



**Right to Asylum in the
Republic of Serbia
Periodic Report for
July–September 2021**



**Belgrade Centre
for Human Rights**

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Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

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

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

ECtHR – European Court of Human Rights

EU – European Union

FRN - Foreigner Registration Number

LATP – Law on Asylum and Temporary Protection

LGAP – Law on the General Administrative Procedure

MOI – Ministry of the Interior of the Republic of Serbia

PIN – Psychosocial Innovation Network

RS – Republic of Serbia

RTC – Reception-Transit Centre

UN – United Nations

UNHCR –United Nations High Commissioner for Refugees

Introduction

The Belgrade Centre for Human Rights (hereinafter: BCHR) has continued extending free legal aid to refugees and asylum seekers in Serbia within the project *Support to Asylum Seekers in Serbia* implemented with the support of the United Nations High Commissioner for Refugees (hereinafter: UNHCR). In addition to representing asylum seekers and refugees before the relevant Serbian authorities and international institutions, the BCHR's team has been extending them assistance with a view to facilitating their integration in the country's social, economic and cultural life.

This Report analyses the treatment of the asylum seekers and refugees in Serbia in the July-September 2021 period, based on the information the BCHR team obtained during their legal representation in the asylum procedure and provision of support in their integration, and during its field work. In addition to reviewing the relevant decisions by the asylum authorities, the Report also describes the BCHR's activities geared at facilitating the integration of refugees and asylum seekers, and their access to their right to education. With a view to providing a more comprehensive illustration of the positive and negative aspects of the asylum authorities' work, where relevant, the authors described their practices in the past or referred to prior BCHR reports.

The Report also comprises data the BCHR collected through regular cooperation and communication with the state authorities and UNHCR. The statistical data cover the 1 July – 30 September 2021 period. The Report has been prepared by the BCHR legal and integration team.

The Report is primarily designated for the 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 asylum. Its authors endeavoured to point out good practice examples, as well as specific shortcomings in the work of the relevant authorities and offer recommendations on how to address them in order to help the relevant RS authorities establish a more functional asylum system.

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 July – 30 September 2021 period. The national asylum authorities do not publish information about their work on their websites.

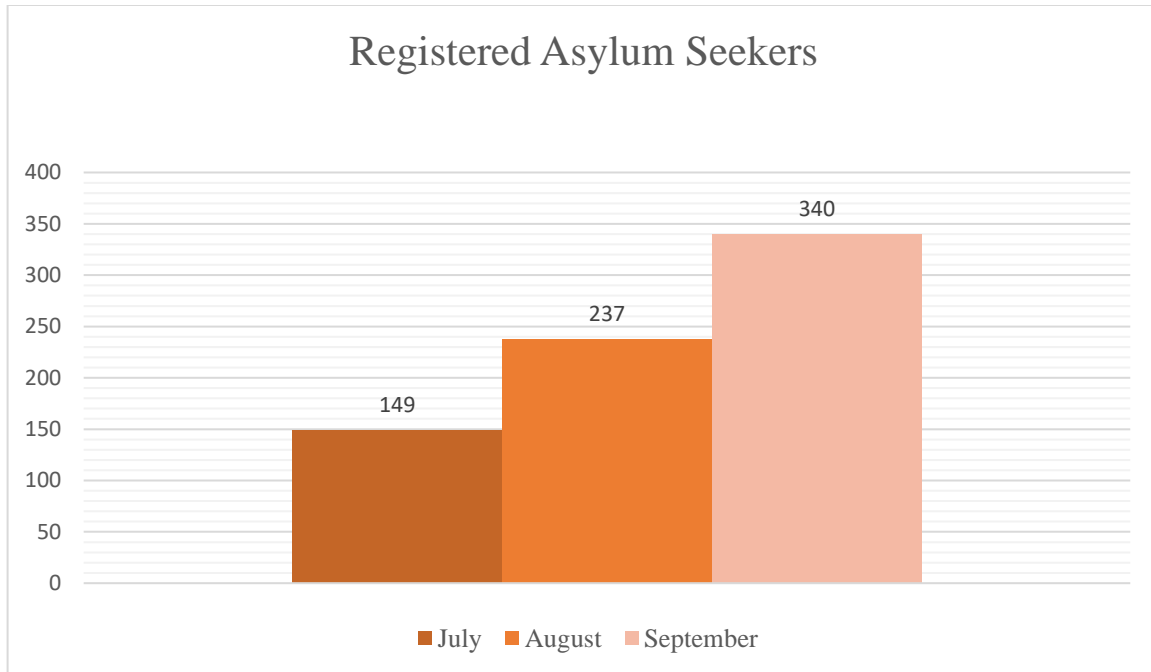
1.1. Registration of Asylum Seekers

In the July-September 2021 period, a total of 726 foreigners expressed the intention to seek asylum in the RS; 657 of them were men and 69 were women. The intention to seek asylum in the RS was expressed by 160 children, 13 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 in the reporting period: 149 in July, 237 in August and 340 in September 2021.

Most of the foreigners, who expressed the intention to seek asylum, were nationals of Afghanistan (300), followed by nationals of Syria (180), Bangladesh (40), Cuba (31), Somalia (22), Burundi (11), India (18), Iraq (13), Iran (11), Armenia (6), Guinea Bissau (5), Morocco (4), Turkey (3), Cameroon (3) and Lybia (3). The intention to seek asylum in the reporting period was also expressed by two nationals of Algeria, Russia and Ghana. The fewest asylum seekers were nationals of Angola, Comoros, Nigeria, South Sudan, Tajikistan, Tunisia, North Macedonia, Jordan, and United States of America (one from each of these countries).

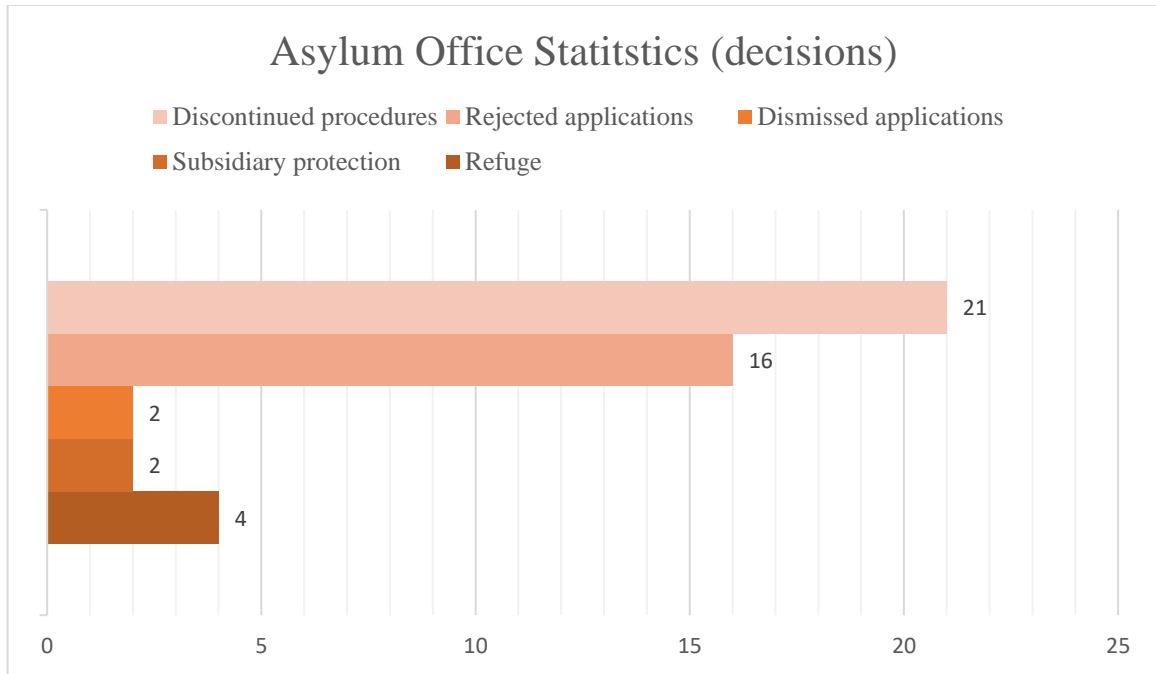
Most foreigners issued certificates confirming they expressed the intention to seek asylum (registration certificates) in the third quarter of the year were registered in police departments in the interior of the country (540), and at Belgrade Airport Nikola Tesla (29), while 135 foreigners were registered at border crossings. The Asylum Office staff registered 22 foreigners as intending to seek asylum at other locations, such as asylum centres (ACs).

A total of 650,829 foreigners expressed the intention to seek asylum in Serbia from 2008 to end September 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 and 2,830 in 2020. Registration certificates were issued to 1,326 foreigners since the beginning of 2021.



1.2. Work of the Asylum Office

Thirteen asylum applications were submitted in person before Asylum Office staff and 34 applications were submitted in writing in the July-September 2021 period. The Asylum Office held hearings concerning 11 asylum seekers. The Asylum Office granted refuge in four and subsidiary protection in two cases. It rejected 16 applications concerning 16 foreigners and dismissed two asylum applications filed by two individuals. The Asylum Office discontinued the review of 21 applications, in most cases 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 205 foreigners since 2008. They have granted refugee status to 95 and subsidiary protection to 110 applicants to date.

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.

