into consideration the case-law of the European Court of Human Rights regarding the application of the safe third country concept. It referred to a number of its judgments spelling out the States' obligations to protect particularly vulnerable categories of people, such as children separated from their parents or guardians.

On 11 February 2019, the BCHR was forwarded Asylum Office ruling upholding the asylum application by a three-member Iranian family.²⁰ They were granted refugee status in the Serbia as refugees *sur place*. Namely, Article 27 of the LATP on the *sur place* principle lays down that well-founded fear of being persecuted or a real risk of suffering serious harm may be based on the events that took place after the applicants had left their country of origin or habitual residence or the activities

¹⁶ Asylum Office Ruling No. 26/2348 of 24 August 2018.

¹⁷ Asylum Commission Ruling No. Až - 44/18 of 8 October 2018.

¹⁸ Performed by a psychologist working for the Psychosocial Innovation Network and delivered on 10 December 2018.

¹⁹ Article 10, LATP.

²⁰ Asylum Office Ruling No. 26-1395/18 of 5 February 2019.

they have engaged in after they had left their country of origin. The Asylum Office ascertained that the asylum seekers would be at risk of persecution on account of their religion if they returned to Iran, due to the circumstances that have arisen since they had left their country of origin. It substantiated its decision by referring to reports of international non-government organisations, such as Amnesty International and Human Rights Watch, European Court of Human Rights judgments and other relevant sources. This Asylum Office decision warrants mention also because it found that the family's conversion to another religion after leaving the country of origin was sufficient grounds to grant them refugee status.

A three-member family from Syria applied for asylum in Serbia on 23 February 2018. Their application was dismissed by the Asylum Office on 21 May 2018.²¹ The Asylum Commission upheld BCHR's appeal and referred the case back to the Asylum Office.²² During its review of the claim, the Asylum Office concluded that the safe return of the asylum seekers to their country of origin was impossible because they would be at risk of harm on account of the internal armed conflicts in Syria. It referred to the European Court of Human Rights judgment in the case of *Sufi and Elmi v. The United Kingdom*²³, in which the Court stated that asylum seekers should not be returned to a country where the general situation of violence was of a sufficient level of intensity to create a real risk that any removal to it would violate Article 3 of the European Convention on Human Rights. The Asylum Office found that the applicants had well-founded fear due to the general state of insecurity in Syria and granted them subsidiary protection on 21 March 2019.²⁴

On 12 February 2019, the Asylum Office issued three rulings granting asylum to three Russian nationals.²⁵ In all three cases, it found that the requirements under Articles 24 and 26 of the LATP were fulfilled and that the applicants had well-founded fear of persecution in their country of origin because of their LGBTQI+ orientation. Although these three applicants had entered Serbia *via* a third country, rather than directly from their country of origin, the Asylum Office held that they had been unable to receive adequate protection in the third country, given the security situation and status of LGBTQI+ people in it. The applicants had legally transited through an airport of a third country, wherefore there were no grounds to apply the safe third country

²¹ Asylum Office Ruling No. 26-176/18 of 21 May 2018. More in the *April-June 2018 Report on the Right to Asylum in the Republic of Serbia*, p. 9, available at: <http://azil.rs/en/wp-content/uploads/2018/08/Right-to-asylum-April-June-2018-periodic-report.pdf>.

²² Asylum Commission Ruling No. Až-21/18 of 3 July 2018.

²³ Application No. 8319/07 and 11449/07.

²⁴ Asylum Office Ruling No. 26-176/18 of 21 March 2019.

²⁵ Asylum Office Rulings No. 26-1216/18, 26-1217/18 and 26-1218/18 of 12 February 2019.

concept in this case. During the procedure, the Asylum Office also consulted the latest reports by the relevant international organisations on the status of the LGBTQI+ population in the Russian Federation and the relevant case-law of the European Court of Human Rights. After assessing all the evidence and the statements by the asylum seekers, it found that they were at risk of persecution in their country of origin on account of their sexual orientation, which can be defined as membership of a particular social group in the light of the Geneva Convention, and that such persecution was implemented by the state authorities, both actively, through repressive measures, and passively, by not punishing the perpetrators of violence against LGBTQI+ people. This Asylum Office decision is a good practice example, because the Office both reviewed the possibility of applying the safe third country concept and dismissed it and consulted the relevant reports and European Court of Human Rights case-law.

