

**Right to Asylum in the
Republic of Serbia
Periodic Report for
January – June 2020**



Belgrade Centre
for Human Rights

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Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

BVMN – Border Violence Monitoring Network

CRM – Commissariat for Refugees and Migration

EASO – European Asylum Support Office

ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms

FL – Foreigners Law

HPPO – Higher Public Prosecutor’s Office

LATP – Law on Asylum and Temporary Protection

LBC – Law on Border Control

LEF – Law on Employment of Foreigners

LGAP – Law on General Administrative Procedure

LPD – Law on the Prohibition of Discrimination

LPPID – Law on the Protection of Population from Infectious Diseases

LSA – Law on State Administration

MoH – Ministry of Health

MoI – Ministry of Interior

ML – Misdemeanour Law

NES – National Employment Service

NGO – Non-Governmental Organisation

OHCHR - Office of the High Commissioner for Human Rights

PIN – Psychosocial Innovation Network

RS – Republic of Serbia

RTC – Reception/Transit Centre

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations International Children’s Emergency Fund

WHO – World Health Organisation

Foreword

The team of the Belgrade Centre for Human Rights (BCHR) has been providing free legal aid to asylum seekers and persons granted international assistance since 2012, as a partner of the United Nations High Commissioner for Refugees (UNHCR) in the Republic of Serbia (RS). These activities, as well as the preparation of this report, have been implemented under the project *Support to Refugees and Asylum Seekers in Serbia*, aimed at improving the refugee protection and access to refugee rights in the RS. Within the framework of this project, the BCHR team is also implementing other activities towards improvement of the protection of the rights of refugees and their inclusion into the cultural, social and economic life.

The report on the right to asylum in RS before you covers the first six months of 2020 and has been developed by the members of the legal and integration team as well as the BCHR associates. The report presents data that the authors collected while providing legal assistance to foreigners in the asylum procedure and support in integration of persons granted the right to asylum in RS. In addition, for the purpose of the report, the BCHR team managed to collect a considerable amount of information thanks to the regular cooperation and communication with the State authorities and UNHCR, as well as on the basis of the Law on Free Access to the Information of Public Importance.¹ The report is based on the review and analysis of the application of the national regulations in the asylum procedure, other regulations relevant to the situation of asylum seekers and other administrative procedures relevant to refugee integration into the Serbian society.

Though a certain number of foreigners whose legal status is not regulated and whose stay in RS is tolerated for humanitarian reasons, some of whom may be in need of international protection, this report focuses on the situation of persons who applied for asylum in the RS. The document does not offer a comprehensive and detailed analysis of the asylum system in the RS, but concentrates on the topics that the authors deemed particularly important for the first half of 2020. To that effect, it focuses on the analysis and recommendations for improvement of the situation of asylum seekers in the course of and upon lifting of the state of emergency in the RS, and in the context of the declaration of the, still ongoing, COVID-19 (SARS-CoV-2) pandemic.

Bearing in mind the reduced scope of activities of the competent asylum authorities in the reporting period, the BCHR legal team did not collect sufficient new data that would allow for a more comprehensive analysis of their work, notably the decisions taken in the asylum procedure. Instead, the authors conducted a thorough analysis of public discourse in the first half of 2020, bearing in mind that migration was one of the main topics in public discourse. This topic became also the subject of politicization during the electoral cycle. For the purposes of the analysis, the

¹ *Official Gazette of the RS*, No. 120/04, 54/07, 104/09 and 36/10.

authors collected a large amount of qualitative information from diverse media reports, taking into consideration various recent public opinion surveys. The document also offers information on the procedures, individual and joint initiatives that the BCHR launched in the reporting period before the different State and independent institutions to protect the rights of asylum seekers and refugees in the RS.

The report should serve to the State authorities in charge of ensuring the rights of asylum seekers and persons granted international protection, but also for other professionals and organisations monitoring the situation related to the refugee law. This report aims to draw attention to certain shortcomings and challenges regarding the right to asylum in the RS and propose solutions to overcome these. In this regard, each section ends with a set of recommendations. We believe that the report will contribute to a better understanding of the situation and the current position of refugees and help the RS authorities in establishing a more efficient asylum system.

1. Statistics

All the statistics relating to the first-instance asylum procedure have been obtained from the UNHCR Office in the RS, which receives official activity reports from the Ministry of Interior (MoI). The data refers to the period 1 January – 30 June 2020. The competent asylum authorities do not publish the information about their work on their web pages.

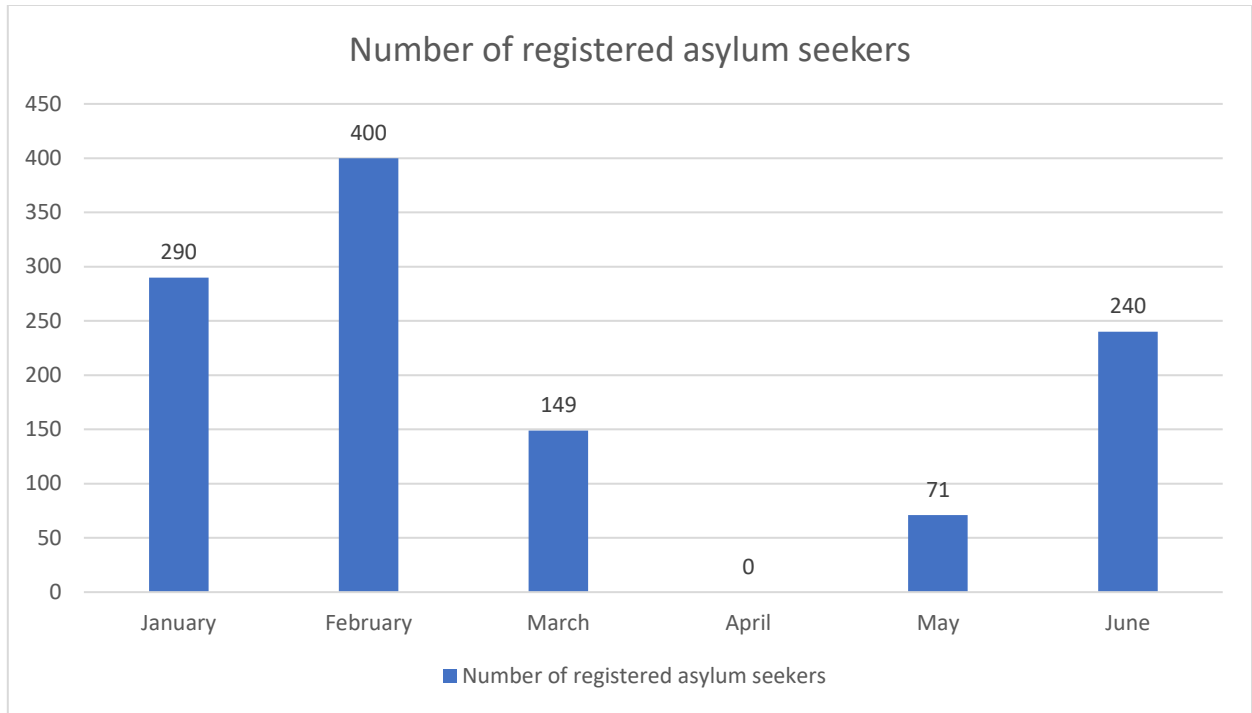
1.1. Registration of Asylum Seekers

Since the beginning of 2020, 1,150 persons expressed intention to apply for asylum in the RS: 1,069 men and 81 women. The intention to seek asylum in the RS was expressed by 165 children, of whom 32 unaccompanied and separated children. Looking at the level per months, 290 persons who expressed the intention to apply for asylum in the RS were registered in January, 400 in February, 149 in March, none in April, 71 in May and 240 persons in June.

Most of the foreigners who expressed intention to apply for asylum in the RS were nationals of Afghanistan (461), Pakistan (175), Syria (104), Bangladesh (75) and India (46). The intention to apply for asylum was also expressed by the nationals of Iran (42), Morocco (41), Algeria and Iraq (37 from each), Egypt (22), Palestine (20), Somalia (16) and Libya (14). Nationals from Burundi and Russia (seven from each), Tunisia (6), China and Turkey (five from each), Lebanon and Myanmar (four from each), Congo and Sudan (three from each) and Eritrea, Yemen and Nepal (two from each) were also registered. The smallest number of asylum seekers arrived from Albania, Ghana, Guinea, Croatia, Jordan, Cameroon, Cuba, Senegal, North Macedonia and the Ivory Coast (one from each).

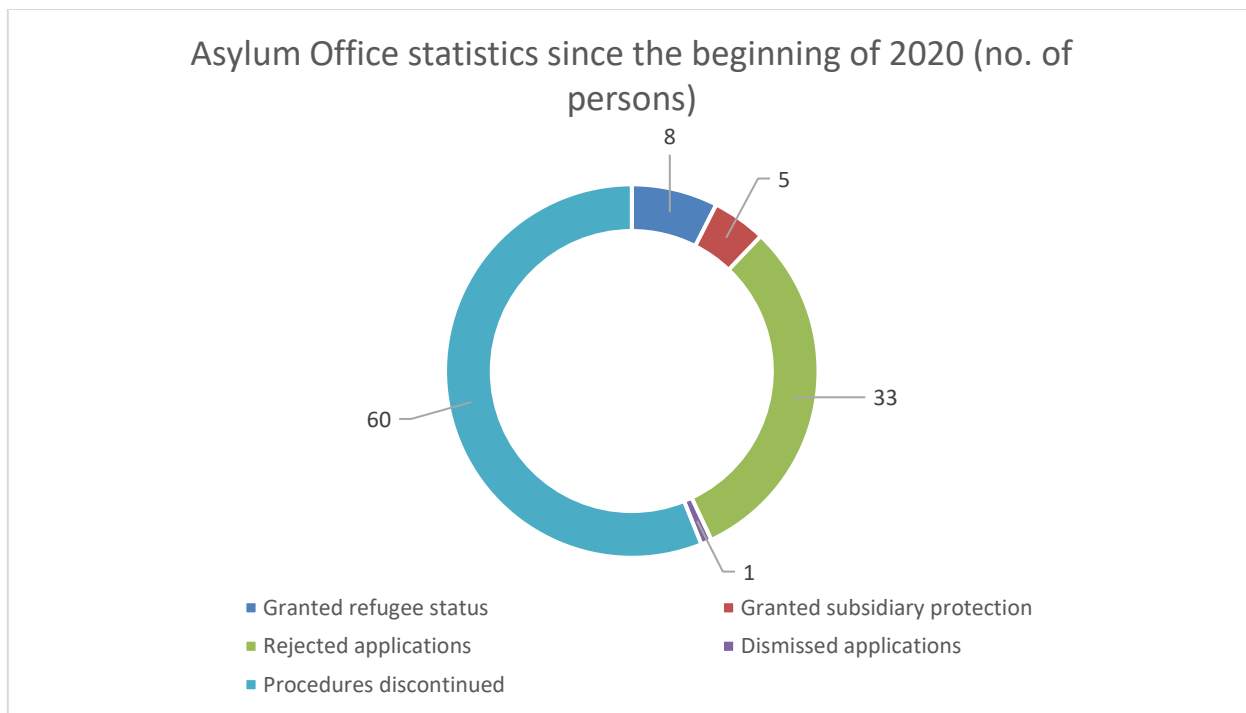
The majority of persons issued a certificate on registration of a foreigner who expressed intention to apply for asylum in the RS (hereinafter: registration certificate) in the first half of 2020 was registered in local police stations (937 persons), at border crossings (157 persons), and at the “Nikola Tesla“ airport (33 persons). The Asylum Office staff registered 23 persons in the asylum centers (AC).

In the period 2008 – end June 2020, 647,823 persons expressed intention to seek asylum in the RS. Broken down by year, 77 persons expressed intention to seek asylum in 2008, 275 persons in 2009, 522 persons in 2010, 3,132 persons in 2011, 2,723 persons in 2012, 5,066 persons in 2013, 16,490 persons in 2014, 577,995 persons in 2015, 12,821 persons in 2016, 6,199 persons in 2017, 8,436 persons in 2018 and 12,937 persons in 2019. Registration certificates were issued to 1,150 persons since the beginning of 2020.



1.2. Activities of the Asylum Office

Since the beginning of 2020, the Asylum Office staff registered 35 asylum applications, 15 of which in writing. Interviews were held with 37 asylum seekers. Five nationals of Iran, two nationals of Burundi and one stateless person were granted refugee status. Subsidiary protection was granted to two nationals of Burundi and one national of Afghanistan, Syria and Somalia each. 21 asylum applications in respect of 33 persons were rejected, and one asylum application in respect of one person was dismissed. 49 procedures with respect to 60 persons were suspended, because the applicants had left the RS during the asylum procedure most often.



1.3. Activities of the Asylum Commission

The Asylum Commission received 26 appeals in the period 1 January – 31 May.² Of these, 25 appeals were submitted on the decisions of the Asylum Office, and one because the first instance decision had not been issued within the statutory timeframe (silence of administration). During the same period, the Asylum Commission passed 26 decisions in the appeals procedures, of which 23 appeals were rejected and two were upheld. The Asylum Commission did not rule on the appeal against silence of administration, bearing in mind that the applicant withdrew the appeal.

² The statistics were provided to the BCHR by the Asylum Commission through request for access to information of public importance for the period from 1 January to 31 May 2020.

2. Access to the Asylum Procedure

The Law on Asylum and Temporary Protection³ (LATP) permits foreigners to express intention to seek asylum inside the RS territory and at border crossings, i.e., in the border zone. Though the border police has the right to decide whom to accept into the RS territory, the border police officers are obliged to allow access to the asylum procedure to the persons in need of international protection, in line with the principle of *non-refoulement*.

The BCHR legal team did not identify additional irregularities related to access to the asylum procedure in the RS during the reporting period. Therefore, the authors will point to several key challenges that the asylum seekers in the RS continue to face in this respect.⁴ This category of foreigners also faced additional challenges with respect to access to the asylum procedure during the state of emergency declared due to the COVID-19 pandemic.⁵ Those challenges will be thoroughly described in this section.

2.1. Issuing Registration Certificates in Serbian

In the RS, foreigners access the asylum procedure when they express intention to apply for asylum before an authorised MoI officer. According to the LATP, foreigners on the RS territory have the right to express such intention and file an asylum application.⁶ MoI officers issue registration certificates to the foreigners who express the intention.⁷ Based on these, foreigners are referred to asylum centre (AC) or other facilities designated for accommodation of asylum seekers where they must report within 72 hours from the moment of issuance of the registration certificate.⁸

The method and the procedure of registration, as well as the content of registration certificates have been prescribed in the Rulebook on the Procedure of Registration, Design and Content of the Certificate on Registration of Foreigners who Expressed Intention to Seek Asylum (Rulebook on Registration).⁹ The persisting problem is that the MoI issues these certificates only and exclusively

³ *Official Gazette of the RS*, No. 24/18.

⁴ See more in *Right to Asylum in the Republic of Serbia 2019*, Belgrade Centre for Human Rights, (Belgrade 2019), pp. 19-39 (hereinafter: *Right to Asylum in the Republic of Serbia 2019*), available at: <https://bityl.co/3CPD>.

⁵ See more in *Right to Asylum in the Republic of Serbia – Report for January–March 2020*, pp. 11-15 (hereinafter: *Right to Asylum, January–March 2020*), available at: <https://bit.ly/2BW3MYq>.

⁶ Article 4 of the LATP.

⁷ Article 35, para. 11 of the LATP.

⁸ Article 35, para. 3 of the LATP. Expression of interest is an initial action whereby a foreigner is included into the asylum system and which constitutes grounds for his/her legal stay in the RS.

⁹ *Official Gazette of the RS*, No. 42/18.

in Serbian and in the Cyrillic alphabet.¹⁰ As the majority of asylum seekers do not understand Serbian and cannot read Cyrillic alphabet, it is unreasonable to expect them to understand the content and the instructions of the certificate.

Should the registered foreigners fail to report to an AC or another facility designated for accommodation of asylum seekers within the prescribed timeframe, they will be subject to regulations governing the legal status of foreigners.¹¹ This means that foreigners who have no other legal basis for stay in the RS, would be obliged to leave the territory of the RS voluntarily or forcibly. In this way, the MoI will not consider such persons as potentially at risk of persecution or ill-treatment in case of return to their country of origin, solely because they cannot read Cyrillic alphabet in the certificate on the expressed intention to seek asylum.

2.2. Inability to Apply for Asylum in All Accommodation Facilities for Asylum Seekers

The Asylum Office conducts activities in the ACs only, but not in the other accommodation facilities under the jurisdiction of the Commissariat for Refugees and Migration (CRM) jurisdiction.¹² This means that access to the asylum procedure is *de facto* limited for the persons accommodated in the reception/transit centres (RTC).¹³

In case the asylum seekers are not accommodated in an AC but in RTC which they had been referred to at registration,¹⁴ the CRM staff subsequently refer them to an AC. Namely, after the legal representative of the asylum seeker submits a request to the Asylum Office for conduct of submission of asylum application, the Asylum Office requests the CRM to transfer a concrete person into an AC. This means that asylum seekers remain in RTC until the Asylum Office requests CRM to transfer them. This is problematic in practice because the persons who genuinely wish to apply for asylum wait for the transfer from RTC to AC unreasonably long, which frequently demotivates them and results in them changing the decision about their stay in the RS.

¹⁰ Art. 8, Rulebook on the Procedure of Registration, Design and Content of the Certificate on Registration of Foreigners who Expressed Intention to Seek Asylum. Certificate form available at: <https://bit.ly/34xkK7X>.

¹¹ Article 35, para. 13 of the LATP.

¹² See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 30-31.

¹³ Pursuant to Article 23 of the LATP, all the Asylum Centres and Reception Centres are within the CRM jurisdiction.

¹⁴ LATP does not state explicitly that asylum seekers are to be accommodated only in Asylum Centres, but that material reception conditions shall be provided in Asylum Centres or other facilities designated for accommodation of asylum seekers (Article 51 of the LATP).

2.3. Inability to Apply for Asylum Independently

Pursuant to the LATP, if the Asylum Office fails to make it possible to a foreigner to apply for asylum within the statutory timeframe, he/she may do so in writing, within an additional 8 days from the expiration of 15 days from the moment of registration.¹⁵ Even though three asylum applications were made in writing in the second quarter of 2020¹⁶, it does not mean that the Asylum Office acted on them.¹⁷ According to hitherto experience of BCHR clients, it is not clear how the legislator thought that persons unknowledgeable of legal procedures and who are not yet informed of their rights, obligations and deadlines for initiating the process, may submit asylum application by themselves. This possibility is further complicated by the fact that the Asylum Office staff are not permanently present in all the facilities for accommodation of asylum seekers and therefore not actually accessible to foreigners to provide the necessary information and to take in person or written asylum application.¹⁸ Currently, the Asylum Office staff is permanently present only in AC in Banja Koviljača and conducts the procedural actions of submission of asylum application and issues identity cards for asylum seekers.¹⁹

2.4. Conclusion and Recommendations

Hitherto practice of MoI does not yet ensure unimpeded access to the asylum procedure in the RS. This conclusion is further supported by the fact that the certificate on the expressed intention to seek asylum is not issued to foreigners in a language they understand. With reference to the above, the MoI should urgently start issuing certificates on registration of the intention to seek asylum in the languages that the foreigners understand.

The Asylum Office conducts the procedural actions related to submission of asylum application in AC solely. Furthermore, foreigners cannot fill in the forms and submit asylum application to the first instance body by themselves.²⁰ The Asylum Office should conduct this action in all the accommodation facilities, including RTC. With regards to that, it is necessary for the CRM to ensure material and technical conditions conducive to conduction official actions in the asylum procedure in all these facilities.

¹⁵ Article 36, para. 2 of the LATP.

¹⁶ Data obtained from UNHCR office in Serbia.

¹⁷ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 32.

¹⁸ Pursuant to Article 48 of the LATP, an asylum seeker has the right to legal aid, while Article 36 of the LATP stipulates the responsibility of the authority to inform the asylum seeker about his/her rights and obligations, particularly about the right to stay, to interpretation free of charge, legal aid and access to UNHCR.

¹⁹ Article 87, para 2 of the LATP.

²⁰ The CRM staff contacted the BCHR in several cases requesting provision of legal aid over the telephone and to engage interpreters to help the asylum seekers adequately apply for asylum in writing.

In addition, the MoI should ensure daily presence of Asylum Office staff in all the accommodation facilities for asylum seekers, i.e. persons who have expressed intention to seek asylum in the RS. The presence of Asylum Office staff in all the facilities designated for accommodation of asylum seekers would allow foreigners to submit asylum application, in person or independently in writing, and give them directly to the staff of the first instance body in the accommodation facility.

2.5. Access to the Asylum Procedure during the COVID-19 Pandemic

Due to the COVID-19 pandemic, the majority of European countries, including the RS, introduced some form of state of emergency in line with national legislation, that allowed the authorities to conduct certain activities and take measures which are not conducted in the regular circumstances. Eleven EU countries declared the state of emergency, and thirteen introduced urgent exceptional measures, while two countries declared the pandemic i.e., quarantine.²¹

The urgent measures calling for social distancing resulted in public restrictions directly affecting the possibility to exercise certain rights *inter alia* those related to the asylum procedure. Some exceptional restrictions limited access to accommodation facilities and services and required adjustment to the situation related to registration and submission of asylum applications. Due to the COVID-19 pandemic, the RS declared the state of emergency in its Decision²² dated 15 March 2020. Aiming to suppress further spread of COVID-19, Government of the RS adopted a series of other decisions which *inter alia* refer to status of foreign nationals including asylum seekers in the RS.²³

Additionally, on 19 March 2020, the Government of the RS passed the Decision on Closure of all Border Crossings for Entry into the RS.²⁴ Pursuant to this Decision, entry into the RS was allowed temporarily if in line with the national interests and for humanitarian reasons as well as if there was an approval of a competent state administration authority.²⁵ That same day, the Government of the RS passed a decision suspending international air traffic from the airport “Nikola Tesla“ until further notice.²⁶

²¹ *COVID-19 emergency measures in asylum and reception systems*, EASO, (June 2020), pp. 7, available at: <https://bit.ly/3iay4a1>.

²² *Official Gazette of the RS*, No. 29/20.

²³ For instance, the Decision on the Status of Foreign Nationals in the RS During the State of Emergency, *Official Gazette of the RS*, No. 41/20, and the Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the RS, *Official Gazette of the RS*, No. 32/20.

²⁴ *Official Gazette of the RS*, No. 37/20.

²⁵ Article 2 of the Decision on Closure of All Border Crossings for Entry into the RS.

²⁶ See more at: <https://bit.ly/2JS4GFL>.

