



**Right to Asylum in the
Republic of Serbia
Periodic Report for
July–September 2020**



**Belgrade Centre
for Human Rights**

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Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

CRM – Commissariat for Refugees and Migration of the Republic of Serbia

EASO – European Asylum Support Office

LATP – Law on Asylum and Temporary Protection

LCRS – Law on Citizenship of the Republic of Serbia

LEF – Law on Employment of Foreigners

LF – Law on Foreigners

LGAP – Law on the General Administrative Procedure

MoI – Ministry of the Interior

NES – National Employment Service

PIN – Psychosocial Innovation Network

RS – Republic of Serbia

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

Introduction

The legal team of the Belgrade Centre for Human Rights (BCHR) has been providing legal aid to asylum seekers and persons granted international protection since 2012. These activities, as well as the development of this Report, are being implemented through the project *Support to Refugees and Asylum Seekers in Serbia*, supported by the United Nations High Commissioner for Refugees (UNHCR) in the Republic of Serbia (RS). Within the same project, the BCHR team also carries out other activities aimed at enhancing the protection of refugees, as well as their inclusion in cultural, social and economic life with a view to facilitating smoother integration into Serbian society.

The Report on the Right to Asylum in the RS presented to you herein for the period from the beginning of July to the end of September 2020, was authored by the BCHR legal and integration team. It contains information the team obtained whilst extending legal aid and representation of foreigners in the asylum procedure as well as support throughout integration of persons granted asylum in the RS. The team has also gathered a large amount of information owing to continued cooperation and communication with the state authorities and the UNHCR. The statistical data encompasses the 1 July - 30 September 2020 period.

For the purposes of preparing this report, the BCHR team has made an elaborate analysis of individual decisions by competent authorities in the asylum procedure, taking into account that their work has been intensified compared with the previous period. However, in the BCHR legal team's opinion, practices by competent bodies, especially in decision-making, should be more efficient. Though the COVID-19 pandemic seems to show no end, in the third quarter the competent bodies acted as if under 'normal' circumstances, when they brought a number of decisions worthy of note, confirming that negative aspects of their decision-making on asylum claims have not been completely removed yet. For the sake of providing a more comprehensive illustration of positive and negative sides of competent authorities' work, in some places the authors have briefly described the previous years' practice from or referred to earlier BCHR reports.

Furthermore, the authors have addressed specific problems perceived throughout the reporting period, but also remained difficulties when it comes to the procedure of refugees' and asylum-seekers' integration into the Serbian society. The integration team has described the key challenges in exercising the basic rights of asylum seekers and refugees and come up with recommendations for their improvement.

The Report is primarily addressed to state authorities competent for ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, but also to other professionals and organisations monitoring the situation in the field of refugee law. With this Report, its authors would like to draw attention to certain shortcomings regarding the right to asylum in the RS and offer a solution for their overcoming. We believe that this document will contribute to better understanding of the refugee position in and assist competent bodies in the RS in establishing a functional asylum system.

1. Statistics

All the statistical data were obtained from the UNHCR Serbia Office, to which the Ministry of the Interior (MoI) delivers its status reports. The data in this Report refers to the 1 January – 30 September 2020 period. The competent asylum procedure authorities do not publish information about their work on their websites.

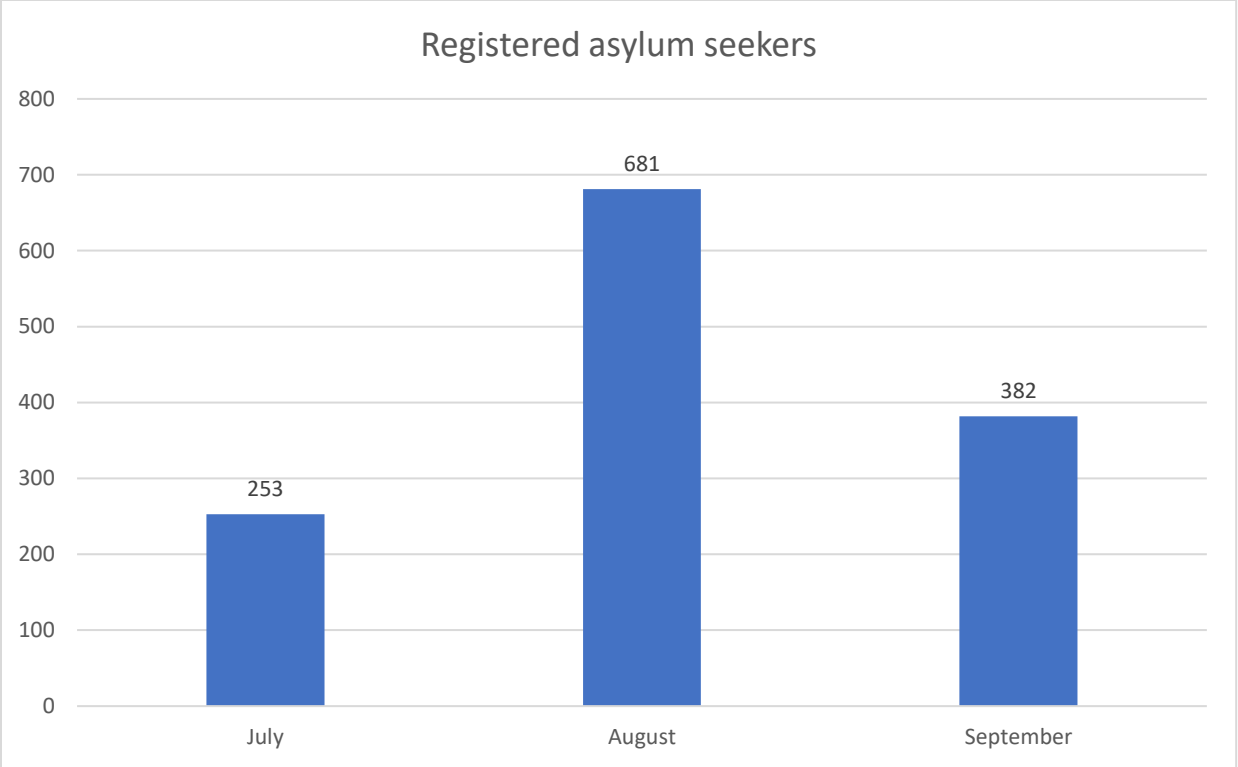
1.1. Registration of Asylum Seekers

From the beginning of July to the end of September 2020, 1,316 persons expressed an intention to apply for asylum in the RS, 1,259 of them being men and 57 women. An intention to seek asylum in the RS was expressed by 394 children, of whom 22 were unaccompanied by their parents or guardians. Viewed by month, in July there were 253 persons who expressed an intention to apply for asylum in the RS registered, in August 681 and in September 382.

Among foreigners who expressed the intention to seek asylum, the largest number of persons were from Afghanistan (941), followed by Syria (109), Pakistan (62), Iraq (54) and Iran (36). An intention to seek asylum was also expressed by persons from Bangladesh (21), Morocco (16), Palestine (16), Eritrea (11), Ghana (10), Libya and Algeria (7 each). There were also registered persons from Turkey (4), Lebanon and Moldova (3 each), Bosnia and Herzegovina, Cameroon, Cuba, Egypt and India (2 each). The smallest number of asylum seekers were from Belarus, Congo, Ecuador, the Gambia, Russia and Tunisia (1 each).

The majority of persons issued certificates of registration certificates of registration of the intention to seek asylum in the RS (certificates of registration) in the third quarter were registered at border crossings (923), then in regional police administrations (384), while 2 persons were registered at Belgrade Airport 'Nikola Tesla'. The Asylum Office (AO) staff registered 7 persons at asylum centres (AC).

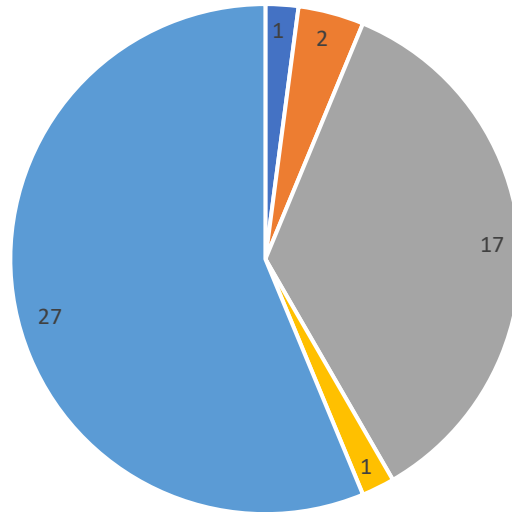
In the period from 2008 to September 2020, 649,139 persons expressed the intention to seek asylum in the RS. Analysed by year, 77 persons expressed such intention in 2008, 275 persons in 2009, 522 persons in 2010, 3,132 persons in 2011, 2,723 persons in 2012, 5,066 persons in 2013, 16,490 persons in 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. Since the beginning of 2020 2,466 persons have been issued with certificates of registration.



1.2. Work of the Asylum Office

From 1 July to 30 September, a total of 41 asylum applications were submitted, out of which 29 before Asylum Office staff in person, and 12 in writing. Apart from that, the Asylum Office held hearing for 10 asylum seekers. In the same period, a refugee status was granted to one stateless person and subsidiary protection to one person from Somalia and one from Mali. The Asylum Office rejected 12 asylum applications in respect to 17 persons and dismissed one asylum application. Throughout the reporting period, the Asylum Office discontinued 19 procedures with regard to 27 persons, mainly because the applicants had left the RS in the course of the asylum procedure.

Asylum Office work statistics for the period from 1 July to 30 September 2020 (number of persons)



- Decision on granting asylum
- Decision on granting subsidiary protection
- Decision on rejecting an asylum application
- Decision on dismissal of asylum application
- Decision on discontinuing the asylum procedure

2. Access to the asylum procedure

2.1. Access to the procedure in the period from July to September 2020

Throughout the third quarter of 2020, the BCHR legal team noticed no significant changes or other irregularities in relation to the access to the asylum procedure compared with those pointed to in the earlier period.¹ In the first half of 2020, the ongoing COVID-19 pandemic greatly affected the possibility of access to the asylum procedure in the RS, as we wrote in our previous report.²

Considering the fact that the general health situation in this reporting period has stabilized to a certain extent, the work of the competent institutions, in full adherence to the recommended epidemiological measures, has intensified. This is reflected in the increased number of expressed intentions to seek asylum in the RS. Namely, from the beginning of July to the end of September 2020, as many as 1,316 people expressed their intention to seek asylum in the RS, which is an upward trend compared with the total number of people who expressed their intention in the first and second quarters of 2020.³

Furthermore, there is an increased number of asylum applications filed before the Asylum Office staff, compared with the previous reporting period. Following the lifting of the state of emergency, the Asylum Office staff resumed procedural actions for asylum seekers housed in the Shelter for Foreigners in Padinska Skela.⁴

Taking into consideration the current situation brought about by the COVID-19 pandemic, during the third quarter, the air traffic did not return to its normal operational framework. Given this, no significant movements of foreigners who wanted to express their intention to seek asylum

¹ For more information see: Lena Petrović (ed.) *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://bit.ly/3kssyAA>.

² For more information see: *Right to Asylum in the Republic of Serbia, Report for January–June 2020*, Belgrade Centre for Human Rights, pp. 12-15 (hereinafter: *Right to Asylum, January–June 2020*), available at: <https://bit.ly/3kN1tld>.