In the July-September 2021 period, the Asylum Office adopted eight decisions in cases in which the asylum seekers were represented by the BCHR; it upheld two applications (granting refuge in two cases on behalf of three persons), rejected three asylum applications and discontinued the procedure in one case. In that period, the Asylum Commission rendered three decisions dismissing the appeals filed by the BCHR on behalf of its clients and upholding the Asylum Office's decisions in these cases. Furthermore, the Asylum Commission adopted one decision upholding the BCHR's appeal on behalf of its two clients and remitted the case to the Asylum Office for reconsideration. The Administrative Court delivered two judgments rejecting one and adopting one claim filed by the BCHR on behalf of four clients during the reporting report.

This part of the Report contains the BCHR legal team's analysis of individual decisions by asylum authorities adopted in the July-September 2021 period, which 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 Decisions

2.1.1. One More Burundian Victim of Torture Granted Refuge

In late June 2021, the Asylum Office adopted a decision¹ upholding the asylum application filed by Burundian national M., a victim of torture on grounds of political opinion, which the BCHR analysed in its January-June 2021 Asylum Report. The Asylum Office upheld the asylum application and granted refuge² to another victim of torture from Burundi on the same grounds in early July 2021. Namely, the asylum seeker N., a member of an opposition party, took part in major anti-government demonstrations in 2015. His brother, who also participated in the protests,

¹ Asylum Office Ruling No. 26-1337/20-1 of 29 June 2021.

² Asylum Office Ruling No. 26-103/21 of 30 June 2021.

was soon afterwards abducted, arrested and tortured. N.'s brother fell into a coma from the injuries he sustained and soon died. N. continued actively participating in his political party's activities, but the members of the intelligence agency and Imbonerakure found him and arrested him in 2017. He was subjected to the most heinous forms of torture during the 21 days he spent in jail. Fearing for his life, N. fled Burundi as soon as he was released with the help of his friends. He spent the following three years living between Uganda and Rwanda, recovering from his injuries. Fearing for his safety, N. decided to leave the region and took a plane from Turkey to the RS.

a) Asylum Office Properly Assessed the Submitted Evidence

Whilst in prison, N. was subjected to some of the most severe forms of torture and sustained injuries with permanent consequences. With a view to substantiating claims that N. had been a victim of torture, the BCHR legal team commissioned a report of a court medical expert, who performed a clinical examination of N.

The Asylum Office examined the evidence and submissions filed during the procedure and properly concluded that the minutes of N.'s clinical examination and the findings and opinion of the court medical expert were applicable to the case at issue. The description and causes of the injuries, as well as the doctor's opinion that these injuries (numerous scars, finger contractures, etc.) had left permanent consequences in the form of aesthetic impairments. The Office said in its decision that the medical findings were consistent with the applicant's claims of how he had sustained the injuries. The Asylum Office also took into account N.'s party membership card, as well as the photographs from the 2015 protests in Burundi, which it qualified as credible in this case.

Furthermore, the Asylum Office reviewed the submitted report on N.'s psychological state of health drawn up by a psychologist of the Psychosocial Innovation Network (PIN). The report emphasised that N. was psychologically vulnerable, and that, in addition to depression and anxiety, he evidently suffered from symptoms related to the Post-Traumatic Stress Disorder (PTSD), such as flashbacks and extreme sensitivity to reminders of the trauma he had experienced.

b) Asylum Office's Decision Reinforces the Good Practice It Developed in M.'s Case

Like in the case of Burundian national M., the Asylum Office took into consideration UNHCR's Guidelines,³ under which several elements need to be taken into consideration when deciding whether a political offender can be considered a refugee. They include, notably, the

³ *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR (2019).

personality of the applicant, his political opinion, the motive behind the act, the nature of the act committed, the nature of the prosecution and its motives; and, finally, the nature of the law on which the prosecution is based. In N.'s case, the Asylum Office correctly assessed all the circumstances in his country of origin, such as N.'s participation in the 2015 demonstrations, the arrest of his brother, and the deprivation of liberty and torture N. had been subjected to. Based on the above considerations, the Asylum Office concluded that the applicant had well-founded fear of persecution, rather than of punishment, in his country of origin.

Furthermore, in UNHCR's view, when assessing whether well-founded fear of persecution exists, not only the frame of mind of the person concerned determines his refugee status, but this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and both elements must be taken into consideration in determining whether well-founded fear exists. Like in M.'s case, the Asylum Office properly took into account both elements when it ruled on the merits of N.'s asylum application. Furthermore, in the case at hand, the Asylum Office found a link between the grounds for persecution, the act of persecution and non-existence of effective protection from such acts. Specifically, due to the circumstances he had been subjected to, N. had been unable to receive effective protection in his country of origin, given that no other than the officials of the ruling regime and an organised group close to the government had persecuted him.

Furthermore, the Asylum Office concluded on the basis of credible international reports⁴ that the situation in N.'s country of origin was extremely unfavourable, and that political opponents and prisoners have been in dire straits since 2015 and the demonstrations. Arbitrary arrests and killings are commonplace in Burundi. Human rights violations are on the rise and continue to have a political dimension, and they mainly concern the right to life, liberty and security, prohibition of torture and sexual violence.

c) Conclusion

In this case, the Asylum Office correctly assessed the submitted evidence, both individually and cumulatively. Its assessment of the medical documentation and its due regard to the court medical expert's findings and opinion on the applicant's treatment in contravention of Article 3 of the ECHR, like in M's case, is particularly encouraging. The BCHR recalls that the proper assessment of all the circumstances of the individual cases and the adoption of lawful decisions on the submitted applications requires of the asylum authorities to apply the multi-disciplinary

⁴ UN General Assembly, *Report of the Commission of Inquiry on Burundi 2019*, available at: <https://undocs.org/en/A/HRC/42/49>; Report of the Secretary-General on the United Nations Electoral Observation Mission in Burundi 2015, available at: https://www.un.org/ga/search/view_doc.asp?symbol=S/2015/510.

approach and draw on their case-law. The BCHR hopes that the Asylum Office will continue with its positive practice, like in N.'s case, in the forthcoming period.

2.1.2. Refuge Granted to Iraqi Nationals

In late August 2021, the Asylum Office adopted a decision⁵ upholding the application filed by an Iraqi national of Kurdish origin A. and her seven-year-old daughter N. due to their fear of persecution for reasons of membership of a particular social group. A. was a victim of sexual and gender-based violence in her country of origin. When she was 15 years old, A. was forced to marry her cousin, 20 years her senior and a member of the Peshmerga; the marriage had been arranged by their families. During her marriage, her freedom of movement was restricted and she was denied access to education and the right to work. She was subject to sexual, physical and psychological abuse in the presence of their daughter N. almost every day. A. did not receive support or protection from the members of her primary family due to the deep-rooted cultural and traditional customs of her community. Furthermore, A. was unable to report the years-long violence she was suffering to the relevant authorities of her country of origin, as such acts are considered a disgrace; furthermore, Iraq lacks an adequate and sustainable system for protecting victims of gender-based violence.

A.'s husband wanted to move from Iraq to Europe. Fearful of him, A. tried to stay in Iraq with their daughter and live with her family, but her idea was not met with her family's support. She and her child were forced to leave their country of origin in 2018. A. was separated from her husband in the RS, after she reported his violent conduct and attempt to murder her in a Reception-Transit Centre (RTC). Thanks to the concerted response by the CRM, MOI and the relevant Social Work Centre, the mother and daughter were separated from the abuser and moved to a Safe House, where they applied for asylum.

a) Asylum Office Properly Qualified the Reasons for Persecution

During its review of the merits of A.'s asylum application, the Asylum Office found that she had based her asylum claim on membership of a particular social group, i.e. the *circumstances of her status in her country of origin as the consequence of the fact that she is a woman*. In addition to relying on the LATP,⁶ the Asylum Office referred to leading international instruments on

⁵ Asylum Office Ruling No. 26-1601/20 of 30 August 2021.

⁶ Art. 26(1(5)), LATP.

violence against women, which are an integral part of Serbia's legal order.⁷ The UN defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual, financial, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

In the context of gender-based asylum applications, such as the one in A.'s case, the Asylum Office referred to the UNHCR Guidelines⁸ requiring the drawing of a distinction between the notions of *sex* and *gender*, in order to understand the nature of persecution on those grounds. As opposed to sex, gender is not static or innate but acquires socially and culturally constructed meaning over time. Gender-related claims have typically encompassed a variety of acts,⁹ a number of which were present in the case at hand,¹⁰ wherefore A.'s fear of persecution was well-founded.

b) Asylum Office Found that the Applicants' Fear of Persecution was Well-Founded

Gaining a comprehensive picture of the personality of the applicant, their background and personal experiences is instrumental during the consideration of gender-based asylum applications, as it is in all other cases, in order to establish the existence of the subjective element of the fear of persecution. Furthermore, in order to establish the existence of the objective element of the fear of persecution, the asylum authority must analyse the practices and actions of the country of origin in the context of its provision or non-provision of protection to individuals from potential perpetrators of persecution.

In that sense, based on the *in dubio pro reo*¹¹ principle, the Asylum Office qualified as credible A.'s statement and concluded that her fear of persecution was well-founded and real, especially in view of the fact that she had been subject to gender-based violence also upon arrival in the RS. In the context of the existence of the objective element of fear of persecution, the Asylum

⁷ UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

⁸ *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on Refugee Protection*, UNHCR (reissued in February 2019).

⁹ Sexual violence, domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores.

¹⁰ A. claimed during the procedure that she had suffered sexual, physical, mental and economic abuse on the part of her husband, as well as emotional and physical abuse by her primary family because she did not comply with the community rules and tried to undermine its honour (her brothers beat her because she wanted to separate from her husband and return to her primary family, which is considered a disgrace in their community), and because they forced her into a child marriage.