The Asylum Office, being a first instance body in the asylum procedure, informed on 17 March by email the BCHR lawyers that it would stop conducting the official actions in view of the epidemiological situation and the measures declared by the Government of the RS. To that effect, the Asylum Office postponed also all the previously scheduled official actions that were to be conducted in this period.²⁷ After the lifting of the state of emergency, the Asylum Office staff conducted incomparably less official actions than it does in regular circumstances.²⁸ In view of the above, and the still unfavourable epidemiological situation in the RS, the question is whether and to which extent would the asylum seekers have an efficient access to the asylum procedure in the period ahead.

Due to the measures that the RS was taking during the state of emergency, a considerably lower number of persons (comparing to the first three months of 2020) submitted request to the competent authorities for granting international protection. This was particularly related to the factual inability of foreign nationals to access the RS territory by air. This is further evidenced also by the statistics showing that 311 intentions to seek asylum in the RS were expressed in the second quarter of 2020, relative to the first quarter when 839 intentions were registered.²⁹

2.5.1. Recommendations of Relevant International Bodies

UNHCR notes that, though states have a sovereign power to declare measures in line with norms of international law, the measures to this effect may not prevent access to the procedure establishing risk from persecution.³⁰ States are obliged to respect the principle of *non-refoulement* and forced return which restricts the conduct of the state that could lead to return in any manner to the territory where the safety of the person can be compromised including including rejection at the border or non-admission to the territory.³¹

The states may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine. However, such measures may not result in denying them an effective opportunity to seek asylum or result in refoulement.

²⁷ For instance, the Asylum Office should have conducted a hearing of an asylum seeker from Tunisia – client of BCHR on 17 March. Due to the new circumstances, this activity was cancelled. A new date has not been set until the moment of finalization of this report.

²⁸ The Asylum Office did not perform activities in April. Only one subsequent submission of asylum application was conducted in May. Six asylum applications and three interviews were held in June.

²⁹ Data obtained from UNHCR in Serbia. No intentions were expressed in April, 71 was expressed in May, and 240 intentions to seek asylum were expressed in June.

³⁰ *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, UNHCR (16 March 2020), para. 1, available at: <https://bit.ly.co/3CPe>.

³¹ *Ibid.*, para. 2.

On declaring the state of emergency, many states including the RS, decided to close their borders and/or step up their border controls in an effort to contain the spread of the COVID-19. In line with the guidelines of the Office of the High Commissioner for Human Rights (OHCHR)³², the states must ensure respect of the prohibition of discrimination, confidentiality and dignity when stepping up border controls and conducting measures at border crossings including the screening and quarantine at points of entry.

The states must adopt measures to ensure continued access to individual assessment, best interests assessment in line with international human rights and refugee law.³³ States should consider the temporary suspension of forced returns during the pandemic. Forced returns can only be carried out if they comply with the principle of *non-refoulement* and the prohibition of collective expulsions, as well as procedural guarantees, including due process, access to legal aid and translators, and the right to appeal a return decision. All stages of return procedures should be adjusted to ensure they are compatible with public health strategies.³⁴

2.5.2. Conclusion and recommendations

In view of the potentially protracted COVID-19 pandemic, the Asylum Office should ensure continuity of asylum procedures in the RS. In that regard, and in cooperation with the other competent authorities, it should make additional preparations for the case of repeated mass spread of the contagion, in order to limit its impact on conduct of activities of all stakeholders in the asylum procedure. This would ensure that all stakeholders are protected from potential infection while the persons in need of international protection would still have access to the right to asylum unlike during the state of emergency. So, the asylum procedure may be conducted safely by taking stipulated health protection measures also applied in other circumstances when engaging with potentially infected persons. This includes potential placement of a suitable physical barrier between the Asylum Office staff and the asylum seekers or use of protective equipment and suits.

The states may introduce measures such as health screenings or testing of persons in need of international protection when these persons enter their territory. On the other hand, these measures should not result in deprivation of the actual possibility of persons to seek asylum. Wishing to promote best practices exchange, UNHCR published a document entitled *Practical Recommendations and Best Practice to Solve the Problems related to Protection in the Context of the COVID-19 Pandemic* in April.³⁵ This document, *inter alia*, recommends measures to ensure

³² *COVID-19 and the Human Rights of Migrants, Guidance* OHCHR (2020), pp. 3, available at: <https://bit.ly/31yb2Cq>.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Coronavirus: UNHCR offers practical recommendations in support of European countries to ensure access to asylum and safe reception*, UNHCR (27 April 2020), available at: <http://bit.ly/2PsJFnK>.

the possibility of entry into territory along with the protection of public health, continuation of registration, prevention of virus transmission in the context of reception and detention.

In line with the above, it is very important to stress that each tightening of border control, restriction of travel or freedom of movement, should not prevent persons fleeing wars or persecution or those entitled to be placed under the protection of human rights law, to actually access such protection.³⁶

2.6. Access to the Asylum Procedure in Misdemeanour Proceedings

One of the standards of the refugee law is the standard of impunity of refugees for illegal entry or stay. The said standard is defined in the Convention on Refugee Status as well as in the LATP.³⁷ The principle of impunity is applied to refugees who take all reasonable measures to contact the authorities, doing so within the reasonable timeframe and prove that they violated the immigration regulations in order to access international protection.³⁸ On the other hand, a foreigner who enters the country or is staying in it illegally but does not seek asylum, shall be subject to misdemeanour punishment.

In the RS, protection of state borders is ensured by norms defined in two laws: Foreigners law (FL) and Law on Border Controls (LBC).³⁹ Both govern illegal crossings of the state border.⁴⁰ Illegal stay is governed by the FL provisions.⁴¹ The standard of impunity is applied in the RS

³⁶COVID-19 Guidance, Migrants, Displaced People and Refugees, OHCHR (2020), para. 5, available at: <https://bit.ly/2y7oiCW>.

³⁷ Article 31 of the Convention on the Status of Refugees 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, 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. Also, Article 8 of the LATP provides that foreigner shall not be punished for unlawful entry or stay in the RS, 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.

³⁸ James C. Hathaway, *The Rights of Refugees Under International Law*, Cambridge University Press (Cambridge, 2005), pp. 316.

³⁹ *Official Gazette of the RS*, No. 24/18.

⁴⁰ Pursuant to Article 12 of the LBC, all movement of people across the state border represent the crossing of the state border. The state border is crossed at the border crossing point with a valid travel document or other document designated for crossing of the state border during the working hours of the border crossing point and in line with the international contract. Also, pursuant to Article 14 of the FL, entry into the RS shall be considered illegal if away from the place designated for crossing of the state border, by avoiding border control, without travel or other document required to cross the state border, by using another person's, invalid or false travel or other document, By providing untruthful information to the border police, during the period in which the protective measure of removal, or the security measure of expulsion is in effect, or during the period of an entry ban.

⁴¹ Article 74 of the FL defines illegal stay as stay in the territory of the RS without a visa, permission to stay or other legal basis.

before misdemeanour courts which establish misdemeanour liability of foreigners for illegal entry and/or stay,⁴² pursuant to the Misdemeanour Law.⁴³

On the basis of the statement of an accused foreigner, the judge must consider all the circumstances of the case, and in particular whether the defendant intends to seek asylum in the RS. That is the moment when the accused foreigner may seek asylum before the judge, i.e., when the court – by its decision – will practically ensure access to the asylum procedure and refer him/her to the competent authority – the Asylum Office.

Besides to explicit expression of intention, a foreigner may do so indirectly in his/her statement, on the basis of which the judge may clearly conclude that he/she is in need of international protection. In order for the judge to establish these facts, the judge must take into consideration all the reasons for leaving the country of origin as well as the reasons for his/her arrival in the RS.⁴⁴

2.6.1. Statistics on Misdemeanour Proceedings

According to the data collected by the BCHR,⁴⁵ 389 proceedings were initiated for illegal border crossing according to the LBC, and 38 proceedings were initiated for illegal entry in line with FL in the first five months of 2020. In line with the FL, 121 proceedings were initiated for illegal stay.

In the same period, 237 foreigners were found liable for illegal crossing of the state border, and 133 for illegal stay in the RS. A decision to remove a foreigner was issued in eight cases. The majority of misdemeanour proceedings were held before the misdemeanour courts in Sremska Mitrovica (136), Senta (110), Belgrade (44) and Pirot (26). Misdemeanour courts suspended the proceedings in only 15 cases due to expressed intention to apply for asylum. Courts frequently punish the nationals of the countries which are not safe or where the war is raging.

⁴² Misdemeanour liability is established in relation to Article 121 in conjunction with Article 14 and Article 122 in conjunction with Article 74 of the FL, as well as Article 71 in conjunction with Article 12 of the LBC.

⁴³ *Official. Gazette of the RS*, No. 65/2013, 13/2016 and 98/2016 – Decision US 91/2019 and 91/2019 – other law.

⁴⁴ Marko Davinić and Ivana Krstić, *Vodič za primenu relevantnih propisa u oblasti azila i migracija* [Manual for application of relevant acts in the field of asylum and migration], Group 484 (Belgrade, 2019), pp. 59.

⁴⁵ At the time of this report, 39 courts from the RS territory sent statistical information and copies of anonymized decisions to the BCHR on the basis of requests for access to information of public importance for the period of 1 January 31–May 2020.

2.6.2. Analysis of Certain Decisions of Misdemeanour Courts

Analysing the practice of misdemeanour courts, one may conclude that the competent authorities continue to exercise the practice of punishing refugees for illegal entry or stay on the territory of the RS. The decisions of misdemeanour courts do not explain in which way had the court assessed the reasons for illegal crossing of the state border or stay on the territory of the RS, and in particular the reasons for leaving the country of origin. The decisions of certain misdemeanour courts taken in the period January – May 2020 will be analysed in this section.

2.6.2.1. Identification of Foreigners in Need of International Protection

The practice of misdemeanour courts indicates that, in certain cases, the courts did not take into consideration all the circumstances on the basis of which they could assess that the procedure should be suspended and a foreigner referred to the authority in charge of the asylum procedure. Such practice was recorded, for instance, in the decision of the Misdemeanour Court in Jagodina,⁴⁶ when an Afghan national was declared liable for a misdemeanour he was charged with. The reasoning of the above decision notes that “the case is about a person who sought asylum and had no money on him”. In this case, the Court completely ignored the fact that the foreigner expressed intention to apply for asylum. Instead, the Court should have passed a decision on suspension of the procedure and referred the foreigner to the asylum procedure. However, concluding that none of the circumstances presented during the proceedings would exclude the liability of the defendant the Court declared him liable and issued him with a reprimand.

Similar examples were also recorded at the same court which declared the nationals of Afghanistan liable for the misdemeanour and issued them with a reprimand.⁴⁷ The reasonings of these decisions states that the persons expressed intention to seek asylum before the competent police administration. They had then been issued with a registration certificate and referred to an asylum centre within a prescribed timeframe which they failed to do. Also in these cases, assessing only the gravity of the misdemeanour, the Court failed to consider the possibility of existence of circumstances that could exclude misdemeanour liability i.e., that the persons should be referred to the asylum procedure. This does not necessarily mean that the judge should have suspended the proceedings, but that he should have established the facts fully.

The standpoint taken by the Misdemeanour Court in Pančevo⁴⁸ represents an example of the court takings into consideration the country of origin of an asylum seeker when establishing the

⁴⁶ Judgement of Misdemeanour Court in Jagodina 7 – Pr.no. 2202/20 of 26 May 2020.

⁴⁷ Judgement of Misdemeanour Court in Jagodina 7 – Pr.no. 2201/20 of 26 May 2020, 7 – Pr.no. 2200/20 of 26 May 2020, 7 – Pr.no. 2199/20 of 26 May 2020.

⁴⁸ Judgement of Misdemeanour Court in Pančevo Pr.no. 12 PR 1670/2020-5 of 28 February 2020.

facts. Namely, in the case of national H.S. the Court passed a decision rejecting the request to initiate misdemeanour proceedings, as H.S. had stated he sought asylum in the RS before the court.

2.6.2.2. Right to Use of Language

The right to use of language, set out in Misdemeanour Law (ML)⁴⁹, represents the foundation of the right to defense in general.⁵⁰ The provisions of this article state that the clients and other parties in the proceedings, who are not RS nationals, shall have the right to interpreter and to use their mother tongue or a language they understand.⁵¹ The reasoning of the decision must clearly show the respect of this right.

Based on brief reasonings in the majority of judgements⁵², one cannot conclude whether an interpreter had been present during the hearing of the defendant. Neither can it be concluded whether the defendant understood the language of the procedure. What remains completely unclear in these judgements is the way in which had the Court itself translated certain facts in the absence of an interpreter. If an interpreter had actually been engaged, the Court had failed to mention it.

2.6.2.3. Children in Misdemeanour Proceedings

According to the data sent to the BCHR team by misdemeanour courts, 37 unaccompanied and separated children were pronounced liable for illegal crossing of the state border and illegal stay in the RS pursuant to LBC and FL, since the beginning of the year and up to 31 May 2020. Not in a single proceedings against the unaccompanied and separated children had the misdemeanour courts applied the principle of impunity of refugees for illegal entry or stay in the RS.

Analysing the collected misdemeanour decision related to unaccompanied and separated children, the BCHR established that the courts in the majority of cases *proprio motu* considered the age of the defendant, but only when imposing re-education measures.⁵³ However, a large number of decisions show an evident lack of other procedural guarantees applicable to children in

⁴⁹ Article 94 of the ML.

⁵⁰ Radmila Dragičević Dičić et al, *Application of the principle of impunity of refugees in misdemeanour proceedings*, Belgrade Centre za Human Rights (Belgrade, 2016).

⁵¹ Article 94, para. 4 of the ML.

⁵² An illustration of this practice was recorded at the Misdemeanour Court in Senta, Dept. in Kanjiža in the Decision no. II-4 Pr. 6/20 of 06 January 2020, Misdemeanour Court in Jagodina in the Decision no. 10 Pr. Br. 103/20 of 08 January 2020. Misdemeanour Court in Novi Pazar (Communication no. SU -17a 4/20 of 24 June 2020) and Misdemeanour Court in Loznica (Communication no. SU –II- 17a 6/20 of 29 June 2020.) informed us that services of interpreters were not used in misdemeanour proceedings against foreigners.

⁵³ Article 74 of the ML.

misdemeanour proceedings, although the courts must ensure that lack of education and knowledge of legal provisions do not detriment the rights of clients.⁵⁴

Namely, misdemeanour proceedings involving children had to be conducted urgently, but this urgency of the proceedings should in no way justify lack of procedural guarantees, and adequate guardianship protection in particular. Before imposing re-education measures or a punishment, the courts must obtain the opinion of a competent guardianship authority.⁵⁵ Analysing a number of judgements one cannot establish whether the children's guardians had been present, much less whether courts took into consideration the opinion of the guardianship authority about the psychological and physical condition of the child when deciding on the punishment.⁵⁶

Furthermore, one cannot ascertain whether the unaccompanied and separated children had a defence attorney in the misdemeanour proceedings. In addition, not a single decision of misdemeanour courts that the BCHR reviewed contains information on whether unaccompanied and separated children had been informed about their right to a defence attorney.⁵⁷ We stress again that courts must ensure that lack of education and knowledge of legal provisions of clients should not obstruct their rights.⁵⁸ Since they did not have the right to a defence attorney, it is reasonable to believe that the minors did not have the possibility to request a legal remedy.

With respect to the right to defence in general, we note that the analysis of certain decisions that the BCHR had insight into, it was established that minors were not informed of their right to interpretation and conduct of the proceeding in their mother tongue or a language they understand.⁵⁹

2.6.3. Conclusion and recommendations

When pronouncing a punishment for a misdemeanour to the persons coming from war-affected territories, the courts still fail to examine additionally the presence of circumstances conducive to exclusion from liability. With respect to the right to defence, the judges interview the defendants only in respect to the circumstances related to the misdemeanour committed. In general, the courts do not take into consideration the circumstances related to establishment of whether these are persons in need of international protection. Misdemeanour courts, in their decisions, do

⁵⁴ Article 90 of the ML.

⁵⁵ Article 292, para. 1–2 of the ML.

⁵⁶ Decision of Misdemeanour Court in Subotica, Reg. no. PRM 11-11/20 of 28 February 2020 and Decision 8 PRM 8/2020 of 12 February 2020.

⁵⁷ Decision of Misdemeanour Court in Senta II-1 PRM 43/2020 of 25 February 2020 and Decision of Misdemeanour Court in Senta, Dept in Kanjiža II-3 PRM 6/2020 of 21 January 2020.

⁵⁸ Article 90 of the ML.

⁵⁹ Article 94, para. 5 of the ML.

not assert in each individual case whether during the misdemeanour procedure there was an interpreter engaged or whether the defendant understood the language of the proceedings.

If there are basic indications that the defendant is a person in need of international protection, the courts should thoroughly examine the existence of conditions for application of Article 8 of the LATP⁶⁰ also, and the Article 31 of the Refugee Convention. The courts should satisfactorily explain (non)existence of these conditions in its decisions. This is relevant even if the defendant does not wish to apply for asylum in the RS, but has given the reasons of his/her illegal entry or stay in the RS which may generally constitute basis for refugee protection.⁶¹

When deciding on the possible application of the principle of impunity for illegal entry or stay on the defendant, courts must take into account the well-known facts about the war and/or violation of human rights transmitted by the media and which need not be proved specifically. The misdemeanour judges must continuously learn about the situation in the war-affected countries or in which there are gross violations of human rights. In order to avoid failing to recognize *prima facie* refugees in misdemeanour procedures, the judges should additionally question the foreigners about the reasons for leaving the country of origin, prior to declaring them liable in misdemeanour proceedings.

In all, and in particular in the procedures where potential refugees appear as defendants, the decisions must include a detailed reasoning. In line with ML, the court must state the content of the request for initiating the procedure, the established facts and evidence, regulations on which the decision is based and reasoning for each item of the decision.⁶²

In their decisions, misdemeanour courts must clearly note if a court interpreter or another person guaranteeing the proceeding in the language that the defendant understand had been present. Also, in the note on the legal remedy, courts must give the foreigners clear guidelines as to whom they may file an appeal to, the deadlines and the method.⁶³

The children found liable for illegal crossing of the state border or illegal stay in the RS faced the absence of procedural guarantees provided for in the regulations governing misdemeanour proceedings involving children. The most frequent problems refer to inadequate role of

⁶⁰ A foreigner shall not be punished for illegal entry or stay in the RS if he applies for asylum without delay and provides a reasonable explanation for his/her illegal entry or stay.

⁶¹ In this case, the Court would directly apply Article 31 of the Convention on the Status of Refugees. E.g., in the judgement of the Misdemeanour Appellate Court, Dept in Niš, no. II 210 Prž 66/15 of 1 April 2015, the Court took the stand that if, the defendant had not applied for asylum in the RS, and was fleeing from war-affected territories, he has ground to be subject to application of provisions of international conventions.

⁶² Article 254, para. 4 of the ML.

⁶³ Article 254, para. 5 of the ML.

guardianship authorities⁶⁴ in the proceedings – conduct of misdemeanour proceedings in absence of a guardian.

On the other hand, unaccompanied and separated children did not have a defence attorney and therefore it is not reasonable to expect they would avail of legal remedies. Furthermore, the analysis of the decisions of misdemeanour courts in the proceedings involving children, show that it was the children who were most frequently not ensured an interpreter for the language they understand in order to be able to understand the procedure.

2.7. Violation of the principle of *Non -Refoulement* of Asylum Seekers

In the evening of 3 April 2020, BCHR was contacted by a group of asylum seekers and migrants from Algeria, Morocco and Iran via *WhatsApp*. They claimed that they were unlawfully driven - in an official vehicle - from the AC Tutin they had been staying at, to the border and expelled to North Macedonia.

According to the information communicated to the BCHR lawyers in a video recording, M.T., S.B., L.D., B.B., M.S., A.U., O.K., S.H., I.U., S.S., I.A., H.B., Y.H. and S.H. had first stayed in AC in Tutin. They corroborated this information by sending a photograph of the cards⁶⁵ issued by CRM.

According to the allegations of the group, the representatives of the state authorities had informed them, on the day of the incident, that they would be transferred to RTC in Preševo. However, they claimed that, after a long ride in an official vehicle, the police officers stopped the vehicle outside an inhabited area and told them to get out and not to come back to the RS. They realised through a mobile phone GPS that they were in the territory of North Macedonia, on a hill above Miratovac, in the vicinity of the village of Lojane.⁶⁶ They claimed they did not have food, water, and that one of the members of the group got sick. The video showed that he was unconscious.

⁶⁴ On insight of a BCHR lawyer into one of the decisions of misdemeanour court, the judges only established the presence of a guardian but not that he also gave his professional assessment.

⁶⁵ Although the LATP and other regulations do not define the form and the jurisdiction of the CRM in issuance of any type of personal documents, all the persons accommodated in AC and reception centres are issued with identification cards which include their personal information, a photograph, centre in which they are accommodated and the personal number.

⁶⁶ They also confirmed it to the BCHR team by sending GPS coordinates of their location via an adequate option on *WhatsApp*.

2.7.1. Control of the Protector of Citizens

In view of the above, the BCHR contacted the Office of the Protector of Citizens (Ombudsman) proposing that a procedure in line with his mandate be initiated. The Ombudsman was asked to establish if the action was in contravention of the *non-refoulement* principle, that resulted in a risk to health and life of these persons and hindrance to access to the asylum procedure. The BCHR also asked the Ombudsman to verify whether other rights guaranteed by international law and national regulations had been violated to these persons.

The Ombudsman informed the BCHR on 13 April that he had initiated control of regularity and legality of the work of the competent authorities in the concrete case.⁶⁷ The procedure was initiated with respect to the operation of MoI and CRM.⁶⁸ The Ombudsman sent a written communication to CRM and MoI on 7 April and 16 April respectively, followed by an urgent request for information on 22 May. In their reply to the Ombudsman's letter, on 30 April CRM stated that the the complaint is unfounded. The MoI did not reply to the Ombudsman even within the additional 7-day timeframe.

According to CRM, these persons had been accommodated in AC in Tutin, but had left on their own initiative only to returned after the adoption of the Government Decision on 16 March.⁶⁹ In continuation, the CRM stated that these persons, according to their information, were “problematic in many aspects“ and that their behaviour in a “traditionally welcoming atmosphere of Tutin endangered others.“ According to the CRM statement, these persons “abused alcohol and psychoactive substances“, broke into other peoples' property and looted them – all of which have been reported with the police and the competent authorities. The CRM had also established that these persons spread misinformation, incited other AC inhabitants to riot and physically attacked the staff. Concluding their statement, the CRM stressed that, in view of such behaviour, these persons had been referred to RTC in Preševo in order to reinstating order and a safe environment in AC in Tutin. The CRM also came out with the information that the said persons, upon arrival in Preševo, “left the mandatory registration procedure for reception of new persons” and had contacted “the Moroccan embassy requesting them to provide accommodation”. Therefore, the CRM had allegedly informed the Embassy of Morocco that the foreigners would be accommodated in the RTC in Miratovac once they report to the authorities.