Another important Asylum Office decision adopted in the reporting period is the one in which it granted subsidiary protection to an Afghani national.²⁶ The reasoning of the decision indicates that the Asylum Office particularly took into account the applicant's psychological state, as well as the fact that he had just turned 18 and was still in the so-called transitional period.²⁷ Given that the transitional period institute is envisaged in a UN General Assembly Resolution²⁸ wherefore it is not legally binding, the Asylum Office has given it legally binding effect by including it in its reasoning, which is another novelty in the practice of the Asylum Office and yet another good practice example.

²⁶ Asylum Office Ruling No. 26-2643/17 of 30 January 2019.

²⁷ A transitional period is a period when a person has reached the age of majority but is still an adolescent and thus considered incapable of leading a stable and independent life.

²⁸ *Guidelines for the Alternative Care for Children, Resolution adopted by the General Assembly on the report of the Third Committee A/64/434, A/RES/64/142**, 24 February 2010, available at: https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf.

4. ASYLUM-SEEKING CHILDREN WITH FOCUS ON UNACCOMPANIED AND SEPARATED CHILDREN

Several important steps forward were made in the first quarter of 2019 concerning the respect for the rights of asylum-seeking children. Back in November 2018, in its decision on BCHR's appeal on the Asylum Office decision of discontinuing the review of the asylum application filed by its client, an unaccompanied Afghani child, the Asylum Commission ruled that the provisions of the LATP should apply to all cases regarding unaccompanied asylum-seeking children, as these provisions were more favourable for them than those of the prior Asylum Law.²⁹ In its decision, the Asylum Commission referred, in particular, to Article 10 of the LATP, under which the principle of the best interests of the child shall be respected in the implementation of the provisions of this Law.

The relevant authorities' obligation to take into account the best interests of the child in their decisions was not introduced in Serbian law by the LATP. Rather, it is laid down in Article 3 the UN Convention on the Rights of the Child, which clearly obligates States to ensure that the child's best interest is appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children.³⁰ The Asylum Office started officially requesting from the guardianship authorities to assess the best interests of the child and take these assessments into account in its decisions when the LATP entered into force. It may be concluded that the explicit mention of the obligation to respect the best interests of the child in the LATP has resulted in the visible improvement of the Asylum Office's practice and, thus, helped improve the status of asylum-seeking children.³¹

There were still no comprehensive official data on the number of unaccompanied or separated children in Serbia at the end of the reporting period; only data on the number of children living in centres accommodating refugees and asylum seekers were available, the number of children appointed guardians and the number

²⁹ Asylum Commission Ruling No. Až-49/18 of 5 November 2018.

³⁰ See paragraph 14 of the UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, available at: <https://www.refworld.org/docid/51a84b5e4.html>.

³¹ More on the direct application of the concept of the best interests of this child in the section of this report analysing the decisions of administrative authorities.

of children, who have expressed the intention to seek asylum, were available. As of 1 March 2019, a total of 484 unaccompanied and separated children were staying at the seven centres accommodating such children: 74.6% were living in the Krnjača Asylum Centre and 16% in the Sjenica Asylum Centre,³² while the rest were staying at the “Jovan Jovanović Zmaj” Orphanage, the Centres for the Accommodation of Foreign Children Unaccompanied by Their Parents or Guardians within the Belgrade and Niš Establishments for Children and Youths, the Pedro Arrupe Integration House managed by the Jesuit Refugee Service and the House of Rescue in Loznica managed by the association Borderfree Serbia. A total of 376 children expressed the intention to seek asylum in Serbia in the first quarter of 2019; 33% (124) of them were unaccompanied or separated from their parents or guardians, as opposed to the last quarter of 2018, when unaccompanied and separated children accounted for 21.6% of the registered children. In February 2019 alone, UNHCR partners identified 153 newly arrived unaccompanied and separated children.³³

The non-government organisation Ideas, which is also a partner of the UNHCR Belgrade Office, has been implementing a project supporting the work of a number of case officers employed in the guardianship authority and professional guardians of unaccompanied and separated children. BCHR has noted that collaboration with the guardians within this project has greatly improved the protection of the rights of the child in the asylum procedure. Individual guardians had earlier been charged with looking after dozens and, at times, hundreds of children and, rather than directly engaging interpreters, the guardianship authorities had availed themselves of the services of interpreters employed in non-government organisations. Consequently, no matter how hard they tried, the social workers had been unable to regularly maintain contact and communicate with their wards or meaningfully look after their best interests.³⁴ Guardians with lighter workloads can involve themselves in the lives of their wards and participate in the asylum procedure more actively. Furthermore, the

³² As BCHR was told by the CRM at the meeting of the Working Group for the Protection of Children held on 1 March 2019 in the UNHCR offices.

