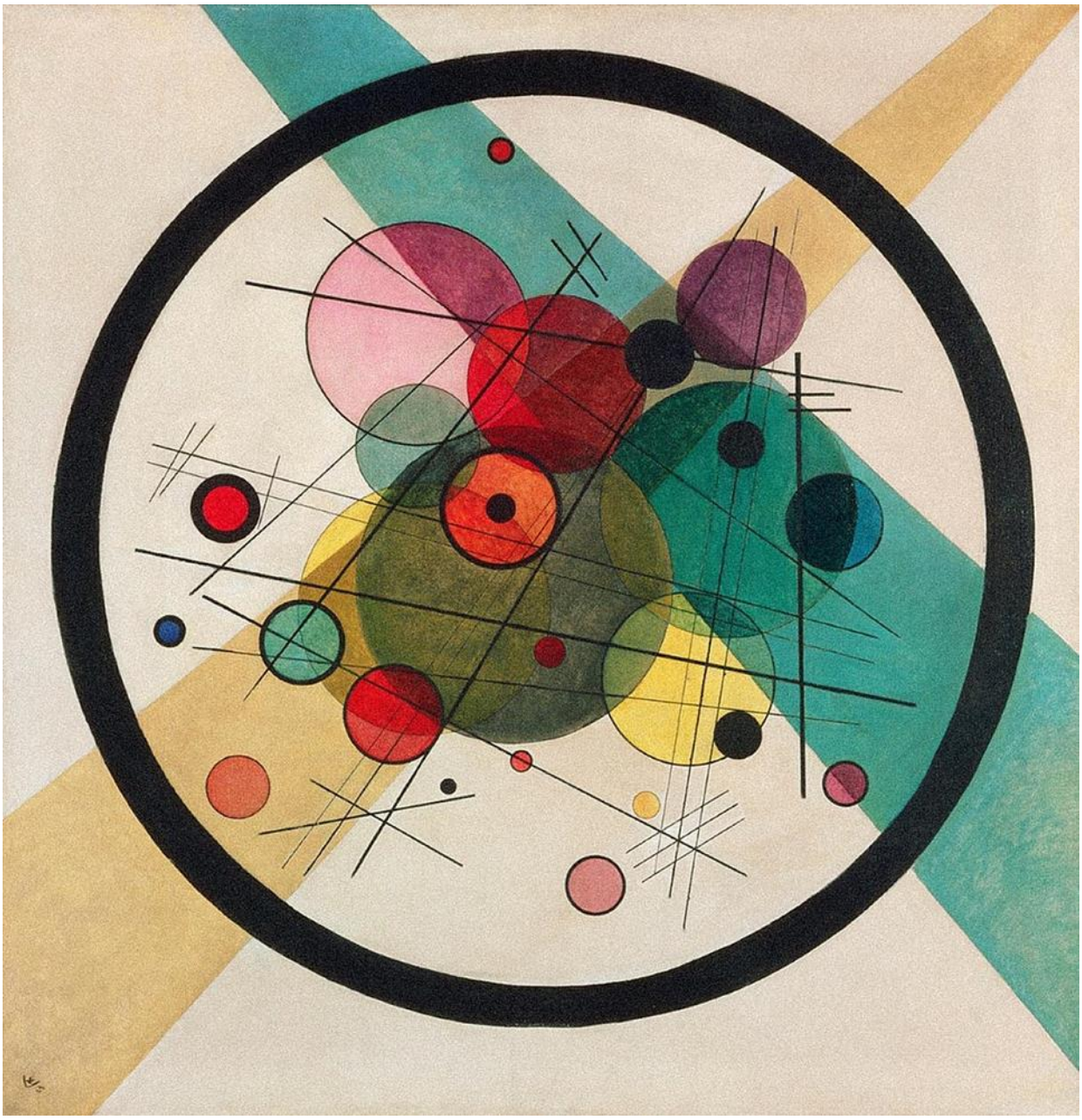

Right to Asylum in the Republic of Serbia Periodic Report for January–March 2021

Belgrade Centre for Human Rights

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Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

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

EASO –European Asylum Support Office

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

ECtHR – European Court of Human Rights

FL – Foreigners Law

FRN – Foreigner Registration Number

LAD – Law on Administrative Disputes

LATP – Law on Asylum and Temporary Protection

LGAP – Law on the General Administrative Procedure

LPPID – Law on the Protection of Population from Infectious Diseases

MOI – Ministry of the Interior of the Republic of Serbia

NBS – National Bank of Serbia

PIN –Psychosocial Innovation Network

RS – Republic of Serbia

RTC – Reception-Transit Centre

SIA – Security Intelligence Agency

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

WHO – World Health Organization

Introduction

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

This Report, focusing on the right to asylum in the RS in the January-March 2021 period, was prepared by BCHR's legal and integration teams. The Report contains information the BCHR legal team obtained whilst representing asylum seekers and in its regular cooperation and communication with the state authorities and the UNHCR. The statistical data presented in it cover the 1 January - 31 March 2021 period.

The Report addresses specific issues that the BCHR team deemed particularly important in the first quarter of 2021. They include Constitutional Court decisions on claims concerning violations of some of the fundamental human rights of asylum seekers and migrants, which the BCHR had alerted to in its prior reports. The BCHR legal team also analysed the asylum authorities' practices and some of their noteworthy decisions adopted in the first three months of the year. Where relevant, the Report briefly describes the prior practices of the relevant authorities or refers to BCHR's earlier reports to provide a more comprehensive illustration of the positive and negative aspects of their work.

Difficulties and challenges surrounding the issuance of travel documents to refugees, which BCHR has been alerting to for years, persisted in the first quarter of 2021 as well. On the other hand, the BCHR identified headway in facilitating the refugees' access to education during the reporting period.

The COVID-19 pandemic declared by the World Health Organization (WHO) on 11 March 2020 continued in 2021.[1] The vaccination process was launched in the RS in December 2020 and refugees, and migrants and asylum seekers living in Asylum Centres (ACs) and Reception-Transit

[1] *WHO Director-General's opening remarks at the media briefing on COVID-19*, WHO, 11 March 2020, available at: https://bityl.co/6rou.

Centres (RTCs) were provided with the chance to sign up for vaccination and be vaccinated in the first quarter of the year.

The Report is primarily addressed to state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals and organisations monitoring the situation in the field of refugee law. Its authors alert to specific shortcomings and challenges in the work of the relevant authorities and offer recommendations on how to address them at the end of each section. We believe that this Report will deepen the readers' understanding of the situation refugees are in and help the relevant RS authorities establish a more functional asylum system.

Cover: *Circles in a Circle*, Wassily Kandinsky (1923)

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. The data in this Report cover the 1 January – 31 March 2021 period. The national asylum authorities do not publish information about their work on their websites.

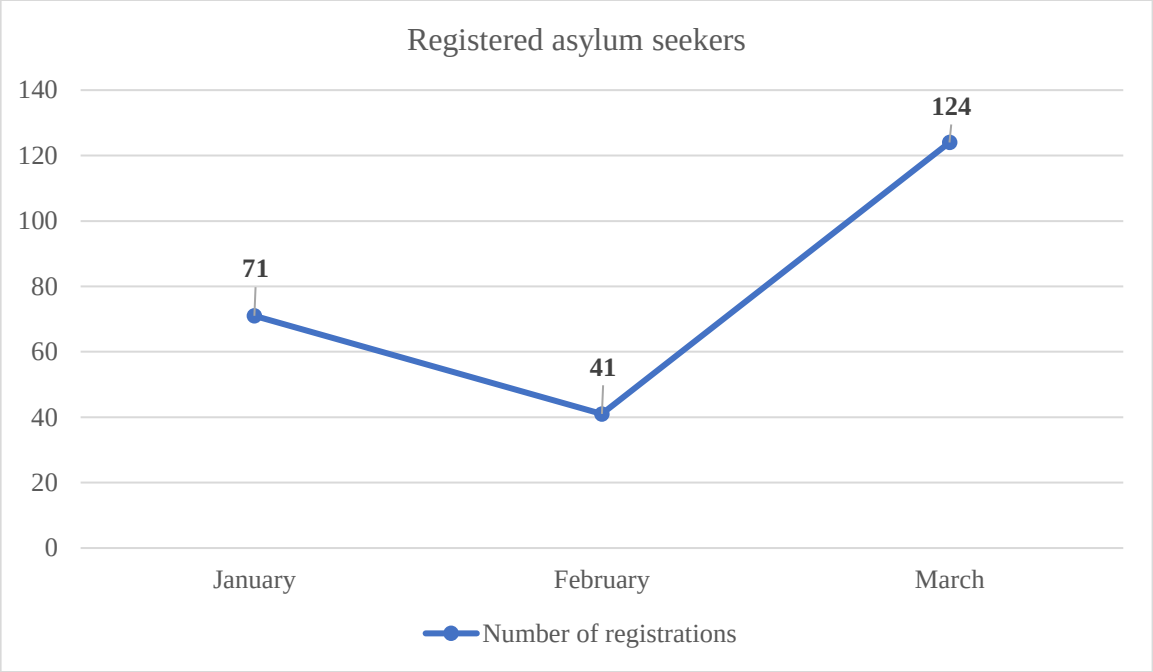
1.1. Registration of Asylum Seekers

A total of 236 foreigners expressed the intention to seek asylum in the RS since the beginning of the year; 213 of them were men and 23 were women. The intention to seek asylum in the RS was expressed by 40 children, four of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered since the beginning of the year: 71 in January, 41 in February and 124 in March 2021.

Most of the foreigners who expressed the intention to seek asylum were nationals of Afghanistan (147), followed by nationals of Pakistan (20), Syria (15), Bangladesh (10), Iran (6) and India (5). The intention to seek asylum in the reporting period was also expressed by three nationals of each of the following countries: Palestine, Morocco, Somalia and Algeria; and two nationals of each of the following countries: DR Congo, Turkey, Burundi, Cuba, and Libya. The fewest asylum seekers were nationals of Armenia, Croatia, Egypt, Iraq, Lebanon, Russia, Albania, Bosnia and Herzegovina, Equatorial Guinea, Ghana and Jordan (one from each of these countries).

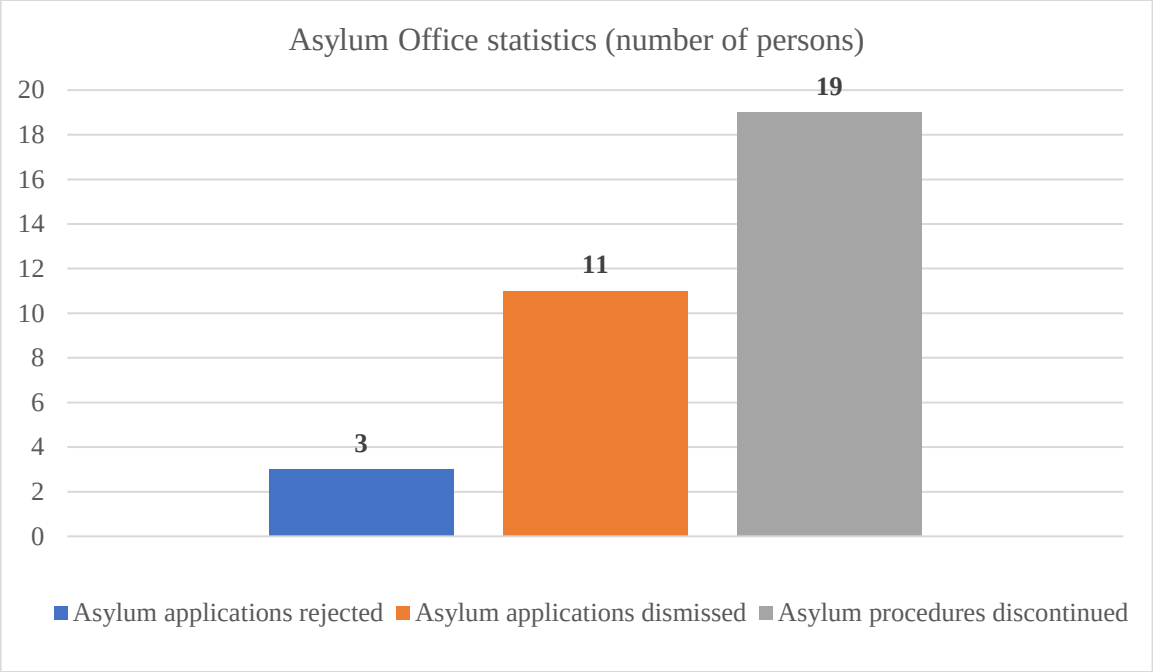
Most foreigners issued certificates confirming they expressed the intention to seek asylum (registration certificates) in the first quarter of the year were registered in police departments in the interior of the country (219), while five foreigners were registered at border crossings and nine at Belgrade Airport Nikola Tesla. The Asylum Office staff registered three foreigners as intending to seek asylum in the asylum centres in the reporting period.

A total of 649,739 foreigners expressed the intention to seek asylum in Serbia from 2008 to end March 2021. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577, 995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018, 12,937 in 2019, 2,830 in 2020 and 236 in the first quarter of 2021.