³ In the January-March 2020 period an intention was expressed by a total of 839 individuals, while in the April-June period there were 311 individuals.

⁴ The information was obtained on 30 September 2020, in conversation with the Shelter for Foreigners management. Regarding access to legal aid for foreigners accommodated in the Shelter, BCHR and APC lawyers, as providers of free legal aid as well as lawyers regularly visit it. Additionally, in the Shelter there are posters with information on free legal aid placed with the aim of keeping foreigners informed about legal aid providers. Available at the BCHR archives.

in RS at the airport in Belgrade were recorded. However, we single out the case when in mid-September, the BCHR legal team was addressed by the citizens of India claiming to be at Belgrade airport and that they were denied access to the asylum procedure.⁵ BCHR lawyers were quick to intervene, put in a request to the Border Police Service (BPS) to allow the persons access to the asylum procedure, however, in a subsequent telephone conversation, BPS officers informed the lawyers that these persons were not at the airport premises. After that, the citizens of India no longer contacted the BCHR, remaining unclear what really happened in this specific case. Due to the lack of temporary permits to access the Airport transit zone during that period, BCHR lawyers were not able to be the spot to talk to the foreigners who claimed to be staying there and offer them legal advice.

The stated case is identical to certain cases we reported on earlier, when a group of foreigners addressed BCHR lawyers via the same e-mail address, claiming to come from India and were at the Belgrade airport with the intention of accessing the asylum procedure.⁶ As in previous cases, the BCHR could not determine with certainty, in this case either, whether these persons were really at the airport, whether they really wanted to seek asylum in the RS, or they contacted the BCHR only to avoid deportation and enter the RS.

Yet, we remind that according to the Law on Foreigners (LF), a foreigner who is denied entry into RS, the border police service is to issue a decision stating the reasons for refusing entry, which is then entered in the foreigner's travel document, issued as a document in a bilingual format.⁷ Even if a person does not meet the conditions for entry into the RS, a border police officer should first examine the potential risk of persecution⁸ and treatment in contravention of

⁵ Namely, a telephone conversation was conducted with a man from India, who claimed to have arrived at the airport with several members of his extended family. On that occasion, the BCHR team received information that there were dozens of people in the premises whose luggage was seized, their entry into the country prevented, as well as access to the asylum procedure.

⁶ For more information see: *Right to Asylum in the Republic of Serbia 2019*, p. 21; *Right to Asylum in the Republic of Serbia, Report for the January–March 2020*, Belgrade Centre for Human Rights, pp. 13-14, (hereinafter: *Right to Asylum, January–March 2020*), available at: <https://bit.ly/3mYWZPB>.

⁷ The decision on refusal is issued on the grounds of the Rulebook on the layout and content of the form on refusal of entry into the RS, the layout and content of the form on granting entry into the RS, and the manner of entering data on refusal of entry into a foreigner's travel document (*Official Gazette of the RS*, No. 50/18). The decision to refuse entry into the RS is an integral part of the Rulebook and is available at: <https://bitly.co/4KZq>.

The decision to refuse entry into the RS is issued on a bilingual form (Serbian and English). It is possible to file an appeal against the decision within 8 days from the date of receipt of the decision, which is made by the MoI. An appeal does not automatically delay the enforcement of the decision, but only when there are special humanitarian reasons or the risk of a serious violation of human rights in the case of the return of a foreigner to a specific country (Article 80 in conjunction with Article 83 of LF).

⁸ In the context of Article 33 of the Convention relating to the Status of Refugees.

the absolute prohibition of torture,⁹ before deciding to return a foreigner to the country from which they arrived in the RS.

2.2. Conclusion

The COVID-19 pandemic has not come to an end yet, however, despite the general uncertainty and unforeseen circumstances when the epidemiological situation in the RS is at issue, it is essential that the competent authorities undertake all necessary measures to enable the continuity of the asylum procedure in the RS. In particular, the Asylum Office is to find a way to act, even in potentially changed circumstances, in such a manner that may not result in a denial of the right of persons in need of international protection to access to the asylum procedure, but that may at the same time take care to ensure that all participants in the procedure are protected from possible infection. Other competent bodies should also support the Asylum Office in these endeavours.¹⁰

When the procedure at Nikola Tesla Airport is in question, specific legal solutions and Belgrade BPS practice still suffer from numerous irregularities we have already pointed to.¹¹ Unfortunately, the MoI has not taken any significant measures to eliminate the observed shortcomings yet. Regardless of the moment at which a person seeks international protection, the competent authorities are obliged to thoroughly examine in each individual case the risks of acting contrary to the prohibition against torture in their country of origin or third country, immediately prior to their forcible removal.¹² One of the recommendations¹³ we forwarded earlier to BPS officers is the support of the Asylum Office, but also of the BCHR team in order to enable easier identification of persons in need of international protection, but also to prevent the abuse of the asylum system.

⁹ In the context of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of the Convention against Torture and Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁰ For example, the CRM staff (in all ACs or PSs in the territory of the RS) as well as the Shelter for Foreigners staff, to provide premises to the Asylum Office staff for the purpose of carrying out procedural actions, while implementing and adhering to all safety and health measures aimed at protecting participants in the procedure.

¹¹ For more information see: *Right to Asylum in the Republic of Serbia 2019*, pp. 24-28.

¹² Article 3 and Article 13 in conjunction with Article 3 of the European Convention impose on the State an obligation to examine with particular care (rigorous scrutiny) the risks of torture, inhuman or degrading treatment or punishment; *J. K. and Others v. Sweden*, application no. 59166/12, para. 83 and *F. G. v. Sweden*, application no. 43611/11, para. 115.

¹³ See more in: *Right to Asylum, January–March 2020*, p. 14.

3. Analysis of the competent authorities' work and decisions in asylum procedure

Under the Law on Asylum and Temporary Protection (LATP) the Asylum Office conducts the first-instance asylum procedure, while the Asylum Commission is competent for issuing second-instance decisions. Asylum seekers may contest Asylum Commission's decisions by filing an appeal to the Administrative Court.

Contrary to the previous quarter, when the pandemic of COVID-19 significantly affected the work efficiency of relevant authorities in the asylum procedure, the general situation improved in the period from July to September 2020. This was reflected in a higher number of official actions taken, but also in the number of decisions rendered with regards to submitted asylum applications. Thus, in cases when persons in need of international protection were represented by the BCHR legal team, the Asylum Office issued 8 decisions, out of which one was on the adoption and one on dismissal and 5 on refusal of the asylum application.¹⁴ In the same period, the Asylum Commission issued 4 decisions ruling out the appeals of BCHR lawyers, i.e., confirmed the stand of Asylum Office regarding those applications. The Administrative Court delivered one judgment, rejecting the lawsuit filed on behalf of the BCHR clients against the decision of the Asylum Commission.

The reporting period was marked by the decision on granting asylum to a stateless person, who was represented in the procedure by BCHR lawyers, but also by more negative decisions of both first-instance and second-instance authority, in which different irregularities have been noted. In addition, the BCHR legal team filed, on behalf of several clients, the appeals to the Asylum Commission, since the Asylum Office did not render decisions on their asylum applications within the deadlines defined by the Law on General Administrative Procedure (LGAP) and LATP. This, as well as specific decisions rendered by the authorities that we have analysed, is to be discussed in more detail in the continuation of this chapter.

¹⁴ In the reporting period, the Asylum Office issued one decision of discontinuing the asylum application, concerning a female citizen of Burundi.

3.1. Analysis of Asylum Office Decisions

3.1.1. Asylum granted to a stateless person

In the mid-August, BCHP received the decision of the Asylum Office adopting the asylum application and granting asylum to Mr. A.¹⁵ This decision is specific on several grounds, which we will explain in continuation.

Namely, a stateless person in question is of Palestinian origin, whose asylum application had previously been refused in Hungary. Mr. A. was born in Lebanon, where he lived on the south of the state in a Palestinian camp under the control of Hamas¹⁶. This organisation tried to recruit him for its units fighting in Syria on the side of President Bashar el-Assad, whose regime has been supported by Hamas since the very beginning of armed conflict in that state. The applicant refused it and left Lebanon in 2016, in order to avoid forced recruitment. During hearing¹⁷ he described the cases of his friends and acquaintances who were sent to Syrian front against their will.

On his way to Serbia, Mr. A. travelled through Syria, Turkey, Greece and Northern Macedonia. The Asylum Office had in mind the fact that Mr. A. went from Serbia to Hungary where his asylum application was rejected in July 2018, with rationale that Lebanon is a safe country for him. However, the first-instance body took the stand that the applicant did not have an efficient approach to asylum procedure in Hungary, basing its opinion on the deposition of Mr. A. as well as on AIDA (*Asylum Information Database*) report of the *European Council on Refugees and Exiles* (ECRE) for 2018.¹⁸

With a view of difficult position of Palestinian refugees in Lebanon, the Asylum Office has consulted several different sources, which should represent regular practice of a first-instance authority, regardless of whether the asylum application is approved or not. In that sense, the rationale contains quotations from the report of *Congressional Research Service* (CRS)¹⁹, of the

¹⁵ Asylum Office Decision No. 26-2063/17 of 11 August 2020.

¹⁶At issue is a Palestinian Islamic organization that is characterized by the EU, USA and other countries as a terrorist organization.

¹⁷ Minutes of the oral hearing 26-2063/17 held on 30 August 2019.

¹⁸ *Country Report Hungary – 2018 Update*, Asylum Information Database (AIDA) – European Council on Refugees and Exiles (March 2019), available on: <https://bit.ly/3oVn9EA>.

¹⁹ Carla E. Humud, *Lebanon*, United States Congressional Research Service (20 September 2017), available on: <https://bit.ly/388fFrN>.

British *Home Office* and several articles and coverages of major media companies.²⁰ The quoted documents assert that a large part of Palestinian community in Lebanon does not have Lebanese citizenship, and thus missing Lebanese personal ID documents. Palestinian refugees are forbidden the access to public healthcare and other social services, and Palestinian children cannot attend Lebanese public schools.

However, certain information were drawn from *Wikipedia*, the website which is, certainly, not considered a credible source in scientific and professional circles. Regardless of this oversight, the Asylum Office took here an adequate approach to deliberating on the merits of the asylum application and to the assessment of important facts and circumstances. It is, also, important to note, since it a frequent case in practice that a first-instance authority does not take into account the other submitted documents about asylum seekers' countries of origin, which results in the refusal of asylum application. Namely, the information and other proofs that asylum seekers offer during asylum procedures are, often, not in favour of the rejecting decision, and the ruling authority ignores them, or assesses them in a selective, i.e., unlawful manner. In the reporting period, the Asylum Office acted in this way in several cases upon applications of BCHR clients, which will be explained in more detail in the continuation of this text.

