



**RIGHT TO ASYLUM IN
THE REPUBLIC OF SERBIA
2020**



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TABLE OF CONTENTS

Acronyms	9
Foreword.....	11
1. Statistics	15
1.1. Number of Asylum Seekers and Other Migrants	15
1.2. Activities of the Asylum Office	17
1.3. Activities of the Asylum Commission and Administrative Court ..	19
2. Access to the Asylum Procedure	21
2.1. Access to the Asylum Procedure in Police Departments and Border Zones	22
2.1.1. Challenges in Accessing the Asylum Procedure	23
2.1.2. Conclusion and Recommendations	24
2.2. Access to the Asylum Procedure in the Context of the COVID-19 Pandemic	25
2.2.1. Recommendations by International Bodies	26
2.2.2. Conclusion and Recommendations	28
2.3. Access to the Asylum Procedure at Belgrade Airport Nikola Tesla	28
2.3.1. BCHR Interventions and Challenges Arising from Border Police Actions	29
2.3.2. Accommodation Conditions in the Nikola Tesla Airport Transit Zone	31
2.3.3. Conclusion and Recommendations	33
2.4. Access to the Asylum Procedure during Misdemeanour Proceedings	34
2.4.1. Data on Misdemeanour Proceedings.....	36
2.4.2. Analysis of Misdemeanour Court Decisions	36
2.4.3. Conclusion and Recommendations	41
2.5. Access to the Asylum Procedure in the Detention Centre	42
2.5.1. Right to Legal Aid.....	43
2.5.2. Conclusion and Recommendations	44

3. Practice of the Asylum Authorities	45
3.1. Asylum Office	45
3.1.1. Findings of Fact and Assessment of Evidence	46
3.1.2. Violations of Statutory Deadlines	54
3.1.3. Conclusion and Recommendations	55
3.2. Asylum Commission	56
3.2.1. No Headway in the Work of the Asylum Commission	57
3.2.2. Procedural Omission in the Application of the Concept of First Country of Asylum	62
3.2.3. Conclusion and Recommendations	65
3.3. Administrative Court	66
3.3.1. Inadequate Reasoning of Negative Decisions	67
3.3.2. Conclusion and Recommendations	72
4. Accommodation of Asylum Seekers and Migrants	73
4.1. Facilities under CRM Jurisdiction	73
4.1.1. Reception-Transit Centres	74
4.1.2. Asylum Centres	77
4.1.3. Restrictions of the Freedom of Movement of Asylum Seekers and Migrants in ACs and RTCs	87
4.1.4. Conclusion and Recommendations	91
4.2. Detention Centre – Placement of Foreigners under Close Police Watch	93
4.2.1. Situation in the Detention Centre in the Context of the COVID-19 Pandemic	94
4.2.2. Treatment of Foreigners in the Detention Centre	95
4.2.3. Conclusion and Recommendations	99
5. Status of Particularly Vulnerable Asylum Seekers	101
5.1. Situation of Unaccompanied and Separated Children	102
5.1.1. Identification of Children and Guardianship Protection	103
5.1.2. Practice of the Relevant Asylum Authorities in Cases of Unaccompanied Children	107
5.1.3. Challenges in the Provision of Alternative Care to Children ..	112
5.1.4. Violence against Unaccompanied and Separated Children in the Bogovađa Asylum Centre	118
5.2. Situation of Asylum Seekers Survivors of Gender-Based or Sexual Violence	124

5.2.1. Asylum Authorities' Decisions on Gender-Based Asylum Applications	125
5.2.2. Identification of Vulnerabilities and Response of the Relevant Authorities	130
6. Integration	137
6.1. Introduction	137
6.2. Right to Accommodation	139
6.2.1. Challenges in Practice	140
6.2.2. Difficulties in Exercising the Right to Accommodation in the Context of the COVID-19 Pandemic	141
6.2.3. Conclusion and Recommendations	142
6.3. Personal Documents and the Right to Freedom of Movement	142
6.3.1. Non-Issuance of Travel Documents	143
6.3.2. IDs Lacking Essential Elements	145
6.3.3. Difficulties in Obtaining Driving Licences	146
6.3.4. Conclusion and Recommendations	147
6.4. Access to the Labour Market	149
6.4.1. Personal Work Permits – Complicated and Expensive Issuance Procedure	150
6.4.2. Additional Challenges in Access to the Labour Market	151
6.4.3. Conclusion and Recommendations	152
6.5. Right to Family Reunification	153
6.6. Right to Marriage and Problems in Practice	155
6.6.1. Conclusion and Recommendations	157
6.7. Education	157
6.7.1. Preschool Education	158
6.7.2. Primary and Secondary Education	159
6.7.3. Higher Education	161
6.7.4. Recognition of Refugees' Foreign School Certificates and Diplomas	163
6.7.5. Conclusion and Recommendations	165
6.8. Health Care	166
6.8.1. Inconsistent Regulations	167
6.8.2. Conclusion and Recommendations	168
6.9. Refugees' (In)ability to Acquire Serbian Citizenship	168
6.9.1. Recommendations Regarding Refugees' Access to Citizenship	170

6.10. Other Issues of Relevance to Integration	171
6.10.1. Serbian Language Courses	171
6.10.2. Conclusion and Recommendations	172
7. Public Discourse, Political Context and Portrayal of Migrants as Criminals	173
7.1. Introduction	173
7.1.1. Media Coverage of Migrants in the Negative Context	176
7.1.2. Media Coverage of Migrants in a Positive Context	183
7.1.3. Politicisation of the Migrant Issue	186
7.1.4. Conclusion and Recommendations	187
7.2. BCHR's Response to Hate Speech against Refugees, Migrants and Asylum Seekers	188
7.2.1. BCHR's Response to Disputable Media Reports	188
7.2.2. BCHR's Campaign against Fake News	190

ACRONYMS

- AC – Asylum Centre
- AL – Asylum Law
- APC – Asylum Protection Centre
- BCHR – Belgrade Centre for Human Rights
- BPPS – Basic Public Prosecution Service
- BPS – Border Police Station
- CEDAW – Committee on the Elimination of Discrimination Against Women
- CoE – Council of Europe
- CRC – Convention on the Rights of the Child
- CRM – Commissariat for Refugees and Migration of the Republic of Serbia
- CRPC – Crisis Response and Policy Centre
- DRC – Danish Refugee Council
- EASO – European Asylum Support Office
- ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECtHR – European Court of Human Rights
- EQPR – European Qualification Passport for Refugees
- FL – Foreigners Law
- FRN – Foreigner Registraton Number
- HCIT – Humanitarian Centre for Integration and Tolerance
- HCL – Health Care Law
- HIL – Health Insurance Law
- HPPS – Higher Public Prosecution Service
- IOM – International Organization for Migration
- LAD – Law on Administrative Disputes
- LATP – Law on Asylum and Temporary Protection
- LBC – Law on Border Control
- LEF – Law on Employment of Foreigners

- LGAP – Law on the General Administrative Procedure
- LM – Law on Misdemeanours
- MOESTD – Ministry of Education, Science and Technological Development
- MOI – Ministry of the Interior
- NES – National Employment Service
- NGO – Non-Government Organisation
- NHIF – National Health Insurance Fund
- OHCHR – Office of the High Commissioner for Human Rights
- PIN – Psychosocial Innovation Network
- RS – Republic of Serbia
- RTC – Reception-Transit Centre
- RTSL – Road Traffic Safety Law
- SGBV – Sexual and Gender-Based Violence
- SPL – Social Protection Law
- SWC – Social Work Centre
- UDHR – Universal Declaration of Human Rights
- UN – United Nations
- UNHCR – United Nations High Commissioner for Refugees
- UNICEF – United Nations International Children’s Emergency Fund
- WHO – World Health Organization

FOREWORD

The Belgrade Centre for Human Rights (BCHR) has been providing legal aid to asylum seekers and persons granted international protection since 2012, as the implementing partner of the United Nations High Commissioner for Refugees (UNHCR) in the Republic of Serbia (RS). Those activities, as well as the preparation of this Report, have been implemented within the project Support to Refugees and Asylum Seekers in Serbia, aimed at improving refugee protection and access to refugee rights in Serbia.

This Report on the Right to Asylum in 2020 was prepared by the BCHR legal and integration teams based on their experiences in extending legal aid to asylum seekers and persons granted asylum. The Report is based on an overview and analysis of the application of national asylum law, other regulations relevant to the status of asylum seekers and refugees, and administrative proceedings related to their integration in Serbian society. Additional information was obtained in regular cooperation and communication with the state authorities and UNHCR, while some data were obtained pursuant to the Law on Free Access to Information of Public Importance.¹

The Report outlines various aspects of the right to asylum in the RS, and focuses on issues that BCHR deemed particularly important for providing a clear picture of the situation in this field in 2020. In general, despite some headway in the exercise of the right to asylum, the Serbian asylum system still lacks in efficiency. Asylum seekers and refugees still depend heavily on support provided by civil society organizations, while systemic solutions and effective coordination among the state authorities are lacking.

The COVID-19 pandemic declared by the World Health Organization (WHO) on 11 March 2020² persisted until the end of reporting period. The Government first adopted a decision declaring COVID-19 a communicable disease on 10 March 2020³, and, several days later, a decision introducing the state of emergency,⁴ which was in place for nearly two months. The health protection measures substantially limited the fundamental human rights of refu-

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

2 WHO Director-General's opening remarks at the media briefing on COVID-19, WHO, 11 March 2020, available at: <https://bit.ly/3bPzgw5>.

3 *Official Gazette of the RS*, No. 23/20.

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

gees and migrants in Serbia. Notably, they had difficulties accessing the asylum procedure and their integration rights, while their freedom of movement was restricted. Safety of migrants, asylum seekers and refugees, especially those belonging to vulnerable groups, was particularly jeopardised, as confirmed by the abuse of unaccompanied and separated children in one asylum centre (AC), an incident the media extensively reported on. Public focus on migration and the observed change in narrative led the BCHR to analyse public discourse and public opinion, fake news and widespread hate speech against refugees and migrants.

Chapter I provides the statistics obtained from UNHCR and partly from the relevant asylum authorities. Chapter II analyses access to the right to asylum and the main challenges identified during the reporting period. Chapter III presents the practices of the Asylum Office (first-instance authority), the Asylum Commission (second-instance authority), and the Administrative Court, through an analysis of their activities and the most important decisions they adopted in 2020. Chapter IV describes the asylum seekers' accommodation conditions, especially in the context of the pandemic, and with particular focus on detention under close police watch. Chapter V is devoted to the situation of two particularly vulnerable asylum seekers: unaccompanied and separated children and survivors of sexual or gender-based violence (SGBV). Chapter VI provides an analysis of the refugees' access to integration in Serbian society. Chapter VII analyses public discourse on migrants and refugees.

Although a number of migrants who have not applied for asylum, some of whom may be in need of international protection, were present in Serbia, this Report focuses on the situation of asylum seekers and persons who have been granted asylum. For ease of reading, the Report uses the term 'refugee' to denote primarily successful asylum seekers, as well as other foreigners in need of international protection. Where relevant, the Report specifically refers to the foreigners' exact status – whether they are asylum seekers, persons granted refuge (refugee status) or subsidiary protection – for the sake of better understanding. The terms 'foreigner' and 'migrant' are also used throughout the Report to denote all foreigners in the RS, whether or not they have sought asylum. In any case, the reader should interpret the meaning of the terms in the context of each chapter.

The Report is intended primarily for the state authorities charged with ensuring the realisation of the rights of asylum seekers and persons granted international protection in Serbia, as well other professionals and organisations monitoring the refugee law situation. This Report aims to draw attention to some of the identified shortcomings and challenges regarding the right to asylum in Ser-

bia and offers recommendations for overcoming them in each chapter. We hope that this report, *Right to Asylum in the Republic of Serbia 2020*, will contribute to a better understanding of the refugee situation and help the Serbian authorities establish a more functional asylum system.

The Report was prepared by the following BCHR team members: Milena Ančić, Jelena Ilić, Aleksandar Marković, Nina Miholjčić, Vuk Raičević, Anja Stefanović, Bojan Stojanović, Miloš Tasovac, Ana Trifunović and Marko Štambuk.

1. STATISTICS

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports and statistical data. The data in this Report cover the 1 January – 31 December 2020 period. The Asylum Office (the first-instance asylum authority) does not publish data or reports on its work on the MOI website. The Asylum Commission (the second-instance asylum authority) and the Administrative Court have replied to BCHR's requests for access to information of public importance and forwarded the requested data covering the 1 January-31 October 2020 period. These data are presented in the below section of the Report.

1.1. Number of Asylum Seekers and Other Migrants

A total of 2,830 people expressed the intention to seek asylum, i.e. were registered in accordance with the Law on Asylum and Temporary Protection (LATP) from 1 January to 31 December 2020. Their number was substantially lower than in the same period in 2019, when 12,937 people expressed the intention to seek asylum in Serbia. The drastic difference was not due only to a lower inflow of asylum seekers, refugees and migrants, but to the fact that the MOI's registration activities were scaled down due to the coronavirus pandemic.

A total of 28,503 foreigners entered Serbia from 19 January to 19 November 2019;⁵ 10,174 of them expressed the intention to seek asylum. The number of foreigners who entered Serbia in the same period in 2020 stood at 23,992,⁶ but only 2,830 registered their intention to seek asylum. Only 220 asylum intentions were registered during the state of emergency, specifically from early March to end May (149 in March, none in April and 71 in May), while the UNHCR registered 1,829 newly-arrived migrants in the same period.⁷⁸

The number of foreigners accommodated in Reception-Transit Centres (RTCs) and ACs ranged from 5,350, over 8,900 in April, to 4,300 in August and 6,600 in November.⁹ Although slightly over 20,000 asylum seekers and migrants

5 *Serbia December 2019 snapshot* (UNHCR), available at: <https://bit.ly/2VJVQQi>.

6 *Serbia November 2020 snapshot* (UNHCR), available at: <https://bit.ly/3sgDFAL>.

7 *Serbia March 2020 snapshot* (UNHCR), available at: <https://bit.ly/2LbNsa9>.

8 *Serbia May 2020 snapshot* (UNHCR), available at: <https://bit.ly/2VJf16M>.

9 *Serbia November 2020 snapshot* (UNHCR), available at: <https://bit.ly/3sgDFAL>.

entered the country, a relatively small number of them sought international protection in Serbia, as the following data illustrate.

Of all foreigners who expressed the intention to apply for asylum in Serbia by end December 2020, 2,649 were men and 181 were women. The number of registered asylum intentions stood at: 290 in January, 400 in February, 149 in March, 0 in April, 71 in May, 240 in June, 253 in July, 681 in August, 382 in September, 173 in October, 97 in November and 94 in December 2020. Children accounted for 638 of them. Most of the 71 unaccompanied children were nationals of Afghanistan (48) and Pakistan (7).

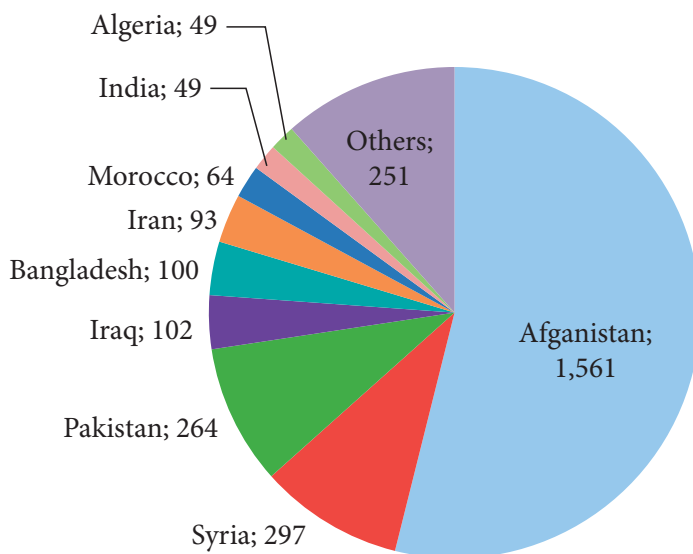
Table 1: Venues at which foreigners expressed the intention to seek asylum (January–December 2020)

Police Stations	1,649
Border Crossings	1,080
Nikola Tesla Airport	44
Detention Centre	0
Asylum Office	57

Table 2: Number of expressed asylum intentions from the establishment of the national asylum system in 2008 to 31 December 2020

2008	2009	2010	2011	2012	2013	2014
77	275	522	3,132	2,723	5,066	16,490
2015	2016	2017	2018	2019	2020	
577,975	96,117	6,199	8,436	12,937	2,830	

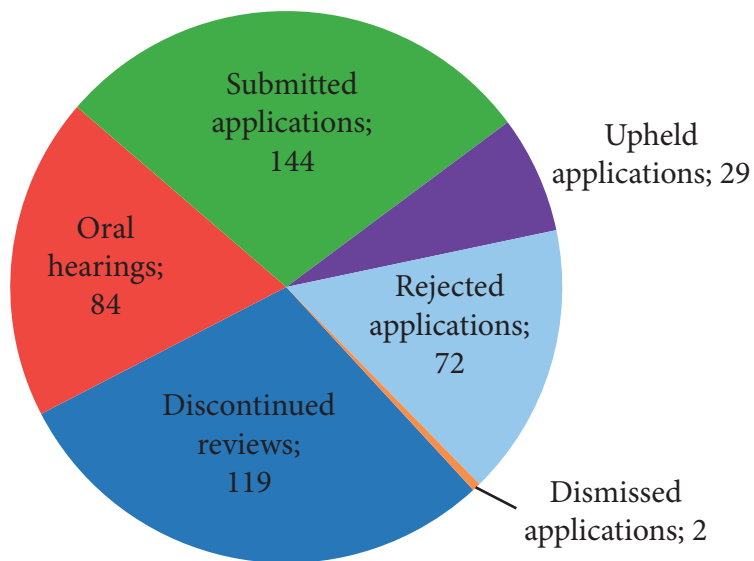
Most of the foreigners who expressed the intention to seek asylum by end December 2020 were nationals of Afghanistan (1,561), Syria (297), Pakistan (264), Iraq (102) and Bangladesh (100). Larger numbers of nationals of the following states also expressed the intention to seek asylum in Serbia: Iran (93), Morocco (64), India (49), Algeria (49), Palestine (43), Libya (27) and Egypt (25). Such an intention was also expressed by the nationals of: Somalia (18), Burundi (15), Eritrea (13), Ghana (11), Cuba (10), Lebanon (10), Turkey (10), Russia (9), Tunisia (9), China (6), Congo (4), Myanmar (4), Sudan (4), Cameroon (3), Gambia (3), Moldova (3), Bosnia and Herzegovina (2), North Macedonia (2), Senegal (2), Nepal (2), Yemen (2), Albania (1), Belarus (1), Bulgaria (1), Ivory Coast (1), Croatia (1), DR Congo (1), Ecuador (1), Guinea (1), Jordan (1), (1), Nigeria (1), Togo (1) and Western Sahara (1).



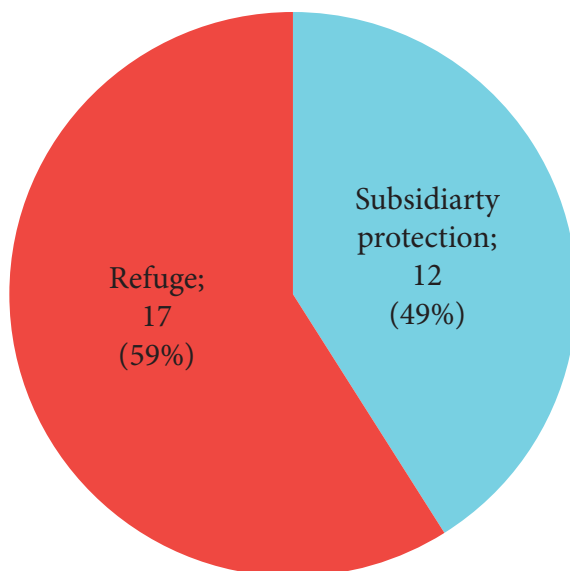
Graph 1: Countries of origin of foreigners who expressed the intention to seek asylum by end December 2020

Activities of the Asylum Office

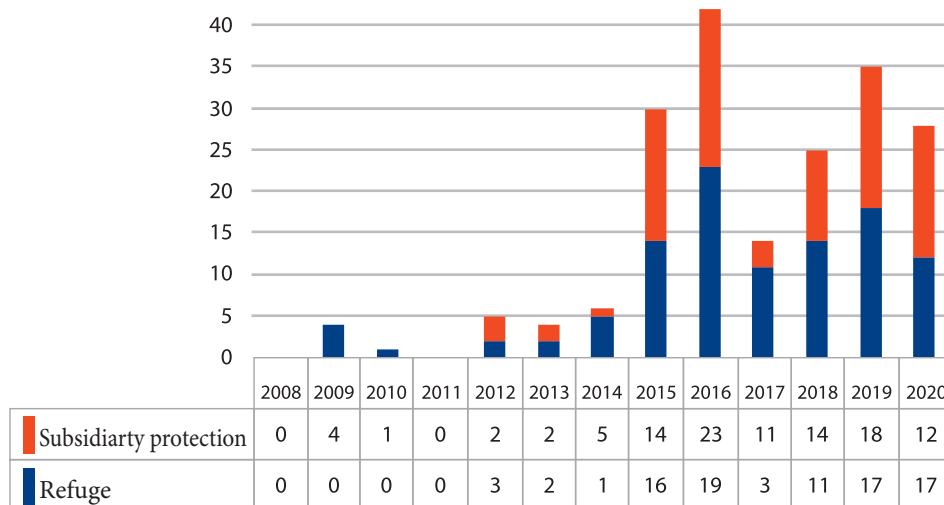
A total of 144 people applied for asylum from January to end December 2020. Fifty-six of the applications were filed with the Asylum Office in writing. The number of applications submitted to the Office was almost halved compared to the number it received in 2019 (252). Most of the applications filed by 31 December were submitted by nationals of Iran (29), Syria (21), Burundi (17), Ghana (12), Iraq (12), Turkey (5), Libya (4) and North Macedonia (4). The Asylum Office interviewed 84 applicants during that period. It upheld 29 and dismissed two applications. The Office rejected 51 applications concerning 72 persons. It discontinued the review of 90 cases concerning 119 asylum seekers, because the vast majority of them had left Serbia or their place of residence. Of the 29 upheld applications, the Asylum Office granted refuge in 17 cases and subsidiary protection in 12 cases. Refuge was granted to nationals of Afghanistan (6), Iran (5), Burundi (2), Iraq (1), Syria (1) and two stateless persons. Subsidiary protection was granted to nationals of Syria (4), Afghanistan (2), Burundi (2), Somalia (2), Iran (1) and Mali (1). The Asylum Office upheld asylum applications of 194 foreigners from 2008, when the national asylum system was established, to 31 December 2020. It has altogether granted refuge to 90 of them and subsidiary protection to 104 of them.



Graph 2: Number of applicants whose cases were reviewed and decided by the Asylum Office in the January-December 2020 period



Graph 3: Number of successful asylum applicants by 31 December 2020



Graph 4: Number of upheld asylum applications by year

1.3. Activities of the Asylum Commission and Administrative Court

The Asylum Commission received 63 appeals from 1 January to 31 October 2020; 51 challenged Asylum Office rulings, while 13 appealed the silence of the administration (the Asylum Office’s failure to decide on the applications within the statutory deadline). In that period, the Asylum Commission issued 52 rulings, rejecting 43 appeals and upholding nine of them. Reviews of appeals concerning silence of the administration were still pending at the end of the reporting period. In the nine cases in which it upheld the appeals, the Asylum Commission voided the rulings and remitted the cases back to the Asylum Office for reconsideration. In other words, the Asylum Commission did not adopt any decisions in which it itself decided on the merits of the applications during the reporting period.

The Administrative Court received 32 initial asylum-related enactments from 1 January to 31 October 2020. It ruled on three cases by the end of the reporting period, rejecting two lawsuits¹⁰ and one complaint.¹¹ In 2020, it also ruled on 11 administrative disputes initiated earlier, rejecting 9 lawsuits,¹² dismissing one lawsuit,¹³ and discontinuing the review of one case.¹⁴ The Administrative Court did not itself rule on the appealed matters in 2020.

10 Case Nos. U 7696/20 and U 11206/20.

11 Case No. Uv 95/2020.

12 Case Nos. U 18004/2017, U 3937/2018, U 14660/19, U 18198/18 and U 20092/2019.

13 Case No. U 18993/2019.

14 Case No. U 13912/19.

2. ACCESS TO THE ASYLUM PROCEDURE

By ratifying the Convention Relating to the Status of Refugees (the Refugee Convention)¹⁵ and its Protocol on the Status of Refugees,¹⁶ the Republic of Serbia assumed the obligation to respect the principle of *non-refoulement*, i.e. the prohibition from returning a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened.¹⁷ In addition, by acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture),¹⁸ Serbia committed to respecting the principle of *non-refoulement* in the context of the prohibition of torture.¹⁹ That means, inter alia, that Serbia is under the obligation to ensure access to the asylum procedure to all foreigners who have a well-founded fear of persecution in their country of origin or who would face a real risk of torture if returned to their country of origin or a third country.²⁰

The right to asylum is guaranteed by the Constitution of the Republic of Serbia (Constitution),²¹ while the asylum procedure is governed by LATP.²² Under the LATP, the Asylum Office (within the MOI's Directorate for Foreigners, shall conduct the first-instance asylum procedure and allow foreigners to present

15 *Official Gazette of the FPRY – International Treaties and Other Agreements*, 7/60.

16 *Official Gazette of the SFRY – International Treaties and Other Agreements*, 15/67.

17 No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Art. 33(1), Refugee Convention).

18 *Official Gazette of the FRY – International Treaties and Other Agreements*, 9/91.

19 No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in risk of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights (Art. 3, Convention against Torture).

20 The above universal international treaties are just some of the instruments ratified by Serbia and obliging it ensure specific treatment of persons in need of international protection. The principle of *non-refoulement* is also implicit in Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, *Official Gazette of the SUSM – International Treaties*, 9/03).

21 Art. 57 of the Constitution, *Official Gazette of the RS*, 98/06. The Constitution equates asylum with refugee protection in terms of the definition of a refugee in Art. 1(A) of the Refugee Convention.

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

all the relevant facts relating to the hardships they would face if they were returned to their country of origin or to another country. The Law on the General Administrative Procedure (LGAP)²³ shall apply to all procedural issues not regulated by the LATP.

Foreigners may access the asylum procedure in Serbia by expressing their intention to apply for asylum before an authorised MOI officer. The LATP entitles foreigners in Serbia to express their intention to seek asylum,²⁴ whereupon the authorised MOI officers shall issue them a registration certificate.²⁵ The expression of intention is, therefore, the initial step that foreigners need to undertake to access the asylum system²⁶ and the issued certificates constitute grounds for their residence in ACs or RTCs, which they must report to within 72 hours.²⁷

The practice of the competent authorities indicates that some foreigners in need of international protection were not provided with effective access to the asylum procedure although they were already in Serbia. They were unable to promptly apply for asylum or had difficulty accessing the asylum procedure due to specific circumstances. Access to the asylum procedure was further exacerbated in 2020 due to the outbreak of the COVID-19 pandemic and the unstable epidemiological situation thereafter. This Chapter will present the main challenges foreigners faced in accessing the asylum procedure during the reporting period.

2.1. Access to the Asylum Procedure in Police Departments and Border Zones

The LATP permits foreigners to express their intention to seek asylum inside Serbia and at its border crossings, i.e., in the border zones. In principle, the border police have the discretion to decide whom to admit into Serbia. However, the principle of *non-refoulement* requires of border police officers to ensure that persons in need of international protection have access to the asylum procedure.²⁸

The intention to seek asylum was expressed by 2,830 foreigners in 2020. Like in the past, most of them expressed the intention to seek asylum in police departments in the interior of the country, which issued 1,649 registration cer-

23 *Official Gazette of the RS*, No. 18/16 and 95/18 – authentic interpretation.

24 Art. 4, LATP.

25 Art. 35(11), LATP. The registration procedure involves the photographing and fingerprinting of the foreigners by the authorised police officers. Minors, for whom it can be determined reliably and unequivocally that they are under 14 years of age, shall not be fingerprinted.

26 The expressed intention to seek asylum is also a ground for the lawful residence of foreigners who want to seek asylum in Serbia.

27 Art. 35(3), LATP.

28 Art. 33 of the LATP in conjunction with Art. 31 of the Refugee Convention.

tificates by December 2020. A total of 1,080 foreigners expressed the intention to seek asylum in Serbia's border zones during this period.

Fewer registration certificates were issued in 2020 than in the past also because of reduced MOI staff presence due to the epidemiological situation.²⁹ Notwithstanding, the number of issued certificates does not reflect the number of foreigners actually intending to apply for asylum, which is much smaller, as the situation on the ground corroborates.³⁰ Only 144 foreigners applied for asylum during the reporting period, indicating that most foreigners in need of international protection still did not perceive Serbia as a destination country.

On the other hand, many foreigners planning on travelling on to other countries still used the registration certificates to temporarily regulate their legal status in Serbia and their residence in ACs and RTCs. This led to the further burdening of the asylum system and exhaustion of the capacities of the Serbian asylum authorities and organisations extending assistance to this population.³¹

2.1.1. Challenges in Accessing the Asylum Procedure

Specific circumstances undermining effective access to the asylum procedure have been present since it was established in Serbia. These problems, which BCHR alerted to in the past, have not been eliminated yet; nor have the asylum authorities' practices improved.³²

The first problem is reflected in the fact that the MOI continued issuing registration certificates exclusively in Serbian and in the Cyrillic script.³³ The certificates specify the name of the AC or RTC the foreigners are referred to and which they have to report to within 72 hours from the moment they are registered, i.e. issued their certificates.³⁴ The vast majority of foreigners expressing

29 According to information BCHR's team obtained from representatives of Crisis Response and Policy Centre (CRPC), some foreigners in Belgrade who asked this organisation for help had to wait more than two weeks to be registered by the Directorate for Foreigners in the Savski Venac police station. The Commissariat for Refugees and Migration of the Republic of Serbia (CRM) occasionally referred the foreigners to one of the RTCs (mostly the one in Divljana), where they could register and obtain their registration certificates; the ones who wanted to apply for asylum were subsequently referred to one of the ACs that had room to take them in.

30 More in Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, Belgrade Centre for Human Rights (Belgrade 2019), p. 22 (hereinafter: *Right to Asylum 2019*), available at: <https://bityl.co/5Z8G>.

31 *Ibid*, p. 21.

32 *Ibid*, pp. 22–24.

33 The registration procedure and the content of the registration certificate are set out in the Rule-book on Registration and the Design and Content of Registration Certificates Issued to Foreigners Who Expressed the Intention to Seek Asylum (*Official Gazette of the RS*, No. 42/18). The template of the registration certificate is available in Serbian at: <https://bit.ly/34xkK7X>.

34 Art. 35(3), LATP. Exceptionally, foreigners may express the intention to seek asylum also in the Detention Centre or the AC; to the best of BCHR's knowledge, such intentions were

the intention to seek asylum do not understand Serbian and cannot be expected to understand the text of the certificates. However, in the event they do not comply with the instructions in the certificates, they shall be subject to less favourable regulations on the legal status of foreigners, which may result in the risk of their *refoulement*.³⁵

The second problem is related to the amount of information foreigners, who want to apply for asylum in Serbia, receive about their rights and obligations related to their residence and their access to other important information during registration.³⁶ Police and other relevant officers are under the obligation to provide them with access to basic information about the asylum procedure in a language they understand, as well access to an interpreter, legal aid, et al.³⁷ They have to be provided the information in a reliable manner, so that they can clearly understand their rights and obligations, and the consequences of non-compliance with the latter. The need to improve access to and provision of information regarding the asylum procedure at all stages was also noted by the European Commission in October 2020.³⁸

To BCHR's knowledge, foreigners obtain basic information in the language they understand mostly from legal aid providers and representatives of international and non-government organisations assisting them in the field.³⁹ On the other hand, Asylum Office staff notify the asylum seekers about their rights and obligations during the asylum procedure only when they are applying for asylum or during their oral hearings.⁴⁰

2.1.2. Conclusion and Recommendations

The MOI's current practice still does not ensure unimpeded access to the asylum procedure in Serbia. This conclusion is supported by the fact that the registration certificates still are not issued to foreigners in a language they understand, and that police do not inform foreigners about their asylum-related rights and obligations adequately, i.e. in a way they can understand.

expressed in 2020 in the ACs in Krnjača and Banja Koviljača (that are staffed by authorised MOI staff).

35 More in the *Right to Asylum 2019*, p. 22.

36 Art. 56, LATP.

37 *Reception Standards for Asylum Seekers in the European Union*, UNHCR, Geneva, July 2000, p. 7, Section C/II, available at: <https://bit.ly/2Qbewq9>.

38 *Serbia 2020 Report*, p. 49, available at: <https://bityl.co/5Z8J>.

39 Hardly any foreigners interviewed by BCHR said they had been notified of their rights and obligations during registration. The question arises whether police officers provide them with such information at all and to which extent, and whether they do so in a language the foreigners understand.

40 At the very beginning of the oral hearings.

The MOI should finally start issuing registration certificates to foreigners in languages they understand and notifying them of their rights and obligations in a reliable manner during registration. This will ensure that the foreigners are familiarised with all the opportunities they have during the asylum procedure, as well as warned of the legal consequences of non-compliance with their obligations.

The MOI should also develop brochures with important information in languages spoken by most (potential) asylum seekers and disseminate them to all its units in Serbia. That would bridge the language barrier between the foreigners and state officials in the absence of interpreters and ensure that the former have access to information about their main rights and obligations within the Serbian asylum procedure.

2.2. Access to the Asylum Procedure in the Context of the COVID-19 Pandemic

On 19 March 2020, the Serbian Government adopted the Decision on the Closure of All Border Crossings⁴¹ in response to the COVID-19 pandemic. Entry into Serbia was allowed only if it was in Serbia's national interests and for humanitarian reasons, as well as with the consent of the relevant state administration authorities.⁴²

As already noted, the pandemic and the adopted measures substantially impinged on access to the Serbian asylum procedure by foreigners in need of international protection, as well as on the efficiency of ongoing asylum procedures⁴³ due to reduced staff presence in the asylum authorities.⁴⁴ Statistical data show that the number of expressed intentions to seek asylum in 2020 was much smaller than in the past.⁴⁵ The degree in which asylum seekers will be provided with effective access to the asylum procedure in the upcoming period remains questionable since the end of the pandemic is not in sight.

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

42 Art. 2, Decision on the Closure of All Border Crossings.

43 The situation affected the status of asylum seekers in ACs far from the Asylum Office headquarters in Belgrade, such as the Banja Koviljača AC, and especially the Sjenica and Tutin ACs.

44 The Asylum Office cancelled all the scheduled procedural activities when the state of emergency was introduced and conducted fewer of them than usual due to the unstable epidemiological situation thereafter. After the state of emergency was lifted, the Asylum Office postponed a number of scheduled appointments for the submission of asylum applications and oral hearings of BCHR's clients due to COVID-19 infections of its staff, or greater numbers of infected asylum seekers or management staff of the ACs, in which they were to have been conducted.

45 See: Statistics.

The ensuing section will outline some of the recommendations issued by international human rights bodies and good practices of some European states aimed at ensuring the implementation of the asylum procedure during the pandemic, whilst complying with all epidemiological and other protection measures.

2.2.1. Recommendations by International Bodies

Nearly all European countries, including Serbia, temporarily closed their borders in response to the COVID-19 pandemic. It may be presumed that this precluded a number of people in need of international protection from leaving their countries of origin and increased their fears of persecution. UNHCR called on European states to pursue good practices and redouble their efforts to strengthen the asylum system in Europe in these difficult times.⁴⁶

Under international law, States have the sovereign power to regulate the entry of non-nationals. However, international law also provides that measures to this effect may not prevent them from seeking asylum from persecution. Central to the right to seek asylum is the principle of *non-refoulement*, which prohibits, without discrimination, any State conduct leading to the ‘return in any manner whatsoever’ to an unsafe foreign territory, including rejection at the frontier or non-admission to the territory. States are responsible for ensuring protection from *refoulement* to all persons who are within its jurisdiction, including at national frontiers, as soon as a person presents him- or herself at the border claiming to be at risk or fearing return to his or her country of origin or any other country.⁴⁷

UNHCR emphasised that nearly two-thirds of European countries found a way to effectively manage their borders, whilst allowing asylum seekers to access their territory.⁴⁸ Medical screenings, issuance of health certificates and temporary quarantine on entry are some of the measures introduced by European countries that it qualified as positive.⁴⁹ Furthermore, registration procedures

46 *Practical Recommendations and Good Practice to Address Protection Concerns in the COVID-19 Pandemic*, UNHCR, April 2020, available at: <https://bit.ly.co/5Z8Q>.

47 More in *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, UNHCR, 16 March 2020, available at: <https://bit.ly.co/5Z8W>.

48 UNHCR recognised the emerging State practice in over 20 European countries of providing for an explicit exemption for persons seeking international protection from border closures and entry bans.

49 In Austria, all new asylum-seekers undergo a medical check. They are tested for temperature when entering and leaving the first-phase reception facilities. In case of increased temperature, the person is immediately moved to the isolation area established in each facility where further examinations are carried out by health personnel. Confirmed cases are quarantined in designated rooms. Transfers to local hospitals take place if needed. Monitoring mechanisms for the evaluation of possible suspected cases have been established. Older persons and

have been simplified (written or electronic submission of registration requests or in conjunction with the medical screening)⁵⁰, along with the automatized issuance of documents. The premises in which asylum seekers are interviewed or tested have been adapted and the interviews are conducted by video or teleconferencing. Among good practice examples, the UNHCR mentioned online submission of asylum applications, online interviews⁵¹ and efforts to speed up asylum procedures, whilst ensuring their fairness.⁵²

UNHCR recommended the consideration of measures to manage the arrival of asylum-seekers in a safe manner, including health screenings or testing⁵³ and quarantine in the form of a preventive and timebound isolation.⁵⁴ Where entry bans or border closures are implemented, an explicit exemption for asylum seekers should be considered, combined with the enhanced health measures. Where a general exemption is not in place, at a minimum, access to territory should be granted in individual cases ensuring compliance with the principle of *non-refoulement*. These alternative measures protect public health while ensuring access to territory for persons seeking international protection and protecting them against the risk of *refoulement*.⁵⁵

other persons at heightened risk are accommodated separately, whenever possible. New federal reception centres have been opened in order to decongest collective facilities as well as to have alternatives in case other reception centres are quarantined due to COVID-19 cases.

- 50 Innovative approaches have been implemented to allow asylum-seekers the possibility to submit online applications for asylum, appeals and/or documentation (including renewals), such as in Malta and Azerbaijan. In Germany, the Federal Office for Migration and Refugees has changed its policy of accepting applications in person in order to comply with the need to avoid contact and is currently only accepting applications in written form.
- 51 In Austria, interviews take place either behind glass panels, with sufficient distance among all parties or by videoconference with the decision-maker and the asylum-seeker sitting in different rooms in the same building.
- 52 In Poland, authorities adopted more flexibility on obtaining case-relevant documentation, which can now also be submitted as a scanned version by email or by regular mail. Interviews are only carried out where this is considered indispensable. In cases for which interviews are scheduled, asylum-seekers' no-show currently does not entail any consequences for them. Where procedures are suspended except when interviews are indispensable, deadlines to appeal negative decisions are also suspended so that asylum-seekers can consult their legal counsellors as current movement restrictions permit.
- 53 This may entail visual observation, measurement of body temperature, questionnaires for travellers, and/or the presentation of health certificates, as well as medical and laboratory examination by medical personnel, conducted in a non-discriminatory manner and in line with guidance of the WHO and national health authorities.
- 54 Quarantine in the form of a preventive and timebound (normally 14 days) separation from the rest of the population, should be implemented in a non-discriminatory and proportionate manner, as a measure to monitor potential symptoms and ensure early detection of the virus.
- 55 *Practical Recommendations and Good Practice to Address Protection Concerns in the COVID-19 Pandemic*, UNHCR, April 2020, available at: <https://bitly.co/5Z8Z>.

The OHCHR said that tightened border controls and measures implemented at international borders, including screening and quarantine at points of entry, must ensure non-discrimination, confidentiality and dignity. It also said that measures should be in place to ensure continued access to individual assessment, best interests assessment and determination, and international protection under international human rights and refugee law. States should consider the temporary suspension of enforced returns during the pandemic. Enforced returns can only be carried out if they comply with the principle of *non-refoulement* and the prohibition of collective expulsions, as well as procedural guarantees, including due process, access to lawyers and translators, and the right to appeal a return decision. In all cases, all stages of return procedures should be adjusted to ensure they are compatible with public health strategies.⁵⁶

2.2.2. Conclusion and Recommendations

Serbia should be guided by the above guidance of international bodies and bring its regulations and practices in conformity with their recommendations. The situation caused by the COVID-19 pandemic should not impinge on access to the asylum procedure or prevent people fleeing war or persecution from protecting their fundamental human rights. People in need of international protection need to be provided with access to Serbia's territory and their rights, whilst complying with the basic protection measures. The MOI should consider medical screening and quarantine of newly arrived asylum seekers, whilst respecting the dignity of all individuals, the prohibition of non-discrimination and, first and foremost, the *non-refoulement* principle.

The Asylum Office should ensure the continuity of the asylum procedure given the likelihood that the COVID-19 pandemic will last a long time. It should secure the protection of all individuals involved in the procedure from infection, by taking the prescribed health care measures (installation of physical barriers between the participants, mandatory wearing of personal protection equipment, et al). This would ensure safe conduct of the asylum procedure and prevent denial of the right to asylum to foreigners in need of international protection.

2.3. Access to the Asylum Procedure at Belgrade Airport Nikola Tesla

Suspension of international passenger flights via the Nikola Tesla Airport was one of the decisions prohibiting entry of foreign nationals in Serbia adopted

⁵⁶ More in *COVID-19 and the Human Rights of Migrants: Guidance*, OHCHR, 2020, available at: <https://bit.ly/31yb2Cq>.

by the Serbian Government after the state of emergency was introduced.⁵⁷ Commercial flights resumed gradually after the state of emergency was lifted, but did not return to normal by the end of 2020.

Consequently, not too many foreigners expressed the intention to seek asylum at the Belgrade Airport. The Airport Border Police Station (BPS) officers issued 44 registration certificates to foreigners who said they intended to seek asylum in Serbia.⁵⁸

Due to the unstable epidemiological situation throughout 2020, BCHR lawyers did not visit⁵⁹ the Belgrade Airport⁶⁰ regularly to directly extend legal aid to foreigners denied entry into Serbia; rather, they extended it by phone, via the BPS officers. Notwithstanding, they concluded that the shortcomings in the work of the MOI identified earlier persisted, impinging on access to the asylum procedure at the Airport,⁶¹ as will be described in greater detail below.

2.3.1. BCHR Interventions and Challenges Arising from Border Police Actions

BCHR lawyers intervened in six cases of registration in the reporting period with respect to 15 foreigners, notably nationals of Cuba, Syria and, in most cases, of India. Most such interventions ensued after the foreigners, who claimed they had expressed their intention to seek asylum before border police, were denied entry into Serbia.⁶² Under the Foreigners Law (FL), foreigners not fulfilling the requirements for lawful entry may be allowed to enter Serbia on humanitarian grounds, which is precisely why they seek asylum.⁶³

57 More is available in Serbian at: <https://bitly.co/5ZKP>.

58 Information obtained from UNHCR Serbia.

59 BCHR lawyers have temporary passes allowing them to enter the Nikola Tesla Airport transit zone. In normal circumstances, they allow them to visit foreigners held in the transit zone requesting of BCHR to extend them legal aid and information about the asylum procedure in Serbia.

60 The BCHR legal team visited the Airport only once before the epidemiological crisis escalated, when a group of nationals of India and Cuba contacted it, claiming that they were not allowed to leave the Airport and enter Serbia. Since the BPS officers did not want to provide BCHR with more information about the foreigners over the phone, BCHR lawyers accessed the transit zone with their passes. The members of the group were issued registration certificates in the meantime and they left the transit zone and entered Serbia.

61 More in *Right to Asylum 2019*, pp. 26–30.

62 With the consent of the BPS, the BCHR legal team put up posters with the e-mail and telephone number via which foreigners in need of international protection can contact them if they need legal aid.

63 Art. 15(2), FL.

In mid-September, a group of nationals of India sent an e-mail to BCHR, claiming they were at the Belgrade Airport and denied access to the asylum procedure and territory of Serbia.⁶⁴ After BCHR's rapid response, a fax requesting that they be provided with access to the asylum procedure was sent to the Belgrade BPS. The BPS officers, however, later told the BCHR that these people were not in the premises of the Belgrade Airport.

In October 2020, BCHR lawyers were contacted by a transgender person from Cuba A.A., who was at the Erevan Airport at the time. This individual claimed they had been denied entry into Serbia and the asylum procedure at Belgrade Airport and that they were returned to Armenia where they were reportedly also told they could not claim asylum. The BPS officers again refused to act in accordance with the LATP⁶⁵ the next time A.A. arrived at the Belgrade Airport. They then contacted the BCHR asking for help. A.A. was issued a registration certificate only after BCHR lawyers intervened, but they subsequently broke off contact with the BCHR.

Like in most other cases,⁶⁶ BCHR lawyers were unable to establish with certainty whether the foreigners, who had contacted them, were actually at the Airport and genuinely wanted to seek asylum in Serbia or merely asked BCHR for help to avoid deportation. Regardless, border police are under the obligation to comply with the LATP to establish the foreigners' identity and facilitate their access to the asylum procedure in the event they express the intention to seek asylum at a border crossing. The law lays down clear measures precluding abuse of the asylum procedure.⁶⁷ Under the FL, border police are under the obligation to issue a (bilingual) decision to foreigners denied entry, specifying why they are not allowed into the country; the ban is then entered into the foreigners' pass-

64 BCHR's lawyer talked on the phone with one man in the group, who said he had arrived at the Airport with several members of his extended family claiming that dozens of people denied entry into Serbia and access to the asylum procedure were held in the Airport premises, and that their luggage had been seized.

65 Under Arts. 4 and 35(1) of the LATP.

66 This case is identical to several other cases BCHR reported on earlier: its lawyers were contacted by e-mail by a group of foreigners, who claimed they were nationals of India and that they were at Belgrade Airport and intended to access the asylum procedure. More in *Right to Asylum 2019*, p. 26, and *Right to Asylum in the Republic of Serbia, Periodic Report for January–March 2020*, Belgrade Centre for Human Rights, pp. 13–14 (hereinafter: *Right to Asylum, Periodic Report for January–March 2020*), available at: <https://bit.ly.co/5YW7>.

67 Under Art. 35 of the LATP, authorised police officers are entitled to search foreigners whilst fully respecting their physical and psychological integrity and human dignity and to search their personal belongings to find their identification papers and documents required to establish their identity. Authorised police officers are also entitled to temporarily seize all identification papers and documents that may be relevant to the asylum procedure, if necessary, and are under the obligation to issue receipts for property seized to the foreigners. Under this Art. regulations governing the status of foreigners shall apply to foreigners who intentionally impede, avoid or refuse registration.

ports.⁶⁸ In BCHR's experience, Belgrade border police do not issue individual decisions to all foreigners denied entry in Serbia, thus precluding them from appealing the decisions,⁶⁹ which indicates that the denial of entry into Serbia is in most cases still conducted in an informal manner. The border police's practice of denying entry was criticised also by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁷⁰ and the National Preventive Mechanism (NPM) within the Office of the Protector of Citizens, as noted by the BCHR.⁷¹ Unfortunately, the MOI has not undertaken all the necessary steps to eliminate the shortcomings.

In addition, even where foreigners do not fulfil the requirements for entering Serbia, the border police are under the obligation to examine potential risks of their persecution and treatment in contravention of the prohibition of torture before deciding to return them to the country they came from. Border police officers must be aware of the fact that denying foreigners access to the asylum procedure and entry into Serbia may have severe and irreparable consequences on their lives and security. That is why they need to devote particular attention to foreigners coming from war-torn countries and countries with poor human rights records.

2.3.2. Accommodation Conditions in the Nikola Tesla Airport Transit Zone

The LATP provides for the implementation of the asylum procedure at border crossings or transit areas of airports or inland ports,⁷² provided the asylum seekers are ensured adequate accommodation and food.⁷³ However, the Airport premises in which the foreigners denied entry are held still do not fulfil even the minimum standards.⁷⁴

68 More in *Right to Asylum 2019*, p. 26.

69 Pursuant to Art. 16, FL. BCHR noted this practice only in cases in which its lawyers intervened on behalf of the foreigners.

70 For instance, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that the considerations underlying and informing the decision of the Border Police to refuse entry and initiate forcible return were not documented with sufficient precision in individual case files and that any such deportation decision did not appear to be subject to a legal remedy involving an individual assessment of the risk of *refoulement* to a place where the person in question might be subjected to torture or other cruel, inhuman or degrading treatment or punishment. See more in: *Visit to Serbia and Kosovo**, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, adopted by the UN Human Rights Council on 29 January 2019, UN. Doc. A/HRC/40/59/Add.1, para. 50, available at: <https://bit.ly.co/5KFR>.

71 More in *Right to Asylum 2019*, pp. 25–29.

72 Pursuant to Art. 41(1(1)), LATP.

73 More in the *Right to Asylum 2019*, p. 28.

74 *Ibid.*

On 28 January 2020, before the escalation of the pandemic, the NPM visited the Airport BPS and the transit zone premises in which foreigners not fulfilling the requirements to enter Serbia are held. In its report on the visit,⁷⁵ the NPM identified several shortcomings that needed to be eliminated. It recommended to the BPS to continuously provide foreigners held in the transit zone basic information (their rights to legal aid, health care, to contact representatives of non-governmental organisations (NGOs) or their family members)⁷⁶ and to have the information translated into the languages most foreigners spoke.⁷⁷ The NPM team also ascertained that the room foreigners denied entry are held in was unsuitable for longer accommodation.⁷⁸ It thus recommended to the BPS to designate a room meeting the required standards and, in the meantime, improve the accommodation conditions in the room used at the time.⁷⁹

In its reply⁸⁰ on steps taken in response to NPM's recommendations, the Border Police Directorate said that BCHR's contact details were visibly displayed in the room in which foreigners denied entry were held in case they needed legal aid. The company Belgrade Airport Ltd., which now runs the Airport, reported to the Protector of Citizens that it had undertaken steps to improve the conditions in the room for foreigners denied entry and that the implementation of a project involving the reconstruction of the Terminal and construction of its annex was under way. They said that the project envisaged also the construction of a new room for foreigners denied entry that would fulfil all the requirements, by mid-2021.⁸¹ The NPM again visited the Nikola Tesla Airport and the Belgrade

75 The Protector of Citizens Report on the NPM's visit to the BPS and Nikola Tesla Airport Ref. No. 7333 of 25 February 2020 is available in Serbian at: <https://bityl.co/5ZKV>.