1.2. Work of the Asylum Office

As of 1 January 2021, 11 asylum applications were submitted in person before Asylum Office staff and 22 applications were submitted in writing; furthermore, three subsequent asylum applications were filed. The Asylum Office held hearings concerning 17 asylum seekers. None of the applicants were granted refuge i.e. asylum or subsidiary protection. The Asylum Office rejected eleven s and dismissed three asylum applications. It discontinued the review of 19 applications, primarily because the applicants had left the RS before the completion of the asylum procedure.



Available data indicate that the RS authorities have upheld the asylum applications of 194 foreigners since 2008. They granted refugee status to 90 and subsidiary protection to 104 applicants.

2. Practice of the Asylum Authorities

Under the Law on Asylum and Temporary Protection (LATP), the first-instance asylum procedure is conducted by the Asylum Office, while appeals of its decisions are heard by the Asylum Commission. The Asylum Commission decisions may be challenged before the Administrative Court.

During the first quarter of 2021, the Asylum Office rendered ten decisions in cases in which the asylum seekers were represented by the BCHR, rejecting six asylum applications and discontinuing four asylum procedures. In the same period, the Asylum Commission rendered eight decisions dismissing the appeals filed by the BCHR on behalf of its clients and upholding the Asylum Office's decisions in these cases. The Administrative Court delivered three judgments rejecting one and adopting two lawsuits filed by the BCHR on behalf of six clients during the reporting report. Not one asylum application was upheld during the first three months of the year.

This part of the Report contains the BCHR legal team's analysis of individual decisions by asylum authorities it considers particularly important. These decisions illustrate the asylum authorities' good practices, as well as specific irregularities and shortcomings that have persisted for years now.

2.1. Asylum Office

2.1.1. Rejection of an Iranian Convert's Asylum Application

On 13 January 2021, the Asylum Office issued a ruling[2] rejecting the asylum application filed by Iranian national A. on 9 December 2019. Namely, A. in 2015 frequented a secret Protestant house church (linked to a Christian organisation abroad) near Tehran, where he, his partner and other believers read the Bible, prayed and took part in other Christian religious rites. After he had been going to the house church every day for four months, A. was arrested by the Iranian security forces. He was subjected to psychological and physical abuse in pre-trial detention for around five days; his tormentors were trying to extort a confession from him and information about the other members of the Christian community he belonged to. Whilst in custody, A. was denied a lawyer

[2] Asylum Office Rulling no. 26-3079/19 of 13 January 2021.

and was held incommunicado. After release, A. became reasonably afraid that he could again be subjected to such treatment and decided to flee Iran and seek asylum in another country.

a) Disregard of Presented Evidence and Own Case-Law

In order to substantiate the application, the BCHR submitted to the Asylum Office over 15 media reports confirming the existence of continuous and ongoing systemic persecution of Christian converts in Iran.[3] The BCHR also referred to a number of prior Asylum Office decisions[4] granting refuge to Christian converts from Iran after establishing the existence of the same or similar facts like in A.'s case.

The BCHR also submitted to the Asylum Office a submission containing other evidence and information of relevance to its decision, such as an analysis of the legal framework governing the right to freedom of religion and reports on religious freedoms and house churches in Iran by non-government organisations and other independent bodies. It also submitted a psychological assessment report of the applicant drawn up by a psychologist working for the Psychosocial Innovation Network (PIN).

In the reasoning of its decision, the Asylum Office noted the submission of the above evidence by the applicant's lawyers but failed to assess any of it. The Asylum Office was under the obligation to properly, accurately and fully ascertain all the facts and circumstances of relevance to the adoption of a lawful decision on this administrative matter.[5] Furthermore, the first-instance authority did not explain why it had deviated from its practice of upholding asylum applications by Iranian converts. It needs to be noted that it had reached a number of identical decisions in such cases and that this negative decision is a precedent to its case-law. To recall, in one of its 2018 judgments,[6] the Administrative Court said that the authorities were under the obligation to take into account their prior decisions on identical or similar administrative matters.[7] Therefore, in this specific case, the Asylum Commission violated the principle of legality and predictability, because it adopted its ruling in contravention of Article 141(4) of the Law on the

[3] Specifically, reports published by the *Mohabat News* agency. The submitted evidence describes only some of the incidents that occurred from April 2019 to end August 2020, clearly indicating that the ill-treatment the applicant had been subjected to was not an isolated incident and that such treatment by the Iranian authorities has persisted.
[4] Asylum Office Rulings nos. 26-1083/17 of 26 January 2018, 26-1081/17 of 4 July 2018 and 26-1395/18 of 5 February 2019.
[5] This obligation arises from Art. 10 of the LGAP on 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.
[6] Judgment no. U. 6310/18 of 27 August 2018.
[7] Art. 5(3), LGAP.

General Administrative Procedure (LGAP).[8] Its decision is also unconstitutional, because the principle of predictability is an expression of the constitutional principle of equality before the law and the constitutional principle guaranteeing everyone equal protection of their rights before the state authorities.

b) Misinterpretation of the Concept of Persecution

The Asylum Office's statement - that A. was not exposed to real risk of ill-treatment because of his interest in Christianity and that such risk could not arise if he, *as a potential convert, practiced Christianity* – is unclear. The Office also reiterated on several occasions in the ruling that A. *did not encounter any problems* during the four months he went to the house church, whereby it inferred that these activities had not and could not have resulted in any adverse consequences. However, the applicant's religious beliefs and his participation in private religious rites with other individuals in the community are the sole reason why he had been deprived of liberty. The Asylum Office had not challenged or brought into question the veracity of these allegations. When one also bears in mind the treatment A. had been subjected to in pre-trial detention,[9] it is clear that his fundamental human rights had been seriously and grossly violated. Therefore, the Asylum Office's conclusion that the described event could not be associated with the concept of "persecution" in the meaning of the Convention Relating to the Status of Refugees (Refugee Convention)[10] is in contravention with the LATP.[11]

The Asylum Office erred when it found that A. *had not a faced real risk of ill-treatment* and that *an isolated and specific case rather than an act of persecution* was at issue, inter alia, because its finding is in contravention with established and unrebutted facts, as well as the case-law of the

[8] Under this Article, the reasoning shall specify, inter alia, the reason(s) why the authority deviated from its decisions on identical or similar administrative matters.
[9] Under Art. 32(3) of the LATP, the fact that an asylum seeker has already been subjected to persecution or risk of suffering serious harm or to threats of such persecution or serious harm is indication of their well-founded fear of persecution or risk of suffering serious harm.
[10] *Official Gazette of the FPRY – International Treaties and Other Agreements*, 7/60.
[11] Under Article 24 of the LATP, the right to refuge, or refugee status, shall be granted to applicants outside their country of origin or habitual residence who have a well-founded fear of persecution on grounds of their race, sex, language, religion, nationality, membership of a social group or political opinion, and who are unable or, owing to such fear, unwilling to avail themselves of the protection of that country. Art. 26(1(2)) of the LATP defines religion as: theistic and atheistic beliefs, the participation, in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of faith, or forms of personal or communal conduct based on or arising from religious belief.

European Convention on Human Rights (ECHR).[12] Namely, the ECtHR has repeatedly[13] held that threats, insults, hitting, kicking and slapping of applicants by security forces amounted to a violation of the prohibition of torture under Article 3 of the European Convention on Human Rights (ECHR). In some cases,[14] the applicants had been exposed to much milder forms of violence and violence of lesser intensity than the violence A. had suffered. The Asylum Office failed to view his application through the prism of the listed decisions and thus failed to make a complete finding of fact.

A. confided to his psychologist that he had spent the days after his release from pre-trial detention and before he left Iran in isolation, constantly fearing for his safety and that of his family and wracked by guilt. The psychologist concluded in his psychological assessment that the applicant's traumatic experiences in his country of origin had considerable psychological implications and lay at the heart of his past and present difficulties. However, the Asylum Office did not take any of this into account when it rejected A.'s asylum application; nor did it explain why. The BCHR earlier alerted to the importance of applying a multi-disciplinary approach to decision-making in the asylum procedure.[15]

c) Contradictory Referencing of the Relevant Reports

In its decision, the Asylum Office said that it had consulted recent reports by international and other relevant organisations. One of them was the Human Rights Committee's 2011 Concluding observations,[16] from which the Asylum Office quoted paragraph 23, which reads as follows: *The Committee is concerned about discrimination against members of the Christian minority, including arrests based on charges of proselytizing and a ban on conducting Christian*

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[12] *Official Gazette of the SCG – International Treaties*, 9/03, 5/05 and 7/05 - *corr*. and *Official Gazette of the RS - International Treaties*, 12/10 and 10/15).

[13] *Ireland v. the Uinited Kingdom*, ECtHR, Application no. 5310/71 (1978); *Tomasi v. France*, ECtHR, Application no. 12850/87 (1992); *Hulki Güneş v. Turkey*, ECtHR, Application no. 28490/95 (2003); *Balog v. Hungary*, ECtHR, Application no. 47940/99 (2004); *R.L. and M.J.D. v. France*, ECtHR, Application no. 44568/98 (2004); *Rivas v. France*, ECtHR, Application no. 59584/00 (2004); *M.F. v. Hungary*, ECtHR, Application no. 45855/12 (2017); *Csonka protiv Mađarske*, ECtHR, Application no. 48455/14 (2019); *Zličić v. Serbia*, ECtHR, Application no. 73313/17 and 20143/19 (2021) et al.

[14] *M.F. v. Hungary* and *Csonka v. Hungary*.

[15] More in Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR, (Belgrade, 2019), pp. 55-58, (hereinafter: *Right to Asylum in the Republic of Serbia 2019*) available at: https://bityl.co/6pAk.

[16] *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee - Islamic Republic of Iran*, UN Human Rights Committee, 29 November 2011, CCPR/C/IRN/CO/3, para. 23, available at: https://bityl.co/6pD6.

services in Farsi. The Committee also notes with concern that individuals who have converted from Islam have been arrested, and that article 225 of the draft Penal Code is aimed at making the death penalty mandatory for convicted male apostates.

The Asylum Office then referred to Amnesty International's 2017/2018 Report,[17] which stated in the part on Iran that the freedom of religion and belief and the *right to change or renounce religious beliefs continued to be violated in law and practice, that Christian converts received harsh prison sentences, which ranged from 10 to 15 years in several cases and that raids on house churches continued*. Therefore, the Asylum Office substantiated its ruling by the fact that Iran has been violating the freedom of religion, discriminating against the Christian minority and sentencing male apostates to death. *Ergo*, the Asylum Office contradicted its own arguments that it used to refuse the asylum application filed by A. (a Christian convert from Iran) by inadequately consulting the relevant reports.

d) Conclusion

The Asylum Office violated a number of procedural rules under domestic law in this case. Despite the efforts invested in proving all the facts, applicant A. was illegally denied the right to asylum and he was not provided with a quality explanation of the decision. The Asylum Office improperly assessed the submitted evidence and deviated from its established practice. The BCHR therefore filed an appeal with the Asylum Commission. The second-instance procedure was still pending at the time this report was completed.

2.1.2. Rejection of a Libyan National's Asylum Application after Consultations with the Security Intelligence Agency

In January 2020, the Asylum Office again rejected the asylum application filed by Libyan national R. back on 19 July 2017. Its first decision, adopted in 16 September 2019, was analysed in detail in BCHR's 2019 annual asylum report.[18] The BCHR filed an appeal on R.'s behalf with the Asylum Commission, which overturned the decision and remitted the case back to the Asylum Office,[19] ordering it to properly, accurately and fully establish all the facts and circumstances of relevance to the lawful and proper adjudication of this administrative matter.

[17] *Amnesty International Report 2017/18 - Iran*, Amnesty International, 22 February 2018, pp. 199-200, available at: https://bityl.co/6pD4.

[18] More in *Right to Asylum in the Republic of Serbia 2019*, pp. 51 and 53.

[19] Asylum Commission Ruling no. Až–29/19 of 19 November 2019.

Fourteen months passed between the Asylum Office's two rulings. In the meantime, the BCHR filed an appeal of the first ruling[20] and a complaint challenging the "silence of the administration". In its second ruling, the Asylum Office said that it had consulted the Security Intelligence Agency (SIA) and received a document classified as "confidential" from it specifying that the applicant did not fulfil the requirements to be granted refuge or subsidiary protection for national security reasons.[21] The Asylum Office failed to elaborate the decision or even refer to the reference number and date of the document qualifying R. as a risk to Serbia's national security and public order. It also remained unclear when and how the Asylum Office consulted SIA, i.e. whether the exchange of data and communication were oral or in writing.