3.1.2. Challenges in the practice of Asylum Office

3.1.2.1. Rejected asylum application of an Arabian family from Iran

In the beginning of August 2020, the Asylum Office rejected the asylum application to the four-member family X. from Iran.²¹ As members of Arab ethnic group, they were forced to flee the country due to persecution and discrimination they were exposed to by public officials.²² Prior to seeking international protection in the RS, the X. family had lived in the province of Khuzestan, rich in oil, that is predominantly inhabited by Arabs, and in which the conflict between this ethnic group and authorities has existed for decades. About 80 percent of land reserves, i.e. 57 percent of the total reserves of Iranian oil is located in this province.²³ It is not rare that security service uses excessive force during interventions in demonstrations, organised

²⁰ Josh Wood, „The Palestinians' Long Wait in Lebanon“, *The New York Times* (2 March 2011) available on: <https://nyti.ms/2JtdEvT> and "Lebanon: Palestinian refugees without basic human rights“, *Aljazeera Balkans* (25 September 2017), available on: <https://bit.ly/3ergux8>.

²¹ Asylum Office Decision No. 26–1831/18 of 30 July 2020.

²² There are 81 million inhabitants in the Islamic Republic of Iran, majority of which are Persians.

²³ *Iran's Oil and Gas Annual Report 2017, Facts Global Energy* (December 2017). available on: <https://bit.ly/2Qlftvh>.

by the inhabitants of Khuzestan. Protesters are detained, tortured, and a high level of violence often leads to fatal outcomes.²⁴

Mr. Y. X. (a husband and a father) was deprived of his liberty for the first time in 2005, during demonstrations in the city of Mahshahr, after which he spent almost one month in inhuman conditions of detainment, where officers tortured him almost every day during interrogation. After several years, security services detained Y. X. again, since he had participated in the planning of new protests. Then he was told "to, by no means, participate in demonstration because he would end up like some people who are gone". Just before leaving Iran in 2017, together with his wife and two juvenile sons, Mr. Y. X. received the information that he was exposed to the same danger again. In the meantime, tensions in the province of Khuzestan have not ceased, and they continued after family X. applied for asylum in the RS.

According to the opinion of Asylum Office, Mr. Y. X. did not experience problems after his second detention, with the conclusion that there is a minor probability that he would be exposed to future persecution for his previous activities. They have completely neglected the fact that he was a victim of arbitrary detention, physical and psychological violence, in addition to long-term instable safety situation in the area in which he had lived with his family and to continuous repression and stigmatization of the ethnic group they belong to.

In ruling the refusing decision, the Asylum Office stated in its rationale that lawyers of the family X. had submitted evidence during the procedure, however, their assessment was completely missing. Above all, those were reports of international and non-governmental organisations, pointing out to the difficult situation of Arab ethnic group in Iran²⁵, as well as general recommendations of the UN Committee on the Elimination of Racial Discrimination, (CERD) and also different media articles, which confirm cases of Arab minority's human rights violation in Iran, as described by the members of X. family.

In that sense, it is necessary to emphasize that it was only a part of publicly available documents that the Asylum Office should have considered fully among all the statements given by the family during the first-instance procedure. It is unacceptable for a first-instance authority to refuse the possibility of existence of credible fear among asylum applicants, failing to examine any topical report on the situation in Iran. Information regarding the country of origin are of key

²⁴ In addition, the motive for frequent dissatisfaction are the claims that Iran authorities permanently deploy specific measures and methods (intentional air pollution, limited access to drinkable water, inability to find employment in public enterprises, etc.), with the intention to force the mass displacement of Arab ethnic group from this province that is of vital importance for this country's economy.

²⁵ Minority Rights Group International, Amnesty International, Human Rights Watch, Ahwaz Human Rights Organization, European Ahwazi Human Rights Organization, Iran Human Rights Documentation Centre, Centre for Human Rights in Iran etc.

importance for setting the general context, in order to show that asylum applicant is exposed to risk from persecution, or to support the statement that there is an existing pattern of persecuting the persons who have characteristics similar to the applicant.²⁶

For the purpose of confirming the merits of the lodged asylum claim, lawyers also submitted three reports on psychological assessment of X. family members, made by psychologists from the organization Psychosocial Innovation Network (PIN). The credibility assessment of an asylum application must be conducted for each person individually, based on individual circumstances and through the prism of different disciplines, such as legal, cultural, psychological and sociological.²⁷ However, the Asylum Office neither took previous reports into account, nor stated reasons for it in the rationale of its negative decision. As the BCHR already underlined earlier, it is important that authorities in charge of asylum procedure consider and appreciate the opinion of experts from other fields when assessing credibility of each application, concerning the fact that such multidisciplinary approach contributes to proper and complete fact-finding in each individual case.²⁸

The first-instance authority was obliged to establish properly, truthfully and completely, all the facts and circumstances that are relevant for lawful and regular procedure in this administrative matter. Such an obligation is laid down in the principle of truth and free evaluation of evidence, which means that decisions must be based on a scrupulous and diligent evaluation of all individual pieces of evidence and the evidence in its entirety, as well as on the results of entire procedure.²⁹ Furthermore, the Asylum Office was especially obliged, when deciding on the merits of application, to take into account all the relevant facts and evidence presented by the asylum applicant during the procedure as well as to take into consideration current reports on circumstances in the country of origin, contained in different sources provided by international organizations, such as UNHCR, European Asylum Support Office (EASO) and other organizations focusing on human rights protection.³⁰

In that respect, it is important to emphasize the decision by Asylum Commission AŽ–19/19 of 26 August 2019, annulling the decision of Asylum Office 26–982/18 of 28 May 2019, and returning the case for repeated procedure and ruling. The reason for that was the stance of

²⁶ *The assessment of credibility in asylum procedures - multidisciplinary manual*, Hungarian Helsinki Board, 2013, p. 24.

²⁷ *Beyond proof – Credibility Assessment in EU Asylum Systems*, UNHCR – European Refugee Fund (May 2013), available on: <https://bit.ly/368AbVh>.

²⁸ For more information see: *Right to Asylum in the Republic of Serbia 2019*, p. 55, available on: <https://bit.ly/2QmifAa>.

²⁹ Article 10 of the LGAP.

³⁰ Article 32, para. 2, item 2 of the LATP.

Asylum Commission that Asylum Office has not considered all submitted facts and relevant reports of international organisations on the situation in Iran.

As a sort of "aggravating circumstance" and one of crucial reasons for rejecting this claim, the Asylum Office stated the fact that the family X. had applied for asylum more than one year after their arrival in the RS, as their previous intention had been to go towards some of EU states. It is interesting that the first-instance body had not interpreted such a circumstance to the detriment of asylum seekers in previous cases. For example, in 2018, the Asylum Office granted asylum to a citizen of Iran, who had tried, prior to applying, to cross the Hungarian border three times, the Romanian border once and the Croatian border four times (managing to reach Zagreb twice before he was forcibly returned to the RS by Croatian police). He also sought the international protection in the RS only after certain period of time.³¹ The Asylum Office also rendered an identical decision in the case of an underaged asylum seeker from Afghanistan, who tried unsuccessfully to travel through Croatia and other EU states to reach Belgium and seek asylum there.³² All the above said shows that the practice of Asylum Office is unbalanced, which is contrary to the principle of lawfulness and predictability, stipulated by the LGAP.³³ This principle binds an authority, when acting in an administrative matter, to also take into account earlier decisions made in the same or similar administrative matters.³⁴

3.1.2.2. Rejected asylum application to the citizen of Palestine

In August 2020, the Asylum Office rejected the claim for asylum to the citizen of Palestine B. B., who had left his country of origin due to persecution based on nationality and religious affiliation.³⁵ B. B. was the target of Israeli army's attacks at one of the checkpoints in the Western Bank, where he had lived with his family. After the attack, he was taken to hospital, and then placed in detention, where he was subjected to torture. He was sentenced to imprisonment without the right to an appeal. During imprisonment, he suffered two heart attacks.

The Asylum Office based its decision on allegations of the asylum applicant B B. from a hearing with respect to the existence of a well-founded fear of persecution as well as on the information on the situation in the country of B B.'s origin, submitted by his lawyer during the

³¹ Asylum Office Decision No. 26-1081/17 of 4 July 2018.

³² Asylum Office Decision No. 26-784/18 of 20 November 2019.

³³ Article 5, para. 3 of the LGAP.

³⁴ That is also stated by the Administrative Court in the ruling U 6310/18 of 27 August 2018, with reference to Article 141, para. 4 of the LGAP, which, among other things, stipulates that rationale should contain the reasons due to which a body has deviated from the solution that it used to issue earlier, in same or similar administrative matters.

³⁵ Asylum Office Decision No. 26-2177/19 of 20 August 2020.

procedure. However, the BCHR legal team holds that it was done in a selective way, due to which an improper conclusion about factual state was drawn in this specific case, which will be described in more detail below.

That is, in the rationale of this decision, the Asylum Office neither considered, nor qualified actions and reasons for persecution in the case of asylum applicant B. B. Their existence was deliberated only on the basis of B. B.'s allegations during procedure assessed as statements that cannot be trusted by the Asylum Office which, therefore, took the viewpoint that submitted evidence was not enough to indicate persecution in the country of B. B. 's origin. In this way, the Asylum Office could not draw a legally relevant conclusion about the situation in the country of origin and its impact on personal circumstances of the asylum applicant. This is supported by the fact that not a single, either UNHCR or EASO report on state of human rights in Palestine was referred to in the rationale of its decision, the Asylum Office thus failing to meet its obligation stipulated by the LATP.³⁶

In favour of the deposition of asylum applicant B. B., in the course of procedure the BCHR legal team submitted a pleading to the Asylum Office, pointing out to the reports containing allegations regarding the events upon which B. B. based its persecution in his country of origin. Among them, there is a series of relevant reports of international organizations on the position of Palestinian people and violation of their human rights - their endangered right to life³⁷, their unlawful and unjustified deprivation of liberty, restrictions on their freedom of movement, etc. All the allegations presented by the legal team confirm that the members of Palestinian nation generally face manifold systematic discrimination by the state of Israel.

Namely, the Asylum Office stated in its decision, that the legal representatives of B. B. had submitted a pleading, and that this fact was taken into account in deliberation. However, judging by the content of the rest of decision, the Asylum Office did not take the stated pleading into consideration at all. The pleading in question contained quotations from the report by the UN

³⁶ Article 32, para. 2, Item. 2 of the LATP.

³⁷ Namely, Asylum Office questioned the credibility of the statement given by the applicant B. B. about the attack of Israeli forces on him, alleging that Israeli soldiers called ambulance that transported him to the hospital on the territory of Israel. The statements of B. B. that Israeli army had not allowed to Palestinian ambulance that had arrived first on the spot, to provide urgent medical aid, were not taken into consideration at all. The first-instance body should have taken the above said fact into consideration, bearing in mind the necessity of first medical assistance. Concerning the fact that the applicant was in life threatening state, his right to life was directly at risk.

Human Rights Council³⁸ and the General Assembly of the UN³⁹ on Human Rights Situation in Occupied Palestinian Territories as well as the positions of the High Commissioner for Human Rights⁴⁰ on the same issue.

The European Commission's report⁴¹ on Israeli treatment of Palestinian detainees states that, according to UN statistics, since the occupation of Western Bank and Gaza Strip in 1967, the number of Palestinian civilians who have been arrested, detained and imprisoned, reaches at least 750,000. Out of this number, about 50,000 of them are women and children. In average, 16,000 Palestinian are imprisoned by Israeli military authorities every year.