⁶⁷ Communication no. 13294 of 13 April 2020. – On 6 April, the case was referred to the Department for Urgent Action.

⁶⁸ Communication no. 18454 of 3 June 2020 in which the Protector of Citizens informed the BCHR on the developments in the procedure.

⁶⁹ Decision on temporary restriction of movement of asylum seekers and irregular migrants accommodated in the Asylum and Reception Centres in the RS (*Official Gazette of the RS*, No. 32/2020).

2.7.2. Reports of International Organisations

An independent group of organisations *Border Violence Monitoring Network* (BVMN) in cooperation with the *Balkan Info Van* reported on the above incident after the expelled foreigners had contacted them.⁷⁰ The BVMN report corresponds to the information the BCHR received. The report also mentions additional details with respect to violence the foreigners had been exposed to. Namely, it states that a group of expelled foreigners included minors as well and that they had been subjected to physical violence with the use of police batons, that the uniformed members of security forces had threatened them with the use of official weapons and had stripped them.

According to the BVMN allegations, on 3 April, several members of security forces dressed in black jackets and olive-green trousers entered the AC in Tutin in official SUV vehicle. The photographs presented in the report show most probably the members of the Gendarmerie - a special MoI unit. The report further states that the accommodated foreigners were ordered to step out in front of the AC and that the MoI officials had a list of the beneficiaries. According to these allegations, the initiative in this respect was of the AC manager “Marija“ and a non-uniformed police officer “Saša“. The group was then told they would be transferred to the RTC in Preševo within the framework of COVID-19 prevention, and that they could not take their personal belongings with them.

The report further states that 16 foreigners were put up in a van of the special unit and forced to stand one on top of the other due to lack of space, which is evidenced by the photographs. Allegedly, the group had no possibility to leave the vehicle and they were driven for some nine hours. Finally, they were allowed to get out of the van in an isolated hilly area where, under the threat of weapons, they were ordered to leave the RS. According to the allegations, some of the officers perpetrated physical violence and one of the members of the group with a previous grave head injury and a scheduled surgery for the next day (as evidenced by medical reports) fell into a coma (as seen in the video sent to the BCHR). The group of foreigners then, on the GPS, realised they were in the territory of North Macedonia, in the vicinity of the village of Lojane. They stated they had tried to return to the RS as many as eight times, but had been returned to North Macedonia with the use of violence and that during one of the expulsions the security force members even threatened their lives. For all that time they were hiding in an abandoned house in the vicinity of Lojane without food, water and a toilet. The police of North Macedonia entered the house on 12 April and eight members of the group were taken to a police van already transporting six other persons. They were informed they would be accommodated in the RTC, but were transported to

⁷⁰ “Pushed back from a camp in Serbia to N. Macedonia, and then to Greece”, *Border Violence Monitoring Network* (3 April 2020), available in English at: <https://bit.ly/2DgcyRL>.

the Greek border and told to leave the territory of North Macedonia. The group arrived in Thessaloniki on 14 April where, according to the latest information, they stayed in abandoned houses fearing police and potential expulsion into Turkey.

This is not the only incident that the BVMN reported on in this period. Namely, the organisations *No Name Kitchen* and *Wave* recorded on 17 April, two similar separate incidents involving 26 asylum seekers from Afghanistan, Syria, Pakistan, Morocco and other countries allegedly expelled into North Macedonia.⁷¹⁷² These reports note a similar *modus operandi*, and emphasize that police dogs that had been used in ill-treatment allegedly bit several asylum seekers. According to the statements of the expelled foreigners, police officers wore balaclavas making identification impossible, and they had an impression the said police officers were dangerous. According to the statements of these asylum seekers, the members of the special unit in green uniforms were assisted by officers in ordinary blue uniforms in RTC in Preševo. Having been victims of violence, they were taken to a forest in the vicinity of Lojane, North Macedonia. Several members of the group returned to the RS on foot, but were stopped by local forces on the territory of Kosovo and returned to North Macedonia. The competent authorities in North Macedonia did not allow them to enter the RTC due to the COVID-19 pandemic, and several attempts to return to Serbia ended in failure. Several members of the group said they had been expelled back into Greece on 28 April.

The BVMN also recorded violence against unaccompanied and separated children from Afghanistan. Namely, during the attempt at an illegal crossing into the territory of the Republic of Croatia, a group of children were allegedly severely beaten up by the police in Batrovci.⁷³

2.7.3. Conclusion and recommendations

Informal returns represent a practice which contravenes national and international law. By returning asylum seekers, they are deprived of the right to a fair procedure and put at a risk of being returned to a territory where their lives or safety would be in danger.

The authorities did not take into consideration the possibility of existence of individual risk of inhuman and degrading treatment in case of return of asylum seekers to North Macedonia. This constitutes a violation of Article 3 of the European Convention on Human Rights which provides for absolute prohibition of torture, inhuman or degrading treatment and Article 4, Protocol no. 4

⁷¹ “The officers encouraged the dogs to attack”, *Border Violence Monitoring Network* (17 April 2020), available in English at: <https://bit.ly/30xiBdj>.

⁷² “Serbian authorities place us 500m above the border, they beat you and bring to the border”, *Border Violence Monitoring Network* (17 April 2020), available in English at: <https://bit.ly/3khzwsg>.

⁷³ “It was a big fight, with feet and everything. It was very dangerous, their shoes were like stone”, *Border Violence Monitoring Network* (24 March 2020), available in English at: <https://bit.ly/3idabOo>.

of the Convention i.e., principle of prohibition of forcible return and collective expulsion. Furthermore, the right of asylum seekers to an effective legal remedy in line with Article 13 of the Convention was also violated.

The respect of the principle of *non-refoulement* also includes the obligation of states to do their utmost to prevent return of asylum seekers to the country of origin without substantive examination of their asylum applications where this would constitute the so called direct *refoulement*. At the same time there is a risk of the so called indirect or chain *refoulement* which would occur with transfer of asylum seekers to third countries, which could then send them further to the place where they fear persecution. This case is the best illustration of chain *refoulement* in practice.

Non-refoulement is an absolute prohibition. LATP sets out that no one should be expelled or returned against his/her will to the territory where he/she is at risk of being subjected to torture, inhuman or degrading treatment or punishment. This rule applies even in the case of persons reasonably believed to constitute a security threat to the RS.⁷⁴ FL additionally sets out that an unaccompanied child must not be forcibly removed, except in the case he/she it is being returned to a family member, a guardian or to an appropriate child reception facility.⁷⁵

As the Constitution guarantees a rule of law which is based on inalienable human rights⁷⁶, the competent state authorities must respect, protect and ensure enjoyment of human rights. The public prosecutor must raise an indictment if the conducted investigation shows existence of a reasonable doubt that a crime has been committed. The MoI should conduct an internal control procedure and sanction the responsible staff in line with the law. Since these were evidently not isolated incidents of certain police officers but an organised action, responsibility of their superiors should be investigated.

In order to prevent police officers to act in contravention of the Constitution, the laws and the ratified international instruments in the future, additional trainings of representatives of the competent authorities should be organised. The MoI should organise and conduct trainings on the principle of *non-refoulement* for all the employees coming into contact with migrants and asylum seekers as well as for the Border Police Administration and Gendarmerie senior staff. Though the MoI staff regularly participated in these trainings in the past, the interest of the Ministry's management to allow participation of staff in these programmes has visibly decreased since 2019. Namely, as compared to the previous years, the MoI representatives did not take part in a single training organised by the BCHR in 2019, though the lectures were held by reputable international experts. Also, MoI representatives did not attend numerous other seminars that the BCHR attended

⁷⁴ Article 6 of the LATP.

⁷⁵ Article 83 of the FL.

⁷⁶ Article 3 of the Constitution of RS.

in 2019, with the exception of several seminars of international organisations granting donations to this Ministry when lower-ranking staff was present.

From the above mentioned statement of the CRM to the Ombudsman, absence of a sufficient level of awareness of the meaning of the *non-refoulement* principle is evident even in this institution. Although the CRM staff, by the very nature of their duties, cannot directly violate this prohibition, they should also attend additional trainings on *non-refoulement* and other fundamental principles of refugee law. This would create conditions in future for the CRM to become an active participant in prevention of unlawful actions instead of offering legally unfounded pretexts for violation of absolute prohibition of expulsion by the police and inciting the police to such actions.

3. Accommodation of Asylum Seekers and Migrants in the Republic of Serbia

3.1. Facilities under CRM Jurisdiction

One of the rights of asylum seekers prescribed by the LATP is the right to material reception conditions including: housing accommodation, food, clothing, and cash allowance for personal needs.⁷⁷ The LATP also sets out that the Commissariat for Refugees and Migration (CRM) is mandated to provide material reception conditions of asylum seekers.⁷⁸ The CRM shall ensure accommodation of asylum seekers and migrants in asylum centres (AC) and reception/transit centres (RTC) established by the Serbian Government decision.⁷⁹

In 2018, the Government of the Republic of Serbia adopted a 2018 -2020 Strategy of Combatting Irregular Migration in the RS⁸⁰, stressing in several places the necessity to ensure adequate accommodation for the migrants on the territory of the state. However, practice shows that the accommodation facilities under the CRM mandate are not at a satisfactory level as yet.

In this context, it is important to respect also certain standards prescribed in the area of asylum and migration of the EU law. Consequently, the RS authorities and the CRM in particular, must

⁷⁷ Article 50, para. 1 of the LATP.

⁷⁸ Article 23 of the LATP.

⁷⁹ Article 5 of the LATP.

⁸⁰ See sections 5.3. and 6.1 of the Strategy for Combating Irregular Migration in the Republic of Serbia for the period from 2018 to 2020.

respect the standards of the European Asylum Support Office (EASO)⁸¹ when placing asylum seekers and migrants into the facilities.⁸² These guarantee a minimum level of living standards for asylum seekers and migrants, while the state signatories are free to raise their own standards to a higher level.

Having been issued Registration Certificates⁸³ from the authorized MoI official, asylum seekers are referred to one of the AC or RTC, depending on the capacities available.⁸⁴ Although the LAMP does not say whether the MoI should refer the registered asylum seekers into AC or RTC on their expression of the intention to seek asylum, practice shows that MoI refers the majority of them to RTC. The BCHR lawyers opine that the difference between AC and RTC is legal. Namely, the asylum procedures – submission of applications and interviews with the asylum seekers – take place in AC.⁸⁵ On the other hand, in the BCHR experience, RTC mostly accommodate persons who wish to continue their journey to the EU countries – those foreigners who do not consider the RS their country of destination.⁸⁶

The practice of referral of foreigners to RTC persisted in 2020, creating additional challenges for the foreigners who genuinely intend to remain in the RS and apply for asylum before the competent authorities. The problem we pointed to in the past in this respect is the *de facto* deprivation of access to the asylum procedure – the Asylum Office does not conduct their work in RTC and, in practice, the asylum seekers wait for transfer from RTC into AC (where the procedure is conducted) for several months.⁸⁷ In this regard, transfer of all persons wishing to Apply for asylum in the RS⁸⁸ from RTC to AC must be expedited, or the Asylum Office should start conducting the procedure also in the RTC⁸⁹.

The state of emergency, that lasted almost two months in the RS, and the persisting COVID-19 related epidemiological situation had a significant impact on the situation of asylum seekers and migrants in the reporting period. The RS Government passed a series of decisions relevant to

⁸¹ Standards of the European Asylum Support Office in the area of reception: EASO Guidance on Reception Conditions: Operational Standards and Indicators.

⁸² See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 67.

⁸³ Article 35, para. 11 of the LAMP.

⁸⁴ In some cases, when families, single mothers or members of vulnerable groups are registered, the MoI officials issue registration certificates referring these persons to AC more suitable to their needs. During the reporting period, this was most often the case in AC in Banja Koviljača.

⁸⁵ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 68.

⁸⁶ *Ibid.*, para. 68.

⁸⁷ See section 2 or more in *Right to Asylum in the Republic of Serbia 2019*, pp. 30 Section 2.3.2. Inability to Apply for Asylum in all Accommodation Facilities.

⁸⁸ In practice, transfers to Asylum Centre happen most often when the legal representative informs the MoI and the CRM that a person is interested in applying for asylum or when the competent authorities establish this in some other way (e.g., in conversation).

⁸⁹ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 69.

the asylum procedure and the status of foreigners in the RS⁹⁰ while at the same time, it has not yet developed detailed response plans and strategies to combat the pandemic which also affects the position of this category of foreigners.

The Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception/Transit Centres in the RS (Decision)⁹¹ of 16 March 2020 temporarily restricted the movement of asylum seekers and foreigners whose stay was not regulated. This means that the asylum seekers and migrants had to stay in the AC and RTC 24h, thus being *de facto* deprived of freedom.⁹² The Decision was annulled on 9 April and its provisions were simultaneously completely transferred into the Decree on the Measures during the State of Emergency⁹³, that was in effect until the passing of the Decision on Lifting the State of Emergency.⁹⁴

Regular visits to AC and RTC were suspended to prevent COVID-19 spread during the state of emergency and after its lifting.⁹⁵ Therefore, the BCHR legal team provided free legal assistance to asylum seekers and migrants accommodated in AC and RTC predominantly by phone.⁹⁶ In view of the current situation we have selected several important developments related to accommodation, safety and situation of asylum seekers and migrants in the first half of 2020.

3.1.1. Restriction of Movement

The movement of migrants and asylum seekers was limited on the basis of Decision of 16 March and the Article 3 of the Decree on the Measures during the State of Emergency.⁹⁷ The Decision temporarily restricting the movement of asylum seekers and migrants was problematic from several aspects. Though *ratio* of the measure of restriction of movement represented protection from spread of contagious diseases on the territory of the RS and “prevention of uncontrolled movement of persons who may be vectors of the disease“, it was linked to deprivation of liberty bearing in mind the factual impossibility to leave centres.⁹⁸ In view of the absence of

⁹⁰ More on the decisions passed by 31 March in *Right to Asylum, January–March 2020*, Section 5, pp. 31-45.

⁹¹ *Official Gazette of the RS*, No. 32/20 of 16 March 2020.

⁹² For a thorough analysis of the decision, see *Right to Asylum, January–March 2020*, Section 5.2.

⁹³ *Official Gazette of the RS*, No. 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20 and 53/20.

⁹⁴ *Official Gazette of the RS*, No. 65 of 6 May 2020.

⁹⁵ According to the information available to the BCHR, access is also restricted to other organizations and individuals providing various forms of assistance to asylum seekers and migrants.

⁹⁶ According to the BCHR statistics, field legal team conducted 20 visits to AC and RTC during the reporting period.

⁹⁷ *Official Gazette of the RS*, No. 32/20. Several NGOs including the BCHR submitted an initiative against this Order to the Constitutional Court.

⁹⁸ The Decision also sets down exceptional cases to the temporary restriction of movement, when justified for e.g., in case of a visit to the doctor (Art. 2 of the Decision). However, the RS Government thus gave a discretionary right to the CRM themselves to assess “justified reasons” for leaving Asylum Centre or Reception Centre. See more in *Right to Asylum, January–March 2020*, section 5.2, pp. 33-34.

reasoning of the Decision and its disproportionality to the aim it was to achieve, the criteria against which the migrants and asylum seekers accommodated in AC and RTC themselves were treated differently from other foreigners and nationals of the RS were dubious.⁹⁹ The state of emergency in the RS was declared on 15 March and lifted after 53 days – on 6 May on the basis of the Decision on Lifting of the State of Emergency. Consequently, all the above measures related to restriction of movement were annulled.

3.1.1.1. Problematic Order of the Ministry of Health

The implementation of measures restricting or fully prohibiting the movement of citizens – as in the case of persons over 65, for instance – terminated immediately following the lifting of the state of emergency. However, this termination did not apply to the persons accommodated in the AC and RTC.

Namely, on the day of lifting of the state of emergency, the Minister of Health passed an Order¹⁰⁰ Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (Order).¹⁰¹ The Order specifically prohibited leaving AC and RTC in the same way as it had been provided by the Government decisions effective during the state of emergency, with essentially meant that the earlier ban on movement persisted.

The Order passed on the basis of the Law on the Protection of Population from Communicable Diseases (LPPID)¹⁰² and the Law on State Administration (LSA)¹⁰³ at the proposal of the Republic Expert Commission for the protection of population from contagious diseases and the Public Health Institute of Serbia “Dr Milan Jovanović Batut“. The order prohibited access to open spaces or facilities housing RTC for migrants and AC (para. 1), while the persons accommodated therein were prohibited to leave them (para. 2). These measures were planned to last until the threat from spreading COVID-19 on the RS territory had passed (para. 3). Since this decision was problematic on several grounds, the BCHR and a group of organisations: Indigo – Group for Children and Youth, Praxis and the Humanitarian Centre for Integration and Tolerance submitted an initiative to the Constitutional Court for review of constitutionality and legality of the Order on 12 May.

⁹⁹ *Ibid.*, pp. 34.

¹⁰⁰ *Official Gazette of the RS*, No. 66/20.

¹⁰¹ *Official Gazette of the RS*, No. 66/2020 – Order No. 512-02-9/32/2020-01

¹⁰² *Official Gazette of the RS*, No. 15/16.

¹⁰³ *Official Gazette of the RS*, No. 79/05, 101/07, 95/10, 99/14, 30/18-other law and 47/18, Article 15, para. 3.

3.1.1.2. Initiative for Review of Constitutionality and Legality of the Order

The Order of the Ministry of Health passed on the basis of LPPID¹⁰⁴ provides for the authority of the minister to order a restriction of movement of the population in the areas affected by the state of emergency. The state of emergency, the methods of its declaration and termination are governed by the Law on Disaster Risk Reduction and Emergency Management.¹⁰⁵ However, after the lifting of the state of emergency on 6 May, no emergencies were declared on any of the territories of the RS where AC and RTC are located. Consequently, the Minister of Health could not have passed the decision on the restriction of movement since the conditions for it - as defined in LPPID - were not fulfilled.

Furthermore, the organisations submitting the initiative considered the measure of prohibition of leaving AC and RTC a restriction of the right to freedom and safety of person of their beneficiaries. In other words, the migrants and the asylum seekers were unfoundedly and arbitrarily deprived of freedom contrary to the RS Constitution¹⁰⁶ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹⁰⁷ First and foremost, that measure did not fulfil the condition of proportionality. Namely, it was not evident in the text of the Order that alternative and more lenient measures applicable in the concrete case had been considered prior to imposition of the prohibition. Next, the basis of the assessment of the minister of health that the migrants and asylum seekers represent a greater risk for spreading of virus – that they themselves are at a greater risk of being infected – could not be established. This especially taking into consideration that, upon lifting of the state of emergency, the restriction of the right to freedom and safety did not include the persons at the greatest risk of developing severe forms of the infection COVID-19 such as the elderly, the persons with weakened immunity, chronic patients, asthma patients, etc. Finally, the measure of deprivation of liberty was not strictly limited in time, nor was there an obligation of regular review thereof in order to ensure it lasted as long as necessary only.

If, for any reason there actually existed a higher level of threat from the infection of persons residing in AC and RTC, or the characteristic group including migrants, asylum seekers and refugees, why was the movement of persons pertaining to one of the three categories who reside, for instance, at private addresses Serbia-wide not restricted. Bearing this in mind, it may be

¹⁰⁴ Article 52, para. 1, Item b of the LPPID.

¹⁰⁵ *Official Gazette of the RS*, No. 87/18.

¹⁰⁶ Article 27 of the Constitution of RS.

¹⁰⁷ Article 5 of the Convention.

concluded that the Order was passed on the basis of a discriminatory criteria of the place of residence.¹⁰⁸

Notwithstanding the fact that the migrants and asylum seekers in AC and RTC were able to use the Internet and mobile phones, the Order prevented unimpeded access of legal representatives, psychiatrists, etc. to them. Such a solution was in contravention of the LATP¹⁰⁹ which stipulates that a foreigner who expressed intention to seek asylum in the RS and the asylum seeker have the right to free legal aid and representation before the competent authorities by the organisations whose aims and actions aim at provision of free legal assistance to asylum seekers and persons granted the right to asylum as well as the free legal aid of UNHCR.

Due to all the above, a group of organization headed by the BCHR, submitted an initiative to the Constitutional Court proposing that a decision be passed to initiate a procedure for establishment of constitutionality and legality of the Order. However, already on 14 May, an Order on Abolishment of the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds¹¹⁰ was passed, restoring free movement to the persons in them.

However, even after its abolishment, the BCHR lawyers received various complaints from their clients residing in AC related to their right to freedom of movement. Concretely, they were not automatically - upon abolishment of the Order - allowed unconditional exit from the AC as is the case in regular circumstances (to the shop, for a walk, to another town). Rather, the AC management took that decision. According to the BCHR clients, those decisions varied from one AC to the other, so it looks as though they were discretionary. The basis on which AC management took them remains unknown. One may assume it had to do with respect of preventive measures and the prevention of “importing” the virus into a certain AC from the outside – and that is understandable, but provided they were implemented proportionally in such a way as to preserve the freedom of person of each individual.¹¹¹

¹⁰⁸ Discrimination is making any unjustified difference between certain persons on the basis of several criteria including personal characteristic. Habitual residence, in addition to personal name and nationality, represents an attribute of all physical persons, and thus the possibility to discriminate persons on the basis of habitual or temporary residence. Protection from discrimination is the right guaranteed by the Constitution of the RS (Article 21) and ECHR (Article 1, Protocol 12 of the Convention).

¹⁰⁹ Article 56, para. 4 of the LATP.

¹¹⁰ *Official Gazette of the RS*, No. 74/20.

¹¹¹ Further to the information obtained from the BCHR clients, decisions on exit and free time outside the Asylum Centre changed several times – from allowing asylum seekers to exit only in small groups to allowing them to stay outside the Asylum Centre one hour or several hours. According to the latest information, the asylum seekers may leave the Asylum Centre for a period of several hours by registration on the list. Sometimes they may also report a maximum three-day absence from the Asylum Centre, in case of important obligations (e.g., finding private accommodation, job interview, etc.).

3.1.2. Material Conditions of Reception

The number of asylum seekers and migrants residing in AC and RTC increased during the state of emergency only to significantly drop after it was lifted.¹¹² At the end of June, 5,182 persons were said to be in the accommodation facilities in the RS, the biggest concentration being in RTC in Kikinda and Obrenovac.¹¹³

The Decision of 16 March resulted in the authorities accommodating all the foreigners (including those outside the system) in AC and RTC. Their number exceeded the available accommodation capacities, resulting in a significant deterioration of the conditions in AC and RTC during the state of emergency. As a consequence, RTC in Divljana was reopened for accommodation of migrants and asylum seekers in April and May, as were the locations in Miratovačko polje and Morović.¹¹⁴

Though the number of residents dropped in the ensuing period, it remains unclear why had the CRM not activated also other RTC previously put on hold such as the one in Dimitrovgrad. A reason for additional concern is the abrupt decision of the CRM of the end of June 2020 to close several RTC (Piroć, Bujanovac), especially having in mind that the conditions in certain AC and RTC do not fulfill the minimum conditions of accommodation.¹¹⁵

Following the declaration of the state of emergency, the asylum seekers informed the BCHR lawyers about the deterioration of accommodation conditions in several AC.¹¹⁶ The problems mentioned had mostly to do with overcrowding, impossibility to leave the facilities, poor hygiene, monotonous meals, absence of COVID-19 risk assessment of residents, etc.¹¹⁷

¹¹² Assessment against statistics of UNHCR office in Belgrade in the BCHR archives. Also, according to the information collected by the BCHR team in the field and during telephone conversations, certain groups of migrants left some Asylum Centres, after the lifting of the state of emergency, intending to head to one of the border crossings and leave the RS.