¹¹ In case of doubts in situations when proving specific facts in an individual case is impossible, the decision-maker may apply the *in dubio pro reo* principle and rule to the benefit of the asylum applicant. In this specific case, the Asylum Office considered that A.'s statement about the gender-based violence her husband and primary family had subjected her to was credible, i.e. legitimate, true and authentic.

Office reviewed, pursuant to the LATP,¹² the relevant reports by international organisations¹³ on the position of women in Iraq, notably the victims of gender-based violence and harmful early marriage practices. Furthermore, the Asylum Office considered A.'s account of her personal experience credible in light of numerous available data on problems surrounding the systemic and efficient protection of domestic violence victims (the vast majority of whom are women) in Iraq, as well as the legal provisions benefitting the abusers. The BCHR welcomes the fact that the Asylum Office took into account the submissions containing the above-mentioned information, which A. submitted via its legal representative during the procedure.¹⁴

As it explained in the reasoning of its ruling, the Asylum Office acknowledged the fact that, despite the generally traumatic experiences that had impinged on her mental health, A. made genuine efforts during the procedure to provide a detailed account of everything she had been through in her country of origin. Furthermore, the Asylum Office assessed that she provided an *acceptable explanation why she had not wanted to request assistance from her country of origin*.

In that sense, given that there must be a link between the reasons for persecution and the act of persecution and the non-existence of protection from such acts, the Asylum Office found that A., a victim of gender-based violence, had been unable to obtain efficient protection in her country of origin. Referring to UNHCR's Guidelines, in addition to the persecution she had been subjected to by her husband and family as non-state actors, A. had also suffered persecution due to discrimination by her country of origin, which was unable to extend her efficient and durable protection. In that sense, the Asylum Office held that A. could not have even been expected to seek help from the authorities of her country of origin. It therefore properly concluded that, in her country of origin, A. had been subject to acts amounting to grave violations of fundamental human rights and persecution in the meaning of the definition of a refugee.

c) Specific Status of Iraqi Nationals – Single Mother and Underage Child

Given that the case concerned a single mother of an underage child, the Asylum Office took into account the specific circumstances of applicants in need of special procedural or reception

¹² Art. 32(2(2)), LATP.

¹³ *Gender- Based Violence and Discrimination against Women and Girls in Iraq*, A Submission to the United Nations Universal Periodic View (April 2019); *World Report 2021 – Iraq*, Human Rights Watch; *Country Report*, Country of Origin Information Kurdistan Region of Iraq, November 2018.

¹⁴ The BCHR's submission including information on the situation in Iraq and referring to reports by relevant international organisations, such as Human Rights Watch, Freedom House, UNICEF, UNFPA, *Minority Rights Group International and Centre for Civilian Rights*, as well as articles by credible media sources (*Reuters*, *Al Jazeera*, *The Guardian* et al).

guarantees, as provided for by the LATP.¹⁵ Such applicants include, inter alia, children, single parents with underage children, and victims of torture, rape or other forms of psychological, physical or sexual violence.

Furthermore, judging by the text of the reasoning of the ruling, the Asylum Office complied with its legal obligation to be guided by the best interests of the child in its decision-making. In addition, pursuant to the provisions of the Convention on the Rights of the Child, and given the circumstances of the case at hand, the Asylum Office assessed that it was in the best interest of underage N. to remain in the company of her mother.

d) Conclusion

When ruling on asylum applications, the asylum authorities should take into account the applicants' personal circumstances and the relevant reports, as the Asylum Office did in this case. Only if they assess the applicants' personal circumstances and relevant reports, as well as other evidence submitted during the procedure, impartially and thoroughly will their findings of facts be correct and complete and contribute to the adoption of lawful decisions.

In the BCHR's opinion, the Asylum Office adopted a high-quality decision in this case, which was based on its thorough review of the facts and circumstances. The Asylum Office in particular bore in mind the personal circumstances of the Iraqi applicants, who fall in the category of vulnerable groups of refugees. The BCHR hopes that this decision will set the standard for rulings on similar asylum cases in the future in the RS and that the Asylum Office will continue with its good practice in the upcoming period.

2.1.3. Asylum Office Rejected Iranian Family's Asylum Application Again

In early March 2021, the Administrative Court delivered a judgment¹⁶ upholding the claim filed by BCHR's lawyers on behalf of the Iranian family V., overturning the Asylum Commission's ruling¹⁷ and remitting the case for reconsideration to the lower-instance authority. The V. family had fled Iran due to persecution on religious grounds.

Their underage daughter, who was born in the RS, had not been included in the asylum procedure before the decision was adopted, although BCHR's lawyers had notified the Asylum

¹⁵ Art. 17, LATP.

¹⁶ Administrative Court judgment No. 15 U 8275719 of 5 March 2021.

¹⁷ Asylum Commission Ruling No. AŽ-06/19 of 1 April 2019.

Office of her birth.¹⁸ In its ruling rejecting the asylum applications, the Asylum Office ordered the V. family to leave the RS within the statutory timeframe.¹⁹ It, however, neglected the fact that the V. family had a baby in the meantime and that, apart from the birth certificate, she had no other personal document, including a passport. This means that there was no legal way the V. family could leave the RS together with their newborn and that they would be forced to avail themselves of the services of smugglers to help them leave the RS illegally, a venture fraught with risks.

a) Asylum Office Failed to Comply with the Administrative Court's Judgment

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 circumstances in a case could not be assessed in general, but cumulatively and with due diligence.

However, the Asylum Office failed to comply fully with the Court's judgment. Namely, after the Asylum Commission remitted the case for reconsideration in accordance with the Court's judgment,²⁰ the family's legal representatives applied for asylum on behalf of the V. family's underage child.²¹ The Asylum Office acted on the application promptly and held the oral hearing two weeks after it was filed. However, the Asylum Office again rejected the V. family's asylum applications, guided almost completely by the reasons it set out in its initial decision. In its new decision, it failed to take account of any facts of relevance to the V. family, in particular their specific status and vulnerability.

Furthermore, the Asylum Office failed to eliminate the identified procedural deficiencies by the very fact that it included family V.'s underage daughter in the asylum procedure. Namely, the Asylum Office was under the duty to clearly explain in its new decision why it was again rejecting the family's asylum application. In addition, the Office should have explained why its decision was in the child's best interests, which have paramount consideration under national law and ratified international treaties, which are an integral part of the RS legal order.²²

¹⁸ More in the *January-March 2021 Right to Asylum Report*, p. 31.

¹⁹ Within 15 days from the day the first-instance ruling becomes final.

²⁰ Asylum Commission Ruling No. AŽ-06/19 of 5 April 2021.

²¹ The Asylum Office issued Conclusion No. 26-1382/18, joining the underage daughter's asylum application with those filed by other family members, on 17 May 2021.

²² Notably, the LATP, LGAP, UN Convention on the Rights of the Child and the European Convention on Human Rights.

b) The Asylum Office Neglected the Fact that the V. Family's Child Does Not Have Adequate Personal Documents

The Asylum Office made no mention of the fact that the V. family's underage child has no personal documents, except a birth certificate issued by the relevant RS authorities. Without personal documents issued by the parents' country of origin, the V. family's underage child is de facto stateless and thus in a particularly disadvantageous position.

Given that the stateless child does not even have a travel document, she can leave the RS only illegally.²³ However, the Asylum Office obviously fully neglected this impediment to the child's removal when it adopted the impugned ruling.

c) The Asylum Office Did Not Assess the Family's Well-Founded Fear of Persecution when it Ruled on Their Asylum Application

In its decision, the Asylum Office noted that the V. family failed to prove it was persecuted by the authorities of their country of origin,²⁴ since no-one had tortured or ill-treated them and they did not face any problems because of their religion. Its conclusion may infer that the family's asylum applications would be considered well-founded only if they had actually been arrested and tortured. However, the LATP precisely defines the concepts of refuge and subsidiary protection and who is eligible. In that sense,²⁵ refuge shall be granted to asylum seekers who have well-founded fear of persecution in their countries of origin, while subsidiary protection shall be granted to foreigners who, if returned to their countries of origin, would be subjected to torture or inhuman or degrading treatment, or their lives, security or liberty would be threatened for reasons of indiscriminate violence caused by a foreign aggression, internal armed conflict or large-scale human rights violations.

Therefore, for an asylum application to be upheld in a specific case, the asylum seeker need not have necessarily been subjected to persecution, torture, inhuman or degrading treatment; nor did their lives, security or liberty necessarily have to be threatened. This means that asylum seekers are not required to prove their fear "beyond reasonable doubt", or that it would be "more probable than not" that the feared harm will materialise. The adjudicator should consider the applicant's

²³ Whoever crosses or attempts to cross the RS state border without a valid travel or other document prescribed for crossing the state border will have violated Art. 71(1(1)) of the Border Control Law.

²⁴ Active (state engages in persecution) or passive (state tolerates persecution).