The Asylum Office's decision is problematic for several reasons. Regardless of the degree of confidentiality of the data, denial of basic information about the document on which the decision to reject the application is based first and foremost gives rise to reasonable suspicion that the decision was arbitrary. Since the LATP does not define the expression "risk to national security and the public order of the Republic of Serbia", it has to be interpreted in the meaning of the Foreigners Law (FL)[22] under which an "unacceptable security-related risk shall exist if available data and knowledge indicate that a foreigner has advocated, encouraged, aided, prepared or undertaken activities threatening the constitutional order and security of the Republic of Serbia, assets protected by international law and national, regional and global security issues of relevance to the Republic of Serbia and its legal system." All these actions are offences under the RS Criminal Code[23] that are prosecuted *ex officio*. Since no proceedings have been launched against R. to establish his guilt for these crimes, the question of the plausibility of SIA's opinion inevitably arises.

a) Truncated Reasoning

The shortcomings of the reasoning have precluded the applicant from ascertaining the reasons why his asylum application was rejected. Therefore, the impugned ruling does not fulfil the legality requirements laid down in the RS Constitution, under which individual enactments and actions of state authorities, organisations vested with public powers and provincial and local self-

[20] More in *Right to Asylum in the Republic of Serbia, Periodic Report for July–September 2020*, BCHR (Belgrade, 2020), pp. 24 and 25, (hereinafter: *Right to Asylum, Periodic Report for July–September 2020*), available at: https://bityl.co/6pDF.
[21] Arts. 33(2) and 34(2), LATP.
[22] Art. 9(3), FL (*Official Gazette of the RS*, 24/18 and 31/19).
[23] *Official Gazette of the RS*, 85/05, 88/05 - corr., 107/05 - corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

government authorities must be based on the law,[24] or the fairness requirements, since all parties to proceedings are entitled to a reasoned decision.

Under the LGAP, the reasoning must be comprehensible and include, inter alia, evidence it is based on, reasons that were decisive for the assessment of each piece of evidence and reasons corroborating the decision in the operative part of the ruling given the findings of fact.[25] By disregarding its obligation to clearly explain the reasons on which it based its ruling, the Asylum Office violated procedural rules and the applicant's right to appeal its decision, since it failed to specify the reasons he could contest in his appeal. It needs to be noted that the RS may be found in violation of the ECHR in this case.[26]

b) Violation of the *Non-Refoulement* Principle

The Asylum Office also failed to review whether applicant R. was at risk of torture or inhuman or degrading treatment or punishment. It therefore acted in contravention of the *non-refoulement* principle laid down in the LATP[27] and the Refugee Convention.

Namely, R. claimed during the first-instance procedure that he was at risk of persecution in his country of origin because he had been a sympathiser and collaborator of Muammar Gaddafi. During the oral hearing, he presented two warrant arrests issued against him by a Libyan paramilitary militia. Furthermore, the new Libyan authorities confiscated the real estate he owned in Tripoli.

There are numerous reports of human rights violations by the new Libyan authorities published by various state institutions and international and non-government organisations. The BCHR submitted a number of such reports and other evidence to substantiate the applicant's claim that he would be at real risk of torture or inhuman or degrading treatment or punishment if he returned to Libya. For instance, the Australian Department of Foreign Affairs and Trade assessed that those who were, or are perceived to have been, high-ranking officials in the Gaddafi regime, or who had close associations with the Gaddafi family, or those who were associated with the

[24] Art. 198(1), RS Constitution.
[25] Art. 141(4), LGAP.
[26] See ECtHR's judgment in the case of *Ljatifi v. the Former Yugoslav Republic of Macedonia,* Application no. 19017/16 (2018).
[27] Art. 6 of the LATP prohibits the *refoulement* of anyone to a territory where they are at risk of being subjected to torture or inhuman or degrading treatment or punishment.

Libyan security forces during the 2011 conflict, faced a high risk of both societal and official discrimination throughout Libya, including of being illegally detained, tortured and even killed.[28]

In its Position on Returns to Libya – Update I , the UNHCR clearly said that individuals who had supported Gaddafi's regime were at direct risk of persecution in the meaning of Article 1 of the Refugee Convention and its 1967 Protocol.[29] The UNHCR concluded that returns to Libya were unacceptable and might result in the violation of the principle of *non-refoulement.* It ended the document by stating:

> *As the situation in Libya remains fluid and uncertain, UNHCR calls on all countries to allow civilians fleeing Libya access to their territories. UNHCR commends any measure taken by States to suspend forcible returns of nationals or habitual residents of Libya, including those who have had their asylum claim rejected. UNHCR urges all States to suspend forcible returns to Libya, including Tripoli, until the security and human rights situation has improved considerably.*[30]

In September 2018, the UNHCR reiterated its opposition to the *refoulement* of Libyan nationals to their country of origin, including those whose asylum claims have been rejected. It also said that sympathisers and former associates of Gaddafi's regime were still considered a vulnerable category, whose human rights were often violated by all parties to the armed conflict in Libya.[31]

The ECtHR has held that States are under the obligation to assess the existence of the risk of the violation of Article 3 of the ECHR *proprio motu* in case of asylum applications based on a well-known risk of persecution, i.e. when information about such a risk is freely ascertainable from a wide number of sources.[32] In *Chahal v. the United Kingdom*, the ECtHR further elaborated the absolute prohibition of ill-treatment applying also to forced removal of individuals that may pose a risk to the State's national security.[33] It has continued reiterating its views in the following

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[28] *Country information report Libya*, Australian Government, Department of Foreign Affairs and Trade (DFAT), (4 April 2016), p. 19, para 3.68, available at: https://bityl.co/6rob.

[29] *UNHCR Position on Returns to Libya - Update I*, UNHCR, (October 2015), pp. 13-14, available at: https://bityl.co/6roY.

[30] *Ibid*. p. 14.

[31] *UNHCR Position on Returns to Libya - Update II*, UNHCR, (September 2018), pp. 5 and 20, available at: https://bityl.co/6roW.

[32] *M.S.S. v. Belgium and Greece*, ECtHR, Application no. 30696/09 (2011).

[33] *Chahal v. the United Kingdom*, ECtHR, Application no. 22414/93 (1996), paras. 73, 74, 79, 80.

decades, in all cases concerning forced removal, both for security reasons and because the individuals no longer fulfilled the requirements to continue residing in ECHR Contracting States.[34]

c) Violation of the Principle of Family Unity

Applicant R. also submitted to the Asylum Office a photocopy of his certificate of marriage to a Serbian national and a photocopy of the birth certificate of their son, also a national of the RS. These certificates were relevant in the light of the importance of the principle of family unity enshrined both in the RS Constitution[35] and the LATP.[36] The applicant's expulsion would thus amount not only to a violation of national regulations, but to a direct breach of the right to respect for family life under Article 8 of the ECHR as well.[37]

d) Misapplication of Substantive Law

The Asylum Office applied the wrong asylum law. Namely, R. filed his asylum application on 22 June 2017, when the former Asylum Law was in force.[38] Under Article 103 of the LATP, all asylum procedures initiated before it enters into effect shall be completed in accordance with provisions of the Asylum Law, unless the provisions of the LATP are more favourable for the applicants. The Asylum Office's first ruling in R.'s case was delivered on 16 September 2019 in accordance with the Asylum Law; however, it adopted its second decision in accordance with the LATP, without explaining why. The Asylum Office's action is in contradiction of the Asylum Commission's view[39] on the application of Article 103 of the LATP.[40]

e) Conclusion

The Asylum Office's decision to reject R.'s asylum application is disputable for a number of reasons. Its failure to explain why it took a decision in contravention of the views of the relevant authorities on the general security situation in Libya; its application of the law less favourable for the applicant; and its non-compliance with the principle of family unity are all indicators of its

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[34] *Saadi v. Italy*, ECtHR, Application no. 37201/06 (2008), para. 125.
[35] Art. 66 of the RS Constitution provides for special protection of families, mothers, single parents and children.
[36] Art. 9 of the LATP provides for the principle of family unity.
[37] See *Boultif v. Switzerland*, ECtHR, Application no. 54273/00 (2001), *Zezev v. Russia*, ECtHR, Application no. 47781/10 (2018) and *Gaspar v. Russia*, ECtHR, Application no. 23038/15 (2018).
[38] *Official Gazette of the RS*, 109/07.
[39] Asylum Commission Ruling no. Až–26/18 of 12 July 2019.
[40] The Asylum Commission has held that Article 103 of the LATP obligates the Asylum Office to assess which of the two laws is more favourable for the applicants who applied for asylum when the Asylum Law was in force and to clearly and comprehensibly explain why it opted for one or the other. Otherwise, the Asylum Office will have violated Article 103 of the LATP to the detriment of the applicant.

gross violations of the applicant's fundamental human rights. Its decision clearly gives rise to the risk of a breach of the non-*refoulement* principle. The appeal procedure was pending at the end of the reporting period.

2.1.3. Rejection of a Burundian Journalist's Asylum Application

The Asylum Office rejected the asylum application in the case of B. from Burundi, who left his country of origin because of his assumed political affiliation and ethnicity.[41] B., a journalist by profession, was the victim of persecution by state agents (police and intelligence officers) who suspected him of associating with other Burundian journalists who had fled to Rwanda during the 2015 demonstrations and whom they considered enemies of the regime. B. had been taken into custody by the police on a number of occasions on suspicion that he had been going to Rwanda to communicate information of the journalists who continued reporting on the situation in Burundi from that country. B. was ill-treated and abused during arrest and detention. The police issued an arrest warrant against B. after he stopped responding to their summons. Furthermore, B. is a member of the Tutsi ethnic community and he lived in the part of the city known as the opposition stronghold. All these reasons prompted B. to leave his country of origin in July 2019.

a) Non-Assessment of the Submitted Evidence of Persecution

In the impugned ruling, the Asylum Office enumerated nearly all the personal circumstances B. related during the oral hearing, as well as the reasons why he applied for asylum in the RS. However, it not only disregarded their relevance but inexplicably failed to consider any of them.

Namely, the Asylum Office did not take into account any material evidence B. presented via his legal representatives. Notably, it ignored the fact that B. is a journalist, a particularly endangered profession in Burundi[42] and the fact that he had been frequently subjected to police ill-treatment and intimidation in his country of origin because of his profession.

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[41] Asylum Office Ruling No. 26-3131/19 of 19 January 2021.

[42] For instance, four journalists were arrested on 22 October 2019 when they arrived in the Bubanza province, where violent clashes had broken out overnight between the Burundian security forces and an armed group. As per their usual protocol, they informed local authorities in advance of their trip to the area. On arrival in the province, authorities accused them of complicity in undermining state security. The four were convicted on a lesser offense of attempting to undermine state security and sentenced to two and half years in prison and a fine of one million Burundian francs (approximately 525 USD). See more at: *Burundi: Journalists, Driver Detained on Reporting Trip*, Amnesty International, 23 October 2019, available at: https://bityl.co/6roM.

The key evidence supporting the claim that B. was at risk of persecution in his country of origin included the police summons and arrest warrant issued against him.[43] The Asylum Office acknowledged the existence of such evidence but evidently disregarded its importance when it ruled on B.'s case. B. had also submitted an international arrest warrant issued against a refugee journalist the Burundi authorities associated him with, as well as the certificate of the Burundi Ministry of Justice on the seizure of the latter's property.

b) Selective Assessment of Facts and Circumstances Indicating Persecution

In its decision, the Asylum Office said that it had thoroughly, properly and comprehensively reviewed all the facts and circumstances of relevance to the adoption of a proper and legal decision in this administrative matter and that it had diligently and conscientiously assessed all the presented facts. However, the first-instance authority failed to adequately consider or qualify the acts or the reasons for persecution in this case, assessing their existence almost exclusively in the light of the applicant's statements and claims that are not of crucial importance. It thus drew the wrong conclusion that evidence of B.'s persecution in his country of origin had not been presented.

The Asylum Office failed to review the submission of BCHR lawyers on the state of human rights and freedoms in Burundi, enumerating the relevant international reports[44] and other credible sources containing facts of relevance to B.'s individual circumstances and personal characteristics. The Asylum Office also disregarded its legal obligation to itself collect and review relevant reports on the situation in the asylum seeker's country of origin[45] with a view to fully and properly establishing the facts. Instead, the Asylum Office referred in the impugned ruling only to the definitions of torture and ECtHR's general views on the prohibition of torture and inhuman or degrading treatment or punishment.

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[43] After he was subjected to threats and abuse on return to Burundi and subsequently at the police station, B. stopped responding to police summons, and the police issued a warrant for his arrest. The police insulted B. on account of his ethnicity, slapped and pushed and kicked him when he fell on the ground. The last time he was in the police station, he was told that "it's not over yet and we'll see you again".

[44] Reports by UNHCR, EASO, a number of UN Committees, the UN General Assembly, the UN Security Council, the International Criminal Court, Human Rights Watch, Amnesty International, Freedom House, Committee for the Protection of Journalists, International Federation of Journalists, et al.

[45] Under Art. 32(2(2)) of the LATP, the Asylum Office is under the obligation to collect and examine all the relevant facts, evidence and circumstances, whilst particularly taking into consideration: recent 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 and EASO and other human rights organisations.

The Asylum Office disregarded the key proof substantiating B.'s claims of police ill-treatment in his country of origin - the police summons and arrest warrant - and rejected his asylum application.

In its reasoning, the Asylum Office stated that the treatment B. had been subjected to in the police station did not indicate that he had reasonable fear of persecution on account of his political opinions, since B. had not expressed them publicly in his country of origin, where he would have suffered consequences for voicing them.[46] However, B. had not left his country of origin because he could not publicly express his opinions; nor did he claim as much during the procedure. Rather, he left Burundi because the police and intelligence officers associated him with the opposition journalists who had fled to Rwanda.[47]

The Asylum Office concluded that B. had not been subjected to torture in his country of origin and that he would not be at risk of torture if he returned to Burundi. However, it failed to explain in the impugned ruling how it had arrived at such a conclusion. Its view is particularly concerning in light of the problems B. had and the fact that he would almost certainly be subjected to same treatment by the relevant Burundian authorities, who have issued a warrant for his arrest as well.

c) Conclusion

The Asylum Office made a number of errors in this case as well. It did not assess all the individual circumstances or qualify the grounds of B.'s persecution. Furthermore, its blanket conclusions and selective assessment of evidence have further contributed to the violation of the asylum seeker's fundamental human rights and his treatment in contravention of the prohibition of torture. BCHR's lawyers thus appealed the ruling of the first-instance authority.