76 *Ibid*, p. 4. The NPM recommended to the Belgrade BPS to visibly display contact details of the relevant domestic and international organisations assisting foreigners in exercising their rights in the room in which foreigners denied entry into Serbia were held.

77 *Ibid*, p. 4. The NPM mentioned English, Arabic, Farsi and Urdu.

78 *Ibid*, pp. 7–8. The NPM, inter alia, ascertained that foreigners were held in the Airport halls for days, that they did not have adequate sleeping and sanitary facilities, the opportunity to spend time outdoors, etc.

79 *Ibid*, p. 8.

80 Letter of the MOI Secretariat Department for Data Processing, Complaints and Cooperation with Independent Bodies No. 072/3–54/20–6 of 5 October 2020 with reference to Border Police Directorate letter 03.5.8.1.2. No. 28–196/20–4 of 23 September 2020, available in Serbian at: <https://www.ombudsman.rs/attachments/article/6846/odgovor%202.pdf>. On 13 May 2020, the Department sent its letter 02/4 No. 072/3–54/20–3 in response to the Border Police Directorate's letter 03.5.8.1.2. No. 28–196/20–2 of 1 April 2020, specifying it would contact BCHR and other relevant organisations once the state of emergency was lifted. The letter is available in Serbian at: <https://bityl.co/5YWc>.

81 The Protector of Citizens press release of 3 November 2020 is available in Serbian at: <https://bityl.co/5YWZ>.

BPS in October to monitor treatment of foreigners denied entry into Serbia and the fulfilment of its prior recommendations.⁸²

2.3.3. Conclusion and Recommendations

The Belgrade BPS' practice still gives rise to risks that the foreigners' need for international protection will not always be recognised. Border police officers thus need to continuously keep abreast of the situation in war-ravaged countries and countries with poor human records. To avoid non-recognition of *prima facie* refugees, before denying the foreigners entry into Serbia, border police officers should always interview them about the reasons why they had left their countries of origin; such interviews should be conducted with the assistance of interpreters⁸³ and in consultation with Asylum Office staff. The BPS and BCHR should explore avenues for improving the existing modes of cooperation. They could give thought to developing a system of mutual support in identifying foreigners genuinely in need of international protection, in the context of preventing abuse of the asylum system.

Belgrade BPS officers should issue foreigners not fulfilling the requirements to access Serbian territory reasoned entry denial decisions in a language they understand that would be subject to appeal and instruct them on the right to appeal, as provided for by the FL.⁸⁴ The MOI should as soon as possible review the possibility of proposing an amendment to the FL to ensure judicial reviews of such decisions. The FL now provides for the filing of a complaint without suspensive effect with the MOI, which is an administrative authority.

The Belgrade BPS should provide foreigners with the opportunity to communicate freely with representatives of the relevant domestic and international organisations extending them assistance in exercising their rights to access the asylum procedure. Adequate premises for foreigners denied entry fulfilling all the valid standards needs to be secured in the Airport transit zone as soon as possible.

82 Police officers provided the NPM team with information about the treatment of foreigners. The team perused the relevant documentation and visited the room in which the foreigners are held, as well as the section designated for women and children. Airport staff provided the NPM team with information on headway made in providing the held foreigners with adequate accommodation. More in the Protector of Citizens press release of 2 October 2020, available in Serbian at: <https://bitly.co/5YWj>.

83 Since the border police may have difficulty engaging interpreters in each individual case, the MOI should review the possibility of asking UNHCR and other organisations to place their interpreters at the disposal of the Belgrade BPS.

84 Art. 15, FL.

2.4. Access to the Asylum Procedure during Misdemeanour Proceedings

Non-penalisation of refugees for illegal entry or stay in a country is one of the principles of refugee law. This principle is laid down both in the Refugee Convention and the LATP.⁸⁵ Such protection is extended to refugees unable to comply with the legal entry requirements who fled persecution, war or grave human rights violations in their countries of origin. The principle of non-penalisation applies to refugees who have taken all reasonable steps to report to the authorities within a reasonable time and demonstrated that they have violated immigration law in order to seek international protection.⁸⁶ On the other hand, foreigners who have entered the country or are staying in it illegally without having applied for asylum may be penalised for a misdemeanour. In addition, they may be forcibly removed from the country.

Protection of Serbia's state borders is regulated by two laws – the FL and the Law on Border Control (LBC).⁸⁷ Both those laws govern illegal crossing of the state border, while the issue of illegal stay is regulated by the FL. Under the LBC, crossing of the state border shall denote any movement of people across the state border. The state borders must be crossed at border crossings, with a valid travel or another document prescribed for crossing the state border, during the working hours of the border crossing point, and in accordance with the international treaties.⁸⁸ Crossing of the border in any other way is a misdemeanour warranting a fine and imprisonment. Illegal entry into Serbia is also defined in the FL.⁸⁹ Illegal stay, for the purposes of

85 Under Art. 31 of the Refugee Convention, Contracting States shall not impose any penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the meaning of Art. 1, enter or are present in their territory without authorisation, provided they present themselves without any delay to the authorities and show good cause for their illegal entry or presence. In addition, Art. 8 of the LATP provides for the non-penalisation of foreigners for illegal entry or stay in the Republic of Serbia, provided they express the intention to apply for asylum without delay and offer a reasonable explanation for their illegal entry or stay.

86 James C. Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, 2005, p. 316.

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

88 Art. 12, LBC.

89 Art. 14, FL. Illegal entry into the RS shall mean any entry outside the place designated for the crossing of the state border, by avoiding border control, without a travel or another document required to cross the state border, by using another person's, invalid or false travel or other document, by providing untrue information to the border police, and entry during a period in which the protective measure of removal, the security measure of expulsion or an entry ban is in effect.

the FL, denotes staying in the RS without a visa, a residence permit or on other legal grounds.⁹⁰

The principle of non-penalisation is applied by Serbian misdemeanour courts that establish the misdemeanour liability of foreigners for illegal entry or illegal stay.⁹¹ Pursuant to the Law on Misdemeanours (LM),⁹² misdemeanour courts must provide defendants with procedural guarantees. The LM specifically guarantees the defendants' right to a lawyer.⁹³ The LM provides for the principle of legality⁹⁴ and the principle of assistance to ignorant parties,⁹⁵ which are particularly relevant for foreigners.

Judges must take into account all the circumstances of the case, and in particular, whether the defendants intend to seek asylum in Serbia. At that point, the defendants may apply for asylum before the judge, i.e., the court may issue a decision practically allowing them access to the asylum procedure.⁹⁶ Foreign defendants may express the intention to seek asylum indirectly as well; in such cases, the judges may clearly conclude on the basis of their testimony that they are in need of international protection. To be able to establish that fact, the judges need to examine all the reasons why the defendants left their country of origin, as well as the reasons why they came to Serbia.⁹⁷

Misdemeanour courts thus play a delicate role, since it is up to them to penalise any violation of the regulations governing the crossing of the state borders. On the other hand, they need to protect the rights of all persons eligible for refugee status under international and national law. Courts thus need to be familiar with and properly interpret and connect specific regulations when assessing whether to initiate misdemeanour proceedings against foreigners who have entered or are living in Serbia illegally, and how they will conduct and complete such proceedings.⁹⁸

90 Art. 74, FL.

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

92 *Official Gazette of the RS*, No. 65/2013, 13/2016 and 98/2016 – CC Decision.

93 Art. 93, LM.

94 Under this principle, set out in Art. 86 of the LM, no-one who is innocent may be punished and misdemeanour proceedings shall be conducted in accordance with the law.

95 Art. 90, LM.

96 By referring them to the Asylum Office, the authority charged with implementing the asylum procedure.

97 Marko Davinić and Ivana Krstić, *Guide to the Implementation of Relevant Asylum and Migration Regulations*, Group 484, Belgrade, 2019, p. 59.

98 Radmila Dragičević Dičić et al, *Application of the Principle of Non-Penalisation of Refugees in Misdemeanour Proceedings*, BCHR, Belgrade, 2016, p. 9.

2.4.1. Data on Misdemeanour Proceedings

Data BCHR obtained in 2020⁹⁹ show that 554 misdemeanour proceedings were initiated for illegal crossing of the state borders under the LBC, while 58 proceedings were conducted for illegal entry into Serbia under the FL. The misdemeanour courts also conducted 268 proceedings for illegal stay in Serbia during the reporting period.

The misdemeanour courts found 334 foreigners guilty of illegally crossing the state borders and 194 of them of illegal presence in Serbia. They ordered the removal of the foreigners in 20 cases and discontinued proceedings in only 15 cases because the foreigners sought asylum. These data demonstrate that the courts rarely apply the principle of non-penalisation of refugees and often punish nationals of countries that are unsafe or ravaged by war.

2.4.2. Analysis of Misdemeanour Court Decisions

The analysis of some judgments of the misdemeanour courts leads to the conclusion that the relevant authorities are still penalising refugees for illegal entry or presence in Serbia.¹⁰⁰ Some of the decisions do not clarify how the courts assessed the reasons for the defendants' illegal crossing, entry or stay in Serbia, especially the reasons why they fled their countries of origin. Lack of interpretation services continued to pose a problem, depriving foreigners of their right to follow the course of the proceedings with the help of an interpreter and of speaking their native language in court.¹⁰¹ Furthermore, the misdemeanour courts' treatment of refugees was not uniform. Perusal of the judgments showed that the courts waived the court fees of the convicted defendants.¹⁰² The following section analyses decisions of some misdemeanour courts delivered from January to November 2020.

a) Identification of Foreigners in Need of International Protection

The misdemeanour courts' case law indicates that, in certain cases, the courts did not take into consideration all the circumstances on the basis of which they could assess that the trial should be suspended and the foreigner referred to the authority in charge of the asylum procedure. Such a practice was registered, for

99 Statistical data and copies of anonymised judgments forwarded to BCHR by 39 Serbian courts in response to its request for access to information of public importance covering the first five months of the year, and the statistical data and copies of anonymised judgments forwarded by 10 Serbian courts and covering the 1 July-31 October 2020 period.

100 More in the *Right to Asylum 2019*, pp. 36–40.

101 Pursuant to Art. 94(4), LM.

102 Pursuant to Art. Art. 145, LM.

instance, in the decision of the Jagodina Misdemeanour Court,¹⁰³ which found an Afghani national guilty of the misdemeanour he was charged with. The Court found that the defendant had “sought asylum and had no money on him,” i.e. it completely ignored the fact that the foreigner expressed the intention to apply for asylum. The Court should have instead passed a decision discontinuing the proceeding and referring the foreigner to the asylum procedure. However, having concluded that none of the circumstances presented during the proceedings excluded the liability of the defendant, the Court found him guilty and issued him a reprimand. The Jagodina Misdemeanour Court made a similar ruling in another case, in which it declared Afghani nationals guilty of the misdemeanour and issued them a reprimand.¹⁰⁴

The Pirot Misdemeanour Court¹⁰⁵ failed to examine all the circumstances in the case of an Iranian national; nor did it refer him to the Asylum Office, although it quoted the defendant in the reasoning of its judgment¹⁰⁶ as saying that he had left Iran “because of the political situation and problems he had there”. The Court instead sentenced the defendant to five days’ imprisonment, explaining that he did not have any personal documents and that it sentenced him to jail “in the interest of national security, so that the relevant authorities can establish his identity, especially since he has earlier been registered in the AFIS system, which the judge consulted.”¹⁰⁷ This Court made similar rulings in the cases of two other Afghani nationals, who had illegally entered Serbia from Bulgaria.¹⁰⁸

The Zaječar Misdemeanour Court sentenced to five days in jail an Iraqi national, although it said in the reasoning of its judgment that he told the Court “that he and another 12 people travelled from Iraq via Turkey to Bulgaria with the aim of reaching Europe”.¹⁰⁹ In this case, the Court did not take into account this fact or the possibility of referring the defendant to the Asylum Office.

The Sremska Mitrovica Misdemeanour Court Na levied fines ranging between five and 10 thousand RSD¹¹⁰ against nationals of Afghanistan, Pakistan and Syria. In all of these judgments,¹¹¹ it said that these individuals were plan-

103 Jagodina Misdemeanour Court judgment 7-Pr. No. 2202/20 of 26 May 2020.

104 See: *Right to Asylum in the Republic of Serbia, Periodic Report for January-June 2020*, Belgrade Centre for Human Rights, p. 17 (hereinafter: *Right to Asylum, Periodic Report for January-June 2020*), available at: <https://bit.ly.co/5ZLB>.

105 Court Department in Dimitrovgrad.

106 Judgment I-5 PR 1938/20 of 30 August 2020.

107 AFIS is the MOI database in which the data of the perpetrators of crimes and misdemeanours in Serbia are entered and in which the MOI registers asylum seekers.

108 Judgments I-5 No. 1227/20 and I-5 No. 1228/20 of 2 July 2020.

109 Zaječar Misdemeanour Court judgment I.No. 2208/20 of 18 August 2020.

110 Court Department in Šid.

111 Judgments I-1 No: 3066/20 and I-1 No: 3059/20 of 13 October 2020 and Judgments I-2 No: 2959/20 and I-2 No: 2960/20 of 9 October 2020.

ning on going to Western European countries rather than staying in Serbia¹¹² and that they had not sought or intended to seek asylum in Serbia. Although these foreigners had not explicitly expressed the intention to seek asylum, the Court should have taken into consideration circumstances that could have, in principle, constituted grounds for extending them refugee protection. It should have examined all the reasons why they had left their countries of origin and come to Serbia, and acted in accordance with the non-penalisation principle.

The view taken by the Misdemeanour Court in Pančevo¹¹³ is an example of a court that took into consideration the foreigner's country of origin. In the case of H. S., the Court issued a ruling dismissing the motion to initiate misdemeanour proceedings against H.S. because he told the Court that he wanted to seek asylum in Serbia.

b) Right to Use One's Own Language in Court

The right to use one's own language in court, laid down in the LM,¹¹⁴ lies at the core of the right to a defence in general terms.¹¹⁵ The LM entitles parties to proceedings, who are not nationals of Serbia, to an interpreter and to use their native language or the language they understand during proceedings. The reasoning of the court decisions must clearly show that the court respected this right.

Most judgments¹¹⁶ were accompanied by a brief reasoning, which did not indicate whether interpreters had been present during the hearings of the defendants. Nor can it be concluded from them whether the defendants understood the language in which the proceedings against them were conducted. It remains completely unclear how the courts themselves translated certain facts in the absence of an interpreter. If interpreters had actually been engaged, the courts failed to mention that fact.

For instance, the Novi Sad Misdemeanour Court informed BCHR that it provided court-sworn interpretation for all defendants in need of interpreta-

112 Italy, Austria and Denmark.

113 Pančevo Misdemeanour Court judgment No. 12 PR 1670/2020-5 of 28 February 2020.

114 Art. 94, LM.

115 Radmila Dragičević Dičić et al, *Application of the Principle of Non-Penalisation of Refugees in Misdemeanour Proceedings*, BCHR, Belgrade, 2016, available in Serbian at at: <https://bit.ly/3ikNoQE>.

116 E.g. Senta Misdemeanour Court Department in Kanjiža judgment II-4 No. 6/20 of 6 January 2020, the Jagodina Misdemeanour Court judgement 10 No. 103/20 of 8 January 2020, the Sremska Mitrovica Misdemeanour Court Department in Šid, judgments: I-1 No.: 3066/20 and I-1 No: 3059/20 of 13 October 2020, and I-2 No: 2959/20 and I-2 No: 2960/20 of 9 October 2020.

The Novi Pazar Misdemeanour Court (letter no SU-17a 4/20 of 24 June 2020) and the Loznica Misdemeanour Court (letter no SU-II-17a 6/20 of 29 June 2020) notified BCHR that they had not used interpretation services in misdemeanour proceedings against foreigners.

tion.¹¹⁷ However, not one of the judgments this Court forwarded to BCHR mentioned the engagement of an interpreter or that the defendants understood the language of the court.¹¹⁸

In some cases, the courts did ensure the presence of interpreters, but the forwarded judgments do not give indication whether they were interpreters for the languages the foreign defendants actually understood. For instance, the Pirot Misdemeanour Court told BCHR that all defendants who did not speak Serbian were provided with interpreters but that it was not under the obligation to keep record for which languages interpreters were engaged in each particular case.¹¹⁹

Courts by and large engaged English interpreters although the defendants did not come from English-speaking countries. For instance, they engaged English interpreters in cases against nationals of Iran, Morocco, Bangladesh, Afghanistan, Syria and Iraq. The courts' judgments do not include information in the reasoning that would unequivocally indicate that the defendants were able to follow the proceedings in English.¹²⁰

c) Children in Misdemeanour Proceedings¹²¹

Having analysed misdemeanour judgments delivered in cases against unaccompanied and separated children, BCHR concluded that, in the vast majority of cases, the courts took into account the age of the defendants *proprio motu* but only when it came to imposing correctional measures.¹²² However, a large

117 Novi Sad Misdemeanour Court's letter in response to BCHR's request for access to information of public importance SU No. II-17a 44/20-1 of 14 December 2020.

118 Judgments delivered in cases against the nationals of Lybia, Jordan and Turkey: 1 PR 7852/2020 of 21 July 2020, III-27 PR 12986/2020 of 29 October 2020, 20 PR 12649/2020 of 24 October 2020, 5 PR 12616/2020 of 23 October 2020, 5 PR 12618/2020 of 23 October 2020, 5 PR 12619/2020 of 23 October 2020, 5 PR 12620/2020 of 23 October 2020, 5 PR 12621/2020 of 23 October 2020, 5 PR 12565/2020 of 22 October 2020, 5 PR 12566/2020 of 22 October 2020, 5 PR 12567/2020 of 22 October 2020, 5 PR 12568/2020 of 22 October 2020 and 5 PR 12569/2020 of 22 October 2020.

119 Pirot Misdemeanour Court's letter in response to BCHR's request for access to information of public importance SU II-17a 11/20-1 of 8 December 2020.

120 E.g. Pirot Misdemeanour Court, Department in Dimitrovgrad, judgments: I-5 No. 1938/20 of 30 August 2020, I-5 No. 1931/20 of 27 August 2020, I-5 No. 2620/20 of 27 October 2020, I-5 No. 1867/20 of 24 August 2020, I-5 No. 1845/20 of 19 August 2020, I-5 No. 2622/20 and I-5 No. 2623/20 of 27 October 2020, I-5 No. 1313/20 of 14 July 2020, as well as I-5 No. 1227/20 and I-5 No. 1228/20 of 2 July 2020. All the defendants were convicted to between five and eight days' imprisonment. A five-day prison sentence was handed down also by the Zaječar Misdemeanour Court in its judgment I.PR 2208/20 of 18 August 2020. Such information was not indicated by the Senta Misdemeanour Court's Department in Kanjiža, which issued reprimands rather than sentenced the defendants to jail, in the following judgments: II-7 No. 1702/20 of 2 October 2020, II-7 No. 1774/20 of 7 October 2020, II-7 No. 1696/20 of 1 October 2020, II-7 No. 1541/20 of 8 September 2020 and II-1 No. 1936/20 of 28 October 2020.

121 More in *Right to Asylum 2019*, pp. 112–121.

122 Art. 74, LM.

number of decisions demonstrated the absence of other procedural safeguards children should enjoy in misdemeanour proceedings, although the courts must ensure that the parties' rights are not adversely affected by their ignorance and unfamiliarity with the law.¹²³

Namely, misdemeanour proceedings involving children are urgent. Such urgency, however, cannot justify lack of procedural guarantees, especially adequate guardianship protection. Before imposing correctional measures or penalties, the courts must obtain the opinion of a competent guardianship authority.¹²⁴ The texts of a number of judgements did not indicate whether the children's guardians had been present, much less whether the courts had taken their opinion about the children's psychological or physical condition when they decided on the penalty.¹²⁵ The forwarded judgments also failed to indicate whether the unaccompanied and separated children had a lawyer during the misdemeanour proceedings. Furthermore, none of the judgments BCHR perused included information on whether the separated or unaccompanied children had been told that they had the right to a lawyer.¹²⁶ To reiterate, courts are under the obligation to make sure that the parties' ignorance or unfamiliarity with the law does not impinge on their rights.¹²⁷ Given that the children were not represented by lawyers, it would be reasonable to assume that they were unaware that they could appeal the court's decision. BCHR's analysis of the judgments it had insight in showed that the children had not been instructed on their right to an interpreter and the conduct of the proceedings in their native language or a language they understood.¹²⁸

For example, the Loznica Misdemeanour Court issued a reprimand to an unaccompanied child from Afghanistan who was caught trying to cross the border illegally and continue towards Germany. The child did not have a valid travel document or other documents with which he could cross the state border.¹²⁹ The text of the judgment did not indicate whether the child had been provided with

123 Art. 90, LM.

124 Art. 292, LM. The guardianship authority attended proceedings against two Afghani children conducted before the Senta Misdemeanour Court's Department in Kanjiža (judgments in cases II-7 PRM 84/2020 of 1 October 2020 and II-1 PRM 102/2020 of 29 October 2020).

125 Subotica Misdemeanour Court ruling PRM 11-11/20 of 28 February 2020 and ruling 8 PRM 8/2020 of 12 February 2020.

126 Senta Misdemeanour Court ruling II-1 PRM 43/2020 of 25 February 2020 and rulings of the Senta Misdemeanour Court's Department in Kanjiža: II-3 PRM 6/2020 of 21 January 2020, II-7 PRM 84/2020 of 1 October 2020 and II-1 PRM 102/2020 of 29 October 2020.

127 Art. 90, LM.

128 Art. 94(5), LM. See, for example, the Senta Misdemeanour Court's Department in Kanjiža judgments in cases II-7 PRM 84/2020 of 1 October 2020 and II-1 PRM 102/2020 of 29 October 2020.

129 Loznica Misdemeanour Court, judgment 4-Prm 27/20 of 5 September 2020.

an interpreter, whether his guardian had attended the trial, or whether the court had obtained the opinion of the guardianship authority. It also failed to specify whether the child had been told he had the right to a lawyer. The Court said that, during its findings of fact, it “took account of the defendant’s circumstances, i.e. the fact that he is under age, has no money, and that he left his country of origin because of armed clashes and hardships in it.”¹³⁰ The Court, however, did not examine further whether there were circumstances that could lead it to find the child not guilty and conclude the child was in need of international protection.

2.4.3. Conclusion and Recommendations

When penalising persons from war-torn territories, misdemeanour courts still fail to examine any circumstances absolving them from liability in the event they are in need of international protection. As per the right to a defence, the judges question the defendants only about the circumstances related to the misdemeanours they committed. Misdemeanour courts do not specify in each judgment whether an interpreter was present during the proceedings and whether the defendants understood the language of the court.

Where there are indications that the defendants are in need of international protection, the courts should thoroughly examine whether the requirements for applying Article 8 of the LATP or Article 31 of the Refugee Convention are fulfilled. They should properly explain the (non-)fulfilment of such requirements in their decisions.¹³¹ They should also take into consideration publicly available information about armed clashes or human rights violations in the defendants’ countries of origin in order to properly assess whether the principle of non-penalisation for illegal entry or presence in Serbia is applicable.

The reasoning of misdemeanour court judgments against potential refugees must be detailed.¹³² It should clearly indicate whether or not an interpreter or another person guaranteeing the conduct of the proceedings in the language the defendant understands was present at the trial. The integral texts of the court decisions must be translated into the language the defendants understand.¹³³

¹³⁰ *Ibid.*

¹³¹ This also applies to foreigners who do not want to seek asylum in Serbia but gave reasons for their illegal entry or stay in Serbia, which in principle constitute grounds for extending them refugee protection. In such cases, the courts will directly apply Art. 31 of the Refugee Convention. More in *Right to Asylum 2019*, p. 43.

¹³² Under Art. 254(4) of the LM, courts must specify in the reasoning the content of the motion to initiate the proceedings, the findings of fact, the presented evidence, the regulations on which the judgment is based and the reasons for each of their findings.

¹³³ Under Art. 254(5) of the LM, the courts are to provide foreigners with clear guidance on which authority they may appeal to, the deadline for filing an appeal, and the manner in which it should be filed.

All misdemeanour courts should pay particular attention to cases of unaccompanied and separate children and ensure that all procedural safeguards, primarily adequate guardianship protection, are in place. The courts should thus involve the guardianship authorities and take into consideration their opinions of the children's best interests in their decisions. Misdemeanour courts should also always ensure that unaccompanied children can exercise their right to a lawyer and an interpreter for a language they understand. The courts should also refrain from ordering the children's removal from Serbia before assessing the existence of the risk of *refoulement*.

2.5. Access to the Asylum Procedure in the Detention Centre

The Foreigners Law defines a Detention Centre¹³⁴ as a facility accommodating foreign nationals who have not been allowed entry into the country, or against whom expulsion, removal or return orders have been issued, but cannot be enforced immediately.¹³⁵ Foreigners shall be referred to the Detention Centre by the relevant authorities, in accordance with the law, where they shall remain under close police watch.¹³⁶ The Detention Centre is under the MOI's jurisdiction.

Foreigners and asylum seekers may be detained in the Detention Centre on the order of the Asylum Office,¹³⁷ police departments and the Border Police.¹³⁸ Treatment of foreigners in the Detention Centre must be in compliance with the Serbian Constitution, ratified international treaties¹³⁹ and other relevant regulations; their human rights must be respected regardless of their personal characteristics or legal status.

Under the LAMP, foreigners in need of international protection may express their intention to seek asylum before an MOI officer deployed at the Detention Centre.¹⁴⁰ Ordinarily, the Centre management notifies the Asylum Office that a foreigner has told the Centre staff that they intend to seek asylum. The Asylum Office then issues such foreigners certificates of their intention to seek asylum.

134 Only one such Detention Centre, the one in Padinska Skela near Belgrade, is operational at the moment. Plans are to open two more Detention Centres – in Plandište and Dimitrovgrad. They were not operational yet due to technical problems and lack of police officers that would staff them. More in the letter of the MOI Secretariat, Department for Data Processing, Complaints and Cooperation with Independent Bodies, 02/4 Ref. No. 072/3–118/20–8, of 16 October 2020, on file with BCHR.

135 Art. 3(1(28)), FL.

136 Art. 87, FL.

137 Arts. 77 and 78, LAMP.

138 Art. 87, FL and Art. 7, Rulebook on House Rules.

139 Notably, Art. 5 of the ECHR.

140 Art. 35(2), LAMP.

BCHR's data show that no foreigners expressed the intention to seek asylum in the Detention Centre in 2020.

2.5.1. Right to Legal Aid

The LATP guarantees asylum seekers the right to information and free legal aid.¹⁴¹ Furthermore, the FL guarantees foreigners access to a lawyer and entitles NGOs and international organisations to visit the Detention Centre.¹⁴² In 2019, the BCHR legal team displayed in the Detention Centre posters with information and its contact details and brochures on the right to asylum in four languages (English, Arabic, Persian and Urdu) for potential asylum seekers. It is critical that foreigners in the Detention Centre have access to legal aid to ensure that they are informed of their rights and obligations, especially the right to seek asylum in Serbia.

The Detention Centre management has for years been facilitating BCHR's legal counselling of the newly-arrived foreigners, nationals of the most common countries of origin of refugees, in accordance with the Rulebook on House Rules, under which the visits must be pre-notified at least one day in advance and may last more than 60 minutes.¹⁴³ The BCHR legal team has for years been visiting the Detention Centre periodically and meeting with the Centre management and the foreigners detained in it. These visits were pre-notified by phone.

The BCHR legal team did not encounter any problems in communication with the Centre management in 2020 and it regularly visited the Centre every month, providing legal counselling to its residents in need of international protection on request and free of charge. However, the Centre management still failed to provide the BCHR legal team with regular weekly statistical updates on foreigners held in the Reception Centre.

In 2020, the BCHR legal team visited the Detention Centre eight times and extended legal aid to three foreigners in need of international protection. It represented one of them in the asylum procedure.¹⁴⁴ However, the Asylum Office did not conduct any actions to establish the merits of the asylum application during his detention in the Detention Centre.

Daily communication with the management and the lawyers' visits to the Detention Centre, as well as information about the origin of the foreigners held in it, are significant for several reasons. Firstly, to ensure that the foreigners are

141 Art. 56, LATP.

142 Art. 91(2(3 and 8)), FL.

143 Art. 22(4), Rulebook on House Rules.

144 At the request of the Banja Koviljača AC, one BCHR's client was temporarily transferred to the Detention Centre in 2020.

advised of their right to asylum. Secondly, to ensure that the foreigners are able to exercise more efficiently their right of access to the asylum procedure in the RS through their legal representatives, thus avoiding the risk of their persecution or ill-treatment in their country of origin.¹⁴⁵

Although the BCHR team has been able to provide legal assistance to those foreigners who contacted it directly, it does not have full insight in the MOI's treatment of foreigners held in the Detention Centre during 2020. The MOI did not reply to BCHR's request for access to public information of November 2020 by the end of the reporting period.¹⁴⁶ The MOI's practice has remained non-transparent in this respect.

2.5.2. Conclusion and Recommendations

The BCHR legal team's cooperation with the Detention Centre management improved in 2020 over the previous years. Scheduling of visits and meetings was faster, but BCHR lawyers did not have access to all foreigners in the Centre, wherefore some of them were probably deprived of the chance to promptly receive legal aid, unless they themselves contacted the UNHCR, BCHR or other legal aid providers.

The Centre management should provide the foreigners with unimpeded and timely access to legal aid to ensure that all those in need of international protection are informed of their right to asylum in Serbia. In this respect, note needs to be made of the fact that the Detention Centre management does not provide information on the detained foreigners and their treatment. The MOI should make information on the number and nationality of the foreigners in the Detention Centre available to all stakeholders¹⁴⁷ especially those extending legal aid.

145 Under Art. 83(1) of the FL, foreigners may not be forcibly removed to a territory where they would be under threat of persecution on grounds of race, sex, sexual orientation or gender identity, religion, ethnic origin, nationality, membership of a particular social group or political opinion.

146 BCHR asked the MOI to provide it with 2020 data on the number of asylum seekers referred to the Detention Centre, their sex and nationality, the number of MOI staff deployed at the Detention Centre, and on the number of foreigners in the Detention Centre who applied for asylum and were interviewed by the Asylum Office whilst in the Detention Centre.

147 Pursuant to the Law on Free Access to Information of Public Importance.

3. PRACTICE OF THE ASYLUM AUTHORITIES

In accordance with the LAMP, the asylum authorities in the RS include the Asylum Office, the Asylum Commission, and the Administrative Court. The first-instance asylum procedure is conducted by the Asylum Office, a unit of the MOI, within the Border Police Directorate. Appeals of Asylum Office decisions are reviewed by the Asylum Commission, an independent authority, the Chairperson and members of which are appointed by the Serbian Government.¹⁴⁸ Final decisions of the Asylum Commission may be challenged before the Administrative Court. This part of the Report will analyse the decisions these authorities adopted in 2020 in cases in which the asylum seekers were represented by BCHR's legal team.

3.1. Asylum Office

International protection was granted to 29 people in 2020. The number of Asylum Office decisions and asylum-related actions lead to the conclusion that it “bore the brunt” of the asylum procedure in Serbia, just like in 2019.¹⁴⁹ It was the only asylum authority that itself directly found the facts during the implementation of asylum-related actions (receipt of asylum applications and holding of oral hearings), based on which it decided on the applications. Namely, the Asylum Commission upheld asylum applications only on three occasions¹⁵⁰ since the national asylum system was established in 2008, while the Administrative Court has never delivered any judgments granting asylum. Therefore, the most asylum seekers can hope for if their applications are dismissed by the Asylum Office is that the latter two authorities will uphold their appeals/claims and remit their cases to the Asylum Office for reconsideration.

The Asylum Office adopted decisions that can be qualified as good practice examples in 2020. In several cases, it recognised the right to asylum to asylum seekers from particularly vulnerable groups, such as victims of torture,¹⁵¹ women

148 Serbian Government Ruling 24 No. 119–2520/17 on the Establishment of the Asylum Commission (*Official Gazette of the RS*, No. 29/17).

149 More in *Right to Asylum 2019*, pp. 43–68.

150 Asylum Commission Ruling No. Až-25/09 of 23 April 2010, Asylum Commission Ruling No. Až-06/16 of 12 April 2016 and another ruling issued in 2019.

151 Asylum Office Ruling No. 26–1403/19 of 11 December 2019.

travelling alone or with their children¹⁵², LGBTI persons,¹⁵³ stateless persons¹⁵⁴ and unaccompanied children.¹⁵⁵ However, the Asylum Office unfortunately continued adopting decisions based on incorrect or incomplete findings of fact or deviating from its prior practice, and in disregard of the statutory deadlines. Around 20% of the appeals against the Office were filed because it had failed to decide on the asylum applications within the statutory deadlines, indicating its lack of expedition. All these issues will be elaborated in the ensuing sections.

3.1.1. Findings of Fact and Assessment of Evidence

The Asylum Office should collect and examine the relevant facts, evidence and circumstances during its review of the merits of asylum applications. In addition to the facts and evidence presented by the asylum seeker, it is under the obligation to take into account the latest reports on the applicant's country of origin and, if necessary, in the countries they passed through on their way to Serbia.¹⁵⁶ Information on the situation in the asylum seekers' countries of origin can be found in various reports by international bodies, such as UNHCR and the European Asylum Support Office (EASO), as well as organisations focusing on human rights.¹⁵⁷

The Asylum Office in 2020 upheld several applications by BCHR's clients and granted them refuge or subsidiary protection,¹⁵⁸ in accordance with the LATP.¹⁵⁹ In these cases, it recognised the well-founded fears of persecution of these particularly vulnerable groups, such as LGBTI persons, SGBV survivors, stateless persons¹⁶⁰ and unaccompanied and separated children.

In late October, the Asylum Office upheld the asylum application of an unaccompanied child from Iran, P., and granted him subsidiary protection.¹⁶¹

152 Asylum Office Ruling No. 26-57/20 of 23 October 2020.

153 Asylum Office Ruling No. 26-2467/17 of 15 January 2020.

154 Asylum Office Ruling No. 26-2063/17 of 11 August 2020.

155 Asylum Office Ruling No. 26-1271/19 of 19 October 2020.

156 Pursuant to Art. 32 LATP.

157 More in *Right to Asylum 2019*, p. 49.

158 More on Asylum Office decisions upholding applications by asylum seekers represented by the BCHR legal team in 2020 in the *Right to Asylum, Periodic Reports for January-March 2020*, pp. 15 and 21 and *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2020*, Belgrade Centre for Human Rights, p. 12 (hereinafter: *Right to Asylum, Periodic Report for July-September 2020*), available at: <https://bityl.co/5ZM6>.

159 Arts. 24 and 25, LATP.

160 The Asylum Office upheld the application of Mr A from Palestine, who had been living in Lebanon where he had well-founded fear of persecution. Interestingly, his application had earlier been rejected in Hungary. The Asylum Office found that A had been denied effective access to the asylum procedure in that country. More in *Right to Asylum, Periodic Report for July-September 2020*, p. 12.

161 Asylum Office Ruling No. 26-1271/19 of 19 October 2020.

It stated that P. would be at risk of serious harm in Iran, since he was an immediate family member of a person of interest to the Iranian security forces. Namely, his father, a doctor, actively supported Mir-Hossein Mousavi, one of the three opposition candidates at the 2009 presidential elections in Iran.¹⁶² Because of his political activism, he was convicted to a 38 months in prison. Furthermore, as a political prisoner, he spent 17 months in the infamous Evin prison near Tehran, where he was tortured; he was subsequently transferred to the Rajai-Shahr Prison in Karaj. In the meantime, P's paternal grandfather became the boy's guardian since his parents were divorced and his mother did not want to take care of him.

Namely, months before the elections in Iran, human rights organisations reported on waves of arrests and intimidation of student and trade union leaders and women's rights activists. Attempting to limit debates and stifle opposition critics, the Iranian authorities obstructed the work of newspapers and limited access to the Internet.¹⁶³ Protests erupted as soon as the head of the Iranian Election Commission announced in advance that Ahmadinejad was winning with a wide lead.¹⁶⁴ Security forces, mostly member of the paramilitary militia Basij,¹⁶⁵ were engaged to prevent and end the protests by force, but the demonstrations continued until the end of 2009.¹⁶⁶ Amnesty International reported in

162 At the elections held on 12 June 2009. The then Iranian President Ahmadinejad ran against three rivals: Mohsen Rezaee, who was considered a conservative, and Mehdi Karroubi and Hossein Mousavi, who were considered reformists. Mousavi's and Karroubi's election camps publicly alerted to the risk of election fraud. Among other charges, they reported large discrepancies between the number of voters and the number of ballots printed by the relevant ministry, and that twice the number of validation stamps had been manufactured and distributed. The reformist campaigns charged that these irregularities could easily be used in nefarious ways by election workers in small towns and villages who would be done early in the day and would therefore have a great deal of time on their hands. More in: *Violent Aftermath: The 2009 Election and Suppression of Dissent in Iran*, Iran Human Rights Documentation Centre, 31 May 2013, available at: <https://bityl.co/5Z7M>.

163 According to official election results, Ahmadinejad won 62.6%, Mousavi 33.8%, Rezaee 1.7% and Karroubi 0.9% of the votes. More in: *Iran: Worsening Repression of Dissent as Election Approaches*, Amnesty International, AI Index MDE 13/012/2009, February 2009, available at: <https://bityl.co/5Z7O>.

164 Green, Mousavi's signature colour during the election campaign, was chosen to symbolise the demonstrations. That led to the establishment of the so-called Green Movement, an informal organisation mostly rallying youth, students and middle class citizens. The Movement reached its climax when up to 3 million protesters turned out on Tehran streets on 5 June 2009.

165 Basij (Mobilisation of the Oppressed) is the Iranian voluntary militia made up of civilians loyal to the Iranian Government. It was established on the order of Ayatollah Khomeini in 1979, during the Iraq-Iran war, and has been operating within the Iranian Revolutionary Guard Corps since 1981.

166 *Violent Aftermath: The 2009 Election and Suppression of Dissent in Iran*, Iran Human Rights Documentation Centre, February 2010, available at: <https://bityl.co/5Z7S>.

December 2009 that at least 4,000 people had been arrested during the post-election protests. One of them was P's father, one of the authors of the slogans used in Mousavi's campaign.¹⁶⁷

Most of the arrestees were released in a few days, but hundreds were held in incommunicado detention¹⁶⁸ for weeks, as victims of forced disappearances.¹⁶⁹ Amnesty International quoted detainees in its 2010 report who described the torture and ill-treatment they had been subjected to in the Kahrizak detention unit.¹⁷⁰ Although the protests were quelled by force, their organisers and participants were prosecuted without the right to a fair trial.

After he was released from prison, P's father decided to leave Iran and he crossed into Turkey illegally. P. flew in from Tehran to join him. Hoping to make it to Germany with the help of smugglers, they went from Istanbul to Greece and then to North Macedonia and arrived in Serbia in February 2018. They separated in Belgrade, after P's father decided to try and enter the EU irregularly; he left his son behind fearing for his safety. The father entered Belgium, where he was granted refugee status in April 2019,¹⁷¹ which enabled him to initiate reunification with his son.

P. applied for asylum in Serbia in May 2019. Two oral hearings on his application were held, one in July and the other in September 2020.¹⁷² The Asylum Office commendably held a Skype oral hearing to interview the applicant's father on 19 February 2020. State authorities should resort to this possibility provided by law¹⁷³ where necessary, because use of contemporary communication technologies definitely contributes to the effectiveness and procedural economy of administrative procedures such as the asylum procedure.

167 Most were detained in Tehran, but arrests were registered also in other cities, such as Shiraz, Mashhad, Esfahan, Babol, as well as Ahvaz, Tabriz and Zahedan.

168 Incommunicado detention denotes a secret place of detention, in which the detainee is held without any contacts with the outside world.

169 *Iran: Election Contested, Repression Compounded*, Amnesty International, 10 December 2009, MDE 13/123/2009, p. 10, available at: <https://bit.ly/5Z7X>.

170 Hundreds of those arrested were freed within days or weeks, but scores were charged with vaguely worded offences, such as fomenting a "velvet revolution" or committing "acts against national security", and prosecuted in "show trials". More in: *Amnesty International Report 2010: The State of the World's Human Rights*, Amnesty International, 27 May 2019, p. 173, available at: <https://bit.ly/2VJSTiz>.

171 The Asylum Office ascertained the above based on a note of the Belgian Embassy in Belgrade of 23 October 2019.

172 On 17 July and 13 September 2020.

173 Art. 111 of the LGAP entitles authorities that have the technical equipment to hold oral hearings via video conferencing, to which the provisions of that law on oral hearings apply accordingly.

During its review of the merits of P's application, the Asylum Office took into account the fact that family members of political dissidents and human rights activists in Iran were often subject to threats and arbitrary deprivation of liberty by the authorities as a form of intimidation or reprisal.¹⁷⁴ The Asylum Office was also guided by the principle of the best interests of the child¹⁷⁵ and took into account the report of the relevant guardianship authority. The Asylum Office found that the requirements for granting subsidiary protection to asylum seeking child were fulfilled given that his father was in Belgium, that his grandparents could not care for him adequately because they were old and sick, and that he would be at risk of serious harm if returned to Iran.¹⁷⁶

Another interesting case is that of Syrian national H. T., to whom the Asylum Office granted subsidiary protection in October 2020.¹⁷⁷ Namely, H. T. and her underage son and daughter left their country of origin in 2017 due to the security situation in this war-torn country and fear of air strikes. The family passed through Turkey, Greece and Albania on their way to Serbia.

H.T., who holds a degree in economy, worked as an accountant in a telecomm company and then involved herself in humanitarian activities in Syria. Members of the Free Syrian Army arbitrarily deprived her of liberty and physically abused her in 2013, convinced she was a reporter and accusing her of treason because of her Turkmen ethnic origin. H.T. said that she decided to leave her hometown of Aleppo and her country of origin after many residents of the building in which she was living with her mother and her children lost their lives in a propane bombing in 2017.

During its review of the merits of the asylum application filed by H.T. and her children, the Asylum Office found that they did not qualify for refuge under the LATP.¹⁷⁸ It stated in the ruling that it did not find a causal link between H.T.'s reasons for leaving her country of origin and the grounds for granting refugee status. In the view of the Asylum Office, H.T.'s personal problems in her country of origin, related to her deprivation of liberty, were due to the general instability caused by the war, as corroborated by H.T.'s statement during the oral hearing, that she and her family had left Syria for security reasons.

174 *2019 Country Reports on Human Rights Practices: Iran*, United States Department of State – Bureau of Democracy, Human Rights and Labor, available at: <https://bityl.co/5Z7b>.

175 Art. 10, LATP.

176 The Belgian authorities soon approved the reunification of underage P. and his father, wherefore the applicant left Belgrade for Brussels in mid-November.

177 Asylum Office Ruling No. 26–57/20 of 23 October 2020.

178 Art. 24, LATP.

On the other hand, when it reviewed whether the applicant qualified for subsidiary protection,¹⁷⁹ the Asylum Office correctly concluded that indiscriminate violence reigned in Syria. It therefore found that the lives of H.T. and her children would be at grave risk if they were returned to their country of origin due to the indiscriminate violence caused by the internal armed conflicts. The Asylum Office based its opinion on the applicant's statements during the procedure and relied on European Court of Human Rights (ECtHR) case law and the recent reports of international and other organisations on the general security situation in Syria.¹⁸⁰ It said in its ruling that there were many testimonies and a lot of evidence of war crimes and crimes against humanity, violations of humanitarian law committed by both Syrian security forces and armed rebels and other armed groups. It went on to say that the described situation persisted in Syria, that there were no indications that it would improve and that assessments were that it would actually deteriorate. It noted that armed attacks and violence against civilians, arbitrary deprivations of liberty, ill-treatment and abductions were frequent ever since the conflicts broke out, wherefore "anyone who returns to Syria at this moment would be at great risk of losing their lives in the armed conflicts" and of "human rights violations".¹⁸¹ The Asylum Office researched in detail the situation in the Aleppo area, which, although under the control of the Syrian Government since 2016, is a stronghold of over 50 rebel groups and where ongoing widespread armed conflicts have been confirmed.

Relying on the above facts established by research of credible information on Syria, the Asylum Office noted that it had held three oral hearings in this case and ascertained that the applicant's statements were generally credible. In its view, H. T. had given a detailed and compelling account of the security situation in her country of origin, especially in Aleppo. After thoroughly examining the current circumstances, the Asylum Office concluded that the security of the mother and her children would be at risk if they returned to Syria, due to internal armed conflicts in that country. It also emphasised in its ruling that a negative decision on the asylum application "would place the life of the applicant at risk, specifically, a negative decision would enable the return of the applicant and her children to Syria, where their lives, freedom or security would definitely be in danger." The Asylum Office was also guided by the principle of the best interests of the child under the LATP.¹⁸²

The Asylum Office fully and properly established all the facts and reviewed the relevant evidence in these cases. It, however, did not apply this good practice in most other cases, which will be described below.

179 Pursuant to Art. 25, LATP.

180 Reports by Human Rights Watch, the Syrian Observatory for Human Rights, et al.

181 Asylum Office Ruling No. 26–57/20 of 23 October 2020, p. 5.

182 Art. 10, LATP.

3.1.1.1. Incomplete Findings of Fact

Like in the past,¹⁸³ the Asylum Office in 2020 rejected asylum applications by BCHR clients without examining the submitted evidence or consulting relevant reports by international bodies and other organisations.¹⁸⁴ Under the LGAP, authorised Asylum Office staff are under the obligation to adopt their decisions after a diligent and thorough examination of each piece of evidence and the body of evidence in its entirety, and on the basis of the results of the entire procedure.¹⁸⁵ The Asylum Office, however, failed to act in accordance with this obligation when it deliberated the cases of many asylum seekers represented by BCHR.

For instance, it disregarded the obligation during its reviews of the merits of applications filed by four BCHR clients. Election of the new Burundi President in 2020 was one of the reasons why it rejected all of them.¹⁸⁶

Having examined information about the country of origin, the Asylum Office established that the government changed in the Republic of Burundi, i.e. that former President Pierre Nkurunziza, against whom the 2015 demonstrations leading to the flight of a number of Burundi nationals were organised, was no longer President and that he passed away on 8 June 2020. The elections held in May 2020 were won by candidate Evariste Ndayishimiye, who called on all nationals, who have fled, to return to their country of origin. According to available information, 6,000 Burundi nationals returned to their country of origin. Furthermore, a tripartite agreement on repatriation was signed by UNHCR, Burundi and Rwanda on 13 August 2020. UNHCR officials successfully organised the repatriation of Burundi nationals from Tanzania in October 2019 as well.

BCHR lawyers find the Asylum Office's view disputable for a number of reasons. According to a report presented by the Commission of Inquiry on Burundi to the UN Human Rights Council in September 2020, human rights abuses, including rape, murder and targeting of the country's youth persisted in Burundi despite a change of government.¹⁸⁷ The newly-elected President, who came to power after the 15-year rule of the late Pierre Nkurunziza, is a member of the ruling party. The chief of the UN Commission on Burundi said that the democratic space remained very narrow, that impunity persisted, and that there was no indication that the level of human rights violations has abated under the new government. Security forces and the youth wing of the governing party, the

183 More in the *Right to Asylum 2019*, pp. 49–51.

184 Pursuant to Art. 32(2(2)), LATP.

185 Art. 10, LGAP.

186 Asylum Office Rulings No. 26–2176/19 of 5 October 2020, No. 26–2175/19 of 3 November 2020, No. 26–3215/19 of 4 November 2020 and No. 26–3136/19 of 26 November 2020.

187 Available at: <https://undocs.org/en/A/HRC/45/32>.

Imbonerakure, continued to have almost total impunity for beatings, kidnappings and sexual violence, the report said. The UN Commission said it still had reasonable grounds to believe that crimes against humanity, including murder, imprisonment or other severe forms of deprivation of physical liberty, torture, rape and other forms of sexual violence of comparable gravity and political persecution, have been committed in Burundi. The investigators, who have been denied access to Burundi itself, particularly highlighted a wide range of serious abuses by local authorities and the Imbonerakure in the context of the 2020 elections. “The perpetrators were seeking to deprive the main opposition party of any chance of winning the election,” the report said. Authorities had also worked to muzzle independent observers, including journalists, and imposed tight controls on common people, it said, decrying “systematic attacks deliberately targeting civilians”.¹⁸⁸

UNHCR said earlier it did not envisage large-scale returns of refugees to Burundi in the near future.¹⁸⁹ Recent data on returns¹⁹⁰ show that over 323,000 refugees from Burundi are still living in the neighbouring countries. In the first nine months of the year, 19,678 refugees returned to Burundi, but 3,266 left it.¹⁹¹ These statistical data demonstrate the risks refugees and asylum seekers face on return to Burundi. The conclusion is corroborated by UNHCR data showing that only 33% could return to their homes, that only 48% of returnee children had access to education (of which only 16% attended secondary schools) and that many refugees faced challenges in reintegration.¹⁹²

In BCHR's view, the Asylum Office's rejection of asylum applications of Burundi nationals because of the change of government is extremely dangerous. Recent UN reports show that the situation in that country has not changed at all and that violations of human rights are still widespread. The impression is that the Asylum Office has been automatically rejecting asylum applications filed by Burundi nationals because of the change of government, without thoroughly analysing the situation there or cumulatively examining all the facts in individual cases, thus putting the applicants at direct risk of *refoulement*.

As already noted, the Asylum Office is under the obligation to collect and examine all the relevant facts, evidence and circumstances, whilst particularly

188 “Human rights abuses persist in Burundi despite new gov't: UN“, *Al Jazeera*, 17 September 2020, available at: <https://bityl.co/5Z7e>.

189 UNHCR, *Burundi Situation 2017 Supplementary Appeal*, May 2017, pp. 5–13, available at: <https://bityl.co/5Z7i>.

190 On 30 September 2020.

191 More in: <https://bityl.co/5ZMD>.

192 More in: <https://bityl.co/5ZMN>.

taking into consideration international reports, including those of UNHCR and EASO.¹⁹³ Its decisions cannot be based on the mere fact that the government has changed in a specific country. It needs to analyse the changes, particularly in the light of the risk of persecution of the asylum seekers. Furthermore, the Asylum Office should assess these changes in each individual case, taking into account all the circumstances of the case at hand. Thorough, proper and comprehensive examination of all facts and circumstances relevant for the adoption of lawful and proper decisions on the submitted asylum applications is crucial not only for the current asylum seekers, but for future ones as well. This is why the Asylum Office needs to change its current practice.

3.1.1.2. Inconsistent Practice

A problem plaguing the Serbian asylum system since its establishment – that of the Asylum Office’s inconsistent practice – has been even more conspicuous over the past few years. In 2020 again, the Asylum Office rejected, without a valid explanation, some asylum applications for the very reasons it had earlier upheld other asylum applications. BCHR’s legal team found this to be particularly problematic in cases of asylum seekers from Afghanistan, especially unaccompanied and separated children.