Due to the failure to consult the relevant reports by the UNHCR, EASO and other international organizations as well as all the quotations of the pleading submitted by legal representatives, the Asylum Office drew a wrong conclusion about the factual state when deciding upon the merits of B. B.'s application. In that sense, the correct evaluation of reasons as to why the applicant was the target of Israeli soldiers' attacks was missing, as well as why he was detained and convicted *without right to appeal*⁴², although he had not been politically active or a member of any armed formation, etc. Owing to selected establishment of all facts, the Asylum Office came to the wrong conclusion that the situation in the West Bank is such that B. B. would not be subjected to death penalty or execution, torture, inhuman or humiliating treatment or punishment.

It is, also, interesting to mention that the Asylum Office stated in its decision that the origin of applicant's injuries he had suffered when attacked by Israeli army cannot be determined with certainty. In the rationale says that, apart from the reports of medical doctors from the RS, no other medical documentation was submitted. In case of any doubt regarding B. B.'s injuries, the

³⁸ *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, Human Rights Council, A/HRC/22/63 (7 February 2013);

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Human Rights Council, A/HRC/40/73 (15 March 2019).

³⁹ *Situation of Human Rights in the Palestinian territories occupied since 1967*, General Assembly, A/71/554, (October 2016); *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, A/73/35, UN General Assembly, (New York, 2018);

⁴⁰ *Briefing to the Committee on the Exercise of the Inalienable Rights of the Palestinian People on the human rights situation in the Occupied Palestinian Territory including the ongoing crisis in Gaza*, Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, (23 July 2018), available at: <https://bit.ly/4Kd9>.

⁴¹ *Violating International Legal Obligations: Israel's Treatment of Palestinian Prisoners*, European Parliament, (March 2013), available at: <https://bit.ly/35FdU17>.

⁴² As he stated during the procedure, the applicant B. B. was accused of an attempt to commit murder of a man he did not know, that he had set a vehicle to fire, entered Israeli territory, etc. During his trial he did not know what he was convicted for, since the proceeding was held in Hebrew, which he did not understand.

Asylum Office should have acted pursuant to the LGAP and ordered medical expertise, instead of evaluating this issue arbitrarily.⁴³ In relation to the above said, it is important to underline that, upon proper and correct determining the relevant facts regarding the grounds of asylum request, a first-instance authority is obliged to repeat the hearing of an applicant in case of the existence of certain contradictions and vagueness.⁴⁴ Such legal possibility was not used in this case.

The Asylum Office, issued negative decision on B. B.'s application, in the BCHR opinion, without previously considering all the circumstances based on which the factual state could have been determined in its entirety, in a proper and lawful manner. Based on such treatment, the impression remains that asylum requests are considered arbitrarily, neglecting the existence of a real risk of ill-treatment in case of return to the country of origin, which should be always taken into account by the relevant acting authorities. Dissatisfied with the decision regarding the asylum application of B. B., the BCHR legal team filed an appeal to the Asylum Commission and the procedure is underway.

3.1.2.3. Rejected application of a person of different sexual orientation from Tunisia

In mid-August, the Asylum Office issued the decision rejecting asylum application of a citizen of Tunisia N.⁴⁵ Mr. N. was born in the city of Benzart, Tunisia, and fled because of well founded fear of persecution due to his sexual orientation. Homosexuality is punishable in Tunisia, for which Mr. N. was arrested several times by police.

In its decision, the Asylum Office failed to analyse in detail the position of LGBTI persons in N's country of origin and thus draw a wrong conclusion regarding the factual state. While making its decision on the merits of the application, the Asylum Office neglected the pleadings that N. had submitted via legal representatives, its content confirming the allegations stated in the procedure. Thus it completely ignored the prominent attitudes of the UN Committee for Human Rights⁴⁶, UN Committee Against Torture⁴⁷ and the Special Rapporteur for torture⁴⁸ that

⁴³ Article 128 of the LGAP stipulates that forensic assessment is done when the determination or evaluation of a fact needs the expertise not owned by the authorized official (para. 1), that the authorized official appoints the forensic analyst, the subject and the scope of forensic assessment and deadline for issuing the finding and opinion (para. 2), and that forensics may be entrusted to a person with right education and expert knowledge, as well as to scientific or professional institution (para. 3).

⁴⁴ Pursuant to Article 37, para. 2 of the LATP.

⁴⁵ Asylum Office Decision No. 26-2039/19 of 17 August 2020.

⁴⁶ Human Rights Committee, *List of issues prior to submission of the sixth periodic report of Tunisia* CCPR/C/TUN/QPR/6 (27 April 2018).

⁴⁷ Committee against Torture, *Concluding observations on the third periodic report of Tunisia*, CAT/C/TUN/CO/3, (16 June 2016), para. 42.

⁴⁸ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (January 2016), A/HRC/31/57, available on: <https://bit.ly/3oX7Zym>.

Tunisian authorities should annul Article 230 of the Criminal Law that criminalise same-sex relationships. It is stated in their reports that men, suspected for such behaviour, are subjected to forced anal medical examination based on a court order to determine whether they have had sexual relations or not. In addition, the Asylum Office neglected the opinion of UNHCR that serious violation of basic human rights of the persons of different sexual orientation or gender identity, regardless of whether an asylum seeker had experienced them or had a well grounded fear from that happening, may be considered persecution, in the sense of the Convention of the Status of Refugees.⁴⁹

Furthermore, the Asylum Office failed to evaluate the credible reports of international non-governmental organizations (*Amnesty International*⁵⁰, *Home Office*, *Human Rights Watch*⁵¹), pointing out to widespread discrimination and the violation of Tunisian homosexuals' basic human rights. In line with the above said, the Asylum Office failed to fulfil its obligation stipulated by LATP⁵², to collect and consider all relevant facts and proofs when deliberating on the grounds of asylum application. Those are, among others, also the reports by the UNHCR and the reports by organizations dealing with human rights protection.

Bearing in mind the rationale of the decision, the Asylum Office has, contrary to regulations, deliberated on the circumstances of importance for decision making in a selective manner that was in favour of the asylum application refusal.⁵³ Thus, it has emphasized the fact that N. had the possibility to contact his lawyer upon specific arrests in the country of origin. However, the above said cannot guarantee the protection of N., bearing in mind that he had been at risk of being sanctioned and of inhuman and humiliating treatment due to his sexual orientation. The decision also stated that a certain number of politicians in Tunisia offered support to the protection of right of LGBTI community members, but omitted the fact that this support has not been offered in practice.⁵⁴ In addition to that, the rationale underlines that among candidates of the last presidential elections in Tunisia was also Munir Batur, a declared homosexual, a lawyer

⁴⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, (23 October 2012), para. 34-37.

⁵⁰ See: Amnesty International, *Amnesty International Report 2017/18 – The State of the World's Human Rights*; Amnesty International, *Tunisia 2019* (13 August 2020), available on: <https://bit.ly/3mJ63HY>.

⁵¹ See: Human Rights Watch, *Tunisia: End Persecution of LGBT People* (17 May 2019), available on: <https://bit.ly/3elZtV1>; *Tunisia: Homosexuality convictions upheld*, Human Rights Watch (13 August 2020), available on: <https://bit.ly/3jUx89w>.

⁵² Article 32, para. 2, Item. 2 of the LATP.

⁵³ Asylum Office Decision No. 26-2039/19 of 17 August 2020, p.6

⁵⁴ Similarly, Asylum Office has stated that the leader of Nahda party, Lofti Zitoun condemned the continuation of anal examinations, however, the condemnation alone does not have any special meaning, because those examinations continued in practice.

by profession and the protector of the rights of the LGBTI community. However, the Asylum Office excluded the fact that Batur was exposed to police pressure throughout the entire electoral campaign, and that he was also a target of serious threats because of his stands, which are not in line with traditional islamic perceptions.

Apart from that, the Asylum Office failed to take into account a psychological report on the condition of asylum seeker N., which clearly indicates that events in the country of origin had major adverse effect on his mental health.⁵⁵ Besides arrest and detention, N. had also faced problems in his family because of his sexual orientation and had been forced to leave the family house. And also, he could not keep any job for a longer period, regarding the fact that he would be fired soon after his employer had learned about his sexual orientation.

In this context, an additionally worrying fact is that this is a vulnerable group of asylum seekers, whose applications should have priority for the Asylum Office in their decision making process. In this specific case, the decision was brought more than 11 months after the date of application⁵⁶ filed by Mr. N., which is not in compliance with LATP that stipulates the deadline of three months for the issuance of a first-instance decision, with the possibility of extension only in exceptional cases, and with timely information sent to asylum applicant.⁵⁷

The above described practice of Asylum Office in the case of N. has contributed to the violation of rules of procedure specified by national regulations, to incompletely determined factual state and, finally, to the issuance of unlawful decision on the filed application. During the reporting period, the Asylum Office rejected asylum application to another citizen of Tunisia who is a member of LGBT population, deliberating in an almost identical manner as in the case of Mr. N. Such practice of deciding upon requests of individuals from vulnerable groups is not based on well grounded, proper and truthful establishment of all relevant facts, and especially not on the existence of risk of abuse in case of returning to the country of origin. Further on, it results in the risk of the violation of the *non-refoulement* principle.

⁵⁵ The assessment of N.'s physical condition was given by the accredited psychologists of the non-governmental organization *Psychosocial Innovation Network* (PIN).

⁵⁶ The asylum applicant N. filed his asylum application on 20 August 2019.

⁵⁷ Article 39 of the LATP.

3.1.2.4. First asylum country as the grounds for the dismissal of asylum application

The BCHR lawyers represent in asylum procedure Mr. Y., a citizen of Burundi, who had previously been given the refugee status in Uganda. Due to problems that he had faced in the country that gave him international protection, he decided to leave it. On 7 March 2019, Y. used regular plane flights from Uganda, via Istanbul, to arrive in Serbia, where he filed asylum application, which was rejected by the decision of the Asylum Office in August 2020.⁵⁸ In the continuation of this document, we will describe the course of the procedure upon the filed application of Mr. Y. and point out to irregularities that his legal representatives have noted.

The Asylum Office notified⁵⁹ the BCHR lawyers that the decision on Mr. Y.'s asylum application would be made in compliance with Article 43 of the LATP, specifying the first country of asylum. In that sense, the first country of asylum was the one "where asylum seeker was given the status of a refugee, if he still may invoke that protection measure⁶⁰ or in which asylum seeker enjoys effective protection, including the guarantees deriving from the *non-refoulement* principle"⁶¹. Furthermore, the applicant has the possibility to contest the application of the principle of first country of asylum in relation to his specific circumstances.⁶²

Only a day following the receipt of the notification, BCHR lawyers received the decision by the Asylum Office⁶³ rejecting the application of Mr. Y. based on Article 43 of LATP.⁶⁴ In this way, Mr. Y. was deprived of the possibility to declare, within legally stipulated deadline,⁶⁵ his opinion on the intention of relevant authority to apply the concept of the first country of asylum and to contest it, based on his personal circumstances.

Namely, in its decision, the Asylum Office stated that his refugee status was recognized to the applicant Y. in Uganda, since the nationals of Burundi have been treated as *prima facie* refugees from 1 June 2017. In that sense, the Asylum Office viewpoint is that the applicant is in even more favourable position than those refugees, since he had applied for asylum in Uganda in October 2015. The rationale of the decision also emphasizes that that the refugee status in

⁵⁸ Asylum Office Decision No. 26-1515/19 of 13 August 2020.

⁵⁹ Asylum Office Notification No. 26-1515/19 of 7 August 2020 was delivered to BCHR lawyers on 14 August 2020.