²⁵ Art. 2, LATP.

fear well-founded if there is a reasonable possibility that the applicant would face some form of harm if returned to the country of origin or habitual residence.²⁶

d) The Asylum Office Inadequately Considered All the Submitted Evidence and Claims Made during the Oral Hearings

During the asylum procedure, the BCHR's lawyers submitted to the Asylum Office a number of relevant reports²⁷ corroborating that the V. family's fear of persecution was well-founded. However, the Office stated in its decision that these reports concerned events that could not be associated with the case at hand,²⁸ whilst failing to explain its view.²⁹

Furthermore, at the additional oral hearing,³⁰ the V. family spoke about a number of events clearly demonstrating that the position of their religious community in Iran had deteriorated in the meantime. However, the Asylum Office failed to adequately consider these circumstances. Specifically, the family mentioned also new facts, e.g. that the Iranian authorities used the COVID-19 pandemic to fully prohibit assemblies by the religious community the V. family belongs to. Furthermore, they started disseminating propaganda against this religious community, equating it with the Islamic State (Da'esh), wherefore its members are qualified as terrorists, putting them directly in danger across Iran.³¹

The Asylum Office ignored all these claims and erred in its application of the institute of passage of time under ECtHR's case-law, under which the circumstances of risk are assessed at the moment the decision is being taken. Relying on the fact that the V. family applied for asylum five and a half months after the events that led them to flee their country of origin occurred, the Asylum Office drew a blanket conclusion that the reasons for their persecution in their country of origin no longer existed. It thus drew the wrong conclusion that the V. family's asylum application was ill-founded.

²⁶ More in UNHCR's Refugee Status Determination – Identifying who is a refugee, September 2005.

²⁷ Notably, the reports of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the Austrian Red Cross on Iran, Freedom House, Human Rights Watch et al, as well as a special report of the Iran Human Rights Documentation Centre (IHRDC) on the situation of Gonabadi Dervishes of March 2021.

²⁸ The Asylum Office said that the submitted reports discussed police casualties and arrests of specific members of the religious community in Iran the V. family belonged to, but that the family itself had not faced the described problems.

²⁹ Asylum Office Ruling No. 26-1382/18 of 20 July 2021, p. 6.

³⁰ The supplementary oral hearing was held on 28 May 2021.

³¹ The family members drew the Office's attention to all these new facts during the supplementary oral hearing, and in the submission the BCHR lawyers communicated to the Asylum Office.

e) Conclusion

BCHR's lawyers are of the view that the new first-instance decision in the V. family's case is not in compliance with the Administrative Court's judgment upholding the claim filed by the family's legal representative. Namely, the Asylum Office yet again acted in contravention of the LATP,³² the principle of the best interests of the child, the UN Convention on the Rights of the Child, and the European Convention on Human Rights. Furthermore, its decision diverges from the Asylum Commission's case-law on unaccompanied stateless children. Namely, the latter alerted to the unlawfulness of the Asylum Office's decisions ordering children without personal documents to leave the RS and that the Office should first establish all the circumstances and their best interests.³³ Due to all of the above considerations, the BCHR filed a fresh appeal with the Asylum Commission in this case. Its decision was pending at the end of the reporting period.

2.1.4. Asylum Office Again Rejects Cuban Nationals' Asylum Application

Like in the above case, the Asylum Office again rejected the asylum applications filed by two Cuban nationals, Y.Y. and her underage daughter K.K. Namely, the applicants fled their country of origin because of the numerous problems they faced as the mother and daughter of an opposition human rights activist in Cuba. Police and intelligence officers came to their home almost every day, summoned Y.Y. for questioning and subjected her to various forms of torture in the police station in order to find out about her husband, R.R., who fled Cuba in fear of persecution in 2016 and sought asylum in the RS. After he left the country. Y.Y. and K.K. continuously faced problems with public officials and were subjected to multiple discrimination (at work, at school). Fearing for their lives and safety, Y.Y. decided to leave Cuba with her daughter and come to the RS. They arrived in the RS in 2019 and applied for asylum in November that year. It took the Asylum Office nearly a year to hold an oral hearing on their applications.³⁴

In March 2021, the Asylum Office issued a ruling³⁵ rejecting the Cuban nationals' asylum applications as ill-founded. BCHR's lawyers, the applicants' legal representatives, appealed the decision with the Asylum Commission. In May 2021, the Asylum Commission issued a ruling³⁶ upholding the BCHR's appeal, voiding the Asylum Office's decision because of the identified

³² Primarily in contravention of Arts. 9, 11, 17 and 32 of the LATP.

³³ See the Asylum Commission's Ruling No. AŽ-46/20 of 17 March 2021.

³⁴ Minutes of the Oral Hearing No. 26-2619/19 of 30 October 2020. Given that the Asylum Office failed to render a decision on the case within the deadline laid down in the LATP or to hold an oral hearing, on 1 October 2020, BCHR's lawyers filed a an appeal with the Asylum Commission challenging the silence of the administration.

³⁵ Asylum Office Ruling No. 26-2619/19 of 31 March 2021.

³⁶ Asylum Commission Ruling No. AŽ-41/20 of 31 May 2021.

deficiencies and remitting the case to it for reconsideration. In September, the Asylum Office, however, adopted a new ruling³⁷ by which it again rejected the Cuban nationals' asylum application.

a) Asylum Commission Upheld the Appeal and Remitted the Case for Reconsideration

Having considered the BCHR's appeal, the Asylum Commission established that the first-instance ruling suffered from specific deficiencies that should be eliminated. Namely, during the procedure, Y.Y. claimed that she had left her country of origin because of the political activities of her husband, who was a member of one of the largest opposition movements in Cuba. However, Y.Y.'s failed to explicitly detail his duties, position or why he was targeted by the Cuban authorities, which the Asylum Office used as an argument to reject the asylum application.

In addition, during the first-instance procedure, BCHR's lawyers requested of the Asylum Office in writing to interview³⁸ R.R. in the capacity of witness in order to ascertain all the relevant facts, since his experience in his country of origin was one of the most important factors for a proper assessment of the mother's and daughter's asylum application. However, the Asylum Office rejected the BCHR's request without a concrete explanation, saying that R.R. had already explained why he had been persecuted during the procedure in which his asylum application had been reviewed and in which a final decision had been rendered.

The BCHR challenged the Asylum Office's interpretations in its appeal filed with the Asylum Commission. First of all, Y.Y. focused on providing as many details as possible about the reasons why she had been persecuted, which were related to her husband's activities. In the view of the BCHR, if it had any dilemmas or insufficient information about the status of Y.Y.'s husband in Cuba, the Asylum Office could have questioned³⁹ Y.Y. in greater detail during the oral hearing. Her lawyers had proposed that her husband R.R. be questioned as a witness precisely with the aim of reinforcing the credibility of her statement. The Asylum Office, however, dismissed the request without a clear explanation, selectively assessed all the facts and circumstances presented during the procedure and rejected the asylum application.

In the reasoning of its decision, the Asylum Commission agreed with the BCHR's claims about the violations of the LGAP⁴⁰ in conjunction with the LATP.⁴¹ Specifically, the Asylum

³⁷ Asylum Office Ruling No. 26-2619/19 of 14 September 2021.

³⁸ Under Art. 124, LGAP.

³⁹ Under Arts. 32(2) or 37(1) or (2), LATP.

⁴⁰ Arts. 10 and 141(4), LGAP.

⁴¹ Art. 37(1(2)), LATP.

Commission found that the first-instance decision was not based on proper, accurate and complete findings of fact, because the Asylum Office had not established the facts and circumstances concerning the activities of Y.Y.'s husband in their country of origin. The Asylum Commission also concluded that the Asylum Office had failed to provide a sufficient explanation why it had refused to interview Y.Y.'s husband as a witness and that it should eliminate the deficiency when it reconsidered the case.⁴²

b) The Asylum Office Adopted the New Decision without First Ascertaining the Facts or Holding an Oral Hearing

In its new ruling,⁴³ the Asylum Office made the identical mistakes it made in the one voided by the Asylum Commission. It again rejected Y.Y.'s and K.K.'s asylum application as ill-founded although it did not hold an oral hearing or re-examine all the relevant facts and circumstances.

As per R.R.'s position in Cuba, the Asylum Office quoted in its reasoning only part of the statement he had given the Asylum Office during the oral hearing on his asylum application. The Asylum Office, however, failed to clearly explain why it concluded that interviewing R.R., which had been requested by Y.Y. and K.K., was unnecessary.

To recall, R.R. applied for asylum at the time the Asylum Law⁴⁴ was in force and that the Asylum Office rejected his application under Article 33 of that law because he had passed through Montenegro, which is on the list of safe third countries, on his way to the RS. It therefore did not review on the merits the reasons why Y.Y.'s husband left his country of origin or whether his fear of persecution was well-founded.

⁴² Namely, under Article 141(4) of the LGAP, the reasoning of a ruling shall be comprehensible and contain a brief outline of the parties' claims; the findings of fact and relevant evidence; the reasons that were decisive in assessing each piece of evidence; the regulations and grounds for rendering the decision in the operational part of the ruling in light of the findings of fact; and, the reasons why any of the parties' motions or requests were dismissed. The reasoning shall also specify why the authority diverged from its earlier decisions in identical or similar administrative matters. In the event the authority exercised its discretionary powers, the reasoning shall also specify the regulation entitling it to do so, the reasons it was guided by and the bounds and purpose of exercising its discretionary powers. The reasoning shall also specify the relevant law, under which an appeal does not stay the enforcement of the ruling.

⁴³ Asylum Office Ruling No. 26-2619/19-1 of 14 September 2021.