For instance, in February 2020, the Asylum Office upheld the asylum application and granted subsidiary protection to an unaccompanied child Z.¹⁹⁴ from Afghanistan.¹⁹⁵ The Asylum Office took into account the unchanged situation in Afghanistan “which was deteriorating in some segments,” as well as UNHCR’s view of 2018 that no part of Afghanistan could be considered safe. Relying on a number of relevant international reports, the Asylum Office concluded that Z.’s security would be at risk in Afghanistan “due to local armed conflicts and utter lack of rule of law in that country”.

However, only two days later, the Asylum Office arrived at a totally different conclusion about the security situation in Afghanistan in its ruling on an asylum application filed by an unaccompanied Afghani child, K. The Asylum Office did not refer to any of the reports it cited in its decision granting Z. subsidiary protection in the reasoning of its ruling rejecting K.’s application.¹⁹⁶ Instead, it said that that UNHCR data showed that the largest voluntary repatriation program in UNHCR’s history has been implemented in Afghanistan since 2002 and that refugees were returning to Kabul, Herat and Mazar-i-Sharif and that these cities

193 Pursuant to Art. 32(2(2)), LATP.

194 Asylum Office Ruling No. 26–1437/18 of 13 February 2020.

195 More in the *Right to Asylum, Periodic Report for January-March 2020*, p. 24.

196 *Ibid.*

were safe and growing rapidly. As opposed to the view it took in its ruling on Z.'s application, the Asylum Office said in this case that Kabul, K.'s home town, was safe because it was under the effective control of the Afghani government.

In October 2020, the Asylum Office upheld the asylum application of unaccompanied child N.¹⁹⁷ In his case, it qualified his country of origin, Afghanistan, as unsafe, referring to the relevant international reports. It was also guided by the principle of the best interests of the child and applied the 2010 Guidelines for the Alternative Care for Children.¹⁹⁸

The Asylum Office's positive decisions on the asylum applications of unaccompanied children from Afghanistan are definitely to be commended. However, its assessments of the general situation in the asylum seekers' country of origin should not differ from one case to another, where the relevant reports indicate that the situation in it is unchanged. It remains unclear why the Asylum Office took two opposite views on the general security situation in Afghanistan in a matter of days and why it failed to provide a valid explanation. This is particularly problematic also in light of the fact that the Asylum Office had been aware of indiscriminate violence in Afghanistan and acknowledged it in several prior decisions.¹⁹⁹

The described Asylum Office decisions corroborate the impression that its reviews of asylum applications are arbitrary, that it does not duly consider the risk of abuse and persecution asylum seekers may face if they return to their country of origin, especially where it is well-aware of the circumstances in it. Decisions on all asylum applications must be based on full and proper findings of all the relevant facts and circumstances, in order to ensure protection from violation of the *non-refoulement* principle.

3.1.2. Violations of Statutory Deadlines

The deadlines set by the LATP are inextricably linked with the principle of procedural economy prescribed by the LGAP. They must be complied with to ensure the continuity of procedural actions, prevent dilatoriness and provide legal certainty. A decision on an asylum application in the regular procedure shall be rendered, at the latest, within three months from the day of submission.²⁰⁰ The deadline may be extended in specific cases set out in the LATP.

197 Asylum Office Ruling No. 26-2573/19 of 15 October 2020.

198 *Guidelines for the Alternative Care for Children*, Resolution adopted in 2010 by the UN General Assembly on the report of the Third Committee A/64/434, A RES/64/142, available at: <https://bitly.co/5KPb>.

199 See, e.g. the Asylum Office Rulings No. 26-1403/19 of 11 December 2019, No. 26-787/19 of 29 May 2019, and No. 26-784/18 of 20 November 2019.

200 Art. 39(1), LATP.

BCHR appealed the “silence of the administration” with the Asylum Commission in cases where the Asylum Office failed to rule on asylum applications within the statutory deadline.²⁰¹ Before the Commission ruled on BCHR legal team’s eight appeals, the Asylum Office issued rulings in five cases.²⁰² By the end of the reporting period, the Commission asked the BCHR whether it was abandoning three of the five appeals complaining of the Asylum Office’s failure to rule on the cases by the deadline prescribed by law. BCHR, however, decided to pursue them, with a view to ascertaining whether the law had been violated to the detriment of the asylum seekers.

Since one appeal was not ruled on within the deadlines prescribed by the LGAP,²⁰³ BCHR’s legal team filed a claim against the Asylum Commission with the Administrative Court, in accordance with the Law on Administrative Disputes (LAD).²⁰⁴ The case is one of the most flagrant examples of the asylum authorities’ non-compliance with the statutory deadlines: the procedure has been ongoing since 19 July 2017 for no good reason. The case was pending before the Administrative Court at the end of the reporting period.

3.1.3. Conclusion and Recommendations

The Asylum Office commendably recognised asylum seekers falling in the particularly vulnerable categories and granted them the right to asylum in 2020. However, it needs to improve some aspects of its work with a view to advancing the first-instance asylum procedure. For instance, in some cases, the Asylum Office did not assess evidence presented by the asylum seekers and their legal representatives. It also disregarded relevant reports on the asylum seekers’ countries of origin or adopted decisions in contravention of its established practice.²⁰⁵ Furthermore, it did not comply with the statutory deadlines. The BCHR already clearly alerted to almost identical shortcomings in its prior reports.²⁰⁶

When reviewing the merits of asylum applications, the Asylum Office must examine all the available and relevant reports on the asylum seekers’ countries of origin and treat them as evidence. It must render its decisions within the timeframes laid down in the LATP.²⁰⁷ The Asylum Office is, inter alia, under the

201 More in *Right to Asylum, Periodic Report for July-September 2020*, p. 22–24.

202 The Asylum Office rejected four asylum applications and upheld one of them, granting refuge to an unaccompanied child from Afghanistan.

203 Art. 145, LGAP.

204 Art. 19, LAD.

205 The first-instance procedure on the asylum application by Libyan national A. lasted 796 days. More in *Right to Asylum 2019*, p. 54.

206 *Ibid.*

207 Art. 39, LATP.

obligation to comply with the LGAP, more specifically, to take into account its prior decisions and ensure the consistency of its decisions.²⁰⁸ Elimination of the identified shortcomings will ensure that it renders proper and legal decisions on asylum applications.

3.2. Asylum Commission

Asylum Office decisions may be appealed with the Asylum Commission within 15 or eight days.²⁰⁹ The Serbian Constitution provides everyone with the right to an appeal or another legal remedy against a decision on their rights, obligations or lawful interests.²¹⁰ The right of appeal is one of the principles of the LGAP.²¹¹ The Asylum Commission is entitled to dismiss an appeal,²¹² reject it, overturn the ruling in its entirety or in part and rule on the administrative matter itself, or overturn the ruling and remit it for reconsideration to the first-instance authority or amend it itself.²¹³

The Asylum Commission received 63 appeals in the first ten months of the year. It ruled on 52 of them, dismissing 43 and upholding nine appeals. Its reviews of appeals contesting the silence of the administration were still pending at the end of the year. In all nine cases in which it upheld the appeals, it overturned the rulings and remitted the cases to the Asylum Office for reconsideration. In other words, the Asylum Commission did not rule on the merits of any asylum applications during the year. As noted, it has done so only three times in the past 12 years, which demonstrates that this mechanism for reviewing Asylum Office decisions is not fully effective.

Like in 2019,²¹⁴ the Asylum Commission refused to forward the rulings it issued in the 1 January-30 November 2020 period to the BCHR. In its view, these rulings contained the asylum seekers' personal data and the applicants have not consented in writing to the disclosure of their data as required by the Law on Free Access to Information of Public Importance. The Asylum Commission's

208 Art. 5, LGAP.

209 Art. 42(4) of the LAMP provides for a shorter, eight-day deadline for appealing first-instance decisions adopted in an expedited procedure and decisions dismissing asylum applications or subsequent asylum applications.

210 Art. 36(2), Serbian Constitution.

211 Art. 13, LGAP.

212 Art. 167(1) of the LGAP provides for the dismissal of appeals that are filed out of time, inadmissible, filed by persons not entitled to file them, and appeals that have not been rectified within the deadline set by the authority.

213 Art. 167(2), LGAP.

214 More in *Right to Asylum 2019*, p. 59.

work has thus remained non-transparent, although it could have anonymised its rulings and thus fully maintained the confidentiality of the asylum seekers' personal data.²¹⁵

The Asylum Commission's decisions in cases in which the asylum seekers are represented by BCHR are characterised by selective assessments of the arguments in the appeals, drawing of incorrect conclusions on the findings of fact and errors of law. The ensuing section analyses several such decisions adopted in 2020, the content of which is particularly interesting.

3.2.1. No Headway in the Work of the Asylum Commission

In October 2020, the Asylum Commission rejected BCHR's appeal²¹⁶ and upheld the Asylum Office decision to reject the asylum application of a four-member Iranian family X,²¹⁷ analysed in BCHR's prior report.²¹⁸ The X family were forced to flee their country of origin because of their persecution and discrimination by the authorities on account of their Arab ethnicity. This ruling encapsulates practically all the shortcomings in the work of the Asylum Commission: its failure to assess the arguments put forth in the appeals or their partial or arbitrary assessment; its upholding of Asylum Office conclusions based on incorrect or incomplete findings of fact; and its disregard of the principles of legality and foreseeability.²¹⁹

First of all, the Asylum Commission selectively assessed the appeal, in contravention of the LGAP,²²⁰ and consequently drew an incorrect conclusion on the findings of fact. Some parts of its ruling were mere copy-pastes of the Asylum Office's findings; the Asylum Office did not review the arguments in the appeal disputing them. On the other hand, it did not even refer to specific parts of the appeal, leading it to the incorrect conclusion conclude that the applicants would not be subjected to persecution or serious harm if they returned to their country of origin.

215 An identical request for access to information of public importance was submitted to the Administrative Court, which promptly forwarded the judgments to the BCHR, without disclosing the personal data of the asylum seekers.

216 Asylum Commission Ruling No. Až-34/20 of 15 September 2020.

217 Asylum Office Ruling No. 26-1831/18 of 30 July 2020.

218 More on the asylum application and an analysis of the Asylum Office's ruling in *Right to Asylum, Periodic Report for July-September 2020*, pp. 13-16.

219 Art. 5, LGAP.

220 Art. 168(2), LGAP. The second-instance authority shall review the grounds challenging the ruling set forth in the appeal and shall perform an *ex officio* review of the existence of grounds for annulment under Art. 183(1(1-6)) of the LGAP and the jurisdiction of the first-instance authority.

The Asylum Commission also drew an incorrect conclusion on the findings of fact and incorrectly applied the LGAP when it found that the Asylum Office had consulted international sources submitted by the applicants' legal representatives.²²¹ It stated in its ruling that the Asylum Office had reviewed the evidence presented by family X's representatives and used the information in the Radio Free Europe (RFE) article on the current security situation in Iran.²²²

The Asylum Commission's general conclusion that the Asylum Office had "reviewed the allegations made during the oral hearing, the evidence presented by the applicants, particularly taking into account information on the situation in the country of origin" does not mean that the Asylum Office had actually performed such a review. Namely, the Asylum Office did not specify which reports it had reviewed in the reasoning of its ruling. With the exception of the RFE article, neither the Asylum Commission nor the Asylum Office specified which reports had been reviewed, although BCHR lawyers representing the X. family submitted a number of relevant reports by eminent international organisations.²²³ The Asylum Commission apparently also failed to properly examine the reports substantiating the applicants' claims although BCHR alerted it in its appeal to the Asylum Office's failure to peruse these reports. Hence the Asylum Commission's incorrect conclusion on the findings of fact. The Asylum Commission also failed to examine the grounds challenging the ruling in the appeal as it was obligated to under the LGAP.²²⁴

The fact that the X. family applied for asylum in December 2018, a year after they arrived in Serbia, was unjustifiably qualified by the Asylum Office as an aggravating circumstance substantiating its decision to reject the application. The Asylum Commission fully agreed with this argument when it reviewed the case on appeal. Together with the appeal, BCHR lawyers submitted the Asylum

221 To recall, under Art. 32(2(2)) of the LATP, when examining the substance of an asylum application, the Asylum Office shall collect and consider all the relevant facts and circumstances, particularly taking into consideration current reports about the situation in the applicant's country of origin or habitual residence, and, if necessary, the countries of transit, including the laws and regulations of these countries, and the manner in which they are applied – as contained in various sources provided by international organisations, including UNHCR, the EASO and human rights organisations.

222 "Khamenei Representative Apologizes after Plastic Bullets Fired at Iranian Protesters," *Radio Free Europe/Radio Liberty*, 26 May 2020, available at: <https://bit.ly.co/5Z7m>.

223 BCHR submitted the reports of the following international and non-government organisations: 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, et al.

224 Art. 168(2), LGAP.

Office decisions²²⁵ and oral hearing minutes²²⁶ as proof that it had not found these circumstances to the detriment of the applicants in its other decisions upholding their asylum applications. After perusing the decisions and minutes, the Asylum Commission said that “each application is considered individually, in compliance with the principle of legal certainty, but it is impossible to single out only one fact in these cases and base on it the principle for all future decisions.”²²⁷

It, however, needs to be noted that legal certainty is precisely why the LGAP guarantees the principles of legality and foreseeability²²⁸ and sets out, *inter alia*, that the authorities ruling on administrative matters shall take account of prior decisions adopted on identical or similar administrative matters. Furthermore, the LGAP lays down that the authorities must specify in their reasoning why they deviated from their prior practice.²²⁹ The Asylum Office’s failure to provide such an explanation clearly corroborates that it violated these provisions of the LGAP and that the Asylum Commission, which failed to identify the violation, drew a wrong conclusion on the findings of fact.

The Asylum Commission drew another wrong conclusion when it found that the Asylum Office had assessed whether family X. fulfilled the requirements to be granted subsidiary protection in Serbia, specifically that it explained its decision after reviewing the relevant international reports. First of all, as described above, the Asylum Office’s reasoning of its ruling does not specify which international reports it had perused. Furthermore, the applicants alerted the Asylum Commission to the Constitutional Court’s decision in the Už–6596/2011 case of 5 November 2014, in which it stated that reasons for rejecting an asylum application need not suffice in each individual case for dismissing the possibility of granting the applicant subsidiary protection as well, since the relevant authorities are obligated to examine reports by international human rights organisations and other evidence of the current security situation in the country of origin. The Asylum Office disregarded the obligation in this case, since it did not review any reports by international organisations on the security situation in Iran and based its decision on arbitrary and unsubstantiated arguments.

On the other hand, the Asylum Commission dismissed as ill-founded the arguments set forth in the appeal that the Asylum Office had failed to consid-

225 Asylum Office Ruling No. 26–1081/17 of 4 July 2018 and Asylum Office Ruling No. 26–784/18 of 20 November 2019.

226 Minutes of Oral Hearing No. 26–1081/17 held on 24 January 2018 and Minutes of Oral Hearing No. 26–784/18 held on 23 August 2018.

227 Asylum Commission Ruling No. Až-34/20 of 15 September 2020, p. 5.

228 Art. 5, LGAP.

229 Art. 141(4), LGAP.

er *ex officio* whether the applicants qualified for subsidiary protection, whereby it breached the LATP,²³⁰ and disregarded the above-mentioned Constitutional Court decision. The Commission thus drew an incorrect conclusion on the findings of fact, because it cannot be concluded on the basis of the Asylum Office's ruling which specific international reports it had reviewed when it examined whether family X. qualified for subsidiary protection. The case was pending before the Administrative Court at the end of the reporting period.

The case of B.B., a Palestinian national, who fled persecution in his country of origin because of his ethnicity and religion, is another case in which the Asylum Commission rejected BCHR's appeal²³¹ and upheld the illegal decision of the Asylum Office.²³² Namely, B.B. had been the target of an attack by the Israeli army on a checkpoint on the West Bank, where he was living with his family. He was taken to the hospital and then into custody, where he was tortured. He was sentenced to imprisonment *without the right of appeal*. He had two heart attacks whilst in prison.

The recall, the Asylum Office failed to consult the relevant reports of UNHCR, EASO and other international organisations, as well as all the claims in the submission filed by B.B.'s legal representatives, wherefore it drew an incorrect conclusion on the findings of fact and adopted an illegal decision.²³³ BCHR lawyers thus filed an appeal on B.B.'s behalf, which was rejected as ill-founded.

The Asylum Commission again resorted to its practice of reiterating the Asylum Office's statements in the ruling. In this case, it upheld the Office's conclusion that B.B.'s statements about the attack were not credible, that he had failed to prove the link between the Israeli army and Mossad, the Israeli intelligence agency, that his claims on Mossad detention did not coincide with facts on the operations of this agency.²³⁴ The Asylum Commission did not comment in detail the arguments set forth in the appeal that the Asylum Office had not consulted the relevant reports by international organisations, in contravention of the LATP.²³⁵ The Asylum Commission also failed to examine in detail BCHR's

230 Art. 4(2), LATP

231 Asylum Commission Ruling No. Až-39/20 of 2 November 2020.

232 Asylum Office Ruling No. 26-2177/19 of 20 August 2020.

233 More on the Asylum Office's decision in this case in *Right to Asylum, Periodic Report for July-September 2020*, pp. 16-19.

234 Asylum Commission Ruling No. Až-39/20 of 2 November 2020, p. 3.

235 Under Art. 32(2(2)) of the LATP, when examining the substance of an asylum application, the Asylum Office shall collect and consider all the relevant facts and circumstances, particularly taking into consideration current reports about the situation in the applicant's country of origin or habitual residence, and, if necessary, the countries of transit, including the laws and regulations of these countries, and the manner in which they are applied – as contained in various sources provided by international organisations, including UNHCR, the EASO and human rights organisations.

arguments in the appeal that the Asylum Office selectively assessed BCHR's submission with the international reports on the situation in Palestine. On the contrary, it merely noted that it was "clear that the submission had been reviewed" and concluded that that was actually the case. The Asylum Commission also found that a number of reports in the submission could not be associated with B.B.'s case, but failed to clarify why it considered the reports irrelevant.²³⁶

Furthermore, the Asylum Commission dismissed as ill-founded²³⁷ BCHR's claims in the appeal that the Asylum Office had failed to hold another oral hearing to clarify any ambiguities and discrepancies in B.B.'s statement, because it considered he had been thoroughly interviewed²³⁸ in the first-instance procedure.²³⁹ In that regard, the Asylum Commission said that B.B.'s representatives had the opportunity to ask him questions during the oral hearing to clarify dilemmas²⁴⁰, wherefore the Asylum Office had not violated the LGAP.²⁴¹

The Asylum Commission's view on the (non-)existence of the risk of *refoulement* in this case is particularly concerning. Namely, the Commission dismissed as ill-founded BCHR's view that the Asylum Office had failed to properly and thoroughly examine the risks B.B. would face in his country of origin if he were forcibly returned to it, since the Office had "rejected, rather than dismissed" his asylum application.²⁴² Furthermore, the Asylum Commission opined that B.B. would not be at risk of capital punishment or execution, or of inhuman or degrading treatment or punishment, inter alia, because there was no indiscriminate violence in Palestine, his family was still living there and B.B. had never been a member of any military or paramilitary unit.

To recall, under the LATP,²⁴³ no foreigner shall be *refouled* to a territory where their life or freedom would be threatened on account of their race, sex,

236 Asylum Commission Ruling No. Až-39/20 of 2 November 2020, p. 5. The Commission, inter alia, said that reports on the situation in the Gaza region, and the socio-economic situation, freedom of assembly and the right to citizenship in Palestine were irrelevant to this case.

237 Asylum Commission Ruling No. Až-39/20 of 2 November 2020, p. 6.

238 Pursuant to Art. 37(1), LATP.

239 The Asylum Commission held that applicant B.B.'s statement was not in accordance with Art. 32(4(3)) of the LATP, under which an applicant's statement shall be considered credible in the part where a certain fact or circumstance is not supported by evidence in the event the applicant's statements are found to be consistent and acceptable, and not in contradiction with the specific and general information relevant to the decision on the asylum application.

240 To recall, under Art. 37(2) of the LATP, authorised Asylum Office staff members may interview the applicants on more than one occasion in order to establish the factual situation.

241 Under Art. 11 of the LGAP, parties must be provided with the opportunity to comment facts of relevance to a decision on the administrative matter and decisions may be taken without hearing the parties' comments only in cases specified by law.

242 Asylum Commission Ruling No. Až-39/20 of 2 November 2020, p. 6.

243 Art. 6(1), LATP.

language, religion, nationality, membership of a particular social group, or political opinion.²⁴⁴ An asylum application shall be rejected in the event the applicant does not fulfil the requirements laid down in the LTP²⁴⁵, or in the event the requirements for denying protection under Articles 33 and 34 of the LTP are fulfilled.²⁴⁶ On the other hand, an asylum application shall be dismissed in the event the concepts of the first country of asylum²⁴⁷ or safe third country²⁴⁸ can be applied. Unfortunately, the Asylum Commission failed to explain in its decision the difference between dismissing and rejecting an asylum application vis-à-vis the risk of *refoulement*. This was crucial, given that both decisions can in principle produce the same consequences – put at risk the applicants’ lives or again subject them to the risk of persecution.

BCHR is of the view that the Asylum Commission yet again failed to fulfil one of its primary obligations as a second-instance authority: to review the lawfulness of the work of the first-instance authority. B.B. filed a claim with the Administrative Court challenging the Asylum Commission’s ruling.

3.2.2. Procedural Omission in the Application of the Concept of First Country of Asylum²⁴⁹

BCHR has legally represented Y. from Burundi, who had been granted the status of refugee in Uganda. He decided to leave Uganda because of the problems he faced there. Y. took a regular flight from Uganda via Istanbul and arrived in Serbia on 7 March 2019. His application for asylum was rejected by the Asylum Office in August 2020.²⁵⁰

Namely, the Asylum Office sent a letter to BCHR lawyers notifying them that the decision on the asylum application would be taken in accordance with Article 43 of the LTP defining the concept of the first country of asylum.²⁵¹

244 This prohibition is envisaged also in Article 33 of the Refugee Convention.

245 Pursuant to Arts. 24 and 25 of the LTP. Applications may also be rejected as ill-founded in the event the applicant does not fulfil the requirements under Arts. 24 and 25 of the LTP and if circumstances under Art. 40 of the LTP exist.

246 Pursuant to Art. 38 (3–5), LTP.

247 Pursuant to Art. 43, LTP.

248 Pursuant to Art. 45, LTP.

249 Art. 43, LTP.

250 Asylum Office Ruling No. 26–1515/19 of 13 August 2020.

251 Under Art. 42(1) of the LTP, a decision rejecting an asylum application without examining it on the merits shall be rendered if it is possible to apply the concept of first country of asylum referred to in Art. 43. Art. 43(1) sets out that a country shall be considered the first country of asylum if the applicant has been recognised refugee status in that country, and if they are still able to avail themselves of that protection or if they still enjoy effective protection in that country, including the guarantees arising from the *non-refoulement* principle.

Just one workday later, the Asylum Office sent the BCHR its ruling dismissing Y's asylum application under Article 43.²⁵² Y. was denied the possibility to comment the Asylum Office's intention to apply the concept of first country of asylum and to challenge its application given his personal circumstances within the statutory deadline.²⁵³

BCHR lawyers filed an appeal with the Asylum Commission claiming procedural violations.²⁵⁴ However, the Asylum Commission dismissed BCHR's appeal as ill-founded.²⁵⁵ It explained that the Asylum Office had not "automatically" ruled on the case and had considered all the allegations Y. made during the oral hearings, as well as the reports on his country of origin and the submissions his legal representative filed during the procedure.

The Asylum Commission agreed with BCHR's claim in the appeal that the first-instance authority had not provided the applicant with enough time to challenge the application of the concept of first country of asylum²⁵⁶ from the time it gave notice that it would render its decision based on that Article to the moment it issued its ruling. The Asylum Commission also said that the LATP itself "does not lay down a precise deadline and way in which the concept of first country of asylum can be challenged, wherefore the first-instance authority could have provided the applicant with a longer timeframe for responding" and that "this issue is left to the discretion of the authority". The Asylum Commission also noted that Y's legal representatives could have required of the Asylum Office to extend the deadline and rectify the *deficiency* the moment they noticed it. Nevertheless, the Asylum Commission opined that the adoption of a legal and proper decision in this case was not substantially prejudiced by this *omission* of the Asylum Office, especially since, in the view of the Asylum Commission, the Asylum Office had held two oral hearings during which it interviewed Y. about all the circumstances of relevance to its decision, including the circumstances regarding his first country of asylum.²⁵⁷ Consequently, the Asylum Commission

252 See the analysis of this decision in: *Right to Asylum, Periodic Report for July-September 2020*, pp. 22–24.

253 Under Art. 43(2) of the LATP, applicants may challenge the application of the concept of first country of asylum in relation to their particular circumstances.

254 The Asylum Office in the meantime sent notice that a decision on another case would be adopted in accordance with Art. 43 of the LATP. This time, the Asylum Office specified that the applicant had eight days to comment its decision. However, the applicant left Serbia and the procedure was discontinued.

255 Asylum Commission Ruling No. Až-36/20 of 4 December 2020.

256 Art. 43(2), LATP.

257 The authorised officer of the Asylum Office interviewed Y. on two occasions also about the circumstances concerning his first country of asylum. During the first oral hearing, Y. spoke about the problems he had in Uganda, his first country of asylum. He, *inter alia*, said that he had been reported because of his sexual orientation, which carries a sentence of impris-

upheld the Asylum Office's decision and concluded that Y's asylum application should be dismissed.

In BCHR's view, such decisions of the Asylum Commission are disputable and dangerous, because they downplay the Asylum Office's flagrant violation of the law and render the asylum procedure in Serbia meaningless. Namely, Article 43 of the LATP explicitly states that asylum seekers shall have the opportunity to contest the application of the concept of first country of asylum in relation to their particular circumstances.²⁵⁸ Therefore, asylum seekers are entitled to challenge the application of this concept under the law and must be provided with the opportunity to do so in every single case and without exception.

Although the LATP does not specify a deadline within which the concept of first country of asylum must be challenged, it does expressly provide for the application of regulations on the general administrative procedure to issues not regulated by this law.²⁵⁹ Under the LGAP, where the time limits are not specified by law or other regulation, they shall be set by the officer conducting the procedure in view of the circumstances of the case.²⁶⁰ Time limits set by the authorised officer may be extended upon a petition of the interested party submitted prior to the expiry of the time limit, provided there are valid reasons for the extension.²⁶¹ The LGAP also sets out that parties must be provided with the opportunity to comment facts of relevance to a decision on an administrative matter and that decisions may be taken without hearing the parties' comments only in cases specified by law.²⁶² The Asylum Office did not provide Y. with any deadline to comment the application of the concept of first country of asylum; rather, it merely notified his legal representatives that it would apply the concept, and then, just one workday after they received its letter, forwarded them its ruling dismissing the asylum application.

The Asylum Commission was correct to conclude that the LATP did not lay down a precise deadline and way in which the concept of first country of asylum could be challenged, and that this issue was left to the discretion of the authority. However, its view that *the first-instance authority could have provided the appli-*

onment in Uganda, and that he had to hide and move frequently. He then decided to leave Uganda. However, at the second hearing, the Asylum Office staff member only asked him when he had come to Uganda, when he was granted asylum in it, the name of the company he had been working for, and when he left Uganda. Y. was not instructed in any way that he was entitled to challenge the application of the concept of first country of asylum in relation to his particular circumstances under Art. 43(2) of the LATP.

258 Art. 43(2), LATP.

259 Pursuant to Art. 3(1), LATP.

260 Pursuant to Art. 79(2), LGAP.

261 Pursuant to Art. 79(3), LGAP.

262 Art. 11, LGAP.

cant with a longer timeframe for responding is absolutely unacceptable. First of all, the Commission was to have noted that the Asylum Office had not set any time limit, which it was under the obligation to do under the law. The Asylum Commission should have voided the impugned ruling on those grounds and either remitted the case to the Asylum Office for reconsideration or itself ruled on this administrative matter.²⁶³ The Asylum Commission's view that Y's legal representatives *could have required of the Asylum Office to extend the deadline and rectify the deficiency the moment they noticed it* is also unacceptable, because neither did the Asylum Office set a deadline, nor did the legal representatives have an opportunity to notice the deficiency. Moreover, it was precisely the Asylum Commission that was obligated to rectify the deficiency under the law.²⁶⁴

Given the above, BCHR lawyers are deeply concerned by the Asylum Commission's opinion that that the adoption of a legal and proper decision in this case was nevertheless *not substantially prejudiced by this omission* of the Asylum Office. The Asylum Commission's decision to reject the appeal as ill-founded despite the fact that it qualified the Asylum Office's action as an "omission" and a "deficiency" is illogical and in contravention of the law. It is all the more problematic in light of another case where the Asylum Office was planning to apply the concept of first country of asylum²⁶⁵ in which it provided the applicant with eight days to comment its decision to apply the concept.²⁶⁶ The Asylum Commission should have taken that Asylum Office decision into account and found that it had violated both the LAMP and the LGAP in Y's case.

Finally, this is the first decision by which the Asylum Office decided to dismiss an application filed by a BCHR client based on the concept of first country of asylum.²⁶⁷ The Asylum Commission's failure to find the Asylum Office in violation of procedural rules in this case establishes a dangerous practice that may gravely impinge on all asylum seekers in Serbia who have already been granted the status of refugee in other countries. BCHR will file a claim with the Administrative Court challenging the Asylum Commission's decision.²⁶⁸

3.2.3. Conclusion and Recommendations

The Asylum Commission has rejected over 80% of the appeals of Asylum Office rulings. It therefore needs to be reiterated yet again that the Commission did not itself rule on the asylum applications. This brings into question the

263 Pursuant to Art. 167(2), LGAP.

264 Pursuant to Art. 21(1), LAMP.

265 Pursuant to Art. 43, LAMP.

266 More in *Right to Asylum: Periodic Report for July-September 2020*, pp. 22–24.

267 Pursuant to Art. 42(1(1)), LAMP.

268 Pursuant to Art. 96(1), LAMP.

effectiveness of the Asylum Commission, the main duty of which is to control the legality of the Asylum Office's operations. The Commission has arbitrarily assessed the arguments put forward in the appeals; its statements of justification do not only lack in both quality and content, but are in contravention of its earlier views as well. The Asylum Commission has often assessed the Asylum Office's decisions in general terms, without clarifying why it had given credence to the arguments of the Asylum Office rather than those stated in the appeals.

The Asylum Commission should not rely exclusively on the findings of the Asylum Office. Rather, it should itself continuously examine the situation in the asylum seekers' countries of origin and take a clearer position on the Asylum Office's failure to take into account the facts in relevant international reports. The LGAP provides the Asylum Commission with the possibility of scheduling an oral hearing and familiarising itself with the facts of relevance to the adoption of a legal and proper decision. The Asylum Commission has not availed itself of this possibility yet.

The Asylum Commission's decisions have to be comprehensible and outline the reasons that were decisive for its assessments of each piece of evidence and the reasons why it did dismissed particular arguments or requests. This is particularly important when it is reviewing appeals of first-instance decisions in contravention of international refugee law standards, such as the *non-refoulement* principle.

The Asylum Commission is under the obligation to take into account prior decisions on identical or similar administrative matters. If the Asylum Commission is to fulfil the main reason why it was set up, it needs to identify the omissions of the Asylum Office and thus help it improve its work and facilitate its proper conduct of the asylum procedure.

3.3. Administrative Court

Administrative disputes may be initiated against final Asylum Commission rulings.²⁶⁹ The filing of a claim with the Administrative Court stays the enforcement of the administrative decision. This Court's practice remained unchanged in 2020. It did not deliver any judgments upholding asylum-related claims; nor did it hold oral hearings in any asylum-related cases in the reporting period.

The Administrative Court received a total of 32 asylum-related claims in the first ten months of 2020. The Administrative Court closed three asylum-related cases by the time this Report was drafted – it rejected two claims²⁷⁰ and

269 Art. 22, LATP.

270 U 7696/20 and U 11206/20.

one complaint.²⁷¹ It also resolved 11 asylum-related cases filed before 2020 – it rejected nine claims,²⁷² dismissed one claim,²⁷³ and discontinued the review of one claim.²⁷⁴ The Court did not itself rule on the matters in 2020.

Analysis of the Administrative Court’s judgments indicates that it almost entirely relies on the facts outlined by the Asylum Commission in the impugned decisions. Therefore, rather than itself reviewing the claims, it has assumed a passive role, as well as an attitude of indifference to the illegal actions of the administrative authorities. This prompted the BCHR legal team to complain to the Constitutional Court about the violation of the right to a reasoned court decision.

3.3.1. *Inadequate Reasoning of Negative Decisions*

The Administrative Court rejected²⁷⁵ the claim BCHR filed against the Asylum Commission seeking the annulment of its ruling of September 2019.²⁷⁶ Namely, during the review of BCHR’s appeal of the first-instance decision, the Asylum Commission accepted the Asylum Office’s reasons for rejecting the asylum application of M. from Pakistan, although his legal representatives argued that the first-instance ruling was based on incorrect and incomplete findings of fact.

In his country of origin, M. had witnessed the politically motivated murder of his father’s friend and member of the Pakistan Muslim League – Nawaz, which the applicant’s father had also belonged to. The perpetrators were caught and M. was summoned to testify in the criminal trial. However, he was soon threatened by unidentified individuals, who tried to coerce him into changing his testimony. After the killers were convicted, unidentified individuals fired shots at the applicant in front of the house he was living in together with his family. M. submitted to the Serbian asylum authorities the criminal report against them as proof that he had been threatened by identified individuals, who had also fired shots at him. His father sent him to live with his aunt in Lahore, but the threats continued and he had to leave his country of origin, fearing he was at risk of serious harm. M. passed through Iran, Turkey, Greece and Macedonia on his way to Serbia.

271 Uv 95/2020.

272 U 18004/2017, U 3937/2018, U 14660/19, U 18198/18 and U 20092/2019.

273 U 18993/2019.

274 U 13912/19.

275 Administrative Court judgment U 20092/19 of 1 October 2020.

276 Asylum Commission Ruling No. Až-24/19 of 17 September 2019.

Both the Asylum Commission, and the Asylum Office before it, found M.'s application ill-founded, because he had not sought international legal protection in any of the states he had lived in before coming to Serbia, because he lived illegally in Serbia for three years and tried twice to leave it illegally. In its claim, BCHR argued that these facts could not be grounds for rejecting M.'s asylum application since the Asylum Office had earlier upheld applications by Pakistani nationals, who had not sought international legal protection in transit countries,²⁷⁷ and of other asylum seekers, who had been illegally residing in Serbia or had tried to leave it illegally.²⁷⁸

BCHR further argued that the Asylum Commission had failed to explain why it accepted the fact that the Asylum Office had not assessed the evidence presented by the applicants at all. Furthermore, the Asylum Commission did not comment the Office's selective references to the EASO's 2018 report.²⁷⁹ Namely, although M.'s legal representative referred to the same document during the procedure, the Asylum Office mentioned only the part of the report that, in its view, substantiated its decision to reject the asylum application. Therefore, the Asylum Commission had confirmed the Asylum Office's decision based on incomplete findings of fact.

The Asylum Commission diligently noted most of the arguments set forth in the appeal, but failed to examine them; it even ignored some parts of BCHR's appeal. In its assessment of the security situation in Pakistan in general, the Asylum Office stated that Pakistan had ratified a number of international conventions. However, the mere fact that Pakistan has ratified the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, as well as the UN Convention against Torture, could not have been the decisive factor that led it reject M.'s asylum application. BCHR referred to the Administrative Court's earlier judgment²⁸⁰ in the case of asylum seeker G.,²⁸¹ in which it confirmed the ECtHR's view that existence of law and accession to international treaties by a state does not in itself suffice to provide protection against persecution, torture or degrading or inhuman treatment. Since this view obviously successfully refuted the Asylum Office's arguments in G.'s case, the Asylum Commission intentionally

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

278 Asylum Office Ruling No. 26-1081/17 of 4 July 2018.

279 *EASO Country of Origin Information Report: Pakistan Security Situation*, EASO, October 2018, available at: <https://bityl.co/5Z7q>.

280 BCHR lawyers referred to the judgment both in the claim and, before that, in the appeal of the first-instance ruling.

281 Judgment U 11868/17 of 7 September 2017.

did not take it into consideration in M.'s case. Furthermore, the Asylum Commission violated the principle of truth and free assessment of evidence, pursuant to which decisions must be adopted after a diligent and thorough examination of each piece of evidence and the body of evidence in its entirety, and on the basis of the results of the entire procedure.²⁸²

After briefly outlining the claims, facts and relevant provisions of the law, the Administrative Court rejected the claim, explaining the reasons for its decision in a mere eight sentences, in which it essentially reiterated the Asylum Commission's findings. It failed to itself review the arguments in the claim, concluding that the administrative authorities had properly found that the requirements for upholding M.'s asylum application had not been fulfilled. Its decision in this case can be qualified as extremely superficial. Blanket judgments can gravely undermine the legal certainty of parties to court proceedings.

Referring to ECtHR's case law,²⁸³ the Serbian Constitutional Court held that the right to a reasoned court decision was an important element of the right to a fair trial.²⁸⁴ Although this cannot be understood as requiring a detailed answer to every argument,²⁸⁵ the Constitutional Court noted that the right to a fair trial is violated when the reasoning does not specify the reasons on which the decision is based with sufficient precision.²⁸⁶ The Constitutional Court has also held that the right to a reasoned court decision entails the court's obligation to provide clear, sufficient and coherent reasons on which its decision is based, whereby it also provides the party with guarantees that it has reviewed the arguments and evidence it had presented during the proceedings. Therefore, the obligation does not mean that the court has to provide detailed answers to all the raised issues and presented arguments. This particularly applies to the reasoning of court decisions on appeals where the appeal court has accepted the arguments of the lower court, in this case an administrative authority.

In October 2020, the Administrative Court delivered its judgment²⁸⁷ rejecting BCHR's claim filed in October 2018 on behalf of Cuban national R.O., whose asylum application was dismissed because he had entered Serbia from Montenegro. Again, the Administrative Court failed to explain why Montenegro should be considered a safe third country for R.O. It merely reiterated views of the Asylum Office and the Asylum Commission on this issue.

282 Art. 10, LGAP.

283 *Ruiz Torija v. Spain*, ECtHR, App. No. 18390/91 (1994).

284 Serbian Constitutional Court judgment Už-597/2018 of 13 February 2020.

285 *Van de Hurk v. The Netherlands*, ECtHR, App. No. 16034/90 (1994).

286 Serbian Constitutional Court judgment RS Už-597/2018 of 13 February 2020.

287 Judgment U 19223/18 of 9 October 2020.

R. O. had left Cuba because of the problems he faced on account of his activism and expression of his opinions on the social and political situation in that country.²⁸⁸ He was hauled in for questioning by the police, which abused him physically and mentally and threatened to kill even his wife and two underage daughters.²⁸⁹ Subject to discrimination and threats that his life would be destroyed, R.O. was unable to live a free life or protect his rights. He left his country of origin in 2016, flying from Cuba to Montenegro via Russia and ultimately arriving in Serbia, where he applied for asylum in June 2017.

In R.O.'s case, the Asylum Office applied the Asylum Law (AL),²⁹⁰ which was in force at the time, and issued a ruling dismissing²⁹¹ R.O.'s asylum application under the explanation that Montenegro was a safe country for him in which he could have sought asylum, because it was on the Serbian Government's list of safe third countries.²⁹² However, the Asylum Office had failed to obtain the requisite guarantees from Montenegro that it would let R.O. back in, provide him with effective access to the asylum procedure and review his application on the merits.

The Asylum Commission rejected²⁹³ BCHR's legal team appeal of the Asylum Office's ruling, basing its decision on the same findings of fact. The LATP, which includes a broader definition of the safe third country concept,²⁹⁴ entered into force in the meantime. Under the LATP, the fulfilment of the conditions for the application of the safe third country concept shall be established for each application individually, by examining whether a third country can be considered safe. The application of this provision of the LATP would have been more favourable for R.O., which the Asylum Commission was under the obligation to examine under Article 103²⁹⁵ of the LATP during its review of the appeal. The

288 Namely, R. O. is a member of one of the leading Cuban opposition movements UNPACU (*Union Patriótica de Cuba*), which focuses on human rights in Cuba, and in which he worked as an organiser of cultural events and field reporter for its mouthpiece. He was also a musician, who expressed in his songs his dissatisfaction with the restrictions of the freedom of speech and other rights and freedoms of Cubans, as well as the frequent threats the government representatives voiced against him.

289 R.O.'s wife and daughter left Cuba in 2019 because of the problems they faced. They came to Serbia and also applied for asylum. The reviews of their applications were pending.

290 Art. 33(1(6)), AL, *Official Gazette of the RS*, No. 109/07.

291 Asylum Office Ruling No. 26-1085/17 of 1 June 2018.

292 Pursuant to the Serbian Government's Decision of 19 August 2009, *Official Gazette of the RS*, No. 67/09.

293 Asylum Commission Ruling No. Až-41-1-18 of 27 July 2018. BCHR lawyers received the ruling on 19 September 2018, nearly two months after it was issued.

294 Art. 45(2), LATP.

295 Under Art. 103 of the LATP, all asylum procedures initiated before its entry into force shall be completed in accordance with provisions of the prior AL unless the provisions of the LATP are more favourable for the applicants.

Asylum Commission had recognised this obligation in other cases, in which it held that this Article obligated the Asylum Office to consider which law was more favourable for the asylum seeker when it ruled on asylum applications submitted at the time the prior AL was in force.²⁹⁶ It also has this obligation when it reviews appeals of decisions on asylum applications filed before the LATP entered into force.

Consequently, R.O.'s legal representatives filed a claim²⁹⁷ with the Administrative Court, requiring that the dispute be resolved in accordance with Article 103 of the LATP, because the application of the valid law would contribute to the fairness of the decision on R.O.'s asylum application. The Administrative Court, however, merely relied on the facts set out by the Asylum Commission in its ruling²⁹⁸ and ignored BCHR's request to apply the LATP as the more favourable law.²⁹⁹ The Court thus accepted the Asylum Commission's conclusion as correct, but failed to specify any reasons why it agreed with its assessments of the facts.

To recall, the Committee against Torture earlier found Serbia in violation of Article 3 of the Convention against Torture because of the automatic application of the safe third country concept.³⁰⁰ The Administrative Court's decision in the R.O. case illustrates that it still renders decisions in which it takes views in contravention of the *non-refoulement* principle,³⁰¹ although the LATP, which does not provide for the application of the list of safe third countries, has been applied for over two years now.

Furthermore, it took the Administrative Court 721 days to deliver a judgment in this case. By failing to explain why it did not apply the LATP, it denied R.O. the right to a reasoned court decision, an important element of the right to a fair trial.³⁰² To reiterate, although courts cannot be required to provide a detailed answer to every argument in the claim, they are still under the obligation

296 Asylum Commission Ruling No. Až-26/18 of 12 July 2019.

297 R.O.'s representatives filed a claim on his behalf with the Administrative Court on 19 October 2018.

298 The Court explained that the evidence had been properly presented and that the issues it found and assessed during its deliberation could not have resulted in a different decision on the administrative dispute at issue.

299 The representatives also filed a submission to the Administrative Court, containing the Asylum Commission's view on the application of the LATP as the more favourable law.

300 More in *Right to Asylum 2019*, Special Supplement: Decision of the Committee against Torture, p. 193.

301 In its prior decisions, adopted when the AL was in effect, the Administrative Court held that the respondent (second-instance) authority was not under the obligation to ascertain whether states considered safe third countries were safe in individual cases; rather, its role was to accept that as an *established fact*, considering that these countries were on the Serbian Government list. That view was also problematic. More in *Right to Asylum 2019*, p. 66.

302 Serbian Constitutional Court Decision Už-6596/2011 of 30 October 2014, p. 11.

to address the parties' main arguments;³⁰³ this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit answer to the arguments which are decisive for the outcome of those proceedings³⁰⁴. The Administrative Court failed to specify why it had not interpreted its obligations in accordance with the LAMP. BCHR lawyers filed a constitutional appeal³⁰⁵ with the Serbian Constitutional Court on R.O.s behalf complaining of a violation of his right to a fair trial. The case was pending at the end of the reporting period.

3.3.2. Conclusion and Recommendations

The Administrative Court has a huge caseload, as confirmed by data of 20 December 2020³⁰⁶ showing that 30,500 cases had been filed with it by that date.³⁰⁷ Asylum-related cases accounted for around 0.1% of these cases.³⁰⁸ It would be reasonable to assume that the Administrative Court has the capacity to hold oral hearings in several dozen cases and itself rule on the matters at issue. In that sense, the specificities of refugee law, the grave consequences and irreparable damage caused by illegal dismissals or rejections of asylum applications need to be borne in mind. Legal certainty requires the proper review of the claimants' arguments and adequate finding of fact in each case. That would improve the quality of the reasoning of judgments and the entire national asylum system.

303 See: *Buzescu v. Romania*, ECtHR, App. No. 61302/00 of 24 May 2005, para. 67; *Donadze v. Georgia*, ECtHR, App. No. 74644/01 of 7 March 2006, para. 35.

304 *Moreira Ferreira v. Portugal* (No. 2), ECtHR, App. No. 19867/12 of 11 July 2017, para. 84.

305 His legal representatives filed a constitutional appeal on 23 November 2020.

306 See the Administrative Court's website: <https://bit.ly/2LuJw4z> (accessed on 20 December 2020).

307 The Administrative Court has the competence to rule on the legality of final administrative enactments in all administrative areas.

308 A total of 32 asylum-related claims were filed with the Administrative Court from 1 January to 31 October 2020.

4. ACCOMMODATION OF ASYLUM SEEKERS AND MIGRANTS

4.1. Facilities under CRM Jurisdiction

The LATP affords asylum seekers, inter alia, with the right to material reception conditions.³⁰⁹ Under the LATP, material reception conditions shall include: housing accommodation, food, clothes and a cash allowance for personal needs.³¹⁰ The LATP entrusts the CRM with the provision of material reception conditions.³¹¹ The CRM is charged with providing asylum seekers and migrants with accommodation in ACs and RTCs established by a decision of the Serbian Government.³¹²

In 2018, the Serbian Government adopted the 2018–2020 Strategy to Combat Irregular Migration.³¹³ The document repeatedly emphasises the need to ensure adequate accommodation for migrants in the territory of the Republic of Serbia.³¹⁴ However, accommodation conditions are not satisfactory in all the facilities under CRM’s jurisdiction. Furthermore, a number of migrants continued living in informal settlements near border crossings, especially from spring to late autumn, when they usually tried to cross the border.

Given Serbia’s commitment to join the EU, it needs to comply with specific asylum and migration related standards laid down in EU law. For instance, Serbian authorities, especially the CRM, are under the obligation to comply with EASO standards on accommodation of migrants and asylum seekers.³¹⁵ In its Serbia 2020 Report, the European Commission said that mobile centres for irregular migrants for the purposes of registration and short-term accommodation were operational. The Commission went on to say that Serbia continued to make substantial efforts to meet the essential needs of migrants passing through or remaining on its territory and that 19 governmental reception facilities (ACs

309 Art. 48, LATP.

310 Art. 50(1), LATP.

311 Art. 23, LATP.

312 Art. 51, LATP.

313 *Official Gazette of the RS*, No. 30/18.

314 See sections 5.3. and 6.1. of the *2018–2020 Strategy for Combatting Irregular Migration in the Republic of Serbia*.

315 *EASO Guidance on Accommodation Conditions: Operational Standards and Indicators*.

and RTCs), two of which have been temporarily put on stand-by, could provide long-term accommodation for up to 6,000 people and temporary shelter for around 1,000 people. It noted that an information management system for regular monitoring, planning and managing accommodation and reception facilities in accordance with European standards for reception conditions was in place within the CRM. The Commission also said that the overall staffing situation in the area of migration depended on international funding.³¹⁶

Due to the unstable epidemiological situation caused by the COVID-19 pandemic, asylum seekers and migrants living in the centres in Serbia were under a specific form of supervision almost the entire year. All ACs and RTCs had medical teams looking after the health of all the residents. The CRM established an admission procedure: all individuals admitted to an AC or RTC must undergo a health screening and the doctors decide on the duration of their isolation. In the event a medical team is not in the centre at the time of admission, the individuals are referred to isolation rooms until they are examined,³¹⁷ whereupon they are referred for medical treatment if necessary.³¹⁸ According to information BCHR's legal team obtained during its visits, the epidemiological situation in the ACs and RTCs was mostly stable.³¹⁹ The CRM said that AC and RTC staff, as well as migrants and asylum seekers, had at their disposal protective equipment funded from the state budget or international donations throughout the year.³²⁰

The BCHR legal team regularly visited facilities accommodating asylum seekers to extend them legal aid except during the state of emergency and at times when the epidemiological situation was critical in the entire country.

This chapter will provide a brief explanation of the difference between ACs and RTCs, particularly with respect to the exercise of rights by asylum seekers living in them. It will also provide a detailed overview of the status of asylum seekers in all ACs in Serbia.

4.1.1. Reception-Transit Centres

Serbia has made efforts to address the problem of the large number of migrants in its territory in response to the situation that emerged in 2015, when

316 European Commission, Serbia 2020 Report, p. 48, available at: <https://bit.ly.co/5YYY>.

317 CRM Reply No. 019-4916/2-2020 of 25 December 2020.

318 *Ibid.* Individuals with a fever, cough or similar symptoms are referred to a clinic where the relevant public health institute or the Serbian Public Health Institute administer the PCR tests.

319 *Ibid.* According to CRM's data, eight asylum seekers and migrants contracted COVID-19 in the 1 June-31 October period.

320 *Ibid.* Asylum seekers and migrants themselves sewed face masks in some centres.

the refugee-migrant crisis intensified, and which persists to this day, albeit to a somewhat lesser extent.³²¹ For that purpose, it established RTCs throughout the country. The LATP entitles the Government to adopt a decision designating one or more facilities for the accommodation of migrants, in addition to ACs. Such facilities are also under CRM jurisdiction. All RTCs are open-type facilities, which means that the migrants can move without restriction, i.e. leave them during the day, but not at night-time.

Fourteen RTCs were operational in Serbia in 2020.³²² Altogether, they had the capacity to accommodate 3,745 people, or 505 people more than in 2019.³²³ As the weather grew colder, a greater number of people were admitted to RTCs, some of which became seriously overcrowded.³²⁴ During the year, MOI and CRM staff on a number of occasions dislocated migrants and refugees from border areas to CRM accommodation facilities in southern Serbia.³²⁵

BCHR's legal team paid regular monthly visits to the RTCs in the following towns: Adaševci, Bosilegrad, Bujanovac, Divljana, Pirot, Obrenovac, Preševo, Vranje, and to RTCs in other towns if necessary. With CRM's approval, the BCHR legal team in 2020 had the opportunity to regularly visit the accommodated migrants and extend legal advice to those who wanted to inform themselves about the right to asylum in Serbia.