⁶⁰ Article 43, para.1, Item 1 of the LATP.

⁶¹ Article 43, para 1, Item 2 of the LATP.

⁶² Article 43, para 2 of the LATP.

⁶³ The notification of Asylum Office No. 26-1515/19 of 13 August 2020 that was delivered to BCHR lawyers on 17 August 2020.

⁶⁴ Article 43, para. 1, point. 1 of the LATP.

⁶⁵ Pursuant to Article 42, para. 4 of the LATP, it is possible to file an appeal to Asylum Commission against the decision to dismiss asylum application or additional asylum application, within eight days from the date of serving such decision.

Uganda granted to the applicant a wide corpus of rights such as the right of access to education, freedom of movement, right to health care, as well as the rights in the area of labour. In favour of the above said is the fact that Mr. Y. was employed and possessed his refugee identity card and driving licence issued to him by the competent public authorities of Uganda. Due to all the above-said, the Asylum Office stated its opinion that the applicant Y. exercised all his guaranteed rights in the first country of asylum and that he had safe life.

It should be highlighted in this specific case that during the procedure the Asylum Office failed to fully identify and lawfully assess the persecution that Mr. Y. had faced in Uganda as the first country of asylum.

Additionally worrying is the fact that the notification on the dismissal of asylum request was delivered to BCHR lawyers only one business day after the submission of Asylum Office notification that it would issue the decision regarding this specific request in accordance with Article 43 of LATP. In this way, the applicant Y. was not given the possibility to contest the application of the principle of first country of asylum in relation to his special circumstances and to acknowledge the fear of persecution in case of his return. The Asylum Office failed to take into account those circumstances during the official act of hearing⁶⁶ and to hear Mr. Y. additionally for the purpose of more precise determination of the factual state in this issue.⁶⁷

In its rationale, the Asylum Office only recorded the allegations by Y. that he had been reported to the police for his sexual orientation in his first country of asylum, whereupon he had been forced to move to another neighbourhood, and that he had changed his place of residence several times. However, it failed to take into consideration the part of deposition from the hearing when Y. stated that such report to the police had been the originator of all his later problems in the first country of asylum.⁶⁸ Due to his sexual orientation, Y. had been at risk of imprisonment in Uganda, and equally at risk of persecution, both in Burundi as his country of origin, and in Uganda.

It follows from all the above that the applicant Y. neither had a safe life, nor had been able to enjoy all his rights guaranteed by his refugee status in Uganda as his first country of asylum. Acting in this manner, the Asylum Office violated the rules of the procedure, determined the factual state incompletely and inaccurately, failing to assess, thoroughly, carefully and with caution, the risk of *refoulement*.

⁶⁶ Minutes of the oral hearing 26-1515/19 held on 17 October 2019 and 24 October 2019.

⁶⁷ Pursuant to Article 37, para. 2 of the LATP, according to which an authorised officer of Asylum Office may hear the asylum seeker several times for determining the factual state.

⁶⁸ Minutes of the oral hearing 26-1515/19 held on 17 October 2019, p. 6.

Dissatisfied with the decision rejecting the asylum application of Mr. Y., the BCHR legal team filed a complaint to the Asylum Commission and the procedure is underway. In the meantime, the Asylum Office submitted to the BCHR a notification⁶⁹ stating that the decision regarding the application of another BCHR client from Burundi⁷⁰ who had previously been granted asylum in Ruanda, would be issued in compliance with Article 43 of LATP. On that occasion, contrary to the previously described case, the Asylum Office stated the legal deadline of eight days⁷¹ within which the asylum seeker may state his opinion on such a circumstance.⁷²

3.1.3. Conclusion

Compared with the practice so far, the practice of Asylum Office has remained unchanged during the issuance of rejecting decisions. Neglecting the submitted proofs, ignoring relevant reports on the asylum seekers' states of origin, and acting contrary to the existing practice are the main characteristics of such decisions. As it is seen, the second-instance authority had previously annulled the decisions of Asylum Office for similar irregularities, therefore their repetition essentially questions the quality of work of this first-instance authority.

3.2. Untimely application of the first-instance procedure

At the end of the third quarter, the BCHR acted in compliance with the LGAP⁷³, and filed eight complaints to the Asylum Commission because of "silence of the administration", i.e. unjust postponement of certain procedures. The complaints were filed on behalf of nine asylum seekers⁷⁴ as Asylum Office failed to render decisions on their individual applications within the deadlines established by the law. The BCHR lawyers had earlier pointed out to the fact that Asylum Office overstepped the deadlines prescribed by the law for issuing decisions.

Namely, the LGAP stipulates that the decision upon asylum application shall be issued in regular procedure, not later than within three months from the date of asylum application

⁶⁹ The notification of Asylum Office of 9 September 2020 was received by BCHR lawyers on 14 September 2020.

⁷⁰ The case was logged in Asylum Office under No. 26-1613/19.

⁷¹ Pursuant to Article 42, para. 4 of the LATP.

⁷² However, bearing in mind the fact that the citizen of Burundi left the territory of the RS in the meantime, the asylum procedure initiated upon his request was suspended, on the initiative of BCHR. The decision on the procedure suspension No. 26-1613/19 of 13 October 2020 was received by BCHR lawyers on 16 October 2020.

⁷³ Article 151, para. 3 of the LGAP.

⁷⁴ Eight cases are at issue, that are conducted for nine asylum applications, submitted by citizens of Libya, Iraq, Afghanistan, Cuba, Burundi and Pakistan.

submission, or from allowed additional asylum application.⁷⁵ Exceptionally, this deadline may be extended by three months if the application contains complex factual or legal issues, or if a large number of foreigners apply for asylum application at the same time.⁷⁶ Furthermore, the deadline for deciding upon such application may be prolonged by additional three months if that is necessary in order to consider the application fully and in a proper manner.⁷⁷ In any case, a decision has to be made within 12 months from the date of asylum application submission, at the latest.⁷⁸

If such decision cannot be rendered within three months, the applicant shall be informed about it, and also about the deadline in which he may expect the issuance of the decision.⁷⁹ Such notification was submitted to the BCHR by the first-instance authority only in two cases, however, deadlines for deciding were overstepped in those procedures as well.⁸⁰

Along with the understanding of special circumstances caused by the pandemic of the infectious disease, COVID-19, the BCHR was forced to address the Asylum Commission, especially if we take into account the worrying fact that the "silence" of the Asylum Office in the stated cases (until 1 October 2020) has been, in average, much longer than one year, or 474.5 days, to be precise. In that respect, the most drastic example is the case of a citizen of Libya, who sought asylum in Serbia on 19 July 2017. In addition, the first-instance authority did not hold a hearing until the moment the complaints were filed, in two cases, although it is obliged to carry out this official action in the shortest period, as stipulated by the LATP.⁸¹

In line with the above said, the BCHR lawyers asked the Asylum Commission to decide upon the submitted applications, since they think that additional extension of the deadline for decision issuance would be the violation of the principle of party's right protection⁸², as well as of the principle of efficiency and cost-effectiveness⁸³. Decisions by competent authorities are expected in the near future.

⁷⁵ Article 39, para. 1 of the LATP.

⁷⁶ Article 39, para. 2 of the LATP.

⁷⁷ Article 39, para. 3 of the LATP.

⁷⁸ Article 39, para. 6 of the LATP.

⁷⁹ Article 39, para. 4 of the LATP.

⁸⁰ Those were the cases No. 26-2176/19 and 26-2573/19, and the notifications of Asylum Office are dated 20 December 2019.

⁸¹ Article 37, para. 1 of the LATP.

⁸² Pursuant to Article 7 of the LAGP, the assigned authority is obliged to enable the party to protect itself easier in the easiest possible way and to exercise its rights and legal interests.

⁸³ Article 9 of the LGAP.

3.3. The Analysis of Some Asylum Commission's Decisions

3.3.1. The uneven practice of Asylum Office in the cases of unaccompanied children from Afghanistan without adequate answer by the Asylum Commission

In one of the previous BCHR reports⁸⁴ it has been stated that in February 2020, the Asylum Office issued two decisions regarding asylum request for unaccompanied children from Afghanistan, in which they stated completely different conclusion regarding the safety situation in this country. Asylum Commission decision made during July 2020 did not lead to uniform practice in such cases.

As a reminder, in one of the cases, the Asylum Office rendered a decision to approve the asylum application and to grant to Z.⁸⁵ subsidiary protection in the RS.⁸⁶ In the decision granting subsidiary protection in the RS to Z., the Asylum Office stated, among other things, that the "situation in Afghanistan has been unchanged for years, as well as that it is getting worse in some segments". Referring to the stand of UNHCR from 2018, the first-instance authority has also stated that no part of Afghanistan could be considered safe. Based on a series of relevant international reports, the Asylum Office has concluded that there is a safety risk for Z. in Afghanistan "due to local armed conflicts and the state of complete lack of the rule of law in this country".

On the other hand, within the period of only two days, the Asylum Office issued a decision in which the situation in Afghanistan was assessed in an entirely different way.⁸⁷ That is, when deliberating upon asylum application of K., also an accompanied child from Afghanistan, Asylum Office draw completely different conclusion about safety in that country. In this decision rejecting K.'s asylum application, there is not a single mention of the reports listed detailedly in the decision in virtue of which subsidiary protection was granted to Z. Instead, the first-instance authority has stated that, according to the UNHCR data from 2002, the largest program of the voluntary return of refugees to Kabul, Herat and Mazar Sharif is implemented in Afghanistan. Those cities were, allegedly, safe and they are developing rapidly. Contrary to the stand expressed in the decision on the asylum application of Z., stating that no part of Afghanistan can be considered safe, regardless of the command under which a certain part is, in case of K., the

⁸⁴ See more in: *Right to Asylum, January - March 2020*.

⁸⁵ Underaged Z. as a seven-year-old child, without company of his parents, fled from Afghanistan to Iran because of the situation of general unsafety. In Iran, he lived in inhumane conditions until his departure to the RS, seven years later.

⁸⁶ Asylum Office Decision No. 26-1437/18 of 13 February 2020.

⁸⁷ Asylum Office Decision No. 26-378/19 of 11 February 2020.

Asylum Office states that Kabul is a safe city since it is under effective control of the Afghani official government.

The evaluation of the overall situation in the country of origin – compared to which individual circumstances of asylum seeker are being assessed - cannot vary from one case to another, if it arises from current reports that the situation in that state is unchanged. There is no reasonable explanation for two opposite stands of the Asylum Office regarding general the safety situation in Afghanistan in only two days. In the decision made upon asylum application of Z. it is seen that the Asylum Office was familiar with general circumstances in Afghanistan, which the Office itself labelled as bad. Such evaluation was given also in several other decisions from 2019.