³³ UNHCR, *UNHCR Serbia Operational Update - February 2019*, available at: <http://www.unhcr.rs/en/dokumenti/izvestaji/unhcr-serbia-updates.html>.

³⁴ More in the following BCHR reports: Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2016*, Belgrade, 2017, p. 74, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>; Nikolina Milić (ed.), *Unaccompanied and Separated Children in the Republic of Serbia*, Belgrade, 2017, p. 22, available at: <http://azil.rs/en/wp-content/uploads/2017/06/Unaccompanied-and-Separated-Children-in-Serbia.pdf>;

Sonja Tošković (ed.), *Right to Asylum in the Republic of Serbia 2017*, Belgrade, 2018, p. 67-70, available at: <http://azil.rs/en/wp-content/uploads/2018/04/Right-to-Asylum-in-the-Republic-of-Serbia-2017.pdf>.

number of children intending to stay in Serbia has increased visibly. Many of the children BCHR lawyers has spoken to said that their relationship with their guardian was one of the reasons why they decided to remain in Serbia.

5. ACCOMMODATION OF ASYLUM SEEKERS AND CONDITIONS IN THE RECEPTION CENTRES

The LAMP lays down that asylum seekers shall be provided with reception conditions in asylum centres or other facilities designated for the accommodation of asylum seekers pending a final decision on their asylum claims.³⁵

Asylum centres are established under a decision of the Government, which also designates one or more facilities for the accommodation of asylum seekers. Although the law lays down that only asylum seekers (i.e. those who have applied for asylum) shall be accommodated in such facilities, the right to accommodation in such facilities is practically also granted to foreigners who have expressed the intention to seek asylum. Such a right is inferred from the meaning of the legal provisions, all the more since foreigners who express the intention to seek asylum are issued certificates of registration in which they are referred to an asylum centre or another facility designated for the accommodation of asylum seekers.

Foreigners, who have not expressed the intention to apply for asylum, as well as those who have neither accessed the asylum procedure nor intend to access it, continued living in such facilities in 2019. The asylum centres and other facilities designated for the accommodation of asylum seekers are managed by the CRM, which has in place enactments regulating the work and staffing of such facilities.

The LAMP contains novel provisions on material reception conditions in facilities accommodating asylum seekers; these conditions include housing, food, clothing and cash allowances for personal needs.³⁶

Under the LAMP, the amount of the cash allowance for personal needs shall be equal to the amount of allowance received by adult 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. The minister charged with social policy did not adopt a by-law governing this issue by the end of the reporting period, although he was under the obligation to do so within 60 days from the day the LAMP entered into force; nor have cash allowances for personal needs been paid out to the beneficiaries from the state budget.³⁷

³⁵ Article 50, LAMP.

³⁶ *Ibid.*

³⁷ Article 101 (1(4)), LAMP.

Five Asylum Centres - in Banja Koviljača, Bogovađa, Sjenica, Tutin and Krnjača - were operational in the RS at the end of the reporting period. Asylum seekers were also living in 11 Reception Centres, in Adaševci, Bosilegrad, Bujanovac, Vranje, Obrenovac, Pirot, Principovac, Subotica, Sombor and Kikinda. The Reception Centres in Bela Palanka - Divljana, Dimitrovgrad and Preševo were temporarily closed.³⁸

In his Report³⁹, the UN Special Rapporteur on torture commented the conditions in the Serbian reception centres he had visited, specifically the Reception Centres in Adaševci, Obrenovac and Preševo, which are managed by the Commissariat for Refugees and Migrants. UN Special Rapporteur on torture noted that the material conditions and medical care within these centres were basic. He identified temporary situations of slight overcrowding giving rise to potential risks of tension and abuse among the migrants. Furthermore, the UN Special Rapporteur on torture received allegations concerning limitations of the migrants' freedom of movement, particularly in Preševo, where some migrants complained they had been regularly denied authorisation to leave the centre.⁴⁰

The Special Rapporteur said in his Report that he had not received any serious allegations about ill-treatment or other abusive behaviour on the part of Commissariat staff during his visit. Nevertheless, he expressed concern that the procedure for individual complaints, which remained within the hierarchical structure of the Commissariat, did not provide for sufficient independence to ensure a reliable and impartial investigation.⁴¹

³⁸ More on CRM's website: http://www.kirs.gov.rs/wb-page.php?kat_id=205&lang=2.