⁴⁴ *Official Gazette of the RS*, 109/07.

c) Asylum Office's Again Made Blanket Assessments of the Relevant Facts and Disregarded the Submitted Evidence

BCHR's lawyers further note that the Asylum Office's assessed the facts presented during the procedure selectively and in a manner weighing towards a negative decision. In both its rulings, the Asylum Office held that Y.Y. had not been subject to persecution, because she *was neither charged nor convicted, which might be considered persecution*. It also said that *the absence of a causal link between her husband's different political opinions and the measures she had suffered or feared indicate that she had not been subjected to persecution in her country of origin*. Namely, the Asylum Office intentionally disregarded the submitted evidence corroborating that Cuban police officers extremely rarely issued arrest warrants to justify, inter alia, taking people into custody. In the case at hand, Y.Y. said that she had been taken into custody dozens of times in her country of origin, where she had been interrogated in detail and subjected to degrading treatment in order to confess and provide information about her husband. The Asylum Office also drew the wrong conclusion that Y.Y.'s fear of persecution was ill-founded because she had not voiced her political opinions publicly in her country of origin.⁴⁵

In addition, according to UNHCR's definition in its document, which the Asylum Office itself referred to, the qualification *well-founded* is added to the element of *fear* – which is a state of mind and a subjective condition. The term *well-founded fear* therefore contains a subjective and an objective element, and both elements must be taken into consideration in determining whether well-founded fear exists. The Asylum Office said that it paid particular attention to Y.Y.'s and K.K.'s well-founded fear of persecution, and that, apart from the potential subjective elements, there were no objective circumstances leading it to conclude that their fear was justified. However, the Asylum Office based its view on selective reference to UNHCR's document.⁴⁶

⁴⁵ In its first ruling in this case, No. 26-2619/19 of 31 March 2021, the Asylum Office also noted *that the applicant's statement on police surveillance and interrogations about her husband in the police station does not indicate that she has justified fears of persecution because of her political convictions, since she did not publicly voice her public opinions because of which she would have suffered consequences in her country of origin*. The Asylum Office selectively referred to UNHCR's opinion on the existence of well-founded fear of persecution for reasons of political opinion. The UNHCR is of the view 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. 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.*"

⁴⁶ In its Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (reissued, Geneva, February 2019), UNHCR said that, as regarded the objective element, it was necessary to evaluate the statements made by the applicant. *"In general, the applicant's fear should be considered well-founded if he can establish, to a*

BCHR's lawyers also emphasise that the Asylum Office merely noted in its new decision that it had received the submitted reports on the human rights situation in Cuba⁴⁷ focusing on the status of opposition activists and members of their families but that it had failed to assess them. In order to facilitate the correct findings of fact in this administrative matter, the BCHR also submitted on behalf of its clients other evidence corroborating the allegations made during the procedure. However, the Asylum Office did not take any of them under advisement, thus rendering a decision based on incomplete and improper findings of fact.

In view of all of the above considerations, it may be concluded that the Asylum Office's views are not in accordance with the findings of fact in the case at hand or Y.Y.'s claims demonstrating that she and her daughter had been subject to persecution in their country of origin, wherefore their fear was objective and well-founded. In addition to Y.Y., her legal representatives alerted to these facts in submissions to both the Asylum Office and the Asylum Commission, which the former failed to review.

d) Asylum Office Failed to Review the Applicants' Eligibility for Subsidiary Protection

As per the applicants' eligibility for subsidiary protection, the Asylum Office reiterated its view in the initial ruling fully disregarding Y.Y.'s allegations of the torture and inhuman and degrading treatment she had suffered in her country of origin.⁴⁸ Namely, Y.Y.'s allegations during the procedure demonstrate that she had been subjected to cruel, inhuman and degrading treatment on the part of state actors in her country of origin and that she would be at real risk of suffering substantial harm in case she returned to it.

The Asylum Office itself confirmed these allegations in the part in which it quoted the view of the European Court of Human Rights (ECtHR) and the definition of torture under the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It therefore remains unclear why it found that Y.Y. had not been subjected to treatment described

reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there." (para 42). "These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded." (para 43). The Asylum Office totally disregarded all these views, which are applicable in the case of Cuban nationals Y.Y. and K.K.

⁴⁷ Namely, the Asylum Office merely noted that the applicants' legal representatives filed four submissions with information on the human rights situation in Cuba, containing claims in reports by credible international human rights organisations (Freedom House, Amnesty International Human Rights Watch) and international bodies (UNHCR, UN Committee on the Rights of the Child), and other material evidence submitted by Y.Y. that is of relevance to the adoption of a lawful decision.

⁴⁸ The applicants' legal representatives alerted the Asylum Commission to this fact in detail in the appeal procedure.

in the definition of torture and that she would not be subjected to it if she returned to her country of origin.

e) Conclusion

The Asylum Office's decision in this case is rife with deficiencies. Above all, it did not assess all the individual circumstances of the case and did not act in compliance with the LATP and the LGAP, as it is obligated to under the law and as the Asylum Commission instructed it to. It reviewed the relevant facts and circumstances selectively – it either disregarded individual pieces of evidence or made blanket assessments of the relevant international reports in a manner weighing towards rejecting Y.Y.'s and her daughter's asylum application.

BCHR's lawyers thus believe that the Asylum Office again adopted a decision that is not based on the law and have appealed it with the Asylum Commission. The procedure was pending at the end of the reporting period.

2.2. Asylum Commission

2.2.1. Asylum Commission Rejected the Appeal in the Case of the Burundian journalist

In May 2021, the Asylum Office again adopted a decision rejecting the asylum application filed by B. from Burundi, who had fled his country of origin on account of his assumed political affiliation and ethnicity.⁴⁹ The Asylum Office's prior consideration of this case had been fraught with deficiencies. Namely, when it rendered its initial decision on B.'s asylum application,⁵⁰ it failed to take into consideration all of his individual circumstances or qualify the grounds for his persecution. Furthermore, the Asylum Office drew blanket conclusions and selectively assessed the submitted evidence,⁵¹ wherefore the BCHR appealed its decision. The Asylum Commission upheld BCHR's appeal and remitted the case to the first-instance authority for reconsideration.⁵² However, the Asylum Office reiterated all its views in its new decision, wherefore BCHR's

⁴⁹ Asylum Office Ruling No. 26-3131/19-1 of 21 May 2021.

⁵⁰ Asylum Office Ruling No. 26-3131/19 of 19 January 2021.

⁵¹ See the *January-March 2021 Right to Asylum Report*, p. 19.

⁵² Asylum Commission Ruling No. AŽ-47/20 of 26 March 2021.

lawyers again filed an appeal⁵³ with the Asylum Commission, which the latter rejected,⁵⁴ upholding the findings of the first-instance authority.

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 to 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) Asylum Commission Erred When it Concluded that B. Had Not Invested Genuine Efforts to Substantiate His Application with Evidence

In its decision, the Asylum Commission first said that B. had not invested genuine efforts to substantiate his application with evidence, because he had submitted it only after the Asylum Office adopted its ruling.⁵⁵ The Asylum Commission argued that B. applied for asylum in January 2020 and had sufficient time to submit the evidence, that evidence should not be submitted *only at the insistence of the first-instance authority, that is, after this issue was raised at the oral hearing*.⁵⁶ The Asylum Commission was primarily referring to the submission of B.'s specific original documents, the copies of which had already been forwarded to the Asylum Office,⁵⁷ and the psychological assessment report the Asylum Office received the same day BCHR's lawyers received the new first-instance decision.⁵⁸ However, the Asylum Commission failed to note that

⁵³ More in the *January – June 2021 Periodic Report*, p. 18.

⁵⁴ Asylum Commission Ruling No. AŽ-47/20 of 5 July 2021.

⁵⁵ *Ibid*, p. 3.

⁵⁶ *Ibid*, p. 3.

⁵⁷ At the supplementary oral hearing held on 20 April 2021, the Asylum Office officer asked B. why his mother and relatives had failed to send him the originals of the police documents he had submitted. He explained that they had sent him the documents by phone, because their safety would be at risk if they sent the documents by post.

⁵⁸ Interestingly, the Asylum Commission erred in its reference to this report. It said in its decision that the report was drawn up by a doctor working for IAN; the report was actually drawn up by a psychologist working for PIN.

BCHR's lawyers had submitted all other evidence of crucial importance for a decision on B.'s application immediately after the oral hearings were held.⁵⁹

In addition, the Asylum Commission did not take into consideration the delay on the part of the Asylum Office. Namely, the Asylum Office held the first oral hearing in this case as many as nine months after B. applied for asylum, and it issued its ruling a year later. The Asylum Office both scheduled the hearing and issued the ruling only after BCHR's lawyers appealed the silence of the administration with the Asylum Commission, contesting the dilatoriness of the first-instance authority.⁶⁰

b) Asylum Commission Made Blanket Assessments about the Arguments in the Appeal

The Asylum Commission made blanket assessments about the BCHR lawyers' claims in the appeal, failing to provide clear explanations of why it upheld the Asylum Office's erroneous statements in the ruling. First of all, B. left his country of origin in 2019 because of the problems he had with the Burundian police for visiting Rwanda, not because of the opposition protests that took place in Burundi in 2015, as the Asylum Office erroneously claimed.⁶¹ In addition, BCHR's lawyers disputed the Asylum Office's reliance on the fact that the government in Burundi has changed, which is not, and should not be, crucial in this legal matter.

Furthermore, the Asylum Commission failed to adequately consider the arguments in the appeal about the Asylum Office's failure to refer to relevant international reports on human rights and security in Burundi. In addition, the Asylum Commission did not explain why the Asylum Office failed to take into account the reports BCHR lawyers forwarded to it during the procedure. Hence the erroneous conclusion that B. had not been subject to persecution and would not be subject to it if he returned to his country of origin.