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[46] Asylum Office Ruling no. 26-3131/19 of 19 January 2021, p. 5.

[47] The UNHCR has held that persecution "for reasons of political opinion" implies that an applicant holds an opinion that either has been expressed or has come to the attention of the authorities. It has, however, emphasised that there may, however, "also be situations in which the applicant has not given any expression to his opinions. Due to the strength of his convictions, however, it may be reasonable to assume that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities. Where this can reasonably be assumed, the applicant can be considered to have fear of persecution for reasons of political opinion." See more in: *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR (Reissued, Geneva 2019), para 82.

2.1.4. Rejection of an Asylum Application Filed by an Unaccompanied Stateless Child

In mid-January 2021, the Asylum Office rejected the asylum application filed by S., an unaccompanied stateless child.[48] S. had fled Pakistan, his country of habitual residence[49] and the risk of persecution on account of the fact that he is a stateless person from Afghanistan. Due to his specific status, S. had difficulty accessing his rights, such as the rights to education and healthcare. Furthermore, S. and his family, like many other Afghan refugees, were at risk of being arbitrarily arrested and forcibly returned to Afghanistan by the Pakistani authorities because of their unregulated legal status.

a) Disregard of the Unfavourable Status of Afghan Refugees in Pakistan

The Asylum Office failed to take adequate account of the fact that the applicant is an unaccompanied and stateless child. Although this fact was ascertained beyond doubt during the procedure, the Asylum Office did not fulfil its obligation to also consult relevant international reports on the status of stateless children and their situation in Pakistan, the country of S.'s habitual residence.[50] The Asylum Office should have given particular weight to these facts when it ruled on S.'s application, in accordance with the international law standard of the best interests of the child.[51]

Around 2.5 million Afghan refugees live in Pakistan at the moment, a million of them without a regulated legal status.[52] Afghan refugees have no access to formal education, cannot open bank accounts or acquire property; they are also denied the right to healthcare. The UN Human Rights Committee expressed concern by the delay in adopting a national refugee law and by reports that Afghans in Pakistan, particularly those without documents, were exposed to arbitrary arrest, harassment and threats of deportation by the police and security forces.[53] A similar assessment was made by the UN Committee on Economic, Social and Cultural Rights, which expressed concern about well-documented reports of police abuse, including beatings, seizures of proof of residence cards, demands of bribery, threats of deportation and arbitrary detention, against

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[48] Asylum Office Ruling no. 26-2349/19 of 12 January 2021.
[49] Under Art. 2(1(10)) of the LATP, a country of origin shall be understood to mean a foreigner's country of nationality or a stateless person's country of former habitual residence.
[50] E.g. *Pakistan Situation of Afghan refugees*, EASO, (May 2020), available at: https://bityl.co/6roI.
[51] Art. 3, Convention on the Rights of the Child.
[52] *Afghanistan's Refugees: forty years of dispossession*, Amnesty International (30 June 2019), available at: https://bityl.co/6roE.
[53] *Concluding observations on the initial report of Pakistan*, Human Rights Committee, CCPR/C/PAK/CO/1, (23 August 2017), para. 45, available at: https://bityl.co/6roC.

such people by the Pakistani police.[54] The UN Committee on the Rights of the Child also alerted to the deficiencies of the Pakistani system and lack of protection of refugee children living in dire circumstances. Furthermore, the UN Committee against Torture expressed concern about recent documented reports of coercion, including threats of deportation and police abuse, extortion, raids and arbitrary detention, to return Afghans, including registered refugees, to their country of origin where they could be at risk of persecution, torture or ill-treatment.[55]

Furthermore, S., a stateless child, cannot exercise an adequate and effective right to refugee protection in Pakistan since this state is not party to the Refugee Convention, its 1967 Protocol or any other UN documents regulating the status of stateless persons. Furthermore, Pakistani law does not include provisions extending protection to refugees or stateless persons, procedures for determining refugee status or enjoyment of international protection. All foreigners (including refugees) without valid documents are subject to Pakistan's 1946 Foreigners' Act, which provides for their arrest, deprivation of liberty and deportation and does not include procedural safeguards against *refoulement.* It is thus reasonable to conclude that Pakistan does not fulfil even the minimum standards to be considered a safe country for individuals such as S., and that there are no clear prospects for their long-term integration and subsequent naturalisation there.

b) Improper and Incomplete Finding of Fact

In its decision, the Asylum Office merely noted that BCHR lawyers had submitted, on S.'s behalf, a submission on the state of human rights and freedoms in Afghanistan and Pakistan including detailed facts relevant to the case. However, the Asylum Office apparently did not take them into consideration at all when it ruled on the merits of S.'s application, because it did not refer to its assessment of the claims in the submitted reports anywhere in the reasoning of its ruling. Furthermore, the Asylum Office totally neglected the fact that Pakistan is not a party to the Refugee Convention or to any UN conventions protecting stateless persons.

c) Gross Violation of the Principle of the Best Interests of the Child

The Asylum Office also acted in contravention of the principle of the best interests of the child,[56] particularly in respect of S.'s protection and safety. Namely, during the oral hearing, S.

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[54] *Concluding observations on the initial report of Pakistan*, Committee on Economic, Social and Cultural Rights, E/C.12/PAK/CO/1, (20 July 2017), para. 25, available at: https://bityl.co/6roA.

[55] *Concluding observations on the initial report of Pakistan*, Committee against Torture, CAT/C/PAK/CO/1, (1 June 2017), para. 34, available at: https://bityl.co/6ro9.

[56] Art. 10 of the LATP reads as follows: "In assessing the best interest of the minor, due attention shall be given to the minor's well-being, social development and background; the minor's opinion, depending on his/her age and maturity; the principle of family unity; and the protection and security of the minor, especially if it is suspected that the minor might be a victim of trafficking or a victim of family violence or other forms of gender-based violence."

said that he had been a victim of a group of smugglers, who had blackmailed him while he was in Turkey and threatened him with physical abuse, and then persecuted him while he was in Greece, which was why he had to leave that country. S. had not been extended any form of support (legal, medical, psychological, or otherwise) in the countries he had transited through, which is particularly problematic given that he is an unaccompanied child in an extremely vulnerable position.[57]

The Asylum Office did not comment at all opinion submitted by the relevant Social Work Centre[58] which stated that S.'s return to his country of origin would have long-term negative impact on him because of the unfavourable security situation and lack of existential and educational opportunities in it. The Asylum Office also neglected the Social Work Centre's assessment that the setting S. was living in at the moment was safe and conducive to his further development, education and professional advancement. The Asylum Office thus not only violated the asylum procedure rules, by ignoring the principle on the best interests of the child under the LATP, but also Article 3 of the UN Convention on the Rights of the Child, which is the pillar of international protection of children.[59] BCHR is of the view that the RS is under the obligation to provide adequate protection to applicants such as S. in accordance with the UN Convention on the Rights of the Child.[60]

The Asylum Office also ordered S. to leave Serbia within 15 days. However, he would commit a misdemeanour if he crossed or tried to cross the state border without a valid travel document or another document prescribed by law for the crossing of the state border.[61]

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[57] For instance, S. was not appointed a temporary guardian, a counsellor or a legal representative in any of those countries.

[58] Specifically, the Findings and Opinion submitted by the Savski venac Social Work Centre during the asylum procedure, on 4 December 2020.

[59] Article 3 of the UN Convention on the Rights of the Child reads as follows:
"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

[60] Under Art. 3(1) in conjunction with Art. 22(1). Article 22(1) of the UN Convention on the Rights of the Child reads as follows: "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

[61] Namely, under Article 71(1(1)) of the Law on Border Control, natural persons who cross or try to cross the state border outside a border crossing, outside the working hours of the border crossing or in contravention of the purpose of border crossings, or who cross or try to cross the state border at a border crossing without a valid travel or another

Furthermore, the UN Convention on the Rights of the Child[62] imposes upon the States Parties the obligation to extend children maximum protection against violence and exploitation that might jeopardise their right to life, survival and development. S., an unaccompanied child whom the Asylum Office ordered to illegally leave the RS, would face numerous risks inherent to illegal crossing of the border.[63]

d) Conclusion

The fact that a foreigner is stateless should be given particular weight when ruling on their asylum application, even more so if the foreigner is an unaccompanied child. Therefore, decisions denying the right to protection in the RS to stateless persons must be thoroughly reasoned, and definitely include an explanation of why they will not be at risk of violations of their fundamental human rights in their country of habitual residence.

Furthermore, decisions on asylum applications filed by unaccompanied or separated children must include a reasoning evidencing that they were adopted in keeping with the best interests of the child. BCHR's lawyers filed an appeal against the impugned decision in S.'s case with the Asylum Commission. The procedure was still pending at the end of the reporting period.

2.2. Asylum Commission

2.2.1. Misapplication of the LGAP

The Asylum Commission dismissed the arguments BCHR specified in its appeal of the Asylum Office's decision on the asylum application by Burundian national C. regarding the latter authority's failure to consult a number of international reports on the state of human rights in his country of origin. C. had left Burundi because of his ethnicity (Tutsi), but the Asylum Office dismissed his application, holding he had not proven he had been subject to persecution in his country of origin.

Namely, the Asylum Office failed to act in compliance with the LATP when it reviewed the merits of C.'s asylum application since it did not consult recent reports on the state of human rights

document prescribed by law for crossing the state border shall be punished by a fine ranging between 10,000 and 100,000 RSD or by up to 30 days' imprisonment.

[62] Art. 6, Convention on the Rights of the Child.

[63] Such as trafficking in children for the purpose of sexual exploitation and other forms of ill-treatment or for exploitation for forced criminal activities that could harm the children.

in his country of origin, such as the relevant reports of UNHCR, EASO, et al. Therefore, in its appeal to the Asylum Commission, BCHR referred to a number of reports by international organisations, including those published by UNHCR and other UN human rights mechanisms, some of which it did not mention during the first-instance procedure.

In its decision[64] rejecting C.'s appeal, the Asylum Commission disputed reference to such reports in the appeal procedure because BCHR lawyers made no mention of them during the first-instance procedure. It therefore held that, pursuant to Art. 159(2) of the LGAP, [65] C.'s legal representatives should have explained in the appeal why they had not referred to the reports earlier.

BCHR's lawyers are of the view that its action cannot be in contravention of the law because it had not presented any new facts or evidence in the appeal. They merely alerted in the appeal to the Asylum Office's failure to itself thoroughly consult all the relevant international reports, which resulted in its incomplete and erroneous finding of fact, its wrong conclusions on C.'s claims and ultimately its decision that his asylum application was ill-founded.

To recall, the Asylum Office's obligation to consult the relevant reports stems from Art. 32(2(2)) of the LATP. Therefore, in this particular case, there was no reason for BCHR to explain why it had referred to the impugned reports because they were based on the same sources the Asylum Office had a legal obligation to consult itself.

Since the Asylum Office failed to fulfil its legal duty, the Asylum Commission was under the obligation to thoroughly explain in its decision why it dismissed the claims in the appeal. Instead, it first said that C.'s lawyers had violated Art. 159(2) of the LGAP and then reiterated that it stood by the decision to reject C.'s asylum application. The Asylum Commission provided one other blanket reason for rejecting the appeal, that the cited reports could not apply to the case at hand because the Asylum Office said that C. had not mentioned any specific problems he had had in his country of origin.[66]

[64] Asylum Commission Ruling no. Až-55/20 of 3 February 2021.
[65] Under Art. 159(2) of the LGAP, new facts and new evidence may be presented in the appeals, but the applicants must explain why they had not presented them during the first-instance procedure.
[66] Asylum Commission Ruling no. Až-55/20 of 3 February 2021, p. 5.

2.2.2. Rejection of an Unaccompanied Iraqi Child's Appeal

Unaccompanied Iraqi child X. applied for asylum on 17 April 2018, which was rejected by the Asylum Office in its ruling of October 2020.[67] The Asylum Office rejected BCHR's appeal and upheld the Asylum Office's decision.[68] X. turned 18 in the meantime.

X., an ethnic Kurd, lived with his family in Erbil, Iraq. He left his country of origin in fear of persecution because of his imputed political opinion and fearing forced conscription. Namely, X.'s father was a member of the opposition Patriotic Union of Kurdistan; he kept his political engagement secret to protect himself and his family from the retaliation of the ruling Kurdish Democratic Party. Furthermore, X., who was 15 years old at the time, was denied access to education and had to perform chores for his father for free. Fearing he would fare as his brother, whom his father had forced to join the party when he turned 18 and sent him to complete his military training for Peshmerga, X. fled the country to avoid conscription.

a) Incomprehension of the Principle of the Best Interests of the Child

During its review of X.'s appeal, the Asylum Commission failed to pay due weight to the fact that he was an unaccompanied child, thus violating the principle of the best interests of the child under the LATP.[69] Namely, the Asylum Commission dismissed X.'s complaint that the Asylum Office had failed to assess the best interests of the child when it ruled on the merits of his asylum application. The Asylum Office thus demonstrated its essential incomprehension of the principle of the best interests of the child enshrined in the LATP, the Convention on the Rights of the Child and the Refugee Convention. The Asylum Commission itself violated the principle by drawing an erroneous conclusion on the Office's assessment of X.'s best interests.