³⁹ UN Human Rights Council, Doc A/HRC/40/59/Add.1 of 25 January 2019.

⁴⁰ *Ibid.*, p.9, para. 53.

⁴¹ *Ibid.*, para. 57.

6. INTEGRATION OF REFUGEES IN SERBIA'S SOCIETY

Restricted freedom of movement due to the authorities' failure to issue travel documents to successful asylum seekers and lack of regulations governing naturalisation continued inhibiting their long-term integration.

By the end of the reporting period, the Minister of the Interior had not adopted regulations detailing the templates for issuing travel documents to refugees or a by-law governing the content and format of the refugees' travel documents, although he was under the obligation to do so within 60 days from the day the LATP entered into effect under the transitional and final provisions of the Law. The adoption of the by-law had been prescribed by the prior Asylum Law as well, but the fulfilment of this obligation had remained pending during the 10 years it was in force.

Under Article 71 of the LATP, the procedure and other issues of relevance to the naturalisation of successful asylum seekers shall be determined by the Government on the proposal of the Commissariat for Refugees and Migration (CRM). No information on whether the CRM forwarded a proposal on naturalisation, an issue crucial for the long-term integration of people granted asylum, was publicly available during the reporting period.

The Decree on Criteria for Establishing Priority Accommodation of Persons Recognised the Right to Refuge or Granted Subsidiary Protection and the Conditions for the Use of Temporary Housing⁴² lays down that, together with their applications for accommodation, the applicants shall submit evidence, including certified statements that they are not earning income. The BCHR identified several problems in this regard. First of all, in practically all the cases, the statements are certified by notaries public who charge their services in accordance with the Notary Public Fee Schedule.⁴³ Apart from the costs of certifying their statements, the vast majority of the applicants are not fluent in Serbian and need to cover the costs of court-sworn interpreters accompanying them to the notaries public (the rates of court-sworn interpreters are set by the interpreters themselves) and the applicants are charged additional fees by the notaries when the certification of their statements is attended by an interpreter or translator.⁴⁴ Furthermore, the increase in the number of successful

⁴² *Sl. glasnik RS*, 63/2015.

⁴³ *Sl. glasnik RS*, 91/2014, 103/2014, 138/2014, 12/2016, 17/2017, 67/2017, 98/2017 and 14/2019.

⁴⁴ Fee 18(4) of the Notary Public Fee Schedule lays down that the notaries' fees shall increase by 10 points every time an interpreter or translator attend the notarisation of documents.

asylum seekers from Iran and Afghanistan, in which Persian is the official language, has again brought to the fore the absence of Persian court-sworn interpreters in Serbia.⁴⁵ BCHR has already alerted to this problem and tried to influence the Ministry of Justice to launch the procedure for appointing Persian court-sworn interpreters in accordance with the Rulebook on Court-Sworn Interpreters⁴⁶, but the Ministry of Justice had not advertised the vacancies by the end of the reporting period.

The applicants also need to submit certificates of unemployment, which are issued by the National Employment Service. In order to register with this Service, they first need to be issued personal work permits. In order to obtain their personal work permits, the applicants need to submit to the National Employment Service an application form, the original certificate of their status issued by the Ministry of the Interior, and certified copies of the ID cards for person granted asylum. The Rulebook on Work Permits⁴⁷ unnecessarily requires of the applicants to submit additional documents, given that the ID cards issued by the MoI suffice to establish that they have been granted asylum, rendering superfluous the submission of other documentation. In practice, this means that persons seeking the CRM's assistance regarding accommodation under the above-mentioned Decree cannot even theoretically receive such assistance for 12 months, the maximum period of validity of the rulings granting them asylum, given that they need around two months to obtain all the requisite documents.