⁵⁹ The oral hearings were held on 21 October 2020 and 20 April 2021. BCHR lawyers filed a total of six submissions containing the relevant information and evidence by the time they received the new first-instance decision. The Asylum Office failed to take into account some of them, as the appeal emphasises.

⁶⁰ See the *July-September 2020 Right to Asylum Report*, p. 24.

⁶¹ The Asylum Office assessed the claims about the persecution B. suffered in his country of origin exclusively from the perspective of the situation in Burundi in 2015, whilst failing to properly take into account the specific developments in 2019, precisely the ones that prompted B. to leave his country of origin and the ones he relied on in his asylum application.

c) The Asylum Commission Downplayed Police Ill-Treatment

The Asylum Commission's view on the fact that the Burundian police held B. at the border and then summoned him to their offices, where they abused and ill-treated him is extremely troubling. In its decision, the Asylum Commission noted that the fact that B. was summoned by the relevant authorities did not qualify him per se as someone in need of international protection. In that sense, the argument made in the Asylum Office's decision relied on the existence of the absolute right of each sovereign state to establish the criminal or other liability of its nationals and collect information from them. The Asylum Commission noted that it could not be concluded from the case files that the reasons why B. was summoned were associated with the grounds for persecution under the Refugee Convention.⁶² The Commission also totally ignored B.'s detailed statements during the oral hearings, clearly demonstrating that he had been ill-treated by the police in his country of origin. Moreover, the Asylum Office had assessed the claims as credible during its review of B.'s application for asylum.

The Asylum Commission also drew a wrong parallel in this part of the decision, referring to RS regulations on police powers and actions concerning the collection of information from citizens.⁶³ However, the impression is that the Commission tendentiously ignored the fact that the described police ill-treatment B. had been subjected to is a crime under Serbian law.⁶⁴ Furthermore, the RS has ratified a number of international conventions absolutely prohibiting torture and ill-treatment,⁶⁵ wherefore it remains unclear why the Asylum Commission tried to downplay the ill-treatment B. had been subjected to, presenting it as a commonplace occurrence. This was clearly not the case in light of all the evidence and information submitted in this case, including on the current situation in Burundi.

d) The Asylum Commission Failed to Take into Account the Vulnerability of Journalists in Burundi

Neither the Asylum Commission nor the Asylum Office before it took into account the fact that B. is a journalist, an extremely high-risk profession in Burundi. Neither asylum authority considered the submitted information and credible evidence of the difficult situation of journalists in Burundi, nor the risks to their safety in Rwanda coming from the Burundian authorities. These

⁶² Asylum Commission Ruling No. AŽ-47/20 of 5 July 2021, p. 6.

⁶³ *Ibid*, p. 6.

⁶⁴ Torture and ill-treatment are prohibited under Art. 137(3) in conjunction with paragraph (2) of that Article, Criminal Code of the RS.

⁶⁵ The European Convention on Human Rights, the UN Convention against Torture and Other Cruel and Inhuman Treatment or Punishment, the 1951 Convention relating to the Status of Refugees.

facts were relevant when the merits of B.'s asylum application were ascertained, especially since the Burundian authorities associated him with Burundian journalists who had fled to Rwanda.

In that sense, the Asylum Commission ignored the BCHR lawyers' claims in the appeal that the Asylum Office's views on the position of journalists in Burundi were based on incomplete and erroneous findings of fact, although the deficiencies that led to them in this specific case were clearly alerted to. The appeal also contested the Asylum Office's observation that B. had worked as a journalist in Burundi for nine years and never had any problems because of that, which B. has never claimed or relied on in his asylum application.

e) Conclusion

The Asylum Commission's decision is in contravention of the LATP, the LGAP and ratified international treaties.⁶⁶ The Commission also failed to fulfil one of its primary roles in this case – review the lawfulness of the Asylum Office's operations. The BCHR has already recalled that the Asylum Commission is under the obligation to review whether the Asylum Office, a lower-instance body, has rendered proper and lawful decisions and thus improve its work. It should also equally make sure that procedural and substantive law is complied with. Finally, the Asylum Commission should review all the facts in the appeals thoroughly, properly and fully, rather than base its decisions on blanket assessments. Due to all these reasons, BCHR's lawyers filed a claim contesting the Asylum Commission's decision with the Administrative Court.

2.3. Administrative Court Confirms Procedural Errors in the Application of the First Country of Asylum Concept⁶⁷

BCHR has legally represented Y. from Burundi, who had been granted the status of refugee in Uganda. He decided to leave Uganda because of the problems he faced there. Y. took a regular flight from Uganda via Istanbul and arrived in Serbia on 7 March 2019. His application for asylum was rejected by the Asylum Office in August 2020.⁶⁸

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

⁶⁶ Notably, violations of Arts. 6, 26, 28 and 32 of the LATP, Arts. 10, 11 and 158 of the LGAP, and Art. 3 of the European Convention on Human Rights.

⁶⁷ Art. 43, LATP.

⁶⁸ Asylum Office Ruling No. 26–1515/19 of 13 August 2020.

concept of the first country of asylum.⁶⁹ Just one workday later, the Asylum Office sent the BCHR its ruling dismissing Y.'s asylum application under Article 43.⁷⁰ Y. was denied the possibility to comment the Asylum Office's intention to apply the concept of first country of asylum and to challenge its application given his personal circumstances within the statutory deadline.⁷¹

BCHR lawyers filed an appeal with the Asylum Commission claiming procedural violations. However, the Asylum Commission dismissed BCHR's appeal as ill-founded.⁷² The BCHR challenged the Asylum Commission's procedural errors⁷³ with the Administrative Court, which upheld its claim in early September 2021 and remitted the case for reconsideration to the Asylum Commission.

a) Applicants Must be Provided with Time to Challenge the First Country of Asylum Concept in Their Particular Circumstances

In its judgment,⁷⁴ the Administrative Court agreed with the BCHR that the Asylum Commission ruling was unlawful and that the procedure in which it rendered its decision was flawed. In the Court's view, Y. was denied the possibility of contesting the application of the first country of asylum concept in his particular circumstances., which is prerequisite for a decision dismissing an application without going into its merits.⁷⁵ The Administrative Court noted that BCHR lawyers were notified of the application of the first country of asylum concept on 14 August 2020, whereas the ruling dismissing the asylum application was adopted on 13 August 2020 and expedited on the day BCHR lawyers received the notice. The Court also emphasised that the notice did not include any request to comment the application of the concept,⁷⁶ wherefore it concluded that BCHR lawyers were not provided with a deadline by which they could do so.⁷⁷

⁶⁹ Under Art. 42(1) of the LATP, a decision rejecting an asylum application without examining it on the merits shall be rendered if it is possible to apply the concept of first country of asylum referred to in Art. 43. Art. 43(1) sets out that a country shall be considered the first country of asylum if the applicant has been recognised refugee status in that country, and if they are still able to avail themselves of that protection or if they still enjoy effective protection in that country, including the guarantees arising from the *non-refoulement* principle

⁷⁰ See the analysis of this decision in: *July-September 2020 Right to Asylum Report*, pp. 22–24.

⁷¹ Under Art. 43(2) of the LATP, applicants may challenge the application of the concept of first country of asylum in relation to their particular circumstances.

⁷² Asylum Commission Ruling No. Až-36/20 of 4 December 2020.

⁷³ The analysis of the Asylum Commission is available in the *2020 Right to Asylum Report*, p. 62.

⁷⁴ Administrative Court judgment No. 8 U 734/21 of 3 September 2021.

⁷⁵ In the meaning of Art. 42 of the LATP.

⁷⁶ Pursuant to Art. 43, LATP.

⁷⁷ Namely, the Administrative Court dismissed the Asylum Commission's findings that the Asylum Office could have provided the applicant with more time to comment the application of the first country of asylum concept, since it had not given him any time whatsoever to do so. The Court also noted that the Asylum Commission had itself upheld the applicant's complaint about the Office's failure to provide him with time to comment.

The Court qualified the Asylum Commission's reasoning as vague and contradictory, given that the Commission said that the Asylum Office's omissions had not substantially affected the adoption of a proper and lawful decision, while noting at the same time that the Office's findings of fact had been incomplete. The Administrative Court also noted that Y. had himself claimed that he had been reported to the police in Uganda because of his bisexual orientation and that he had been granted refugee status there.⁷⁸

b) Applicants Must Explicitly be Provided with the Opportunity to Contest the First Country of Asylum Concept in Their Particular Circumstances

The Administrative Court also found disputable the Asylum Commission's assertions that Y. had been thoroughly interviewed during the two oral hearings the Asylum Office held before it rendered its decision, and that he had been given the opportunity to challenge the first country of asylum concept. Namely, the Court stated that such a conclusion could not be drawn since Y. had not been asked at all to comment those circumstances.

The Court also noted that the regulations governing the general administrative procedure applied to asylum-related issues not regulated by the LATP. The LGAP, *inter alia*, lays down that administrative authorities are under the obligation to facilitate as much as possible the protection and exercise of the parties' rights and legal interests.⁷⁹ The Court also found violations of the law,⁸⁰ under which a reasoned ruling must include a summary of the party's claims, the findings of fact and the evidence based on which the ruling was adopted. In addition, the authority must specify which reasons were decisive in its assessments of each piece of evidence, the regulations and the reasons which, given the findings of fact, corroborate the decision in the operational part of the decision, as well as reasons why a motion or request has been dismissed.

c) Conclusion

In sum, the Administrative Court identified the same deficiencies in Y.'s case as the ones to which BCHR's lawyers had alerted both the first and second-instance authorities. Notably, it clearly ascertained that applicant had to be provided with time to challenge the first country of asylum concept in their particular circumstances. Furthermore, applicants must be explicitly provided with the opportunity to contest the first country of asylum concept in their particular circumstances. BCHR lawyers expect that the Court's judgment will help nip in the bud a dangerous practice that would impinge on asylum seekers in the RS, who had been unable to enjoy

⁷⁸ As the first country of asylum.