Namely, the Asylum Commission wrongly concluded that the fact that X.'s temporary guardian had attended the asylum procedure illustrated that the Asylum Office was guided by X.'s best interests when it made its decision. Actually, the guardian's presence only meant that the Asylum Office had complied with the LATP provisions,[70] under which unaccompanied asylum-seeking children must have a guardian during the asylum procedure, who is to attend all asylum-related actions and make sure that their best interests are taken into account. This, however, does

[67] Asylum Office Ruling no. 26-1946/18 of 9 October 2020.
[68] Asylum Commission Ruling no. Až-43/20 of 9 December 2020.
[69] Art. 10, LATP.
[70] Arts. 11 and 12, LATP.

not alter the fact that the Asylum Office actually did not act in compliance with the principle of the best interests of the child.[71]

Furthermore, the Asylum Commission dismissed as ill-founded X.'s complaint that the Asylum Office failed to give due consideration to the guardian's findings and opinion, one of the most relevant pieces of evidence in reviews of asylum applications filed by unaccompanied and separated children. The Asylum Office explained in its ruling that it had received the guardian's report and reviewed it with a view to adopting a proper and lawful decision. However, the Asylum Office did not specify anywhere in the reasoning what the guardian's findings and opinion were or how it had proceeded to assess the best interests of the child. Neither did the Asylum Commission.

In the view of the Committee on the Rights of the Child, assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The "best-interests assessment" consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker (in this case the Asylum Office), by a multidisciplinary team.[72] The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests.[73]

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. In this case, the Asylum Office provided no arguments for its view that X.'s return to Iraq would be in his best interest. Nor did it assign weight to each of the various elements of relevance in the best-interests assessment (which it failed to identify in its ruling) in relation to one another.[74] Given that it failed to identify the above violations of the Asylum Office, the Asylum Commission violated not only the rules of the asylum procedure, specifically the principle of the best interests of the child, but also the Convention on the Rights of the Child and its Article 3, which is the pillar of international child protection.

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[71] Under Art. 10(2) of the LATP, in assessing the best interest of the minor, due attention shall be given to the minor's well-being, social development and background; the minor's opinion, depending on his/her age and maturity; the principle of family unity; and the protection and security of the minor, especially if it is suspected that the minor might be a victim of trafficking or a victim of family violence or other forms of gender-based violence.
[72] *General Comment 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, UN Committee on the Rights of the Child, CRC /C/GC/14, (29 May 2013), para. 47.
[73] *Ibid*., para. 97.
[74] *Ibid*., para. 46.

b) Disregard of Relevant Facts and Circumstances of the Case

According to UNHCR's Guidelines on Child Asylum Claims, a contemporary and child-sensitive understanding of persecution encompasses many types of human rights violations, including violations of child-specific rights guaranteed by the Convention on the Rights of the Child.[75] In the case of a child applicant, psychological harm may be a particularly relevant factor to consider.[76]

During the first-instance procedure, the BCHR filed a submission with the Asylum Office in which it thoroughly elaborated why X. should be granted international protection in the RS, i.e. why he was unable to enjoy his fundamental rights under the Convention on the Rights of the Child in his country of origin. The Asylum Office did not take these arguments into account at all, while the Asylum Commission totally disregarded the claims in the appeal detailing the views of the Committee on the Rights of the Child, the UNHCR and international conventions and standards binding on the RS.[77] Furthermore, the Asylum Commission upheld some other Asylum Office views set out in its ruling, thus dismissing X.'s claims that he was at risk of persecution and violations of his human rights in Iraq.[78]

As per X.'s labour exploitation by his father, the Asylum Commission set out that the applicant had not suffered either physical or verbal abuse by his father, wherefore the first-instance authority correctly concluded that the applicant father's decision was taken to ensure the existential survival of the entire family. However, the Asylum Commission disregarded X.'s claim noted during the first-instance procedure that his father had beaten him and that he was a victim of domestic violence.

Neither the Asylum Office nor the Asylum Commission took into account the fact that X. has integrated extremely successfully in Serbia's society, that he enrolled in school in 2018, excelled in class and has learned to speak and write in Serbian. Both asylum authorities failed to comply with the Administrative Court's view that they should question applicants about all facts and circumstances of their life and successful integration in the RS during the procedure.

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[75] *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, (Geneva, 22 December 2009), para. 13.

[76] *Ibid.*, para. 16.

[77] Although the burden of proof is mostly divided between the decision maker and the asylum seeker, the decision maker must assume a greater share of it when the applicant is a child.

[78] The Asylum Commission upheld the Asylum Office's view that X. "is making assumptions about his potential service in the Peshmerga and that he and his father have a "family problem" which cannot be associated with persecution in the meaning of Art. 24 of the LATP," i.e. that the objective element of the fear of persecution was missing in this specific case. Asylum Office Ruling no. 26-1946/18, p. 4, on file with the BCHR.

c) Conclusion

The Asylum Commission violated the LGAP[79] in this case because it did not take into account all of the complaints in BCHR's appeal. Furthermore, like the Asylum Office, it failed to adequately assess the best interests of the child, thus giving rise to the risk of violation of the principle of *non-refoulement*. Such conduct by the asylum authorities is especially problematic when they are ruling on asylum applications filed by unaccompanied or separated children, who are particularly vulnerable. The case was pending before the Administrative Court at the end of the reporting period.

2.2.3. "Silence" of the Asylum Commission on BCHR's Appeals

The BCHR team had earlier pointed out the problem of overly long first-instance procedures, i.e. the Asylum Office's failure to rule on the asylum applications within the LATP deadlines. In October 2020, the BCHR filed eight appeals with the Asylum Commission[80] on behalf of nine asylums seekers complaining about the Asylum Office's failure to rule on their individual applications within the statutory deadlines.[81]

The Asylum Office ruled on the merits of seven applications since.[82] The Asylum Commission asked the BCHR whether it was abandoning three of the seven appeals, since the Asylum Office ruled on the asylum applications in the meantime. BCHR, however, decided to pursue them, duly notifying the Asylum Commission thereof, with a view to ascertaining whether the law had been violated to the detriment of the asylum seekers.

Given that the Asylum Commission failed to rule on any of BCHR's appeals even after the expiry of the Law on Administrative Disputes (LAD) deadline,[83] the BCHR filed follow-up requests with the Asylum Commission in January 2021.[84] However, since the Asylum Office ruled on the merits of most of these applications in the meantime, the Asylum Commission issued rulings discontinuing reviews of six appeals complaining of "silence of the administration" filed by the

[79] Art. 158(1), sub-paragraphs 1, 3 and 4 of the LGAP.
[80] Article 151, para. 3 of the LGAP.
[81] See more in *Right to Asylum, Periodic Report for July–September 2020*, pp. 24-25.
[82] The Asylum Office rejected six applications and upheld one, granting the applicant, an unaccompanied child from Afghanistan, refugee status. The Asylum Office did not rule on an asylum application by two Cuban nationals (mother and daughter) by the end of the reporting period, although they applied for asylum over a year ago.
[83] Under Art. 19 of the LAD, parties may file appeals against second-instance authorities that have failed to rule on their appeals of first-instance decisions by the statutory deadline or within 60 days at most or within another seven days upon their submission of follow-up requests. *Official Gazette of the RS*, 111/09.
[84] The follow-up request on behalf of the Libyan national was filed somewhat earlier, in December 2020.

BCHR.[85] The Asylum Commission said that the Asylum Office had already ruled on the applications filed by BCHR's clients wherefore there were no grounds to continue the reviews under the LGAP.[86] The BCHR legal team filed claims with the Administrative Court in early February contesting the Asylum Commission's decisions to discontinue the review of its appeals contesting the "silence of the administration".[87]

Namely, the Asylum Commission failed to apply the LGAP properly in these cases since there were no grounds to adopt rulings discontinuing the reviews, given that the LGAP specifies in which situations a review may be discontinued.[88] The procedure may be discontinued, inter alia, if the applicant abandons the appeal, which definitely none of BCHR's clients did.[89] The BCHR clients' obvious intention to pursue their appeals, notwithstanding the first-instance rulings on their asylum applications adopted subsequently, is reflected in their follow-up requests to the Asylum Commission to rule on their "silence of the administration" appeals. Furthermore, the applicants explicitly stated in writing that they were seeking of the Commission to ascertain whether their rights had been violated. The Asylum Commission failed to refer to these circumstances in its rulings discontinuing the reviews, wherefore the BCHR team filed claims with the Administrative Court. The proceedings before that court were pending at the end of the reporting period.

2.3. Administrative Court

2.3.1. Administrative Court Upholds Iranian Family's Claim

In early March 2021, the Administrative Court delivered a judgment[90] upholding the claim filed by BCHR lawyers on behalf of the Iranian family V., overturning the Asylum Commission's ruling[91] and remitting the case for reconsideration to the lower-instance authority. The V. family had fled Iran due to persecution on religious grounds.

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[85] Six Asylum Commission rulings discontinuing reviews of "silence of the administration" appeals. The Asylum Commission forwarded some of these rulings to the BCHR together with its rulings on BCHR's appeals of Asylum Office decisions rejecting asylum applications by the same clients.
[86] Art. 101(1), LGAP.
[87] The BCHR appealed the "silence of the administration" only with regard to one case (its two clients, mother and daughter from Cuba) since the Asylum Commission had not acted on its follow-up request to rule on their asylum applications, which the BCHR filed in October 2020.
[88] Art. 157(3), LGAP.
[89] The Administrative Court's case-law corroborates BCHR's claim that the Asylum Commission's actions are not based on the LGAP. See the Administrative Court's judgment no. U 1103/2018 of 25 October 2018.
[90] Administrative Court judgment no. 15 U 8275719 of 5 March 2021.
[91] Asylum Commission Ruling no. Až–06/19 of 1 April 2019.

a) Facts of the Case

Namely, members of the V. family took part in demonstrations in Tehran in early 2018, which broke out when the security forces headed towards the home of the leader of the Gonabadi Dervish religious minority they belong to. In its decision,[92] the Asylum Office said, and the Asylum Commission subsequently concurred, that members of the V. family had not suffered any consequences for merely participating in (witnessing) the demonstrations and that they had not proven they had been persecuted against. The Asylum Office, however, disregarded the applicants' claim that just several days later, security officers entered a house without an arrest warrant looking for the V. family and that this occurred one more time.

The Asylum Commission also disregarded these claims in its decision. A member of V.'s extended family spent several months under house arrest after the demonstrations. However, like the Asylum Office, the Asylum Commission held that the period of five months that passed from the demonstrations to the day the family left Iran proved that the reasons for its persecution may have ceased.

BCHR lawyers held that the Asylum Commission interpreted the very institute of asylum in contravention of the LATP. International protection, i.e. asylum in RS may be sought by any foreigner who has well-founded fear of persecution for reasons of race, sex, language, *religion*, nationality, membership of a specific social group or political opinion, and who is unable or, owing to such fear, unwilling to avail themselves of the protection of that country. On the other hand, such a right belongs also to any foreigner who would be subjected to torture or inhuman or degrading treatment if they returned to their country of origin. Neither the Asylum Office nor the Asylum Commission reviewed reports about the unfavourable treatment of unsuccessful asylum seekers on their return to the Islamic Republic of Iran.

Furthermore, neither the Asylum Office nor the Asylum Commission took into account the fact that family V. had a baby in the meantime, of whose birth BCHR's lawyers notified the Asylum Office. The Asylum Office ordered family V. to leave the RS within 15 days from the day its ruling becomes final, neglecting the fact that the only document the baby has is a birth certificate. That means that the V. family cannot leave the RS with their new-born daughter legally and that they would be forced to seek the assistance of smugglers to leave the RS illegally, a venture fraught with risks. The Asylum Office did not explain in the reasoning of its ruling how it had assessed the risk of a violation of Art. 3 of the ECHR and Art. 37(a) of the UN Convention on the Rights of the Child should the V. family try to comply with the ruling.[93] These are precisely

[92] Asylum Office Ruling no. 26-1382/18 of 21 January 2019.

[93] Namely, in accordance with the States' positive obligations under Art. 3 of the ECHR (prohibition of torture) the ECtHR has emphasised in many decisions, and Art. 37(a) of the Convention on the Rights of the Child, under which

the facts that the Administrative Court found disputable, wherefore it overturned the Asylum Commission's ruling.