3.3.1.1. Rejected appeals in the cases of K and H

Acting upon the appeal filed by BCHR lawyers in the case of K., the Asylum Commission issued a decision in July 2020, rejecting the appeal as ungrounded. In the rationale it emphasises that the first-instance authority has "considered in detail, properly and fully, all the facts and circumstances that are of relevance for decision making in this legal matter, and that it has conscientiously and carefully evaluated all the facts and took the view that this asylum application should be rejected."⁸⁸

It should be mentioned that neither the Asylum Office nor the Asylum Commission have accepted as relevant the report on psychological state of K., in which it is confirmed that K. displayed the symptoms of post-traumatic stress disorder. The same repeated with the report of the competent centre for social work, which has determined that, taking into account all personal circumstances and the vulnerability of K., it would be in the best child's interests to receive asylum in the RS and to settle here. Related to this, the Asylum Commission ascertained that "the first-instance authority took these reports into consideration and deliberated on their merits, and that the Law on Asylum and Temporary Protection clearly stipulates the competencies and authority in the procedure of determining asylum rights in the RS as well as that all decisions are made by the Asylum Office".

During the month of July, the Asylum Commission issued another decision about asylum application of an unaccompanied child from Afghanistan. Namely, it was the case of H., who

⁸⁸ Asylum Commission Decision Až. 13/20 of 21 July 2020.

filed an appeal through BCHR's legal representative, disputing the decision by the Asylum Office rejecting his asylum claim⁸⁹, which was also rejected as not grounded⁹⁰.

A minor H. fled to Pakistan with his family when he was five, where they spent about eleven years. When deciding upon the merits of the application of H., the Asylum Office mentioned Pakistan as a usual country of residence, although pursuant to the Convention of the Status of Refugees, this term is used only for stateless persons.⁹¹ It was not the case in this application, since H. is a citizen of Afghanistan, hence Pakistan should be considered as the third country. As a result of such interpretation, the Asylum Office failed to recognise in its decision, the existence of founded fear of persecution or suffering serious injustice in Afghanistan - the country of origin of H.⁹² Such behaviour is contrary to similar decisions that the Asylum Office had issued earlier, as it was in the already mentioned case of Afghani citizen who spent eight years in Iran. In that decision, Iran is indicated as the third country, i.e., the state of transit⁹³. But in this specific case, the Asylum Office weighed the existence of conditions for granting asylum, i.e., subsidiary protection, with regards to Afghanistan as the state of origin.

However, the Asylum Commission, respecting the quotations from the appeal to rejected asylum request of H., has stated "that it cannot be considered whether the applicant was exposed to persecution or to serious injustice in Afghanistan or not". The Asylum Commission held that H. did not have any established connection with his state of origin, as "after moving to Pakistan with his family, he has never resided in the country of origin". It is stated that in this specific case, "Pakistan may be called the state of usual residence, as a counterpart to the term 'country of origin'", because H. has resided in Pakistan for a major part of his life, living there with his parents.

Especially interesting and significant example of inadequate circumstance evaluation is the fact that neither the Asylum Office, nor the Asylum Commission have taken into account that Pakistan is not the signatory of the Convention Relating to the Status of Refugees from 1951 and the Protocol from 1967. In addition, the acting authorities neglected the circumstance that the national legislation of Pakistan neither has the rules offering protection to refugees, nor the procedures for determining the refugee status to persons seeking international protection.

In the course of their asylum procedure, the legal representatives of K. and H. submitted pleadings containing facts and proofs of significance for issuing proper and lawful decisions.

⁸⁹ Asylum Office Decision No. 26-374/19 of 14 February 2020.

⁹⁰ Asylum Commission Decision Až. 14/20 of 9 July 2020.

⁹¹ Article 1, para. C(6) of the Convention Relating to the Status of Refugees.

⁹² Asylum Office Decision No. 26-374/19 of 14 February 2020.

⁹³ Asylum Office Decision No. 26-1437/18 of 13 February 2020.

However, the decision makers failed to take them into consideration.⁹⁴ One special problem that characterise both cases is reflected in the fact that the Asylum Commission failed to determine and note, during the control procedure, the violation of rules of procedure that the Asylum Office made during the process of issuing decision regarding the applications of K. and H. Due to this, as well as due to neglect of other omissions such as the obligation of complete and truthful determination of factual state⁹⁵, BCHR's lawyers filed the appeal against the decision by the Asylum Commission. Administrative disputes in the cases of K. and H. are underway.

3.3.2. The repeated rejection of asylum application of an activist from Iran

In the reporting period the Asylum Commission rejected the complaint that BCHR filed on behalf of the citizen of Iran D., who had applied for the asylum application in 2018, but another decision rendered by this authority in the case of D. is at issue. Namely, the Asylum Commission already annulled the decision⁹⁶ of the Asylum Office, rejecting the application of D. and returning the case for repeated deliberation.⁹⁷ It was also found that the Asylum Office violated the provisions of the LGAP⁹⁸ since it failed to carefully examine all the facts of relevance for the issuance of the first-instance decision. Precisely, it has considered no relevant report by international organisations on the general situation in Iran, which is something that it is bound by LATP⁹⁹ to do for the purpose of deciding on the merits of each application individually.

In the country of origin Mr. D. used to make flyers and posters with feminist and anti-Islamic contents, and being an opponent to compulsory hijab wearing, he wrote poetry on the subject of women' rights. In addition to that, he publicly opposed the Islam religion and strict customs that this religion imposes. He shared his viewpoints with others via the Internet, due to which he was a target of the representatives of Islamic power several times, since that such activities were perceived as anti national and anti constitutional. In this context, reports of organisations dealing with the protection and promotion of human rights give us the clear evidence of repressive

⁹⁴ Additionally, Asylum office and the Asylum Commission, in both cases, failed to assess adequately the degree of and unaccompanied children's integration to societies such as for example the fact that both K and H speak Serbian language quite well.

⁹⁵ Pursuant to Article 167 of the LGAP, the second-instance authority decides on an appeal based on factual state that was determined by the first-instance or second-instance authority.

⁹⁶ Asylum Office Decision No. 26-9826-98218 of 28 May 2029.

⁹⁷ Asylum Commission Decision Až. 19/19 of 26 August 2020.

⁹⁸ Article 10 of the LGAP.

⁹⁹ Article 32, para. 2 of the LATP, and in compliance with the principle of truth and free assessment of evidence, stipulated by Article 10 of the LGAP.

measures and methods that Iran applied against those who were publicly engaged, like this applicant.

However, after repeated deliberation, the Asylum Office rejected his application for the second time.¹⁰⁰ Dissatisfied with such decision, Mr. D. filed an appeal through his legal representatives, against the wrong application of material law, violation of rules of procedure, incorrectly and incompletely established factual state, and also against the improper conclusion drawn from the determined factual state.

In the appeal, Mr. D.' legal representatives emphasised the fact that the Asylum Office failed to eliminate omissions that the Asylum Commission clearly pointed out to in its first decision regarding the assessment of all relevant facts, among which there were also the excerpts from International organisations' reports on the general situation in Iran. In relation to the above, the BCHR pointed out to different documents that confirm the grounds of Mr. D's application.

For example, *Human Rights Watch* states in its report for 2015, that on 13 July 2014, The Revolutionary Court in Tehran sentenced eight Facebook users to the total 127 years of imprisonment, due to alleged publication of messages that, among other things, insulted sanctities and public officials.¹⁰¹ According to allegations of *Reporters Without Borders*, at least 50 journalists, bloggers, and social network activists have been detained in Iran since December 2014. During the year of 2015, security services of Iran continued to repress the freedom of speech, while the revolutionary court rendered very serious and harsh sentences to social networks users including death penalties in some cases.¹⁰²

The following year, the same organisation noted that freedom of speech in Iran had remained repressed, as well as that the authorities continued to arrest and accuse journalists, bloggers and social network activists. Hundreds of Internet pages including Facebook and Twitter remained blocked. The intelligence service closely scrutinise the citizens' activities on social networks. *Islamic Revolutionary Guard Corps* (IRGC) arrested and questioned hundreds of individuals who had commented on certain controversial topics on Telegram and Instagram applications.¹⁰³

In its report for 2016/2017, *Amnesty International* indicates that Iranian administration have renewed the attacks to women's right activists, equalising every collective initiative related to feminism and women's rights with criminal activities. The activist who were in favour of higher representation of women in the February parliamentary elections were target of the Islamic

¹⁰⁰ Asylum Office Decision No. 26-982/18 of 14 May 2020.

¹⁰¹ *World Report 2016*, Human Rights Watch (2016), p.314, available on: <https://bit.ly/3n2cDK2>.

¹⁰² *Ibid.*

¹⁰³ *World Report 2017*, Human Rights Watch (2017), p.336, available on: <https://bit.ly/2I5CEIU>.

Revolutionary Guard, who took them into custody and brutally questioned. On that occasion they were threatened with imprisonment, under indictment that they had jeopardised the national security. Police and paramilitary units continued their intrusion and violent targeting of women unimpeded, owing to the laws on compulsory hijab breaching the women's rights to equality, privacy, freedom of expression and religion.¹⁰⁴

Regardless of the fact that the Asylum Office failed to take into account the above stated and other allegations that the BCHR had stated in the appeal procedure, the Asylum Commission dismissed the appeal this time, and confirmed the last ruling of the Asylum Office. It remains unclear as to why the Asylum Commission departed from its prior view in same administrative matter. For example, in its new decision the Commission emphasises that the “acting authorities have considered reports referred to by legal representatives, but that those reports neither apply to asylum seeker, nor can they be applied in this specific case”. However it is not clear in such explanation, based on what it has been concluded that the Asylum Office evaluated the said evidence at all, since it is not evident from the contested decision. Bearing in mind all the above said, especially the concern over the Asylum Commission neglect of previous practice, though the adherence to this practice is stipulated by LGAP¹⁰⁵, the BCHR filed an appeal to the Administrative Court and initiated the court dispute that is underway.

3.3.3. Conclusion

In this reporting period, the Asylum Commission rendered decisions confirming the Asylum Office attitudes regarding the BCHR clients’ applications, by dismissing them as unfounded. On these occasions, in the BCHR legal team opinion, this body failed to fulfill one of its primary obligation, that being the control of lawfulness of the Asylum Office work, which is best shown in actions and in worrying change of its viewpoints in the case of the stated Iranian citizen. Instead, the Asylum Commission should examine regularity and lawfulness of the Asylum Office decision making, thus improving its work. Furthermore, in order to improve the quality of asylum procedure itself, it is necessary to equally take into account the rules of procedure and observance of the material law. In addition, it is also important to examine independently the situation in the countries of origin of asylum seekers, since those are

¹⁰⁴*Amnesty International Report 2016/17–Iran*, Amnesty International (22 February 2017), available on: <https://bit.ly/3oXmUJ1>.

¹⁰⁵Article 5, para. 3 of the LGAP stipulates that the authorities are bound to take into account earlier decisions rendered in same or similar administrative matters. In addition, Article 141, para. 4 of the LGAP stipulates that rationale in decision has to contain the reasons due to which an authority departed its earlier practice and decisions in same or similar administrative matters.

individuals coming from war-inflicted or politically unstable countries, in which the situation changes almost on a daily basis.

4. Integration

In terms of the LAMP, integration entails the process of inclusion of persons granted the right to asylum, into social, cultural and economic life of the RS as well as the issue of their naturalization.¹⁰⁶ The LAMP also stipulates that the RS will, within its possibilities, provide all the conditions for integration. In that sense, the right to work, education and healthcare are of special importance.