⁷⁹ Pursuant to Art. 7, LGAP.

⁸⁰ Specifically Art. 141(4), LGAP.

effective protection in their prior countries of asylum. The BCHR expects that the Asylum Office will unquestioningly facilitate as much as possible the protection and exercise of the asylum seekers' rights and legal interests in accordance with the law. The reconsideration of Y.'s application was pending at the end of the reporting period.

3. Integration

3.1. Refugee Education and Primary School Enrolment during the 2021/22 School-Year

Under the LATP, asylum seekers and individuals granted asylum are entitled to primary and secondary education free of charge.⁸¹ Primary education is free and mandatory in the RS.⁸² In addition, the LATP lays down that asylum-seeking child shall be provided with access to education immediately, within three months from the day they apply for asylum in the RS at the latest.⁸³

The Integration Decree⁸⁴ recognises help in accessing education as an important factor in the refugee integration process and envisages assistance⁸⁵ entailing the provision of textbooks and school supplies. Refugees are also entitled to study support and the relevant authorities are under the duty to secure funding for their involvement in extracurricular activities.⁸⁶ It also needs to be noted that the Integration Decree does not recognise asylum-seeking children as a particularly vulnerable category also in need of assistance in enrolment and in class.⁸⁷

The enrolment of children living in ACs and RTCs is assisted and supported by the staff of the CRM,⁸⁸ while children living in private lodgings are assisted by NGOs. The enrolment of unaccompanied and separated children is facilitated by their temporary guardians.⁸⁹

UNHCR data⁹⁰ indicate that around 175 refugees are attending Serbian schools or universities at the moment; slightly over 20 of them are attending secondary school, 120 are attending primary school, four are at university, while around five are attending adult education

⁸¹ Arts. 55(1) and 64, LATP.

⁸² Arts. 4 and 5, Primary Education Law

⁸³ Art. 55(2), LATP.

⁸⁴ Art. 2(1(4)) (*Sl. glasnik RS* 101/16 and 56/18).

⁸⁵ Art. 2(2) of the Integration Decree entrusts the CRM with extending to individuals granted refuge in the RS assistance in integrating in the social, cultural and economic life of the country.

⁸⁶ Art. 6, Integration Decree.

⁸⁷ Asylum-seeking children mostly rely on NGO assistance in that respect.

⁸⁸ Given that the CRM extends assistance to asylum seekers under the Integration Decree.

⁸⁹ Police certificates suffice for enrolment of children who have not applied for asylum, whereas, for asylum-seeking children, FRN certificates, which are issued by the Asylum Office at the request of their parents or temporary guardians via their legal representatives in the asylum procedure, need to be submitted.

⁹⁰ See the *Danas* article, available in Serbian at: <https://www.danas.rs/drustvo/unhcr-stopa-upisa-izbeglica-u-skole-i-univerzitete-u-srbiji-i-dalje-kriticno-niska/>.

classes. As far as tertiary education is concerned, 2021 is the first year during which refugees from outside the region enrolled at RS state universities, as the BCHR noted in its January-March 2021 Asylum Report.⁹¹

Refugee and asylum-seeking children started school during this reporting period. Red tape additionally obstructed the beginning of the school-year for first graders. Although anti-COVID-19 measures were in place, access to education was unimpeded.

In order to enrol in first grade, children must undergo comprehensive medical check-ups and they must be vaccinated. In the BCHR's experience, in addition to red tape, the language barrier and non-existence of additional support that would be provided by language assistants, who would interpret for the children and help them follow class, is still the key problem in accessing education. During the reporting period, the BCHR assisted the children of four families in accessing education, specifically the enrolment of six first graders and of one fifth grader. The assistance it provided will be described in the ensuing sections.

3.1.1. Enrolment of a Refugee Child in First Grade

A single mother from Iraq and her seven-year-old child, granted refuge by the Asylum Office at the end of August⁹², is one of the families the BCHR integration team helped gain access to primary education. The BCHR team enrolled the child in school in cooperation with the NGO ATINA, which has been extending the mother and child support and protection for years now.

The enrolment of children in first grade is arranged with the primary school closest to their place of residence, to which the requisite documentation is submitted. The children are assigned to a class and the schools define the modality of work with them, i.e. programme. Refugee children enrolling in school are to submit their Foreigner Registration Number (FRN), the Asylum Office ruling approving their residence in private lodgings, and a health certificate issued after their general check-up. The language barrier arose as a problem already during the child's enrolment, given that the mother does not speak Serbian and barely speaks English, wherefore an interpreter for their native language had to attend the enrolment procedure.

The mother commendably opted for the full-day programme; after the regular classes, held from 8 am to noon, the child attends after-school care with the other children, until 4 pm. During after-school care, the teacher extends the children study support and helps them do their

⁹¹ See the *January-March 2021 Right to Asylum Report*, p. 44.

⁹² See more in 2.1.2.

homework. Refugee children attending after-school care have had less trouble mastering Serbian, which is particularly helpful where the parents, such as the mother in this case, do not speak Serbian and cannot help their children with their homework. As evidenced by the child's progress, attendance of after-school care is a good practice example, facilitating the integration of refugees in the RS education system, despite the absence of language assistants.

3.1.2. Enrolment of a Seven-Year-Old Asylum Seeker in Primary School

A single mother and her seven-year-old child J.K.T., nationals of the Democratic Republic of Congo, came to the RS in February 2021 with the intention of seeking asylum. After living in an AC for a short period of time, they decided to move to private lodgings, wherefore the mother needed assistance in enrolling the child in a state school in Belgrade. Given that J.K.T was born in 2014 and had to be enrolled in first grade under the Primary Education Law,⁹³ a BCHR Integration Adviser enrolled the child in school.

Parents or guardians of children about to start school must contact the school closest to their place of residence and the child has to undergo an interview with the school psychologist. Given their status of asylum seekers, J.K.T.'s mother needed to submit the child's FRN and the Asylum Office's ruling approving their residence in private lodgings, the latter serving as evidence of their registered temporary place of residence. The mother also needed to submit a health certificate issued after her son's general check-up.⁹⁴

Given that J.K.T. speaks only French, the school decided to draw up a programme comprising one-on-one lessons in specific subjects, such as the Serbian Language, in combination with the regular programme, during which the child is to attend classes in other subjects together with his classmates. The mother and J.K.T.'s teacher agreed to communicate in the future via the Viber group, to which the teacher sends important school-related information to all the parents. They also agreed to communicate with the help of Google Translate. Unfortunately, the school does not have on staff a French teacher, who would be able to assist J.K.T. in mastering the

⁹³ Art. 5, Primary School Law.

⁹⁴ In this case, the child underwent the check-up subsequently, since the mother had been unfamiliar with the enrolment procedure. Given that the child was already being enrolled with a delay, the school allowed the mother to submit the health certificate later, so that the child could start school as soon as possible.

curriculum. On the other hand, the child fortunately had the opportunity to start his formal education in a Serbian state school, facilitating his socialisation in Serbian society.

It remains to be seen how rapidly the child will accept school and master Serbian. His mother's support and motivation to learn the language and integrate in the new community provide an important impetus also to the child's faster progress.

3.1.3. Enrolment of Three Pakistani Asylum-Seeking Children in First Grade

During the reporting period, the BCHR integration team helped another client, a single mother from Pakistan, enrol in school her three children – a seven-year-old son and two daughters, aged 9 and 10. This asylum-seeking family has been living in private lodgings in Belgrade since April 2021. The BCHR established contact with the nearest primary school. It arranged with the school psychologist that the mother, the children and the BCHR Integration Adviser visit the school before the school-year began, to meet the teacher, the principal and other school staff. The mother submitted the children's FRN certificates to the school during the visit.⁹⁵

The school decided to enrol all three children in the same class for the first few months, since they had never attended a Serbian school. The staff assessed that the children would have an easier time settling in, that they would be covering the same curriculum and have the same homework. None of them spoke Serbian, but the girls spoke English. In order to eliminate the language barrier as soon as possible, the BCHR team asked the UNHCR for help and the latter arranged Serbian language lessons for the children. The BCHR also asked the UNHCR for one-off financial aid to cover the costs of the children's textbooks and school supplies, which the mother had trouble covering herself.

3.1.4. Enrolment of Syrian Refugee Children in First and Fifth Grades

The BCHR also helped a single mother from Syria enrol her children in school during the reporting period. Her son was enrolled in fifth and her daughter in first grade.

The three-member family, granted subsidiary protection by the Asylum Office in 2020, has been living in private lodgings in Sombor since the spring of 2021. At the BCHR's request, the MOI issued the children IDs and FRN certificates during the summer; these documents were

⁹⁵ In this case, the FRN certificates were the only documents submitted to the school, given that the children do not have any other personal or other documents from their country of origin or any other documents issued in the RS.

submitted to the relevant primary school before the start of the school-year. The BCHR also contacted the pedagogical unit of the primary school in Banja Koviljača, where the older child had attended fourth grade, to collect additional documentation about this pupil,⁹⁶ which was then forwarded to the primary school in Sombor.