Although the LATP does not specify whether the MOI should refer foreigners who expressed the intention to seek asylum to ACs or RTCs, the MOI has in most cases been referring them to RTCs. In BCHR's experience, foreigners,

321 See BCHR's 2015–2019 *Right to Asylum* reports, available at: azil.rs.

322 RTCs are operational in the following towns and cities: Adaševci, Bosilegrad, Bujanovac, Dimitrovgrad, Divljana, Kikinda, Obrenovac, Preševo, Pirot, Principovac, Sombor, Subotica, Šid and Vranje. The RTCs in Dimitrovgrad, Divljana and Pirot were on hold during a part of the year. The RTC in Morović was operational from 10 April to 6 May, the RTC in Bujanovac was operational from 1 January to 16 June 2020 and reopened on 13 October 2020. The Pirot RTC was operational from 1 January to 23 June 202 and reopened on 13 October 2020, while the Divljana RTC opened on 31 March 2020. Other RTCs remained open throughout the year. Information obtained from the CRM, in its Reply No. 019–4916/2–2020 of 25 December 2020.

323 Compare with *Right to Asylum 2019*, Belgrade 2019, p. 72.

324 E.g., in December 2020, the Obrenovac RTC (capacity 400) had 616 residents; the Principovac RTC (capacity 200) had 533 residents; the Kikinda RTC (capacity 280) had 717 residents; the Sombor RTC (capacity 120) had 753 residents; the Subotica RTC (capacity 130) had 171 residents; and, the Preševo RTC (capacity 800) had 965 residents. Information obtained from UNHCR.

325 "Around 300 migrants moved to Preševo WITH HELP OF POLICE AND COMMISSARIAT FOR REFUGEES (Photo)," *Novosti.rs*, 25 September 2020, available in Serbian at: <https://bit.ly/2LEIJ0E>; "Migrants from Subotica streets accommodated in camp in Preševo," 25 November 2020, available in Serbian at: <https://bit.ly/2Lfb1iw>.

who do not consider Serbia their destination country and want to continue their journey, account for most residents of RTCs. Furthermore, the location of the RTCs, i.e. their proximity to the border, is not a conducive environment for foreigners who genuinely want to seek asylum in Serbia.³²⁶ With the exception of asylum seekers, the other migrants living in RTCs have not regulated their residence in Serbia in accordance with domestic law.

The Asylum Office has not been performing asylum-related actions in RTCs, wherefore foreigners living in them were practically denied access to the asylum procedure.³²⁷ Foreigners who want to apply for asylum have to wait to be relocated to an AC (where the asylum procedure is conducted) sometimes for weeks and even months, which discourages them from staying in Serbia. Either all foreigners who wish to apply for asylum in Serbia should be relocated to ACs as soon as possible or the Asylum Office should start conducting the asylum procedure in the RTCs. At the moment, asylum applications of foreigners staying in RTCs are forwarded by the CRM to the Asylum Office, whereupon they are moved to one of the five ACs, where the Asylum Office staff conduct the asylum procedure.³²⁸

The reception conditions in the RTCs are not as good as those in the ACs, for many reasons, including insufficient investments, overcrowding, and large fluctuations of people in RTCs in the border areas (especially in the RTCs in Adaševci, Šid and Principovac). Most of the facilities serving as RTCs were built a long time ago, lack capacity or satisfactory sanitary conditions. The RTCs in Bosilegrad, Pirot and Preševo, which were renovated over the past two years, are the exception.

Most foreigners in RTCs BCHR's lawyers talked to did not want to stay in Serbia. They were pleased with the RTCs' proximity to the border, especially the borders with Croatia, Hungary and Romania, i.e. EU Member States. Serbia's policy on accommodating migrants, as well as asylum seekers, in these RTCs is unclear.³²⁹

326 With the exception of the RTC in Obrenovac, all RTCs are near Serbia's borders with the neighbouring countries.

327 See *Right to Asylum 2019*, pp. 73–74.

328 Some CRM staff used to require of asylum-seekers, who applied for asylum in writing and were moved from an RTC to an AC, to agains apply for asylum orally, in order to verify the facts specified in the application forms. Such a practice appears unnecessary given that Art. 36 of the LATP lays down that the asylum procedure shall be consider initiated upon the submission of the asylum application form to the Asylum Office. BCHR's legal team did not identify such a practice in 2020.

329 Namely, accommodation of migrants in RTCs near the entry points, i.e. the borders with North Macedonia and Bulgaria, countries from which most migrants enter Serbia, is legitimate. The fact that potential asylum seekers are accommodated in these facilities is, however, problematic.

4.1.2. Asylum Centres

Under the LATP, asylum seekers shall be accommodated in one of the ACs run by CRM. The Serbian Government shall establish one or more ACs at the proposal of the CRM, which is charged with their internal organisation and staffing.³³⁰ Life in ACs is regulated by the Rulebook on House Rules in Asylum Centres and Other Facilities Accommodating Asylum Seekers.³³¹ Admission to ACs is governed by the Rulebook on Medical Examinations of Asylum Seekers on Admission to Asylum Centres and Other Facilities Accommodating Asylum Seekers.³³²

In BCHR's view, the difference between ACs and RTCs is legal in character. The Asylum Office conducts the asylum procedure in ACs – it receives the asylum applications and interviews the asylum seekers. However, as noted above, the MOI first refers the asylum seekers to RTCs and they are transferred to the ACs later, usually after their legal representatives notify the MOI and CRM that their clients are genuinely interested in applying for asylum or when the foreigners themselves request of the RTC management to enable them to apply for asylum in writing.

Such a practice remains a total mystery, since none of the ACs were full all year³³³ and could have admitted foreigners genuinely intending to seek asylum in Serbia. BCHR alerted to this problem earlier, especially since the Asylum Office has not been conducting the asylum procedure in RTCs and the relocation of asylum seekers from RTCs to ACs takes an unreasonably long time.³³⁴ In 2020, some asylum seekers complained that they had been waiting for a long time to be moved from an RTC to an AC. According to the information BCHR obtained in the field, such delays were caused by the COVID-19 pandemic.

The ACs in Banja Koviljača, Bogovađa, Krnjača, Sjenica and Tutin were operational in 2020. The CRM provides accommodation in ACs for all asylum seekers, regardless of their sex, age or other personal characteristics. The Sjenica and Bogovađa ACs are designated for the accommodation of unaccompanied and separated children; such children are also accommodated in a part of the Krnjača AC.³³⁵ Unaccompanied children who end up in other AC or RTCs are

330 Arts. 35 and 51, LATP.

331 *Official Gazette of the RS*, No. 96/18.

332 *Official Gazette of the RS*, No. 57/18.

333 Conclusion BCHR drew based on data obtained during the year from UNHCR.

334 More in *Right to Asylum 2019*, p. 73.

335 CRM Reply No. 019–4916/2–2020 of 25 December 2020. Information on ACs on CRM's website is mostly outdated and was last updated back in January 2019. See: <https://bit.ly/3nx-jZ86>.

referred to one of these ACs or a specialised residential care facility, in cooperation with the Social Work Centres (SWCs), their guardianship authorities. Pending their relocation, they are accommodated separately from adults.³³⁶

Under the Migration Management Law,³³⁷ migration shall be managed in accordance with the principles of balanced and planned economic development and prohibition of the artificial change of the ethnic composition of the population. Most ACs are located outside urban settlements or on the outskirts of towns or cities. With the exception of the Krnjača AC, all ACs are far from Belgrade, where the Asylum Office is headquartered, which has often impinged on the scheduling of asylum-related actions.³³⁸ Most ACs are also located in isolated and economically underdeveloped areas, which has substantially slowed down their residents' integration in the local community.³³⁹ They communicate with the local population if their children attend the local schools and during various NGO activities.³⁴⁰

All ACs are open-type facilities, which means that asylum seekers are free to leave them without asking for permission, unless their movement is restricted in accordance with the law.³⁴¹ Asylum seekers may leave the AC for 72 hours with the AC management's written permission. If they do not return within that period, the CRM deletes their names from the list of AC residents, which affects reviews of their applications. Namely, when the AC management forwards the information on the deletion of a name from the list of AC residents, the Asylum Office issues a ruling discontinuing the asylum procedure, unless the asylum seeker promptly notifies it of their new address.³⁴²

The following section of the Report provides brief descriptions of the situation of asylum seekers in each of the five ACs. The BCHR legal team focused on the ACs since the vast majority of foreigners who genuinely wish to apply for asylum in Serbia reside in them and since the Asylum Office conducts the asylum procedure in them. The below descriptions are informed by official CRM

336 CRM Reply No. 019-4916/2-2020 of 25 December 2020.

337 *Official Gazette of the RS*, No. 107/12-4.

338 In 2020, the Asylum Office did not perform any asylum-related activities with respect to any BCHR clients in the Tutin and Sjenica ACs.

339 More in *Right to Asylum 2019*, pp. 74-75.

340 *Strategy on Coordinated Action on Migrant Protection by Local Actors*, BCHR, Belgrade, 2019, p. 9.

341 Art. 77 of the LATP sets out instances in which movement may be restricted (e.g. to establish a foreigner's identity, and to protect national security and public order). Art. 78 lists measures restricting the freedom of movement (e.g. ban on leaving the AC, regular reporting to the police).

342 Art. 47(2(3)), LATP.

and UNHCR reports, the BCHR legal team's observations on the ground and the impressions of AC residents. Note should be taken of the fact that the section of the CRM website with the profiles of the centres, which had earlier been updated on a monthly basis, contained only January and April updates.³⁴³ Such lack of information has further impeded monitoring of the accommodation of migrants and asylum seekers in the RS.

a) Banja Koviljača Asylum Centre

The Banja Koviljača AC is 151 km away from Belgrade. The closest public services, primary school and police station are around one km away from the AC. The AC is located in an urban setting, near the city of Loznica. This was the first asylum centre that opened in Serbia, back in 2018.

The AC can accommodate up to 120 people and is suitable for the accommodation of both single asylum seekers and larger families.³⁴⁴ Asylum seekers share rooms; the AC management endeavours to accommodate families in separate rooms. The residents also share common bathrooms and toilets.³⁴⁵ This AC was not overcrowded at any point in 2020.

The AC includes a TV room, a cafeteria and a classroom for children. The asylum seekers are provided with meals meeting their religious and health-related dietary needs three times a day. Therefore, the AC provides facilities satisfying the various needs of the asylum seekers. Asylum seekers did not complain to BCHR's lawyers about the services, except about the weak Internet signal in the entire building, which was why they often had to go to the TV room or the hallway to use the Internet.

The Banja Koviljača AC is staffed by a general practitioner (GP) and nurse, supported by the International Organization for Migration (IOM) and monitored by the Danish Refugee Council (DRC). The GP is in office every workday and on call 24//7, since she also lives in the AC. None of BCHR's clients in this AC complained of the health services, qualifying them as adequate. The former sewing room was ceded to doctors when the COVID-19 pandemic broke out and doctors and protective equipment had to be available at all times.

Representatives of various international and non-government organisations visited the Banja Koviljača AC in 2020, extending assistance in specific areas (legal aid, interpretation services, and organisation of various work-

343 The English language version of the profiles was last updated in January 2020, see: <https://bit.ly.co/5YYx>.

344 UNHCR Serbia, *Centre profiling – Banja Koviljaca AC*, available at: <https://bit.ly/39mVzjb>.

345 There are eight shower cabins (four for women and four for men) on each floor, shared by an average of 35 people.

shops). The following organisations conducted activities in this Centre except during the state of emergency: BCHR, Psychosocial Innovation Network (PIN), CRPC, DRC, the Humanitarian Centre for Integration and Tolerance (HCIT), IOM and UNHCR.

School-age children can attend the local primary school; the secondary schools are in Loznica, seven kilometres away from the AC. Several children living in the AC attended kindergarten and the primary school in the AC's immediate vicinity.

Legal aid providers regularly visited the Banja Koviljača AC. They included lawyers working for the BCHR, HCIT and the Asylum Protection Centre (APC), who also came to the AC if necessary. The AC management said that all new arrivals were first interviewed by the manager, with other residents stepping in as interpreters. The AC does not have its own interpreters; interpreters usually accompany the NGOs conducting various activities in the AC. Legal aid providers did not visit the AC during the state of emergency or for brief periods thereafter, due to the deterioration of the epidemiological situation in the country.

The Banja Koviljača AC does not have a separate room in which the asylum seekers can meet with their legal aid providers. If the TV room or the classroom are unavailable, legal aid providers extend their advice in the hall or outside, which is problematic in terms of protection of the asylum seekers' privacy, and in case of inclement weather, especially during the winter.

An Asylum Office staff member, who is present in the Banja Koviljača AC every workday, issues IDs to asylum seekers and receives their asylum applications. The staff of the Asylum Office in Belgrade visit the AC to interview the asylum seekers.³⁴⁶ This has reflected on the duration of the asylum procedure since the Asylum Office is seated in Belgrade and it rarely visits the Banja Koviljača AC. It made even fewer visits in 2020 due to the COVID-19 pandemic.

b) Bogovađa Asylum Centre

The Bogovađa AC is 70 km away from Belgrade. It is housed in the former Red Cross Children's Resort. The AC is located in a resort settlement surrounded by a forest, 11 km from town, wherefore its residents have difficulty accessing all the services they need,³⁴⁷ with the exception of the nearby primary school.

³⁴⁶ The Asylum Office's practice of having one officer receive the asylum application and the other interview the applicant may affect the assessment of the credibility of the application, as BCHR already reported. See more in: *Right to Asylum 2019*, p. 77.

³⁴⁷ The closest store is some 2–3 km away.

The AC can accommodate 200 people. Eighty-two asylum seekers were living in it at the end of the reporting period.³⁴⁸ The residents share rooms, bathrooms and toilets. The AC has a TV room. Meals meeting the asylum seekers' religious and health-related dietary needs are served three times a day in the cafeteria.

The AC has video surveillance and security guards. The AC comprises several buildings; one comprises offices used by the management, the doctor, the Asylum Office staff and Red Cross employees. Asylum seekers are accommodated in the largest building. Humanitarian organisations, such as Caritas, organise their activities in a separate building. The AC has a playground in the yard.

The Bogovađa AC is staffed by a general practitioner. Asylum seekers are driven to Lajkovac or Valjevo for specialist examinations. Access to health services outside the AC is difficult due to lack of transportation and drivers. The GP is in the AC on workdays; he has difficulties communicating with his patients when the civil society organizations' interpreters are unavailable.

Various workshops, most of them organised by Caritas and the Red Cross, are organised in this AC. Special workshops for children and youth and language courses were held in the AC in 2020. The representatives of the following organisations visited this AC: BCHR, Caritas, CRPC, DRC, Group 484, IOM and UNHCR.³⁴⁹ CRPC's representatives hold cultural mediation classes on workdays and English and Serbian language classes with cultural orientation twice a week.³⁵⁰ Organisations visiting the AC in Bogovađa suspended their activities when the religious and health-related dietary needs religious and health-related dietary needs when the epidemiological situation was critical.

Asylum seekers have access to legal aid provided by civil society organisations. BCHR lawyers are accompanied by interpreters on their regular monthly visits to the AC and when they come to prepare the asylum seekers for their interviews. In most cases, BCHR's legal team was provided with a separate room for its meetings with interested asylum seekers during its regular visits in 2020. When such a room was unavailable, it held private meetings with asylum seekers in the cafeteria with the management's consent, or outdoors, weather permitting.

In BCHR's experience, the Asylum Office occasionally visits the Bogovađa AC to conduct the asylum procedure. Activities related to the submission of asylum applications and interviews are conducted relatively frequently, which may be attributed to the fact that this AC is close to Belgrade. Exceptionally, no such activities were conducted during the state of emergency and in its immediate aftermath.

348 Information obtained from UNHCR.

349 Information obtained during an interview with the Bogovađa AC management on 22 November 2020. On file with BCHR.

350 Information obtained from CRPC.

c) Sjenica Asylum Centre

The Sjenica AC is located in the management building of the Vesna plant, around 250 km away from Belgrade. It was opened in March 2017. The distance between this AC and Belgrade and the underdeveloped road infrastructure pose particular difficulties for NGOs extending various forms of assistance to asylum seekers. In addition, the location of this AC is probably one of the reasons why the Asylum Office very rarely performs asylum-related actions in it. Its staff did not visit the Sjenica AC even once in 2020.

The Sjenica AC can accommodate up to 400 people.³⁵¹ Its occupancy rate exceeded that number only during the state of emergency, when 428 people were living in it at one point.³⁵² The AC building has 27 rooms³⁵³ and common bathrooms and toilets shared by asylum seekers. The AC has an area for children, a TV room and a playground. The meals provided asylum seekers three times a day are in accordance with their religious and health-related dietary needs.

Unaccompanied children account for most of the AC's residents, an MOI and CRM practice that has not been formalised yet. To BCHR's knowledge, only foreigners who claim they are underage are referred to the Sjenica AC. Most of them are 15–18 years old; several AC residents, have reached the age of maturity since they came to the Centre some time ago.³⁵⁴ Unaccompanied children under 15, who do not feel safe or have health or psychological problems, are accommodated in residential care facilities.³⁵⁵

The initial placement of unaccompanied children in the original facilities of the Sjenica AC could not be considered a good practice example. The former factory building was old and dilapidated. The children's living conditions improved to an extent after the renovation of the old part of the building and the construction of a new building in 2019. Work on the facility and the yard continued in 2020. The entrance to the building and the front yard were renovated, along with the part of the building where the kitchen, cafeteria and bedrooms are located. The new part of the building provides more privacy and plenty of accommodation space. Children can engage in sports activities (ball games) and now have a TV room with Internet access. The children accommodated at the AC are satisfied with the organised activities. They mainly complain that Sjenica is a small town, wherefore they spend most of their time on the AC grounds and the surrounding area.

351 Information obtained from UNHCR.

352 Information obtained from UNHCR.

353 UNHCR Serbia, Centre profiling – Sjenica AC, available at: <https://bit.ly/369XQ7P>.

354 Information obtained from an officer of the Sjenica SWC on 28 November 2020. On file with BCHR.

355 *Ibid.*

A general practitioner is available at the AC every workday. If necessary, the children are escorted by their guardian and interpreter for specialist examinations in the out-patient health clinic or other health centres. All unaccompanied children interviewed by the BCHR were informed of the possibility of access to health care. All children undergo a check-up upon admission to the AC.³⁵⁶ This can be considered a good practice example.

Various civil society and international organisations conducted activities in the Sjenica AC in 2020 (extended legal aid, organised language and PC literacy courses, et al). They included: BCHR, DRC, Group 484, IDEAS, PIN, Sigma plus, UNHCR and United Nations International Children's Emergency Fund (UNICEF).³⁵⁷ Representatives of these organisations visited the Sjenica AC whenever the epidemiological situation permitted.

All unaccompanied children have access to the local primary school and the secondary vocational school. Unaccompanied children and their guardians told BCHR that the children were given some time to adapt before they were enrolled in school during the school-year. However, the vast majority of them soon stopped going to school, under the explanation that they had problems communicating with the teachers and their peers, and partly because they did not plan on staying in Serbia long.³⁵⁸

Unaccompanied children and other residents of the Sjenica AC had access to legal aid provided by NGOs during 2020. They usually met with their legal aid providers in the office of the SWC officer or the cafeteria. These meetings are attended by the children's guardians, as well as interpreters for the children's native language or the language they best understand.

No Asylum Office staff member is present in the Sjenica AC on workdays. Asylum seekers may submit their asylum applications in this AC in principle. However, to the best of BCHR's knowledge, Asylum Office staff did not come at all to this AC or perform asylum-related actions in it in 2020. Such a practice is particularly problematic given that the asylum seekers are children, whose applications should have priority.³⁵⁹

d) Tutin Asylum Centre

The Tutin AC is located in a new building in Velje Polje, some 295 km away from Belgrade. It takes an average of 5–6 hours to get to the Tutin AC from Belgrade, since the roads are in poor shape. Visiting the Tutin AC may prove especially difficult during the winter months, when the roads are snowed under.

356 The minutes are on file with BCHR.

357 Information obtained during an interview with the Sjenica AC management on 4 November 2020.

358 Minutes of interviews with BCHR clients on file with BCHR.

359 Art. 12, LATP.

The Tutin AC can take in up to 200 people.³⁶⁰ Its residents share rooms; the AC management endeavours to accommodate families in separate rooms. The residents share the toilets and bathrooms. The AC was overcrowded during specific periods in 2020,³⁶¹ including during the state of emergency and its immediate aftermath. The number of residents fell substantially during the summer months.³⁶²

The Tutin AC is a modern and clean facility, which also has a TV room, a cafeteria and a playground. It has disability-friendly areas as well. However, people with disabilities cannot access the first floor for technical reasons and can move only on the ground floor. This problem remained unaddressed in 2020.

The AC residents are served three meals a day and the CRM ensures that they meet their religious dietary needs.³⁶³ The AC management provides newly-arrived asylum seekers with adequate clothing and footwear, as well as hygiene packages which include the basic hygiene items. BCHR's clients in the Tutin AC have not complained of the living conditions.

The Tutin AC management told BCHR's legal team that none of its residents had been infected by COVID-19 in 2020. Five rooms on the 1st floor have been designated as quarantine rooms. Any resident absent more than 24 hours from the AC must spend 14 days in quarantine to prevent the entry of the virus into the AC. Anyone with COVID-19 symptoms is also put in quarantine. Doctors from Novi Pazar visit the AC to extend medical assistance; testing for COVID-19 is also available.³⁶⁴ Asylum seekers in need of specialist examinations or urgent medical aid are driven to the local hospital in Tutin, some 4 km from the AC, or to the hospital in Novi Pazar.

Children living together with their parents in the AC have access to primary and secondary education. All schools are in Tutin, several kilometres away from the AC. The AC management organises informal activities in the centre. Many workshops are organised in the Children's Corner, and various courses are organised for adults.

Communication between asylum seekers and the AC management and other officials visiting the AC is impeded by lack of interpreters for languages spoken by most asylum seekers on a daily basis. Organisations extending legal aid and implementing other activities bring their interpreters with them.

360 UNHCR Serbia, *Centre profiling – Tutin AC*, available at: <https://bit.ly/2u2FoQs>.

361 Although the AC has the capacity to accommodate 200 people, it had 252 residents in November and 206 residents in December 2020. Information obtained from UNHCR.

362 *Ibid.*

363 Minutes of interviews on file with BCHR.

364 Information obtained from the AC management during the interview on 9 September 2020. On file with BCHR.

Legal aid providers visited the Tutin AC throughout 2020, except during the state of emergency. BCHR legal teams paid regular and ad hoc visits to the AC. The AC management provides the legal aid providers with a room where they can talk with the asylum seekers in confidence, and even lets them use its own offices if other adequate rooms are unavailable.

The Tutin AC is far from the Asylum Office's headquarters in Belgrade. To the best of BCHR's knowledge, Asylum Office staff did not visit the Tutin AC regularly to conduct official asylum-related activities. Specifically, they did not conduct any procedural actions for any BCHR clients in that AC. As BCHR has already noted, the Asylum Office's failure to visit this AC frequently has substantially impeded the migrants' access to the asylum procedure, discouraging them from staying in Serbia and applying for asylum in it; many of them left the AC and abandoned the asylum procedure after a specific period of time. The Asylum Office should change its practice and visit this AC more frequently.

e) Krnjača Asylum Centre

The Krnjača AC is around four kilometres away from Belgrade. It is located within the complex of the construction company PIM Ivan Milutinović. Buses going to downtown Belgrade and running every 20 minutes stop at a station close to the AC. Asylum seekers living in this AC are more motivated to seek asylum in Serbia since they have greater employment and integration opportunities due to the proximity of Belgrade.

The Krnjača AC can accommodate up to 1,000 people.³⁶⁵ It was never overcrowded in 2020, not even during the state of emergency. Asylum seekers share rooms in barracks; one such room is designated for the accommodation of unaccompanied children. Some barracks are designated only for the accommodation of families. The furnishing, cleanliness and adequacy of the barracks in the Krnjača AC vary. The AC gates are locked at night, but the management unlocks them to let in employed asylum seekers, who cannot return from work on time. The AC has a TV room and a cafeteria in which the asylum seekers take their three daily meals, which are prepared in accordance with their religious and health-related dietary needs. Children attending school are provided with snacks as well. Most of the asylum seekers who talked with the BCHR legal team complained that the Internet signal was poor because many residents used it.

A general practitioner is available at the Krnjača AC from 8 am to 8 pm on workdays. The GP refers asylum seekers in need of specialist examinations to Belgrade health institutions. With IOM's help, the AC organises the transportation of asylum seekers to the doctors in the city. In practice, there have been

365 UNHCR Serbia, *Centre profiling – Krnjaca AC*, available at: <https://bit.ly/2tih1xB>.

problems in ensuring that asylum seekers are accompanied by interpreters when they visit specialist doctors, who insist on their presence.

One building was designated as quarantine when the state of emergency was introduced. All asylum seekers suspected of having the virus remained in quarantine until they tested negative.³⁶⁶

Representatives of various civil society and international organisations visited the Krnjača AC in 2020, extending assistance in different areas (legal aid, interpretation services, organisation of various workshops, et al). The following organisations conducted activities in the Krnjača AC throughout the year: APC, BCHR, Caritas, CRPC, DRC, IOM and UNHCR, except during the state of emergency.

Unaccompanied children and children living with their parents in the Krnjača AC have access to primary and secondary education.³⁶⁷ However, some children, mostly discouraged by the language barrier, do not attend school.³⁶⁸ The AC has a hair salon and a tailor. NGO's hold various language and craft courses in the common rooms.

Most civil society organisations' representatives visiting the AC were accompanied by interpreters for the asylum seekers' native languages. In addition, interpreters engaged by CRPC held cultural mediation workshops during the year in this centre to help the asylum seekers learn the language and integrate in Serbian society.

Legal aid providers regularly visited the Krnjača AC during the year, except during the state of emergency and when their regular visits were cancelled because of the deteriorating epidemiological situation, primarily because AC staff contracted COVID-19. The BCHR legal team visited the AC regularly and when necessary. Like in the past, the lawyers were provided with adequate facilities to talk to their clients in confidence – the AC has offices designated for use by NGO's.

The Krnjača AC is close to the Asylum Office headquarters in Belgrade. This is why official asylum related actions are conducted more often in this AC than in any other facility accommodating asylum seekers in Serbia. Asylum Office staff did not conduct procedural actions in the Krnjača AC during the state

366 Information obtained from the Krnjača AC management on 2 September. On file with BCHR.

367 According to the available information, the CRM management is charged with enrolling children living in ACs in school and organising their transport to and from school.

368 According to information BCHR collected in the field, some children living in the Krnjača AC do not attend school regularly both because of the language barrier and because they are not encouraged by their parents, some of whom do not intend to stay long in Serbia.

of emergency and in its immediate aftermath, but resumed them thereafter and continued implementing them until the end of the year.

4.1.3. Restrictions of the Freedom of Movement of Asylum Seekers and Migrants in ACs and RTCs

The freedom of movement of asylum seekers and migrants was restricted in 2020 due to the COVID-19 pandemic. The Serbian President, Prime Minister and National Assembly Speaker proclaimed the state of emergency on 15 March 2020.³⁶⁹ Pursuant to the Decision on the Proclamation of the State of Emergency, the Serbia Prime Minister on 16 March adopted a Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia (hereinafter: Decision).³⁷⁰ The Decision “temporarily restricted the movement” of migrants and asylum seekers,³⁷¹ who were allowed to leave the ACs and RTCs only in exceptional situations and with the consent of the CRM.³⁷² The Government thus gave the CRM the discretion to itself assess the relevance of the reasons why the migrants had to leave the ACs or RTCs. The Decision was repealed on 9 April 2020, but its provisions were included verbatim in the Decree on State of Emergency Measures.³⁷³

Asylum seekers and migrants lived in centres under CRM’s jurisdiction during the state of emergency.³⁷⁴ Many of the ACs and RTCs were full, and some were even overcrowded during this period.³⁷⁵ The CRM thus put up tents to accommodate new arrivals.³⁷⁶ Many BCHR clients in some ACs complained about

369 Decision on the Proclamation of the State of Emergency, *Official Gazette of the RS*, No. 29/20.

370 *Official Gazette of the RS*, No. 32/20.

371 The Decision specified that the measure was introduced to protect against the transmission of contagious diseases in the territory of the RS and to “prevent the uncontrolled movement of potential carriers of the virus and their arbitrary departure from asylum and reception centres”. The Decision also provided for enhanced supervision and security of all facilities accommodating migrants.

372 For instance, to see a doctor or for another justifiable reasons. The Decision, however, did not specify the procedure for seeking permission to leave the centres, the exceptional and justifiable reasons for which it could be granted, the deadlines by which the decisions on the requests had to be made, or the right to appeal negative decisions.

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

374 Irregular migrants living at informal venues were referred to centres that had room to spare. The authorities aimed to accommodate all migrants in the centres to prevent the transmission of the virus.

375 In April the number of people accommodated in the RTC in Principovac was several times higher than its capacity allows. Information obtained from UNHCR.

376 The centre managements said they served as quarantine for the new arrivals.

the living conditions, overcrowding, poor hygiene, monotonous meals, absence of COVID-19 risk assessments, etc.³⁷⁷

The Decision Lifting the State of Emergency³⁷⁸ adopted on 6 May did not, however, put an end to restrictive measures against migrants and asylum seekers in ACs and RTCs. As soon as the state of emergency was lifted, the Health Minister issued an Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (hereinafter: Order)³⁷⁹. The Order prohibited migrants and asylum seekers from leaving ACs and RTCs identically as the Government decisions in force during the state of emergency.³⁸⁰ It prohibited access to AC and RTC grounds and facilities (in para 1) and their residents from leaving them (para 2). The measures were to remain in effect as long as there was a risk of transmission of COVID-19 in Serbia (para 3).³⁸¹

A group of civil society organisations led by BCHR filed an initiative with the Constitutional Court to review the constitutionality and legality of the Order. A new decision³⁸² voiding the Order and restoring the freedom of movement of AC and RTC residents was adopted already on 14 May.³⁸³ The Constitutional Court did not review the initiative by the end of the reporting period.

Most BCHR's asylum seeking clients and other asylum seekers BCHR talked to during the reporting period complained about the ban on leaving the ACs/ RTCs during the state of emergency. Several of them in various centres also claimed that they were not allowed to leave them during the day without the management's permission even after the state of emergency was lifted. Those granted such permission were allowed to leave the centres only for a few hours. BCHR's clients complained that their freedom of movement was restricted even after the Order was voided. Specifically, they were not allowed to leave the ACs as they used to in the pre-pandemic era (to buy groceries, take a walk or to go to another town) without the AC management's permission. BCHR's clients claimed that such management decisions differed from one AC to another. They appear to have been discretionary. Another question that arises is on which grounds the

377 More in *Right to Asylum, Periodic Report for January-March 2020*, 5.3. Material Reception Conditions pp. 36–39 and *Right to Asylum January-June 2020*, p. 32.

378 *Official Gazette of the RS*, No. 65/20.

379 Order No. 512–02–9/32/2020–01 – *Official Gazette of the RS*, No. 66/20.

380 More about the impugned order in *Right to Asylum, Periodic Report for January-June 2020*, p. 29.

381 *Ibid.*

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

383 More about the initiative in *Right to Asylum, Periodic Report for January-June 2020*, pp. 30–31.

managements rendered them in the first place. Presumably, such decisions were adopted to enforce protection measures and prevent the “entry” of the virus into the ACs; however, they had to be proportionate and not interfere with the liberty of any individual.³⁸⁴

In the meantime, the Constitutional Court on 17 September 2020 adopted a decision on a number of civil society organisations’ initiatives to review the constitutionality and legality of several decisions restricting the freedom of movement during the state of emergency.³⁸⁵ It held, *inter alia*, that the *temporary restriction of movement of asylum seekers and irregular migrants* living in ACs and RTCs during the state of emergency *did not amount to deprivation of liberty*. Since the Constitutional Court did not find violations of constitutionality and legality and rights enshrined in the European Convention on Human Rights (ECHR) are at issue, the BCHR filed an application with the ECtHR.

4.1.3.1. Constitutional Court Decision and BCHR’s Application to the ECtHR

The Constitutional Court dismissed the claims in the initiative that migrants and asylum seekers had been illegally, arbitrarily and collectively deprived of liberty on the basis of discriminatory criteria and without recourse to judicial protection. It said that the temporary restriction of movement was permitted by the Serbian Constitution,³⁸⁶ allowing derogations from constitutionally guaranteed human and minority rights during a state of emergency to the extent necessary to protect the population from the transmission of the COVID-19 communicable disease.

As noted above, the Constitutional Court held that the temporary restriction of movement of asylum seekers and irregular migrants living in ACs and RTCs during the state of emergency did not amount to deprivation of liberty under two fundamental criteria: purpose and substance. In the Constitutional Court’s view, the temporary restriction of movement had a dual purpose: to effectively protect the migrants and asylum seekers and the entire Serbian population from the communicable disease. In its view, both of these purposes were legitimate, legally acceptable and justifiable under constitutional law. The Court said that the risk the migrants and asylum seekers would be exposed to was “substantial also because the vast majority of these individuals do not plan on remaining and settling

384 *Ibid.*, p. 32.

385 Constitutional Court Decision IUo-45 adopted at its session on 17 September 2020. The decision regards a number of initiatives for the review of the constitutionality and legality of several decisions restricting the freedom of movement during the state of emergency in Serbia.

386 Art. 202(1), Constitution of the Republic of Serbia.

down in the Republic of Serbia permanently or for a longer period of time. On the contrary, they are trying to enter other countries as soon as possible.”³⁸⁷

As per the substance of the measures, the Constitutional Court held that it essentially boiled down to creating the necessary conditions for effectively protecting this category from a dangerous communicable disease in concrete circumstances, explaining that this category would otherwise be at a much higher risk of contracting the virus.³⁸⁸ Therefore, in the Court’s view, the substance of the measure restricting the freedom of movement of migrants and asylum seekers in ACs and RTCs during the state of emergency was also acceptable, legitimate and justifiable under constitutional law.

BCHR filed an application with the ECtHR, complaining that the prohibition of movement imposed against migrants and asylum seekers for over 50 days, was in contravention of Articles 5 and 14 of the ECHR.³⁸⁹ It argued that the restriction imposed against this category of the population was comparable with the degree of restrictions of liberty during house arrest or home imprisonment, which are considered deprivation of liberty.³⁹⁰ It also argued that the measure was discriminatory, because it unjustifiably distinguished between migrants and asylum seekers accommodated in ACs and RTCs and other categories of the population in Serbia.³⁹¹ In BCHR’s view, such substantial differences in re-

387 In addition, the Constitutional Court emphasised that the migrants and asylum seekers’ prospects of leaving Serbia would not have been realistic under the circumstances, when the state borders were under maximum security, and that, even if they did, they would encounter serious problems in the neighbouring states. They would be forced to try to illegally cross the state border a number of times amidst the state of emergency; most of their attempts would be futile and each such attempt would carry a substantially higher degree of other risks.

388 The Constitutional Court also held that the risk of other people contracting COVID-19 would have been much greater if the freedom of movement of migrants and asylum seekers had not been temporarily restricted.

389 Art. 5 of the ECHR enshrines the right to liberty and security, while Art. 14 of the ECHR prohibits discrimination in the enjoyment of the rights and freedoms set forth in the ECHR. The ECtHR was established to ensure compliance of the High Contracting States (including Serbia) with their obligations under the ECHR. Under the ECHR, the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. The ECtHR may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

390 In light of the intensity of the restrictions of the freedom of movement and social contacts, duration, degree of supervision and severity of the penalties for violating the measure at issue.

391 Including privately accommodated refugees and asylum seekers and those living outside ACs and RTCs. Specifically, they were subject to much milder restrictions of their freedom of movement, in the evenings, at nights and on weekends, during the state of emergency.

stricting the freedom of movement were neither justified nor properly explained. Prohibition of movement of migrants and asylum seekers was not based on an assessment of the individuals' circumstances (their health, hygiene conditions, et al), but on the authorities' general and, to a degree, arbitrary assessment. The relevant authorities never provided a legitimate explanation for the different treatment of asylum seekers and migrants, on the one hand, and other categories of the population subjected to much milder restrictions of their freedom of movement, on the other.³⁹²

All of the above leads to the conclusion that the prohibition of leaving ACs and RTCs resulted in unjustifiable and arbitrary deprivation of liberty and discrimination against migrants and asylum seekers, in contravention of both the Serbian Constitution and the ECHR. The authorities had not considered the application of alternative, milder measures that could have been applied in this specific case.³⁹³ Furthermore, it was impossible to ascertain what led the authorities to conclude that migrants and asylum seekers were at greater risk of transmitting the virus and contracting it themselves than other categories of the population living in Serbia. Furthermore, these deprivation of liberty measures were not clearly limited in time; nor did the authorities provide for their periodic review to ensure that they were proportionate to the current health situation in the country. Given that the COVID-19 pandemic is still ongoing, fears are that the state may resort to such measures again. The state has to carefully consider measures to ensure effective protection from the virus, whilst avoiding the imposition of unjustifiable, disproportionate and discriminatory measures against particular categories of the population and whilst fully complying with the Serbian Constitution and the ECHR.

4.1.4. Conclusion and Recommendations

Asylum seekers were living in ACs and RTCs in 2020. Those living in RTCs were able to apply for asylum in writing and subsequently transfer to one of the ACs. However, the periods between their submission of their asylum applications and their transfer to the ACs were still long. Given that an efficient asylum procedure and rapid integration in society are in the interest of genuine asylum seekers, the MOI should as soon as possible stop referring who express the

392 In addition, migrants and asylum seekers were not notified whether the Government had considered the imposition of any milder measures (such as wearing of face masks, gloves, face shields, use of disinfectants, physical distancing) or of the reasons it considered them insufficient and ineffective.

393 These measures precluded migrants and asylum seekers from accessing their rights, impeding their access to their legal aid providers, psychologists, psychiatrists, et al. More in *Right to Asylum, Periodic Report for January-June 2020*, p. 31.

intention to seek asylum during registration to RTCs and should instead refer them exclusively to ACs. If this is impossible, the Asylum Office should conduct the asylum procedure in all ACs and RTCs. The MOI should nevertheless clearly separate people who genuinely want asylum from those who do not; however, the state must provide both categories with minimum living conditions respecting their dignity.

On the other hand, asylum seekers in all ACs have been provided with basic material reception conditions (a place to live and sleep, food, health care, et al.). However, the Asylum Office did not perform the asylum procedure in ACs far from Belgrade and did not visit some of them (the Sjenica and Tutin ACs) at all during the reporting period. This brings into question the efficiency of access to the asylum procedure of foreigners living in these establishments. Furthermore, remoteness of most centres impinges on the asylum seekers' integration opportunities and access to various institutions (educational institutions, out-patient health clinics, etc.).

All ACs should be located near urban settlements to facilitate the asylum seekers' access to various services. Furthermore, in cooperation with CRM, the MOI should provide for full-time deployment of Asylum Office staff in all the ACs to ensure that asylum-related activities are promptly implemented in them.

Despite the pandemic related challenges in 2020, asylum seekers had access to legal aid, as well as other activities (language and craft courses, workshops for children, et al) implemented by civil society organisations independently or in cooperation with the CRM, except during the state of emergency when life in the entire country was brought to a standstill. These proactive and commendable activities facilitate the asylum seekers' integration in Serbia and empower them to lead independent lives in Serbia in the future.

Interpreters were present in the ACs only during civil society organisations' activities. The CRM should ensure full-time presence of interpreters in all ACs, for languages spoken by their residents. If the physical presence of interpreters is impossible, the CRM should consider use of online video applications.

As per accommodation, the CRM and other state authorities should review the accommodation of migrants and asylum seekers in emergency situations, such as the state of emergency and its immediate aftermath, in order to avoid overcrowding of the ACs and RTCs. This might be achieved by expanding the capacities of the existing centres or designating additional facilities at other locations. Representatives of the local self-governments should be consulted in the process to ensure cooperation with the local community and avoid frictions be-

tween the migrants and the local population, like the ones that occurred in some communities in the past.³⁹⁴

In the event the epidemiological situation in Serbia deteriorates, the Government and the line ministries should promptly identify alternative measures to prevent the transmission of COVID-19. As opposed to the measures taken during the state of emergency and its immediate aftermath, these measures should not deprive migrants and asylum seekers of their liberty or their other human rights or discriminate against them vis-à-vis other categories of the population.

4.2. Detention Centre³⁹⁵ – Placement of Foreigners under Close Police Watch

The Serbian law qualifies detention in the Detention Centre as a restriction of the freedom of movement.³⁹⁶ However, there is a clear distinction between restriction of movement and deprivation of liberty – the difference is one of degree or intensity, and not one of nature or substance.³⁹⁷ Therefore, holding foreigners in the Detention Centre cannot be qualified in practice as a restriction of their movement, because of the nature and duration of the measure. The FL sets out that foreigners shall be detained in the Detention Centre for the shortest possible time but no more than 180 days³⁹⁸ and that there must be reasonable prospects of their forced removal. Asylum seekers shall remain in the Detention Centre as long as the reasons provided for by the LATP³⁹⁹ exist, three months at most. The Asylum Office may exceptionally extend their detention in the Detention Centre another three months.⁴⁰⁰

394 More on anti-migrant protests in some local communities in Section 7: Public Discourse.

395 More about the Detention Centre in Section 2.5. Access to the Asylum Procedure in Detention Centre.

396 Arts. 77–80 LATP.

397 *Practitioners' Guide no. 6 on Migration and International Human Rights Law, updated edition*, International Commission of Jurists (2017), pp. 201, 202. See: *Guzzardi v. Italy*, ECtHR, App. No. 7367/76 (1980), para. 93.

398 Art. 88(2(4)), 4 FL.

399 Art. 77 LATP. Asylum seekers may be detained in the Detention Centre in order to: 1) establish their identity or nationality; 2) establish material facts and circumstances underlying their asylum application, which cannot be established without restricting their movement, particularly if there is a risk of them absconding; 3) ensure their presence in the course of the asylum procedure, if there are reasonable grounds to believe that they had applied for asylum with a view to avoiding deportation; 4) ensure the protection of the security of the Republic of Serbia and public order in accordance with law; 5) decide, in the course of the procedure, whether they are entitled to enter the territory of the Republic of Serbia.

400 Art. 78(4), LATP.

Qualification of a measure imposed against a foreigner or an asylum seeker in international law should include both an objective and a subjective element. The objective element regards the type and duration of the measure; its effects and method of administration; the foreigner's possibility of leaving the place without notifying the authorities; the area to which movement is restricted; the extent of social contacts the foreigner is allowed to have; reporting obligations and penalties in case of non-compliance. The subjective element concerns lack of the individual's free consent to confinement.⁴⁰¹ It should also be borne in mind that deprivation of liberty is not identified under international law by reference to qualification in domestic law; rather, the actual restrictions imposed on the person are considered. Foreigners in the Detention Centre are not at liberty to leave it of their own free will. Therefore, given the intensity and duration of the restriction, foreigners held in the Detention Centre are *de facto* deprived of liberty.⁴⁰²

The ensuing text will describe the status of foreigners held in the Detention Centre in 2020 and their access to their rights, and draw attention to some negative aspects and shortcomings impinging on their exercise of specific rights, especially due to the state of emergency and the anti-COVID-19 measures.

4.2.1. Situation in the Detention Centre in the Context of the COVID-19 Pandemic

The Detention Centre can accommodate 55 people. The number of foreigners detained in it did not exceed that number in 2020. A total of 44 MOI staff – inspectors, uniformed police officers and technical staff (janitor and four servers) – worked in the Detention Centre during the year. Work in shifts was scaled down during the state of emergency as much as possible without impeding the functioning of the Centre. Sufficient physical distance between the staff and the foreigners was maintained.⁴⁰³

When the pandemic broke out and the state of emergency was introduced, three rooms in the Detention Centre, one with two and two with single beds, were designated for quarantine. None of the foreigners in the Detention Centre were infected by coronavirus.⁴⁰⁴

401 Marko Davinić and Ivana Krstić, *Guide to the Implementation of Relevant Asylum and Migration Regulations*, Group 484, Beograd, 2019, p. 135.

402 More on the legal character of detention in the Detention Centre in *Right to Asylum 2019*, pp. 86–88.

403 Information obtained during a meeting with the Detention Centre management on 30 September 2020. On file with BCHR.

404 *Ibid.*

4.2.2. Treatment of Foreigners in the Detention Centre

Given that asylum seekers may also be held in the Detention Centre, police officers deployed at the Centre must treat them in accordance with regulations on rights of asylum seekers. As a minimum, they must ensure their realisation of all their rights under the LATP.⁴⁰⁵ Police should also facilitate the asylum seekers' exercise of their other rights under the FL⁴⁰⁶ and the Detention Centre's Rulebook on House Rules⁴⁰⁷ (hereinafter: Rulebook on House Rules). The foreigners held in the Detention Centre are under the obligation to comply with the house rules.⁴⁰⁸

Under the FL, the Detention Centre shall provide foreigners access to information on house rules in a language they understand or are assumed to understand.⁴⁰⁹ The same obligation is set out in the Rulebook on House Rules.⁴¹⁰ The management of the Detention Centre made the Rulebook on House Rules available to the foreigners held in it in accordance with the FL – it displayed the Rulebook on the bulletin board in the cafeteria, which the foreigners come to three times a day.⁴¹¹ Upon admission, foreigners shall be provided with a room, personal hygiene items and bed linen.⁴¹² Foreigners shall be accommodated in rooms that have their own sanitary facilities, sufficient natural and artificial lighting, and are ventilated, dry and warm in the winter months.⁴¹³

Construction works in the Detention Centre continued in 2020 and intensified in the latter half of the year. The ground floor of the new part of the Centre building, between the entrance into the complex and the old part of the Centre building, was completed. The IOM⁴¹⁴ funded the extension of the Centre's capacity. The works, which continued in September 2020, were to be completed by March 2021. The Detention Centre will then have the capacity to admit another 100 people. The new part of the building is to include the following premises:

405 Arts. 48–57, LATP.

406 Art. 91 FL.

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

408 Art. 5 of Rulebook on House Rules contains a detailed schedule of the Detention Centre residents' daily activities. Art. 6 of the Rulebook on House Rules lays down the obligations of foreigners detained in the Detention Centre.

409 Art. 91(2(9)), FL.

410 Art. 2(1) Rulebook on House Rules.

411 The Rulebook on House Rules has been translated into Arabic, English, French, Macedonian, German, Russian, Spanish and Urdu. More in *Right to Asylum 2019*, p. 84.

412 Art. 10, Rulebook on House Rules.

413 Art. 11(1), Rulebook on House Rules.

414 Within MADAD project.

bedrooms (for 100 people); a cafeteria for 50 people; the kitchen and the kitchen-cafeteria part; an observation room; a room for the accommodation of police officers; a room for check-ups, and toilets.⁴¹⁵

a) Clothing and Food

The Rulebook on House Rules lays down that foreigners shall wear their own clothes and footwear in the Detention Centre. Police officers shall immediately provide foreigners lacking adequate clothes or footwear with the ones they need, within 48 hours at most, from clothes and footwear donated by humanitarian organisations or the Red Cross.⁴¹⁶ The Detention Centre management told the BCHR legal team that the living conditions in the Centre fulfilled the statutory requirements.⁴¹⁷ None of the foreigners it talked to had complained of their living conditions or treatment in that respect.⁴¹⁸

Foreigners in the Detention Centre are provided with three meals a day – breakfast, lunch and dinner, one of which is a hot meal. Children are also provided with snacks twice a day. Account is taken of the foreigners' health and religious dietary requirements.⁴¹⁹ The meals are eaten in the Detention Centre cafeteria. Food is not provided outside the cafeteria except when so required by religious practices, illness or for other reasons, in which case the house rules and diet regime may be modified.⁴²⁰ The Detention Centre staff started disinfecting the hands of the foreigners before the meals when the pandemic broke out.⁴²¹

b) Availability of Interpreters

No changes occurred with respect to the availability of interpreters in the Detention Centre during the reporting period, although their presence is essential to facilitate communication between the foreigners and the Centre staff. The

415 More in the letter of the MOI Secretariat, Department for Data Processing, Complaints and Cooperation with Independent Bodies, 02/4 Ref. No. 072/3–118/20–8, of 16 October 2020, on file with BCHR.

416 Art. 13, Rulebook on House Rules.

417 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

418 The BCHR legal team talked with foreigners in the Detention Centre and extended them legal advice on 14 February, 19 May and 27 May 2020.

419 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

420 Art. 20(3), Rulebook on House Rules.

421 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

Centre is particularly in need of interpreters for languages most commonly spoken by the foreigners (Arabic, Persian, and Urdu).

The Detention Centre staff ordinarily communicate with the foreigners in English, or if any of the foreigners speaks Serbian, in Serbian. In addition, the foreigners assist one another in communicating with the Centre staff.⁴²² This practice can be problematic, given that it compromises the privacy of foreigners in need of an interpreter. As a result, the foreigners are put in a dependent position in relation to other foreigners helping them as their interpreters. In situations where there are no English speaking foreigners, communication with the Centre management is virtually impossible.

The situation is somewhat different when the Detention Centre is visited by providers of legal aid accompanied by interpreters for the native languages or the languages best understood by the foreigners they are to talk to. In addition to such cases,⁴²³ interpreters also accompany providers of psycho-social assistance, such as, e.g. the PIN and SWC representatives visiting the Detention Centre.⁴²⁴ When it receives the asylum applications of asylum seekers in the Detention Centre or interviews them, the Asylum Office engages interpreters for their native languages.⁴²⁵ These visits are, however, ad hoc, i.e. they are an exception rather than a rule. This means that the provision of interpretation services in the Detention Centre is neither consistent nor regular. Lack of such services impinges on the lives of the foreigners, as well as the work of the MOI staff.

c) Health Care

Under the FL, all foreigners at the Detention Centre are entitled to emergency medical care.⁴²⁶ However, no general practitioners visit or have an office in the Centre. The Centre management informed the BCHR legal team that they took foreigners to see a GP or a specialist if necessary. Although the Centre management in 2019 informed the BCHR legal team that a GP would be present at the Detention Centre as of January 2020, the facility was not manned by any

422 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

423 The BCHR legal team has been “lending” its interpreters to the Detention Centre management if necessary whenever it visited the Detention Centre to extend legal advice to foreigners interested in applying for asylum in Serbia.

424 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

425 To the best of BCHR’s knowledge, Asylum Office staff in 2020 conducted asylum-related actions in the case of one Cameroon national, to whom the BCHR lawyer extended legal advice.