¹¹³ According to the information received from UNHCR on 28 June, 4,383 men, 287 women and 521 children (of whom 167 unaccompanied and separated children) were accommodate in the Asylum and Reception Centres. The majority was accommodated in RTC in Kikinda (792), RTC in Obrenovac (785), followed by RTC in Adaševci (644) and AC in Krnjača (627).

¹¹⁴ According to the information that the BCHR received from the CRM following the request for access to information of public importance (019-2282/1-2020 of 03 July 2020), 284 persons were accommodated in RTC in Divljana in April, and 296 in May. In April and May, 103 and 120 persons respectively were accommodated in Miratovačko polje, and 436 and 443 persons respectively in Morović.

¹¹⁵ "Reception centres in Bujanovac and Piroć temporarily closed", *Južne vesti* (24.6.2020), available at: <https://bit.ly/33z15ao>.

¹¹⁶ Information obtained over the telephone from asylum seekers represented by the BCHR in the asylum procedure, and thus accommodated in the Asylum Centre. Data in the BCHR archives.

¹¹⁷ More on the problems that asylum seekers complained about on the eve of declaration of the state of emergency in *Right to Asylum, January–March 2020*, Section 5.3.

The next section will analyse the situation of asylum seekers and accommodation conditions in the AC¹¹⁸, bearing in mind that the BCHR team conducted more visits to them in the reporting period¹¹⁹ and collected more relevant information than in RTC.

3.1.2.1. Access to Rights in ACs in the First Half of 2020

There are five Asylum Centres designated for accommodation of asylum seekers in the Republic of Serbia: in Krnjača, Banja Koviljača, Bogovađa, Tutin and Sjenica. Except for an informal decision of the CRM of early 2020, that AC in Bogovađa be adapted to receive unaccompanied and separated children¹²⁰, no major changes happened in the operation of AC during the reporting period.¹²¹

Although AC are designated for accommodation asylum seekers, foreigners with unregulated stay – those outside the RS system – were also accommodated in them following the declaration of the state of emergency. During that period, all the AC were full and even overcrowded whereby the entire accommodation system was considerably stretched for a while.¹²² Alternative solutions were resorted to in order to expand the available accommodation capacities. For instance, several sleeping tents were put up in AC in Banja Koviljača.¹²³ Nevertheless, a drop of the number of persons accommodated in AC was recorded in the period after the lifting of the state of emergency.¹²⁴

¹¹⁸ Pursuant to Articles 35 and 51 of the LAMP, the RS Government, at the CRM proposal, establishes one or more Asylum Centres, the internal organization and systematization of which is defined by the CRM. There are five Asylum Centres in the RS designated for accommodation of asylum seekers: in Krnjača, Banja Koviljača, Bogovađa, Tutin and Sjenica.

¹¹⁹ In the first six months, the BCHR team conducted 11 visits to AC in Banja Koviljača, 4 visits to AC in Krnjača, 3 visits to AC in Bogovađa and one visit to AC in Tutin and AC in Sjenica each. The number of visits is significantly lower due to the state of emergency lasting almost two months and the deterioration of the epidemiological situation even after its lifting.

¹²⁰ See more in *Right to Asylum, January–March 2020*, pp. 28-30

¹²¹ For details about the operation of all five AC in the RS see *Right to Asylum in the Republic of Serbia 2019*, pp. 69-80.

¹²² According to the information received from the BCHR clients of 20 March 2020, some asylum seekers slept on the floors for lack of space in the rooms.

¹²³ Information obtained from AC management in Banja Koviljača. According to the latest information obtained by the BCHR, four rub halls are used. Available in the BCHR archives.

¹²⁴ In AC in Krnjača, the capacity of which is 1,000 places, 928 persons were accommodated in March, 918 in April, 841 in May and 627 persons in June. In AC in Banja Koviljača (capacity 120 places), 328 persons were accommodated in March, 111 and 112 persons in April and May respectively and 68 persons in June. In AC in Bogovađa (capacity 200 places), 261 persons were accommodated in March, April and May, and this number dropped to 84 in June. In AC in Tutin (capacity 139 places), 225 persons were accommodated in March and April, 209 in May and 109 persons in June. In AC in Sjenica (capacity 250 places), 382 persons were accommodated in March and April, 428 in May and 69 in June. In view of these figures, the number of persons accommodated in AC started to drop significantly after the lifting of the state of emergency which is related to the annulment of the Decision and the termination of the ban on

Overcrowding adversely affected hygiene in the AC, and most of the grievances that the BCHR team received came from asylum seekers in AC in Krnjača who complained about the lack of hygiene items. We are conveying the impressions of one asylum seeker for the purpose of the report:

When you look at this camp from the outside, it looks well; when you look at the facilities from the outside, it is clean. But when you enter into it, it looks like a prison. Currently, 17 families live in our barrack. For example, eight to ten persons live in a small room. In two days we received nothing but an old blanket and dirty linen. We were promised pillows, but got none. We were given soap, shampoo and toothpaste, all with the expiry date passed. We did not receive gloves. You see, 17 families now share two bathrooms – a male and a female one. It is difficult to stay protected and keep the two meter distance between people in such circumstances.¹²⁵

Overcrowding in the AC during the state of emergency gave rise to tensions among the asylum seekers and sometimes led to fights and minor incidents¹²⁶, that were luckily resolved without serious consequences. It may be assumed that the cause of this lies largely in dissatisfaction of the residents caused by their impossibility to move freely¹²⁷ and isolation. All the above negatively affected their mental health, so the need for psychosocial support was higher than is usually the case.¹²⁸

During the state of emergency, the BCHR clients complained of monotonous meals in AC¹²⁹, based on bread and canned food. They complained in particular about the access to health care and COVID-19 related protective measures, insufficient medicines, disinfectants, masks and gloves.¹³⁰

movement. Consequently, those persons who intended to continue their journey to the EU used this opportunity to leave AC they were accommodated in, and the RS territory probably.

¹²⁵ „Migrants and pandemic: 17 families and two bathrooms“, *Radio Slobodna Evropa* (30 March), available at: <https://bit.ly/2PrRutX>.

¹²⁶ Information obtained over the telephone from the BCHR clients in March 2020. Data in the BCHR archives.

¹²⁷ Available in the BCHR archives. Mental health of one client from Syria was gravely impaired because of the restriction of movement, of which he regularly informed the BCHR legal officers.

¹²⁸ E.g., the BCHR clients and other asylum seekers were provided psychological assistance in AC in Banja Koviljača by the psychologists of NGO *Psychosocial Innovation Network* (PIN). Sessions were held over the telephone during the state of emergency.

¹²⁹ According to the statements of asylum seekers in AC in Bogovađa, food during the state of emergency was monotonous, consisting of dry bread and canned food, and fruit sometimes. E.g., Turkish Agency for Cooperation and Coordination (TIKA) donated the necessary provisions for the persons accommodated in AC in Krnjača. See more: <https://bit.ly/3gxXtcA>.

¹³⁰ See more in *Right to Asylum, January–March 2020*, pp. 38.

Also, some asylum seekers feared infection due to the new circumstances and overcrowding. According to their statements, no COVID-19 testing were performed in AC.¹³¹

In the context of health care, the CRM informed¹³² the BCHR legal team that there had been no recorded cases of COVID-19 infection among the migrants and asylum seekers in AC and RTC in the period March – end May, and that 27 of them had been tested.¹³³ The decision on testing was passed by the doctor engaged in the facility. According to the CRM, medical teams consisting of doctors, medical technicians and psychologists in some of these, were regularly present in each AC and RTC on work days in one or two shifts, or every other day, depending on the number of residents and individual needs.¹³⁴

Also, according to the CRM,¹³⁵ all the AC and RTC residents in direct contact with the tested persons stayed in isolation “until finalization of the testing “. With respect to the new arrivals in AC and RTC after the declaration of COVID-19 pandemic, the CRM said they stayed in the 14-day isolation in the “designated areas, in line with general regulations and recommendations “. This assertion of the CRM is not clear enough, since it does neither provide more concrete information on the location of self-isolation and on the type of “areas“ where the new arrivals were placed nor on the organization of their stay in them. This is particularly questionable bearing in mind the above-mentioned overcrowding in AC and RTC that created problems during the state of emergency.

Pursuant to the data received from the CRM, a Directive aimed at prevention of spreading of the infection and breakout of the epidemic was passed to take additional and special measures in

¹³¹ *Ibid.*

¹³² On 18 June, the BCHR legal team sent a request for access to information of public importance intending to obtain information about the situation in AC and RTC during the state of emergency and after its lifting, with a special focus on access to health care and measures to prevent the spread of COVID-19 among the asylum seekers and migrants. The CRM response no. 019-2282/1-2020 of 3 July 2020.

¹³³ Out of the 27 tested migrants and asylum seekers, 9 were accommodated in RTC Kikinda, 5 in AC Krnjača, 4 in RTC Obrenovac, 3 in RTC Pirot, 1 in RTC Divljana. Also, according to the information available to the CRM, 5 more persons were tested in Miksalište. All the persons tested were negative to COVID-19.

¹³⁴ Each workday in the period from 15 March to 6 May, one doctor and one nurse were present in AC in Banja Koviljača from 8 to 14h; in AC in Tutin from 9 to 15h; and in AC in Sjenica from 8 to 14h. In the period from 15 March to 15 May, in AC in Bogovađa only one nurse worked from 9 to 13h on work days, and the medical team was strengthened with one doctor after that period (information received from the AC management in June 2020 by telephone. As to AC in Krnjača, according to the CRM, 5 health workers (two doctors, two nurses and one psychologist) were present from 7 to 18h (psychologist only during the mornings) in the period 15 March to 14 April. As of 15 April, until 6 May, 3 health workers (a doctor, a psychologist and a nurse) were present during the same hours. According to the information obtained from the CRM following a request for information of public importance, the medical teams deployed in AC and RTC were engaged by the Ministry of Health, except in Miratovac where the Preševo Health Centre engaged doctors with the CRM funding and at the approval of the Ministry of Health.

¹³⁵ The CRM reply to the request for access to information of public importance no. 019-2282/1-2020 of 3 July 2020.

all AC and RTC.¹³⁶ According to the additional information, in the period March – end May, the competent public health institute conducted hygiene and epidemiological supervision in all the facilities, and the protective equipment that existed “in sufficient quantities“ was distributed to all the asylum seekers and migrants as well as to staff in AC and RTC.¹³⁷ Some asylum seekers and migrants organised sewing of masks as part of their occupational and recreation workshops, which the public saw as a solidarity initiative and a way to endure life in quarantine.¹³⁸

Since strict measures related to restriction of movement and prevention of the infection spread were in effect during the reporting period, UNHCR and the organizations providing free legal aid to asylum seekers and migrants were not able to visit AC and RTC. In order to disseminate important information after the declaration of the state of emergency, the BCHR team developed information leaflets¹³⁹ and established a micro website *Let's Stop the Pandemic! (Zaustavimo pandemiju!)*¹⁴⁰ with the instructions on personal hygiene in line with the recommendations of the World Health Organization (WHO). The information was available on the languages of asylum seekers and distributed electronically and via social networks. In this way, the asylum seekers could obtain regular information about the state of emergency and the current epidemiological measures. They found the said information very useful, bearing in mind that the competent state authorities (MoI¹⁴¹, MoH, etc.) did not inform the public and this category of foreigners sufficiently about the legal framework applicable nor on the measures taken during the state of emergency.¹⁴² The exception was the CRM Internet page. However, all the available data related to the legal framework exist only in Serbian.¹⁴³

¹³⁶ *Ibid.* According to the information obtained from the CRM, these measures included cleaning of joint spaces, airing, disinfection of hands before and after meals, involvement of migrants and asylum seekers into preventive measures, regular information sharing meetings, etc.

¹³⁷ *Ibid.* Protective equipment (masks, gloves, alcohol and other disinfectants) collected by the CRM and IOM, as well as donated by international organizations UNHCR and UNICEF.

¹³⁸ See *Right to Asylum, January–March 2020*, pp. 38 and Section 6.

¹³⁹ *Ograničenje kretanja tražilaca azila tokom trajanja vanrednog stanja i pandemije korona virusa*, BCHR (23. March 2020), available at: <https://bit.ly/2XALTFV>.

¹⁴⁰ *Zaustavimo pandemiju!* BCHR, available at: <https://bit.ly/39ZppDJ>.

¹⁴¹ MoI does not inform refugees about their rights and obligations in the asylum procedure as yet, and we noted that in the past as well. See Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018*, p. 21, available at: <https://bit.ly/2DJpN1R>. The Asylum Office is mentioned by name only once on the MoI web site, and in the list in the section entitled “Organizational Units of the Police and Police Administration Directorate.” There are no contacts, and the problem persists that reports of the operation of the Asylum Office and the information for asylum seekers are not published on it. During the COVID-19 epidemic, the home page of MoI displayed a telephone no. for information (011/2741-580) and mail (infokoronavirus@mup.gov.rs), related to the epidemic in the part that the MoI has a mandate for. Still, these contacts are not posted in the English section, and the only topical information during the state of emergency, that was published in English, referred to validity of documents.

¹⁴² Pursuant to Article 56, para. 2 of the LATP, a foreigner who has expressed his/her intention to seek asylum in the RS, as well as the Applicant, shall have the right to be informed about his/her rights and obligations throughout the asylum procedure.

¹⁴³ See more in *Right to Asylum, January–March 2020*, pp. 42.

3.1.3. Conclusion

Almost 9,000 persons were discriminated by actions of the RS Government during the state of emergency. Refugees, migrants and asylum seekers were deprived of liberty without any possibility of receiving legal protection and contacting the judiciary to appeal collective decisions on deprivation of liberty. Even though the measures of restriction of movement have been abolished by the time of this report, it is worth noting that any future measures impacting asylum seekers and related to the pandemic response, need to be reviewed to assess their legality, usefulness and effectiveness. The measures adopted must not be discriminatory. In other words, the asylum seekers should not be placed into a more unfavourable position than that of the other categories of foreigners and RS citizens, without any health-related reasons warranting that.

The living conditions in some AC and RTC were unsatisfactory and below the level of the required accommodation standards. The issue of overcrowding predominated during the state of emergency. The number of asylum seekers and migrants dropped significantly after it was lifted.¹⁴⁴ This, however, does not mean that overcrowding was completely resolved because the risk of COVID-19 pandemic persists.

Looking at the experiences of other countries, solutions to certain accommodation challenges, also faced by the RS, may be found. In Belgium, identification and accommodation of the vulnerable categories of asylum seekers was resolved in a COVID-19 response plan within a reception network whereby they were placed in reception centres, transferred to individual accommodation and other facilities of grouped in separated areas of the centres. Germany ensured reception of new arrivals into the accommodation centres only after a two-week quarantine. Sweden reduced overcrowding in reception centres while Denmark introduced multiple distribution of meals in order to reduce gathering of the number of persons in enclosed spaces.

Instead of implementing the best practices of other countries, the RS passed hasty decisions to close several active RTC, thus reducing the accommodation capacities, which would prove very useful in case of need. If their closure is needed for justified reasons, the CRM must immediately find other solutions to overcrowding. Instead of transferring the beneficiaries from one of the existing AC or RTC to another, the potential new facilities providing minimum statutory standards¹⁴⁵, could help ease overcrowding and consequently spread of the infection.

Also, the CRM should continue investing efforts to prevent and combat the spread of COVID-19 in AC and RTC. To do this, it needs continued support of the competent authorities, the Ministry of Health in the first place. It would be good that the RS Government and the CRM use the period

¹⁴⁴ *Serbia Update May 2020*, UNHCR (5 Jun 2020), available at: <https://bit.ly/2DhMAxb>.

¹⁴⁵ Pursuant to Article 50, para. 10 of the LATP, material reception conditions can be provided at the Asylum Centre or at other facility designated for such purposes - hotels, resorts, other suitable facilities.

ahead to revisit the decision to adapt one facility for accommodation of extremely vulnerable groups in case of a new sudden influx of asylum seekers and migrants, where they would implement stricter health care measures.¹⁴⁶ Other state authorities and international organisations should also continue providing humanitarian and medical assistance and secure sufficient quantities of protective material and equipment to be distributed in all the facilities accommodating asylum seekers and migrants.

It is paramount that the competent authorities, notably the MoI and the CRM, respect the rights of asylum seekers to information. The asylum seekers should be given timely and continued assistance and information about all the developments related to their rights and obligations and the epidemiological measures in the languages they understand. These information must be available in all AC and RTC, as well as on the Internet pages of the above mentioned authorities.

3.2. Violence against Unaccompanied Children in the AC in Bogovada

In mid-May, the BCHR team was contacted by an NGO Group for Children and Youth - Indigo (hereinafter: Indigo) informing about a violent incident that happened in Bogovada. The incident happened in the night between 10 and 11 May 2020 when the staff of *Dekapolit* – the company securing safety in this AC –attacked the unaccompanied children in this centre verbally and physically. One of the boys who witnessed the violence managed to record the incident on his mobile phone and send the recording to Indigo. The recording that the BCHR lawyers had an insight to, shows an employee of the security company hitting a child with his fist and a baton-like object on the body and head shouting: “How much beating do you need?!” The other recording shows the same person threatening, shouting and swinging a chair at the children sitting on a bed at one point, with his colleague standing by and observing the incident without even trying to preempt a potential escalation. Threats, intimidation and physical violence perpetrated by the security company staff are also visible on other recordings.

Based on these recordings, the BCHR raised criminal charges¹⁴⁷ with the Basic Public Prosecutor’s Office in Ub against two security company employees shown on the recordings. The Protector of Citizens and the CRM were informed about the incidents.¹⁴⁸ UNHCR representatives

¹⁴⁶ In this regard, the CRM should respond more decisively and not to allow risk of spread of the disease during the inconclusive negotiations with the local population, but rather clearly explain to the local population the reasons for organized reception.

¹⁴⁷ Reg. no.-668/8, 13 May. Available in the BCHR archives.

¹⁴⁸ The Protector of Citizens was contacted by organizations Indigo and the BCHR, and the BCHR informed also the CRM. Available in electronic form in the BCHR archives.

visited¹⁴⁹ AC in Bogovađa and talked to the guardian, field worker, the CRM representatives and the manager of Red Cross which owns the facility.

3.2.1. Threats to an Unaccompanied Child for Reporting Violence

Immediately after the competent authorities were informed about the incident, the boy who recorded abuse reported that one of the security staff from the recording tried to intimidate him for reporting violence. In addition, he threatened the boy that he would confiscate his mobile phone and throw it away, should this happen again. The security staff had, previously and in the presence of two more persons, inspected the material on the boy's phone in an attempt to find the problematic shots showing abuse. However, the boy had erased them in the meantime. The same person then showed the boy the recording of abuse on his own phone, saying he got them from the police. Having learned about the attempt to intimidate the boy, the BCHR legal team sent a letter to the MoI Internal Affairs Sector aiming to point to the potential deficiencies in the work of the police in this concrete case.

The state is obliged to adequately investigate each credible assertion that ill-treatment had taken place, and ensure that no one should be exposed to negative treatment or other adverse consequences for reporting it. The BCHR supplemented the criminal charges raised with the Basic Public Prosecutor's Office in Ub,¹⁵⁰ and Indigo informed the Protector of Citizens about it.

It is important to note that the incident took place during the restriction of movement of asylum seekers and migrants based on the Order of the Ministry of Health. In this way, the unaccompanied and separated children could not voluntarily leave the AC in Bogovađa. Following the annulment of the Order, the children who were victims and witnesses of the abuse started to leave the AC, heading to the RS borders and intending to cross to the territories of the neighbouring countries on their way to the EU.

The team of the Ombudsman and the forensic medicine expert visited the AC in Bogovađa on 15 May, whereafter the children confirmed that the situation had calmed down. In the procedure of control of legality and regularity of work of the CRM, the AC in Bogovađa and the Inter-Municipal Social Welfare Centre for the municipalities of Ljig, Lajkovac and Mionica (hereinafter: Inter-Municipal Centre), on 23 May the Ombudsman issued recommendations¹⁵¹ for improvement of operation of these authorities in this and the similar situations in the future. The procedure established deficiencies in the operation of AC in Bogovađa and the competent Inter-Municipal

¹⁴⁹ UNHCR representatives visited AC in Bogovađa on 12 and 19 July 2020.

¹⁵⁰ Reg. no.-668-2/8. Available in the BCHR archives.

¹⁵¹ Conclusions and recommendations of the Protector of Citizens, Protector of Citizens, 2020, available at <https://bit.ly/33AluvF>.

Centre for failure to take adequate actions when they learned of the physical violence against children under the guardianship of this centre, and for not having informed the police and/or the competent prosecutor's office.¹⁵² On the basis of the findings, the Ombudsman recommended that the AC Bogovađa and the Inter-Municipal Centre inform the MoI about what they incident and embrace this practice in any potential situations in the future (recommendations I and II). The CRM is to supervise treatment in AC in Bogovađa, and the Ministry of Labour, Employment, Veteran and Social Affairs in the competent social welfare centre. Should they ascertain deficiencies in their operation, they are to take adequate measures (recommendations IV and V). Also, AC in Bogovađa should prevent contact between the abused children and the security staff who took part in the incident until termination of the procedures for establishing their responsibility (recommendation III). It is particularly important that the CRM develop instruction for management of the centres in cases of violence or abuse of unaccompanied children (recommendation IX). In line with the official notes of the security company employee which states that police officers were present in the AC that night, the MoI was recommended to establish whether the police intervened and, if the statement is credible, whether the police knew of the violence against children (recommendation VI).

According to the information received by the BCHR on 21 May, the security company employee who was recorded physically punishing the children was discharged of from duty securing the AC in Bogovađa before this date. It remains unknown whether he was redeployed or permanently discharged from conducting similar duties. In the meantime and until 21 May, all the children from the room no 20, where the incident happened, left the AC and the Inter-Municipal Centre did not file criminal charges or inform in any way the police or the prosecutor's office about the incident.

3.2.2. Conclusion

Though prohibition of ill-treatment and torture is absolute, the group in this case may be considered vulnerable on multiple basis. Victims of violence were children who, in addition to being vulnerable on the account of their age, also reside in the RS without parents or guardians, and so the only available protection is the one they should be getting from the system. Many unaccompanied and separated children come from the war-affected territories and extremely violent societies and are deeply traumatised by their experiences in the countries of origin.