In addition to LAMP, two more decrees are of importance for the area of integration - the Decree on the Manner of Inclusion into Social, Cultural and Economic Life of Persons Granted the Right to Asylum (Integration Decree)¹⁰⁷ and the Decree on Criteria for Establishment of Priorities in Accommodation of Persons Granted the Right to Refuge or Subsidiary Protection and the Conditions for Use of Housing for Temporary Accommodation (Accommodation Decree).¹⁰⁸

Difficulties in the process of refugee integration in the RS are still existing and have been present for a long time, while some of them increased considerably due to the pandemic of virus COVID-19. Obstacles to permanent integration are still legally unregulated possibility of naturalisation, limited freedom of movement due to inability to issue travel documents, and the long-lasting and heightened problem of employment that has been further intensified in the period of pandemic. The reporting period was also marked by the beginning of fresh school year for persons granted asylum and asylum seekers, which is to be described in more detail in continuation.

Furthermore, this section deals with the integration of persons with granted right to asylum, but also with the problems faced by asylum seekers who are not able to exercise specific rights of importance for the integration into the Serbian society such as right to work, healthcare, education, marriage of foreign citizens in the RS. Specific attention is addressed to numerous challenges related to the integration procedure, resulting from legal voids and misalignment of regulations, but also from the still underdeveloped practice of competent authorities.

¹⁰⁶ Article 71 of the LAMP.

¹⁰⁷ *Official Gazette of the RS*, No. 10101/16 and 56/18.

¹⁰⁸ *Official Gazette of the RS*, No. 63/15 and 56/18.

4.1. Naturalisation

Regarding the long-term odds for the overall integration of refugees into the Serbian society, naturalisation is of particular importance. By the Convention Relating to the Status of Refugees, countries clearly assumed the obligation to enable naturalisation of refugees and accelerate such procedures with minimum cost.¹⁰⁹ Although the LATP transitional and final provisions stipulate that the minister of interior shall, within 60 days from the date of entry into force of this Law, promulgate the regulations on the content and layout of the forms used for the issuance of refugees' travel documents, the bylaw governing the content and layout of travel document for this category of foreigners has not been passed even more than two years after the enactment of this Law. Under the LATP¹¹⁰ the method, procedure and other issues of relevance to the naturalisation of successful asylum seekers shall be determined by the RS government, upon the proposal of the Commissariat for Refugees and Migration (CRM).

During the reporting period the BCHR integration team continued to point out to problems related to the regulation of this matter, it being one of key issues with regards to long-term integration of individuals with asylum right granted. In relation to the above, it is especially important to mention that currently in the RS there are persons enjoying international protection for longer than 10 years, but due to lack of adequate legal solutions, they do not have grounds to apply for permanent residence and later for naturalisation. It should be especially mentioned that those are persons already fully integrated in the Serbian society considering the social aspect but without any clear indication that their process of full legal naturalisations will come to an end. Upon MoI's initiative, the government of RS should propose to the National Assembly the amendments to the Citizenship Law of the Republic of Serbia (LCRS), in order to enable the status categories of foreigners specified by the LATP, to acquire the right to Serbian citizenship.

Refugees exercise their inclusion in a country's community and become its equal members by acquiring the citizenship. Unfortunately, this issue has not been solved in the RS due to disharmony of the LF and the LCRS with the LATP. That is why it is necessary to amend them, and establish clear rules for naturalisation of foreigners with granted asylum.

¹⁰⁹ Article 34 of the Convention Relating to the Status of Refugees.

¹¹⁰ Article 71, para. 2 of the LATP.

4.2. Statutory Issues and the Right to Marriage

Exceptional challenge is the marriage of persons with granted international protection in the RS. In the BCHR practice heretofore, several clients with granted asylum, i.e. with granted refugee or subsidiary protection, have addressed legal staff asking for legal aid in marriage procedure. Namely, according to local regulations, conditions for getting married are governed by the law of the country whose national a person is at the time of marriage. However, the question raised in practice is whether such interpretation by local authorities may and should be applied to persons in exile, concerning the fact that they are not in the situation to exercise protection of their countries of origin.

According to registration services' practice, to meet the material conditions for marriage of foreign citizens in the RS, the marriage application is to be accompanied by birth certificate and single status certificate (both documents have to be legalised in accordance with the law, i.e., translated by a court interpreter, if not stipulated otherwise by an international agreement), as well as by the valid passport presented for inspection. However, persons granted the right to asylum are not in a situation to re-contact the competent institution in their countries of origin because of justified fear for their lives, due to which they cannot acquire the above listed documents for the needs of marriage application.

We would like to remind you that the institute of asylum is based on international protection that a state provides to a person who fears prosecution. Thus, their new contact with the institutions and registration books in the country they fled from may put their life in danger.¹¹¹ Accordingly, a question arises in practice: should different requirements be applied in case of such persons when applying to get married in the RS.

The LATP¹¹² anticipates the assistance in integration to persons granted asylum or subsidiary protection and defines precisely that the RS will, within its abilities, provide conditions for inclusion of these persons into social, cultural and economic life, as well as enable naturalisation of refugees. Majority of BCHR clients facing difficulties in getting married are persons who would like to stay in the RS and raise a family, get married with their partners and become equal members of our society. Generally speaking, the persons who are deprived of the right to get married are, at the same time, hindered in the process of integration that has been

¹¹¹ The persons with granted asylum are the persons who are out of their country of origin or the country of their usual residence, and they have justified fear from persecution based on race, gender, language, religion, nationality, affiliation to certain social group or political beliefs due to which they cannot or do not want to accept the protection of such country or to contact it again in order to acquire the listed documents.

¹¹² Article 71, para. 2 of the LATP.

anticipated by the Decree on amendments and additions to the Decree on the Manner of Inclusion into Social Cultural and Economic Life of Persons Granted the Right to Asylum.¹¹³

Without the right to get married freely, it is impossible to exercise basic human rights such as the right to respect for private and family life anticipated by the European Convention on Human Rights.¹¹⁴ It is important to mention that The Convention Relating to the Status of Refugees¹¹⁵ stipulates, in the issue of administrative aid, that member countries on whose territory a person resides, shall endeavour to provide such aid, i.e., to issue documents or certificates that their national governments and authorities would regularly issue or mediate to have them issued. Such issued documents or certificates shall replace the official papers that are issued to foreigner by their national authorities, or through their mediation, and they shall be valid until proved otherwise.

During the reporting period, the BCHR's integration team submitted to the Ministry of Labour, Employment, Veterans' and Social Affairs¹¹⁶ the request for the opinion regarding the marriage of persons that have been granted asylum or subsidiary protection in the RS¹¹⁷. The BCHR sent the same request to the Ministry of Public Administration and Local Self-government, which is competent¹¹⁸ for the issues related to registration books¹¹⁹.

The above mentioned ministries should send to registration services their special instructions when the procedure of marriage of the persons with granted asylum in the RS is at issue, bearing in mind their specific legal status. Procedures upon this request should be different for the persons that are out of their country of origin, that have justified fear of persecution due to reasons anticipated by the Convention on the Status of Refugees, for the purpose of meeting requirements for necessary documentation.¹²⁰

¹¹³ *Official Gazette of the RS*, No. 10101/16 and 56/18.

¹¹⁴ *Official Gazette SCG - International contracts*, No. 9/03, 5/05 and 7/05 - corr. and *Official Gazette RS - International contracts*, No. 12/10 and 10/15.

¹¹⁵ *Official Gazette FNRY – International contracts*, No. 7/60, Article 25.

¹¹⁶ Pursuant to Article 16 of the Law on Ministries, the issue of getting married is the competency of the Ministry of Labour, Employment, Veterans' Affairs and Social Affairs.

¹¹⁷ The request of the opinion regarding the marriage of persons that have been granted asylum or subsidiary protection in the Republic of Serbia, sent to the Ministry of Labour, Employment, Veterans' Affairs and Social Affairs, document No. 2220 of 23 September 2020.

¹¹⁸ Article 10 of the Law on Ministries.

¹¹⁹ The request of the opinion regarding the marriage of persons that have been granted asylum or subsidiary protection in the Republic of Serbia, sent to the Ministry of Public Administration and Local Self-Government, document No. 1935 of 2 September 2020.

¹²⁰ Due to this reason, these individuals cannot contact again their countries of origin and acquire necessary documents. For example, in BCHR's practice, no asylum seeker or refugee possessed the certificate of single status from the country of origin, which is one of necessary documents to complete the application to get married.

4.3. Education

The LATP stipulates that asylum seekers have the right to free elementary and secondary education.¹²¹ By the same law, persons to whom the right to asylum has been granted in the RS are guaranteed the right to preschool, elementary, secondary and higher education, under the same conditions as the RS citizens.¹²² Integration of refugees into education system and support to their inclusion in the RS educational system is regulated in more detail by Professional Instructions for the Inclusion of Students Refugees/Asylum-seekers in the Education System in Serbia.¹²³

This reporting period noted the return of all children, including migrant and refugee children, to elementary and secondary schools, while the beginning of a new school year was additionally aggravated due to recommendations issued by the ministry in charge of the prevention of virus COVID-19.¹²⁴ Putting the recommendations regarding all students on the territory of the RS aside, we may say that the access to elementary and secondary education was unhindered. From 1 September, each school, in accordance with its own possibilities, organised its classes, so that they were held partially online, and partially in schools, but in smaller groups.

As in the first half of the year, when the state of emergency was imposed, attending classes online was a big problem for some students from migrant-refugee population. The reason for that is the fact that a number of children do not have access to devices, such as telephone, tablet, laptop or computer, enabling them to attend this type of classes. Apart from that, difficulties are reflected in the availability of internet, especially in case of children who live at private addresses, and those dwelling in some of the ACs with slower internet.¹²⁵ At the end of the school year 2019/2020, the UNHCR recognised this problem, and donated to school age children and students the devices necessary to follow their online classes.

Upon the school enrolment, the children living in some of ACs or reception/transit centres, are provided by necessary assistance by CRM employees¹²⁶, while the assistance for children living at private addresses is provided by the representatives of civil society organisations. The

¹²¹ Article 55 of the LATP.

¹²² Article 64 of the LATP.

¹²³ Ministry of Education, Science and Technological Development, Instruction No. 601-00-00042/17-2018 of May 2017.

¹²⁴ The Recommendations of the Ministry of Education, Science and Technological Development to fight outbreak of COVID-19, No. 612-00-00355/2020-06.

¹²⁵ Per example, internet connection in the AC in Bogovađa is unstable, likewise in the AC in Krnjača, mainly due to large number of persons accommodated.

¹²⁶ Having in mind that the CRM provides assistance to asylum seekers according to Integration Decree.

enrolment of unaccompanied and separated children is taken care of by their temporary guardians.¹²⁷

According to existing practice, children from refugee-migrant population, older than 14, who reside in Belgrade and have not completed elementary school, are enrolled in "Branko Pešić" elementary school. As for the access to secondary education in the territory of Belgrade¹²⁸, the children from this population are enrolled in secondary school as late as in August, upon completion of the second round of enrolment. In those cases, contact person from Belgrade school administration submits the list of schools with available places, in order to make a child select one of the schools offered in the list, after which it is necessary that medical examination be performed. The majority of children of BCHR clients attend secondary vocational schools.

In the reporting period, the BCHR integration team was addressed by clients whose children attend schools, asking help in the provision of textbooks and necessary school materials. The UNHCR Team for Permanent Solutions continued to provide support to BCHR clients through approval of funds for the purchase of necessary textbooks. In addition, The UNHCR provides assistance in Serbian language learning. Specifically, there is still present problem of the lack of knowledge or insufficient knowledge of the language in schools, as well as the lack of interpreters for languages spoken by children - refugees and migrants, which makes adaptation and their integration process more difficult.