426 Art. 91(2(4)), FL.

medical staff by the end of the year.⁴²⁷ One of the rooms in the new part of the Centre building, which is under construction, will be fully equipped for medical examinations.⁴²⁸

Foreigners in the Detention Centre do not have access to psychological support at all times.⁴²⁹ They were, however, provided with psychological support and counselling by PIN psychologists, who visited them during the year.⁴³⁰ Given that the residents of the Detention Centre are deprived of liberty and that some asylum seekers have traumatic experiences, they should have access to psychotherapy if they feel they need it, especially since their isolation from the outside world may further aggravate their mental health.

d) Outdoor Exercise and Communication with the Outside World

The Rulebook on House Rules lays down that foreigners must be allowed to spend at least two hours a day outdoors, during which time they should be able to move freely and participate in social and sports activities. Outdoor exercise is monitored by the Detention Centre police officers.⁴³¹ In 2020, the foreigners were allowed to move freely in the Centre courtyard, weather permitting.

With regard to the foreigners' contacts with the outside world, the Rulebook on House Rules provides that foreigners are entitled to one free telephone call to the diplomatic or consular mission of their country of nationality upon admission to the Detention Centre.⁴³² Most asylum seekers, are, however, reluctant to have any contact with the authorities of the country where they were persecuted.⁴³³

The foreigners were unable to use the telephone booth for several months in 2019 due to technical problems and, subsequently, due to the lack of telephone cards.⁴³⁴ The situation improved in mid-2020. The Centre management bought two cell phones which the foreigners can use provided they pay in advance the minutes they will use. These payments are made on Mondays and Fridays, the

427 See *Right to Asylum 2019*, p. 90. Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

428 MOI Secretariat, Department for Data Processing, Complaints and Cooperation with Independent Bodies, 02/4 Ref. No. 072/3–118/20–8, of 16 October 2020.

429 Information obtained during a meeting with the Detention Centre management on 4 December 2020. On file with BCHR.

430 Ibid.

431 Art. 17, Rulebook on House Rules.

432 Art. 24, Rulebook on House Rules.

433 Information BCHR legal team's obtained from asylum seekers.

434 See *Right to Asylum 2019*, p. 91.

shopping days.⁴³⁵ The Centre management subsequently allowed the foreigners to occasionally use their private cell phones to communicate with their families and legal aid providers.⁴³⁶

4.2.3. Conclusion and Recommendations

The Asylum Office and other asylum authorities continued ordering the detention of foreigners in the Detention Centre, which has the legal character of deprivation of liberty, without bringing them before the relevant court within the 48-hour statutory deadline. Before referring asylum seekers to the Detention Centre, the Asylum Office should consider other milder forms of restrictions of their liberty. Furthermore, the Government should propose, and the National Assembly should adopt amendments to the provisions on detention of foreigners in the Detention Centre to ensure that the decision on detention in the Detention Centre and its duration be taken by the competent court within 48 hours from the moment of referral to the Detention Centre.

The MOI should ensure that a GP is present in the Detention Centre every day, at least for a limited period of time, and facilitate regular visits by psychologists who would talk with the foreigners. Such visits can be arranged in cooperation with NGOs extending psycho-social assistance.

The MOI should also ensure that interpreters for languages spoken by most foreigners are regularly available in the Detention Centre. This would ensure that the foreigners are clearly informed of their rights and obligations and that they can communicate with the Centre staff without difficulty.

435 Information obtained during a meeting with the Detention Centre management on 16 June. On file with BCHR.

436 Information obtained during a meeting with the Detention Centre management on 31 August 2020. On file with BCHR.

5. STATUS OF PARTICULARLY VULNERABLE ASYLUM SEEKERS

Under the LATP⁴³⁷, the specific circumstances of individuals requiring special procedural or reception guarantees shall be taken into account during the asylum procedure. The LATP recognises, inter alia, the following particularly vulnerable groups of asylum seekers: unaccompanied children, single parents and their underage children and victims of trafficking in humans, as well as asylum seekers survivors of torture, rape or other grave forms of psychological, physical or sexual abuse.

Procedural and reception guarantees shall serve to provide appropriate assistance to asylum seekers, who, due to their personal circumstances, are unable to benefit from the rights and obligations under the LATP without such assistance. It is not, however, always clear which kind of assistance is at issue, primarily because the LATP does not define it precisely.

Prompt identification of vulnerable asylum seekers is crucial for the application of the special procedural and reception guarantees within the meaning of the LATP. The procedure for identification of the asylum seekers' personal circumstances should be carried out on a continuous basis, by the competent authorities, and at the earliest reasonable time after the initiation of the asylum procedure

To the best of BCHR's knowledge, the situation of particularly vulnerable groups of asylum seekers in Serbia did not improve substantially in 2020 over the previous period,⁴³⁸ notably due to the COVID-19 pandemic. They were not provided with full systemic support or protection during the reporting period. Challenges in recognising vulnerable asylum seekers and providing them adequate accommodation were also identified.

As per the asylum procedure, the Asylum Office in 2020 commendably adopted several decisions upholding applications by BCHR clients belonging to particularly vulnerable groups. It, however, rejected applications by particularly vulnerable asylum seekers as well. Its explanations of the latter decisions lead to the conclusion that it did not always take into account the asylum seekers' vulnerabilities, as the ensuing section will elaborate.

437 Art. 17(1), LATP.

438 More in *Right to Asylum 2019*, pp. 97–158.

This section of the Report on particularly vulnerable categories will focus on the situation of unaccompanied and separated children and survivors of sexual or gender-based violence (SGBV). The analysis is based on the data the BCHR team collected during 2020, primarily whilst extending legal aid and representing these asylum seekers in the asylum procedure. The rest of the data were collected in the field or were obtained in response to BCHR's requests for access to information of public importance.

5.1. Situation of Unaccompanied and Separated Children

Serbia has ratified and directly applies⁴³⁹ the UN Convention on the Rights of the Child (CRC),⁴⁴⁰ which is the most important international instrument protecting the rights of the child. The CRC requires of all Serbian authorities to respect and ensure the rights of every child within Serbia's territory and under its jurisdiction, without discrimination on any grounds.⁴⁴¹ Serbia is also under the obligation to protect the best interests of the child and provide the same volume and scope of protection to migrant and refugee children enjoyed by other children living in Serbia. The principle of the best interests of the child is also guaranteed by the LATP.⁴⁴²

The Serbian legal framework on child protection is relatively good but is insufficiently implemented in practice.⁴⁴³ This fact was also noted by UN treaty bodies in their observations.⁴⁴⁴

BCHR is of the impression that the shortcomings in the identification of unaccompanied and separated children, their alternative care and guardianship protection persisted throughout 2020. This category of asylum seekers faced additional challenges that were brought on by the COVID-19 pandemic; they had trouble accessing their right to education, their freedom of movement was restricted, and the Asylum Office processed their applications with delay. These challenges will be elaborated in the text below.

439 Art. 16(2), Serbian Constitution.

440 Law Ratifying the United Nations Convention on the Rights of the Child, *Official Gazette of the SFRY – International Treaties*, 15/90 and *Official Gazette of the FRY – International Treaties*, 4/96 and 2/97.

441 Art. 2, CRC.

442 Art. 10, LATP.

443 See *Right to Asylum 2019*, p. 97.

444 See, for example, *Concluding Observations on the combined second and third periodic reports of Serbia*, Committee on the Rights of the Child (hereinafter: CRC Committee), UN Doc. CRC/C/SRB/CO/2-3, Geneva, 7 March 2017; and *Concluding Observations on the third periodic report of Serbia*, CRC Committee, UN Doc. CCPR/C/SRB/CO/3, Geneva, 10 April 2017.

5.1.1. Identification of Children and Guardianship Protection

Urgent identification of unaccompanied and separated children is the first step towards providing them with priority protection measures.⁴⁴⁵ It involves the identification of children not accompanied by their parents and a preliminary assessment of their needs and best interests, with a view to referring them to the appropriate support services.⁴⁴⁶ According to the instructions of the relevant Ministry of Labour, Employment and Veteran and Social Issues (Labour Ministry), the social workers in the field are to notify the relevant guardianship authority as soon as they receive information or themselves find out about an unaccompanied child.⁴⁴⁷ The guardianship authority is then to urgently perform a preliminary assessment of the situation and the child's needs,⁴⁴⁸ and issue a ruling appointing a temporary guardian to the child.⁴⁴⁹

The obligatory presence of temporary guardians, tasked with looking after the overall well-being of the children in all procedures regarding them, stems from the CRC.⁴⁵⁰ Under the Family Law, the guardianship placement proceedings shall be urgent and the guardianship authorities are under the duty to issue a ruling on guardianship immediately, within 30 days at the latest from the day they become aware of the need to place a child under guardianship.⁴⁵¹ Under the LATP, temporary guardians must be appointed for children as soon as it is established that they are not accompanied by their parents or guardians, in any case before they apply for asylum.⁴⁵² Furthermore, the Registration Rulebook⁴⁵³ sets out that unaccompanied children shall be registered in the presence of their

445 See *Right to Asylum 2019*, p. 98.

446 General Comment No. 6 (2005): *Treatment of Unaccompanied and Separated Children outside their Country of Origin*, CRC Committee, UN. Doc. CRC/GC/2005/6, Geneva, 1 September 2005, paras. 31–32.

447 Labour Ministry Instructions for Social Work Centres – Guardianship Authorities on the accommodation of unaccompanied migrant and refugee children, No. 019–00–19/2010–05 of 12 April 2018, Section II.

448 Rulebook on the Organisation, Norms and Operating Standards of Social Work Centres, *Official Gazette of the RS*, No. 59/08, 37/10, 39/11 – other rulebook and 1/12 – other rulebook, Art. 56.

449 *Ibid.* Under Art. 126(1) of the Family Law, an individual who has the personal characteristics and abilities requisite for performing the duties of a guardian and has agreed to be a guardian may be appointed a guardian.

450 See Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018*, Belgrade Centre for Human Rights (Belgrade, 2019), p. 56 (hereinafter: *Right to Asylum 2018*), available at: <https://bit.ly.co/5Wvf>.

451 Art. 332, Family Law.

452 Art. 12(1), LATP. Under paragraph 3 of that Art., guardians are under the obligation to provide the children with all the necessary information about the asylum procedure and their rights and obligations.

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

temporary guardians. Therefore, the appointment of a guardian is the first step to extending protection to unaccompanied and separated children.

However, registration of children in Serbia is ad hoc rather than systemic, wherefore their exact number cannot always be determined. Furthermore, many children are still registered in the absence of their temporary guardians.⁴⁵⁴ On the other hand the efficiency of the guardianship system has been undermined by its huge caseload.

5.1.1.1. Challenges in Practice

BCHR has already alerted to the problem arising from the lack of a single database and an adequate system for identifying children in Serbia in accordance with the recommendations of the UN Committee on the Rights of the Child.⁴⁵⁵ Various authorities and organisations continued keeping their own records of unaccompanied and separated children in 2020. UNHCR data, for instance, show that 2,173 unaccompanied and separated children entered Serbia in 2020.⁴⁵⁶ Save the Children registered 1,434 unaccompanied and separated children in the first nine months of the year; most of them were nationals of Syria and Afghanistan. The majority of the children were identified in the first⁴⁵⁷ and third⁴⁵⁸ quarters of the year, while only 6% were identified in the second quarter when the world went into lockdown.⁴⁵⁹ The data CRM forwarded to BCHR show that 2,579 children were living in the Bogovađa and Sjenica ACs and that 1,445 of them were unaccompanied.⁴⁶⁰

Many unaccompanied children perceive Serbia as a country they are transiting through *en route* to the EU. This is why some of them do not register at all; consequently, they do not have access to any forms of protection. The BCHR has already noted the need to improve coordination among the relevant state

454 A SWC cannot appoint the child a guardian if it does not have the child's general data, obtained during registration.

455 More in *Right to Asylum 2019*, p. 98–100.

456 UNHCR reports are available at: <https://bit.ly/co/5KOU>.

457 Save the Children identified 874 children in the first quarter of 2020; 508 of them were unaccompanied. See more at: *Refugees and Migrants at the Western Balkans Route, Regional Overview, January-March 2020*, available at: <https://bit.ly/2Y4OrfC>.

458 According to Save the Children data, another 1,425 children, 855 of them unaccompanied, entered Serbia during the third quarter of the year.

459 The number of migrants, adults and children who entered Serbia was much smaller during the second quarter of the year, when the world went into lockdown. Seventy-one unaccompanied children (6%) were registered by Save the Children in that period, see more at: Save the Children, *Refugees and Migrants at the Western Balkans Route, Regional Overview, April-June 2020*, available at: <https://bit.ly/3o7IKYS>.

460 CRM's reply to BCHR's request for access to information of public importance No. 019–3274/1–2020 of 2 September 2020.

authorities, such as the MOI, the CRM and the Labour Ministry, to establish a more comprehensive system for identifying and registering all refugee and migrant children in Serbia.⁴⁶¹

As per the registration of children, the LAMP lays down that children, for whom it can be determined reliably and unequivocally that they are under 14 years of age, shall not be fingerprinted.⁴⁶² However, the absence of an adequate procedure for determining the children's age has provided the relevant authorities with broad discretion in deciding on the age of individuals lacking identity papers issued by their countries of origin. They often ascertain the age of the individuals exclusively on the basis of their statements to MOI officers or doctors. In practice, this has frequently resulted in individuals who are obviously of age registering as children.⁴⁶³ Their accommodation in facilities designated for unaccompanied and separated children may adversely affect the latter.

Unaccompanied children still registered in the absence of their temporary guardians⁴⁶⁴ in 2020, which is in contravention of the CRC, the Family Law and the LAMP, as well as the principle of the best interests of the child. According to information collected by BCHR, the Dimitrovgrad SWC on duty staff⁴⁶⁵ attended the registration of several unaccompanied children during the reporting period.⁴⁶⁶ In addition, in cooperation with the Red Cross, they commendably provided the children with the requisite information and psychological support. It, however, remained unclear, whether the SWC issued rulings appointing the children their temporary guardians before the children registered.⁴⁶⁷

461 Having recognised the problem of the early identification of children, UNICEF issued a publication in early 2020 with a tip sheet for field workers on how to identify unaccompanied and separated girls more easily. See more in *Making the Invisible Visible: the identification of unaccompanied and separated girls in Bulgaria, Greece, Italy and Serbia*, UNICEF, 16 March 2020, available at: <https://bit.ly.co/5YbF>.

462 Art. 35(6), LAMP.

463 Information obtained from Sjenica AC staff, on file with BCHR. This is not a new development. Presumably, some adults give the wrong age because asylum seeking children are provided with better accommodation than adult asylum seekers.

464 More in *Right to Asylum 2019*, pp. 108–110.

465 BCHR does not have information clarifying when the social workers were officially appointed the children's temporary guardians by a ruling of the Dimitrovgrad SWC, before or after registration.

466 In the first 10 months of the year, 217 children, 10 of them 14 years old or younger, expressed the intention to seek asylum. Reply to BCHR's request for access to information of public importance No.02–717/2020–3 of 24 November 2020.

467 *Ibid.* According to information provided by the SWC, upon registration, most children left the Dimitrovgrad municipality of their own accord or went to the ACs they had been referred to. BCHR was not told which ACs the children had been referred to and whether the SWCs with jurisdiction over the territory in which the ACs are located appointed their temporary guardians.

Understaffing and a heavy caseload are the main problems,⁴⁶⁸ and the most widespread excuse guardianship authorities give for their failure to respond rapidly in all stages of the asylum procedure.⁴⁶⁹ In the first half of 2020, 302 children in the Bogovađa AC were placed under the guardianship of one temporary guardian.⁴⁷⁰ By end October, two temporary guardians looked after 302 children. However, no-one in the understaffed SWC performed the duties of caseworker.⁴⁷¹ The children in the Sjenica AC (over 150 of them in 2020) were still placed under collective guardianship.⁴⁷²

This situation has impinged on the availability and quality of protection extended to unaccompanied children. Furthermore, it is not in compliance with Minimum Standards for Child Protection in Humanitarian Action, under which one caseworker should not be responsible for more than 25 children.⁴⁷³ It needs to be noted that caseworkers and guardians of refugee/migrant children were still most engaged via various civil society organisations' projects and that a systemic and sustainable solution to the problem has not been found yet.

5.1.1.2. Conclusion and Recommendations

The large number of unaccompanied children practically living outside the system has been a problem for years now. Hence the need to as soon as possible put in place a nationwide system for their identification and official records of the number of children who entered or are living in Serbia. Children, whose status is not regulated and who are not planning on seeking asylum, should be provided with the possibility of applying for temporary residence on humanitarian grounds or for another form of legal residence prescribed by the Foreigners Law.

468 More in *Right to Asylum 2019*, pp. 102–103.

469 The caseload of the Belgrade temporary guardians was reduced in 2020 since, pursuant to a decision of the relevant SWC, most of the children in the Krnjača AC were transferred to the ACs in Bogovađa and Sjenica, which the CRM designated for the accommodation of unaccompanied and separated children. Nevertheless, the number of specialised social workers needs to increase, as several guardians told BCHR.

470 Two individuals acted as the children's temporary guardians and one individual performed the duties of caseworker. Reply to BCHR's request for access to information of public importance No. 234 of 19 August 2020.

471 Reply to BCHR's request for access to information of public importance No. 445 of 23 November 2020.

472 Reply to BCHR's request for access to information of public importance No. 1079 of 17 August 2020. Also, this is in contravention of Art. 130 of Family Law, under which the managers or members of staff of residential care institutions may be appointed the residents' guardians if they consent to the appointment and if that is in the residents' best interests.

473 *Minimum Standards for Child Protection in Humanitarian Action*, Child Protection Working Group (2012), p. 138, available at: <https://bitly.co/5KOj>.

Respect for the principle of the best interests of the child should be the priority of the relevant authorities at all stages of the procedure and without exception. In that context, the Labour Ministry and the SWCs are under the obligation to promptly appoint temporary guardians for all unaccompanied and separated children, who will extend them effective protection. Children should always be registered in the presence of their temporary guardians.

The number of people performing the duties of the children's guardians needs to be increased to ensure that their capacity to recognise and adequately assess the needs of each child are not undermined by their heavy caseloads. The Labour Ministry should develop longer-term plans for the engagement of temporary guardians and caseworkers. For their part, the relevant authorities should develop longer-term programmes guaranteeing continuous protection of refugee and migrant children.

5.1.2. *Practice of the Relevant Asylum Authorities in Cases of Unaccompanied Children*

According to UNHCR'S Guidelines, children may face similar or identical forms of harm as adults.⁴⁷⁴ The fact that the refugee claimant is a child may be a central factor in the harm inflicted or feared.⁴⁷⁵

The following four core CRC principles must be complied with: non-discrimination, best interests of the child, child's right to life, survival and development, and the children's right to freely express their views in proceedings concerning them.⁴⁷⁶ Under the CRC, assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse, sexual harassment, degrading treatment, as well as protection against sexual, economic and other exploitation, forced labour, armed conflict, etc.⁴⁷⁷

The LATP provides for particular protection of asylum seeking children.⁴⁷⁸ Inclusion of the principle of the best interests of the child⁴⁷⁹ in the LATP partly

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

475 *Ibid.*, para. 18.

476 See *Right to Asylum 2018*, pp. 51–57.

477 *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, CRC Committee, CRC/C/GC/14, 29 May 2013, para. 73.

478 *Ibid.*

479 Under Art. 10(2) of the LATP, when assessing the best interests of the child, due account shall be taken of, inter alia, the children's well-being, social development and background,

contributed to the improvement of the asylum authorities' practices with regard to unaccompanied and separated asylum seeking children.⁴⁸⁰ The relevant authorities must obtain the findings and opinion⁴⁸¹ of the guardianship authority in order to render proper decisions protecting the right of the child.⁴⁸² Although the LATP does not specify that the asylum authorities must act in line with such opinions, such an obligation is imposed by the Family Law.⁴⁸³

Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.⁴⁸⁴ No decision regarding a child may be adopted if its outcome impinges on the child's right to life, survival and development.⁴⁸⁵

Despite some headway, the Serbian asylum authorities' practice still suffered from specific shortcomings⁴⁸⁶ adversely affecting the well-being of unaccompanied and separated children.⁴⁸⁷ The asylum authorities were not guided by the best interests of the child in all their decisions. Furthermore, although applications filed by unaccompanied children are to have priority under the LATP,⁴⁸⁸

and their protection and safety, especially if there are suspicions that they are victims of human trafficking, domestic violence or other forms of gender-based violence.

480 See *Right to Asylum 2019*, pp. 105–106.

481 Art. 270, Family Law.

482 Under Art. 62 of the Rulebook on the Organisation, Norms and Operating Standards of Social Work Centres, *Official Gazette of the RS*, No. 59/08, 37/10, 39/11 – other rulebook and 1/12 – other rulebook, caseworkers shall prepare their findings and expert opinions when the assessment results are needed by a court, other authorities or institutions.

483 *Ibid.*

484 *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art. 3. 1)*, CRC Committee, CRC/C/GC/14, 29 May 2013, para. 74.

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

486 More in: *Right to Asylum 2019*, pp. 98–105.

487 For instance, although Art. 12(9) of the LATP lays down that asylum applications filed by unaccompanied children shall have priority, in 2020 again, many of BCHR's underage clients had to wait quite a long time for the Asylum Office to perform asylum-related actions or rule on their applications. For instance BCHR's client – an unaccompanied child from Pakistan – applied for asylum back in 2019, but the Asylum Office did not interview him by the end of 2020, let alone rule on his application. Although the COVID-19 pandemic did result in the adjournment of many hearings throughout the year, it should not serve an excuse for breaching the law. The most vulnerable groups of asylum seekers must enjoy all the guaranteed rights during the asylum procedure and all stakeholders have to modify and adjust their operations to the circumstances.

488 Art. 12(9), LATP.

some underage asylum seekers had to wait an unreasonably long time for the Asylum Office to undertake asylum-related actions or rule on their applications in 2020 as well. All these issues will be elaborated in the ensuing text.

5.1.2.1. Selected Decisions of the Asylum Office

Despite delays caused by the COVID-19 pandemic, the Asylum Office in 2020 adopted several decisions on applications filed by unaccompanied and separated children represented by BCHR. In some of them, it properly applied the LATP, whereas in others, it resorted to its old practice of ruling differently on identical or similar matters.⁴⁸⁹

In its decision⁴⁹⁰ granting refuge to an unaccompanied Afghani child, V., the Asylum Office commendably took into consideration his best interests.⁴⁹¹ Namely, V. was underage at the time he applied for asylum,⁴⁹² but he turned 18 during the procedure. The Asylum Office held that children who turn 18 during the procedure should be provided with special procedural guarantees. BCHR has already commended the Asylum Office on its view that, in terms of the best care for the child, care must be taken of the children in the “transition period”, when they are particularly vulnerable.⁴⁹³ In its decision on V’s application, the Asylum Office took due account of the recommendations the Council of Europe (CoE) Parliamentary Assembly made in its 2011 Report.⁴⁹⁴ The Report calls for the establishment of a “buffer age”, a transition period between adulthood and the finding of a lasting solution for asylum seeking children.⁴⁹⁵ The Asylum Office was also commendably guided in this case by the UN Guidelines for the Alternative Care of Children,⁴⁹⁶ which are intended to enhance the implementation of the Convention on the Rights of the Child.⁴⁹⁷ The Guidelines also emphasise the importance of the transition period until the children are empowered enough by

489 Art. 5 (3), LGAP.

490 Ruling No. 26–2573/19 of 15 October 2020.

491 In another similar case, the Asylum Office upheld the application of an unaccompanied child from Afghanistan, Z., and granted him subsidiary protection (Ruling No. 26–1437/18 of 13 February 2020). See: *Right to Asylum, Periodic Report for July-September 2020*, p. 26.

492 The asylum application was filed on 18 October 2019.

493 More in *Right to Asylum 2019*, p. 107.

494 *Report of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe: Unaccompanied Children in Europe: Issues of Arrival, Stay and Return*, available at: <https://bit.ly.co/5KPq>.

495 As the Asylum Office said in its Ruling No. 26–2573/19 of 15 October 2020, p. 8.

496 *Guidelines for the Alternative Care for Children*, Resolution adopted in 2010 by the UN General Assembly on the report of the Third Committee A/64/434, A RES/64/142, available at: <https://bit.ly.co/5KPb>.

497 *Ibid*, para 1.

the system to look after themselves adequately.⁴⁹⁸ The Asylum Office also commendably took note of other international reports submitted by BCHR's lawyers on V's behalf; these reports described the insecurity in Afghanistan, judicial corruption and other human rights violations.⁴⁹⁹ The Asylum Office stated the following in its decision:

UN treaty bodies' reports show that the situation in Afghanistan has remained unchanged for years and that it is deteriorating in some segments. Along with Syria and Yemen, Afghanistan is on the list of countries with the greatest number of children killed in armed conflict. Children accounted for thirty percent of all civilian casualties in 2017 and nearly half of them died during the fighting between Government forces and rebel groups.⁵⁰⁰

Although the above decision is a good practice example, the Asylum Office took an opposite view in some other cases of unaccompanied Afghani children, as BCHR alerted to on several occasions.⁵⁰¹ The text of one impugned decision⁵⁰² indicates that the Asylum Office did not take into account publicly available and credible international reports on the situation in Afghanistan when it reviewed the facts and circumstances of this case. Furthermore, it failed to review the evidence and documents the child's lawyers had submitted during the procedure. The Asylum Office thus failed to adequately assess the risks that the unaccompanied child's rights would be violated if he were returned to Afghanistan; nor did it explain why its decision was in the child's best interests. It both violated the procedural rules and brought the child into the danger of *refoulement*. To make things worse, instead of reviewing the work of the Asylum Office and identifying its procedural flaws, and applying the LGAP⁵⁰³ accordingly, the Asylum Commission rejected BCHR's appeal and upheld the decision of the Asylum Office.

BCHR emphasised that the assessment of the general situation in the country of origin – against which an asylum seekers' individual circumstances are assessed – cannot differ from one case to another if the current reports show that the situation in the country has remained unchanged.⁵⁰⁴ To recall, in its 2018 Eligibility Guidelines for Assessing the International Protection Needs of

498 As the Asylum Office said in its Ruling No. 26–2573/19 of 15 October 2020, p. 8.

499 *Ibid.* p. 4–5.

500 *Ibid.*, pp. 6–7.

501 See *Right to Asylum, Periodic Report for July-September 2020*, pp. 26–27. See also Section 3. Practice of the Asylum Authorities, Asylum Office.

502 Ruling No. 26–378/19 of 11 February 2020.

503 Art. 165, LGAP.

504 See *Right to Asylum, Periodic Report for July-September 2020*, p. 27.

Asylum-seekers from Afghanistan, UNHCR said that human rights violations against the civilian population were reported to occur in all parts of the country, regardless of who was in effective control of an area.⁵⁰⁵

The Asylum Office is under the obligation to properly and lawfully review all the available facts and evidence relevant to each individual case. It must also take into account the best interests of the child when reviewing applications by unaccompanied and separated children. It has to rely on its prior decisions both when it considers applications by Afghani children, like the cases mentioned above, and when it reviews all other applications, in accordance with the principles of legality and legal certainty set out in the LGAP.

5.1.2.2. Overly Long Procedures

The principle of special procedural and reception guarantees imposes upon the asylum authorities the obligation to take account of the circumstances of the individuals, including unaccompanied and separated children, in need of such guarantees.⁵⁰⁶ One of the procedural guarantees laid down in the LATP requires of asylum authorities to give priority to reviews of asylum applications filed by unaccompanied children. However, in BCHR's experience, this provision is hardly every applied in practice.⁵⁰⁷

For instance, an unaccompanied child from Pakistan applied for asylum in December 2019. The Asylum Office failed to interview him or rule on his application by the end of the reporting period.⁵⁰⁸ The COVID-19 pandemic understandably led to delays in its reviews of both this and many other asylum applications.⁵⁰⁹ The Asylum Office and other asylum stakeholders thus need to adjust their operations to the current circumstances, to ensure that the most vulnerable groups of asylum seekers enjoy their rights guaranteed by law.

5.1.2.3. Conclusion and Recommendations

The problems BCHR's legal team identified earlier in asylum procedures concerning unaccompanied and separated children persisted in 2020. The

505 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Afghanistan*, UNHCR, 30 August 2018, p. 23, available at: <https://bitly.co/5YbW>.

506 Art. 17(1), LATP.

507 *More in Right to Asylum 2019*, pp. 110–112.

508 Since unaccompanied and separated children are a particularly vulnerable category of asylum seekers, BCHR sent a letter to the Asylum Office in September 2020, asking it to forgo the child's interview in accordance with Art. 37(10(1)) of the LATP and rule on his application, given that it had sufficient evidence to adopt a decision on it.

509 In BCHR's experience, the time it takes the Asylum Office to rule on an application depends, inter alia, on the expedition of the staff handling the cases.

Asylum Office should eliminate discrepancies in its reviews of the general circumstances in the countries of origin of unaccompanied children. Reviews of their applications take unreasonably long, which is not in their best interests. The Asylum Office must take account of the asylum seeking children's best interests in all stages of the asylum procedure, especially when ruling on their applications. It must also always take account of the opinions of the guardianship authorities.

5.1.3. Challenges in the Provision of Alternative Care⁵¹⁰ to Children

Alternative care shall be provided to children temporarily or permanently deprived of their family environment in accordance with the law if that is in their best interests.⁵¹¹ The CRC lays down the states' obligation to provide children with appropriate care regardless of their legal status.⁵¹² UN Guidelines for the Alternative Care of Children set out that states should ensure the availability of a range of alternative care options for emergency, short-term and long-term care.⁵¹³

Guardianship authorities must issue temporary conclusions on the children's accommodation within 24 hours from the moment they are notified of the need for guardianship.⁵¹⁴ States Parties shall assure to children capable of forming their own views the right to express those views freely in all matters concerning them, including on alternative care, and give the views of the children due weight in accordance with their age and maturity.⁵¹⁵ Under the Social Protection Law (SPL),⁵¹⁶ children without parental care may be accommodated with their relatives or foster families, in homes, shelters or other facilities in accordance with their best interests and the law.⁵¹⁷ Unaccompanied children and victims of trafficking in humans are recognised as vulnerable groups in this law.⁵¹⁸

The Labour Ministry's Instructions lay down detailed criteria guardianship authorities are to apply when deciding where to accommodate unaccompanied and separated children.⁵¹⁹ Under these Instructions, they shall be accommodat-

510 Care provided to children away from their families.

511 Modalities of alternative child care are prescribed by the Family Law and the SPL.

512 Art. 20 in conjunction with Art. 2 of the CRC.

513 *Guidelines for the Alternative Care of Children*, Resolution adopted by the UN General Assembly on 18 December 2009, UN Doc. A/RES/64/142, para. 54.

514 Art. 332(2), Family Law.

515 Art. 12, CRC.

516 *Official Gazette of the RS*, No. 24/11.

517 Art. 47, SPL.

518 Art. 41(2), SPL.

519 Labour Ministry Instructions for Social Work Centres – Guardianship Authorities on the accommodation of unaccompanied migrant and refugee children, No. 019–00–19/2010–05 of 12 April 2018, Section II.

ed in ACs only if they are over 16 years of age and their guardians applied for asylum on their behalf. The ACs must fulfil the requirements for the accommodation of children and the fulfilment of all their needs, and the guardianship authorities have to conclude that placement in them is in the children's best interests.⁵²⁰ Notwithstanding, unaccompanied children under 16 have in practice also been referred to ACs and to facilities in which adult asylum seekers are residing.⁵²¹

Unaccompanied and separated children, especially those under 14, may be placed with foster families,⁵²² in residential care or health institutions as long as they are in need of such protection.⁵²³ Residential care facilities and foster families must provide the unaccompanied children with safety, health care, clothes, basic sanitary conditions and adequate nutrition.⁵²⁴ They must also provide the children with recreational activities and education in accordance with the relevant regulations.⁵²⁵

The ensuing text will provide an overview of the situation of unaccompanied and separated children living in ACs and residential care facilities and the challenges they faced in 2020, especially during the state of emergency introduced in response to the COVID-19 pandemic. The overview is based on the data the BCHR team collected in 2020.

5.1.3.1. Accommodation of Children in Asylum Centres

Pending a final decision on their asylum applications, asylum seekers shall be provided with material reception conditions, specifically accommodation, food, clothes and a cash allowance for their personal needs, in facilities designated for the accommodation of asylum seekers.⁵²⁶ Under the LATP, when deciding on the accommodation of foreigners who expressed the intention to seek asylum, due attention shall be given in particular to their sex and age, their status of a person requiring special procedural and/or reception guarantees, as well as family unity.⁵²⁷

520 *Ibid.*

521 E.g. in the AC in Krnjača.

522 Unaccompanied children are unfortunately rarely placed in foster families, because the foster family system is underdeveloped in Serbia. Placement in foster families has been especially difficult since the COVID-19 pandemic broke out.

523 Labour Ministry Instructions for Social Work Centres – Guardianship Authorities on the accommodation of unaccompanied migrant and refugee children, para. 3.

524 *Ibid.*

525 *Ibid.*

526 Art. 50(1), LATP.

527 Art. 50(3), LATP.

In January 2020, the CRM designated the AC in Bogovađa for the accommodation of unaccompanied and separated children, in addition to the Sjenica AC. BCHR commented this decision in its periodic report.⁵²⁸ Namely, the Bogovađa AC lacks adequate accommodation facilities and staff sufficiently trained in extending care to this particularly vulnerable group of asylum seekers. BCHR's opinion was, unfortunately, corroborated by the cases of violence against the children living there perpetrated by the AC security guards.⁵²⁹

To recall, the Committee on the Rights of the Child criticised the state's practice of accommodating children under 16 in ACs⁵³⁰ and recommended to Serbia to provide them accommodation in foster families or other accommodation facilities adequate for their age, gender and needs.⁵³¹ Sixteen of the 354 unaccompanied children living in ACs during the first half of the year were 12 years old or younger.⁵³² The relevant authorities referred the children to these facilities without first assessing their individual needs, merely because they were asylum seekers. Such a practice can be ascribed to the underdeveloped capacities for alternative care for children.

In the first half of 2020, CRM transferred a large number of children from the Krnjača AC to the ACs in Bogovađa and Sjenica. The latter accommodated the greatest number of children at the end of the year,⁵³³ including children who had lived in the Krnjača AC for over a year, attended the local primary school and received the psychological assistance they needed. The temporary guardians of some of them were reportedly told of their transfer just one day in advance or after the children had already been moved. Many guardians believed that the children's transfer was in violation of the principle of the best interests of the child, because the children had trouble adjusting to the new circumstances and building rapport with their new temporary guardians⁵³⁴ during the state of emergency.⁵³⁵ The difficulties faced by temporary guardians, charged with large

528 More in *Right to Asylum, Periodic Report for January-March 2020*, p. 29.

529 More in the section: Violence against Unaccompanied and Separated Children in the Bogovađa Asylum Centre.

530 *Concluding observations on the combined second and third periodic reports of Serbia*, CRC Committee, UN. Doc. CRC/C/SRB/CO/2-3, 7 March 2017, paras. 56 (b) and 57(b).

531 More in *Right to Asylum, Periodic Report for January-March 2020*, p. 29.

532 During this period, most of the children were accommodated in the Bogovađa AC (135), the Sjenica AC (99), and the Krnjača AC (40).

533 According to CRM's reply to BCHR's request for access to information of public importance No. 019-4916/2-2020 of 25 December 2020, 642 children lived in the Bogovađa AC and 611 lived in the Sjenica AC during the year.

534 Unaccompanied children could maintain only telephone contacts with their new temporary guardians during the state of emergency.

535 Many of the transferred children stayed in touch with their prior guardians, the only people they felt they could turn to after they moved.

numbers of unaccompanied children, to provide each child with the attention they need should be borne in mind. They particularly came to the fore in the Bogovađa AC. On the other hand, despite some advantages, the AC in Krnjača is unsuitable for the accommodation of unaccompanied and separated children, since the children in it are exposed to multiple risks⁵³⁶ given that this AC accommodates a large number of adult asylum seekers of various ages, nationalities and with various specificities.

According to Belgrade social workers, the situation in the ACs was extremely challenging during the state of emergency; misunderstandings and clashes broke out among asylum seekers, as tensions grew during the lockdown.⁵³⁷ Unaccompanied and separated children definitely could not have benefited from such circumstances. The children moved from the Krnjača AC to the remote AC in Sjenica were particularly displeased;⁵³⁸ in their opinion, their integration in the local community would have been easier had they stayed near Belgrade.

5.1.3.2. Accommodation of Children in Residential Care Facilities

Unaccompanied asylum seeking children may exceptionally be accommodated in residential care facilities, in other accommodation facilities or with families.⁵³⁹ Serbia does not have institutions specialised for providing alternative care to unaccompanied and separated children. The children are mostly referred to the Belgrade Home for Children and Youth,⁵⁴⁰ the Youth Home in Niš and the Jovan Jovanović Zmaj orphanage in Belgrade. The Jesuit Pedro Arrupe Integration House in Belgrade and the House of Rescue in Loznica also take in unaccompanied children.

Various criteria are taken into consideration during the accommodation of children in residential care facilities: their age and vulnerabilities; whether they have any physical or mental disabilities; how long they have been living in Ser-

536 In addition, according to information BCHR obtained from asylum seekers in the field, the doors to the barracks and rooms and the gate of the Krnjača AC are not locked, bringing into question the safety of its residents, especially children.

537 See *Right to Asylum, Periodic Report for January-June 2020*, p. 61.

538 During their regular visits to the Sjenica AC, BCHR lawyers talked with the CRM staff, the children living in this AC and their temporary guardians. The children explicitly expressed their dissatisfaction with Sjenica's geographic position and the long asylum procedure. Some of these children had been living on the outskirts of Belgrade for quite a while; they had gotten used to the Krnjača AC, went to school and found new friends there, and enjoyed the benefits of living in a large city, which definitely has much more to offer than Sjenica.

539 If the conditions for their accommodation cannot be secured in ACs or other facilities designated for the accommodation of asylum seekers.

540 The Centre for Accommodation of Foreign Children Unaccompanied by Their Parents or Guardians is located in Vodovodska Street in Belgrade.

bia; whether they attend school, et al. Children are usually referred to residential care facilities on the request of their temporary guardians but only when the institutions have room to take them in. Many children do not wish to live in such institutions although the living conditions in them are more suitable for children. Most of these children plan on continuing their journey towards EU Member States and prefer the “freedom” they have in ACs and RTCs. It thus comes as no surprise that more children living in ACs and RTCs than in residential care facilities have been leaving Serbia.

Available data show that a total of 10 children were living in the Belgrade orphanage Jovan Jovanović Zmaj during the first half 2020. The section of the orphanage designated for unaccompanied foreign children can accommodate 10 children. It is staffed by six counsellors and professional associates.⁵⁴¹ The 24 children living in the Niš Home were looked after by six counsellors. The unit designated for unaccompanied foreign children has the capacity to accommodate 15 children – 10 boys and five girls.⁵⁴² However, only boys, most of them from Afghanistan, were living the Belgrade and Niš Homes during this period.

The Pedro Arrupe House can take in 15 children. Sixteen boys between 8 and 18 years of age lived in it from January to end October 2020. Seven children were living in the House at the end of the year, five of them for over a year and a half.⁵⁴³ Eight professionals – two social workers, a special needs teacher, a cultural mediator, three counsellors and the Integration House Coordinator – look after the children. The staff said that extending study support to the children, who were all attending school, and ensuring they followed online classes was the greatest challenge they encountered in 2020.

The Loznica House of Rescue was home to 10 children in 2020; three of them have been living in it for over a year. The House can take in 15 children, but always keeps three beds free for emergencies.

a) Accommodation in Residential Care Facilities in the Context of the COVID-19 Pandemic

During the state of emergency, the Labour Ministry issued Instructions for residential care facilities on protection of children without parental care during the state of emergency proclaimed in response to the COVID-19 pandemic.⁵⁴⁴

541 Reply to BCHR’s request for access to information of public importance No.3731/1 of 19 August 2020.

542 Reply to BCHR’s request for access to information of public importance e-mailed on 20 August 2020.

543 According to information collected by BCHR, the children live around eight months in this institution on average.

544 Available in Serbian at: <https://bityl.co/5YcT>.

Compliance with protection measures was crucial because of the epidemiological situation. However, the practices of institutions accommodating children were not uniform.

For instance, children living in the Home in Vodovodska Street in Belgrade were not allowed to leave the institution during the state of emergency and in its immediate aftermath. When the epidemiological situation improved in June, the children were allowed to go out for two hours in accordance with the “schedule”, albeit not every day. The children’s movement was again restricted later in June, when the number of people infected by COVID-19 increased. They stayed inside until mid-August, after the Labour Ministry intervened in response to many appeals by the children’s guardians and representatives of civil society organisations who were in touch with the children. The children complained to their guardians about the inability to leave the institution, which is particularly concerning given that some of the children in this home have various psychological and psychiatric problems.

On the other hand, the children living in the Belgrade orphanage Jovan Jovanović Zmaj were allowed to play in the yard or go to the nearby store during the state of emergency. After the state of emergency was lifted, they were allowed to leave the orphanage for a few hours every day.

To the best of BCHR’s knowledge, the guardians of children living in residential care facilities were not allowed to meet with them regularly inside the institutions when the state of emergency was introduced so they would meet outdoors – in parks or the institutions’ yards – weather permitting. However, as the weather grew colder and the COVID-19 toll increased, the guardians maintained contact with their wards over the phone. The children do not have complete privacy in their rooms when they are talking on the phone and they miss their in-person meetings with their guardians. Therefore, an adequate solution needs to be found to eliminate the current communication difficulties.⁵⁴⁵

Unaccompanied and separated children in residential care facilities, most of whom go to school, faced specific challenges in accessing education during the reporting period and in maintaining their motivation to learn. Specifically, the children had trouble following online classes because not all of them had access to quality Internet and devices via which they could follow class.⁵⁴⁶ Furthermore, the children and their counsellors, who tried to help them, faced difficulties because the teachers were using different applications, many of which they found complicated. The children’s motivation and interest were dampened by the very

545 Furthermore, there was no spontaneous communication between the children’s counsellors in the institutions and their guardians that would have facilitated their exchange of information about their wards.

546 UNHCR donated computers to the Home in Vodovodska Street so the children could follow online classes.

fact that all lessons and tests were online.⁵⁴⁷ BCHR was told that some children did not regularly attend online classes.

5.1.3.3. Conclusion and Recommendations

Alternative care for unaccompanied and separated children is still not adequate or provided in compliance with international treaties ratified by Serbia. Some unaccompanied and separated children are still referred to ACs, where they live together with adults, although this arrangement is inadequate, particularly in the context of their safety and protection. Counsellors and other education professionals and experts specialising in children are not present in the ACs at all times. This issue needs to be addressed through multi-sectoral cooperation, to ensure that the children benefit from continuous support.

Managers of residential care facilities need to designate rooms or identify other modalities that will enable unaccompanied and separated children to regularly meet their guardians in person whilst fully complying with health protection measures. They should also guarantee equal access to and treatment of children in their institutions, regardless of the circumstances; this also includes provision of support to their education. The state needs to invest additional efforts in improving the possibilities of placing this category of children with foster families and in motivating and empowering future foster parents.

5.1.4. Violence against Unaccompanied and Separated Children in the Bogovađa Asylum Centre

In May 2020, BCHR was alerted to verbal and physical abuse of unaccompanied and separated children by the security guards in the Bogovađa AC.⁵⁴⁸ The incident took place while asylum seekers and migrants were still prohibited from leaving the ACs and RTCs under the Health Ministry's Order.⁵⁴⁹ The incident raised the issue of the safety and efficiency of protection of unaccompanied and separated children living in that AC.

547 The counsellors played a major role in the children's education. The teachers sometimes e-mailed the children their assignments and the counsellors ended up explaining the lessons to the children and helping them learn them.

548 In the night of 10/11 May 2020, the Bogovađa AC security guards, working for a private company Dekapolit, verbally and physically abused a group of unaccompanied and separated children living in that AC. One of the boys, who witnessed the violence, filmed it on his cell phone and sent the footage to the Group for Children and Youth – Indigo, which alerted the BCHR. More in *Right to Asylum, Periodic Report for January-June 2020*, pp. 38–40.

549 After the Order was abolished on 14 May, the children victims and eyewitnesses of the ill-treatment started leaving the AC; they headed towards Serbia's borders, with the intention of crossing the border irregularly and reaching the EU.

The relevant authorities – the CRM⁵⁵⁰ and MOI, as well as the Protector of Citizens – were alerted to the incident.⁵⁵¹ BCHR also filed a criminal report with the Ub Basic Public Prosecution Service (BPPS) against the security guards on the footage.⁵⁵² After it subsequently learned of an alleged attempt by one guard to intimidate the boy who had recorded the incident, the BCHR sent a letter to the MOI Internal Control Sector, alerting it to the omissions of the police in this case. The state is under the obligation to effectively examine all credible claims of ill-treatment and to ensure that no-one suffers negative consequences for reporting it.⁵⁵³

BCHR was told on 21 May that the security guard, who had physically punished the children, had been removed from security detail in the Bogovađa AC. The CRM said that both guards had been dismissed from their jobs when the Belgrade Red Cross, which had engaged Dekapolit, learned of the incident. Dekapolit never commented the incident publicly. By 21 May, all the unaccompanied children staying in the room in which the incident occurred left the Bogovađa AC.

5.1.4.1. Review Performed by the Protector of Citizens

The children living in the Bogovađa AC said that the situation calmed down after the team of the Protector of Citizens, accompanied by a forensic expert, visited the AC on 15 May. After reviewing the legality of the operations of CRM, the Bogovađa AC and the Inter-Municipal SWC for the Ljig, Lajkovac and Mionica Municipalities (hereinafter: Inter-Municipal SWC), the Protector of Citizens on 23 June published his recommendations⁵⁵⁴ on how these authorities should respond to this and similar situations in the future.

The Protector of Citizens identified deficiencies in the work of the Bogovađa AC and the Inter-Municipal SWC, specifically, that they had failed to take adequate measures when they learned of the physical abuse of children under the guardianship of this Centre,⁵⁵⁵ and to notify the police and/or the relevant

550 The CRM and the relevant SWC did not report the incident to the police or the prosecutors.

551 BCHR notified the CRM of the violence in the Bogovađa AC; the BCHR and Indigo sent a joint letter about the incident to the Protector of Citizens.

552 Ref. No. 668/8, 13 May 2020. On file with BCHR.

553 Ref. No. 668–2/8. On file with BCHR. Indigo notified the Protector of Citizens and BCHR supplemented the criminal report it had submitted.

554 The Protector's findings and recommendations No. 20866 of 23 June 2020, Case No. 422–191/20.2020 are available in Serbian at: <https://bit.ly/33AluvF>. The recommendations are also outlined in *Right to Asylum, Periodic Report for January-June 2020*, pp. 39–40.

555 Namely, although the CA manager, the field social worker in the AC (who acts as a coordinator between the unaccompanied children and their guardian) and the guardian of the unaccompanied children learned of the incident on 12 May at the latest, they failed to notify of it

prosecution service thereof.⁵⁵⁶ On the other hand, the case files BCHR obtained in response to its request for access to information of public importance show that, instead of himself reporting the incident to the prosecutors,⁵⁵⁷ the Protector of Citizens merely identified the omissions of the authorities under review and recommended that they report the incident to the relevant prosecution service.⁵⁵⁸

The Protector of Citizens identified other deficiencies in the work of the Bogovada AC and Inter-Municipal SWC as well. With the exception of a field social worker who talked to the children who had reported the incident, neither the AC nor the SWC provided any expert assistance to the children.⁵⁵⁹ Specifically, they did not refer them for a check-up when they found out about the violence or take steps to immediately remove the reported security guards from the AC security detail.⁵⁶⁰

5.1.4.2. State Authorities' Response to the Recommendations of the Protector of Citizens

The reply CRM sent the Protector of Citizens to his recommendations on 10 July 2020⁵⁶¹ suggests that it had not taken all the requisite steps to preclude such omissions in the future. Namely, the Protector of Citizens said that the police should be notified without delay of all facts and circumstances surrounding the physical ill-treatment of unaccompanied and separated children. It, however, took the CRM more than 15 days from the day it received the Protector's recommendations to act on them.

In its reply, CRM said that it had intensified in-house oversight in the Bogovada AC and other facilities accommodating asylum seekers to preclude similar incidents in the future and ensure prompt notification of the relevant authorities if they did. The Protector of Citizens also recommended that the CRM perform a check of the AC's operations and identify any deficiencies in its response to the violence. The CRM said that, as soon as it learned of the incident, it immediate-

the relevant public prosecution service, which was to have investigated whether the violence included elements of a crime prosecuted *ex officio*.

556 The BCHR did that in this case, by filing a criminal report.

557 On 15 May, i.e. four days after the incident.

558 On 23 June, i.e. more than a month after the incident.

559 The Protector of Citizens established that one social worker was acting as the guardian of around 333 unaccompanied and separated children in the Bogovada AC single-handedly, without the assistance of a psychologist.

560 The security guards were later removed from security detail in the AC.

561 Information BCHR received from the Protector of Citizens on 10 September 2020, in response to its request for access to information of public importance.

ly launched a protection mechanism, in which the relevant SWC and guardian were involved, and notified the Red Cross. The CRM also said that it had issued recommendations to the Bogovađa AC after reviewing its operations.

CRM played down the failure to report the violence to the police and/or prosecutors by holding that it had already been reported to the police, which intervened in the AC that evening. The CRM did not take into account the obligations of all state authorities and organisations vested with public powers to report crimes and act in the best interests of the child, given that it concluded that the Bogovađa AC staff had not violated their duties, without ascertaining that that was actually the case.

The Bogovađa AC management notified the Protector of Citizens that the children had been referred for a check-up, but that they had refused to be examined by the doctor and nurse working in the AC. For their part, the children said they were afraid of the examination, while the doctor said she had not been told about the incident at all. Furthermore, the CRM's claims that the AC staff heard about the incident after the children's guardian visited them on 12 May contradicts the guardian's statement. She told the representatives of the Protector of Citizens that she had gone to visit the children on 12 May after the field worker told her about the violence against the children.

In order to illustrate the existence of an internal oversight mechanism, CRM said that instructions on filing complaints about the work of the staff and associates (e-mail and box for complaints) and the telephone number of the Protector of Citizens were visibly displayed. This mechanism, however, cannot be considered efficient or adequate in case of violent incidents. On the one hand, the independence of the individuals handling the complaints is disputable, while, on the other, the mechanism does not provide for rapid response to violent incidents in view of their potential consequences.

The CRM commendably vowed to organise training for Bogovađa AC staff on ill-treatment of children and to elaborate the joint CRM and UNICEF guidelines, et al. It, however failed to ascertain who was responsible for the shortcomings that resulted in the violation of the rights of several unaccompanied and separated children.

The Labour Ministry did not act on the Ombudsman's recommendation to check the work of the Inter-Municipal SWC.⁵⁶² In its reply to the Protector of Citizens of 6 July 2020, the Inter-Municipal SWC said it had organised a co-ordination meeting after the Protector of Citizens visited the Bogovađa AC.