As per the economic empowerment of the refugees, the BCHR team continued closely cooperating with the UNHCR team for durable solutions on extending various forms of support to refugees to find a job and acquire the requisite competences, from vocational training, learning Serbian to purchasing work equipment, as well as extending support to vulnerable categories, such as unaccompanied children and single mothers, in the process of becoming independent and joining the labour market. In the January-March period, the BCHR continued cooperating with companies that have recognised the vulnerabilities of this group joining the labour market. A number of BCHR clients were referred to attend training organised by the GIZ (*Gesellschaft für Internationale Zusammenarbeit*) Office in the hospitality industry in Belgrade and Banja Koviljača and providing them with the possibility of finding a job upon completion. BCHR also continued its successful cooperation with the company Froneri Ice-

⁴⁵ Electronic register of court-sworn interpreters and translators of the 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>.

⁴⁶ *Sl. glasnik RS*, 35/2010, 80/2016 and 7/2017.

⁴⁷ *Sl. glasnik RS*, 63/18.

Creams, the Šauarma Bar restaurant, the construction company Modulor and multilingual call centres.

The new LATP introduces the right of successful asylum seekers also to preschool and tertiary education, under the same conditions as Serbian nationals. BCHR will monitor the implementation of this provision in practice, by supporting its clients interested in these forms of education.

Integration of persons granted temporary residence on humanitarian grounds pursuant to the Foreigners Law will be a challenge. Namely, this category, although obviously vulnerable, is not recognised in other laws. The Law on the Employment of Foreigners⁴⁸ does not recognise this category of people as those entitled to personal work permits, i.e. they must undergo the same employment-related procedure as any other foreigner, since the mere fact that a foreigner has been granted temporary residence does not entail his/her right to work. The Law on the Employment of Foreigners now recognises the following special categories of foreigners: asylum seekers, persons granted temporary protection, human trafficking victims and persons granted subsidiary protection. Given the fact that human trafficking victims, which were entitled to temporary residence on those grounds under the prior Foreigners Law as well, are issued personal work permits, the validity of which coincides with the validity of their granted residence permits, it would be reasonable to expect that the Law on the Employment of Foreigners be amended so as to include in the special categories of foreigners also the categories envisaged in the Foreigners Law, such as that of persons granted residence on humanitarian grounds. This is particularly important in view of the desire to facilitate the soonest possible integration of persons granted residence on humanitarian grounds and enable them to exercise their right to residence on grounds of employment, schooling or family reunion.

BCHR endeavoured to create rapport between the refugees and the local population through cultural exchange and, to that end, organised the performance of two theatre plays in the January-March 2019 period. In January, "The Game", illuminating the experiences of present-day refugees *via* an atypical prism, premiered beyond Serbia's borders in Sarajevo, the capital of Bosnia and Herzegovina. The play, written at the height of the refugee crisis in Serbia, has been the result of a process comprising lectures, discussions about the refugee crisis, dramaturgical research of the topic, as well as conversations and joint activities with refugees living in the reception centres in Serbia. The authors interviewed the refugees passing through Serbia, who shared their experiences with them. In February, the play "Towards the Sun: Fairy Tale about a Boy and People Who Are Afraid" was performed again in

⁴⁸ *Sl. glasnik RS*, 128/2014, 113/2017 and 50/2018.

Belgrade, on the Polet Art Gallery stage. This play focuses on inclusion in the education system and the obstacles standing in the way of full support to refugees in education.

Numerous activities were organised to facilitate the integration of refugees in Serbia's social and cultural life, within an EU programme supporting migration management in the Republic of Serbia, which is implemented by the International Organization for Migration, the CRM and partner organisations and institutions.⁴⁹

⁴⁹ See more at: <http://euinfo.rs/podrska-eu-upravljanju-migracijama/en/>.

7. APPLICATION OF THE NEW FOREIGNERS LAW

The new Foreigners Law,⁵⁰ which came into effect in March 2018 and has been enforced since 3 October 2018, governs the entry, movement, residence and return of foreigners, as well as the competences and duties of the Serbian state authorities regarding the entry, movement and residence of foreigners in Serbia and their return from Serbia.⁵¹

With a view to harmonising the national legislation with EU Directives, the legislator amended the existing concepts and introduced new ones, which are also present in the other new laws governing this area. The new legislation introduces specific provisions that had not existed in the prior Foreigners Law,⁵² notably those on the entry into and departure of foreigners from the country and refusal of entry into Serbia.