As per the lawfulness of the impugned Asylum Commission ruling, the Administrative Court found that the V. family was correct to claim that the ruling had violated the law to their detriment. The Administrative Court found that the Asylum Office had failed to ascertain all the relevant facts, since it had not considered all the submitted evidence of the birth of the family's second child. The Administrative Court recalled the procedural safeguards provided for by the LATP – the principle of family unity[94] and the principle of protection of the best interests of the child.[95] The Administrative Court also referred to the relevant provisions of the UN Convention on the Rights of the Child and the ECHR. It also referred to the principle of securing special procedural and reception guarantees to persons in specific situations.[96] These provisions impose upon the relevant authorities the obligation to carry out the procedure for identifying the personal circumstances of these persons on a continuous basis and at the earliest reasonable time after the initiation of the asylum procedure or the expression of the intention to submit an asylum application at the border or in the transit zone.[97] The Administrative Court observed that the appeal filed with the Asylum Commission alerted to the violation of this provision but that the Commission had merely drawn a general conclusion that there no grounds for family V.'s claims that the principle had been breached. The Administrative Court thus found that the Asylum Commission's violations of the rules of procedure substantively impinged on regularity and legality and ordered that they be eliminated in the repeat procedure.

b) Conclusion

This Administrative Court's judgment is important for several reasons. First, it directly associates the international law standard of the best interests of the child with the legal safeguards of the best interests of the child prescribed by the LATP. Second, it directly points to the necessity of respecting the principle of family unity. The Administrative Court commendably noted that all personal circumstances of asylum seekers had to be continuously identified and that the

States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the Asylum Office is under the obligation to review the existence of such a risk before it renders its decision.

[94] Art. 9(1), LATP.

[95] Art. 10, LATP.

[96] Art. 17(1) of the LATP reads: "In the course of the asylum procedure, account should be taken of the specific circumstances of the persons requiring special procedural or reception guarantees, such as minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with underage children, victims of trafficking, severely ill persons, persons with mental disorders, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as women who were victims of female genital mutilation."

[97] Art. 17(3), LATP.

circumstances in a case could not be assessed in general, but cumulatively and with due diligence. Finally, the Administrative Court's decision should help improve the quality of the Asylum Office's decisions in similar cases in the future. The Asylum Commission should be guided by the Administrative Court's decisions as well, in order to improve the quality of its reviews of appeals and identify the deficiencies of the Asylum Office more easily.

2.3.2. "Belated" Administrative Court Judgment in the Case of an Afghan National

In March 2021, the Administrative Court delivered a judgment[98] upholding BCHR's claim in the case of Afghan national B.R. It overturned the Asylum Commission decision[99] and remitted the case for reconsideration.

a) The View of the Administrative Court

The Administrative Court upheld the claim, but it did not review the merits of the case. It, however, found that the Asylum Office's ruling had not been signed by an authorised official and that the Asylum Commission missed the opportunity to eliminate the Asylum Office's substantive procedural violations and to itself review other solutions provided by substantive law.[100] The Administrative Court thus avoided reviewing the substantial deficiencies of the impugned ruling B.R.'s legal representative alerted to in the claim, specifically incomplete findings of fact and errors of substantive law.

The Administrative Court found that the requirements had not been fulfilled for it to rule on the matter in full jurisdiction under the LAD.[101] Concluding that it was unnecessary to hold an oral hearing in this case since it did not need to establish the facts, the Court ruled on the claim based on the documents in the case file.[102]

b) Conclusion and Recommendations

This judgment is interesting for several reasons. First, it took the Administrative Court more than three and a half years to rule on the claim B.R.'s legal representatives filed against the Asylum Commission's ruling. The claim was filed on 9 August 2017 and the Court ruled on it on 17 March 2021. Second, the Court avoided reviewing and ruling on the merits and based its judgment merely on the lower authority's procedural error. Third, the overly long period it took the Court to rule on

[98] Administrative Court judgment no. 13 U 12125/17 of 17 March 2021.
[99] Asylum Office ruling no. Až-53-1/16 of 31 May 2017.
[100] See page 4 of the judgment, on file with BCHR.
[101] Art. 43, LAD (judgments on disputes delivered in full jurisdiction).
[102] Page 3 of the judgment, on file with BCHR.

the claim has a demotivating effect on asylum seekers in the RS, since it indicates that the asylum procedure can actually last much longer than three and a half years like it did in this case.[103]

Namely, B.R. applied for asylum on 15 June 2016, the Asylum Office adopted its ruling on 14 September 2016 and the Asylum Commission ruled on the appeal of that decision on 31 May 2017. In sum, over four and a half years can pass from the day a foreigner applied for asylum to the day the Administrative Court delivers its judgment[104], which is, indeed, unfortunate, given the undeniable negative impact long proceedings, uncertainty about the outcome of the asylum procedure and adoption of decisions concerning their future have on asylum seekers. This situation could be improved, e.g. by opening a new special department in the Administrative Court that would be staffed by judges specialised in refugee law who would rule only on asylum cases. However, this scenario appears unrealistic at the moment, given the caseloads of the courts in the RS, especially the Administrative Court, which have grown even more during the pandemic.

[103] The procedure before the Administrative Court took place after the completion of the first- and second-instance procedures.
[104] This is one of the longest asylum procedures in the RS in the experience of BCHR's legal team.

3. Analysis of Constitutional Court Decisions

During the reporting period, the BCHR received two decisions of the Constitutional Court of the RS on complaints of violations of some of the fundamental rights of refugees and migrants in the RS. The first decision concerned an initiative filed by a group of NGOs immediately after the state of emergency was lifted in May 2020, asking the Court to rule on the lawfulness of the restriction of movement of refugees and asylum seekers living in ACs and RTCs. The second decision concerned the high-profile collective expulsion of 17 Afghan asylum seekers from the RS to Bulgaria in February 2017, on behalf of whom the BCHR filed a constitutional appeal with the Court. Both decisions are summarised and thoroughly analysed in the text below.

3.1. Comment of the Constitutional Court's Conclusion on the Health Minister's Order

BCHR and a group of organisations[105] on 12 May 2020 asked the Constitutional Court to review the constitutionality and legality of the Health Minister's Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (hereinafter: Order).[106]

The recall, the Order, issued by the Health Minister as soon as the state of emergency was lifted, was in effect seven days, from 7 to 14 May 2020.[107] It was based on the Law on the Protection of Population from Infectious Diseases (LPPID),[108] entitling the Health Minister to order restriction of movement of the population in areas affected by an emergency situation.[109] However, BCHR and its partner organisations disputed the Order, considering the prohibition of leaving ACs and RTCs a restriction of the right to liberty and security of their residents.[110]

[105] Indigo – Group for Children and Youth, Praxis and Humanitarian Centre for Integration and Tolerance.
[106] *Official Gazette of the RS*, 66/2020 – Order No. 512-02-9/32/2020-01. More about the Order: *Right to Asylum in the Republic of Serbia, Periodic Report for January–June 2020*, pp. 29-31, (hereinafter: *Right to Asylum, Periodic Report for January–June 2020*) and *Right to Asylum in the Republic of Serbia 2020*, pp. 88-89 (hereinafter: *Right to Asylum 2020*).
[107] The Order ceased to have effect when the Health Minister issued the Order Rescinding the Order Restricting Movement on Roads Leading to Asylum and Reception Centre Facilities and Grounds (*Official Gazette of the RS*, 74/20).
[108] *Official Gazette of the RS*, 15/16.
[109] Art. 52(1(b)), LPPID.
[110] See more in: *Right to Asylum, Periodic Report for January–June 2020*, pp. 29-31.

3.1.1. The View of the Constitutional Court

At its session held on 30 December 2020, the Constitutional Court adopted a Conclusion[111] dismissing the BCHR's initiative and another initiative to review the constitutionality and legality of the Order.[112] The Conclusion included excerpts from the initiatives, without specifying who had submitted them or when.

The first initiative claimed that the Order was unconstitutional in its entirety because it had resulted in the illegal, arbitrary and collective deprivation of liberty of migrants and asylum seekers living in the ACs and RTCs.[113] Its submitters claimed that the measures were based on discriminatory criteria and that the victims had no recourse to judicial protection, in contravention of the RS Constitution.[114]

The second initiative specified that an emergency situation had not been declared in any parts of the RS where the ACs and RTCs were located on 6 May 2020, wherefore there were no grounds for imposing measures under the LPPID. Its submitters held that the prohibition to leave the ACs and RTCs amounted to deprivation of liberty, given the duration of the measure, its implementation and the penalties for violating it, as well as the cumulative effect of the listed characteristics of the ban. Therefore, they argued that the Order was in violation of the RS Constitution[115] and the ECHR.[116] The initiative also highlighted violations of other rights of migrants and asylum seekers living in the ACs and RTCs at the time – denial of access to legal aid[117], restriction of the freedom of movement,[118] and discrimination.[119]

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[111] Constitutional Court Conclusion no. IUo-62/2020.
[112] *Official Gazette of the RS*, 66/20.
[113] In contravention of the Constitution, notably: Art. 20 (restriction of human and minority rights), Art. 27 (right to liberty and security of person) and Art. 29(2) (special rights in case of arrest and deprivation of liberty in the absence of a court decision).
[114] Art. 21 (prohibition of discrimination) and Art. 22 (protection of human and minority rights and freedoms) of the RS Constitution (*Official Gazette of the RS*, 98/06), page 1 of the Conclusion.
[115] Art. 27, RS Constitution.
[116] Art. 5, ECHR.
[117] In contravention of Art. 56(4), LATP.
[118] In contravention of Art. 26 (freedom of movement) of the Refugee Convention.
[119] In contravention of Art. 21 of the RS Constitution (prohibition of discrimination) and Art. 1 of Protocol No 12 to the ECHR (prohibition of discrimination).

In its reasoning of the Conclusion, the Constitutional Court referred to its earlier decision on initiatives[120] to review the constitutionality and legality of the Decree on State of Emergency[121] (hereinafter: Decree), in which it had concluded that the asylum seekers, refugees and migrants had not been deprived of liberty during the state of emergency.[122] However, like in that decision, the Constitutional Court again neglected facts indicating that migrants and asylum seekers living in ACs and RTCs had been *de facto* deprived of liberty given the intensity of the restrictions of their rights, the indeterminate duration of the measures,[123] and the penalties for violating them.

According to ECtHR's case-law, the purpose of a measure is not crucial in assessing whether it amounts to deprivation of liberty or a restriction of the freedom of movement. The ECtHR has held that even measures intended for protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty.[124] The difference between restriction of movement and deprivation of liberty is one of degree and intensity, i.e. it depends on the duration of the restriction, degree of supervision, effects et al, not on its nature, reasons why it was introduced or its qualification under domestic law.[125]

Furthermore, the Constitutional Court held that the Order had not discriminated against refugees, migrants and asylum seekers living in ACs and RTCs. The measures imposed by the Order did, indeed, apply to everyone living in these facilities, but the question is why the refugee and migrant population was singled out as a category to which the special measures applied without a valid reason. The Constitutional Court also failed to take into account the fact that the Order applied to specific facilities (ACs and RTCs) but not the areas where they are situated and the population living and working in their vicinity.

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[120] CSOs and individuals filed a number of initiatives with the Constitutional Court asking it to review the constitutionality and legality of a number of RS Government decisions which were issued during the state of emergency and unreasonably restricted the freedom of movement of the population. Some provisions of the decisions applied also to refugees, migrants and asylum seekers. The BCHR's initiative of 31 March 2020 is available at: https://bityl.co/6scx.

[121] *Official Gazette of the RS*, 31/20, 36/20, 38/20, 39/20, 43/20, 47/20, 49/20, 53/20, 56/20, 57/20, 58/20 and 60/20.

[122] Constitutional Court Decision no. IU-o-45/20, *Official Gazette of the RS*, 126/20.

[123] Under Art. 3 of the Order: "Measures imposed under this Order shall remain in effect until the risk of transmission of COVID-19 in the territory of the Republic of Serbia ceases."

[124] See *Khlaifia and Others v. Italy*, ECtHR, Application no. 16483/12, para. 71.

[125] See *Guzzardi v. Italy*, ECtHR, Application no. 7367/76, para. 93; *Amur v. France*, ECtHR, Application no. 17/1995/523/609, judgment of 20 May 1996, footnote 45, para. 42 et al. See also *Migration and International Human Rights Law, A Practitioners' Guide No. 6,* updated version, International Commission of Jurists (2017), p. 201, footnote 627.

The Constitutional Court also dismissed claims that the Order was in contravention of the LATP[126] and the asylum seekers' right to legal aid[127] and the Refugee Convention[128] enshrining the freedom of movement of refugees.[129] In that context, the Constitutional Court did not take into account that the denial of these rights had occurred in extraordinary rather than ordinary circumstances.

Finally, the Constitutional Court recalled in the operative part of its Conclusion its view that the purpose of the measures was to protect, inter alia, the refugees and migrants as well. However, it neglected the problem of the alarming degree of overcrowding of some ACs and RTCs, both during the state of emergency, in its immediate aftermath, and during the rest of 2020.[130] Given the risks of overcrowding, it cannot be said that migrants and asylum seekers living in ACs and RTCs are *a priori* safe and free from the risk of contracting COVID-19.

Under the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure)[131] the Court's reasoning shall specify: the request and claims in the submission initiating the procedure; excerpts from the reply of the authority that adopted the impugned enactment; legal regulations on which the Court's decision is based; reasons for its decision set out in the operative part; and other elements depending on the matter under dispute and type of decision. The Court's Conclusion, however, failed to include the reply of the authority that adopted the impugned enactment, i.e. the Health Minister. Given that it dismissed the initiatives as "manifestly ill-founded", it may be presumed that the Constitutional Court considered it inexpedient to ask the Minister for his comment.