It is important to note that securing facilities, such as an AC, implies execution of public authority entrusted to the incumbents by the state. *Ipsa facto*, the state must pay attention not to entrust such authority to unprofessional and violent individuals, and in the facilities for

¹⁵² The BCHR did it by raising criminal charges.

accommodation of unaccompanied and separated children in particular. In this regard, we note that the Committee for the Rights of the Child¹⁵³ had in the past noted the ill practice of the RS to accommodate unaccompanied and separated children under 16 in inadequate conditions in AC, without trained staff to take care of them. The recommendations that the RS received have not yet been fulfilled. Bearing in mind the above, the CRM decision to designate Bogovađa for accommodation of unaccompanied and separated children is not a good solution.¹⁵⁴

Though the BCHR issued a press release on 19 May¹⁵⁵ about this incident, the entire case hit the media only a month later, when the problematic recordings appeared on *YouTube*. The *NI TV* carried the above press release¹⁵⁶ on its Internet page the comment of BCHR in the daily news¹⁵⁷. Following the broadcast of the recording, the CRM issued a press release strongly condemning violence and stating its staff had been informed of it a day it had occurred and that the perpetrator had been dismissed.¹⁵⁸ Also on the same day, the Ministry of Labour, Employment, Veteran and Social Affairs called on the CRM to investigate the case and send the information collected. In addition, the Ministry appealed on the authorities to respond, without going into details as to whether the bodies of this Ministry had initiated any procedure or, if they had, what was the result of it.¹⁵⁹

3.3. Stay in the Shelter for Foreigners in Padinska Skela

The Shelter for Foreigners (hereinafter: the Shelter) is a facility for accommodation of foreigners not allowed entry into the RS or who have been issued a decision on expulsion, removal from the country or deportation, but who cannot be removed immediately.¹⁶⁰ The competent authority – border police – refers them to this facility under heightened police vigilance, in line with the law.¹⁶¹ The Shelter is within the mandate of MoI.

¹⁵³ Concluding Observations on the Combined Second and Third Periodic Reports of Serbia, Committee on the Rights of the Child, UN. Doc. CRC/C/SRB/CO/2-3 (7 March 2017), pp. 56(b) and 57(b).

¹⁵⁴ See more in *Right to Asylum, January–March 2020*, pp. 28-29.

¹⁵⁵ Press release –Violence against unaccompanied children in the Asylum Centre Bogovađa, BCHR, 19 May, available at: <https://bit.ly/3idK1ee>.

¹⁵⁶ “Security beat migrants in Bogovađa, Belgrade Centre raises criminal charges”, *NI* (19 June), available at: <https://bit.ly/33zdafZ>. RTS online informed about the recordings and the incident, as did, BBC in Serbian, *Radio Free Europe*, *Telegraf*, *Mondo* and others.

¹⁵⁷ “Stefanović: Less than 200 persons granted asylum in Serbia in 10 years”, *NI* (19 June), available at: <https://bit.ly/33FV8sa>.

¹⁵⁸ „Commissariat: Employee who hit an underage migrant dismissed“, *NI* (19 June), available at: <https://bit.ly/3isgXjt>.

¹⁵⁹ Available at: <https://bit.ly/3gB9NJ4>.

¹⁶⁰ Article 3, para. 1, Item 28 of the FL.

¹⁶¹ Article 87 of the FL.

The Shelter may accommodate foreigners and asylum seekers, and the decision on it is passed by the Asylum Office as well as the regional police administrations and the border police. Pursuant to LATP, asylum seekers may be referred to the Shelter in order to establish their identity or citizenship, key facts, evidence and circumstances that their asylum application is based on and which cannot be established without restricting their movement. Also, the Asylum Office may order asylum seekers to stay in the Shelter to ensure their presence in the asylum procedures, when it may reasonably be assumed that he/she applied for asylum in order to avoid deportation, as well as in order to protect the security and the public order of the RS. Furthermore, asylum seekers may stay in the Shelter until a decision in the asylum procedure is made on their rights to enter the territory of the RS.

3.3.1. Material Conditions of Reception

With respect to the pre-COVID-19 pandemic and the declaration of the state of emergency, the material reception conditions in the shelter in Padinska remained unchanged relative to 2019.¹⁶² However, since mid-March 2020, significant changes took place with respect to treatment of foreigners accommodated in the Shelter. It was when the state of emergency was declared that more restrictive measures of access to the Shelter were introduced. The management of the facility procured two mobile phones available to all the persons accommodated therein, and the works on rehabilitation of the complex resumed.¹⁶³

3.3.1.1. Health Care

Health care workers are still not permanently present in the Shelter. According to the information obtained in a meeting with the management, not a single case of infection among the beneficiaries or staff were recorded during the state of emergency. All the new arriving foreigners were placed into quarantine, and they were forbidden to leave the facility for 14 and 28 days respectively, upon admission into the Shelter. In case of need, the staff escorted foreigners to health care institutions.¹⁶⁴

¹⁶² See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 83-86.

¹⁶³ Special entrance made in front of the compound, and the entrance into the Shelter was reconstructed.

¹⁶⁴ Information obtained from the Shelter management on 16 June 2020. Available in the BCHR archives.

3.3.1.2. Communication with the Outside World

Foreigners are entitled to daily telephone calls at their own expense. Telephone calls take place from two mobile phones secured by the management. This type of communication functions on the principle of credit to one of the two phones. A foreigner who pays the credit may use the phone up to the amount of impulses paid for. Police officers in the Shelter add the credit twice a week (Monday and Thursday) with the money collected from the foreigners.¹⁶⁵ This represents a change from the previous months when the foreigners were not allowed to use the telephone booth due to lack of “halo” cards.¹⁶⁶ In case of need, foreigners may contact their legal representatives also on the Shelter telephone.

Visits to foreigners were not allowed during the state of emergency. Consequently, the providers of legal assistance were not allowed access to the Shelter.¹⁶⁷ An asylum seeker whom the BCHR is representing in the asylum procedure told his legal representative he had no complaints to the accommodation conditions in the Shelter.¹⁶⁸

3.3.1.3. Interpretation

The problem related to the provision of interpretation services persisted in the first half of 2020. Namely, as in the previous period, there were no interpreters for the languages of the foreigners accommodated in the Shelter. They only occasionally come to the Shelter, and only in cases of asylum-related procedures when an interpreter must be engaged by the MoI or during legal aid providers’ visits by their lawyers or representatives of NGOs providing free legal assistance. This practice cannot be assessed as positive for several reasons. First, the foreigners accommodated in the Shelter thus remain deprived of answers to numerous legal questions about their stay, the legal assistance, daily communication and needs. This situation was somewhat eased on posting of the translation of the House Rules and Regulations¹⁶⁹ in eight languages: Arabic, English, French, Macedonian, German, Russian, Spanish and Urdu¹⁷⁰ on the bulletin board at the Shelter.

¹⁶⁵ *Ibid.*

¹⁶⁶ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 86-87.

¹⁶⁷ Bearing in mind that the Asylum Office did not conduct procedures in the Shelter, the procedural rights of foreigners in any of these during the state of emergency are not threatened.

¹⁶⁸ Information obtained in conversation with the asylum seeker – Syrian national - on 27 May 2020. So, in the period following the lifting of the state of emergency. The BCHR legal team was not called by any of the foreigners accommodated in the Shelter during the state of emergency. Information available in the BCHR archives.

¹⁶⁹ *Official Gazette of the RS*, No. 42/2018.

¹⁷⁰ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 84.

3.3.2. Conclusion

Relative to 2019, some aspects of the situation in the Shelter remained unchanged, others deteriorated, and still others improved in the first half of this year.

The situation remains unchanged with respect to: unavailability of interpretation services, absence of medical staff in the Shelter and treatment of foreigners by the staff, as well as with respect to unimpeded access of legal aid providers to the foreigners with the exception during the state of emergency. Deterioration during the state of emergency was reflected in that the foreigners were not allowed visits. No one was allowed to visit them – neither their relatives and friends, nor legal assistance providers - during that time. The situation improved with respect to the possibility to communicate with the outer world, with the management securing two mobile phones for the foreigners to use them during their stay in the Shelter. Reconstruction of the facility was resumed, and physical access to the complex was improved.

Related to that, the practice of treatment of foreigners accommodated in the Shelter needs to be changed. Permanent presence of doctors during certain hours and the presence of interpreters should be ensured. Also, in case of any future emergency measures to be taken to combat spread of COVID-19, the foreigners should be allowed unimpeded access to legal aid providers, particularly in cases disputing the basis of stay in the Shelter.

4. Integration

According to the LATP, integration includes inclusion of persons granted the right to asylum in social, cultural and economic life of the RS, and their naturalisation.¹⁷¹ The LATP also sets out that the RS shall, commensurately with its capacities, ensure conditions for integration. The BCHR believes that, in addition to refugees, asylum seekers should also be allowed access to and exercise of the rights significantly helping them adapt to the social life in the RS.¹⁷² With respect to that, the right to work, education and health care are of particular importance.¹⁷³

In addition to the LATP, two decrees are relevant to integration – Decree on the Manner of Inclusion into the Social, Cultural and Economic Life of Persons Granted the Right to Asylum (hereinafter: Integration Decree)¹⁷⁴ and the Decree on Criteria for Establishment of Priorities in Accommodation of Persons Granted the Right to Refugee or Subsidiary Protection and the Conditions of Use of Housing for Temporary Accommodation (hereinafter: Accommodation Decree).¹⁷⁵

In view of the COVID-19 related state of emergency in the RS from 15 March to 6 May 2020, the BCHR integration team activities were limited in the reporting period. Concretely, most of them focused on maintaining contacts, providing information and support primarily to privately accommodated refugees and asylum seekers on the phone, mobile applications and social networks. The competent institutions suspended or reduced to the indispensable minimum their activities temporarily, particularly those who activities are founded on direct contact with the clients.

Generally speaking, the state of emergency and the overall prevailing epidemiologic situation during the reporting period had an adverse effect on full enjoyment of numerous rights of asylum seekers and refugees in the RS, and in particular to access to the labour market and stay outside the accommodation facilities and at private addresses. Therefore, for the purpose of this report, the BCHR integration team conducted a short survey involving all its clients¹⁷⁶ with a view to establishing the extent to which they faced obstacles in exercise of the above-mentioned rights.

¹⁷¹ Article 71 of the LATP.

¹⁷² See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 149 and 151.

¹⁷³ Pursuant to Article 48 of the LATP, asylum seekers in the RS have the right to residence, material reception conditions, freedom of movement in the RS, social assistance, healthcare, primary and secondary education, information and legal aid, freedom of religion and access to the labour market.

¹⁷⁴ *Official Gazette of the RS*, No. 101/16 and 56/18.

¹⁷⁵ *Official Gazette of the RS*, No. 63/15 and 56/18.

¹⁷⁶ Asylum seekers (persons in the asylum procedure) and refugees (persons whose asylum applications were upheld) in the RS were among them. All of them are privately accommodated.

The findings were used as basis for several general recommendations related to improvement of their situation in future.

4.1. Right to Accommodation and Challenges in Practice

Pursuant to the L ATP,¹⁷⁷ the persons granted the right to asylum receive assistance in accommodation, commensurate with the capacities of the RS. These persons, assisted by the CRM, are provided housing for temporary use or financial assistance for temporary accommodation for a maximum one year since the receipt of the final decision granting them the right to asylum. The assistance process is governed by the Accommodation Decree.¹⁷⁸

In the BCHR experience, only financial assistance is ensured in practice¹⁷⁹, as the CRM does not have the required housing for temporary use. If a refugee does not generate any income or if the income does not exceed 20% of minimum salary in the RS for the previous month per family member, the level of assistance is established in the amount of minimum salary in the RS for the previous month.¹⁸⁰ The calculated sum is the same regardless of whether it is extended to a single person or a large family. Oftentimes it does not suffice to pay apartment rent and the utilities, especially in bigger cities or in case of larger families.

An important problem in this respect is the number of documents required to accompany the request for assistance sent to the CRM. These include also that each family member of age must submit a certified statement that he/she does not generate any regular or temporary earnings from employment, entrepreneurship, right to movable property and real estate. The statement is certified by a notary public in the presence of a sworn-to-court interpreter for the language of the applicant. According to the BCHR experience, this represents a big challenge having in mind that, in such cases, the applicants must often organize travel to or from the town of residence. Furthermore, the costs of the services of sworn-to-court interpreters are unreasonably high.¹⁸¹

In addition, the applicants must report and register at the National Employment Service (NES) in order to obtain an unemployment certificate. The problems here are similar – the NES branch office is often in another town, the staff at the bureau and /or refugees speak only their mother tongue, and the form to be filled in is in Cyrillic alphabet.

¹⁷⁷ Article 61, para. 2 of the L ATP.

¹⁷⁸ *Official Gazette of the RS*, No. 63/15.

¹⁷⁹ Article 10, para. 1, Item 1 of the Accommodation Decree.

¹⁸⁰ Assistance amounts to approx. RSD 30,000.

¹⁸¹ Services of the sworn-to-court interpreter for verification of statement cost approx. RSD 6,000.

When refugees are issued a decision on the CRM financial assistance, they are given a 30-day deadline to move out of the AC they lived in. In practice, however, landlords request a down payment in addition to the rent for the first month, and so the total costs of the move are often higher than the sum that the refugees have. Thus, the delay in the entire process of the move from AC.¹⁸² An additional challenge in identification of suitable housing are mistrust of landlords, the prejudices about refugees and the language barrier.

4.1.1. Problems in Exercising the Right to Accommodation in the Context of COVID-19 Pandemic

During the state of emergency, the privately accommodated BCHR received regular information on the restriction of movements and the duration of curfew in Serbian and English. This information was shared by the BCHR team via *Viber* and *WhatsApp* text messages.¹⁸³ In April, they also received electronic brochures developed by the BCHR¹⁸⁴ with a view to informing them on preventive measures in a simple way.¹⁸⁵

The majority of them contacted the BCHR integration team during this period, as they lost their jobs and needed primarily financial assistance to cover the rent and utility bills, but also to satisfy their basic necessities.¹⁸⁶ Notably, they were not only persons granted refugee status or subsidiary protection, but also asylum seekers who were employed and living outside AC. In this period, as well as after the lifting of the state of emergency, the BCHR submitted 19 requests for financial aid in respect of 29 persons to the UNHCR.¹⁸⁷

¹⁸² In these situations, the BCHR assists their clients in applying for UNHCR cash grants. For the purpose of applying for UNHCR cash grants, a form is filled in including the reasons that an individual or a family is in need of assistance.

¹⁸³ The BCHR team assisted them once a week, most often and that before the weekend so that they would be able to go shopping for food or conduct other business before the start of curfew.

¹⁸⁴ Zaustavimo pandemiju! BCHR, available at: <http://www.bgcentar.org.rs/lifleti-zaustavimo-pandemiju-na-srpskom-engleskom-arapskom-i-persijskom-jeziku/>.

¹⁸⁵ Information on the measures included in the brochures are universal and based on current recommendations of the World Health Organization: <https://www.who.int/> and the Centre for Disease Control and Prevention: <https://www.zdravlje.org.rs/index.php/lat/izvestaji/Centre-za-kontrolu-i-prevenciju-bolesti>.

¹⁸⁶ Families in which the adults were laid off and with no possibility to provide the basic livelihood of their children, let alone apartment rent, were in a particularly difficult situation.

¹⁸⁷ 19 applications were submitted for 5 families and 14 individuals.

4.1.2. Other Challenges – Learning Serbian¹⁸⁸

One of the key factors contributing to a more efficient and successful social integration is knowledge of the language. Having been granted the right to asylum, refugees must attend Serbian language classes.¹⁸⁹ If they fail to register for them with the CRM within 15 days from the date of the effective decision granting them the right to asylum, they lose financial assistance for temporary accommodation.¹⁹⁰ They may also lose the right to assistance when they do not attend the language classes regularly or drop out without a reasonable justification.

The procedure for involvement into the Serbian language learning programme is governed by the Decree. The CRM is in charge of organizing the classes no later than two months of the validity of the decision granting asylum or subsidiary protection.¹⁹¹ However, due to the declaration of COVID-19 pandemic and the state of emergency, the BCHR clients granted asylum in February could not start the classes until the end of the reporting period. Furthermore, due to the unfavorable epidemiological situation it is uncertain when this would happen. One of the safest ways to organize the lessons in *on line*. However, this also raises the question as to the objective feasibility and acceptable to all taking into account technical requirements.¹⁹² In addition, it is unclear whether the persons who have not registered for the lessons will lose the right to financial assistance.

¹⁸⁸ In addition to the CRM, UNHCR also provides classes of Serbian. The asylum seekers who are not accommodated in AC during the asylum procedure i.e., if they reside at private addresses, may attend Serbian language classes organized by UNHCR staff. Refugees and persons granted asylum have the obligation to attend 300 Serbian language classes where after they may request additional classes if needed. Additional classes are provided by the CRM or UNHCR.

¹⁸⁹ Article 59, para. 3 of the LATP.

¹⁹⁰ Article 59, para. 4 of the LATP.

¹⁹¹ Article 4, para. 7 of the Integration Decree.

¹⁹² Absence of good Internet connection or adequate equipment to follow the classes.

4.2. Challenges Related to Exercising the Right to Work

LATP guarantees the right to work to the persons granted asylum¹⁹³, as well as persons seeking asylum in line with the regulations governing employment of foreigners.¹⁹⁴ The labour and employment-related rights for this group of foreigners are governed by the Law on Employment of Foreigners (LEF)¹⁹⁵ which defines special categories, conditions, and the procedure of their employment in the RS.¹⁹⁶

The LEF provides for issuance of a personal work permits,¹⁹⁷ *inter alia*, to the persons granted the right to asylum, as well as to asylum seekers, but under certain conditions. While refugees or persons granted subsidiary protection have the right to request issuance of work permits immediately after being granted the status, asylum seekers may file such a request only if nine months have elapsed since the request and no final decision was made on their asylum application.¹⁹⁸ However, in practice, asylum seekers often wait longer than nine months in order to acquire the right to file a request for a personal work permit, and consequently to access the labour market¹⁹⁹ which represents a challenge we have been raising also in previous reports.

The BCHR integration team has submitted 31 requests for personal work permits on behalf of their clients to the NES during the reporting period. Of them, 23 were approved.²⁰⁰ A drop in filing of the requests as well as in receipt of permits is evident, especially in May 2020 when only one request was submitted, and one personal work permit issued. This drop in the number of requests submitted and permits issued to the BCHR represented asylum seekers and refugees is understandable since the NES adapted its operation during the state of emergency to the measures aimed at preventing the breakout, spread and combating COVID-19²⁰¹ and that the Government

¹⁹³ Article 65 of the LATP.

¹⁹⁴ Article 57 of the LATP.

¹⁹⁵ *Official Gazette of the RS*, No. 128/14, 113/17, 50/18 and 31/19.

¹⁹⁶ With respect to asylum seekers, LEF recognizes two categories of foreigners – refugees as a group of foreigners whose right to asylum was recognized pursuant to asylum regulations (Article 2, para. 8 of the LEF), and persons from a special category of foreigners that includes asylum seekers, the persons granted temporary protection and the persons granted subsidiary protection (Article 2, para. 9 of the LEF).

¹⁹⁷ Article 11 of the LEF.

¹⁹⁸ Personal work permits that allow unrestricted employment, self-employment, and exercise of rights in case of unemployment (Article 12 of the LEF) differ from ordinary work permits as they are not linked to a concrete employer. In the case of persons granted the right to asylum, its validity is linked to the validity of identity cards. Asylum seekers, having fulfilled all the special conditions, are issued personal work permits for 6 months with the possibility of extension for as long as the person holds the status of an asylum seeker (Article 13 of the LEF).

¹⁹⁹ See more in *Right to Asylum in the Republic of Serbia 2019*, pp. 159-160.

²⁰⁰ BCHR Monthly Progress Reports for the months of February, March, April, May, June. UNHCR (2020).

²⁰¹ *Report on the Activities of the National Employment Service during the State of Emergency 16 March 2020 to 06 May 2020*, NES (7 May 2020), available at: <http://bit.ly/3gO9jPC>.

Decision²⁰² sets out that “a work permit issued to a foreigner, which has expired or will expire, will be considered valid during the state of emergency“.

The right to work remains one of the rights that refugees and asylum seekers in the RS find difficult to exercise. A cumbersome procedure of issuance of personal work permits, employers’ ignorance about the rights of refugees and migrants in the domain of employment, the high unemployment rate and the underdeveloped local market impede exercise of the right to work for this category of population. The state of emergency from 15 March to 6 May 2020, and the ensuing period additionally aggravated the already vulnerable position of refugees and asylum seekers regarding employment and economic empowerment. More will be said on this issue in continuation.

4.2.1. High Costs and Cumbersome Procedure of Issuance of Personal Work Permits

The Rulebook on Work Permits²⁰³ governs issuance and extension of work permits, the procedures of proving eligibility for work permits as well as the form and the content thereof.²⁰⁴ The procedure of issuance of work permits to asylum seekers and refugees has not proved efficient in practice, from the aspect of efficiency and cost-effectiveness. Not knowing the language and being unable to understand the relevant regulations, the clients depend on the BCHR assistance to verify the copies of personal documents and apply for the work permits, thus additionally prolonging the entire procedure. The acquisition of a certified copy of a personal document itself is time consuming and costly.²⁰⁵

One particularly contentious point in the procedure of issuance of personal work permits for privately accommodated refugees and asylum seekers is presentation of proof on payment of administrative taxes. According to the current price list of administrative taxes, issuance of the permit costs RSD 13,890²⁰⁶, in addition to tax for filing the request amounting to RSD 320.²⁰⁷ Such high costs are unreasonable and represent an additional challenge in exercise of the right to work by this vulnerable group.

²⁰² *Official Gazette of the RS*, No. 43/20.

²⁰³ *Official Gazette of the RS*, No. 63/18, 56/19.

²⁰⁴ If a person resides at a private address, in order to obtain a personal work permit he/she needs to submit a filled issuance request form, certified copy of an identity card, a photocopy of the certificate on foreigners’ registration number for employment, as well as evidence on payment of administrative tax. If a person resides in AC, instead of the evidence on payment of administrative tax, he/she must submit a certificate on accommodation in a collective centre issued by the CRM.

²⁰⁵ Certification of an identity card copy costs RSD 360 (tariff no. 10 Notary Public Tariff).

²⁰⁶ Tariff no. 205, Law on Republic Administrative Taxes.

²⁰⁷ Tariff no. 1 Law on Republic Administrative Taxes.