In the light of the situation in practice heretofore, major progress in the sense of access to right to education has been achieved in the area of elementary education of migrant children, as a result of the fact that elementary education is compulsory in the RS. Although the enrolment in secondary schools has also been enabled, the motivation for attending classes is rather low, while the problem is reflected in the fact that refugee students are usually enrolled only in second round of enrollment. The Ministry of Education, Technological and Scientific Development (Ministry of Education) should amend the Decision on Financing the Purchase of Textbooks from the RS Budget, whereby the right to free textbooks would be provided for asylum seeker and refugee children. The Ministry of Education should establish the system for the recognition of previously acquired higher education knowledge through a procedure that would encompass the assessment of available documentation and the structured interview in compliance with the process *European Qualifications Passport Refugees – EQPR*, carried out by UNESCO and the

¹²⁷ If a child who has not started asylum procedure is in question, it is necessary for enrolment to submit the police certificate, while the children asylum-seekers need to attach also the certificate of a holder of the foreigner registration number (FRN), issued by the Asylum Office upon the request of their parents or temporary guardians via legal representatives in the asylum procedure.

¹²⁸ Generally speaking, schools attended by BCHR's clients are in the territory of Belgrade.

Council of Europe.¹²⁹ Universities in the RS should design and implement preparatory programs, as well as active measures for the inclusion of refugees into higher education, such as access to studies financed from the national budget when sitting entrance examinations for faculties.¹³⁰

4.4. Challenges in exercising the right to work

The LAMP guarantees the right to access labour market to the persons with granted asylum¹³¹, while the access to labour market has been also enabled to asylum seekers under certain conditions.¹³² This field has been closely regulated by the Law on Employment of Foreigners (LEF).¹³³

As we underlined in the previous period¹³⁴, the beginning of COVID-19 virus pandemic affected the asylum seekers and refugees, and several clients represented by the BCHR team faced the loss of their jobs. As epidemiological situation calmed down during summer months, certain number of clients managed to find new jobs, however, the problem of hampered employment is still present.

During the reporting period, the BCHR integration team established the cooperation with the Belgrade Open School (BOS), which held in late September of 2020 the training courses in career coaching for clients who lost jobs or were in search for new workplaces. In that respect, the BCHR continues to monitor the development of the situation caused by the pandemic, with continuous support to clients who are interested in this type of education and professional orientation.

Regarding economic empowerment, the BCHR Integration team has continued close cooperation with the UNHCR Team for Permanent Solutions, in providing different types of support to refugees and asylum seekers. Thus, clients are given assistance in job seeking, in covering taxes for work permits, sanitary booklets, procurement of work equipment, as well as

¹²⁹UNESCO qualifications passport for refugees and vulnerable migrants, UNESCO, available on: <https://bit.ly/37iOzuo>, European Qualifications Passport for Refugees, Council of Europe, available on: <https://bit.ly/37IG0it>.

¹³⁰ In the work practice of the BCHR so far, no person granted asylum in the RS has accessed to high education. Insufficient knowledge of Serbian appears as the most frequent problem, as well as the fact that they are perceived as the foreign citizens by the LF, who pay tuition fees for enrollment in faculties of amount sometimes twice as expensive as the amount of tuition fees paid by the citizens of RS.

¹³¹ Article 65 of the LAMP.

¹³² Article 57 of the LAMP.

¹³³ *Official Gazette of the RS*, No. 128/14, 50/18 and 31/19.

¹³⁴ See more in: *Right to Asylum, January-June 2020*, pp. 46–50.

support in attempt of emancipation and inclusion into labour market.¹³⁵ In the July-September 2020 period, the BCHR continued its activities aimed towards the establishment of cooperation with companies that have recognised the vulnerability and unfavourable position of refugee population when accessing the labour market in the RS. Greater successful cooperation with different employers has been established; among them there are the bakery "Zrno po zrno pogača", construction company "Modulor", the company "OIP", as well as Customer Support Call Centres providing support in foreign languages.¹³⁶

The problem that still exists in practice is a longer wait times for obtaining working permits¹³⁷, issued to asylum seekers by the National Employment Service (NES), being especially prominent in Belgrade. In BCHR practice, in average, it takes clients a month to obtain a work permit, however sometimes this period is much longer.¹³⁸ When we take into account that work permits for asylum seekers are issued with a validity period of six months, then such a long period of preparation considerably shortens the real time in which they may be used¹³⁹. In practice, this may cause additional difficulties for asylum seekers and refugees, as it often happens that future employer is not able to engage a person without work permit, or an employer has to wait for a person to obtain it. On the other hand, the BCHR integration team noted that the office of NES in Loznica has been very efficient related to this issue, since it prepares work permits within 7 - 10 days from the date of submission of the application for its issuance.

Additionally, persons living at private addresses are obliged to pay high fees, for which they will need additional financial support in the greatest number of cases.¹⁴⁰ The LATP¹⁴¹ stipulates the relief from such payment in cases when a party cannot bear those costs without affecting their own or their families' upkeep, and if that has been anticipated by the international contract that have been confirmed. However according to existing practice, such type of relaxation is applicable only in cases of asylum seekers accommodated in one of the ACs.

¹³⁵ *Ibid.*, pp. 47–49.

¹³⁶ During the reporting period, several clients of BCHR started their engagement in some of the mentioned companies, based on temporary employment contracts.

¹³⁷ Pursuant to Article 13 of the LEF.

¹³⁸ For example, the team of BCHR filed an application for the issuance of work permit on behalf of one client in the beginning of June and received it on behalf of such client at the beginning of August 2020. On the other hand, BCHR has submitted applications on behalf of two clients in the beginning of August 2020, however NES has not prepared work permits until the conclusion of this reporting period.

¹³⁹ Although there is a possibility of its extension by additional six months, in that sense arises the problem of complicated issuance procedure, since the entire process is repeated and also lasts longer.

¹⁴⁰ It is the Republic administrative tax in the amount of RSD 14,490, which has increased in comparison with the previous period. BCHR clients who live at private addresses and who do not have a possibility to pay such a high amount for the issuance of work permit were provided by UNHCR with one-off financial aid.

¹⁴¹ Article 89 of the LGAP.

All asylum seekers and persons granted the asylum right granted in the RS, are recorded at the NES as unqualified workforce. In order to register their qualification in the records, they need to validate diplomas, proving their qualification degree. However the majority of them do not hold original diplomas and documentation from the state of origin and most frequently, there is no real possibility to obtain them.¹⁴²

In addition, there is an impression that employers are not fully familiar with all details when engagement of refugees and asylum seekers is at issue. According to the allegations of NES employees, employers are sometimes not willing to employ foreigners, since their engagement would assume additional costs (they should pay "for their work permit"). That is not always the case, especially when a person with granted asylum in the RS is in question, regarding the fact that their work permits are issued for the period of five years with a legal possibility of their extension provided.¹⁴³

The issue of access to the labour market by refugees depends on legal regulations, but also on factual possibilities. With regards to regulations that are governing this area, there are still numerous unresolved issues about costs and deadlines for exercising the right to work. Comparative practice of the EU member states being in similar economic position as the RS, shows that refugees are not exempted from the need to acquire work permits.¹⁴⁴ By adopting such solution in the RS, a series of questions that we have pointed out to, both in this and in previous reports, would be resolved.

In this manner the existing resources of state institution, but also of civil society organisations, would be more easily redirected to factual exercise of rights to work, through qualification and re-qualification programs, as well as through more active cooperation with potential employers. ENIC-NARIC Centre within the Agency for Qualification¹⁴⁵ should work on the implementation of the process *European Qualifications Passport Refugees* implemented by the UNESCO and the Council of Europe, it has been bound by the Lisbon Recognition Convention.¹⁴⁶ The RS prospective joining this process would solve the problem of refugees' previous qualification and re-qualification in the event they possess incomplete documentation.

¹⁴² For example, schools and universities have been destroyed in their countries of origin, or they do not have contact person to send them the necessary documents from the country of origin to the Republic of Serbia etc.

¹⁴³ When we talk about persons with subsidiary protection granted, personal work permit has been crucial for the period of one year, where is the possibility of extension.

¹⁴⁴ Article 73 of the Croatian Law on Foreigners, available at: <https://bit.ly/357c8F0>.

¹⁴⁵ Qualification agency was founded by the Serbian Government in 2018 by issuing the Decision on the establishment of Qualification Agency (*Official Gazette of the RS*, No. 68/18).

¹⁴⁶ For more information see at: <https://bit.ly/4UHE>.

4.5. Challenges in exercising healthcare right

The LAMP provides that asylum seekers are entitled to health care in the RS in accordance with the regulations governing foreigners' health care.¹⁴⁷ Also, provisions of the LAMP¹⁴⁸ stipulate that a person granted asylum is entitled to healthcare and that the costs shall be borne by the RS budget. In the following text, we will point out the most common problems that refugees face in exercising this right.

Often in practice, healthcare workers refuse to offer services to persons granted the right to asylum in the RS, which, according to the BCHR, most frequently happens due to lack of familiarity with local regulations governing this area. The practice so far has shown that refugees in the RS do not have an opportunity to register for health records at local healthcare facilities. Namely, the problem is the complex process of making the health cards for refugees, which results in an inability to register for medical records. All the above leads to rather hampered access of these persons to adequate treatment. Due to all the above stated, in the previous period the BCHR integration team prepared the standard memos, which the clients will use when they need to need to contact health centres or other healthcare facilities for assistance. The aim of such memos is to provide an insight into their content and enable acting healthcare workers learn the rights the persons granted asylum in the RS have with respect to their right to healthcare.

Still, bearing in mind the current situation in this area, the majority of doubts arise regarding inability to exercise the right to healthcare in practice, primarily due to insufficient knowledge of local regulations. During the reporting period, numerous dilemmas were solved in an informal way and with special engagement of the BCHR integration team.¹⁴⁹ There is a lack of harmonisation of health institutions' practices¹⁵⁰ as well as the equal implementation of existing rules by the Serbian Health Insurance Fund (SHIF) to asylum seekers and foreigners granted asylum in the RS. To that end, Serbian government should propose to the National Assembly, upon initiative by the relevant ministry, the amendment to the Law on Health Insurance, so that

¹⁴⁷ Article 54 of the LAMP.

¹⁴⁸ Article 63 of the LAMP.

¹⁴⁹ For example, when enrolling children in a kindergarten or a school, it is necessary to have the medical examination done. Then it is necessary that the parents hold certificate on Foreign Record Number, issued for healthcare purpose so that medical workers can fill-in the data in the records. However, even with the fact that parents had the necessary certificate and that the healthcare was for the child, the assistance by the BCHR integration team was necessary. Also, specialist medical examination and the vaccination remain a problem.

¹⁵⁰ In the reporting period, but even before, it used to happen that workers in some healthcare institutions did not know how to act when they were addressed by a person from refugee population, so they denied them the right to necessary healthcare due to lack of knowledge and unintentionally. In such cases the Integration team most frequently, gives support to the clients of the BCHR. On the other hand, such problems have not appeared in institutions that had taken care of persons coming from refugee population before.

refugees and asylum seekers may exercise their right to health care without the problems existing in practice.