562 On 2 September 2020, the Protector of Citizens again requested of the Labour Ministry to forward the relevant information in seven days and reminded it of its obligation to cooperate with him.

The meeting was attended by the representatives of the Labour Ministry, the Inter-Municipal SWC, the CRM and UNHCR. They discussed organisation of trainings on working with children for the staff and various social activities to familiarise the children with the House Rules.

The Protector of Citizens had also recommended to the MOI to establish whether police officers intervened on the night of the incident to restore order in the Bogovađa AC, whether they were aware of the incident and which measures they had undertaken in response to it. The MOI confirmed that police went to the AC at the request of the security guards, specifying that they had not been told about the violence against the children, that no-one complained of abuse or had any visible injuries.

No headway was apparently made in implementing the Ombudsman's recommendation that the Bogovađa AC and the Inter-Municipal SWC hereinafter notify the relevant prosecution service or the police of any violence without delay. Namely, BCHR alerted the Protector of Citizens to another violent incident that occurred on the night of 13/14 August 2020 in the Bogovađa AC in which another unaccompanied child was the victim of physical abuse by a security guard. The child was examined by the medical staff in the AC after he complained of an ear injury and hearing problems. The Bogovađa AC staff and social worker were aware of the incident but, to the best of BCHR's knowledge, they did not report it either to the police or the prosecutors. BCHR filed a criminal report and the Protector of Citizens notified it that he had launched a review of the legality of the operations of the Bogovađa AC.

5.1.4.3. Complaint to the UN Special Rapporteur on the human rights of migrants

A brief description of the case was sent to the UN Special Rapporteur on the human rights of migrants and the UN Working Group on the use of mercenaries. This Working Group published a report⁵⁶³ on 9 July 2020, in which it analysed the impact of the use of private security guards on the human rights of migrants, especially in situations of deprivation of liberty.⁵⁶⁴ The Working Group said that in specific situations, especially situations of deprivation of liberty, private security companies were directly responsible for human rights abuses of migrants, including refugees and asylum seekers, while in some instances, they were complicit in widespread human rights violations and abuse caused by other actors,

563 Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, *Impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants*, A/HRC/45/9, available at: <https://undocs.org/A/HRC/45/9>.

564 To recall, asylum seekers, refugees and migrants in Serbia were *de facto* deprived of their liberty in ACs and RTCs during the state of emergency.

such as immigration and border authorities. The Working Group recalled that UN Member States were accountable for the impacts companies have on the enjoyment of human rights and that they had to be particularly vigilant when they outsourced inherent government functions to private commercial actors that are motivated primarily by profit, fostering situations in which human rights are subordinated to goals of efficiency, effectiveness and cost-cutting.⁵⁶⁵

5.1.4.4. Conclusion and Recommendations

The prohibition of torture and ill-treatment is absolute. In this case, the victims of the ill-treatment belonged to a group that can be considered vulnerable on a number of grounds – they were children, unaccompanied by their parents or guardians and the Serbian system was the only one that could have protected them. Many unaccompanied and separated children have come from war-ravaged countries or extremely violent societies, and are already deeply traumatised by their experiences in their countries of origin.

Therefore, the CRM and the SWCs, as well as other authorities, must improve their treatment of unaccompanied and separated children in Serbia. Given the children's vulnerabilities, they must give priority to protecting and supporting this group of asylum seekers and provide them with treatment facilitating the fulfilment of their needs.

Security of facilities, such as ACs, involves the exercise of public powers by the guards engaged by the state. Therefore, the state is under the obligation to make sure that such powers are not exercised by unprofessional and violent individuals, especially in facilities in which unaccompanied and separated children are living. To recall, the Committee on the Rights of the Child⁵⁶⁶ criticised Serbia for placing unaccompanied children under 16 in ACs which lacked living conditions suitable for children and trained staff to care for them. The implementation of the Committee's recommendation in that regard is still pending. The described events corroborate that the CRM's decision to designate the Bogovađa AC for the accommodation of unaccompanied and separated children was not a good one.⁵⁶⁷

BCHR was told at the end of the reporting period that the relevant prosecution service was conducting a preliminary investigation of the security guards, who had abused the unaccompanied and separated children, and had required of the police to collect the requisite information. The relevant authorities need to exercise their powers adequately and as soon as possible to ensure the protection of unaccompanied and separated children, whilst focusing on their vulnerabilities.

565 Working Group's report, paras. 75 and 76.

566 *Concluding observations on the combined second and third periodic reports of Serbia*, Committee on the Rights of the Child, UN. Doc. CRC/C/SRB/CO/2-3, 7 March 2017, para. 56 (b) and 57 (b).

567 More in *Right to Asylum, Periodic Report for January-March 2020*, pp. 29–30.

5.2. Situation of Asylum Seekers Survivors of Gender-Based or Sexual Violence

Although neither the Refugee Convention nor its Protocol specifically reference gender or sex in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment.⁵⁶⁸ Back in 1991, UNHCR recommended a broad interpretation of the refugee definition to include individuals persecuted on account of their gender.⁵⁶⁹ UNHCR defines sexual and gender-based violence (SGBV) as violence targeting individuals on the basis of their sex or gender.⁵⁷⁰

Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.⁵⁷¹ This part of the Report will mostly focus on women, since they are the victims of these types of persecution the most often. However, gender-related applications have also been filed by men, as BCHR's practice over the past few years confirms.⁵⁷²

Gender-based violence may have occurred in the applicants' country of origin, *en route* or in the country in which they applied for asylum and decided to settle down. In addition to the basic needs shared with all refugees, refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.⁵⁷³

A number of female migrants and asylum seekers have come to Serbia alone, with their children or in the company of men who they may not be married or related to. Unfortunately, the exact number of migrant women and girls

568 *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/01, 7 May 2002, para. 6.

569 *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva, July 1991, available at: <https://bit.ly.co/5Ycp>.

570 It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty. See more in: *Sexual and Gender Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, UNHCR, May 2003, available at: <https://bit.ly/39kqLSi>.

571 *Ibid.*

572 For instance, in 2019 and 2020, BCHR represented several LGBTI men, some of whom were victims of sexual violence in their countries of origin.

573 *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva, July 1991, para. 3, available at: <https://bit.ly.co/5Ycu>.

in Serbia and how many of them are SGBV survivors cannot be ascertained since the state authorities do not keep nationwide records of the number of migrants in Serbia.

Systemic support to SGBV survivors is still underdeveloped in Serbia and is generally limited to assistance extended by NGOs. There is still a lack of understanding of and sensitivity to SGBV among some authorities responsible for the protection of refugees, which will be discussed in more detail below.

5.2.1. Asylum Authorities' Decisions on Gender-Based Asylum Applications

The Serbian Constitution guarantees the right to refugee protection (asylum) to foreign nationals and recognises sex or gender as grounds of persecution.⁵⁷⁴ The LATP explicitly recognises sex or gender as grounds of persecution and as grounds for asylum in Serbia.⁵⁷⁵ Under the LATP, acts of persecution may include physical or mental violence, including sexual and gender-based violence,⁵⁷⁶ as well as acts of a gender-specific nature.⁵⁷⁷ The LATP also recognises membership of a particular social group as grounds of persecution.⁵⁷⁸ Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sex, gender, gender identity or sexual orientation.⁵⁷⁹

5.2.1.1. Asylum Office Decisions

In 2020, the Asylum Office upheld several asylum applications in which the gender dimension dominated. They were filed by asylum seekers victims of sexual abuse because of their LGBTI orientation or single mothers with children from areas ravaged by war and armed conflict.

In the first quarter of the year, the Asylum Office granted refuge⁵⁸⁰ to a mother and daughter from Burundi, who had fled their country of origin out of fear of persecution by the authorities.⁵⁸¹ The mother, X.Y., had been branded as an enemy of the Government,⁵⁸² arbitrarily deprived of her liberty and

574 Art. 57(1), Serbian Constitution.

575 Art. 24, LATP.

576 Art. 28(2(1)), LATP.

577 Art. 28(2(6)), LATP.

578 Art. 26(5), LATP.

579 Art. 26(2), LATP.

580 Asylum Office Ruling No. 26–2328/19 of 24 February 2020.

581 More in *Right to Asylum, Periodic Report for January-March 2020*, p. 20.

582 After the 2015 civic and political protests against the then President of Burundi, the government forces re-established control, launching repressive campaigns, fraught with gross

tortured. During its review of the merits of the application, the Asylum Office consulted credible reports on the security situation in Burundi⁵⁸³, and focused on the status of women.⁵⁸⁴ In another case, the Asylum Office granted subsidiary protection⁵⁸⁵ to a Syrian national, who had left her country of origin with her underage children for security reasons.⁵⁸⁶ In its decision, the Asylum Office properly examined the risks of ill-treatment of family members in Syria. The Asylum Office's was commendably guided by the principle of the best interests of applicant H's son and daughter in its assessment of the security situation and armed conflicts in the country of origin.⁵⁸⁷

Another good practice example is the Asylum Office's decision to grant refuge⁵⁸⁸ to Iranian national Y., who had fled his country of origin in fear of persecution and capital punishment to which LGBTI persons living in that country are subjected.⁵⁸⁹ Apart from consulting the relevant reports on the situation of the LGBTI population, notably the UNHCR Guidelines Claims to Refugee Status based on Sexual Orientation and/or Gender Identity, the fact that the Asylum Office took into account Y's psychological assessment is particularly relevant as well.⁵⁹⁰

violations of the human rights of individuals accused of participating in the demonstrations or the abortive coup.

- 583 *Burundi: Treatment of Tutsis, in particular, young Tutsis, by the authorities; their treatment at the ports of entry*, April 2015 – November 2015, Immigration and Refugee Board of Canada, 30 November 2015, available at: <https://bit.ly/3eOCIOQ>; *Report of the Secretary-General on the United Nations Electoral Observation Mission in Burundi*, United Nations Security Council, UN. Doc. S/2015/98516, December 2015, available at: <https://bit.ly/2yKk1WA>; *Report of the Commission of Inquiry on Burundi*, UN Human Rights Council, UN. Doc. A/HRC/36/54, (6. avgust 2017), available at: <https://bit.ly/2x9NkBm>.
- 584 The Asylum Office also took into account the UNHCR Guidelines, according to which applicants (in this case the daughter, Y. Y.) need not have personally experienced persecution and that what, for example, happened to their friends and relatives and other members of the same racial or social group may well show that they have well-founded fear that eventually they will also become a victim of persecution. See more in: *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/12/09, UNHCR, 23 October 2012, available at: <https://bit.ly/5KU9>.
- 585 Asylum Office Ruling No. 26–57/20 of 23 October 2020.
- 586 More in the section 3.1. Asylum Office.
- 587 *Ibid.*
- 588 Asylum Office Ruling No. 26–2467/17 of 15 January 2020.
- 589 Under the Iranian Criminal Code, same-sex relationships warrant a death penalty. More in: *Freedom in the World 2018 – Iran*, Freedom House, (19. januar 2018), available at: <https://bit.ly/2x6a4LL>.
- 590 In Y's case, BCHR, however, needs to draw attention to the duration of the asylum procedure – over 700 days passed from the day he applied for asylum to the day the Asylum Office rendered its decision. The Asylum Office has to give priority to applications filed by LGBTI

The Asylum Office recognised fears of persecution of asylum seekers who filed gender-based applications in the past as well, specifically those filed by SGBV survivors⁵⁹¹ and LGBTI persons.⁵⁹² However, its rulings on such claims were not always consistent either in the past⁵⁹³ or in 2020.⁵⁹⁴

In the case of a transgender man K.K., a national of Bosnia and Herzegovina, the Asylum Office issued a ruling rejecting his application⁵⁹⁵ because he had not proven his well-founded fear of persecution. The Asylum Office rejected his application despite the fact that K. K. had presented credible proof and detailed claims of the multiple risks he had been exposed to in his country of origin since he was young because of his gender identity.⁵⁹⁶ As opposed to the case of Iranian national Y. described above, the Asylum Office did not consult the UNHCR Guidelines, under which grave violations of the fundamental human rights of people of a different sexual orientation or gender identity, whether or not the asylum seekers experienced them personally or have well-founded fears that they will experience them, can be considered persecution in the meaning of the Refugee Convention. An applicant may have been subjected to various measures not in themselves amounting to persecution, but the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”.⁵⁹⁷ Despite K.K.’s claims of discrimination on multiple grounds, domestic violence and sexual harassment impinging on his health, the Asylum Office stated the following in the reasoning of its decision:

The provocations and incidents K.K. alleges he had been exposed to in his country of origin, regardless of his response to them, cannot in any case be

persons and other vulnerable groups of asylum seekers to minimise their additional traumatising and feelings of uncertainty about the outcome of the asylum procedure.

591 Asylum Office Ruling No. 26–1403/19 of 11 December 2019. More in *Right to Asylum, Periodic Report for January-March 2020*, pp. 18–20.

592 See *Right to Asylum 2019*, p. 138.

593 *Ibid.*

594 For instance, the Asylum Office three times reviewed asylum applications by a single mother and a child from Iran, who were victims of domestic violence in Iran and were not protected by the local authorities. The Asylum Office rejected their application in a decision forwarded to BCHR in January 2020. More in *Right to Asylum, Periodic Report for January-March 2020*, pp. 21–23. See also the Asylum Office’s Ruling No. 26–1599/19 of 13 October 2020.

595 Asylum Office Ruling No. 26–2347/19 of 8 June 2020.

596 K. K. had been a victim of domestic violence because of his gender identity. The community’s discrimination against him also impinged on his psychological well-being.

597 *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, UNHCR, January 1992, para. st. 53.

considered discrimination that reached the threshold of persecution, given that the psychological state of the applicant and his personal perceptions of persecution are not decisive in decisions granting refugee status.

The Asylum Office did not properly or fully explain why it had not taken into account the evidence K. K. submitted to substantiate his claims. The Asylum Office rendered similar decisions on several other applications filed by LG-BTI persons, where it did not establish that they had well-founded fear of persecution.⁵⁹⁸

5.2.1.2. Gender Equality and Sensitivity

The LAMP enshrines the principle of gender equality and sensitivity,⁵⁹⁹ which entails the obligation of the competent asylum authorities to respect gender equality and interpret the LAMP in a gender-sensitive manner.⁶⁰⁰ This, *inter alia*, means that female asylum seekers accompanied by men should be interviewed separately from their male companions, i.e., husbands,⁶⁰¹ which is especially important in asylum applications comprising gender elements.

Therefore, during the interviews, Asylum Office staff should comply with the established standards and measures⁶⁰² that are specially tailored to SGBV survivors. They should be neutral, compassionate and objective and avoid any body language or gesticulation that could be perceived as intimidating, culturally insensitive or inappropriate.⁶⁰³

The principle of gender sensitivity also entails the asylum seekers' right to request to be interviewed by police officers of the same sex, or to be assisted by translators or interpreters of the same sex.⁶⁰⁴ Practice has shown that this legal

598 See Asylum Office Rulings No. 26–2039/19 of 17 August 2020 and No. 26–1515/19 of 13 August 2020. More in: *Right to Asylum, Periodic Report for July-September 2020*, pp. 18–22.

599 Art. 16, LAMP.

600 More in *Right to Asylum 2019*, pp. 140–141.

601 Art. 16(4), LAMP. In practice, this principle applies to all asylum seekers, wherefore the official asylum actions are conducted separately for men and women. This possibility is extremely important given that SGBV survivors may be afraid and ashamed to speak about the violence in the presence of their partners or compatriots. On the other hand, this practice is not applied to all family members. For instance, the Asylum Office always interviews children in the presence of their parents or guardians..

602 *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, Geneva 2019, p. 90.

603 In BCHR's experience, the practice of police officers receiving gender-based asylum applications and interviewing the applicants is not fully consistent. BCHR has gained the impression that some officers are more sensitised than their colleagues.

604 Art. 16(2), LAMP.

possibility given to asylum seekers is of great importance considering the sensitivity of gender-related asylum applications and is generally complied with.⁶⁰⁵

However, BCHR ascertained that Asylum Office staff did not respect this principle in several cases during the reporting period,⁶⁰⁶ where female asylum seekers explicitly required the presence of specific interpreters, even male ones, for various, albeit fully legitimate reasons.⁶⁰⁷

Only one male Asylum Office officer is deployed in the Banja Koviljača AC to receive asylum applications.⁶⁰⁸ Particularly vulnerable asylum seeking women and men are not comfortable with telling him about their traumatic experiences.⁶⁰⁹ In view of the above considerations, BCHR is of the view that it would be best to always provide asylum seekers with the possibility of declaring whether they prefer to be interviewed by an officer and assisted by an interpreter of their sex.

5.2.1.3. Conclusion and Recommendations

The situation of asylum seeking and refugee women is particularly sensitive since they leave their countries of origin due to well-founded fear for their lives, persecution on grounds of sex and various gender roles attributed to them in the societies they come from. They are frequently discriminated against and the violence they are victims of is often justified by their culture, tradition, and harmful

605 More in *Right to Asylum 2019*, pp. 144–146.

606 The Asylum Office on several occasions engaged male interpreters to assist in cases of women applicants who had filed gender-based claims. BCHR gained the impression that this happened either because the officers were under the obligation to conduct the asylum actions as soon as possible or because no female interpreters for the languages at issue were available. In such instances, the BCHR usually contacted the officers handling the applications or sent them a letter asking that they conduct the actions in accordance with the LATP; the officers obliged, rescheduling the actions when they were unable to find a female interpreter.

607 A female asylum seeker from Iraq, an SGBV survivor staying in NGO Atina's safe house, asked to be assisted by interpreter O. during the interview, because she had gotten to know him well and come to trust him. BCHR considered her request legitimate given the exceptional importance of ensuring that particularly vulnerable asylum seekers can give their statements in an enabling environment, in which they feel comfortable and encouraged to openly discuss their problems and traumatic experiences. In one other case, a female asylum seeker from Turkey said that she did not have any preferences about the sex of the interpreter at the oral hearing, as long as s/he was not Turkish. In that case, the Asylum Office engaged a male interpreter, who was a Serb national; no problems arose during the interview.

608 A male Asylum Office officer has been deployed to the AC in Banja Koviljača, to receive asylum applications and issue IDs to asylum seekers. Interviews are conducted in the AC by Asylum Office case officers who come from Belgrade.

609 BCHR clients, who have been living in the AC, feared their personal circumstances would be revealed to the other AC residents or staff. To recall, Art. 19 of the LATP enshrines the principle of confidentiality of the asylum procedure.

practices in their countries of origin, which are based on the notion of women's inferiority to men.

The LATP recognises sexual and gender-based violence as persecution and provides for adequate protection and treatment of foreigners submitting gender-based applications during the asylum procedure. The Asylum Office should pursue its good practices and continuously improve its work and strengthen the asylum system. Its officers need to receive training on gender-based applications and fully respect the LATP during the implementation of the asylum procedure. It is critical that Asylum Office staff keep abreast of the situation and violations of the human rights of particularly vulnerable groups of refugees, such as SGBV survivors. This will improve the quality of their decisions, ensuring they are based on proper and thorough findings of fact in each particular case.

In each individual case, the Asylum Office should promptly inform asylum seekers of the principle of gender equality and sensitivity and of all the forms of protection they can avail themselves of. The relevant authorities must create a climate of trust to ensure proper re-examination of gender-based asylum applications and protection of the victims. This entails allowing asylum seekers to choose the sex of the officers and interpreters involved in all the official actions throughout the procedure.

5.2.2. Identification of Vulnerabilities and Response of the Relevant Authorities

As already noted, no official records of asylum seekers victims of violence in their countries of origin, *en route* or upon arrival in Serbia are in place yet. Many survivors are reluctant or afraid to report the violence as well, for various reasons.⁶¹⁰

BCHR's data show that women accounted for 181 of all foreigners whose intention to seek asylum was registered in 2020.⁶¹¹ BCHR lawyers extended legal aid to 35 migrant women, who have or are presumed to have experienced SGBV in the reporting period. Thirty-three of them were registered by the asylum authorities and 14 asked the BCHR to represent them in the asylum procedure.

The LATP provides for the provision of special procedural and reception guarantees to individual vulnerable categories of asylum seekers.⁶¹² As noted at the beginning of this Chapter, their application is not fully clear. BCHR has as yet been unable to ascertain how this principle is applied to survivors of gender-based violence and asylum seekers at risk of such violence.

610 Reasons why survivors of violence do not report violence are manifold; fear, shame and embarrassment, dependence on their abusers, the language barrier, doubts and mistrust, even unawareness that they are victims. More in *Right to Asylum 2019*, p. 136.

611 BCHR is not in possession of such data concerning underage girls.

612 Art. 17, LATP.

Prompt identification of the asylum seekers' vulnerabilities is crucial for applying special procedural and reception guarantees in the meaning of the LATP. The relevant authorities should carry out the procedure for identification of the asylum seekers' personal circumstances continuously, as soon as reasonably possible after the initiation of the asylum procedure.⁶¹³

Most assistance to such asylum seekers has been extended by NGOs in the field.⁶¹⁴ To the best of BCHR's knowledge, Atina is the only NGO in Serbia that extends support⁶¹⁵ and accommodation in its safe house to asylum seeking SGBV survivors and asylum seekers at risk of such violence.⁶¹⁶ Its assistance is crucial because it provides vulnerable asylum seekers with safe accommodation for a specific period of time, as well as support throughout the asylum procedure. However, as BCHR already warned,⁶¹⁷ this solution is neither a lasting one, nor sufficient to respond to the major needs of asylum seekers at risk of SGBV.

5.2.2.1. Identification of SGBV Survivors and Their Accommodation

In principle, police officers immediately refer asylum seeking women to ACs or RTCs, as soon as the issue them registration certificates.⁶¹⁸ The Asylum Office approves their referral to a safe house in the event the registering officers establish or suspect that the women are victims of violence.⁶¹⁹ In exceptional cases of particularly vulnerable asylum seekers, the Asylum Office consents to their accommodation in private lodgings rather than an AC or RTC immediately after their registration.⁶²⁰

Furthermore, the MOI has on occasion referred registered women travelling alone, single mothers and women survivors of SGBV to centres that can afford them a higher degree of privacy and safety.⁶²¹ However, this was not so easy dur-

613 Art. 17(2 and 3), LATP.

614 NGO Atina is the only organisation extending assistance to these people; it provides them with accommodation in its safe house and implements various support and empowerment programmes.

615 Other international and non-government organisations focusing on refugee rights have also been extending various forms of support to vulnerable groups. They include, notably, PIN, DRC, et al.

616 More in *Right to Asylum 2019*, p. 146.

617 *Ibid.*

618 Asylum seekers are under the obligation to report to the AC they are referred to within 72 hours from the moment they are issued their registration certificates.

619 The Asylum Office recognised the special needs and vulnerabilities of women victims of gender-based violence.

620 For instance, in mid-2020, the Asylum Office granted BCHR's request to allow a Turkish national and her seven-year-old son to move to private lodgings immediately after registration rather than an AC. The Asylum Office thus acted in accordance with Art. 50(3) of the LATP.

621 Women were mostly referred to the ACs in Banja Koviljača and Bogovada over the past few years.

ing the state of emergency introduced in response to the COVID-19 pandemic. Namely the ACs and RTCs became overcrowded after the authorities ordered the accommodation of all asylum seekers and migrants in ACs and RTCs (and restricted their freedom of movement).⁶²² Such circumstances particularly impinged on the safety and security of asylum seekers belonging to vulnerable groups.⁶²³

Notwithstanding the Asylum Office's good practice in handling some particularly vulnerable cases, the MOI and the CRM, as the competent asylum institutions, still lack mechanisms for the prompt identification of the vulnerabilities of specific groups of asylum seekers and for providing special reception conditions.⁶²⁴ They are often assisted by NGOs focusing on the protection of these groups.

CRM officers alert NGOs (usually Atina) when they identify vulnerable asylum seekers or survivors of gender-based violence in ACs or RTCs,⁶²⁵ and refer them to the safe houses (notifying the CRM thereof).⁶²⁶ On 9 March 2020, the CRM referred a single mother and her child to a safe house, where they stayed until 13 May.⁶²⁷ In another case, the CRM decided to transfer a mother and her three children to another facility for the accommodation of migrants and asylum seekers.⁶²⁸

5.2.2.2. Acts of Violence and Problems in Practice

The CoE Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)⁶²⁹ is the first legally binding document on the prevention of violence against women in Europe that has been

622 More in section 4.1.3. Restrictions of the Freedom of Movement of Asylum Seekers and Migrants in ACs and RTCs.

623 Several asylum seeking women, who had come to Serbia alone, told BCHR that the Banja Koviljača AC was extremely overcrowded during the state of emergency. One of them said she was extremely apprehensive because so many male asylum seekers had moved in. Alternative accommodation (transfer to another AC or a safe house) was impossible because of the pandemic and the decision prohibiting migrants and asylum seekers from leaving the ACs and RTCs.

624 BCHR's opinion based on information obtained in the field and during representation of asylum seekers over the past few years.

625 SGBV is usually identified by competent representatives of NGOs and CRM representatives. The victims rarely report it.

626 More in *Right to Asylum 2019*, p. 145.

627 Information obtained from the CRM in response to BCHR's request for access to information of public importance No. 019-4916/2-2020 of 25 December 2020. BCHR was not told which AC the mother and child had lived in, the reason for their transfer, or whether they were moved back to it.

628 *Ibid.* BCHR was not told which AC the family had lived in or the AC they were transferred to in this case either.

629 *Official Gazette of the RS – International Treaties*, 12/13.

ratified by the RS.⁶³⁰ The Istanbul Convention sets clear standards for the protection of migrant, asylum seeking and refugee women from violence.

The rights and obligations arising from Serbian laws and international treaties Serbia has ratified, as well as penalties for their violations, apply not only to Serbian nationals, but to all individuals in its territory as well. The competent Serbian authorities sometimes apparently forget that fact, usually because they believe that refugees and migrants will not be staying long in Serbia. Their failure to promptly respond to the migrants' violations of the law extends also to SGBV cases.⁶³¹ The problem can also be ascribed to the fact that the survivors are reluctant to report their abusers or are even unaware that they are victims of such violence.⁶³²

In 2019, Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern because refugee women in the RS continued to experience multiple and intersecting forms of discrimination and inadequate protection from gender-based violence.⁶³³ It recommended Serbia intensify its efforts to raise awareness among women, including disadvantaged groups of women and refugee women, of their rights and the existence of laws protecting them.

In BCHR's experience, SGBV survivors are mostly migrant women from Iran, Iraq, Afghanistan, Burundi, Nigeria and Somalia.⁶³⁴ They are especially vulnerable if they are travelling with their husbands or other men, when they depend on their actions and decisions regarding their common future.⁶³⁵ Some women travelling with their family members were less reluctant to talk about violence than women travelling alone, but, in BCHR's experience, that was not always the case.⁶³⁶

630 The Istanbul Convention is the first international treaty that includes the definition of gender as “ the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”. The Convention also establishes a strong link between ensuring gender equality and the eradication of violence against women. Based on this premise, it recognises that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.

631 More in *Right to Asylum 2019*, pp. 149–152.

632 *Ibid*, pp. 150–151.

633 *Concluding Observations on the fourth periodic report of Serbia*, CEDAW, UN Doc. CE-DAW/C/SRB/CO/4. 14 March 2019, p. 14, para. 43.

634 Especially in the context of multiple discrimination against and mass violations of the human rights of women in those states.

635 BCHR formed this opinion based on its experience in representing and providing legal aid to some women coming from those countries.

636 A Syrian national came to Serbia with her two underage children and a man impersonating her husband. They applied for asylum as a family, and the Asylum Office decided to review

Domestic violence targeting women is the most frequent form of violence in the refugee population. LGBTI persons are often discriminated against⁶³⁷ and abused as well. Such violence occurs not only in their countries of origin but also on their arrival in Serbia, in the ACs or RTCs.

The rules on actions to be taken when violence is identified or reported⁶³⁸ obviously do not provide the victims with sufficient protection.⁶³⁹ The CRM notifies the police and the relevant SWC in the event it is ascertained that a crime containing an element of SGBV has been committed⁶⁴⁰ in an AC or RTC⁶⁴¹ and the victim is promptly provided with medical assistance and an interpreter.

According to data the CRM forwarded to BCHR,⁶⁴² CRM registered 13 cases of domestic violence in ACs⁶⁴³ and RTCs⁶⁴⁴ during the first 10 months of the year. The victims included women, as well as boys and girls. Most of the victims were nationals of Iran. Eleven of the abusers were men and two were women.⁶⁴⁵

When it comes to the practice of judicial bodies in this area,⁶⁴⁶ according to information obtained by BCHR, migrant perpetrators of violence are usually

the applications jointly. It was only during the second interview that the woman revealed the truth to the police, in order not to undermine the credibility of her asylum application and to protect herself and her children.

637 A transgender man from Bosnia and Herzegovina, who was living in the AC in Banja Koviljača, moved out to private lodgings after being subjected to discrimination by the other residents, as well as CRM staff, for several months. Several civil society organisations helped him move out. More on this case in *Right to Asylum 2019*, p. 149.

638 The national Standard Operating Procedures (SOP) for the prevention and protection of refugees from SGBV deal with the provision of assistance in SGBV cases in ACs and RTCs. The SOP were developed jointly by the Ministry of Labor, the MOI, the Ministry of Health, the Ministry of Justice, the Gender Equality Coordination Body, the CRM, the Serbian Institute for Social Protection, the Public Health Institute Dr. Milan Jovanović-Batut, independent national human rights institutions, the UN Population Fund in Serbia, UNHCR, UNICEF, and civil society organisations present in the centres.

639 More in *Right to Asylum 2019*, pp. 150–153.

640 The victim, if decides to report the violence, notifies the AC or RTC management, police and SWC about it.

641 The Belgrade SWC responded to domestic violence reports twice in 2020. On one case, it transferred an Iraqi asylum seeker, who had been physically abused, and her five-year-old child from the Krnjača AC to Atina's safe house.

642 CRM's reply to BCHR's request for access to information of public importance No. 019–4916/2–2020 of 25 December 2020.

643 Three cases were registered in ACs, one in the Krnjača AC and two in the Tutin AC.

644 Cases registered in RTCs – four in the Šid RTC, two cases in the Vranje RTC, one in the Divljana RTC and one in the Bosilegrad RTC.

645 The women were nationals of Afghanistan. The men were nationals of Iran (6), Iraq (2), Pakistan (1), Palestine (1) and Kazakhstan (1).

646 According to Art. 7(1) of the Domestic Violence Law, the police, public prosecutors, courts of general jurisdictions and misdemeanor courts are competent state bodies in preventing

issued temporary restraining orders⁶⁴⁷ but are not prosecuted for their crimes. Such impunity for SGBV, registered in the past as well,⁶⁴⁸ does not provide survivors with guarantees that they will be fully protected whilst in Serbia.

5.2.2.3. Conclusion and Recommendations

The LATP does not define precisely what special procedural and reception guarantees entail, while the practice of the relevant authorities indicates that individuals that could benefit from them are not promptly identified. Therefore, the relevant authorities, especially the MOI and the CRM, must increase their resources and improve their cooperation and lay down rules for the prompt identification of SGBV survivors.

Serbia should increase the number of sustainable shelters for SGBV survivors and provide them with other safe havens where they will be protected from violence. State authorities, especially the judiciary, need to play a more active role in supporting the victims, especially in the context of CEDAW's recommendations to Serbia. This will put in place conditions for providing systemic and effective protection to SGBV survivors and people at risk of SGBV, regardless of their nationality, legal status or how long they intend to stay in Serbia.

Furthermore, asylum institutions and NGOs need to invest additional efforts in empowering victims to report violence and to extend them continuous support in that respect. This entails the organisation of various joint activities and workshops raising awareness of SGBV among women, girls, as well as men, in a way appropriate for their age, culture and gender.

domestic violence and supporting the victims of domestic violence and victims of criminal offences determined by this law, as well as centers for social work as institutions.

647 According to Art. 17 of the Domestic Violence Law. In response to its request for information of public importance, BCHR obtained information that the Belgrade First Basic Court that it had issued a ruling on the motion of the relevant prosecution service and the police to extend the validity of restraining orders against four migrants (one national of Iran, two nationals of Tunis and one national of Turkey). Such an order was also issued against a Pakistani national on the motion of the Belgrade Second BPPS. The Vranje BPPS filed a motion with the relevant court to issue a restraining order against an Iranian national reported for domestic violence. Furthermore, a Loznica police officer asked the relevant prosecutors to apply for a restraining order against an Afghani national.

648 See more in *Right to Asylum 2019*, pp. 154–156.

6. INTEGRATION

6.1. Introduction

Integration is the path to the refugees' naturalisation in Serbian society and effective access to the rights they are guaranteed under international and national law. Integration of refugees is a dynamic and multi-faceted two-way process requiring efforts of all key stakeholders, including the refugees' readiness to adjust to society in the host country, without having to forsake their own culture or identity. On the other hand, it requires the readiness of the state of refuge and the local community to accept these individuals. The integration process is complex and slow. Its ultimate aim is the full integration of refugees in the society of the state granting them international protection. Therefore, integration involves integration in the legal, economic, social and cultural senses and provides refugees, who have fled war, conflicts and persecution, with the opportunity to live in dignity.

The LATP provides for the integration of foreigners granted asylum in the social, cultural and economic life of the country and their naturalisation.⁶⁴⁹ The LATP also sets out that the Republic of Serbia will extend support to the implementation of the integration-related provisions of that law commensurate with its capacities.⁶⁵⁰

Foreigners granted the right to asylum, either refuge or subsidiary protection, are entitled to: residence, accommodation, freedom of movement, ownership of property, health care, education, freedom of religion, family reunification, access the labour market, legal and social assistance, and assistance in integration.⁶⁵¹ From the legal perspective, they have equal rights as Serbian nationals to education, intellectual property, access to justice and legal aid.⁶⁵² Like Serbian nationals, they, too, may be exempted from paying court and administrative fees. The rights of foreigners granted asylum in Serbia to access the labour market, health care and own movable and immovable property are governed by regulations on the status of foreigners in these fields.⁶⁵³

649 Art. 71, LATP.

650 *Ibid.*

651 Art. 59, LATP.

652 Arts. 60–73, LATP.

653 *Ibid.*

Integration is partly regulated also by the Decree on the Integration of Persons Granted the Right to Asylum in the Social, Cultural and Economic Life (hereinafter: Integration Decree). The Decree on Criteria for Establishment of Priorities in Accommodation of Persons Granted the Right to Refuge or Subsidiary Protection and the Conditions of Use of Housing for Temporary Accommodation (hereinafter: Accommodation Decree) is also relevant to the integration of refugees.⁶⁵⁴

Although Serbia is not an EU Member State, its regulations on asylum are very similar to those of the Member States, although they still do not fully comply with the EU Directives. According to BCHR's records, at least 23 foreigners granted the right to asylum have left Serbia over the past three years because of their inability to integrate in its society in the long-term. These data indicate that refugees may still be perceiving Serbia as a transit country in which they plan on staying only temporarily, which, naturally, is not conducive to their integration. The reasons do not lie solely in the legal lacunae and poor enforcement of the law, but also in the lack of motivation among the refugees to learn the language and adjust to the local culture.

Non-issuance of travel documents is the key legal obstacle and one of the main reasons why foreigners granted refuge have been leaving the RS.⁶⁵⁵ Persons who have decided to settle for good in Serbia have for years been facing obstacles arising from their inability to naturalise and lack of systemic support to their integration.

The CRM plays a key role in integration.⁶⁵⁶ The Ministry of Labour, Employment and Veteran and Social Issues (Labour Ministry) is also tasked with administrative duties regarding the rights and integration of foreigners granted the right to asylum.⁶⁵⁷ Under the LAMP, the Asylum Office shall notify them of their rights and obligations as soon as possible.⁶⁵⁸ Namely, the Asylum Office should instruct them orally or provide them with leaflets referring them to the CRM in order to exercise their rights and fulfil their duties under the Integration Decree.⁶⁵⁹ To the best of BCHR's knowledge, the Asylum Office has not done either yet.

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

655 Art. 91, LAMP.

656 Art. 10 (2), Migration Management Law, *Official Gazette of the RS*, No. 107/12.

657 Art. 19, Law on Ministries, *Official Gazette of the RS*, No. 128/20).

658 Art. 59(6), LAMP.

659 Under Art. 2(3) of the Integration Decree, the integration of persons granted the right to asylum in the social, cultural and economic life of the country shall be ensured by: prompt provision of all information on their rights, opportunities and obligations; Serbian language courses; familiarisation with Serbia's history culture and constitutional order; assistance in integration in the education system; assistance in exercising the right to health care and social protection; and, assistance in integration in the labour market.

Under Serbian law, foreigners granted international protection have greater rights than asylum seekers. As practice has shown, the complex process of integration would be more expedient and successful if it were launched earlier, i.e. if asylum seekers were granted greater rights. Therefore, this chapter will discuss integration of foreigners granted asylum, as well as how asylum seekers can realise individual rights that are important for their integration in Serbian society – the right to work, the right to health care, the right to marry, the right to education, et al.

The years-long integration-related difficulties, caused by the legal lacunae and inconsistencies, were exacerbated in 2020 due to the outbreak of the COVID-19 pandemic. In addition to the state of emergency, the unstable epidemiological situation that persisted until the end of the year impinged on the full enjoyment of many rights of refugees and asylum seekers in Serbia, especially their right to access the labour market. The pandemic also exacerbated the already considerably underdeveloped practices of the relevant national authorities. Most institutions suspended their activities temporarily, especially those involving face-to-face contacts with clients, or minimised them. The activities of the BCHR integration team were consequently limited as well.⁶⁶⁰ Its assistance to clients focused mostly on maintaining contact, provision of information and support primarily to privately accommodated refugees and asylum seekers, via phone, mobile applications and social networks.

All these integration-related challenges will be elaborated in detail in the ensuing sections. We will use the word ‘refugees’ to denote foreigners granted the right to asylum in the Republic of Serbia, except where it was important to specify the precise status of the foreigners under national law.

6.2. Right to Accommodation

Under the LATP,⁶⁶¹ foreigners granted the right to asylum shall be provided with assistance in accommodation, commensurate to the state’s capacities. Specifically, such persons are to be provided, via the CRM, with temporary housing or financial aid to rent temporary housing, for a period of one year from the day they are served the ruling granting them the right to asylum. The process is governed in greater detail by the Accommodation Decree.⁶⁶²

660 More in *Right to Asylum, Periodic Report for January-March 2020*, pp. 45–54.

661 Art. 61(2), LATP.

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

In BCHR's experience, refugees have been provided exclusively with financial aid,⁶⁶³ since the CRM does not have temporary housing at its disposal. The financial aid in the amount of the minimum wage the previous month is granted to refugees, who have no income or whose income per family member does not exceed 20% of that minimum wage.⁶⁶⁴ The identical amount of aid is granted single refugees and those living together with their families. It usually does not suffice to pay the rent and utility bills, especially in cities, and in case of larger families.

6.2.1. Challenges in Practice

Exercise of the right to accommodation is exacerbated by the large number of documents the applicants need to submit to the CRM. They include: photocopies of their ID, Foreigner Registration Number (FRN) certificates, bank card(s) and the ruling granting them asylum,⁶⁶⁵ certificates of unemployment and statements certified by a notary public. All adult family members are to submit certified statements confirming that they do not earn any regular or occasional income from employment, entrepreneurship, or property. The statements must be certified by a notary public in the presence of a court-sworn interpreter for the applicant's language. In BCHR's experience, all this is quite challenging since the applicants usually have to make a number of trips to town to collect the documents. Furthermore, the fees of the notaries public and court-sworn interpreters are unreasonably high.⁶⁶⁶

The applicants also need to be registered with the National Employment Service (NES), which issues certificates of unemployment. Refugees encounter similar problems here as well – the NES offices are usually in another city, the NES staff and/or the refugees do not speak foreign languages, while the form that they need to fill is in Cyrillic. The procedure is even more complicated if the refugees do not have a personal work permit. In that case, they first have to wait for such a permit, a month or even longer, especially in Belgrade.

Once the CRM approves their applications for financial aid, the refugees have to move out of the AC within a month. However, landlords usually require of their new tenants to pay a deposit together with the first month's rent; the

663 Art. 10(1(1)), Accommodation Decree.

664 The aid was slightly higher than 30,000 RSD (less than €300).

665 Without explanation, in accordance with the confidentiality principle.

666 Court-sworn interpreters charge around 6,000 RSD, while the notaries public charge 2,160 RSD per statement. More about the high costs of notaries public and lack of court-sworn interpreters and the challenges refugees and asylum seekers face in this area in *Right to Asylum 2019*, p. 189.

total costs of moving from the AC usually exceed the amount of money the refugees have, wherefore they usually move out the ACs with a delay.⁶⁶⁷ The CRM adopted seven rulings granting financial aid to nine BCHR clients in 2020.⁶⁶⁸

The refugees' quest for an apartment to rent is further exacerbated by the landlords' distrust, lack of information and prejudice against refugees, as well as the language barriers between them. This is why the refugees often give the potential landlords the telephone numbers of their legal representatives or integration advisers, who can provide them with additional explanations and information.

Several asylum seekers represented by BCHR left the AC in Banja Koviljača and moved to Belgrade in 2020. One of them was provided with accommodation by the company that hired him, in a building it owns, while some of them first stayed at hostels until they found adequate private lodgings.

6.2.2. Difficulties in Exercising the Right to Accommodation in the Context of the COVID-19 Pandemic

The BCHR regularly notified its privately accommodated clients of the restrictions of movement and curfews during the state of emergency. BCHR's team sent them the information in Serbian and English, via text messages, Viber or WhatsApp.⁶⁶⁹ The BCHR team also sent them electronically its "Let's Stop the Pandemic Together" brochure⁶⁷⁰ with user-friendly information on preventive measures in English, Arabic, Persian and Serbian.⁶⁷¹

A number of privately accommodated refugees and asylum seekers asked the BCHR integration team for help during the state of emergency – most of them had been dismissed from their jobs and needed primarily financial aid to cover their rent and utility costs, and their subsistence.⁶⁷²

667 In such situations, the BCHR helps its clients apply for one-off financial aid with the UN-HCR. They need to fill the application form and explain why they and their families need the aid.

668 Once they receive the rulings, their representatives need to send a letter on their behalf to the CRM that they waive the right to appeal, in order to speed up the process; otherwise, the ruling becomes final after the expiry of the 15-day statutory deadline.

669 The BCHR team sent the information out usually once a week, before the weekend, to enable them to buy their groceries or perform other chores before the curfew.

670 Let's Stop the Pandemic Together! BCHR, available at: <https://bit.ly/3gPo19r>.

671 The information on preventive measures in the brochure is universal and was based on the recommendations of WHO (<https://www.who.int/>) and the Serbian Centre for Disease Control and Prevention (<https://bit.ly.co/5Ydx>).

672 Families whose adult members lost their jobs and were unable to feed their children, let alone pay the rent, were in particularly dire straits.

The BCHR filed a total of 23 financial aid applications with the UNHCR on behalf of 34 people in the reporting period.⁶⁷³ Most of the applications were filed in the first half of the year, when many refugees were left jobless due to the state of emergency and the pandemic, and, thus, without any source of income.

6.2.3. Conclusion and Recommendations

Most refugees fall in the category of socially vulnerable people and are thus in need of substantial support and aid for housing. This particularly came to the fore in 2020 and the economic crisis caused by the COVID-19 pandemic. Refugees and asylum seekers, who had lost their regular income, were in need of aid, which was mostly provided by international organisations and local NGOs. Some state institutions⁶⁷⁴ also need to extend support to this group, commensurate to their capacities.

The BCHR reiterates its recommendation that the Serbian Government should amend the Accommodation Decree to ensure that the amount of financial aid for housing that is granted to refugees, especially those with one or more children, reflects the size of their families. Furthermore, the Serbian Government should simplify the application procedure and lower the costs the refugees have to bear. Finally, the Serbian Government should amend the Accommodation Decree and set participation in integration programmes as the requirement for realisation of the right to accommodation.⁶⁷⁵

6.3. Personal Documents and the Right to Freedom of Movement

The LATP lays down that the MOI may issue four types of IDs and travel documents for refugees.⁶⁷⁶ The ID templates are set out in the Rulebook on the Content and Format of the Asylum Application and the Contents and Formats of Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection.⁶⁷⁷

673 The BCHR filed 23 applications on behalf of six families and 17 individuals. The UNHCR list of successful applicants includes 66 BCHR clients, specifically 11 families and 29 individuals.

674 E.g., the SWCs and other institutions able to extend the requisite assistance.

675 Namely, Art. 59 of the LATP on loss of the right to financial aid for accommodation of refugees who do not attend Serbian language courses needs to be enforced consistently. In BCHR's experience, attendance of such courses mostly depends on the refugees' motivation and will. In practice, several foreigners granted refuge have never attended any Serbian language lessons, while, on the other hand, the CRM lacks the capacity to "monitor" attendance by all the individuals or check whether they comply with this obligation.

676 Under Art. 87 of the LATP, the MOI shall issue IDs for asylum seekers, IDs for persons granted refuge, IDs for persons granted subsidiary protection, IDs for persons granted temporary protection and travel documents for refugees.

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

The Minister of the Interior yet again failed to adopt the template of the travel document for refugees in 2020. Nor was the template of IDs for asylum seekers and refugees changed to include all the requisite elements. BCHR alerted to these shortcomings in its prior reports.

Refugees and asylum seekers are also entitled to a driving licence, which they are issued by the MOI after they pass the driving test or apply for exchange of their valid foreign driving licences for Serbian ones. The procedure is set out in the Road Traffic Safety Law (RTSL)⁶⁷⁸ and the Rulebook on Driving Licences.⁶⁷⁹ The legal lacunae in these regulations, however, impede the issuance of driving licences to refugees and asylum seekers. The RTSL does not recognise them as categories, which further complicates the exchange of their foreign driving licences by Serbian ones. These issues will be elaborated in greater detail in the ensuing sections.

6.3.1. Non-Issuance of Travel Documents

The Refugee Convention lays down that the Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory.⁶⁸⁰ A specimen travel document is available in the Annex to the Convention.

The Minister of the Interior still has not adopted a by-law governing the format of the travel document for refugees⁶⁸¹ although 12 years have passed since Serbia established the asylum system⁶⁸² and over two years have passed since the LAMP entered into force. The BCHR has for years now been alerting to this problem impinging on the integration of refugees in Serbia.

BCHR's clients include foreigners granted refuge or subsidiary protection over 10 years ago. Their full naturalisation in Serbia is almost precluded because they do not possess travel documents. Lack of travel documents de facto restricts their freedom of movement, which is in contravention of both the Serbian Constitution and the Refugee Convention.⁶⁸³ The resolution of the issue is thus of major importance.

678 *Official Gazette of the RS*, No. 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law, 9/16 – CC Decision, 24/18, 41/18, 41/18 – other law, 87/18 and 23/19.

679 *Official Gazette of the RS*, No. 73/10, 20/19 and 43/19.

680 Art. 28, Refugee Convention.

681 As he was under the duty to within the deadline set for in Art. 101 in conjunction with Art. 87(6) of the LAMP.

682 When the prior AL (*Official Gazette of the RS*, No. 109/07) entered into force.

683 Freedom of movement is enshrined in Art. 39 of the Serbian Constitution and Art. 2(2) of Protocol No. 4 to the ECHR.

The passports issued to the refugees by their countries of origin (if they even have them) have in most cases already expired; they cannot extend them because they cannot contact their countries of origin or their diplomatic missions. Therefore, most of them are left without any travel documents. Without valid travel documents, the refugees cannot go abroad and their freedom of movement is limited to the territory of Serbia, which has led to their general dissatisfaction and disappointment in its asylum system. The inability to travel has resulted in the violation of some of their other fundamental human rights as well, such as the right to respect for their family life and the right to work.⁶⁸⁴

In March 2020, the BCHR applied with the MOI Asylum Office for the issuance of travel documents for all its clients granted refuge.⁶⁸⁵ Rather than issuing rulings on all the application forms, the MOI sent BCHR a letter⁶⁸⁶ explaining that it was unable to issue travel documents for refugees because the technical requirements for issuing biometric travel documents were not fulfilled; the MOI letter was not in the form of an administrative enactment and did not contain the mandatory instruction on appeal, as required by the LGAP.⁶⁸⁷

The MOI's letter did not shed light on the reasons why it concluded that the technical requirements had not been met or why the requisite by-laws have not been adopted for over 12 years now. The MOI can use the specimen travel document in the Annex to the Refugee Convention, which was published in the SFRY Official Journal when the country ratified the Convention. In its letters to the MOI in 2019,⁶⁸⁸ the BCHR pointed out that UNHCR recommendations were not legally binding and that, although it was preferable to issue biometric travel documents, even the issuance of technically obsolete documents was better than refusal to issue any travel document, which was unlawful. The Border Police Directorate retorted that, "under the new standards of the International Civil Aviation Organization (ICAO) of 2015, all travel documents for refugees and stateless persons are to have a machine-readable zone".

After the Protector of Citizens announced that the MOI had acted on its recommendation to issue decisions on parties' requests in the form of administrative enactments,⁶⁸⁹ the BCHR integration team in November again filed

684 The vast majority of refugees cannot travel abroad and see their family members.

685 Pursuant to Art. 59(12) in conjunction with Art. 87 of the LATP.

686 MOI, Police Directorate, Border Police Directorate, letter Ref. No. 26/1403/19 of 1 June 2020.

687 Art. 141, LGAP.

688 More in *Right to Asylum 2019*, p. 165.

689 In October 2020, the Protector of Citizens posted on his website that the MOI had acted on his recommendation and ordered all units to change the way they processed applications by the members of the public. Their decisions must have the form of an administrative en-

applications with the Asylum Office to issue travel documents to all its clients granted refuge. The BCHR required of the MOI to reply to each application in the format including instruction on appeal, as recommended by the Protector of Citizens.⁶⁹⁰ The MOI did not reply to the applications by the end of the reporting period.

The BCHR filed an application with the ECtHR against Serbia complaining that it had denied persons granted the right to asylum the right to freedom of movement⁶⁹¹ by not issuing them travel documents. The state's failure to adopt a by-law on the format and content of the travel document for persons granted asylum in the Republic of Serbia cannot be grounds for restricting the freedom of movement in the meaning of the ECHR. The application was pending at the end of the reporting period.⁶⁹²

6.3.2. IDs Lacking Essential Elements

The MOI still has not eliminated the identified shortcomings of the IDs for refugees. The paper IDs are simple in format, handwritten and laminated, lacking biometric data. Their holders have for years now faced numerous problems in exercising their rights under the LATP.⁶⁹³ Such handwritten IDs are easy to forge and are met with distrust, causing the refugees much unpleasantness.⁶⁹⁴

The most problematic shortcoming is that such IDs lack the refugees' FRN, which are the equivalent of the personal identification numbers (PIN) assigned Serbian nationals. In order to claim specific rights, asylum seekers and refugees must in practice produce FRN certificates, which are issued by the Asylum Office for each specific purpose and may not be used for other purposes. This poses everyday

actment, i.e. include a reasoning and instruction on appeal. The Ombudsman's recommendation confirms the BCHR's claims about the shortcomings of the MOI's reviews of travel document applications. His press release of 14 October 2020 is available in Serbian at: <https://bit.ly.co/5LBY>.