The Law on General Administrative Procedure (LGAP) provides for exemption from costs²⁰⁸ in cases when clients cannot afford them without affecting their minimum subsistence or that of their families or if that has been set out in ratified international agreement. However, in practice this type of exemption is applied only to persons currently accommodated in one of the AC or RTC. In most cases, the privately accommodated refugees and asylum seekers also cannot afford such costs related to issuance of personal work permits but need financial assistance.²⁰⁹

4.3. Survey on the Integration-Related Challenges in the First Half of 2020

In June 2020, the BCHR integration team conducted a survey on the challenges faced by its privately accommodated clients²¹⁰ during the state of emergency with a view to proposing recommendations to improve their situation in the future. The survey mostly focused on employment, financial aid and other segments relevant to the new circumstances including the way they received information on COVID-19 protective measures and restrictions of movement. The findings and the analysis of the survey are presented in continuation.

4.3.1. Analysis and Findings of the BCHR Survey

The BCHR conducted an *on line* survey²¹¹ completed by 30 persons including single persons and family members.²¹² It included ten questions, the first four of which strictly related to employment and relevant to the part of the survey related to work and employment.

Most of the privately accommodated BCHR clients who were employed before the declaration of the state of emergency lost their jobs during the curfew or continued working albeit at a drastically reduced level. Many of them work or have worked in catering which, due to the COVID-19 pandemic, suffered enormous losses at the national²¹³ and the global level.²¹⁴ Of the

²⁰⁸ Article 89 of the LGAP.

²⁰⁹ With regard to the BCHR clients, UNHCR generally provides cash grants to persons who are unable to cover the costs of issuance of personal work permits.

²¹⁰ Referring to refugees, persons granted asylum in the RS, as well as privately accommodated asylum seekers. Most of the respondents are refugees (20), but also asylum seekers (8), and the survey also targeted BCHR clients granted temporary stay on humanitarian grounds (2).

²¹¹ The survey was distributed online via *Viber* and *WhatsApp*.

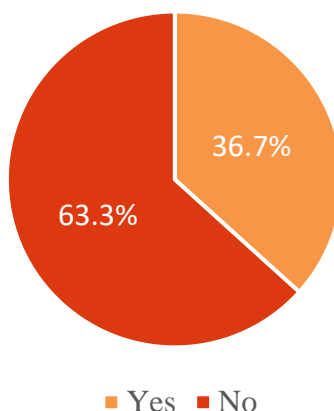
²¹² Asylum seekers and refugees from Iraq, Iran, Afghanistan, Libya, Syria, Pakistan, Kazakhstan, Sudan, Cameroon, Burundi and Cuba.

²¹³ „Some 200,000 people in Serbia lost their jobs during the state of emergency”, *Nova ekonomija* (13 May 2020), available at: <https://bit.ly/3119XZ1>.

²¹⁴ *Coronavirus: A visual guide to the economic impact*, BBC (30 April 2020), available at: <https://bbc.in/3gWSfaz>.

total number of respondents, more than 60% are unemployed²¹⁵ and the majority believes this to be the consequence of the state of emergency. The greatest challenges stated are decrease of income due to reduction of level of work, loss of jobs and impossibility to go to work due to suspension of public transport.

Are you employed?
30 answers



Most of the respondents answered positively to the question as to whether they are currently looking for a job. The challenges cited in the process of finding employment were that the employers prefer candidates holding Serbian citizenship and that they often have no feedback on the status of their job applications. Also, for fear from COVID-19 among the local population, the respondents providing services in catering or working as physiotherapists faced a drastic drop of the number of clients. Insufficient level of Serbian and mistrust of employers to asylum seekers was stated as an additional challenge.²¹⁶ Some of the clients faced distinct anti-migrant views of some employers who believe them to be guilty of the spread of the virus.

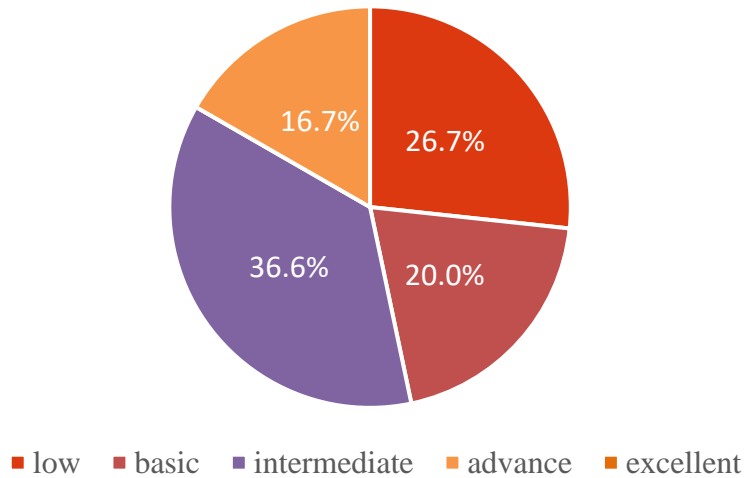
Access of refugees and asylum seekers to the labour market during and in the aftermath of the state of emergency proved to be very complex and hard to achieve. Many BCHR clients faced challenges related to exercising the right to work since the measures introduced during the state of emergency affected the economic aspect the most, leading this already vulnerable category of population into an extremely difficult financial situation. Many lost their jobs - the only source of income for some of them. Drop of job opportunities that followed the lifting of the state of emergency exacerbated new jobs search or return to pre-pandemic jobs for many clients.

²¹⁵ Question No.1.

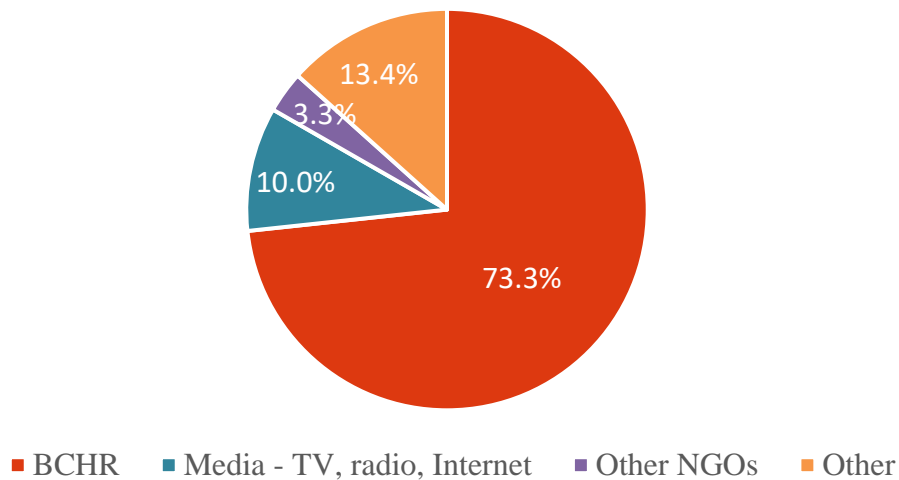
²¹⁶ To illustrate negative practice on application, a BCHR client mentioned the offer of illegal employment – without contract.

With respect to the state of emergency, 73.3% of the respondents stated the BCHR as a source of information about the curfew and restrictions of movement, in view of the lack of information in the media in the languages other than Serbian. Also, 23 respondents (76.7%) said that the BCHR brochures and the mini website helped them most in obtaining information on the COVID-19 and the measures to combat the pandemic. The fact that almost half of the respondents (46.7%) assessed their knowledge of Serbian as basic or non-existent does not come as a surprise.

Knowledge of the Serbian language



Information channels on curfew and restrictions of movement



More than 50% of respondents²¹⁷ stated they receive UNHCR financial assistance which allowed them to cover the cost of rent and provide for the basic livelihood.²¹⁸ All the applicants were granted 3-month financial assistance, which was subsequently extended to some of them because they did not succeed in finding new jobs or their employers downsized their operations in the period following the state of emergency. A total of 25 respondents (83.3 %) noted they would need financial aid in the coming months, two were not sure and three said they did not need financial aid.

4.4. Conclusion and recommendations

The COVID-19 pandemic caused health care and socioeconomic problems as well as a rise in global poverty. In the RS, persons with low education levels, the unemployed or the inactive on the labour market find themselves at the greatest risk of poverty.²¹⁹ That is why it does not come as a surprise that many BCHR clients asked for help due to the loss of jobs during the reporting period.

Aiming to help combat COVID-19, UNHCR in Serbia provided more than EUR 600,000 in assistance including hygiene and medical provisions, financial and humanitarian aid to refugees and asylum seekers who lost their jobs and income during the crisis.²²⁰ The BCHR survey showed that refugees and asylum seekers are currently in dire need of assistance and that there are but a few addresses they can turn to for support. The majority are assisted by international organizations or NGOs. The system of protection of this category should be expanded also to include some competent state authorities, in line with their capacities.

Many refugees and asylum seekers have not managed to find new jobs after the lifting of the state of emergency, or even after the completion of this report. On the other hand, those who did go back to their old jobs are working considerably less. One should bear in mind also that many refugees and asylum seekers had to interrupt their education due to war or poor security situation in their countries of origin. Therefore, they were not able to continue education or acquire professional qualifications. Consequently, and regretfully, the number of jobs they can execute is limited. For lack of sufficient knowledge of the language and culture, it is even more difficult for them to find jobs or the relevant information. They are in need of systemic support in finding new

²¹⁷ 17 persons in total.

²¹⁸ The majority of respondents expressed gratitude and satisfaction for the assistance provided, for UNHCR aid was the only steady source of income for them during the state of emergency.

²¹⁹ *Poverty in the Times of Covid-19 Pandemic and Post-Crisis Period Serbia*, Social Inclusion and Poverty reduction team (2020), available at: <http://bit.ly/3iuNWDN>.

²²⁰ *The UN Refugee Agency calls for the full inclusion of refugees, asylum-seekers, stateless and internally displaced persons into COVID-19 recovery strategies and plans*, UNHCR (2020), available at: <http://bit.ly/3klBO9z>.

employment and acquiring new skills and knowledge to increase their competitiveness on the labour market. This would in turn increase their social security and help them lead a dignified life.

In this respect, a change of LATP and LEF would be welcome in order to ensure that the persons granted the right to asylum obtain an automatic right to work without requiring from them to obtain personal work permits.²²¹ Access to the right to access the labour market would be greatly facilitated if the RS adopted such a solution. The focus would then be redirected to the qualification acquisition programmes and requalification programmes. The NES and the CRM should invest additional resources to develop and implement more efficient programmes for inclusion of refugees into additional education and trainings and facilitate their access to the labour market through more efficient active labour market policies. This would contribute to a more efficient employment of refugees in the RS.

Also, such a solution would be welcome especially in the aftermath of the state of emergency so that the refugees could focus more on finding jobs and acquiring the necessary qualifications instead of spending time and resources on the procedure of obtaining work permits. LEF should be changed to liberalize the current solution which provides for expiration of nine months from the date of submission of an asylum application before asylum seekers may exercise the right to work. A positive change would be moving this deadline to the moment of expression of interest to seek asylum.²²²

The persons who were granted the right to asylum on the eve of 15 March spent the period of the state of emergency in AC.²²³ Since they were forbidden to move for almost two months, they “lost” the right to the CRM financial assistance for temporary accommodation in the meantime. The BCHR integration team was not submitting requests for financial assistance during that time as it was impossible to collect all the necessary documents – many institutions maintained the minimum operation or did not work with the clients directly. For the time being, there is no realistic possibility for them to receive compensation and a possible retroactive payment. It would be good for the CRM to consider whether there is space and goodwill for that in the coming period.

²²¹ More about comparative practice of EU Member States in a similar position as Serbia, and where refugees are exempted from obtaining work permits see: *Right to Asylum in the Republic of Serbia 2019*, p. 163.

²²² *Ibid.*

²²³ Two BCHR clients who were granted asylum by the Asylum Office in the first quarter of 2020 did not leave the AC on time where after they were forbidden to exit it due to the state of emergency.

5. Public Discourse on Migrants and Hate Speech

In continuation, we shall present the analysis of media reports in the first six months of 2020 where differing opinions prevailed about migrants, asylum seekers and refugees. Drawing attention to various narratives, we will present the most frequent challenges faced by this category of foreigners and offer recommendations for improvement of their situation in the society.

With respect to the above, we shall also comment on the ever more widespread hate speech about the refugee and migrant population in the RS, and the BCHR response before the competent institutions.

5.1. Analysis of Public Discourse on Migrants in the First Six Months of 2020

For the purpose of this report, we analysed the media content in the first six months of this year. The authors collected qualitative and partly quantitative data from more than 700 media reports, news and various content published in the newspapers, broadcast by electronic media and on Internet portals. We also used the survey about citizens' perceptions of migrants conducted by *Ipsos Strategic Marketing* in November 2019 at the BCHR initiative and the recently published survey about the citizens' perceptions of migration that the Red Cross of Serbia conducted in partnership with NGO PIN.²²⁴ The period between these two surveys is almost ideal to gain insight into the way the developments of the last six months affected the perception of the Serbian citizens about the migrants. We are using the term “migrants” in this part of the report because it is the most used in the public discourse – much more frequently than the term “refugees“ or “asylum seekers“ which the experts use when making a distinction of foreigners enjoying different status in the RS.²²⁵

In recent months we have been witnessing an ever stronger politization of migrant-related topics as well as clearer profiling and representation of these in the context of national security. One cannot say as yet that the overall attitude and perceptions of the Serbian society about the migrants are negative and fraught with intolerance. However, gradual deterioration of that relationship is evident and it may continue into the future in view of the climate that has been created and which is conducive to the rise of xenophobia and anti-migrant views. The citizens are ever more exposed to different half-truths and contradictory information often resulting in

²²⁴ Bjekić, Jovana et al. 2020. *Social Inclusion of Migrants: Survey on Perceptions about Migration and Recommendations to Reduce Discrimination*, Belgrade: Red Cross of Serbia.

²²⁵The term “migrant” is the most general. However, it is not precise enough in certain situations and is distinct from the terms “asylum seeker” and “refugee”. See UNHCR definition of these three concepts at: <https://bit.ly/30BC6BF>.

confusion and a distorted picture of reality. This gives rise to doubts, mistrust and impossibility to establish the real truth. Since migration will certainly be a significant geopolitical factor for years to come, there is a threat that these opinions will solidify and deteriorate in the future. We have noticed several pronounced trends related to the prevailing narrative in media reporting and the accompanying social reactions. We have also focused on several key developments resulting in the changes of the relationship towards migrants, and for the worse, regrettably.

Based on the survey on the perceptions of the citizens of Serbia about migrants conducted by the BCHR and *Ipsos Strategic Marketing*, one cannot say that there is a prevalence of either positive or negative attitudes.²²⁶ However, the results of a recent survey conducted by the Serbian Red Cross and PIN show a deterioration of views, as could be expected in view of all the recent developments and the negative image of migrants painted in the public discourse.²²⁷ The measurement of social distance showed the majority of reviewed relationships and social situations to be in the zone of non-acceptance. Moderate acceptance exists only with respect to the temporary nature of migrants in the country and in the city. In all, 53% of respondents did not favour the notion of having migrants as their neighbours (as compared to 47% in the previous survey), while a mere 28% had a clearly opposite opinion (as compared to 42% in the previous survey). 35% of the respondents said they agreed with having migrants as colleagues at their workplace (slight decrease relative to the earlier 37%), while as many as 43% did not agree with this idea. Somewhat surprisingly, 39% of the respondents considered a possibility of having migrants as close friends and 41% were negative about it. As expected, an even higher social distance was recorded with respect to higher levels of closeness.²²⁸

The way in which the media covered the topic of migrants changed during the analysed period. Although the media cannot be said to have been particularly passionate, but rather as being neutral, the choice of topics and difference in their representation provide a deeper insight into this area. Though migrants were predominantly treated as a security question also in the past, the COVID-19 epidemic and the declaration of the state of emergency enhanced this trend through a constant use of militant narrative. The number of media reports stressing one or the other negative aspect within the migrant theme increased evidently, as did the frequency of placement of such news and stories. Not a week passed without them being in the eye of the public.

A notable contribution of the state of emergency and the epidemic is also higher presence of media content which portrayed the migrants positively, or arouse empathy and better understanding in the citizens. Yet, this content remained in the “shadow“ of increase of negative

²²⁶ See more in *Right to Asylum, January–March 2020*, pp. 46.

²²⁷ Though the methodology of this survey is somewhat different from the BCHR and Ipsos survey, some segments are suitable for comparisons, and the overall result is indicative enough to assert that the perceptions of citizens have deteriorated.

²²⁸ 56% and 63% respectively of the respondents would not like to have a migrant as a member of a larger or nuclear family, as compared to 25% and 22% respectively of those who would not mind.

portrayal of migrants and numerous speculations as well as the deterioration of their situation due to a protracted confinement in the accommodation facilities during and after the state of emergency. Namely, all this resulted in the need for stronger involvement of the CRM, the civil society and certain media with a view to improving the situation of migrants and assuaging the negative portrayal of this group.²²⁹

With respect to the content, we focus on three most frequent narratives. The first and the dominant was that about the security aspect in the context of migration. It usually induces fear and the feeling of vulnerability in the recipients of such information. The second, humanitarian narrative, which focuses on the problems and suffering that migrants survived, usually arouses empathy and sympathy in the recipients, was much less represented. Even when it was present, it was linked to the security narrative and so not immediately evident and not conducive to creating a positive attitude and understanding of the migrants, as would normally be expected. Finally, the third type of narrative that we would call integration or developmental, is the least present in the media. It includes topics aimed at showing the positive aspects and the potential contribution of the migrants to the Serbian society, efforts being invested in their integration and positive examples of inter-cultural relationships.

Apart from these narratives, the information and opinions of relevant state authorities and institutions – the CRM in the first place, as well as some international agencies and NGOs working with refugees and migrants – receive media space relatively regularly. They usually give insight into the number of migrants, their activities, the situation in AC and RTC and their situation and treatment in general. It is good that this content is represented in the media, for it aims to provide precise information and combat different speculations often appearing in public. Also in this way, the attention is turned to the unfavourable situation of migrants, various challenges they face and the problematic decisions and actions of the authorities in this respect.

In continuation we will present the three dominant narratives about migrants: security, humanitarian and integration related. We will try to explain the reasons and the sociopolitical context conducive to their emergency and propagation.

²²⁹ A small number of media reports may be assessed as neutral and that there is no clear negative or positive inclination in the content. All the above refers to the “mainstream“ media, while the situation on social networks and various “alternative“ Internet portals is certainly worse and they largely contribute to strengthening of negative perceptions and intolerance towards migrants in a part of the society.

5.1.1. Security Narrative

When looking at a security narrative, we single out several main topics. Namely, in late February the focus was on the developments surrounding the decision of the President of Tukey not to hold off any longer the Syrian refugees on their way to Europe which resulted in increasing the atmosphere of fear from “invasion“ of several million people and the consequent re-emergence of the phrase “migrant crisis” in public discourse. The media speculated about the potential new migration waves and the way in which the states intended to respond to protect their borders. By end of March this topic reemerged due to the spread of the global COVID-19 pandemic.²³⁰

What significantly intensified and shaped the security narrative was the evident rise of intolerance among the RS citizens to migrants and the ever more frequent xenophobic incidents in the Serbian society. Anti-migrant protests were reported several times during the analysed period, and persisted in towns where AC and RTC were located or where a certain number of migrants remained. The protest in Belgrade headed by peoples’ patrols attracted the most attention.²³¹ The absence of a decisive response of the state authorities, with the exception of the CRM, is worrying.²³² By the time of completion of this report, the BCHR team is not aware of any official investigation into these incidents.

With introduction of COVID-19 epidemic related measures including restriction of movement and gathering, these expressions of intolerance moved from the streets unto the Internet and the social networks. Thus, a man in Obrenovac was arrested and charged with racial and other discrimination in early April. He used the social networks to call for a showdown with the migrants accommodated in the military barracks in that town.²³³ In early May, a new incident took place again in Obrenovac. A young man drove into the migrant centre with his car while agitatingly shouting “I do not want my girlfriend attacked by the migrants”, “I do not want my army to protect migrants”, “I do not want a Muslim state” and “I do not want to stand this” and all the while recording it on his telephone.²³⁴ Luckily, no one was hurt during this incident. However, it is a good example of what may happen when the citizens are overly exposed to anti-migrant rhetoric. The CRM representatives condemned this incident publicly and said it was a warning that it was high time to stop the attacks on the migrants and a hysterical campaign against them on social networks.²³⁵ Judging by Facebook comments, a considerable number of the young man’s

²³⁰ See more in *Right to Asylum, January–March 2020*, pp. 48.

²³¹ *Ibid.*, pp. 49-50.

²³² “Commissariat for Refugees: Protests against migrants shameful for Serbia”, *Danas* (9. March 2020), available at: <https://bit.ly/2PuQWDB>.

²³³ “ARREST IN OBRENOVAC A man calling for a showdown with migrants“, *Blic* (5 April 2020), available at: <https://bit.ly/2DD2hi9>.

²³⁴ A recording of this incident available at: <https://bit.ly/2DuyfNT>.

²³⁵ “Commissariat for Refugees and Migration condemns incursion into Reception Centre in Obrenovac“, *Danas* (7 May 2020), available at: <https://bit.ly/2DMEr3K>.

compatriots support him and believes his actions to be righteous. Soon after that it turned out he was a local activist of the Serbian Progressive Party (SPS) and a member of the movement “Levijatan” which added a political element to this incident. The said incident led also to first bigger anti-migrant protests. Namely, in May, a group of members of various extremist organisations convened a gathering in front of the migrant centre in Obrenovac in support of the young man who was in detention.²³⁶ The epilogue of this event in Obrenovac is an 8-month imprisonment that the perpetrator was sentenced to.²³⁷

The topic that permeated all segments of life, and thus the migrants, is the COVID-19 epidemic. It significantly influenced the change of situation and perceptions of the migrant population. Thus almost all media reports mentioning migrants since the second half of March and almost until early June were linked to the epidemics and the resulting state of emergency. In the beginning, the media often stressed that illegal border crossings were unacceptable and that strong quarantine supervision of migrant and refugee population must be put in place, and so the migrants were subject to the well nigh most restrictive measures. They were primarily tagged as a danger to public health. However, as it turned out, there was no virus among the migrant population and this was ascribed to the restrictive measures, militarization of the narrative increased. The same restrictive regime remained applicable to migrants even after the lifting of the state of emergency and without any particular justification.²³⁸

In view of the decision to have the Army secure and monitor the accommodation centres, the mention of the Army was an inevitable element of each report.²³⁹ The most represented politician and state official in the media reporting about migrants during the epidemic and the state of emergency was Aleksandar Vulin, Minister of Defence, who appeared in or whose statements were carried by almost all the media. This somewhat odd information is an additional proof of the rise of militant narrative with respect to migrants. Furthermore, the Minister’s messages were somewhat mixed – on the one hand, he stressed that the migrants had everything provided for them and that the State was taking care of them, and on the other, he warned quite threateningly that “they should not even dream of attacking an officer of the police, Army or the Commissariat and violate our laws“.²⁴⁰ There were also other statements of the Minister treating the migrants as a threat: “Were they not accommodated here, ... they would today be somewhere in the streets of our cities, they would present a security and health risk for each citizen of Serbia.”²⁴¹ He also

²³⁶ “Rightists in front of the migrant centre in Obrenovac“, *Tanjug* (13 May 2020), available at: <https://bit.ly/33EuZdE>.