The new Foreigners Law also introduces new provisions on family reunions, notably, on granting temporary residence to nuclear family members of foreigners granted protection under the LATP.⁵³

The Foreigners Law now also provides the possibility of granting temporary residence on humanitarian grounds, and of granting temporary residence to foreigners, who had been involved in facilitating irregular migration, provided they took part in the proceedings as injured parties or witnesses,⁵⁴ as well as to victims of human trafficking.⁵⁵

The Foreigners Law defines and regulates illegal stay, lays down the return procedure principles, the procedure for issuing rulings on the return of foreigners not fulfilling or no longer fulfilling the requirements to legally reside in Serbia and the deadlines for their voluntary return to their country of origin or country of habitual residence⁵⁶. It also provides for the imposition of a ban on returning to Serbia for a

⁵⁰ *Sl. glasnik RS*, 24/18.

⁵¹ Article 1, Foreigners Law.

⁵² *Sl. glasnik RS*, 97/08.

⁵³ Article 56, Foreigners Law.

⁵⁴ Article 61, Foreigners Law.

⁵⁵ Article 63, Foreigners Law.

⁵⁶ Articles 74-77, Foreigners Law.

period not exceeding five years against foreigners, who have been ordered to leave the country or to be returned, except in cases provided for by this Law⁵⁷.

Article 81 of the Foreigners Law lays down the procedure and requirements for the forced removal of foreigners. The Protector of Citizens is charged with monitoring the enforcement of such removals, in accordance with his remit and the Law Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵⁸ This provision is for now merely prescribed by law, given that the Rulebook on Removal of Foreigners⁵⁹ does not regulate in detail the monitoring procedure to be performed by the Protector of Citizens in accordance with his remit. To the best of the BCHR's knowledge, there have been no cases that would activate this provision.

Articles 83 and 84 of the Foreigners Law provide for the prohibition and postponement of the forcible removal of foreigners to territories where they are at risk of capital punishment, torture, or inhuman or degrading treatment or punishment or of grave violations of their rights enshrined in the Serbian Constitution (*non-refoulement*). As opposed to the prior Foreigners Law, the new one includes provisions relevant both to the return procedure in general and to the status of some particularly vulnerable categories of foreigners, introduces the possibility of them lodging appeals that have suspensive effect and provides for exceptions from the application of the provisions on forcible removal.

Under the Foreigners Law, the Government may on the proposal of the Minister of the Interior, adopt a Decree on the tolerated presence of foreigners illegally in Serbian territory, in the event of special circumstances related to the illegal presence of an increased number of foreign nationals in the territory of Serbia, who cannot be returned to their country of origin by virtue of the *non-refoulement* principle, or who cannot leave Serbia because of circumstances beyond their control.⁶⁰ The Foreigners Law, however, does not specify what tolerated presence entails. Nor have the tolerated presence procedure and requirements been laid down clearly.

⁵⁷ Article 78(3), Foreigners Law.

⁵⁸ Article 82, Foreigners Law.

⁵⁹ *Sl. glasnik RS*, 69/18.

⁶⁰ Article 124 (2), Foreigners Law.

7.1. TEMPORARY RESIDENCE ON HUMANITARIAN GROUNDS – INSTITUTE INTRODUCED BY THE NEW FOREIGNERS LAW

As opposed to other European laws on foreigners, which reserve temporary residence on humanitarian grounds for asylum seekers or refugees not fulfilling the asylum requirements in specific countries, the Serbian Foreigners Law provides basis for granting temporary residence on humanitarian grounds also to foreigners who have integrated into Serbia's social life, i.e. who have developed strong cultural and social ties with Serbia, particularly in terms of their education, work activities or language skills.⁶¹ Furthermore, temporary residence on humanitarian grounds can be approved also to foreigners who are victims of grave criminal offences, including foreigners who had been involved in facilitating irregular migration but are cooperating with the police and the judiciary and their presence in the criminal proceedings is indispensable or they are participating in the investigation as witnesses or injured parties⁶² and for foreign children who have been abandoned, were victims of organised crime or have been left without parental care or are unaccompanied for other reasons⁶³. Temporary residence on humanitarian grounds may also be granted to foreigners for serious and legitimate personal reasons humanitarian in character, if cases when there is interest of Serbia or deriving from its international commitments.⁶⁴