690 To recall, Art. 145(3) of the LGAP lays down that authorities ruling on administrative matters at the initiative of the parties and in their interest, where the procedure does not involve direct ruling, must issue their rulings within 60 days from the day the procedure was initiated.

691 Art. 2 of Protocol No. 4 to the ECHR, under which everyone shall be free to leave any country, including his own.

692 *Seraj Eddin v. Serbia*, ECtHR, App. no. 61365/16 of 19 October 2016, communicated to the Government on 23 February 2018.

693 The IDs still lack protective elements other than the seal. The templates are filled manually by the Asylum Office staff. See the Rulebook on the Content and Format of the Asylum Application and the Content and Format of Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection, *Official Gazette of the RS*, No. 47/18.

694 More in *Right to Asylum 2019*, p. 167.

problems, especially given the fee⁶⁹⁵ that has to be paid for each copy of the certificate, except in specific cases set out in the law,⁶⁹⁶ when the fee is waived.⁶⁹⁷

Refugees have encountered numerous problems in practice because of their inadequate IDs: in registering with a health institution and opening a patient file and having a check-up without a biometric ID, opening a bank account, mistrust of potential landlords, bureaucratic problems during employment, et al. For instance, a BCHR client, who is stateless and has been granted asylum, had problems registering with a Belgrade out-patient health clinic; its staff did not know how to register him in the system, since he does not have a PIN or a biometric ID. The client had brought a copy of the FRN certificate issued to him so that he could exercise his right to health care, but the health professional ultimately dispensed with the formalities and examined him. He, however, refused to open the man a patient file although the latter resides in the clinic's catchment area.

Possession of technically more dignified biometric IDs would facilitate the refugees' integration and provide them with access to rights guaranteed by law on equal terms with Serbian nationals.

6.3.3. Difficulties in Obtaining Driving Licences

Under the RTSL, foreigners temporarily residing in Serbia, who have valid travel documents, foreign IDs or visas, may operate vehicles provided they have a foreign or international driving licence. They also need to have proof of the duration of their uninterrupted residence in Serbia. The RTSL lays down that an international driving licence shall be valid for 12 months, as of the day the foreigner is granted uninterrupted temporary residence exceeding six months or permanent residence in Serbia.⁶⁹⁸

Foreigners who want to exchange their driving licences for Serbian ones need to submit the following documents together with their application: their valid foreign driving licence and a court-sworn translation of the document, documents proving they have been granted temporary residence exceeding six months, paid the fees, a clean bill of health issued within the past six months and proof of identity.⁶⁹⁹ Refugees and asylum seekers also need to submit their FRNs and status certificates.

695 The refugees have to pay a 320 RSD fee for each copy of the certificate, plus the bank fee.

696 Art. 19, Law on Republican Administrative Fees (*Official Gazette of the RS*, No. 43/03, 51/03 – corr., 61/05, 101/05 – other law, 5/09, 54/09, 50/11, 70/11, 55/12, 93/12, 47/13, 65/13 – other law, 57/14, 45/15, 83/15, 112/15, 50/16, 61/17, 113/17, 3/18 – corr., 50/18, 95/18 and 38/19).

697 The fee is waived if the certificate is issued for the purpose of exercising labour, health care or welfare rights.

698 Art. 178 RTSL.

699 A valid ID for foreigners or a travel document.

The procedure for exchanging the refugees' driving licences with Serbian ones is not complicated, but the collection of the requisite documents is time consuming. However, police departments and stations do not have a consistent practice concerning the issuance of driving licences to asylum seekers. The Loznica police station, for instance, refused to issue a BCHR client a Serbian driving licence in exchange for his foreign one claiming he was not entitled to one. On the other hand, the Belgrade traffic police consider that both refugees and asylum seekers are entitled to exchange their driving licences and have issued Serbian licences to all the applicants.⁷⁰⁰

Mention should be made of the risk of disclosure of confidential information about refugees and asylum seekers during the issuance of their driving licences. The licence exchange procedure is set out in the Rulebook on Driving Licences.⁷⁰¹ Under the Rulebook,⁷⁰² the exchanged foreign driving licences shall be returned to the authorities of the states that had issued them via their diplomatic-consular missions in Serbia. The enforcement of this provision in case of refugees and asylum seekers would lead to a violation of the confidentiality principle under the LAMP,⁷⁰³ which prohibits the disclosure of information about refugees to their countries of origin. This is why the BCHR has been referring to the LAMP and the confidentiality principle whenever it applied for the exchange of its clients' driving licences.

6.3.4. Conclusion and Recommendations

The successful integration of persons granted asylum in Serbia is possible only if they can exercise all their guaranteed rights, in compliance with international conventions and other ratified documents. Given the current situation concerning personal documents, it may be concluded that the practice of issuing them has not been improved since the asylum system was established twelve years ago. The adoption of the by-law on the format of the travel document for refugees is still pending, while the MOI is refusing to use the specimen travel document envisaged by the Refugee Convention. The MOI should adopt the by-

700 Some BCHR clients decided to buy a car after they exchanged their driving licences. One Afghani client asked the BCHR for help, because he had difficulties paying the ownership transfer tax. Namely, although he produced his FRN certificate, the tax authorities could not enter his data in their electronic records and had to match the FRN number with a number assigned by the Tax Administration. The problem was soon resolved after the BCHR's telephone intervention.

701 *Official Gazette of the RS*, No. 73/10, 20/19, 43/19 and 128/20.

702 Art. 17, Rulebook on Driving Licences.

703 Art. 19, LAMP.

law on the content and format of the travel document for refugees without delay, to facilitate their freedom of movement outside Serbia.

The MOI should also introduce a new ID for successful asylum seekers that will allow them to exercise their rights under the LATP more simply and rapidly, and without discrimination. That personal document should be of the same quality and offer the same degree of protection as biometric IDs issued to Serbian nationals. It should also include the FRN, which is the equivalent of the PINs assigned to Serbian nationals. The costs of issuing such biometric documents would not strain the Serbian budget substantially, since slightly over 170 people have been granted the right to asylum by the time this report was finalised and some of them are no longer living in Serbia.⁷⁰⁴ The holders of these IDs would not have to apply for their renewal so often or for new IDs every time they moved, since their new address would be merely entered via the chip.⁷⁰⁵

As per driving licences, the RTSL applies to foreigners whose status is governed by the Foreigners Law, but its provisions do not apply to refugees and asylum seekers. The Serbian Government should propose the alignment of the RTSL with the LATP and the clear definition of the rules regarding the exchange of the refugees' and asylum seekers' driving licences. The Rulebook on Driving Licences should then be brought into compliance with the amended law.

Most refugees had to flee their countries of origin and are not in possession of all the requisite documents. Those that have their driving licences and want to exchange them for Serbian ones risk disclosure of their identity and whereabouts to their countries of origin. Rules regarding foreigners with temporary residence in Serbia should not apply to refugees and asylum seekers, since their rights may be violated if the Serbian authorities disclose their status and presence in Serbia to their countries of origin. The question arises whether these people should be required to take their driving tests all over again or undergo structured interviews and checks on the assumption that they possess foreign driving licences to facilitate their exchange for Serbian ones. The relevant Ministry should give thought to issuing guidelines and instructions on exchange or issuance of driving licences to refugees in accordance with the Refugee Convention.⁷⁰⁶

704 The Asylum Office upheld the applications of 194 foreigners from 2008, when the national asylum system was established, to 31 December 2020. It has altogether granted refuge to 90 of them and subsidiary protection to 104 of them.

705 In some cases, the BCHR applied for the replacement of its clients' IDs several times a year, every time they moved house and changed address.

706 Art. 25 of the Refugee Convention sets out that the authorities that granted international protection shall deliver or cause to be delivered under their supervision to refugees documents or certifications that would normally be delivered to aliens by or through their national authorities.

6.4. Access to the Labour Market

The LAMP guarantees the right to work to persons granted asylum⁷⁰⁷ and asylum seekers in accordance with regulations on employment of foreigners.⁷⁰⁸ Labour and employment rights of this group of foreigners are governed by the Law on Employment of Foreigners (LEF),⁷⁰⁹ which defines in greater detail the categories of foreigners, and the employment procedure and requirements.⁷¹⁰

The LEF provides for the issuance of personal work permits⁷¹¹ *inter alia* to refugees and asylum seekers fulfilling the specified requirements. Persons granted refuge or subsidiary protection are entitled to apply for their personal work permits as soon as they acquire the status, while asylum seekers may apply for them provided that they had applied for asylum over nine months ago and a final decision on their application is still pending.⁷¹² However, in practice, asylum seekers usually have to wait more than nine months to apply for personal work permits and thus acquire the right to access the labour market,⁷¹³ a problem BCHR has already alerted to in its prior reports.

In 2020, the BCHR integration team filed 86 applications for personal work permits on behalf of its clients with the NES, which approved 73 of them.⁷¹⁴ A much smaller number of such applications was filed and, indeed, a much smaller number of permits was issued during the state of emergency, especially in May 2020, when only one application was submitted and only one personal work permit was issued. The NES scaled down its operations in response to the measures the Government introduced during the state of emergency.⁷¹⁵ The increase in the number of applications was registered already in June, when as many as 15 BCHR clients applied for personal work permits.

707 Art. 65, LAMP.

708 Art. 57, LAMP.

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

710 The LEF recognises two categories of foreigners in the asylum category: 1) refugees, whose right to refuge has been recognised under asylum law (Art. 2(8)); and 2) asylum seekers, persons granted temporary protection and persons granted subsidiary protection (Art. 2(9)).

711 Art. 11 LEF.

712 Holders of personal work permits are entitled to employment, self-employment and unemployment-related rights (Art. 12 LEF). Such a permit differs from an ordinary work permit because it is not tied to a particular employer. Personal work permits issued to persons granted the right to asylum will be valid as long as their IDs are valid. The validity of personal work permits issued to asylum seekers is six months and may be extended as long as they have the status of asylum seeker (Art. 13 LEF).

713 More in *Right to Asylum 2019*, pp. 169–170.

714 NES February–December Monthly Updates.

715 NES Report on its activities during the state of emergency, from 16 March to 6 May 2020, available in Serbian at: <https://bit.ly/3gO9jPC>.

Refugees and asylum seekers in Serbia still encounter problems in exercising their right to work, due, primarily to: the complicated personal work permit issuance procedure; the employers' unfamiliarity with the refugees' and migrants' rights to access the labour market, the high unemployment rate, and the underdeveloped domestic market. The refugees' and asylum seekers' economic empowerment and the employment-related challenges they already faced were exacerbated by the state of emergency, and in the ensuing period. The domestic labour market recovered to an extent after the state of emergency was lifted and a number of BCHR clients managed to find a job.⁷¹⁶ However, the epidemiological situation caused by the COVID-19 virus remained volatile and its effects on the labour market in general and on the employability of refugees and asylum seekers are yet to be seen.

Therefore, asylum seekers and refugees still have problems finding a job. The BCHR integration team has started cooperating with the Belgrade Open School (BOS), which in late September conducted career management training for BCHR's clients who had lost their jobs or were looking for a job. BCHR has continued monitoring the situation in the context of the COVID-19 pandemic and extending support to its clients interested in these forms of education and vocational guidance and in applying for jobs.

6.4.1. Personal Work Permits – Complicated and Expensive Issuance Procedure

The Rulebook on Work Permits⁷¹⁷ defines in greater detail the issuance and extension of work permits, proof of eligibility, and the format and content of the work permits.⁷¹⁸ The procedure in which personal work permits are issued to refugees and asylum seekers has not proven efficient or cost-effective in practice. BCHR's clients have been relying on its assistance because they do not speak Serbian and do not understand the regulations.

BCHR's integration team has been assisting its clients in collecting the requisite documentation to access the labour market and in applying for their personal work permits. Payment of administrative fees is particularly problematic for privately accommodated refugees and asylum seekers applying for personal

716 Most BCHR clients work in the catering industry, factories and call centres.

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

718 In addition to the application form, the applicants need to submit a photocopy of their ID, their FRN certificate and proof of payment of administrative fees in case of privately accommodated applicants, or, in case of applicants living in ACs, the CRM certificate confirming that they are living in an AC.

work permits. According to the Fee Schedule, they need to pay 13,970 RSD (the fee increased by 80 RSD in August 2020) for the permit⁷¹⁹ and a 320 RSD application fee.⁷²⁰ Such high fees are unreasonable and exacerbate the realisation of the right to work by this vulnerable group of the population.

The LGAP provides for waiver of personal work permit fees⁷²¹ in the event the applicants would jeopardise their or their families' subsistence by paying them or if so provided by an international treaty. However, only fees of applicants living in an AC or RTC are waived in practice. The vast majority of privately accommodated refugees and asylum seekers have to seek financial support because they cannot afford such high fees.⁷²²

Another persisting problem is the long time the asylum seekers have to wait for the NES to issue their work permits,⁷²³ especially in Belgrade. They ordinarily have to wait for it one month, sometimes much longer.⁷²⁴ Given that personal work permits issued to asylum seekers are valid for six months, such long waiting times substantially reduce the time they can use them.⁷²⁵ This may cause additional problems to refugees and asylum seekers in practice, because employers may not hire them if they do not have work permits and some employers are unwilling to wait long for their potential employees to finally get them.⁷²⁶

6.4.2. Additional Challenges in Access to the Labour Market

The two most common challenges job-seeking refugees and asylum seekers face are the employers' preference to hire Serbian nationals and their unfamiliarity with the rights and distrust of the refugees and asylum seekers. Furthermore, BCHR's clients can usually apply for only some of jobs because they do not speak Serbian. Most must satisfy themselves with lower paying low-skilled jobs in plants and factories, as well as catering jobs not requiring

719 Fee Schedule 205, Law on Republican Administrative Fees.

720 Fee Schedule 1, Law on Republican Administrative Fees.

721 Art. 89, LGAP.

722 In case of BCHR's clients, UNHCR has mostly been extending one-off financial aid to those who cannot afford to pay the administrative fees for their personal work permits.

723 Art. 13, LEF.

724 For instance, the BCHR team applied on behalf of two of its clients for personal work permits on 5 August 2020. The permits, which are valid until 5 February 2021, were issued on 22 October 2020 and the BCHR received them on behalf of its clients on 12 November 2020.

725 Although the permits may be extended another six months, the renewal procedure is just as complicated and just as long as the issuance procedure.

726 On the other hand, the BCHR integration team has noted that the NES Office in Loznica is extremely efficient, as it has been issuing the work permits within 7–10 days from the day of application. Other NES offices should follow suit.

contact with the clients, such as the hotel and restaurant kitchens and bakeries.⁷²⁷ The refugees' and asylum seekers' knowledge of foreign languages has, however, proven to be an advantage and a number of them have been hired to work in call centres.⁷²⁸

Most privately accommodated BCHR clients, who had been employed before the state of emergency, either lost their jobs during the lockdown or continued working but much less. Many of them were employed in the catering industry, which suffered huge losses both in Serbia⁷²⁹ and globally.⁷³⁰ Many BCHR clients had difficulty finding new jobs or going back to their pre-pandemic jobs due to shrinking business opportunities in the aftermath of the state of emergency.⁷³¹

Therefore, the refugees' and asylum seekers' access to the Serbian labour market proved extremely complex and difficult in 2020. Many BCHR clients faced challenges in exercising their right to work because the state of emergency measures impacted the economy the most, plunging this already vulnerable category of the population into even dire financial straits.⁷³²

6.4.3. Conclusion and Recommendations

Refugees and asylum seekers in Serbia have had an even harder time finding a job and accessing useful employment-related information due to their lack of knowledge of the local language and culture. They need to be provided with systemic support in finding a job and in acquiring new skills and knowledge to improve their competitiveness in the labour market, and, consequently, increase their social security and live a life in dignity.

The LATP and the LEF should be amended to automatically recognise the right to work of persons granted the right to asylum, without them needing to

727 Account should also be taken of the fact that a number of refugees and asylum seekers had to interrupt their schooling because of war or insecurity in their countries of origin and could not resume it or acquire adequate professional qualifications, all of which has limited the kinds of jobs they can do.

728 Several BCHR clients have found jobs in call centres, especially in the French, Arabic and English departments.

729 "Around 200,000 people in Serbia lost their jobs during the state of emergency," *Nova ekonomija*, 13 May 2020, available in Serbian at: <https://bit.ly/31I9XZ1>.

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

731 Most BCHR clients believe that the state of emergency and the COVID-19 pandemic have impinged on their prospects of find a job or retaining it.

732 Many BCHR clients lost their jobs, which were, in some cases, their only source of income.

obtain personal work permits.⁷³³ Such amendments would greatly facilitate their access to the labour market and the refugees could focus on qualification and requalification programmes. The NES, as well as the CRM,⁷³⁴ should invest their resources in the design and implementation of effective programmes for the engagement of refugees in education and trainings, and facilitate their access to the labour market through more effective active employment measures.

Greater involvement of the relevant authorities, coupled with the amendment of the regulations on refugee access to the labour market, would facilitate the employment of this vulnerable group of the population. The LEF provision, under which asylum seekers may apply for personal work permits provided that they had applied for asylum over nine months ago, should be replaced by a provision allowing them to apply for their work permits as soon as they express their intention to seek asylum.⁷³⁵

As per the economic empowerment of refugees, the BCHR integration team continued closely cooperating with the UNHCR team for durable solutions in extending various forms of support to refugees and asylum seekers to find a job, learn Serbian, cover the costs of work permit fees, obtain their sanitary booklets, purchase work equipment, emancipate themselves and join the labour market. In 2020, the BCHR continued cooperating with companies that have recognised the vulnerability of this group joining the labour market. Practice has shown that companies, such as the ones operating call centres extending services in foreign languages, the catering industry, primarily bakeries, and some construction companies are willing to hire refugees and asylum seekers.⁷³⁶

6.5. Right to Family Reunification

Separation of families due to war, conflict and persecution has devastating effects on the well-being of their members, their unity and ability to rebuild their life together. Many difficult decisions are made in such circumstances and people often leave their families behind in their quest for safety in other countries. Family reunification is undoubtedly one of the greatest concerns of refugees, most of all those who are alone in countries where they enjoy international protection.

733 More on the comparative practices of EU Member States in a similar economic situation as Serbia in which refugees do not need to obtain work permits in *Right to Asylum 2019*, p. 173.

734 Pursuant to Art. 2(1(6)) of the Integration Decree.

735 *Ibid.*

736 More in *Right to Asylum, Periodic Report for July-September 2020*, p. 36.

The right to family life and unity is guaranteed by many international and national laws. Under the Universal Declaration of Human Rights (UDHR),⁷³⁷ the family is entitled to protection by society and the state. The 1951 Refugee Convention does not explicitly mention the right to family reunification. However, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, adopted together with the Refugee Convention, states that unity of the family is an essential right of the refugee. The Final Act emphasises that such unity is constantly threatened and recommends to the signatory states to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring the protection of refugees who are minors, in particular unaccompanied children and girls.⁷³⁸

LATP guarantees persons granted asylum in Serbia the right to reunite with their families.⁷³⁹ The LATP charges the Asylum Office with deciding on family reunification applications involving underage children born in or out of wedlock, underage adopted children or underage stepchildren of refugees who have not founded a family of their own. Residence of other family members shall be regulated in accordance with regulations governing the legal status of foreigners.⁷⁴⁰ The FL⁷⁴¹ defines in greater detail the right to temporary residence of foreigners who are members of the refugee's immediate family. Under the LATP, family members of persons granted the right to asylum shall have, under equal conditions, all the rights and obligations, with the exception of the right to family reunification.⁷⁴²

To the best of BCHR's knowledge, the family reunification procedure had never been conducted under the prior AL; there are no data on how the right to family reunification was exercised until 31 December 2017.⁷⁴³ Available data, however, show that the Serbian authorities issued visas for family reunification for the first time in July 2020, after a years-long procedure.⁷⁴⁴ This case will undoubtedly play an important role in the development of the national practice on family reunification.

737 Art. 16(3) UDHR.

738 Available at: <https://bityl.co/5YeK>.

739 Art. 70(1), LATP.

740 Art. 70(3), FL.

741 Art. 56, FL.

742 Art. 59(5), LATP.

743 More in: Sonja Tošković (ed.), *Right to Asylum in the Republic of Serbia 2017*, Belgrade Centre for Human Rights (Belgrade 2018), pp. 109–110.

744 A family of a refugee from Afghanistan is at issue. See the APC's press release of 20 July 2020, available in Serbian at: <https://bityl.co/5LBo>.

6.6. Right to Marriage and Problems in Practice

The UDHR confirms the right to marry.⁷⁴⁵ This right is not defined in the Refugee Convention or the LATP.

Several BCHR clients granted the right to asylum in Serbia asked for its help in submitting documentation for entry into marriage to the relevant civil registry departments. Under Serbian law, the law of the state the foreigner is a national of shall apply in relation to conditions governing marriage.⁷⁴⁶ However, the question that arises in practice is whether this provision also applies to refugees, who are not in a position to enjoy the protection of their countries of origin.

According to the practice of civil registry departments, foreign nationals who wish to enter into marriage in Serbia must submit a copy of their birth certificate and a single status certificate (both of which must be translated by court-sworn translators unless otherwise provided by an international treaty) and a valid passport. However, most refugees are unable to contact the relevant institutions in their countries of origin due to their well-founded fear for their lives, prior persecution, war, etc. and are thus unable to obtain the above certificates needed to conclude a marriage. Thought should be given to changing the requirements refugees must fulfil to marry in Serbia.⁷⁴⁷

Under the LATP,⁷⁴⁸ the state shall put in place conditions for the integration of persons granted the right to asylum in Serbia's social, cultural and economic life and facilitate their naturalisation commensurate with its capacities. Most BCHR clients facing problems in fulfilling the formal requirements for entry into marriage are no other than refugees who want to settle down, marry and start a family in Serbia and be full-fledged citizens of the community.

If deprived of their right to marry, refugees are unable to exercise their fundamental human rights, such as the right to respect for their private and family life.⁷⁴⁹ Given that the formal marriage requirements impede the integration pro-

745 Art. 16(1), UDHR.

746 Art. 32(1), Law on Resolution of Conflicts of Laws with Regulations of Other Countries, *Official Gazette of the SFRY*, No. 43/82 and 72/82 – corr., *Official Gazette of the FRY*, No. 46/96 and *Official Gazette of the RS*, No. 46/06 – other law.

747 Refugees are persons who are outside their countries of origin or countries of habitual residence because of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, and who are unable or unwilling to avail themselves of the protection of those countries or contact them again to obtain the above certificates.

748 Art. 71 (2), LATP.

749 Art. 8, ECHR, *Official Gazette of the SUSM – International Treaties*, 9/03, 5/05 and 7/05 – corr. and *Official Gazette of the RS – International Treaties*, 12/10 and 10/15.

cess under the Integration Decree,⁷⁵⁰ the question arises whether refugee law is consistently applied in this area.

Under the Refugee Convention,⁷⁵¹ the authorities of the countries the refugees are living in shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

In September 2020, the BCHR integration team sent a request to the Labour Ministry⁷⁵² to render an opinion on entry into marriage of persons granted refuge or subsidiary protection in Serbia.⁷⁵³ The BCHR sent the same request to the Ministry of State Administration and Local Self-Governments, given that civil registries⁷⁵⁴ are within its purview under both the prior and the valid Law on Ministries.⁷⁵⁵ The reply⁷⁵⁶ the Labour Ministry sent to the BCHR in October indicates that it did not fully understand the question and interpreted the term 'refugee' in the context of the FL and other laws governing the status of foreigners in Serbia.⁷⁵⁷ The Ministry held that the only way to address the non-fulfilment of the formal requirements for entry into marriage was to require of the registrars to issue a written ruling rejecting the intended marriage application, which the registrars are obligated to do within eight days from the day they orally rejected the application and only if so required by the applicant. The applicant then had 15 days to appeal the registrar's decision with the ministry charged with family protection.⁷⁵⁸

750 *Official Gazette of the RS*, No. 56/18.

751 Art. 25, Refugee Convention, *Official Gazette of the FPRY- International Treaties*, 7/60.

752 Which was tasked with family related issues under Art. 16 of the Act on Ministries valid at the time.

753 Request for an Opinion on Entry into Marriage by Persons Granted Refuge or Subsidiary Protection in the Republic of Serbia, submitted to the Labour Ministry, Ref. No. 2220 of 23 September 2020.

754 Request for an Opinion on Entry into Marriage by Persons Granted Refuge or Subsidiary Protection in the Republic of Serbia, submitted to the Ministry of State Administration and Local Self-Governments, Ref. No. 1935 of 2 September 2020.

755 Art. 10 of the prior Law on Ministries. Art. 11 of the valid Law on Ministries, *Official Gazette of the RS*, No. 128/20.

756 Labour Ministry's reply, Ref. No. 2220, of 8 October 2020.

757 The Ministry went on to say that it, as the ministry in charge of family protection, ruled on appeals of registrars' rulings rejecting the intended marriage application and issued general opinions on the implementation of the Family Law but did not extend legal aid in its application to concrete legal situations.

758 Art. 293, Family Law.

6.6.1. Conclusion and Recommendations

The rules concerning intended marriage applications need to be modified with respect to foreign applicants who have well-founded fear of persecution on any of the grounds listed in the Refugee Convention. The relevant ministries should develop instructions on entry into marriage by refugees, given their specific legal status, and disseminate them to the civil registry offices. The BCHR will continue investing efforts in eliminating these problems in the future.

6.7. Education

The right to education is guaranteed by numerous international instruments ratified by Serbia, including the UDHR,⁷⁵⁹ the International Covenant on Economic, Social and Cultural Rights,⁷⁶⁰ and the Convention on the Elimination of All Forms of Discrimination against Women.⁷⁶¹ The Serbian Constitution lays down that everyone is entitled to education.⁷⁶² The Serbian education system is governed in detail by a set of laws: the Education System Law,⁷⁶³ the Primary Education Law,⁷⁶⁴ the Secondary Education Law⁷⁶⁵ and the Higher Education Law.⁷⁶⁶

The UN recommends that states should provide inclusive and equitable education for migrant children and facilitate their access to learning opportunities,⁷⁶⁷ including by strengthening the capacities of education systems and by facilitating non-discriminatory access to early childhood development, formal schooling and non-formal education programmes.⁷⁶⁸

The Education System Law prohibits discrimination.⁷⁶⁹ Everyone, irrespective of their personal characteristics, is entitled to preschool, primary, secondary

759 Art. 26, UDHR.

760 In arts. 13 and 14, *Official Gazette of the SFRY – International Treaties*.

761 Art. 10, *Official Gazette of the SFRY – International Treaties*, 11/81.

762 Art. 71, Constitution.

763 *Official Gazette of the RS*, No. 88/17, 27/18 – other law, 10/19 and 27/18 – other law.

764 *Official Gazette of the RS*, No. 55/13, 11/17, 10/19 and 27/18 – other law.

765 *Official Gazette of the RS*, No. 55/13 and 101/17.

766 *Official Gazette of the RS*, No. 88/17, 27/18 – other law, 73/18 and 67/19.

767 *The Global Compact for Safe, Orderly and Regular Migration*, UN General Assembly, A/RES/73/195, (11 January 2019), Objective 15 (f), available at: <https://bit.ly.co/5Yet>.

768 *Ibid.*

769 Art. 23, Education System Law.

and higher education on equal terms.⁷⁷⁰ The Rulebook on Criteria for Recognising Forms of Discrimination by Staff, Children, Pupils or Third Parties in Educational Institutions⁷⁷¹ defines the status of vulnerable categories in educational institutions in greater detail as well.

The L ATP lays down that asylum seekers are entitled to free primary and secondary education.⁷⁷² It also guarantees the right to preschool, primary, secondary and higher education to individuals granted the right to asylum in Serbia on equal terms as Serbian nationals.⁷⁷³

Integration of refugees in the education system and provision of support to integration in the national education system is governed in greater detail by Professional Guidance on Integration of Refugee/Asylum Seeking Pupils in the Education System.⁷⁷⁴ Refugee children with proof of prior education are enrolled in primary and secondary schools in accordance with their age and education level. The knowledge of children who lack such proof is tested by the Preliminary Knowledge Test Team.⁷⁷⁵

The COVID-19 pandemic substantially affected access to education in Serbia in 2020. Schools held classes online for the most part of the year, which posed particular challenges to refugee children, since some of them did not have devices, such as telephones, tablets, laptops or desktops, enabling them to follow class. Problems with Internet access were encountered both by privately accommodated refugee children and those living in ACs with low Internet bandwidth.⁷⁷⁶ The ensuing sections will outline the various challenges in access to education of refugee children at various levels of education.

6.7.1. *Preschool Education*

Belgrade state kindergartens have for years now lacked the capacity to admit all the children. At the beginning of the year, there were problems in en-

770 Art. 19, Anti-Discrimination Law, *Official Gazette of the RS*, No. 22/09.

771 *Official Gazette of the RS*, No. 22/16.

772 Art. 55, L ATP.

773 Art. 64, L ATP.

774 Available in Serbian at: <https://bityl.co/5LCR>.

775 The Team may include: an interpreter, a foreign language teacher, a pedagogical assistant, the child's parent or temporary guardian in case of unaccompanied or separated children and other individuals that know the child well. Schools are under the obligation to develop Support Plans for each pupil; such plans need to include an adaptation and stress coping programme, intensive Serbian language course, individualised teaching activities and provide for the child's engagement in extracurricular activities.

776 More in the *Right to Asylum, Periodic Report for July-September 2020*, p. 37.

rolling a girl from Cuba born in 2013 in the mandatory preschool preparatory programme.⁷⁷⁷ Children enrol in kindergarten in May; subsequent enrolment depends on kindergarten capacities. Given that it was in the child's interest to start the preparatory programme as soon as possible, UNHCR agreed to cover the fees of a private kindergarten. Unfortunately, the kindergartens closed when the state of emergency was introduced and her enrolment was suspended.

A girl from Cameroon, who enrolled in kindergarten in 2019,⁷⁷⁸ moved to another part of town and a request for her transfer to a kindergarten closer to her new home was submitted.⁷⁷⁹ However, the kindergarten class in her age group was full.

Children enrolling in kindergarten have to undergo a medical check-up. The fulfilment of this requirement is often problematic in practice, since health professionals are insufficiently familiar with the rights of refugees and asylum seekers, most of whom do not have health cards. This problem will be addressed in greater detail in the section on access to health care.

Low rates of enrolment of refugee and asylum seeking children should also be viewed in the light of their parents' culture. Namely, most of their mothers do not have full or part time jobs and they look after their children.

The City of Belgrade has not amended its regulations on kindergarten enrolment to ensure that refugees and asylum seekers are recognised as vulnerable categories entitled to subsidised kindergarten fees. Other Serbian cities and municipalities should also give thought to waiving kindergarten fees for refugee and asylum seeking children in Serbia.

6.7.2. Primary and Secondary Education

Pursuant to the LAMP, asylum seekers and refugees are entitled to primary and secondary education free of charge.⁷⁸⁰ In Serbia, primary education is free and mandatory,⁷⁸¹ while secondary education is free but not mandatory. The LAMP also lays down that asylum seeking children shall be provided with access to education immediately, within three months from the day they applied for asylum at the latest.⁷⁸²

777 She and her mother applied for asylum in late 2019.

778 More about this case in *Right to Asylum 2019*, p. 175.

779 The girl is attending kindergarten within the preschool institution Dr Sima Milošević.

780 Arts. 55(1) and 64, LAMP.

781 Arts. 4 and 5, Primary Education Law.

782 Art. 55(2), LAMP.

The Integration Decree⁷⁸³ attaches major importance to assistance in integration in the education system and envisages aid⁷⁸⁴ in textbooks and school supplies. Refugees are also entitled to study support and the relevant authorities are charged with securing funding for the engagement of refugee children in extracurricular activities.⁷⁸⁵ It is important to note that the Integration Decree does not recognise asylum seeking children as a particularly vulnerable category also in need of enrolment and study support.⁷⁸⁶

Children living in ACs or RTCs are extended enrolment assistance and support by the CRM staff,⁷⁸⁷ while privately accommodated children receive such assistance from civil society organisations. Unaccompanied and separated children are enrolled in school by their temporary guardians.⁷⁸⁸

Integration of refugee and migrant children in the education system has not been smooth. For instance, the Government Decision⁷⁸⁹ specifies categories of children entitled to textbooks funded from the state budget, including children from poor families, children with disabilities, etc., but makes no mention of asylum seeking and refugee children.⁷⁹⁰ The applications for free textbooks are filed by the children's parents or guardians and the teachers are instructed to encourage parents they think might be eligible to apply.⁷⁹¹ The non-alignment of the Integration Decree and the Government Decision have precluded refugee children from applying for and obtaining free textbooks funded from the state budget.

The BCHR integration team continued extending assistance to its underage clients in identifying adequate schools, communicating with the school administration during their enrolment and collecting the required documents

783 Art. 2(1(4)), *Official Gazette of the RS*, No. 101/16 and 56/18.

784 The CRM shall extend assistance in integration of persons granted the right to asylum in Serbia's social, cultural and economic life, Art. 2(2), Integration Decree.

785 Art. 6, Integration Decree.

786 Asylum seeking children mostly rely on NGO assistance in this respect.

787 As provided for by the Integration Decree, which lays down that the CRM shall extend support to asylum seekers.

788 The applicants need to produce police certificates for children who have not applied for asylum yet, while, for asylum seeking children, the applicants also need to produce the FRN certificates issued by the Asylum Office at the request of the children's parents or temporary guardians via their legal representatives.

789 Serbian Government Decision on Funding of Textbooks for the 2019/2020 School-Year from the Budget of the Republic of Serbia No. 451-2660/19, of 21 March 2019, *Official Gazette of the RS*, No. 22/19. The Decision for the 2020/2021 School-Year is available in Serbian at: <https://bit.ly/co/5Yez>.

790 *Ibid.*

791 More is available in Serbian at: <https://bit.ly/2tcOTw5>.

for enrolment. During the reporting period, BCHR helped two families enrol their children in first grade and a high schooler transfer from the Cambridge programme to a national programme offered by a private high school in Belgrade.⁷⁹² Children enrolling in first grade need to undergo a check-up, receive the requisite vaccines and submit to the selected school their health certificates and birth certificates. The refugee and asylum seeking children's birth certificates need to be translated by court-sworn translators.⁷⁹³ Refugee and asylum seeking children have been encountering a number of challenges during enrolment in state schools. The language barrier, incomplete or lack of documentation, such as birth certificates and/or health cards from their countries of origin, have further complicated their enrolment, as well as their ability to follow class in state primary and secondary schools.

The teachers BCHR talked with singled out the language barrier and absence of additional support, e.g. an assistant who would interpret for the pupils who do not know Serbian. Projects assisting refugee and asylum seeking children attending state schools need to be developed and implemented. Language and psychosocial support facilitating integration would be welcome and extremely useful.⁷⁹⁴ The relevant authorities should put more effort in motivating and informing refugee and asylum seeking children and their parents of their education-related rights and needs. Furthermore, school administrations and teachers need to be informed about this vulnerable category of foreigners and its rights.

6.7.3. Higher Education

The LATP entitles persons granted the right to asylum in Serbia to higher education under the same terms as Serbian nationals.⁷⁹⁵ Refugees, however, face a number of problems and difficulties in accessing higher education in Serbia.

Professional Guidance on Enrolment in Study Programmes of Basic and Integrated Studies at Higher Education Institutions Founded by the Republic of Serbia in the 2020/2021 Academic Year (Professional Guidance)⁷⁹⁶ is also worth

792 BCHR's clients were unable to pay the high Cambridge programme tuition fees due to financial difficulties caused by COVID-19 and decided to transfer their child to the national programme offered by the same private high school, which costs much less. The BCHR extended assistance in the validation of the child's certificates.

793 Certification and translation of birth certificates incur addition costs, which most privately accommodated refugees and asylum seekers cannot afford.

794 Like the teachers, the children of BCHR's clients also said they liked going to school, that the other schoolchildren have accepted them, but that they sometimes had problems communicating because they did not know the language.

795 Art. 64, LATP.

796 *Official Gazette of the RS*, No. 78/20.

mentioning in this context. This document, which has been in force since May 2020, recognises foreign nationals who have the status of migrants/asylum seekers but makes no mention of those granted asylum, i.e. refugees. It sets out that foreign nationals who have the status of migrants/asylum seekers are entitled to enrol under the same terms as Serbian nationals. It, however, does not provide for affirmative measures for this vulnerable group, as it does for Roma and persons with disabilities. The Guidance should also include refugees, whose full integration greatly depends on their access to education.

The language barrier is, indeed, a major problem that refugees face in access to higher education, since they first have to take the college entrance exams in Serbian. Second, refugees would have to pay the tuition fees charged foreign nationals, since they are considered foreigners under the FL.

The BCHR integration team in September asked the University of Belgrade⁷⁹⁷ to issue an opinion and clarify in greater detail the requirements prospective students, who have been granted refuge or subsidiary protection, need to fulfil to enrol in this University.⁷⁹⁸ The University of Belgrade sent its reply⁷⁹⁹ to BCHR a month later, in which it said that “Article 64 of the Law on Asylum and Temporary Protection lays down that persons granted the right to asylum are entitled to preschool, primary, secondary and higher education under the same terms as the nationals of the Republic of Serbia, in accordance with regulations governing education” and went on to refer to the Professional Guidance⁸⁰⁰ entitling foreign nationals who have the status of migrants/asylum seekers to enrol in college under the same terms as Serbian nationals.⁸⁰¹ The University’s reply confirms that refugees are entitled to attend college in Serbia free of charge.

The Education Ministry’s and Belgrade University’s recognition of vulnerable categories extended refugee protection this year is a major step forward by the Serbian education system. It remains to be seen whether the universities will introduce measures addressing lack of knowledge of Serbian of these prospective students, e.g. organise a preparatory year during which they will master Serbian sufficiently to be able to follow class.

797 BCHR’s request to the University of Belgrade for an opinion No. 212/8 of 10 September 2020.

798 BCHR also drew the University’s attention to the practice of higher education institutions in Serbia to consider refugee students foreign nationals who have to pay tuition fees, rather than treat them as a vulnerable category.

799 University of Belgrade reply Ref. No. 212/8 of 12 October 2020.

800 *Official Gazette of the RS*, No. 78/20.

801 The University noted in its reply that Art. 103 of the Higher Education Law and Art. 82 of the University of Belgrade Statute specified whose studies are to be funded from the state budget 1) students above the budget-funding threshold on enrolment, 2) students who have earned 48 ECTS and are above the budget-funding threshold, 3) students with disabilities or enrolled under affirmative action who have 36 ECTS.

6.7.4. Recognition of Refugees' Foreign School Certificates and Diplomas

The Integration Decree tasks the CRM with extending assistance to refugees in initiating the recognition of their foreign school certificates and diplomas.⁸⁰² However, the CRM has failed to extend such support to refugees who wanted to initiate the procedure.⁸⁰³ Refugees must initiate it themselves with the Qualification Agency – the ENIC-NARIC Centre in Serbia⁸⁰⁴ and pay for it. The BCHR integration team's assistance in the process has been critical since most of its refugee clients do not know Serbian and the process and application form are not tailored to refugees.

The high fees that the applicants have to pay for the recognition of their certificates and diplomas pose a substantial challenge and should be waived for refugees, i.e. the CRM should act in accordance with the Integration Decree. The fee for recognising primary, secondary and higher education certificates stood at 7,500 RSD in 2020, an exorbitant sum refugees cannot afford without financial aid.⁸⁰⁵

Another problem arises from the fact that most refugees had not taken their diplomas with them when they fled their war-torn countries or persecution. Fearing for their lives, they cannot contact the relevant institutions in their countries of origin and obtain documents proving their skills and qualifications.

The BCHR is therefore of the view that the 1997 Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region⁸⁰⁶ and the Refugee Convention provisions on giving credence in the absence of documents or certifications issued by the country of origin⁸⁰⁷ should apply in such situations. Together with the introduction of the European Qualifications Passport for Refugees-EQPR, refugees would be provided with effective access to education on equal terms.

802 Arts. 6 and 7(2), Integration Decree.

803 To the best of BCHR integration team's knowledge.

804 The Qualification Agency– ENIC NARIC's website is available only in Serbian (in Cyrillic): <http://azk.gov.rs/>.

805 In several cases, the BCHR paid the fees from the budget of the Asylum and Migration project funded by UNHCR.

806 The Lisbon Convention aims to eliminate barriers and ensure unimpeded recognition of diplomas. Article VII of the Convention deals with refugees. The system introduced by the Convention has built a bridge between various higher education systems, introducing greater flexibility both at universities and in the labour market. Fifty-three states, including Serbia, have ratified the Convention.

807 Art. 25, Refugee Convention.

6.7.4.1. European Qualification Passport for Refugees

In support of the Lisbon Convention⁸⁰⁸, UNESCO and the CoE launched their European Qualifications Passport for Refugees-EQPR project in 2015.⁸⁰⁹ The initiative helps refugees restore their lives in countries they plan on settling in and in which they enjoy legal protection, providing them with the possibility of assessing their qualifications even when they do not have all the documents proving them. The EQPR thus supports the implementation of Article VII of the Lisbon Convention, which facilitates recognition of refugees' qualifications even in the absence of all the documentation. The Convention aims to simplify the legal framework at the European level and, in the long term, replace the six conventions on the issue adopted earlier by the CoE and UNESCO. The Lisbon Convention provides for the assessment of the applications in an equitable manner and within a reasonable time. States may refuse to recognise qualifications only if they are significantly different from theirs. The responsibility to demonstrate that an application does not fulfil the relevant requirements lies with the body undertaking the assessment.

The EQPR⁸¹⁰ is a document listing the highest education qualifications obtained, language skills and work experience. It can be used by refugees when they wish to enrol in college, enter further studies and/or seek employment, and apply for scholarships. The recognition process involves three steps: assessment, explanation and practical use of the passport in further integration. Part two includes information on the legal status of the document and a brief description of the project. Part three contains information on the next steps, contact details of state authorities and agencies, job-seeking steps and applications for continuing education. Although it does not constitute formal recognition, authorisation or licence to engage in a particular profession, the EQPR provides credible information that may be relevant to applications for jobs, internships, qualification courses and enrolment in college. The document is valid for five years. The goal is to provide refugees and migrants with the opportunity to improve their language skills, continue their studies, improve their employment prospects or apply for the formal recognition or approval of their education.⁸¹¹

808 Art. VII.

809 See more at <https://bit.ly/37iOzuo> and <https://bit.ly/37lG0it>.

810 More is available in Serbian at: <https://bityl.co/5LCo>.

811 Partners in this project have so far included the Greek Ministry of Education and Religious Affairs, the Italian Ministry of Education, Universities and Research, the Conference of University Rectors of Italy, the Norwegian Ministry of Education and Research, the Government of Flanders – Belgium and qualification recognition centres in Armenia, Bosnia and Herzegovina, Canada, France, Germany, Greece, Italy, the Netherlands, Norway and the UK. UNHCR offices in Greece and Strasbourg also support its implementation.

With the support of the UNHCR office in Belgrade, the BCHR held a webinar on “Recognition of Refugees’ Acquired Knowledge”⁸¹² on 30 September 2020 to familiarise the key stakeholders in Serbia with this extremely important process. BCHR’s initiative also aims to ensure that Serbia, as a party to the Lisbon Convention⁸¹³ implements the EQPR as follow-up to the implementation of Article VII of the Lisbon Convention. After the webinar, attended also by the representatives of the ENIC – NARIC Centre in Serbia, the initiative was launched together with the representatives of the CoE and the EQPR project that the ENIC – NARIC Centre in Serbia join in the project. The aim is to ensure that all stakeholders focus on this plan in 2021.

6.7.5. Conclusion and Recommendations

Like in the past, especially as of 2018 when access to primary education was facilitated and simplified, the greatest headway in refugees’ access to education was made in the field of primary education. Both the civil and state sectors invested major efforts in achieving the progress. It may also be linked to the fact that primary education is mandatory. There are, however, still problems in primary schools: lack of Serbian language preparatory courses, and poor motivation among teachers to provide individual support to refugee pupils having trouble following class in Serbian.

The challenges persisting in preschool education can be ascribed to the non-alignment of by-laws and inconsistent practices. Low kindergarten enrolment rates can also be ascribed to the culture of the refugees: most refugee mothers do not have jobs and look after their children.

The Belgrade City Assembly should amend all enactments on enrolment in kindergartens to ensure that refugees and asylum seekers are considered vulnerable categories eligible for subsidies. Both the City of Belgrade and other Serbian cities and towns should give thought to waiving kindergarten fees for all migrant children, irrespective of their legal status.

Although refugee and asylum seeking children have access to secondary education and have increasingly availed themselves of it since 2018, their share is much smaller than that of refugee children enrolled in primary school. One of the reasons is that older children are less interested in pursuing their education. The other is that refugee children usually enrol only in vocational secondary schools.⁸¹⁴

812 More is available in Serbian at: <https://bityl.co/5Yf5>.

813 Pursuant to which the ENIC – NARIC Centres were established in Europe.

814 According to information available to BCHR’s integration team.

The Ministry of Education, Science and Technological Development (MOESTD) needs to amend the decision on the procurement of textbooks from the state budget to ensure that refugee and migrant children are entitled to free textbooks.

The MOESTD and Qualification Agency need to join in the implementation of the EQPR project to facilitate the recognition of the higher education acquired by refugees even if they do not have all the documents proving that. Refugees should be waived from paying the fee for the ENIC – NARIC Centre procedure.

The CRM should put in place a system for supporting the recognition of foreign school certificates and diplomas. All universities in Serbia should develop preparatory programmes and active measures for the integration of refugees in higher education. This could result in the enrolment of the first refugee student in a university course in Serbian in the 2021/2022 school-year, whose studies would be funded from the state budget. All these steps would facilitate the naturalisation and integration of young refugees who see their future in Serbia.

6.8. Health Care

The right to health is one of the fundamental human rights enshrined in many international treaties ratified by Serbia.⁸¹⁵ LAMP entitles asylum seekers to health care in the RS in accordance with the regulations on health care of foreigners.⁸¹⁶ The LAMP also entitles persons granted the right to asylum to health care at the expense of the state.⁸¹⁷ Health care of foreigners is governed in greater detail by the Health Care Law (HCL),⁸¹⁸ the Health Insurance Law (HIL)⁸¹⁹ and the Rulebook on Exercise of Compulsory Health Insurance Rights.⁸²⁰ The HIL guar-

815 Art. 25 of the UDHR. Under Art. 12 of the ICESCR, the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Under Art. 24 of the CRC, States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Art. 5 of the Convention on the Elimination of All Forms of Racial Discrimination obligates States Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without any distinction, to equality before the law, notably in the enjoyment of, inter alia, the right to public health, medical care, etc.

816 Art. 54, LAMP.

817 Art. 63, LAMP.

818 *Official Gazette of the RS*, No. 25/19.

819 *Official Gazette of the RS*, No. 107/25, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14 and 126/14 – CC Decision.

820 *Official Gazette of the RS*, No. 10/10, 18/10 – corr., 46/10, 52/10 – corr., 80/10, 60/11 – CC Decision and 1/13.

antees respect for the right to equality, which entails the prohibition of discrimination in the provision of health care based on any personal characteristics.⁸²¹

The inconsistent national regulations on provision of health care to refugees and asylum seekers and the health professionals' unfamiliarity with their rights have frequently resulted in misunderstandings and unpleasant situations when refugees and asylum seekers sought assistance in out-patient health clinics across Serbia. BCHR has continued assisting its clients in exercising their statutory rights to health care and eliminating the legal obstacles impeding refugees' and asylum seekers' access to health care.

6.8.1. Inconsistent Regulations

The HCL does not distinguish between refugees and asylum seekers and Serbian nationals when it comes to the provision of health care.⁸²² However, the rights of refugees, with the exception of refugees from the former Yugoslav republics, are not governed in greater detail by the HIL and the Rulebook on Exercise of Compulsory Health Insurance Rights. The HIL does not recognise refugees and asylum seekers in the meaning of the LATP as a separate category of the insured.⁸²³ Although the HIL entitles employed foreigners to health insurance,⁸²⁴ it does not cover a large number of refugees and asylum seekers who are unemployed. The National Health Insurance Fund (NHIF) does not recognise any other categories of refugees except those from the former Yugoslav republics.⁸²⁵ Consequently, refugees and asylum seekers in the meaning of the LATP are not entitled to compulsory health insurance or health cards.⁸²⁶

Refugees and asylum seekers have often been unable to exercise their right to health care in practice, due to the health professionals' refusal to extend health services to this vulnerable category because of their unfamiliarity with regulations in this area. The clinics have been refusing to register persons granted the right to asylum as their patients⁸²⁷ if they do not have health cards, which they have difficulty obtaining. Such obstacles have deprived refugees and asylum seekers of their right to health care and may result in the deterioration of their health problems.

821 Art. 21, HCL.

822 *Ibid.*, Arts. 236(1) and 239.

823 See Art. 11 of the HIL, which enumerates the categories of insured persons.

824 Art. 11(10), HIL.

825 *Exercise of Compulsory Health Insurance Rights*, National Health Insurance Fund, Belgrade, May 2015, available in Serbian at: <https://bit.ly/371Cwww>.

826 Insurance card, Art. 25, HIL.

827 An Iraqi refugee tried to register with a Belgrade out-patient health clinic, which refused to open her a patient file because she did not have a health card.

The problem prompted the BCHR integration team to draft template letters for clients to produce in out-patient health clinics and other health institutions. The template letters contain information about the rights of refugees and asylum seekers.⁸²⁸ Many dilemmas were addressed informally by the BCHR integration team during the reporting period.⁸²⁹ Specialist examinations and vaccination⁸³⁰ continued to be problematic during 2020. These problems have not been addressed systemically yet and BCHR's integration team continued assisting in their resolution where necessary.

6.8.2. Conclusion and Recommendations

In the experience of the BCHR integration team, the greatest concerns arise in the field of health care. Although the legal framework is in place, the health institutions' practices are inconsistent, as is the NHIF' application of the regulations to refugees and asylum seekers in Serbia.

The Ministry of Health should ensure uniform operations of all health institutions in the country. The Ministry of Health and NHIF should supply unemployed refugees and asylum seekers with health cards, on an equal footing with Serbian nationals. The Ministry should thus initiate and the Government should propose amendment of the HCL to ensure that refugees and asylum seekers have full and unimpeded access to health care.

6.9. Refugees' (In)ability to Acquire Serbian Citizenship

Naturalisation is a durable solution for refugees and entails their access to permanent residence in the host country and subsequent acquisition of its citizenship.