²³⁷ “Eight months for an incursion into the migrant centre“, *Večernje novosti* (6 June 2020).

²³⁸ See more in Section 3.

²³⁹ “Serbian Minister of Defense visits soldiers deployed at the Centre for Protection and Assistance to Asylum Seekers in Sjenica“, *Beta* (21 March 2020), available at: <https://bit.ly/31tRKhA>.

²⁴⁰ “Good morning Serbia“: Minister Vulin on the attack of a migrant on the Army, heroes from Kosare and situation and the fair! *Happy* (11 April 2020), available at: <https://bit.ly/2DmrbmA>.

²⁴¹ “Minister Vulin: 24h quarantine for all the migrants until the crisis is over“ (16 April 2020), available on the website of the Ministry of Defense of the RS: <https://bit.ly/30EPuoB>.

stated that the Army had been compelled to pacify unrests inside the centres several times, and to fire warning shots.²⁴²

A new step towards militarization of the migrant narrative was taken in mid-May when the President Aleksandar Vučić ordered an urgent deployment of the Army to protect the citizens of Šid and their property from the migrants.²⁴³ Namely petty theft, breaks of migrants into citizens property and similar offences in the municipality of Šid increased after the ease of the restriction of movement. Since no serious criminal offences were committed, as confirmed by the President himself, this decision remains unclear as does why was the police not sufficient to protect the citizens. The explanation that it was a preventive measure based on security assessment did not sound overly convincing, and some people saw it as part of the pre-electoral campaign.²⁴⁴

The likely climax of efforts to portray migrants through a militant lense was the public procurement for razor wire to fence in the migrant centres in Serbia that the Ministry of Defence launched in mid-May.²⁴⁵ This is yet another example of interference of this Ministry into the domain it has no jurisdiction over. According to the statements, the CRM was not informed about this decision of the Ministry. In the end, this public procurement was suspended thanks to the joint efforts and pressures of the civil sector, some media and public.

The allegations about different acts of violence committed by the migrants and their improper behaviour which are the cause of citizens' intolerance do not come from the traditional channels of information. Namely, many such news come from the rightist-oriented Internet portals and groups on the social networks. Also, many of these news proved to be fake or several years old though they were placed as novel.²⁴⁶ The *Facebook* group "STOP settling of migrants", that reached as many as 330,000 members at one point, drew a lot of attention and concern. Yet another example of promotion of extremist and chauvinistic views is a citizen of Valjevo who was arrested in late May for spreading panic and inciting ethnic, racial and religious hatred and intolerance. He founded a portal "provereno.rs" (verified.rs) and used to publish fake news about the migrants.²⁴⁷ However, during the state of emergency and after its lifting, news about different riots and problems caused by the migrants in the centers and local communities appeared very frequently in the traditional media.

²⁴² "Vulin: Army fired warning shots to stop the migrants escaping quarantine", *NI* (21 April 2020), available at: <https://bit.ly/31yK91n>.

²⁴³ "President of Serbia orders urgent deployment of Army in Šid", *Prva TV* (16 May 2020), available at: <https://bit.ly/33BbP8a>.

²⁴⁴ "Army preserving rating of the authorities", *Danas* (18 May 2020), available at: <https://bit.ly/3khwYud>.

²⁴⁵ "Is razor wire becoming a policy of Serbia", *Danas* (22 May 2020), available at: <https://bit.ly/2C8K9MF>.

²⁴⁶ See more in *Right to Asylum, January– March 2020*, p. 50.

²⁴⁷ "Citizen of Valjevo who launched a portal and posted fake news about migrants, arrested for provoking panic", *Blic* (22 May 2020), available at: <https://bit.ly/2PzirvD>.

The news about incidents occurring in the migrant camps appeared very frequently and were usually carried by all the bigger media outlets, often with sensationalist titles. These took place in Tutin, Obrenovac, Krnjača, Preševo, Adaševci. The incident in Obrenovac attracted a lot of attention since it involved a mass fight among the migrants. It resulted in considerable material damage to the premises, some migrants tried to escape, others even tried to attack the Commissariat staff.²⁴⁸ The mass fight of migrants in Krnjača also attracted a lot of attention, and the Army had to fire warning shots. The attempt of migrants to leave the centre in Adaševci was resolved in the same way.²⁴⁹ There is no doubt that these events must be reported. The problem is that this type of news was absolutely the most represented in media reporting and often under sensationalist titles which thus attract even more attention of the readership.²⁵⁰

After the deployment of the Army in Šid in mid-May, the media started publishing numerous news about the misdeeds committed by the migrants on the territory of that municipality corroborated by the interviews of the inhabitants. A small number of the interviewed persons stated they had never had problems with the migrants and that they do not mind them. Still, the majority mentioned various unpleasant situations they found themselves in because of the migrants, both in the past and at present.²⁵¹ For several days all the media covered the developments in Šid. During the reporting period, there have never been as many and as frequent negative news on offences, crimes and various misdeeds committed by the migrant population over such a short period of time. The Deputy Mayor of Šid stated that there were more than 50 incidents in one day including cases when the Army returned the migrants into the centres because they were outside without permits, transport of migrants from other towns by taxis which he assessed as a potential health risk.²⁵² And so, in the case of Šid, ideal conditions were created for development and support of anti-migrant news: constant reporting on the problems caused by the migrants and the threat they represent, with the presence of the Army representing an acknowledgment that the worries and the fear of citizens were justified and that the security risk was real.

In early June, the citizens of Banja Koviljača and Loznica also started complaining about the growing number of problems with the migrants, and said they would try and solve the problems

²⁴⁸ “Migrants detained after the fight in the reception centre Obrenovac“, *Politika* (7 April 2020).

²⁴⁹ See footnote 242.

²⁵⁰ Among numerous titles, we note: “MIGRANTS WREAK TOTAL CHAOS IN OBRENOVAC: Mass fight, barracks demolished, CALMED DOWN BY ARMY AND POLICE“, *Kurir* (6 April 2020), available at: <https://bit.ly/33Ez51Y>; “SHOOTING IN MIGRANT CENTRES: Arab mutiny in Serbia, Army permitted to use weapons“, *Pravda* (21 April 2020), available at: <https://bit.ly/3ijj6xL/>; or a more straightforward version “Migrants raging in reception centres“, *Informer* (8 April 2020), available at: <https://bit.ly/3CSe>.

²⁵¹ “Dnevnik 2“, *RTS 1* (16 May 2020); “Migrants breaking into our houses!“, *Srpski telegraf* (18 May 2020); “Jutro sa Jovanom i Srđanom“, *Prva TV* (18 May 2020).

²⁵² “More than 50 incidents in Šid; Safer since Army deployment“, *B92* (18 May 2020), available at: <https://bit.ly/3fCCxjo>.

themselves short of an adequate reaction of the relevant authorities.²⁵³ Regretfully, this is a characteristic proof that the citizens of Serbia believe they can take the law into their own hands when migrant issues are in question – a trend started by the “people’s patrols“. An anti-migrant protest of some 400 people was organised in Banja Koviljači soon after that.²⁵⁴

Another frequent topic in the security narrative are illegal border crossings and smuggling.²⁵⁵ The public is often reminded about the porousness of our borders and the need for enhanced protection of borders. This is frequently linked to the health risks, for ill-controlled movement of persons in times of the global pandemic may be particularly risky. Certainly, such news influence development of negative views as they are partly justified by the fact that these are illegal migrants and the opinion that those who do not obey our laws are not welcome in our country. In this context, Serbia is monitoring actions of the neighbouring countries - Croatia²⁵⁶ and Hungary,²⁵⁷ in particular – which work intensively to protect their borders often resorting to violent and unlawful methods. Notwithstanding, comments sections on Internet portals and social networks are full of praise for such actions.

During the analysed period we also noticed an increase of conspiracy theories, mostly disseminated on social networks and obscure Internet portals. These said that the migrants are covertly transported to Serbia during the curfew and the ban on movement and then distributed around the country, all to implement a secret plan of settlement of migrants.²⁵⁸ The extent of the spread of untruths is evidenced by the news of early April that migrants settled in some villages around Čačak. Even the inhabitants of these villages assessed this news as impossible in one media report.²⁵⁹ There were also speculations that the number of migrants in Serbia exceeds by far the official statistics and that they continue crossing the border illegally and move around our country without any control. The CRM responded to these speculations explaining that the increase of the official number of migrants was the result of almost all of them being placed in reception centres and therefore included in the official statistics. To support these theories, old footage showing groups of migrants on the move or in the buses was used in the media, even those that was not

²⁵³ “HUNDREDS OF MIGRANTS AT THE RAILROAD STATION: Citizens of Banja Koviljača and Loznica faced with a problem“, *Kurir* (4 June 2020), available at: <https://bit.ly/2PA7IRK>.

²⁵⁴ “Protest of citizens of Banja Koviljača because of immigrants“, *RTSI* (19 June 2020), available at: <https://bit.ly/3gOKenp>.

²⁵⁵ E.g. “Customs officers discovered 45 illegal migrants in one day“, *Dnevnik* (19 June 2020), available at: <https://bit.ly/co/3CSf>.

²⁵⁶ The Guardian: “EU covers brutality of Croatian police towards migrants“, *NI* (15 June 2020), available at: <https://bit.ly/2PBnmfK>.

²⁵⁷ “Migrants at the Hungarian border again, majority returned to Serbia“, *Glas javnosti* (10 June 2020), available at: <https://bit.ly/3ikUVPg>.

²⁵⁸ “DVERI: How did the number of migrants in Serbia go up if the borders are closed!“, *Srbinfo* (1 April 2020), available at: <https://bit.ly/31zNWLA>.

²⁵⁹ “A news breaks that migrants moved into the villages around Čačak: Citizens shake their heads in disbelief“, *Reflektor* (7 April 2020), available at: <https://bit.ly/3fKFMp2>.

taken in Serbia.²⁶⁰ Conspiracy theories sometimes took very absurd forms – it was claimed that migrants are used to install 5G network during the curfew. The extent to which the citizens are actually susceptible to these theories was corroborated also by a survey of the Centre for International Public Policies whereby as many as 27% of the respondents stated they believe the pandemic to be a smokescreen to settle the migrants all over Europe.²⁶¹

By far the most represented theory is the one on the secret plans to settle a large number of migrants (a million is even mentioned) in Serbian villages.²⁶² The frequently used argument to prove existence of such an intention was the statement of the former Austrian Minister of Interior on the Austrian television that there exists an agreement on returning refugees to Serbia should they be found ineligible for asylum in that country. After an MP question of Austrian parliamentarians in April, it turned out that there indeed was a working arrangement with Serbia to that effect.²⁶³ Following the initial confusion, the Serbian officials also confirmed this.²⁶⁴ It turned out that the arrangement is not as important as the anti-migrant rightist circles pertain and that it could in no way result in settlement of as large number of migrants as speculated. Since this story about settlement is one of the backbones of anti-migrant rhetoric in our society, the top state officials, and in particular the Prime Minister, the RS President and the Minister of Interior were supposed to be more responsible and transparent and inform the public correctly about the facts much earlier.²⁶⁵ According to a survey presented by the Nova srpska politička misao (New Serbian Political Thought) in June, as many as 44.4% of the citizens believe that Serbia is in danger of mass settlement of migrants as compared to 42.1% of the citizens who do not think that is the case.²⁶⁶ The earlier mentioned survey of the Red Cross of Serbia and PIN showed that 56% of the respondents would not like any migrant to remain and live in Serbia, and 21% would not like it even if temporarily; 25% and 62% respectively would not mind. Portrayal of migrants as usurpers of the Serbian living (and ethnic) space even surpassed our borders. Thus, the media followed on the opening of a new migrant centre in the village of Lipa in Bosnia and Herzegovina accompanied

²⁶⁰ “Commissariat: Untruthful assertions on “settlement“ of migrants”, *RTS* (4 April 2020), available at: <https://bit.ly/2PyE9zZ>.

²⁶¹ *Views of Citizens about the Coronavirus Epidemic (COVID-19)*, Center for International Public Policy (April 2020), available at: <https://bit.ly/2Pzssci>.

²⁶² This is a topic brought to the fore by the leader of the Serbian Movement Dveri, Boško Obradović, in late 2019. See: “Obradović: Petition against settlement of migrants; they would change the structure of population in Serbia”, *moravainfo* (16 December 2019), available at: <https://bit.ly/33RJdIQ>.

²⁶³ “Agreement with Austria exists; the gain of Serbia remains a secret”, *DW* (15. April 2020), available at: <https://bit.ly/30zM6LA>.

²⁶⁴ “Lazarov rejects speculations that Serbia is turned into an asylum centre and that Austria is returning migrants to Serbia”, 22 April 2020. Press release available on MoI web site.

²⁶⁵ In this context, the BCHR called on the RS Government representatives to present accurate information about the statements on existence of an international agreement between the Serbia and Austria on reception of irregular migrants and unsuccessful asylum seekers. BCHR press release available at: <https://bit.ly/3ilpdBG>.

²⁶⁶ “Pre-electoral survey of NSPM: How has boycott become inevitable”, *Vreme* (4 June 2020), available at: <https://bit.ly/30EaY4E>.

by criticism and warnings to the Republika Srpska as it is the area where many Serbs lived before the war, and a certain number repatriated and inhabit now.²⁶⁷

Analysing the messages sent during the protests and comments on various Internet portals, we tried to sum up the key arguments and specificities of anti-migrant rhetoric. Migrants are perceived as a security threat, both by the State as well as by the citizens. There are statements on the necessity to defend the borders of Serbia and the potential threat from terrorism and spillover of conflicts from the Middle East to the territory of Serbia. Migrants are frequently said to be problematic and a threat to public security. Alleged cases of violence perpetrated by the migrants are cited and assertions made that they attack and rob the citizens, with special emphasis on the risks that women and children are exposed to. Since the beginning of the year, there is a rising number of stories about mass settlement of migrants on the territory of Serbia. The number of migrants in Serbia is exaggerated and there is talk about a possible “invasion“ or “swarm“ in the impending future. It is often said that the migrants are better treated than many citizens of Serbia. Big cultural differences between the migrants and the RS citizens are also stressed, as are the warnings about the risk to the Serbian ethnic integrity and social homogeneity that the migrants represent.

The reality could not be more different. Very few offences were committed by the migrants and these incidents mostly happen between the different groups of them or entail break into someone’s property i.e., taking vacant spaces and long abandoned houses.²⁶⁸ The number of migrants is also nothing to be concerned about. It is relatively stable and ranged between 6,000 – 9,000 during the reporting period²⁶⁹, with the increase being a consequence of the impossibility of migrants to move freely and staying in quarantine in reception centres. At the same time, the migrants still do not consider Serbia a state they would remain in.

5.1.2. Humanitarian and Integration Narrative

The news and reports with humanitarian narrative turned the attention of the public to the difficult situation of migrants in the countries of transit.²⁷⁰ These reports noted the accidents that often happen on that dangerous journey, as well as the violence perpetrated by the local population, the state authorities – police and border police concretely - they are the victims of. With respect

²⁶⁷ “YOU ARE INTIMIDATING SERBS BY SETTLING MIGRANTS IN SERBIAN VILLAGES! Linta: Scandalous decision of Bosniak authorities in Sarajevo!“, *Informer* (14 March 2020), available at: <https://bit.ly/2CdY9oA>.

²⁶⁸ As per assertions of the CRM representative in his interview at the N1 TV, available at: <https://bit.ly/2PA0VHC>.

²⁶⁹ According to the information the CRM staff gave to the media on several occasions.

²⁷⁰ “WAITING FOR THE TRAIN TO TAKE THEM TO A BRIGHTER FUTURE: Migrants spending nights in deserted buildings: We have nothing any more, we just want a new home“, *Blic* (26 March 2020), available at: <https://bit.ly/33CHKoJ>.

to that, the media reported extensively about the situation in the region drawing attention to terrible humanitarian conditions in the migrant camps in Greece.²⁷¹ Another quite disturbing news came from Croatia where the migrants had been exposed to multiple acts of violence and inhuman treatment by the police which even painted crosses on their heads before returning them across the border.²⁷² An especially gut-wrenching was the news about the capsizing of a boat on the Romanian side of the Danube when seven migrants and one Serbian smuggler drowned.²⁷³

However, part of humanitarian narrative also referred to various forms of assistance and support that the migrants and refugees receive in the RS. For instance, one could read about the transfer of underage unaccompanied migrants from Greece to the EU countries²⁷⁴, or about different donations Serbia received for care and accommodation of migrants.²⁷⁵

The integration narrative is rarely represented. Notable examples of it are the way in which the inclusion of migrant children in education is implemented²⁷⁶ or the projects aimed at integration of migrants into local community activities. With the situation with COVID-19 epidemic growing ever more serious, the news on migrants sewing protective masks and offering assistance to combat the virus appeared. Since there are still among them persons who were health workers in their countries of origin, the migrants believed they could contribute to the joint efforts to combat the epidemic and pay Serbia back for its hospitality. It is positive that these stories found their way into numerous media since they show that migrants should not be perceived as a threat or a burden to the State but that they can also give a useful contribution to the society if given an opportunity.²⁷⁷ There were occasional articles or interviews with the migrants presenting them as people with their own worries, deliberations, interests and hopes. In this respect, a story about Ornobu, a young Bangladeshi who arrived in Serbia five years ago and regretfully remained confined to bed after the accident in a smugglers' van. Notwithstanding the circumstances, he managed to retain good spirits and notes that he thinks the best about our country and its people and that he made many friends here.²⁷⁸ Another positive example is an article about Jafar, an Iranian who arrived in Serbia four years ago and now lives and works as an interpreter here. This

²⁷¹ "Impact of Coronavirus on refugees in Greece", *Novi magazin* (30 April 2020), available at: <https://bit.ly/31vmvT9>.

²⁷² "Croatian police draws crosses on the heads of migrants", *Politika* (12 May 2020), available at: <https://bit.ly/2F6pIkR>.

²⁷³ "Seven migrants and a smuggler from Serbia perish in the Danube in Romania", *Politika* (17 April 2020), available at: <https://bit.ly/2C9vktP>.

²⁷⁴ "Leyen: Underage migrants will be transferred from Greece to Luxembourg", *Blic* (4 April 2020), available at: <https://bit.ly/3a8j8p3>.

²⁷⁵ "EU sends blankets, mattresses and tents to help Serbia accommodate migrants", *Beta* (21 April 2020), available at: <https://bit.ly/33Qkq7p>.

²⁷⁶ "Commissariat: More than 1,000 migrant children studied in Serbian schools", *Beta* (24 February 2020), available at: <https://bit.ly/3koB4AQ>.

²⁷⁷ "Ovo je Srbija", *RTSI* (31 March 2020), available at: <https://bit.ly/3kmH9xw>.

²⁷⁸ "He remained paralyzed after the van full of migrants turned over, only to find new friends in Serbia: the hospital is quarantine and home to Ornobu", *Novosti* (6 May 2020), available at: <https://bit.ly/2PxO88E>.

is one of the few stories who were carried in the media about a relatively successful integration into the social life of Serbia.²⁷⁹ Our society should have access to more content of this type.

The fact that positive discourse is not at the fore, that it is mostly developed by the organisations and people engaged in assisting the refugees and migrants and that its dissemination to the general public is limited represents a problem. Still, during and in the aftermath of the state of emergency, when the concerns were rising about the migrants being exposed to different risks, poor conditions and treatment in the centres and when the authorities' decisions could jeopardise their position, the people dealing with the rights of migrants and their accommodation were given space in the media. The CRM staff often informed about the situation in the centres, how disciplined the migrants were, their good understanding of the situation and the contribution they were giving to maintaining hygiene and implementing preventive measures. The NGO representatives engaged in migrant and refugee protection repeatedly drew attention to certain questionable actions of the authorities or a poor situation of migrants, opposing the fake news and anti-migration rhetoric. They did it either in public appearances on television, by issuing press releases and appeals or starting certain initiatives.²⁸⁰ UNHCR Serbia representatives also informed, on many occasions, about the current situation of refugees, both in Serbia and globally.²⁸¹

The very term most frequently used “migrants” speaks about the prevailing opinion that the people arriving in the RS from the Middle East and Africa are prone to opportunism, that they embark on a long journey in search of a better life and improvement of their economic status. As many as 48% of the respondents in the above survey of the Red Cross and PIN agreed with this statement relative to 28% who did not. In this context, there is an evident division to “real and phony refugees“. Namely, when the migrants are portrayed negatively one can often hear that no one is against “real refugees“ but those who are not, adding that the majority of migrants do not even come from the war-affected countries. It is also said that the majority are men of army age and that there are almost no women and children among them. Therefore, one gains an impression that part of the public is evidently erroneously linking the concept “refugee“ with war only. As many as 19% of citizens first think of war when they hear the term “refugee”.²⁸²

This is not the only obvious dichotomy. The migrants are divided into legal as opposed to illegal, good as opposed to the bad (problematic). It is as if the qualifications of this sort in the public discourse aim to rationalise and justify xenophobic and racist opinions.

²⁷⁹ “I have a bit more freedom in Serbia”, *B92* (8 June 2020), available at: <https://bit.ly/31w2En4>.

²⁸⁰ For instance, a group of CSOs submitted, on 12 May, an initiative for assessment of constitutionality of the order restricting movement to refugees and migrants even after the lifting of the state of emergency to the Constitutional Court (see more in Section 3); or the press release of a group of CSOs of 20 May drawing attention to increased use of hate speech and xenophobic views about refugees and migrants.

²⁸¹ See, for instance, the press release issued in late April: <https://bit.ly/3kt8huC>.

²⁸² *Survey on the Perception of Citizens about Migrants*, Ipsos Strategic Marketing, BCHR (November 2019).

5.1.3. Politicization of Migrants

Elections are another important factor that contributed to the negative image of migrants. By politicizing this topic, certain political groups tried to influence citizens' orientation leading to an unequivocal (ab)use of migrants. This section will thoroughly analyse the way in which the parliamentary and local elections²⁸³ in the RS influenced development and propagation of negative views about migrants.

Notably, the increase of negative messages sent by certain political groups is evident also in the period preceding the calling of parliamentary and local elections.²⁸⁴ In the past, the migrants were not an important topic to attract voters in electoral cycles. However, the situation seems to be different in this electoral year.