3.1.2. Conclusion

It took the Constitutional Court an unreasonable amount of time, more than six months, to rule on the initiatives seeking the review of the constitutionality and legality of the Order. Although the Order was in effect just seven days, the intensity of the denial and restriction of the rights of migrants and asylum seekers living in ACs and RTCs was alarming, wherefore it should have dealt with the matter with urgency. Given its finding that the initiatives were "manifestly ill-founded",

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[126] *Official Gazette of the RS*, 24/18.
[127] Art. 54(4), LATP.
[128] *Sl. list FNRJ – International Treaties*, 7/60.
[129] Art. 26, Refugee Convention.
[130] More about the situation during the rest of the year in *Right to Asylum 2020*, p. 75 and footnote 324.
[131] Art. 83(1) in conjunction with Art. 80(4) of the Constitutional Court's Rules of Procedure (*Official Gazette of the RS*, 24/08, 27/08 - *corr*. and 76/11).

an unreasonably long period of time passed from the moment it received them to the moment it adopted its Conclusion.

The Constitutional Court's failure to acknowledge obvious violations of the fundamental human rights of persons belonging to a particularly vulnerable category in the RS is, however, particularly concerning. Notwithstanding the legitimate intention to preserve health amidst the pandemic, migrants and asylum seekers were doubtlessly subject to discriminatory treatment vis-à-vis other categories of the population. The BCHR has repeatedly called on the relevant authorities to review alternative measures for protecting migrants and asylum seekers in ACs and RTCs in case they needed to introduce more radical epidemiological measures to contain the transmission of the coronavirus. Such measures should not impinge on their enjoyment of their fundamental human rights, such as the freedom of movement, and should avoid the repetition of the 2020 situation.

3.2. Constitutional Court Rules Serbian Authorities Illegally Deported Group of Asylum Seekers

At its session on 29 December 2020, the Constitutional Court adopted a decision[132] partly upholding BCHR's constitutional appeal filed in 2017 on behalf of 17 Afghan nationals who were pushed back although they expressed the intention to seek asylum in the RS. The group included eight children and one person over 50. The Constitutional Court found that the actions of the Gradina Border Police Station (Gradina BPS) on 3 February 2017 violated the asylum-seekers' rights of persons deprived of liberty[133] and their freedom of movement[134] enshrined in the

[132] Decision No. Už-1823/2017.

[133] Art. 27(3) in conjunction with Art. 29(1) of the Constitution. These provisions entitle everyone deprived of liberty to initiate proceedings where the court shall review the lawfulness of their deprivation of liberty and order their release if it finds the deprivation of liberty was against the law. They also entitle everyone deprived of liberty without a decision of the court to be informed promptly about the right to remain silent and about the right to be questioned only in the presence of a defence counsel of their own choosing or a defence counsel who will provide legal aid free of charge if they are unable to pay for it.

[134] Specifically Art. 39(3) in conjunction with Art. 25 of the RS Constitution. Art. 39(3) of the Constitution reads: "Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law. A foreign national may be expelled only under a decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution."

Constitution. The Constitutional Court did not uphold the other complaints – it dismissed some complaints[135] and rejected others.[136]

3.2.1. Facts of the Case

The BCHR described the details of the incident, and the treatment the group was exposed to in its 2017 periodic report on the right to asylum. In July 2016, the Serbian Government adopted the Decision Establishing Joint Police and Army Forces[137], under which the joint Ministry of Defence and MOI patrols are to reinforce Serbia's borders with Bulgaria and Macedonia. This move provided ample grounds for collective expulsions, i.e. pushing back foreigners to the neighbouring countries without conducting the adequate procedures or providing them with access to the asylum procedure in Serbia.

On 3 February 2017, 17 nationals of Afghanistan were deprived of liberty on the road to Dimitrovgrad by a patrol of Gradina Border Police Station (BPS), together with the members of the Serbian Gendarmerie and Army. After bringing them to the police premises, the Gradina BPS called the BCHR interpreter to help them communicate with the refugees. Members of the group were handed the custody ruling, after which they were placed in holding cells in the BPS basement, under inhuman and degrading conditions.[138] They spent almost 12 hours in those cells, without the possibility of engaging a lawyer, after which they were driven to the Pirot Misdemeanour Court, where the police filed motions for their prosecution.

The proceedings before the Pirot Misdemeanour Court ended with a ruling discontinuing the misdemeanour proceedings. Namely, the judge found that the defendants were in need of international protection and that they had left country of origin in fear of persecution and generalised violence, and that there was reasonable doubt that they were victims of human trafficking. The judge also concluded that their return to Bulgaria under the Serbia-EU Readmission Agreement was impossible due to the risk of them being subjected to treatment in contravention of the absolute prohibition of ill-treatment in case of their removal to Bulgaria.[139]

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[135] The Constitutional Court dismissed BCHR's complaint under Art. 25 (inviolability of physical and psychological integrity) and Art. 28 (treatment of persons deprived of liberty) of the RS Constitution.
[136] The Constitutional Court rejected the complaint under Art. 27(1) of the RS Constitution (right to liberty and security of person).
[137] See the *BIRN* report of 16 March 2016, available at: https://bityl.co/6ruZ.
[138] The Gradina BPS officers took the Afghan nationals' personal data, fingerprinted and photographed them and entered their data in the MOI databases Afis and OKS. It then handed them a leaflet on their rights based on the Guidance on Treatment of Persons Taken into and Held in Custody.
[139] The Afghan refugees described the dire conditions in the Bulgarian refugee centres and claimed that the Bulgarian police had abused them and seized their money.

After the judge established the aforesaid and notified them of their right to seek asylum in Serbia, the foreigners expressed the intention to seek asylum. In its decisions, the Misdemeanour Court ordered the representatives of the Gradina PBS and the Commissariat for Refugees and Migration (CRM) to issue certificates of intent to seek asylum to the foreigners.[140]

The Gradina BPS acted on the Pirot Misdemeanour Court's order and issued certificates of intent to the Afghan nationals referring them to the Reception Centre in Divljana.[141] After they were handed their certificates, they boarded a police van in the presence of a Farsi interpreter. They spent around an hour and a half in the van, convinced the officers were driving them to the Divljana Reception Centre. However, the van stopped at one point and the police officers ordered them to disembark. The asylum seekers alleged that they were then searched and that all the documents they had been issued in Serbia and all other items indicating they had been in Serbia were seized and destroyed. The officers then used threats and derogatory language and ordered them to go through the woods back to Bulgaria across the so-called "green line". Several members of the group objected and started to plead with the officers not to force them back to Bulgaria, but to no avail. Those who refused to obey the orders were kicked several times. The group spent the night outdoors, in the woods, at below zero temperatures and then headed towards Sofia, the capital of Bulgaria, where they alerted BCHR's interpreter to the incident.[142]

In its decision, the Constitutional Court found that the applicants had not been extended adequate legal aid from the moment they were deprived of liberty, given that they had not been provided with a lawyer either before or during the misdemeanour proceedings against them although their deprivation of liberty had not been ordered by the court. It observed that the applicants were foreign nationals who could reasonably be presumed to be refugees and unable to engage a lawyer themselves. The Court held that they had been in need of professional legal aid so that they could learn about their rights and the procedure that would be applied to them.

The Constitutional Court established that the applicants had been illegally expelled from the RS in the night of 3/4 February 2017.[143] It ascertained that the police officers had pushed back the applicants although they were qualified as refugees from a war-torn area and expressed the intention to seek asylum. It said that police actions included elements of inhuman treatment, especially since the applicants were expelled in contravention of the Pirot Misdemeanour Court's

[140] According to Art. 22 and 23 of the Asylum Act.
[141] The refugees were initially to have been referred to the AC in Krnjača. However, as the Krnjača Centre was overcrowded at the time, the foreigners were referred to the Reception Centre in Divljana at Bela Palanka.
[142] More about the incident in *Right to Asylum in the Republic of Serbia, Periodic Report for January–March 2017*, available at: https://bityl.co/6rui.
[143] Which is in contravention of the prohibition of expulsion of foreigners under Art. 39(3) of the RS Constitution and Art. 4 of Protocol No. 4 to the ECHR prohibiting the collective expulsion of foreigners.

decision. The Constitutional Court further supported its conclusion on inhuman treatment by the fact that the asylum seekers were expelled to Bulgaria, driven to a forest and left there at night and at below freezing temperatures. The Constitutional Court noted, in particular, that the group included eight children, four of whom were under five and three of whom were under seven years of age. Finally, the Constitutional Court emphasised that the applicants had been expelled after they had already filed their intentions to seek asylum and thus initiated the asylum procedure, which was pending at the time of expulsion.

On the other hand, the Constitutional Court held that there were grounds to restrict the applicants' liberty at the time they were arrested and placed into custody.[144] Accordingly, it dismissed the complaint about their illegal and arbitrary deprivation of liberty.

The Constitutional Court said that it had taken into account the claims in the constitutional appeal that the applicants had spent the night in inhuman and degrading conditions, because the police holding cells in the basement they were held in had neither a toilet nor drinking water. The Constitutional Court referred to a 2017 Report of the Protector of Citizens[145] stating that the holding cells in the Gradina BPS did not satisfy even the minimum standards. However, the Court observed, inter alia, that the applicants had been given food during that critical night,[146] and that UNHCR representatives donated them clothing and footwear. Commenting the inhuman conditions in the police holding cells, the Court said that *a large number of people were exceptionally placed in the cells due to the migrant crisis and the unexpected surge in arrivals into the RS people falling under a special legal regime*. It also noted that the applicants had spent less than 12 hours in the basement cells. Accordingly, it did not find a violation of Art. 25 of the RS Constitution.

In view of all the above considerations, the Constitutional Court ordered the State to pay just satisfaction to the applicants for the violations of their rights, specifically €1,000 (in RSD) to each of them in respect of non-pecuniary damages.

3.2.2. Conclusion

The Constitutional Court's judgment on BCHR's 2017 constitutional appeal officially confirms that Afghan asylum seekers had been collectively expelled by the relevant RS authorities.

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[144] The Constitutional Court referred to Art. 27(1) of the RS Constitution and Art. 5(1) of the ECHR.
[145] Report of the Protector of Citizens on the Visit to the Regional Border Police Centre towards Bulgaria, Ref. no. 281-15/17, Belgrade, February 2017, pp. 3-4.
[146] The applicants were delivered food by the Manager of the Dimitrovgrad RTC and by the representatives of the Danish Refugee Council (DRC) and BCHR.

The illegal actions of the police resulted also in the violation of the applicants' other human rights enshrined in the RS Constitution and the ECHR.

The BCHR team expects that this decision will help put an end to illegal pushbacks, i.e. forced returns of foreigners in need of international protection from RS territory without first reviewing their individual circumstances and providing them with fair access to the asylum procedure. The relevant authorities' compliance with the law will encourage refugees to seek the protection they need without fear that they will fare like the 17 Afghan nationals.

4. Integration

4.1. Review of the Situation in Practice through the Analysis of Particular Rights of Asylum Seekers and Refugees

The LATP provides for the integration of foreigners granted asylum in the social, cultural and economic life of the country and their naturalisation.[147] Integration of refugees may be perceived as an extremely dynamic and complex two-way process. Both the refugees and the host community need to adjust to each other for integration to succeed. On the one hand, the refugees' willingness and motivation to adjust to the social life of the state that granted them asylum, while not forsaking their own culture and identity, is crucial. On the other hand, they cannot integrate successfully unless the state and the local population are willing to accept them.

Foreigners granted the right to asylum, either refuge or subsidiary protection, are entitled to: residence, accommodation, freedom of movement, ownership of property, healthcare, education, access the labour market, legal and social assistance, freedom of religion, family reunification and assistance in integration.[148]

The years-long integration-related difficulties and challenges, caused by legal lacunae and inconsistencies, persisted in the first quarter of 2021. This chapter will describe two problems refugees have been facing: non-issuance of travel documents and difficulties in opening bank accounts. It will also discuss the vaccination of refugees and asylum seekers against COVID-19 and the headway made in the realisation of the refugees' right to education, specifically, the recognition of their foreign school certificates and diplomas.

4.1.1. Non-Issuance of Travel Documents

The problem of non-issuance of travel documents to foreigners granted refuge or subsidiary protection in the RS persisted in the reporting period.[149] The Minister of the Interior has not adopted a by-law governing the format of the travel document for refugees yet,[150] wherefore the refugees' freedom of movement is still *de facto* restricted, in direct contravention of the Refugee

[147] Art. 71, LATP.
[148] Art. 59, LATP.
[149] See more in the *Right to Asylum 2020*, pp. 143 – 145.
[150] As he was under the duty to within the deadline set forth in Art. 101 in conjunction with Art. 87(6) of the LATP.

Convention[151] and the Serbian Constitution.[152] The BCHR has for years now been alerting to this problem impinging on the successful integration and subsequent naturalisation of refugees. The challenges identified in this area during the reporting period will be described in greater detail in the text below.