Temporary residence on humanitarian grounds may be granted for a period of minimum six months and maximum one year and may be renewed if the reasons for which it was granted still exist.⁶⁵

The adoption of the Foreigners Law was accompanied by the adoption of a Rulebook on Detailed Temporary Residence Requirements, the Temporary Residence Application Form and the Format and Affixation of Temporary Residence Stickers in Foreign Travel Documents⁶⁶. The Rulebook thoroughly governs the temporary residence requirements, the temporary residence application form and the format and affixation of temporary residence stickers in foreign travel documents.⁶⁷ The provisions of the Rulebook dealing with temporary residence on humanitarian grounds lays down that foreigners may apply for this form of residence on account of

⁶¹ *Ibid.*, Article 61 (1(1)).

⁶² *Ibid.*, Article 61 (1(3)).

⁶³ *Ibid.*, Article 61 (1(4)).

⁶⁴ *Ibid.*, Article 61 (1(5)).

⁶⁵ *Ibid.*, Article 61 (3).

⁶⁶ *Sl. glasnik RS*, 72/18.

⁶⁷ Article 1 of the Rulebook.

their family, cultural or social ties with Serbia, although they had been unable to lawfully apply for temporary residence due to specific circumstances of their prior stay in Serbia.⁶⁸ The applicants must also show that they have resided in Serbia at least two years and submit specific evidence thereof.⁶⁹

The above-mentioned specific circumstances include: the foreigners' lack of travel documents, which they had been unable to obtain for justified reasons, financial difficulties beyond their control or failure to regulate their residence in Serbia due to grave health issues, age or legitimate family or personal situation.⁷⁰ Humanitarian residence applications on behalf of foreign children, who have been abandoned, are victims of organised crime or have been left without parental care or are unaccompanied, are filed by the social workers in the presence of the child.⁷¹

Given that temporary residence may be approved pursuant to rulings also to foreigners not in possession of travel documents, the Foreigners Law provides basis for the issuance of IDs for foreigners granted temporary residence⁷². The IDs will be issued on the old template until the authorities start issuing biometric IDs for foreigners, whose data will be on the chip, as prescribed by the Law. As opposed to the documents envisaged by the LATP, the IDs for foreigners include personal identification numbers, which facilitates their realisation of a number of their rights.

The MoI has granted temporary residence on humanitarian grounds in several cases since the new Foreigners Law took effect. During the reporting period, BCHR's lawyers represented foreigners who had applied for temporary residence on humanitarian grounds and whose asylum claims had either been dismissed by a final decision and they could not return to a safe third country or their country of origin or who had been living in Serbia for several years now and had forged specific family, cultural and social ties in Serbia. The BCHR did not advise all unsuccessful asylum

⁶⁸ Article 26 of the Rulebook.

⁶⁹ Such evidence shall comprise proof that they have finished school or worked in the Serbia, have close consanguineal or affinal kin to the second degree with whom they have maintained close contact, have entered into a marriage, to understand and speak Serbian, and that, due to these circumstances, there are reasonable prospects that they will fully integrate in the social life in the Serbia once they regulate their residence.

⁷⁰ Rulebook on Detailed Temporary Residence Requirements, the Temporary Residence Application Form and the Format and Affixation of Temporary Residence Stickers in Foreign Travel Documents, Article 26(2).

⁷¹ *Ibid.*, Article 26 (4).

⁷² Article 44 (6), Foreigners Law.

seekers to apply for temporary residence on humanitarian grounds, only those who have been living over two years in Serbia and have integrated in Serbian society.

For instance, one BCHR's client, an Iraqi national, applied for temporary residence on humanitarian grounds in December 2018, after the Administrative Court made a final decision dismissing his asylum claim. The Serbian authorities upheld his application for temporary residence on humanitarian grounds because the applicant was highly integrated in Serbian society, in which he has worked, learned Serbian, and participated in humanitarian activities. This was BCHR's first client who has been granted temporary residence on humanitarian grounds.⁷³

Decisions on four other applications for temporary residence on humanitarian grounds filed by BCHR's clients were still pending at the end of the reporting period.⁷⁴

⁷³ Ruling 03/16/5/1/1 No. 11895 of 21 December 2018.

⁷⁴ Pursuant to the Foreigners Law, in the reporting period the BCHR filed applications for temporary residence on humanitarian grounds on behalf of N.J., Z.F., N.T.S. and E.C.C.