First of all, this is evident in the activities of opposition parties and movements attempting to increase their voters' support in this way. Though they remained unanimous in boycotting the elections in the end, the most pronounced case is that of the Serbian movement Dveri, with their anti-migrant narrative and demonstration of the so called "spritzer racism" by its leader Boško Obradović, that particularly attracted public attention.²⁸⁵ Dveri also followed up on the situation related to the contentious agreement with Austria, believing this could cause "additional destabilization of Serbia and a general threat to the security of our nation and state."²⁸⁶

Though the trend of politicization of migrants calmed down during the state of emergency, soon after the electoral activities resumed and a new date of elections was scheduled, we witnessed it rise again. In addition to Dveri, policies of other parties and movements also contained anti-migrant elements. The movement Dosta je bilo (Enough) was also one of the main supporters of the thesis about the plan for mass settlement of migrants and hiding the official data on their number.²⁸⁷ They also advocate for Serbia to terminate all the migrant-related agreements. There is also a coalition Za kraljevinu Srbiju (For the Kingdom of Serbia), with the Pokret za obnovu kraljevine Serbia (POKS – Movement for Restoration of Monarchy), as its highest profile member. During the state of emergency they asked for the Army to be redeployed from the hospitals to the borders in order to prevent the crossing of migrants who would, in addition to the danger from

²⁸³ Decision on Elections for Members of Parliament (*Official. Gazette RS*, no. 19/2020); „Gojković calls local elections” (4 March 2020), available at: <https://bit.ly/3krMVhi>.

²⁸⁴ According to the questionnaire in the *Survey of the Perceptions of Citizens* conducted by Ipsos Strategic Marketing in November 2019, at the BCHR initiative, 30% of citizens approve of the Government policy towards migrants, 32% do not approve, 30% think they do not have sufficient information. The opinion of a political party about migrants is especially important for 16% of the respondents, important to some extent for 35% and unimportant for 28% of the respondents.

²⁸⁵ See more in *Right to Asylum, January–March 2020*, pp. 48-49.

²⁸⁶ See press release of Serbian Movement Dveri at: <https://bit.ly/3ij7kTW>.

²⁸⁷ See press release of Movement Dosta je bilo at: <https://bit.ly/3a8ajvv>.

jihadists, also represent a big health risk.²⁸⁸ They gave some exceptionally negative statements in the period running up to the elections.²⁸⁹

The movement Metla 2020 (Broom 2020) also shared concerns about the distribution of migrants Serbia-wide during the night and advocated for annulment of all the agreements detrimental to the State.²⁹⁰ The Serbian Radical Party advocated for ban on entry of migrants into Serbia, and that those already in the country be assisted to leave to the EU.²⁹¹ Narodni blok (The Peoples' Block) stressed Serbia was not responsible for wars in the north of Africa and the Middle East, and thus was not obliged to take care about the migrants²⁹² and asked that smuggling of migrants perpetrated by the Government and the state structures be put a stop to. The movement Levijatan as well as the Srpska stranka Zavetnici (Serbian Party Zavetnici) asserted their anti-migrant policies on numerous occasions.

On the other hand, the ruling Serbian Progressive Party (SPS) sought to maintain a balanced relationship to migrants, knowing this was not a topic that could enlist a more significant support in the elections. An illustration of this approach is the following statement of Aleksandar Vučić: "Wherever they make problems, we will calm them down immediately. We take care of them, we protect them, feed them and behave like good hosts. But were they become impertinent, we will know how to act pursuant to the law of this country."²⁹³ The SPS MP Vladimir Đukanović even believes that the topic of migrants was concocted by the opposition groups and that there is no problem at all.²⁹⁴ Still, one could hear also that the strengthening of militant approach to migrants was in fact part of the electoral campaign and an attempt to turn the votes that would potentially go to certain opposition options.²⁹⁵

The extent to which this approach actually contributed to a better electoral result of the mentioned parties is dubious. According to a research of the agency *Faktor plus*, 10% of the

²⁸⁸ See press release of POKS at: <https://bit.ly/30FCrTW>.

²⁸⁹ It suffices to note the statement of Žika Gojković, POKS Chairman: "We will immediately terminate all the contracts bounding Serbia to receive migrants and deport those who are in it to their countries of origin. We must not allow Serbia to slowly become an Islamic state nor should we be basis for future mujahedin", "Telemaster", *Happy* (12 May 2020).

²⁹⁰ See press release: <https://bit.ly/33JsI0z>.

²⁹¹ "Serbian Radical Party: Prohibit migrants to enter Serbia, those who are here should be assisted to go to the EU", *Beta* (18 May 2020), available at: <https://bit.ly/3kqqsBh>.

²⁹² "Stojanović (Peoples' Bloc): Serbia has no obligation to care for migrants", *NI*, (8 June 2020), available at: <https://bit.ly/2Calrvv>.

²⁹³ "VUČIĆ ON INCIDENTS IN THE MIGRANT CENTRES: The situation is under control! In locations where they create problems, WE WILL CALM THEM DOWN IMMEDIATELY", *Kurir* (7 April 2020), available at: <https://bit.ly/3a5UbdY>.

²⁹⁴ "Novo jutro", *Pink* (9 May 2020), available at: <https://ggle.io/3JNB>.

²⁹⁵ "Army boot and Doc Martens – how the SPS is mobilizing xenophobia", *DW* (18 May 2020), available at: <https://bit.ly/3ks9xhB>.

citizens thought that topic of migrants would dominate in the campaign.²⁹⁶ Taking into account that the political options with the loudest anti-migrant rhetoric failed to achieve any notable electoral result, this seems not to have sufficed for the formation of political views and orientation of the majority of the citizens.

5.1.4. Conclusion and recommendations

Bearing in mind all the above: the incidents, negative trends, politicization and militarization of context dealing with migrants, we cannot offer an overly optimistic conclusion. The public perception of migrants and their portrayal in the public discourse deteriorated over the past six months. Certain factors including elections, COVID-19 pandemic and the state of emergency have, to some extent, contributed to propagation of negative views. It seems that the climate is already in place in which xenophobia, racial and religious hatred and intolerance are not being condemned as they deserve and where the response of the society and the State does not present these as overly bad or alarming. This is a very dangerous situation, for when it becomes generally accepted and commonplace to link migrants with violence, danger and problems, their future situation will be conditioned by different factors conducive to their instrumentalization. Therefore, more efforts should be invested into improving the image that the citizens have about migrants, through combatting fake news and the spread of stereotypes and by combatting hatred and intolerance.

The competent authorities of the RS should show a cleared intention to protect the migrant population and provide timely and more frequent response to the threats to their safety and rights. The MoI and the judiciary should respond to the explicit cases of hate speech and racism that could potentially result in escalation of intolerance. In particular, attempts of different groups to take the law into their own hands by different groups should be prevented. The state officials should behave more responsibly and transparently towards the public with respect to the official migration policy and international obligations assumed by Serbia so as not to contribute to mistrust and the climate conducive to conspiracy theories. The role of the Ministry of Defence should remain within their legal framework with respect to deployments related to migrants and refugees, and the Army of Serbia should be used for that only when justified and required so as not to enhance the image of migrants as a public threat and a problem. The political parties, ruling and opposition alike, should refrain from the abuse of migrants for political gain.

When discussing the media, it is paramount that all the media abide by professional standards and refrain from sensationalist journalism. We would welcome higher representation of humanitarian and integration narrative as these would make visible the positive aspects of the life and stay of refugees and migrants in Serbia. To that effect, efforts should be made to give the voice

²⁹⁶ “Ratings of parties after the state of emergency: SPS AND ŠAPIĆ GAINED MOST STRENGTH, Sergej leads PSG by over 3%, CROWD AT THE CENSUS BASELINE”, *Blic* (14 May 2020), available at: <https://bit.ly/30Cfv7Y>.

to the refugees and migrants and an opportunity to present themselves to the public, to talk about their plans, thoughts, experiences and problems. Because the best way to dispel prejudices about one is to know one.

5.2. BCHR Response to Hate Speech Towards Migrants, Asylum Seekers and Refugees

In line with the above analysis, the deterioration of the situation of refugees and migrants in public discourse is evident in that the media regularly published negative stories about this population in the first six months of 2020. It was also subjected to politicization during the electoral cycle and several anti-migrant protests were held during the first six months of 2020.²⁹⁷ Resulting from the above, refugees and migrants staying in the RS were largely exposed to discrimination and hate speech. Therefore, the BCHR team reacted before two competent institutions and this will be explained in continuation.²⁹⁸

5.2.1. Prohibition of Discrimination and Hate Speech

The international law perceives discrimination and hate speech as negative phenomena subject to sanctioning. Since hate speech represents an antipode to the freedom of speech, it constitutes a violation of the freedom of speech defined in numerous universal and regional international human rights contracts - Universal Declaration of Human Rights,²⁹⁹ International Pact on Civic and Political Rights,³⁰⁰ Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR)³⁰¹ and others.³⁰² The practice of the European Court for Human Rights is growing with the cases protecting from hate speech. In order to suppress it, the practice is evolving to include the posts and comments on the social networks pages.³⁰³

²⁹⁷ Bojan Stojanović, “Refugee as a *persona non grata*”, *Vreme*, No. 1537 (18 June 2020), available at: <https://bit.ly/2DLTB9n>.

²⁹⁸ With regard to this issue, the BCHR acted several times in the first six months also by issuing press releases. See BCHR website: <https://bit.ly/31yEyrO>.

²⁹⁹ Resolution A/RES/217, 10 December 1948. Article 19.

³⁰⁰ *Official Gazette of the SFRY*, No. 7/71. Article 19.

³⁰¹ *Official Gazette of the SCG* (International Contracts), No. 9/03. Article 10.

³⁰² Incitement to violence is not included by the protection provided in Article 10 of the ECHR where intentional and direct use of formulations towards incitement of violence exists and where there is a realistic possibility of the violence taking place. See more in: Dominika Bychawska-Siniarska, *Protecting the Right to Freedom of Expression under the European Convention on Human Rights - A handbook for legal practitioners*, Council of Europe, 2017.

³⁰³ E.g. see case *Beizaras and Levickas v. Lithuania*, Petition no. 41288/15, Judgement of 14 January 2020.

The Constitution of the Republic Serbia (hereinafter: the Constitution)³⁰⁴ sets out prohibition of discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, etc.³⁰⁵ The Constitution also prohibits and punishes any provocation or incitement to racial, ethnic, religious or other inequality, hate and intolerance.³⁰⁶ In this respect, the Penal Code³⁰⁷ provides for sanctions for these acts directed to the peoples or ethnic communities living in the RS.³⁰⁸

The Law on the Prohibition of Discrimination (LPD) defines hate speech as one of the forms of discrimination.³⁰⁹ LPD prohibits expression of ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.³¹⁰

The Law on Public Information and Media provides for prohibition of hatred.³¹¹ Therefore, the ideas, opinions and information published in the media should not incite discrimination, hatred or violence against persons or groups of persons for their affiliation or non-affiliation to a race, religion, nation, gender, sexual orientation or other personal characteristic irrespective of whether an offence was committed by its publication.

5.2.2. Problematic Media Reports and the Response of the BCHR

Numerous media reports about refugees and migrants during the reporting period contained anti-migrant tone. Discriminatory comments of readers or followers were posted underneath the texts of several Internet portals and on *Facebook* pages of these media.³¹² These comments included hate speech aimed at refugees and migrants.

For this reason, the BCHR legal team raised criminal charges to the Higher Public Prosecutor's Office against the administrator of the *Facebook* group "STOP naseljavanju migranata" (Stop settlement of migrants) in April. In May, the team lodged seven complaints to

³⁰⁴ *Official Gazette of the RS*, No. 98/06.

³⁰⁵ Article 21, para. 3 of the Constitution of the RS.

³⁰⁶ Article 49 of the Constitution of the RS.

³⁰⁷ *Official Gazette of the RS*, No. 85/05, 88/05 - corr., 107/05 -corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

³⁰⁸ Article 317 para. 1 of the Criminal Code.

³⁰⁹ Article 5 of the LPD.

³¹⁰ Article 11 of the LPD.

³¹¹ Article 75 of the Law on Public Information and Media.

³¹² In April 2020, the BCHR legal team sent a letter to the editorial board of *Kurir* asking for removal of offensive and discriminatory comments posted on the portal and the *Facebook* page of *Kurir*. The administrator of the portal and the social network profile where the problematic comments appeared, acted in line with the statements of the letter and removed the comments. These are posts dated April 2020.

the Press Council (hereinafter: Council). The appeals were preceded by letters of the BCHR addressed to the editorial boards of Blic,³¹³ Kurir,³¹⁴ Srbija danas³¹⁵, with a view to removing offensive and discriminatory comments under the texts on their Facebook pages. The administrators of the above media neither prevented posting of such comments, nor did they subsequently remove them.

5.2.2.1. Criminal Charges to Higher Public Prosecutor's Office

The above mentioned *Facebook* grupa „STOP naseljavanju migranata“ was founded amid the anti-migrant campaign. It gathered an enormous number of followers who share “the intention and readiness to fight against settlement of migrants of the territory of the RS“. Publication of the article “Srbiji preti haos – ljudi nisu svesni opasnosti od migranata“ (Serbia faced with chaos – people unaware of the danger of migrants) on the said group, represented a motive to express racist, offensive and discriminatory comments on the account of migrants. The problematic comments expressed hate speech and called to killing of migrants, their expulsion and beating.

Due to the above, the BCHR raised criminal charges³¹⁶ to the Special Department for Cybercrime, Higher Public Prosecutor's Office in Belgrade against the administrator of the above *Facebook* group. Publication of problematic comments constitutes several concurrent criminal offences: violation of equality³¹⁷, endangerment of safety³¹⁸, instigation of ethnic, racial and religious hatred and intolerance³¹⁹ as well as racial and other discrimination.³²⁰

³¹³ “INCURSION INTO THE MIGRANT CENTRE: Inhabitant of Obrenovac drives a car into the Army barricades and rages around the Reception Centre screaming: *I don't want a Muslim state!*“, *Blic* (6.5.2020); “MADE A PUBLIC LIST OF "PATIENTS" Who is a member of "Levijatan" who raged in his car around the reception centre, NOTORIOUS BY VIOLENCE in Obrenovac for years“, *Blic* (7.5.2020); “*THESE ARE MY BOYS, TEMPERAMENTAL...* The citizen of Obrenovac who broke into the Reception Centre for Migrants is a MEMBER OF MOVEMENT "LEVIJATAN", their leader justifies violent behaviour“, *Blic* (7.5.2020) and “SHAME of an athlete and member of "Levijatan" who drove his car into the Reception Centre and wreaked chaos, JUDGE LET HIM FREE“, *Blic* (9 May 2020).

³¹⁴ “YOUNG MAN LOST HIS BEARINGS AND DROVE HIS CAR INTO THE BARRACKS IN OBRENOVAC: I don't want my girlfriend to be attacked by migrants! (VIDEO)“, *Kurir* (6 May 2020) and “A MEMBER OF LEVIJATAN WANTED TO RUN MIGRANTS OVER! His girlfriend tells Kurir what the ASYLUM SEEKERS CAT CALLED AFTER HER before the incursion!“, *Kurir* (7 May 2020).

³¹⁵ “A SHOCKING VIDEO SURFACES: Drove his car into the migrant camp in Obrenovac, and then steered towards the Army of Serbia (VIDEO)“, *Srbija danas* (6 May 2020).

³¹⁶ Criminal Charges registered under no. 615-8 of 14 April 2020. Available in the BCHR archives.

³¹⁷ Article 128, para. 1 of the Criminal Code.

³¹⁸ Article 138, para. 2 of the Criminal Code.

³¹⁹ Article 317, para. 2 of the Criminal Code.

³²⁰ Article 387, para. 6 of the Criminal Code.

a) Absence of Prosecutors' Office Response

Two months on, the Department for Cybercrime of the Higher Public Prosecutor's Office still failed to act on the criminal charges raised by the BCHR. When the BCHR lawyer inquired about its status, an employee of the Higher Public Prosecutor's Office replied they had not received it. However, next time they inquired, the BCHR lawyers were told it had been received, but "they do not know what became of it."³²¹ Consequently, the BCHR lawyers sent a communication³²² to this authority requesting a concrete answer to the questions related to the criminal charges they filed and an urgent action thereon. At the time of this report, the BCHR still had no information as to whether the Higher Public Prosecutor's Office had initiated procedures within its jurisdiction, nor had it received any reply related to the above charges.

This practice of a public institution creates an impression that the authorities are completely disinterested in the situation of all individuals in it and in the protection of their statutory rights. In the concrete case, the absence of response of the competent authorities to inciting hatred, widespread multiple discrimination and violation of fundamental human rights of the refugee and migrant population represents a reason for concern. By abstaining from response, the State tacitly tolerates discriminatory treatment of this minority group.

5.2.2.2. Press Council

The Press Council is an independent, self-regulatory body that brings together publishers, owners of print and online media, news agencies and media professionals. It has been established for monitoring the observance of the Journalist's Code of Ethics (hereinafter: the Code) solving complaints made by individuals and institutions related to media content.³²³ The members of the Council are all the media who acknowledged the jurisdiction of the Council: daily papers, magazines, local media, portals and news agencies.³²⁴ The Council operates independently and its decisions are public.³²⁵

The Founding Act of the Council establishes the Press Complaints Commission (hereinafter: Commission), as a body of the Council.³²⁶ The Commission decides on the complaints of authorised applicants about the content published in the print media and all their editions on all the

³²¹ Both times, the replies were received by telephone from the staff of the Higher Public Prosecutor's Office in June 2020.

³²² BCHR communication no. 1191 of 23 June 2020.

³²³ See more about the Press Council at the Internet page of the Council: <https://bit.ly/2XGf0Ym>.

³²⁴ The list of media acknowledging jurisdiction of the Press Council available at: <https://bit.ly/3koRWY0>. The Association of Journalists of Serbia and the Independent Journalists' Association of Serbia adopted the Journalists' Code of Ethics as the ethical standard of professional practice of journalists.

³²⁵ Article 6 of the Founding Act, Press Council.

³²⁶ Article 10, para. 1, Item 4 of the Founding Act and Article 10, para. 1, Item 2 of the Statute of Press Council.

platforms, information portals and news agencies, that they consider not to be in line with the provisions of the Code.³²⁷

a) *Procedures on the BCHR Complaints*

At its session held 26 June 2020, the Commission upheld all the five complaints filed by the BCHR team against *Blic* and the portal *Srbija danas*. At the same session, the Commission asserted that *Kurir* had removed the controversial discriminatory comments and the comments containing elements of hate speech. However, it took more than one month for the administrator of the *Facebook* page of *Kurir* to remove the comments and this only after the BCHR legal team and the Secretary of the Press Council warned him about the problematic comments.³²⁸

The Commission established that *Blic* (in all the four cases) and *Srbija danas* (in two cases) had violated the standard of journalists' accountability³²⁹ pursuant to which journalists have an obligation to oppose anyone who violates human rights or who advocates for any type of discrimination, hate speech and incitement to violence. The Commission also established that the above media violated the standard of journalists' attention³³⁰ pursuant to which journalists must be aware of the danger of discrimination being spread by the media and do everything in their power to avoid it.³³¹

During the complaints procedure, the Commission established that neither *Blic* nor *Srbija danas* moderate comments on their *Facebook* page in advance of posting them, and so that they could not decide not to publish the problematic comments. However, *Blic* and *Srbija danas* failed to do it even pursuant to the rules of subsequent (*ex post*) moderation. BCHR had warned them about it as did the Secretary General of the Council. Since the problematic comments were not removed in the subsequent moderation, the Commission's decision to declare the editorial boards of *Blic* and *Srbija danas* responsible in these cases, is correct.³³²

With regards to the problematic comments, the Commission established them to be discriminatory to migrants i.e., offensive, that they incite to direct or indirect violence. Although the texts beneath which the comments appeared were not contradictory, the editorial boards must have paid attention that such comments undoubtedly incite to continued spread of prejudices and

³²⁷ According to Article 19 of the Statute of Press Council, the Commission shall pass a decision on a complaint no later than within 45 days from the date of receipt of the complaint by the Council.

³²⁸ Statement given by Vida Petrović Škero, member of the Commission. See items 6 and 7 of the Minutes from the 101st session of the Complaints Commission held 26 June 2020. Available at: <https://bit.ly/30zMI3I>.

³²⁹ Item 1, Section IV of the Code.

³³⁰ Item 4, Section V of the Code.

³³¹ In this context, a journalist should also avoid discrimination based, *inter alia*, on race, gender, age, sexual orientation, language, religion, political and other opinion, ethnic or social origin.

³³² The Commission ordered both media to publish the decisions within maximum five days from their receipt. The Press Council will also make them accessible to public on their Internet page.

hatred of migrants. Therefore, in no case is their removal a restriction of the freedom of speech, but rather an obligation of the editorial board to oppose all those who violate human rights and advocate for discrimination, hatred and incitement to violence.

Bearing in mind that these are significantly visible posts on *Facebook* pages of *Blic* and portal *Srbija danas*³³³, the discriminatory comments and comments spreading hate speech on them attract great public attention. Therefore, the decision of the Commission represents a significant step to drawing the attention of the public to irregularities and criticism of media who overstep freedom of speech and threaten minority groups – migrants, in this case – by their discriminatory writing.

Discriminatory texts and comments containing elements of hate speech underneath the posts on portals and social networks by the media who did not acknowledge jurisdiction of the Council represent a major problem. In case they act contrary to the Code no complaints procedure may not be initiated against these media. Consequently, it would not be possible to establish the responsibility of their editorial boards and the obligation to remove problematic comments.

b) *Conclusion*

The practice of the Council developed by upholding five BCHR complaints against discriminatory comments on the media *Facebook* pages is positive. Namely, the Commission established violations of the Code³³⁴ and the obligation of editorial boards to pay attention to comments on their social networks. This has a preventive effect on any future violations of the Code. Also, the decisions state that discriminatory comments and hate speech against migrants were expressed on the *Facebook* pages of *Blic* and *Srbija danas*, and that these acts were sanctioned. These decisions represent a good response to the growing presence of hate speech directed at minority groups such as migrants and refugees. Consequently, the recommendation that the editorial boards need to abide by the Code, and that violations must be acted on also by filing complaints to the Commission still stands.

A persisting outstanding issue is that numerous portals and *Facebook* pages are neither under the jurisdiction of the Council, nor are they its members. With regard to such media, the fact that a large number of discriminatory articles and comments remains unremoved and out of the Council's reach represents an obstacle.

During the reporting period, the BCHR legal team established a practice of monitoring media sources spreading hate speech and promoting discrimination of the refugee and migrant

³³³ *Facebook* page of the daily *Blic* has approximately 950,000 followers, and the portal *Srbija danas* approximately 300,000 users of this social network.

³³⁴ The Commission established violations of Item 1, Section IV of the Code (journalists' responsibilities) and Item 4, Section V of the Code (journalists' attention) in the comments posted on *Facebook* pages of *Blic* and *Srbija danas*.

population. By its timely response and contacting the Council, the BCHR legal team considerably influenced development of the body of practice of this independent authority with respect to prohibition of publishing discriminatory comments and spreading hate speech in the media and on their social media portals. The BCHR plans to continue monitoring social media posts and drawing attention to potential violations and irregularities in contravention with the Serbian Journalists' Code of Ethics, with a view to preventing hate speech and discriminatory treatment of refugee and migrant population.