The CRM provided the requisite assistance to the Syrian family in Sombor during the enrolment. Namely, the BCHR integration team contacted the CRM Integration Adviser, who arranged the family's visit to the school in the presence of a CRM representative and an Arabic interpreter. The boy was enrolled in fifth grade; his integration in the school is expected to be easier since he has already attended school in Serbia and has some knowledge of Serbian. During the visit to the school, the staff explained to the mother how the transportation system operated, where the bus stations were and the bus schedule, given that the school organises transportation of children living on the city outskirts, like the Syrian family. Furthermore, the school provided the children with the basic school supplies. The CRM has also arranged online Serbian Language lessons for the children.⁹⁷ Since the family was granted subsidiary protection in the RS, the BCHR filed a request with the CRM to cover the costs of the children's textbooks. Its reply was still pending at the time this Report was completed.

The CRM's practice established in the 2021/22 school-year also warrants mention in that respect. Namely, foreigners granted refugee or subsidiary protection over the past year are entitled to reimbursement of the costs of their school children's textbooks. In practice, the parents need to submit to the CRM a list of the requisite textbooks and their prices, together with a fiscal receipt proving that they had paid their children's textbooks. The CRM then adopts a ruling on the reimbursement of the textbook costs.

The BCHR applauds such support extended by the CRM with the aim of relieving refugee families with school children of the high costs of education. However, this procedure suffers from two shortcomings – the refugees initially have to cover the costs of the textbooks themselves and such costs are reimbursed only to foreigners granted international protection, whereas asylum seekers are denied this right.

⁹⁶ The child's half-term grades, personal file and portfolio, cross-curricular competences – evaluation list and support plan.

⁹⁷ In late September, the mother asked the BCHR team to procure a laptop for the family since the children had trouble following class via the phone. The laptop will prove necessary in the event the schools revert to online classes if the COVID-19 pandemic surges. The BCHR has forwarded the mother's request to UNHCR.

4. Appendix – Deterioration in the Security Situation and Change of Government in Afghanistan

During the withdrawal of US and allied troops from Afghanistan after 20 years in August 2020, the Taliban launched attacks and captured territories across the country, sparking a new humanitarian crisis in this part of the world.⁹⁸ The Taliban was in control of already 65% of Afghan territory by mid-August; they entered the capital, Kabul, and the presidential palace on 15 August and declared their victory, claiming that the war was over.⁹⁹ The civilian population's fear of the Taliban and its retaliation, elimination and concealment of all traces of the "modern" and influence of Western values, evacuation of the civilians at Kabul airport, helpless families with children stranded in Afghanistan, were just some of the images that swept across the world.

Given that Afghan nationals account for most migrants taking the so-called Balkan Route, it is quite likely that the latest developments in that country will prompt a new wave of refugees in the upcoming period. Millions of Afghans have fled decades-long conflict and large-scale human rights violations in that country.¹⁰⁰ The rights of women and children, freedoms of expression, association and assembly, the position of journalists and human rights activists, as well as the right to health during the ongoing COVID-19 pandemic, are denied the most to the citizens of Afghanistan.¹⁰¹ Those fleeing the country are still in need of international protection, in particular due to the fact that no part of Afghanistan has been considered safe for some time now.

Concerned by the developments, UNHCR published its *Position on returns to Afghanistan* in August, calling on all countries to allow civilians fleeing Afghanistan access to their territories.¹⁰² UNHCR lay stress on the countries' obligation to comply with the non-refoulement principle and to keep their borders open and act in accordance with their international obligations. UNHCR also stressed that all claims of nationals and former habitual residents of Afghanistan seeking international protection should be processed in fair and efficient procedures in accordance

⁹⁸ The Taliban launched attacks across Afghanistan, after the US put off the withdrawal of its troops, see, e.g. "Biden to withdraw US troops from Afghanistan by September 11", *Al Jazeera* (13 April 2021), available at: <https://bityl.co/9boJ>.

⁹⁹ See, e.g.: "Timeline: Afghanistan provincial capitals captured by Taliban", *Al Jazeera* (11 August 2021), available at: <https://bityl.co/9UZ7>; and, "Taliban enters Afghan presidential palace after Ghani flees" *Al Jazeera* (15 August 2021), available at: <https://bityl.co/9boQ>.

¹⁰⁰ According to UNHCR data, there are 2.6 million registered Afghan refugees in the world, most of them in Iran and Pakistan. Around 3.5 million Afghan nationals are internally displaced due to conflicts in their country of origin. Over 550,000 of them left their homes, seeking refuge in other parts of the country since the beginning of 2021 alone. See: UNHCR, *Afghanistan emergency*, available at: <https://bityl.co/9boV>.

¹⁰¹ See more in: *AFGHANISTAN 2020*, Amnesty International, available at: <https://bityl.co/9Ude>.

¹⁰² UNHCR, *Position on returns to Afghanistan*, available at: <https://bityl.co/9Ude>.

with international and regional refugee law. UNHCR also welcomed steps taken by some countries of asylum to suspend decision-making on international protection needs of nationals and former habitual residents of Afghanistan, until such time as the situation in the country has stabilised and reliable information about the security and human rights situation was available to assess the international protection needs of individual applicants. In its view, for individuals whose claim had been rejected prior to recent events, the current situation in Afghanistan may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted in view of the volatility of the situation in Afghanistan. UNHCR also called on states to suspend the forcible return of nationals and former habitual residents of Afghanistan, including those who have had their asylum claims rejected.¹⁰³ Their return would amount to a violation of non-refoulement, the fundamental principle of refugee law also enshrined in the leading international human rights protection treaties.¹⁰⁴

After the Taliban captured Kabul, the US State Department on 15 August published the *Joint Statement on Afghanistan*,¹⁰⁵ calling on all parties to respect and facilitate the safe and orderly departure of foreign nationals and Afghans who wished to leave the country. Albania and North Macedonia were among the first countries in the region to sign the Statement.¹⁰⁶ Serbia was not on the initial list of signatory states, but was included in the updated list a few days later, after it extended support to the Statement.¹⁰⁷

In early September, the Taliban disclosed the composition of the new interim Government, the officials of which committed to more tolerant and open governance and granting amnesty to anyone who had cooperated with the USA and the Afghan administration it supported during the previous two decades.¹⁰⁸ The Taliban also vowed to guarantee the safety of embassies, diplomats and humanitarian relief institutions. The question, however, arose, how these promises would be fulfilled by an unrepresentative Government without any women and with poor ethnic representation,¹⁰⁹ which is not recognised by a large number of countries, and some of whose members are on the lists of most-wanted terrorists.

¹⁰³ *Ibid.*

¹⁰⁴ Including the Convention relating to the Status of Refugees (1951), the European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985), et al.

¹⁰⁵ The Joint Statement and list of states that signed it are available at: <https://bit.ly.co/9bop>.

¹⁰⁶ Albania and North Macedonia granted the first Afghan refugees access to their territories already in late August.

¹⁰⁷ “Serbia joins International Joint Statement on Afghanistan,” US Embassy in Serbia (20 August 2021), available at: <https://bit.ly.co/9boy>.

¹⁰⁸ “Head of new Afghan government calls on ex-officials to return,” *Al Jazeera* (8 September 2021), available at: <https://bit.ly.co/9bon>.

¹⁰⁹ *Ibid.*

Soon afterwards, international organisations reported numerous restrictions impinging especially on women,¹¹⁰ ongoing discrimination against ethnic and religious minorities,¹¹¹ escalation of violence and stifling of peaceful protests,¹¹² and unlawful and extrajudicial execution practices.¹¹³ At the emergency Human Rights Council session on 13 September, the UN High Commissioner for Refugees called on the Council to establish a dedicated mechanism to monitor the evolving human rights situation throughout the country and keep the Council closely apprised of developments.¹¹⁴

In light of the volatile security situation and indiscriminate violence in Afghanistan, as well as the extent of human rights violations at all levels, the relevant RS authorities must act with special diligence in cases of Afghan asylum seekers. The MOI should provide individuals in need of international protection with effective access to the asylum procedure. The Asylum Office should continuously monitor the developments and human rights situation in Afghanistan during its reviews of asylum applications. Given the uncertainties surrounding the situation and likely prolongation of the humanitarian crisis in the upcoming period, the Asylum Office should also review subsequent asylum claims by Afghan nationals, whose applications had been rejected by a final decision, given that they are precluded from returning to their country of origin for objective reasons.

¹¹⁰ More in: *List of Taliban Policies Violating Women's Rights in Afghanistan*, Human Rights Watch (29 September 2021), available at: <https://bit.ly.co/9UbY>.

¹¹¹ See, e.g.: *Why the Hazara people fear genocide in Afghanistan*, Al Jazeera (27 October 2021), available at: <https://bit.ly.co/9Ubu>.

¹¹² See, e.g.: *Taliban response to protests increasingly violent, warns OHCHR*, UN News (10 September 2021), available at: <https://bit.ly.co/9Ubz>; *Afghanistan: Suppression of protests at odds with Taliban's claims on human rights*, Amnesty International (8 September 2021), available at: <https://bit.ly.co/9Uc5>.

¹¹³ See, e.g.: *Afghanistan: 13 Hazara killed by Taliban fighters in Daykundi province – new investigation*, Amnesty International (5 October 2021), available at: <https://bit.ly.co/9UcD>.

¹¹⁴ OHCHR, *Oral update on the situation of human rights in Afghanistan*, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, available at: <https://bit.ly.co/9Ud0>.