In November 2020, [153] the BCHR integration team filed requests with the Asylum Office to issue travel documents to all its clients granted refuge. Pursuant to the Guidelines issued by the Protector of Citizens in October 2020,[154] the BCHR asked the MOI to provide its responses to each of the requests in the format specified by the LGAP, specifically to include instruction on appeal in them.[155]

The MOI Border Police Directorate replied to the BCHR on 27 January 2021,[156] but again failed to issue its decision in the proper format. It said that the individuals the requests referred to were entitled to travel documents under Article 91 of the LATP, but that the MOI was unable to issue them at the moment because the technical requirements were not fulfilled.[157] The MOI said that the drafting of a Rulebook on Travel Documents was under way and that it would promptly notify the BCHR when the requirements for issuing them were fulfilled.

On behalf of its clients, the BCHR integration team on 26 March 2021 filed a group complaint about the MOI's incomplete reply with the Protector of Citizens,[158] noting that the MOI had not complied with his Guidelines of 14 October 2020 and asking this independent institution to exercise its powers under the law[159] and launch a review of the legality and regularity of the MOI's operations. Specifically, it referred to:

[151] Freedom of movement is enshrined in Art. 39 of the RS Constitution and Art. 2(2) of Protocol No. 4 to the ECHR.
[152] Art. 39, RS Constitution.
[153] Following the issuance of guidelines by the Protector of Citizens on 14 October 2020.
[154] The Protector of Citizens ordered all units to change the way they processed applications by the members of the public, specifying that their decisions had to be issued in the form of an administrative enactment, i.e. include a reasoning and instruction on appeal.
[155] Under Art. 145(3) of the LGAP, 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.
[156] MOI Police Directorate, Border Police Directorate, Reply No. 26-430/17 of 27 February 2021.
[157] A specimen travel document is available in the Annex to the Refugee Convention. The Annex was published together with the Refugee Convention in the SFRY Official Journal when the Convention was ratified, wherefore it remains unclear why the MOI has not made use of it in this specific case
[158] On behalf of BCHR's 23 clients to whom the MOI Border Police Directorate refused to issue travel documents by its letter of 27 January 2021.
[159] Art. 25(5), Protector of Citizens Law.

- The MOI's failure to issue its decisions on applications filed by members of the public in the format of an administrative enactment as prescribed by law and provide them with the right to appeal its decisions.
- The complainants' inability to obtain travel documents in accordance with the LATP via their BCHR representatives.

a) Conclusion

The BCHR asked the Protector of Citizens to issue the relevant recommendations to the MOI should it identify deficiencies in its operations. BCHR hopes that the Protector of Citizens will launch oversight and instruct the MOI to remedy the irregularities alerted to in the refugees' group complaint, and issue the relevant recommendations to the MOI should it identify deficiencies in its operations. thus enabling them to fully exercise their rights in the RS under the LATP.[160]

4.1.2. Challenges in Opening Bank Accounts

Refugees and asylum seekers have for years now had problems opening bank accounts in Serbia. All banks have their internal operating procedures that they follow when opening accounts for new clients. These operating procedures and specific laws and by-laws banks have been invoking[161] are the main reason why they have been refusing to open accounts for specific refugees and asylum seekers, mostly nationals of Iran, Afghanistan, Iraq and Pakistan.[162]

Asylum seekers and foreigners granted refuge or subsidiary protection wishing to open a bank account must produce their IDs and their Foreigner Registration Number (FRN) certificates (issued by the MOI). Those who have valid passports do not face as many problems. However, many BCHR clients do not possess any documents issued by their countries of origin. Furthermore, most bank officers are unfamiliar with the IDs and FRN certificates issued to refugees and asylum seekers or with the fact that the FRNs carry the same validity as the Personal Identification Numbers (PINs) all nationals of Serbia have. They are often unable to clarify these issues with the refugees and asylum seekers or simply refer them to the banks' main offices to try and open their accounts there.

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[160] Art. 91, LATP.
[161] Specifically, their internal enactments ensuring that their operations are in compliance with the regulations of the Republic of Serbia on the prevention of money laundering and financing of terrorism (the Law on the Prevention of Money Laundering and Financing of Terrorism (*Official Gazette of the RS*, 113/17, 91/19 and 153/20) and its by-laws, and the Law on Freezing of Assets to Prevent Terrorism and Proliferation of Weapons of Mass Destruction (*Official Gazette of the RS*, 29/15, 113/17 and 41/18).
[162] In BCHR's experience.

S.D., an adult asylum seeker from Iran, asked the BCHR for help when *Komercijalna banka* called him up and asked him to come to the branch office where he had opened the account to sign a form for its closure, on instructions of this bank's compliance department. The BCHR wrote the bank and asked it for an explanation, especially in view of the fact that S.D. had opened both RSD and a foreign currency accounts in March 2019. The bank stated the following in its reply: *The Bank has acted in compliance with its internal enactments governing operations ensuring compliance with the regulations of the Republic of Serbia on the prevention of money laundering and financing of terrorism (the Law on the Prevention of Money Laundering and Financing of Terrorism and its by-laws, and the Law on Freezing of Assets to Prevent Terrorism and Proliferation of Weapons of Mass Destruction).*[163]

At the same time, the BCHR sent letters to 22 banks operating in Serbia, asking them whether asylum seekers from Iran with IDs for asylum seekers and FRNs could open accounts in them. It received only one affirmative reply, from the Postal Savings Bank.[164] However, this Bank allowed BCHR's client from Iran, S.D., to open only an RSD account.

The BCHR also sent a request to the National Bank of Serbia (NBS) asking it to issue an opinion[165] on the opening of bank accounts for asylum seekers and foreigners granted refuge in the RS. The NBS' reply to BCHR's request was still pending at the end of the reporting period.

A similar problem arose in late March 2021, when three young men from Afghanistan tried to open foreign currency accounts so that they could receive remuneration for their engagement in an international project which has to be paid in foreign currency. All the banks, however, refused them. They applied with the Postal Savings Bank, which told them that the procedure would take longer because of the checks it had to perform and that they would be notified in due course. An additional obstacle to opening a foreign currency account is the fact that the applicants must produce valid passports. Given that the three young Aghan men do not have passports, it seems quite unlikely that their requests will be successful.[166]

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[163] BCHR presumes that *Komercijalna banka* has been under the obligation to comply with the new regulations since it was bought by NLB in late 2020.

[164] Eight banks replied in the negative, while two said that all applications were individually processed but that such accounts could not be opened in practice. One bank described the procedure applying to foreign nationals, rather than asylum seekers. Ten banks did not reply to BCHR's letter and, from BCHR's experience, one bank has been refusing to open accounts for Iranian nationals.

[165] The BCHR asked the NBS for an opinion in accordance with Art. 64 of the National Bank of Serbia Law (*Official Gazette of the RS*, 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – CC Decision and 44/2018).

[166] An additional problem arose from the fact that the implementation of the project was due to begin in April and that the three men had to provide their bank account details to sign their contracts.

a) Conclusion and Recommendations

The problem essentially reflects the fact that banks exclusively perceive refugees and asylum seekers as foreign nationals, not as a special category of foreigners who, for objective reasons, do not possess all the requisite documents, such as passports issued by their countries of origin.[167] The banks' policies have thus placed refugees and asylum seekers at a disadvantage and amount to discrimination against them.[168]

Refugees denied free access to the banking system cannot exercise their rights to access the labour market, welfare or property, which impinges on their integration in society. Unfortunately, as things stand now, refugees from Iran, Afghanistan, Iraq and Pakistan can open RSD accounts in only one bank in Serbia. This is why the banks should apply different rules to the opening of accounts for refugees and asylum seekers and the NBS should develop guidelines or rulebooks on the treatment of this vulnerable category of foreign nationals.

4.1.3. Recognition of the Refugees' Foreign School Certificates and Diplomas

The LATP 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.[169] Furthermore, the University of Belgrade sent its reply to BCHR in 2020, specifying that foreign nationals who had the status of migrants/asylum seekers were entitled to enrol in college under the same terms as Serbian nationals.[170]

Several BCHR clients expressed the wish to enrol in college or pursue their university education. One of them is a national of Burundi, K.I.K., who wants to study medicine. She started intensive Serbian language course in the summer of 2020 and has been attending Biology and Chemistry lessons to prepare for the entrance exam since early 2021. In February 2021, BCHR filed a request with the Qualification Agency ENIC-NARIC Centre to validate her high-school diploma. K.I.K. submitted all the required documents,[171] certified by a court-sworn French translator.

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[167] In the experience of BCHR's team, refugees and asylum seekers must produce valid passports since they are foreign nationals, their residence certificates, et al.
[168] Art. 7 of the LATP prohibits any discrimination against refugees and asylum seekers in accordance with anti-discrimination regulations, in particular on grounds of nationality, race, social background, birth, culture, etc.
[169] Art. 64, LATP.
[170] University of Belgrade reply Ref. no. 212/8 of 12 October 2020.
[171] Certificates for every year of schooling, diploma, state exam certificate and state exam results, and certificate of general classical education.

The validation process is not complicated. The applicants need to present their original documents for inspection and submit their certified translations, pay the administrative fee and fill a form obtained in the Qualification Agency. Ten days after K.I.K. applied, the Agency sent BCHR a ruling validating her high school diploma as the diploma of a general high school with passed matriculation exams corresponding to Level 4 of the National Qualifications Framework of the Republic of Serbia (NQFS).

The BCHR also applied for the validation of the college diplomas and grade certificates /diploma appendixes on behalf of two other clients. However, the procedure for validating college diplomas is more complex and the Qualification Agency had not confirmed that the clients had submitted all the requisite documents by the end of the reporting period.

The BCHR thus continued its cooperation with the ENIC-NARIC Centre in the RS, which began with a webinar on *Recognition of Refugees' Acquired Knowledge* in 2020, with the support of the UNHCR Office in Belgrade. In addition, an initiative was launched in tandem with the representatives of the Council of Europe and the *European Qualification Passport for Refugees* (EQPR) project that the ENIC-NARIC Centre in the RS join in this project.[172] The topmost UNHCR officials in the RS met in March with the representatives of the Council of Europe Office in Belgrade to discuss the recognition of university qualifications of refugees, i.e. the EQPR.[173]

a) Conclusions and Recommendations

The BCHR applauds the efforts and activities invested by the Ministry of Education and the Qualification Agency ENIC-NARIC to start the implementation of the EQPR project in Serbia in 2021. The goal of the project is to facilitate the recognition of the higher education acquired by refugees even if they do not have all the requisite documents. Such recognition will increase the refugees' prospects of finding a job, integrating in Serbia's society and contributing to it.

[172] More in *Right to Asylum 2020*, pp. 163-165.
[173] See more at: https://bit.ly/3vePhEK.

4.1.4. Vaccination of Refugees against Coronavirus in the Republic of Serbia

Vaccination of Serbia's population against COVID-19 began on 24 December 2020. The free vaccines have been obtained under bilateral agreements and approved by the national *Medicines* and Medical Devices Agency (ALIMS).

The Ministry of Health started conducting the vaccination in accordance with the Vaccination Operational Plan, developed by the national Public Health Institute Jovan Jovanović Batut,[174] and WHO recommendations. Under that plan, vaccination was to have been conducted in three stages, depending on the availability of the vaccines. The first stage involved the vaccination of health professionals, staff and people over 65 in old people's homes, people over 75, and people between 65 and 75 suffering from chronic diseases. The second stage, which began on 19 January 2021, involved the vaccination of people under 65 suffering from chronic diseases and staff of national and local institutions.

The third stage will cover the vaccination of vulnerable individuals at high risk of contracting COVID-19, such as asylum seekers, refugees and migrants in collective centres.[175] At the beginning of the year, Batut said that stage three would begin when vaccines were secured for 21-50% of the entire population; the Institute, however, did not estimate when this stage would begin.

Interest in voluntary vaccination may be expressed electronically or by calling the Call Centre. The applicants need to fill a simple online questionnaire on the e-Government portal, in which they need to enter their personal data and select which of the vaccines they want to receive. Both Serbian nationals and foreign nationals, whether or not they reside in the RS, are eligible. Serbian nationals need to enter their PINs, while foreign nationals need to enter their FRNs.

In coordination with the UNHCR team for durable solutions and the Crisis and Response Policy Centre (CRPC), a group of BCHR's clients in March assisted in application for vaccination of refugees via the e-Government portal. Media reported that 530 residents of ACs and RTCs had applied for vaccination.[176] The first to be vaccinated were refugees living in private lodgings, including a BCHR's client granted refuge in the RS.[177] UNHCR representative in the RS Francesca Bonelli qualified the vaccination of refugees and migrants in the vaccination as an important sign

[174] Available in Serbian at: https://bityl.co/6pLY.
[175] This group includes the homeless, people living in substandard settlements and inmates over 50 years of age.
[176] See the *N1* report of 26 March 2021, available at: https://bityl.co/6pLl and the *Radio Free Europe* report of 26 March 2021, available at: https://bityl.co/6pLv.
[177] The BCHR's client, a refugee from Burundi, received the AstraZeneca vaccine in the Belgrade suburb of Krnjača.

of support Serbia has been extending refugees, saying that it "shows a commitment to protect and integrate refugees and asylum-seekers in Serbian society".[178]

a) Conclusion

Serbia's inclusion of refugees and migrants in the vaccination process is a good practice example. Their access to healthcare is particularly important, given that most migrants and refugees live in ACs and RTCs, where maintaining physical distance is extremely hard, as is containing the spreading of the virus, despite all the epidemiological measures in place and the availability of personal protection equipment provided by the CRM.

[178] See: https://bityl.co/6nKZ.