Under the LAMP, Serbia shall facilitate the naturalisation of refugees and the Government shall regulate the requirements, procedure and other issues of rele-

828 The letters explain the legal provisions on health care of refugees and asylum seekers.

829 For instance, children enrolling in kindergarten or school have to undergo a comprehensive check-up. Parents of migrant and asylum-seeking children need to produce a FRN certificate issued for the purpose of exercising the right to health care so that the health professionals can register the children. However, the BCHR integration team needed to intervene in one such case although the parents produced the certificate.

830 An asylum-seeking family took their baby to the local out-patient health clinic to be vaccinated but the health professionals refused to vaccinate the baby and referred the mother to a private clinic. The out-patient health clinic agreed to examine the baby and vaccinate it after the BCHR and DRC alerted the Ministry of Health to the incident and informed it of the rights of this vulnerable category.

vance to naturalisation proposed by the CRM. To the best of BCHR's knowledge, the CRM has not forwarded such a proposal to the Government yet.

Naturalisation of refugees, as the highest degree of integration in the society of the receiving country, is provided for by Article 34 of the Refugee Convention.⁸³¹ That Article sets out that the Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees and make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.⁸³²

No headway was made in the naturalisation of refugees by the end of the reporting period, in contravention of Serbia's international obligations and national law. Naturalisation of refugees is *de iure* impossible due to the inconsistencies between the domestic regulations on the status of foreigners, acquisition of citizenship and rights of refugees.

According to official Asylum Office statistics, a total of 90 people were granted asylum in Serbia from 2008 to the end of 2020. These people are entitled to apply for Serbian citizenship. Serbia has not granted citizenship to anyone with the status of refugee⁸³³ although 12 years have passed since the first law on asylum⁸³⁴ was adopted.

The type of residence granted refugees must correspond to the type of residence required for the acquisition of citizenship if Article 34 of the Refugee Convention is to be implemented in practice. Serbia needs to bring its Citizenship Law and FL in line with the Refugee Convention and enable people granted asylum to apply for permanent residence. The amendments to the FL should define residence on grounds of asylum as a particular form of temporary residence and allow refugees to apply for permanent residence upon the expiry of the statutory time limit.⁸³⁵ This would facilitate the refugees' full naturalisation and constitute grounds for their acquisition of Serbian citizenship.

831 *Official Gazette of the FPRY (International Treaties)*, 7/60.

832 Art. 34, Refugee Convention.

833 Arts. 24 and 25, LATP.

834 The Asylum Law (*Official Gazette of the RS*, No. 109/07) which entered into force in 2008 and was replaced in 2018 by the Law on Asylum and Temporary Protection (*Official Gazette of the RS*, No. 24/18).

835 Art. 67(2), FL: Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 70 of this Law, who has, until the date of application for permanent residence in the Republic of Serbia, resided in it without interruption for over five years based on a temporary residence permit. Art. 68, FL: (1) Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 79 in this Law who: 1) has married or formed a civil union with a national of the Republic of Serbia or a foreigner with a permanent residence permit in the territory of the Republic of Serbia and has resided at least three years with a temporary residence permit on grounds of family reunification; 2) is a minor with temporary residence in the Republic of Serbia, if one of the parents is a national of the

Refugees can fulfil the legal requirement for permanent residence – three or five years’ uninterrupted temporary residence in Serbia – only if they change the grounds of residence, i.e. “substitute” residence on grounds of asylum or subsidiary protection by one of the types of temporary residence enumerated in Article 40 of the FL.⁸³⁶ The question arises how the relevant authority will react to the “cancellation” of the granted right to asylum given that two of BCHR clients have initiated such procedures before the MOI Directorate for Foreigners. The latter did not notify the BCHR team that it had completed the procedures by the end of the reporting period.

6.9.1. Recommendations Regarding Refugees’ Access to Citizenship

Naturalisation facilitates the full inclusion and equality of refugees in the society of the country of asylum. It provides them with the prospect of acquiring the country’s citizenship and permanent residence. For instance, according to EUROSTAT’s most recent data, 672,000 people acquired the citizenship of an EU Member State in 2018;⁸³⁷ over 80% of them had not been nationals of any EU states. Refugees are assumed to account for a large share of these people.

The MOI should initiate and the Government should propose amendments to the Law on Citizenship and the Foreigners Law to enable acquisition of Serbian citizenship by foreigners granted status under the LAMP. The Law on Citizenship should also provide these individuals with the possibility of acquiring Serbian citizenship under more favourable terms than those applying to permanently residing foreigners in accordance with the FL, the solution adopted by many EU Member States.⁸³⁸

Republic of Serbia, or a foreigner with a permanent residence permit; 3) originates from the Republic of Serbia; 4) has been issued a temporary residence permit on humanitarian grounds or in the interests of the Republic of Serbia.

836 Art. 40 of the FL sets out that foreigners may be granted temporary residence in Serbia on grounds of: employment, schooling or learning the Serbian language; university studies; participation in international pupil and student exchange programmes; professional specialisation, training and internship; scientific research and other scientific educational activities; family reunification; performance of religious services; medical treatment or health care; real estate ownership; humanitarian residence; status of presumed or actual victim of trafficking in humans, and for other justified reasons in accordance with the law or international treaties.

837 *Migrant and migrant population statistics*, EUROSTAT, 2018, available at: <https://bit.ly.co/5Yfo>.

838 Refugees in Germany may acquire citizenship under more favourable terms than other foreigners. The duration of a former asylum procedure can be included in this waiting period. The residence period can be reduced to 7 years if applicants have attended an integration course successfully, and it can be reduced to 6 years if applicants have integrated particularly well into society. See more: <https://bit.ly.co/5Yfe>.

Although the MOI is charged with reviewing citizenship applications, the CRM should forward the draft amendments to the Law on Citizenship to the Government as soon as possible, in accordance with its competences in the field of refugee integration. The CRM has not forwarded its proposal of the procedure and requirements for the naturalisation of refugees since the LATP has entered into force.

6.10. Other Issues of Relevance to Integration

6.10.1. Serbian Language Courses

Knowledge of the local language is one of the key factors for faster and more successful integration in a society. As a rule, refugees and asylum seekers, who have mastered basic Serbian language skills, have an easier time finding a job.⁸³⁹ Refugee and asylum seeking children also need to know the language, in order to follow class in primary and secondary schools.

Persons granted the right to asylum are under the obligation to attend Serbian language lessons.⁸⁴⁰ Under the LATP, they shall forfeit their right to financial aid for temporary accommodation if they fail to register for courses with the CRM within 15 days from the day the ruling granting them the right to asylum becomes final.⁸⁴¹ They also forfeit that right if they do not attend the language lessons regularly or stop attending them without good cause. Persons granted asylum are under the obligation to attend 300 Serbian language lessons and may subsequently request additional classes. However, hardly anyone's right to aid has been forfeited due to irregular attendance.

The Integration Decree regulates the procedure for joining in the Serbian language programme in greater detail. The CRM is under the obligation to organise the lessons within two months from the day the ruling granting refugee or subsidiary protection becomes final.⁸⁴² However, due to the COVID-19 pandemic and introduction of the state of emergency, BCHR's clients granted the right to asylum in February started attending classes five months later, in July. The courses went online in the spring. However, refugees without good Internet or adequate devices had difficulties following them.

839 UNHCR organised an accountancy course in November 2020. Since the course was held in Serbian, only refugees with basic Serbian language skills could attend it.

840 Art. 59(3), LATP.

841 Art. 59(4), LATP.

842 Art. 4(7), Integration Decree.

Another problem arises from the refugees' habit of frequently changing their telephone numbers. Since several months can pass between their registration with the CRM and the beginning of the language course, the CRM has been unable to get in touch with all of them at the numbers they left when they registered.

The UNHCR has been providing Serbian language lessons as well, which can be attended by privately accommodated asylum seekers. Seven BCHR clients started attending Serbian language lessons supported by UNHCR in the reporting period. UNHCR has also organised study support for schoolchildren and various trainings in new skills and qualifications, to improve the refugees' and asylum seekers' employment prospects. Most of the trainings and study support are held in Serbian.

6.10.2. Conclusion and Recommendations

Serbian language courses are still not organised within the statutory timeframe. This problem exists in larger towns as well, but is even more visible in smaller and remote settlements refugees are living in.

The first difficulty can be overcome if the CRM starts providing persons granted the right to asylum with Serbian language courses within the two-month deadline. The second problem, organisation of Serbian language lessons in small and remote settlements, can be addressed by issuing vouchers for private Serbian language lessons.

7. PUBLIC DISCOURSE, POLITICAL CONTEXT AND PORTRAYAL OF MIGRANTS AS CRIMINALS

This chapter presents BCHR's analysis of media reports on refugees, asylum seekers and migrants published in 2020, as well as public opinion on this category of foreigners and, consequently, the challenges they and the Serbian society face. It also analyses the impact of media and politics on general public perceptions of migrants. The year behind us was characterised by increasing anti-migrant rhetoric and hate speech against refugees and migrants living in Serbia.⁸⁴³

This part of the Report uses the term 'migrants' because it is used much more frequently in public discourse than the terms 'refugees' or 'asylum seekers', which experts, including the BCHR, use to distinguish between these three categories of foreigners with different statuses in the Republic of Serbia.⁸⁴⁴

7.1. Introduction

With a view to analysing media coverage of migrants in 2020, the authors collected data from over 1,000 media reports, news items and various content that appeared in newspapers, on TV and Internet portals. They also perused the public opinion poll on refugees and migrants conducted by Ipsos Strategic Marketing in November 2019 at BCHR's initiative, as well as the survey of public perceptions of migrants conducted by the Red Cross of Serbia in partnership with PIN, which was published in June 2020.⁸⁴⁵

Although public discourse on migrants cannot be qualified as totally negative, the increase in negative public perceptions of the migrant population was visible throughout the year, especially in the run-up to the June 2020 local and parliamentary elections. Migrants were increasingly portrayed by the media, especially on the Internet, as a threat to the safety of Serbia's citizens. Negative perceptions were particularly fuelled by the growing number of unverified and

843 "Bonelli: Around 7,000 migrants in Serbia, situation is not out of control," *Radio Free Europe*, 12 November 2020, available in Serbian at: <https://bit.ly/3fq5Cjg>.

844 The term 'migrant' is broader and differs from the terms 'asylum seeker' and 'refugee'. See the UNHCR definitions at: <https://bit.ly/30BC6BF>.

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

often absurd theories, which can be qualified as conspiracy theories, describing migrants as part of a global conspiracy and a threat to the survival of states and nations, particularly in Europe and the United States of America. The Serbian public has been increasingly exposed to various half-truths and contradictory information about the migrant population, often resulting in confusion and a distorted picture of reality, and giving rise to suspicion, distrust and the inability to discern the truth.

Lack of expert and professional debates on the issue in the media, as well as the non-transparent government migration policy, contributed to such a climate. Namely, migration related issues that occasionally caught the public eye were rarely clarified by public officials. Given that migration will definitely remain an important geopolitical factor for years to come, there is a risk that anti-migrant sentiments will intensify in the future. BCHR has identified several trends in the prevailing media narratives and society's reactions to them. This Report also singles out several key developments in 2020 that led to changes in perceptions of migrants.

The BCHR/Ipsos Strategic Marketing survey results did not indicate a distinct prevalence of either positive or negative perceptions of migrants at the end of 2019.⁸⁴⁶ However, the results of the Red Cross/PIN survey conducted in June 2020 showed growing anti-migrant sentiments, which did not come as surprise given everything that happened the previous year and the mostly negative portrayals of migrants in public discourse.⁸⁴⁷ Moderate acceptance was registered only with respect to the migrants' temporary residence in the country and the city. As many as 53% of the respondents said that they did not want migrants to move in next door (as opposed to 47% in the prior survey), while only 28% clearly stated the opposite (as opposed to 42% in the prior survey); 35% of the respondents said that they would have nothing against working with migrants (a slight decrease over the previous survey, where 37% of the respondents agreed with this statement), while as many as 43% disagreed with the idea. Thirty-nine percent of the respondents had nothing against being close friends with migrants; 41% did. Fifty-six percent of the respondents would not like a migrant to be a member of their extended family (25% would have not against that), while 63% would not want a migrant to be a member of their immediate family (as opposed to 22%).

Two kinds of media coverage on migrants dominated public discourse in terms of topics and the way in which migrants were reported on. The first included reports on migrants in the "negative" context, focusing on the negative

846 More in *Right to Asylum, Periodic Report for January-March 2020*, p. 48.

847 More in *Right to Asylum, Periodic Report for January-June 2020*, p. 57.

aspects of the migration wave and describing migrants as a threat to the security of Serbia and its citizens. Such coverage mostly included reports of incidents involving migrants. The tone of such articles was mostly neutral. However, constant coverage of each and every incident involving migrants, including minor and negligible infractions, and emphasis on their status, provoked apprehension and feelings of threat among the recipients of the information, resulting in their negative perceptions of the migrant population. The trend of treating migrants as predominantly a security issue intensified with the outbreak of COVID-19 and the proclamation of the state emergency, as well as the nearing of elections. There was a visible increase in media reports highlighting negative aspects within the migrant theme. Political interest in migrant issues somewhat abated after the elections. However, media focus on migrants remained higher than usual, primarily due to the intensified anti-migrant rhetoric and activities of rightist organisations.

The second kind of media coverage spoke of migrants in a positive context, or in the context of the suffering and difficulties they have experienced. Such reports usually arouse empathy and compassion among the recipients of the information. Such reports also covered topics aiming to portray the migrants' potential contribution to Serbian society, efforts invested in their integration and illustrate intercultural rapport. The increase in the number of media reports positively portraying migrants and eliciting empathy and understanding among the citizens can be described as a silver lining of the pandemic and the state of emergency. Such reports, however, remained in the shadow of the increase in negative portrayals of migrants and numerous speculations, as well as their exacerbated situation due to months-long lockdown during and in the immediate aftermath of the state of emergency. All these factors created the need for greater engagement by the CRM, civil society and individual media in defusing social tensions and the effects of generalisation directly impinging on the migrants' treatment by the local community.

Apart from these narratives, the media occasionally gave room to the relevant state authorities, primarily the CRM and some international and non-government organisations focusing on refugees and migration. These reports usually gave insight in the number of migrants, their activities, the situation in ACs and RTCs and their situation and treatment in general. However, media interest in these issues was usually sparked by incidents or the marking of relevant dates, such as World Refugee Day and International Migrants Day.

The ensuing sections will present the two dominant types of coverage of migrant issues and attempt to explain the reasons for them and the socio-political context in which they appeared.

7.1.1. Media Coverage of Migrants in the Negative Context

Analysis of public discourse in 2020 leads to the impression that migration issues have not attracted as much attention of the public, media and political stakeholders since the migrant crisis broke out in 2015. Intensified anti-migrant rhetoric of minor opposition parties and movements during the election campaign and the state of emergency was concerning. The Serbian Movement *Dveri* stood out in that respect, but the political propaganda of the Serbian Radical Party (SRS), the Serbian Right and similar rightist organisations also included anti-migrant elements.⁸⁴⁸ UNHCR representatives alerted to the visible increase in anti-migrant rhetoric and negative perceptions of migrants throughout the year, although MOI data showed that less than one percent of crimes were committed by migrants.⁸⁴⁹

Traditional media were not the main source of the anti-migrant campaign in 2020. Rather, it was spearheaded by extremist websites and groups on social networks. The Facebook group “STOP Settlement of Migrants” reigned supreme among them; it had over 330,000 members at one point.

Increased interest in migrant issues among political stakeholders, media and other groups, reflected mostly in the negative campaign, coincided with the substantial increase in public intolerance of migrants. Although political interest in migrant issues ebbed after the June local and parliamentary elections, they continued drawing a lot of attention on websites of extremist organisations and Internet portals with similar content.

Negative views of migrants were particularly visible in media debates about their potential large-scale settlement in Serbia.⁸⁵⁰ Most guests on TV shows, reporters and readers commenting their articles online perceived the settlement of migrants as an evil in itself. Their estimates of the number of migrants who would settle down in Serbia were not accompanied by explanations of how they arrived at them. Participants in such debates opposing the settlement of migrants did not even try to back up their views with any facts or illustrate how the migrants would undermine Serbia’s social or economic development. Their arguments against potential cohabitation with foreigners granted residence in accordance with the law included security concerns, i.e. they presumed that ter-

848 *Ibid*, pp. 51–52.

849 ”Bonelli: Around 7,000 migrants in Serbia, situation is not out of control,” *Radio Free Europe*, 12 November 2020, available in Serbian at: <https://bit.ly/3fq5Cjg>.

850 Such claims will be described in greater detail in the section on conspiracy theories. There are many conspiracy theories about planned massive settlement of migrants in Serbia, although there is no proof that such plans exist and although only a negligible few of the many migrants BCHR lawyers are constantly in touch with are planning on settling down in Serbia for good, as statistics confirm as well.

rorists would settle down in Serbia, warning that migrants came from cultures incompatible with the Serbian culture, etc. Fears of massive settlement of migrants were stoked by Turkish President Erdogan's decision not to stop Syrian refugees from continuing their journey to Europe any longer, which was extensively reported on by the media.⁸⁵¹ Allegations of the "onslaught" of millions of migrants who would "flood" Serbia were increasingly published by media and on social networks.⁸⁵²

A large number of media reports on misdemeanours and crimes migrants were suspected of were published throughout 2020. Emphasis on migrants as people whose behaviour is problematic has created the impression of their involvement in a large number of crimes in Serbia. On the other hand, there is no proof that the crime rate among migrants is substantially higher than among the rest of the population. Quite a few reports also alleged that migrants were "roaming Serbia without control". Such reports usually implied that the migrants' freedom of movement was in and of itself a threat to Serbia and its citizens. The number of negative reports about migrants was several times higher than the number of positive reports about them.⁸⁵³ A number of articles featured sensationalist titles, e.g. "Migrants break into a kindergarten in Bihać, extinguish cigarette on cot?" to attract more readers. Intentionally or not, such reports sparked fury against the migrant population.⁸⁵⁴

Public discourse was increasingly infested with narratives that all, or at least most, migrants were merely economic migrants and were illegally in Serbia, that they were not fleeing war or persecution and that their sole motivation was to achieve economic prosperity in rich West European countries. Media portrayed their journey towards the West as a whim and them as "bad" migrants. Needless to say, such allegations are untrue. Most migrants in Serbia fled countries ravaged by war, indiscriminate violence and widespread persecution on various grounds.⁸⁵⁵ Media should thus report the actual facts and write about them with greater empathy, to raise public awareness that even "irregular" and "economic" migrants are not automatically terrorists or a threat, that they are just ordinary people forced by their misfortunes and poverty to embark on a dangerous and potentially lethal journey.

851 "Erdogan: Turkish border with Europe open to migrants," *NI*, 29 February 2020, available in Serbian at: <https://bit.ly/3bD4dn2>.

852 More in the *Right to Asylum, Periodic Report for January-March 2020*, p. 59.

853 One can get an idea of the number of reports focusing on any misdeeds by migrants by a simple search of the word "migrant" on search engines and perusal of the titles of articles on migrants in electronic editions of many Serbian newspapers. See, e.g. <https://bit.ly/39wH47y>.

854 "Migrants break into a kindergarten in Bihać, extinguish cigarette on cot?" *Telegraf*, 24 September 2020, available in Serbian at: <https://bit.ly/33uyCl9>.

855 See more in *Right to Asylum 2019*, pp. 14–15.

Another myth about migrants is that they are all physically fit young men who may pose a threat to Serbia's citizens. Statistics say otherwise: men accounted for 2,649 and women for 181 foreigners who expressed the intention to seek asylum in 2020. Such an intention was expressed also by 638 children, 71 of whom were unaccompanied. Therefore, women and children accounted for almost a third of newly-registered asylum seekers in 2020. Impressions that all migrants are men can primarily be attributed to the fact that migrant families, especially those with young children, are living in camps, far from the public eye, and that they are not as visible as migrants who can be seen on city streets. Furthermore, the journey the migrants undertake to reach their destinations is extremely arduous and dangerous, wherefore it comes as no surprise that younger and stronger men usually decide to embark on it.

7.1.1.1. Anti-Migrant Protests

A number of anti-migrant protests took place in 2020, in towns where a number of migrants were accommodated or living. Such protests were held in Subotica in late February, in Belgrade, Šid and Požarevac in early March and in Deliblat in late March. A major protest in the heart of Belgrade on 8 March 2020 and the appearance of vigilantes, the so-called "people's patrols" in late February, comprising the organisers of the March protest, also drew public attention. "People's patrols" and aggressive rightist groups such as Leviathan are an extremely concerning phenomenon.⁸⁵⁶ An anti-migrant protest was held in the park at Belgrade College of Economy, which is ordinarily frequented by migrants, on 25 October 2020. Strong police forces separated the extremist rightists, who had staged it, from a group of pro-left activists and radical leftist organisations that rallied to express their solidarity with the migrant population.⁸⁵⁷ The MOI did not react to the announcements of the representatives of "people's patrols" that they would "clean" the park that day. Nor did it issue a press release on whether the rally was pre-notified. A large number of uniformed and plain-clothes officers were present at the venue. The police secured all entrances to the park and the nearby streets.

The migrants stayed away from the park that day. The participants in the rally carried a flag with a skull and a banner saying "Terrorists Unwelcome", chanting "With faith in God, liberty or death" and "Serbia to Serbs". They were joined by former MP and member of the *Dveri* movement Srđan Nogo and Damjan Knežević. Knežević told his supporters that a group had been formed on social

⁸⁵⁶ *Ibid*, pp. 50–51.

⁸⁵⁷ "Anti-migrant rally and counter-rally in Belgrade, separated by police," *Danas*, 25 October 2020, available in Serbian at: <https://bit.ly/37tasch>.

networks to which “deviant migrants” could be reported and that people were “entitled to make citizen’s arrests”,⁸⁵⁸ publicly relaying the message that citizens had the right to take justice into their own hands and employ violence against migrants if necessary. Such messages are a major risk to any state governed by rule of law rather than by instinct of the masses.

Given that these organisations have been freely employing violence against migrants, it came as no surprise when they resorted to the same methods against other people disagreeing with their views.⁸⁵⁹ Their anti-migrant messages and protests met with the approval of a large number of people, as evidenced by comments of the event publicly available on the Internet. Footage showing Leviathan members abusing a Roma family,⁸⁶⁰ a migrant on Belgrade’s main street, or a young man who opposed them, revealed both the character of this group and the consequences of not holding it accountable for its violent actions.

7.1.1.2. Migrants and the COVID-19 Pandemic

The impact of the COVID-19 pandemic on public discourse should also be mentioned in the context of negative coverage of the migrant population. Commentators of reports on Internet portals portraying them as a threat to the safety and health of the domicile population called for restrictions of their freedom of movement and prohibiting them from entering Serbia. Nearly all media reports mentioning migrants from mid-March to early June were related to the pandemic and the state of emergency and targeted them as a threat to public health. In addition to the population over 65, migrants were subjected to the most restrictive lockdown measures and were prohibited from leaving the ACs and RTCs.⁸⁶¹ They were placed in quarantine when the state of emergency was proclaimed and their lockdown was extended under a Ministry of Health decision after it was lifted.⁸⁶² The camps they were living in were guarded by the Army.⁸⁶³

7.1.1.3. Militarisation of the Migrant Issue

A step towards the militarisation of the migrant narrative was made in mid-May, when Serbian President Aleksandar Vučić ordered the urgent deployment of the Army to protect the safety of Šid’s residents and their property from

858 “Protests of extreme rightists and leftist organisations in Belgrade,” *Radio Free Europe*, 25 October 2020, available in Serbian at: <https://bit.ly/38BPE2R>.

859 “Arrest of six members of Leviathan suspected of beating up a man,” *Danas*, 14 October 2020, available in Serbian at: <https://bit.ly/39ycVF0>.

860 Footage available on Leviathan’s Facebook profile: <https://fb.watch/2IxFTT9Q0B/>.

861 More in Chapter Accommodation of Asylum Seekers and Migrants.

862 More in *Right to Asylum, Periodic Report for January-June 2020*, pp. 29–31.

863 *Ibid*, p. 60.

migrants.⁸⁶⁴ An increase in the number of petty thefts, trespassing and similar other minor offences by migrants was registered in that municipality after the relaxation of the restrictive measures. It remains unclear why such a decision was taken and why the deployment of the police did not suffice given the absence of grave criminal offences, which the President himself noted. The tender for the public procurement of razor wire to fence off migrant centres in Serbia, advertised by the Ministry of Defence in mid-May, may have been the climax of efforts to visualise migrants through a militant lens.⁸⁶⁵ Reports of incidents in migrant camps were extremely frequent and were usually picked up by all the major outlets, increasingly resorting to sensationalist titles. Incidents broke out in camps in Tutin, Obrenovac, Krnjača, Preševo and Adaševci. The incident in Obrenovac attracted a lot of attention since it involved a mass fight among the migrants.⁸⁶⁶

The migrant narrative was again militarised when the Gendarmerie⁸⁶⁷ was deployed to the streets of Šid to “defend” its residents from the “migrant risk”.⁸⁶⁸ Participants in the anti-migrant protests held on 8 November 2020 in Šid called for the redeployment of the Army in that town.⁸⁶⁹ The protest was extensively covered by print and other media; their rhetoric fuelled fears among the residents of Šid, leaving the rest of Serbia under the impression that the town was “occupied” by migrants. Between 200 and 300 migrants ordinarily live in the RTC in Šid, a number which definitely cannot be qualified as an onslaught of migrants. Since the Gendarmerie has been formed, trained and equipped to fight against terrorism, the question arises whether it was necessary and expedient to deploy such a “heavy-weight” unit to handle minor infractions by migrants in Šid. Protests such as these can have grave and long-term effects on the safety of migrants but are unlikely to contribute to the achievement of the local population’s primary goal – improvement of migration management and public law and order in this border municipality that has borne the brunt of the migrant crisis since 2015.

864 “President of Serbia orders urgent deployment of Army in Šid”, *Prva TV*, 16 May 2020, available in Serbian at: <https://bit.ly/33BbP8a>.

865 “Is razor wire becoming Serbia’s policy?” *Danas*, 22 May 2020, available in Serbian at: <https://bit.ly/2C8K9ME>.

866 More in *Right to Asylum, Periodic Report for January-June 2020*, p. 62.

867 Although part of the MOI, the Gendarmerie is clearly not “ordinary” police. Rather, it is a “militarised” police unit that uses equipment used by the Army. According to the MOI website, it is primarily tasked with “suppressing terrorism (collection and processing of operational intelligence, detection of criminal acts of terrorism and securing of material evidence, deprivation of liberty of criminal offenders, disruption of organised terrorist groups and preventive anti-terrorist activities in Serbia)”.

868 More is available in Serbian at: <https://bit.ly/3lrOkUv>.

869 “Anti-migrant protesters in Šid want Army back,” *Danas*, 8 November 2020, available in Serbian at: <https://bit.ly/3fUtPyB>.

7.1.1.4. Unverified Theories

Unverified unverified theories, mostly spread via social networks and obscure Internet portals, thrived throughout 2020, especially during the state of emergency. Word had it that migrants were being secretly brought into Serbia during the curfew and prohibition of movement and bussed to locations across the country, which was all part of the secret plan to settle them in Serbia.⁸⁷⁰ Widespread resort to fake news is perhaps best illustrated by a report that come out in early April about the settlement of migrants in some Čačak villages, which the villagers themselves publicly denied.⁸⁷¹ Speculations that the number of migrants in Serbia was much higher than the official number, that they were still illegally crossing into Serbia and roaming it without control prompted the CRM to explain that the official number of migrants increased because they were now all living in RTCs. To back up the unverified theories, media published old footage of groups of migrants on the move or on buses, a lot of which had not even been filmed in Serbia.⁸⁷² Conspiracy theories sometimes verged on the absurd: migrants were reportedly engaged to install the 5G network during the curfew. A survey conducted by the Centre for International Public Policy illustrated how susceptible the public was to such theories – as many as 27% of the respondents believed that the pandemic was a smokescreen for settling migrants across Europe.⁸⁷³

Secret plans to settle a large number of migrants (reportedly even a million) in Serbian villages was definitely the most widespread of all the migrant-related unverified theories.⁸⁷⁴ Reports spreading it usually quoted the former Austrian Interior Minister as saying on a local TV station that Austria had an agreement with Serbia on its admission of unsuccessful asylum seekers. It transpired that such a working arrangement actually existed after Austrian MPs raised the issue with their MOI in April.⁸⁷⁵ Serbian officials

870 “DVERI: How did the number of migrants increase if the borders are closed!” *srbin.info*, 1 April 2020, available in Serbian at: <https://bit.ly/31zNWLA>.

871 “News breaks that migrants moved into the villages around Čačak: Citizens shake their heads in disbelief,” *Reflektor*, 7 April 2020, available in Serbian at: <https://bit.ly/3fKFMp2>.

872 “Commissariat denies allegations of ‘settlement’ of migrants,” *RTS*, 4 April 2020, available in Serbian at: <https://bit.ly/2PyE9zZ>.

873 *Public Opinion on Coronavirus (COVID-19) Epidemic*, Centre for International Public Policy, April 2020, available in Serbian at: <http://cmjp.rs/stavovi-gradjana-o-epidemiji-virusa-korona/>.

874 The issue was raised in late 2019 by *Dveri* leader Boško Obradović. See more at: “Obradović: Petition against settlement of migrants, they’d change the structure of the population in Serbia,” *Moravainfo*, 16 December 2019, available in Serbian at: <https://bit.ly/33RjdI0>.

875 “The agreement with Austria exists, what Serbia is getting is confidential,” *Deutsche Welle*, 15 April 2020, available in Serbian at: <https://bit.ly/30zM6LA>.

admitted as much after initial confusion.⁸⁷⁶ In its response to BCHR's request for access to information of public importance, the Serbian MOI said that Serbia had signed the Readmission Agreement with the EU back in 2007 and, based on it, a Protocol on its implementation with Austria in 2010. The MOI said that the Working Arrangement signed with its Austrian counterpart was merely an operational document specifying the technical details of readmission and transfer, which did not have to be endorsed by the Serbian Government or its National Assembly. The MOI said the Working Arrangement clearly specified that the Austrians had to prove beyond doubt that third-country migrants had entered Austria from Serbia and that Serbia then needed to explicitly consent to their return. Serbia was also entitled to refuse the migrants' transfer without specifying why. The MOI also said that Austria had never returned any migrants to Serbia, either on readmission or any other grounds.

Given that stories about the settlement of migrants in Serbia were one of the pillars of anti-migrant policy in Serbia, Serbia's senior officials, especially the President, Prime Minister and Minister of the Interior should have exhibited greater responsibility and transparency and promptly published accurate facts.⁸⁷⁷ According to a public opinion poll presented by the New Serbian Political Thought (NSPM) in early June, as many as 44.4% of the respondents believed that Serbia was at risk of large-scale settlement of migrants, whereas 42.1% did not subscribe to that view.⁸⁷⁸ The Red Cross/PIN survey showed that 56% of the respondents were against the permanent settlement of migrants in Serbia (25% disagreed with them), and that 21% of them were against even their temporary residence in Serbia (a view not shared by 62% of the respondents).

The latter survey also showed that the man in the street was poorly informed about migrants: only 8.3% (correctly) thought that fewer than 100 people had been granted asylum in Serbia over the past two years; 15.9% believed that up to 10,000 migrants have come to Serbia, 7.3% put their number at 100,000, while 3.2% thought that it exceeded 100,000. Since 55.2% of the respondents said that

876 "Lazarov dismisses speculations that Serbia is being turned into an asylum centre and that Austria is returning migrants to Serbia," 22 April 2020, MOI press release is available in Serbian at: <https://bit.ly/3plgwur>.

877 In that context, BCHR called on the Serbian authorities to immediately respond to claims about the existence of an alleged inter-state agreement between Serbia and Austria on the former's admission of irregular migrants and unsuccessful asylum seekers. See BCHR's press release of 17 April 2020, available at: <https://bityl.co/5Z7y>.

878 "NSPM pre-election survey: how boycott became inevitable," *Vreme*, 4 June 2020, available in Serbian at: <https://bit.ly/30EaY4E>.

they did not know the answer to that question, it transpires that nearly two-thirds of those who did answer it believed the astronomical figures.⁸⁷⁹

7.1.1.5. Conclusion

BCHR analysed the messages voiced during the protests and comments on various websites to sum up the main arguments and specificities of anti-migrant rhetoric. Migrants were perceived as a security threat at both the state level and by Serbia's citizens. The need to defend Serbian borders and avert potential terrorist threats were often mentioned. The migrants' behaviour was frequently described as problematic and they were perceived as a threat to public safety. Large-scale settlement of migrants in Serbia was increasingly spoken about. The number of migrants was greatly exaggerated and there was a lot of talk of their "invasion" or "onslaught" in the imminent future. Views that migrants were treated better than many Serbian citizens were frequently voiced. Major cultural differences between migrants and the local population were often emphasised, accompanied by warnings that migrants threatened Serbia's national identity and social homogeneity.

The reality could not be more different. Only a few crimes have been committed by migrants. These incidents mostly occurred when they clashed amongst themselves or involved trespassing, specifically entry into homes and areas abandoned a long time ago.⁸⁸⁰

Every minor or criminal offence must be penalised without delay, no matter who committed it. However, blanket statements on the migrants' propensity to crime are dangerous and may impinge on their safety. The number of migrants is also nothing to be concerned about. It was relatively stable and ranged between 6,000 and 9,000 during the reporting period.⁸⁸¹ The increase in their number in the centres managed by the CRM was due to their inability to move freely because they were under lockdown in the ACs and RTCs during the state of emergency. Furthermore, the vast majority of migrants still do not perceive Serbia as a country in which they would like to settle down for good.

7.1.2. Media Coverage of Migrants in a Positive Context

There was much less positive media coverage of migrants. Such coverage mostly included reports about the difficulties they faced in the countries they

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

880 As CRM representatives said on N1 TV, available in Serbian at: <https://bit.ly/2PA0VHC>.

881 As CRM representatives told the media on a number of occasions.

passed through on their way to their ultimate destinations.⁸⁸² Many reports described the brutalities they experienced on the Greek and Croatian borders.⁸⁸³

Media gave more room to individuals trying to help migrants during and after the state of emergency, at a time when there were greater fears that migrants would be exposed to various risks, poor living conditions in the overcrowded centres and when government decisions could have impinged on their situation. CRM representatives often spoke about the situation in the centres and the migrants' discipline, their understanding of the situation and help in maintaining hygiene and implementing protective measures. On a number of occasions, NGO representatives appeared in the media, issued press releases on the number of migrants and other open issues and appeals, and launched initiatives, alerting to disputable government actions and the circumstances the migrants were living in, and to fake news and anti-migrant rhetoric.⁸⁸⁴ UNHCR representatives in Serbia also used a number of opportunities to inform the public about the status of refugees, both in Serbia and globally.⁸⁸⁵

As the COVID-19 situation deteriorated, media started reporting on migrants sewing face masks in the centres and offering their help in containing the virus. Those who worked as health professionals in their countries of origin wanted to join in the anti-pandemic efforts and repay Serbia for its hospitality. Such news, showing that migrants should not be perceived as a threat or a burden to the state and that they could be of use to society, given the chance, were commendably picked up by numerous outlets.⁸⁸⁶ Every once in a while, an outlet would publish an article or an interview with migrants about their everyday concerns, thoughts, interests and hopes.⁸⁸⁷ Another extremely positive example is an article about Jafar from Iran, who came to Serbia four years ago, and now

882 "WAITING FOR THE TRAIN TO TAKE THEM TO A BRIGHTER FUTURE: Migrants spending nights in deserted buildings: We don't have anything anymore, ALL WE WANT IS A NEW HOME," *Blic*, 26 March 2020, available in Serbian at: <https://bit.ly/33CHKoJ>.

883 "Croatian police drawing crosses on migrants' heads," *Politika*, 12 May 2020, available in Serbian at: <https://bit.ly/2F6pIkr>.

884 For instance, a group of civil society organisations on 12 May filed an initiative with the Constitutional Court to review the constitutionality and legality of the order restricting the migrants' and refugees' freedom of movement even after the state of emergency was lifted. More in the *Right to Asylum, Periodic Report for January–June 2020*, pp. 30–31. See also a press release by a group of civil society organisations of 20 May alerting to increase in hate speech and xenophobic views against refugees and migrants, available in Serbian at: <https://bit.ly.co/5Jbf>.

885 See UNHCR's press release of late April, available at: <https://bit.ly.co/5Z81>.

886 "This is Serbia," *RTS 1*, 31 March 2020, available in Serbian at: <https://bit.ly/3kmH9xw>.

887 "Paralysed after a van full of migrants overturned, found new friends in Serbia: the hospital is Ornob's home," *Novosti*, 6 May 2020, available in Serbian at: <https://bit.ly/2PxO88E>.

works as an interpreter. This is one of the rare stories of relatively successful integration in Serbian life the media reported on.⁸⁸⁸ More reports portraying migrants as ordinary people worrying about the same things as Serbian citizens would likely encourage people who are undecided on this issue to approach it more constructively.

The documentary “Pushback and Dangerous Games”⁸⁸⁹ on the risks and hardships migrants face on their way to Europe attracted a lot of public attention. The documentary provided the public with another side of the story about migrants, who encounter huge difficulties and suffering on their journey so they can provide a better future for themselves and their families, contrary to the narrative that their ultimate goal is to massively settle down in Serbia.

Activities with positive connotations were launched also by a group of 15 initiatives and NGOs that said they would come and organise a “Solidarity Tea Party” for African and Asian refugees in the park across the Belgrade College of Economy on 25 October 2020, as a symbolic token of their solidarity with and support to these people. The event was organised in response to the anti-migrant protest staged by extremist organisations.⁸⁹⁰

In late November 2020, media reported that refugees and migrants from Syria and other Middle East and African countries living in the RTCs in Sombor, Kikinda, Krnjača and Obrenovac started raising funds for the treatment of Serbian children suffering from rare diseases. They joined the campaign that mobilised a large number of people in Serbia and designed posters in Arabic and Persian saying “Anika is a girl from Serbia suffering from a rare disease. Anika needs a drug that costs an unbelievable €2.1 million if she is to be cured. Serbian citizens have been raising funds to help Anika survive for three months now. She’s got only a little time left to take the drug. Let’s organise ourselves and give our modest contribution, let’s join the Serbian citizens’ campaign to raise funds for the drug.” The migrants managed to raise around 60,000 RSD for the treatment of children. This wonderful gesture is one of the few events portraying the migrant population in a positive light which was reported on by a number of media and welcomed by most of the Serbian public.⁸⁹¹

888 “I have a bit more freedom in Serbia; Sjekloća: We have the capacity to be a tolerant society,” *B92*, 8 June 2020, available in Serbian at: <https://bit.ly/31w2En4>.

889 See: <https://bit.ly/2Jm6Lx0>.

890 “Tea for migrants: rally against extremists on Sunday,” *Nova S*, 30 November 2020, available in Serbian at: <https://bit.ly/3gisUYM>.

891 “Migrants in Serbia collect money for sick children treatment,” *N1*, 23 October 2020, available at: <https://bit.ly/co/5Z82>.

7.1.3. Politicisation of the Migrant Issue

Except in 2015, when the refugee wave swept across the Western Balkans, political parties and other political stakeholders never devoted so much attention to migrant issues as they did in 2020. The politicisation of the migrant issue was probably crucial for the creation of negative perceptions of migrants in Serbia. The reason for the growing anti-migrant sentiments and discourse can primarily be sought in the fact that local and parliamentary elections were held in June 2020 and that pro-right parties tried to replicate the election rhetoric of their ideological counterparts in the EU. The impression is, however, that this topic does not feature among the priorities based on which citizens decide which party they will vote for. It remains unclear why migrants became such an important topic at these elections, but it is yet another indication that it is becoming the focus at all levels.

Opposition parties were the most keen to use the migrant issue and the threats migrants allegedly posed. *Dveri* reigned supreme in that respect. Its anti-migrant rhetoric climaxed in the so-called “spritzer racism” of its leader Boško Obradović, which drew a lot of attention.⁸⁹² *Dveri* also devoted a lot of attention to the arrangement with Austria, opining it could “further destabilise Serbia and generally undermine the security of our nation and state.”⁸⁹³ Anti-migrant rhetoric was also used to attract voters by the movement Enough is Enough, which dwelled on theories on the mass settlement of migrants. Similar anti-migrant sentiments were expressed also by the Movement for the Restoration of the Monarchy, as well as the movement Broom 2020, the People’s Bloc, SRS, the Leviathan Movement, *Zavetnici* and others.⁸⁹⁴

The fact that political interest in migrant issues plunged after the local and parliamentary elections corroborates the conclusion that political stakeholders abused them to score political points. Their lesser interest in this topic may also be attributed to their failure to achieve the results they had hoped for from highlighting it. It cannot, however, be concluded that attempts to politicise the migrant issue i.e. abuse it for political purposes abated after the elections. *Dveri* again took the lead, claiming that Serbia should return the migrants back to where they had come from, mostly North Macedonia, either by itself or in agreement with North Macedonia. *Dveri* emphasised that Hungary and Croatia were pushing migrants back to Serbia and called on Serbia to follow suit, although pushbacks are illegal under international law.⁸⁹⁵

892 More in *Right to Asylum, Periodic Report for January-March 2020*, pp. 50–51.

893 See *Dveri*’s press release of 23 April 2020, available in Serbian at: <https://bit.ly/3ij7kTW>.

894 More in *Right to Asylum, Periodic Report for January-June 2020*, pp. 68–69.

895 “*Dveri*: Migrants to Preševo, Migrants from Preševo“, *City of Subotica*, 18 November 2020, available in Serbian at: <https://bit.ly/33K2IBn>.

The ruling Serbian Progressive Party (SNS) tried to maintain a balanced attitude towards migrants, aware that this topic could not greatly increase its support among voters. Its policy is well illustrated by the following statement made by Aleksandar Vučić: ““Wherever they make problems, we will calm them down immediately. We take care of them, we protect them, feed them and behave like good hosts. But we know what to do if they get out of line, in accordance with national law.”⁸⁹⁶ SNS MP Vladimir Đukanović even opined that the migrant problem was concocted by the opposition and that it did not exist.⁸⁹⁷

The degree to which the migrant issue helped improve the election results of the above-mentioned opposition parties remains questionable. According to agency *Faktor plus*’ survey, 10% of the respondents thought that the migrant issue would dominate the campaign.⁸⁹⁸ Given the poor election results of the political parties with fervent anti-migrant rhetoric, migrant issues apparently do not fall among those that greatly influence political views and preferences of most Serbian voters.

7.1.4. Conclusion and Recommendations

In light of the foregoing considerations and despite lesser political abuse of the migrant issue in the latter half of the year, the below conclusions apply to the entire reporting period.

Public perceptions of migrants and their portrayal in public discourse deteriorated in 2020. Specific factors, including elections, the COVID-19 pandemic and the state of emergency, contributed to the spread of negative views. The climate that apparently prevails in Serbia, in which xenophobia, racial and religious hatred and intolerance are not being condemned or qualified as alarming by the state and society, is a very dangerous one. When it becomes generally accepted and commonplace to associate migrants with violence, danger or problems, their future situation will be conditioned by various factors conducive to their instrumentalisation. This is why more efforts should be made to improve public perceptions of migrants; they should involve the fight against fake news and stereotypes, as well as against hatred and intolerance.

All the relevant Serbian authorities should demonstrate a clearer intention to protect the migrant population and to react promptly to all threats to their

896 “VUČIĆ ON INCIDENTS IN MIGRANT CENTRES: Situation is under control! WE’LL CALM THEM DOWN wherever they make problems,” *Kurir*, 7 April 2020), available in Serbian at: <https://bit.ly/3a5UbdY>.

897 “New morning”, *Pink*, 9 May 2020, available in Serbian at: <https://ggle.io/3JNB>.

898 “Party ratings after state of emergency: SNS AND ŠAPIĆ COME OUT THE STRONGEST, Sergej taking MFC across threshold, CROWD AT THE THRESHOLD,” *Blic*, 14 May 2020, available in Serbian at: <https://bit.ly/30Cfv7Y>.

safety and rights. The MOI and the judiciary should respond to explicit cases of hate speech and racism that might result in escalation of intolerance. In particular, attempts by different groups to take the law into their own hands should be prevented. State officials should exhibit greater responsibility and transparency vis-à-vis the public and familiarise it with the national migration policy and international obligations assumed by Serbia to dispel distrust and the climate conducive to unverified theories. The Ministry of Defence should limit its activities related to migrants and refugees to the confines of the law, and the Army of Serbia should be engaged only when its involvement is justified and necessary, rather than strengthen public perceptions of migrants as a threat or a problem. The political parties, ruling and opposition alike, should refrain from abusing migrants for political gain.

All media should comply with professional standards and refrain from sensationalist journalism. Their greater focus on the humanitarian and integration narratives increases the visibility of the positive aspects of the refugees' and migrants' presence in Serbia. They should give refugees and migrants the opportunity to be heard, to talk about their plans, thoughts, experiences and problems. Because the best way to dispel prejudices about people is to get to know them.

7.2. BCHR's Response to Hate Speech against Refugees, Migrants and Asylum Seekers

The above analysis leads to the conclusion that negative views of refugees and migrants dominated public discourse in Serbia. This population was also the target of sensationalist and unprofessional journalism, quasi journalism and stigmatisation, and even hate speech on Internet portals and social networks. BCHR initiated several proceedings before the relevant authorities, as well as a campaign against fake news and conspiracy theories flourishing on the Internet.⁸⁹⁹

7.2.1. BCHR's Response to Disputable Media Reports

Most of the disputable announcements containing hate speech against migrants and refugees in 2020 came from various rightist organisations and groups that published them on their Internet portals and social network profiles. Notwithstanding their sensationalist titles and focus on the security narrative and the migrants' wrongdoings (even the minutest infractions), mainstream media nevertheless maintained a neutral tone. However, the comments

⁸⁹⁹ BCHR also issued several press releases during the first half of the year, available at: <https://bit.ly/31yEyrO>.

posted by the readers on their websites abounded with horrifying forms of hate speech and even direct calls to violence, which the outlets did not delete promptly.⁹⁰⁰

In mid-April 2020, BCHR's legal team filed a criminal report⁹⁰¹ against the administrators of the Facebook group "STOP settlement of migrants" with the Cyber Crime Department of the Belgrade Higher Public Prosecution Service (HPPS). Since the Department did not act on the criminal report two months,⁹⁰² BCHR sent a letter to HPPS, asking it to respond to its questions regarding the criminal report and act on it forthwith.⁹⁰³ The HPPS did not send BCHR an adequate reply by the end of the reporting period. It merely asked BCHR to forward it the data about the administrators and profiles of the group; most of these profiles had been fake and were by then deleted, partly due to the delayed response of the HPPS. Such omissions to act suggest that the state is acquiescing to discrimination against migrants and refugees, who are a particularly vulnerable group.

The BCHR in 2020 also initiated proceedings before the Complaints Commission of the Press Council, an independent self-regulatory body established to monitor compliance with the Serbian Press Code of Conduct (hereinafter: Code). BCHR complained against media which did not delete discriminatory comments containing hate speech from their portals. At its session on 26 June 2020, the Commission upheld all five complaints BCHR filed against the daily *Blic* and the *Srbija danas* portal. It noted that the tabloid *Kurir* had deleted the disputable discriminatory comments and comments with elements of hate speech. It found that press accountability standards were violated by *Blic* (in all four cases) and by *Srbija danas* (in two cases).⁹⁰⁴ The Commission also concluded that these outlets had violated the due diligence standard,⁹⁰⁵ under which reporters must be aware of the risk of discrimination being spread by media and do their utmost to prevent it.⁹⁰⁶

The views the Complaints Commission stated in its decisions are of major importance. They provide outlets with guidance on professional journalism

900 In April 2020, BCHR's legal team sent a letter to the *Kurir* editors, asking them to delete offensive and discriminatory comments posted on its portal and Facebook page that month. The administrators of the portal and Facebook profile acted on BCHR's request and removed the disputable comments.

901 Criminal report registered under Ref. No. 615-8 of 14 April 2020. On file with BCHR.

902 More in *Right to Asylum, January-June 2020*, pp. 73-74.

903 BCHR letter No. 1191 of 23 June 2020.

904 Paragraph 1, Section IV of the Code.

905 Paragraph 4, Section V of the Code.

906 More in *Right to Asylum, Periodic Report for January-June 2020*, pp. 74-76.

and admonish unprofessionalism and breach of law. The Press Council has a retributive and a preventive role. Retributive measures include: its orders to the outlets found in violation of the Code to publish the Complaints Commission's decisions; publication of its decisions on the Press Council's website; and the ineligibility of media found in violation of the Code for project co-funding from public funds. The Commission's decisions play a preventive role as well since they alert other outlets to conduct considered impermissible in a modern democratic society.⁹⁰⁷

7.2.2. BCHR's Campaign against Fake News

BCHR in 2020 launched a campaign against the many fake news about the number of migrants and their alleged large-scale settlement in Serbia, the "privileges" they enjoy, and many other untrue, incomplete or unverified information about them.⁹⁰⁸ The campaign aimed to provide the public, especially people who get most of their news from social networks, with accurate information about the migrant population and its size, and to familiarise them with national and international legal documents governing refugee law and migration.

The campaign was launched on social networks and included a series of posts in the form of electronic posters or brochures⁹⁰⁹ on BCHR's Facebook, Twitter and Instagram profiles. The posts were short and simple and summarised various facts, regulations and statistics, providing the readers with links to sources where they could check the information or familiarise themselves with the issues in greater detail.

Unfortunately, the campaign caused negative, even extremist reactions among a large number of readers of the posts, specifically many of their commentators. Interestingly, the commentators hardly ever focused on the content of the posts or denied the facts; rather, their comments served exclusively to offend, threaten or label the authors of the posts. Such verbal assaults and threats against people disclosing facts not to one's liking, without the attempt to refute them, is extremely dangerous for the general climate in society and the culture of dialogue on any sensitive issue eliciting strong reactions. People who are not open to facts and react emotionally to news they dislike, without thinking about them or analysing them, are susceptible to manipulation; they can easily be won over by propaganda and mere pandering to their prejudices. Commentators on social networks should not, however, be taken as the least common denomina-

907 "Discrimination and hate speech in the media," *Vreme*, 6 August 2020, available in Serbian at: <https://bit.ly/36JU7kk>.

908 Primarily on websites and social networks.

909 See, e.g. <https://bit.ly/2Ig7uz0>.

tor, since most moderate readers are not in the habit of commenting or engaging in debates in the comments sections and since sensitive issues attract a disproportionately high number of extremists. Although a substantial share of Serbia's population has negative views of migrants, statistics presented in this analysis of public discourse on migrants show that most people do not share the extremist views of people commenting BCHR's posts published during its anti-fake news campaign.

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