

RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2021



**Belgrade Centre
for Human Rights**

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ACRONYMS

- AC – Asylum Centre
- APC – Asylum Protection Centre
- BCHR – Belgrade Centre for Human Rights
- BPS – Border Police Station
- CEDAW – Committee on the Elimination of Discrimination Against Women
- CRC – Convention on the Rights of the Child
- CRM – Commissariat for Refugees and Migration of the Republic of Serbia
- CRPC – Crisis Response and Policy Center
- CSO – Civil Society Organisation
- DRC – Danish Refugee Council
- EASO – European Asylum Support Office
- ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECtHR – European Court of Human Rights
- FL – Foreigners Law
- FRN – Foreigner Registration Number
- HCL – Health Care Law
- HIL – Health Insurance Law
- LATP – Law on Asylum and Temporary Protection
- LBC – Law on Border Control
- LC – Law on Citizenship
- LEF – Law on Employment of Foreigners
- LGAP – Law on the General Administrative Procedure
- ML – Misdemeanours Law
- MLEVSI – Ministry of Labour, Employment and Veteran and Social Issues
- MOESTD – Ministry of Education, Science and Technological Development
- MOI – Ministry of the Interior

NES – National Employment Service
NGO – Non-Government Organisation
NHIF – National Health Insurance Fund
NPM – The National Preventive Mechanism
PIN – Psychosocial Innovation Network
RS – Republic of Serbia
RTSL – Road Traffic Safety Law
RTC – Reception-Transit Centre
SGBV – Sexual and Gender Based Violence
SOP – Standard Operating Procedures
SPL – Social Protection Law
SWC – Social Work Centre
UN – United Nations
UNHCR – United Nations High Commissioner for Refugees
UNICEF – United Nations International Children's Emergency Fund

FOREWORD

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

This 10th annual report on the right to asylum in the RS, covering 2021, was prepared by the members of BCHR's legal and integration teams, based on their experience in extending legal aid to asylum seekers and representing them in the asylum procedure, on their field work, and in supporting the integration of people granted asylum in the RS. The Report is based on an overview and analysis of the application of national asylum law, other regulations relevant to the status of asylum seekers and refugees, and administrative proceedings related to their integration in Serbian society.

During the preparation of the report, the BCHR team obtained information in regular cooperation and communication with the state authorities and UNHCR, as well as partner and other organisations extending various forms of support to refugees and asylum seekers in the RS, with which the BCHR has been successfully cooperating for ten years now. Additionally, some data were obtained pursuant to the Law on Free Access to Information of Public Importance,¹ as well as from perusing media reports on the situation of migrants, refugees and asylum seekers in the RS. In some of its parts, the Report discusses the international commitments undertaken by the RS under specific universal and regional instruments it has ratified. Its authors sought to present the RS asylum authorities' operations in an objective manner, corroborating some of their observations with the views of international organisations, United Nations (UN) treaty bodies and special procedures, and the European Court of Human Rights (ECtHR).

In 2021, the RS in 2021 continued extending humanitarian assistance to a large number of migrants, most of them from refugee producing countries. The relevant authorities did not assess whether they were in need of international protection in each individual case or issue individual decisions determining their status.

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

Despite some headway in the realisation of the right to asylum and access to integration-related rights, the national asylum system, established in 2008, was still far from functional in the reporting period; it was further stymied by the ongoing COVID-19 pandemic. A substantial number of foreigners in need of international protection still do not perceive the RS as a country of refuge, viewing it merely as a country of transit on their way to EU Member States offering better conditions for refugee integration and life in dignity. However, this fact should not prevent the relevant RS authorities from investing additional efforts in establishing a fair and efficient asylum procedure and integration system. Asylum seekers and refugees still rely heavily on support provided by civil society organisations (CSOs), while systemic solutions and effective coordination among the state authorities are lacking. In addition, specific legal gaps and inconsistent enforcement of the existing legislation impede the exercise of both the right to asylum and many other refugee rights.

The process of amending the laws governing the status of refugees, asylum seekers and foreigners in the RS was initiated in late 2021. BCHR's team took part in the consultations organised by the Ministry of the Interior (MOI) and the Ministry of Labour, Employment and Veteran and Social Issues (MLEVSI) on amendments to the Law on Asylum and Temporary Protection, the Foreigners Law and the Law on Employment of Foreigners. The BCHR submitted its comments on the preliminary drafts of the amending laws and the amendments it is proposing. Many of the amendments, if adopted, will improve the situation of asylum seekers and refugees in the RS. The BCHR expects that the work on the amendments will continue since it was just initiated.

Chapter 1 of this Report provides the statistics obtained from UNHCR and partly from the relevant asylum authorities. Chapter 2 analyses access to the right to asylum and the main challenges identified during the reporting period. Chapter 3 presents the practices of the Asylum Office (first-instance authority), the Asylum Commission (second-instance authority), and the Administrative Court, through an analysis of their activities² and the most important decisions they adopted in 2021. The asylum authorities upheld fewer asylum applications in 2021 than in the recent years. Chapter 4 describes the asylum seekers' accommodation conditions, focusing on those living in ACs and the challenges they face. Chapter 5 is devoted to the situation of two groups of asylum seekers: unaccompanied and separated children and survivors of sexual or gender-based violence (SGBV). The protection of these groups with specific needs in the RS is still unsatisfactory. Chapter 6 analyses the refugees' access to their integration-re-

2 With a view to providing a more comprehensive illustration of the positive and negative aspects of the asylum authorities' work, the authors described their practices in the past or referred to prior BCHR reports where relevant.

lated rights, highlighting the positive changes, especially with respect to the right to education, as well as the problems they face in practice, many of which have persisted for years. Chapter 7 analyses public discourse on migrants and refugees and provides an overview of a survey of public opinions on migrants conducted in 2021 by Ipsos Strategic Marketing at BCHR's initiative. Although migration issues were much less in the public limelight than in 2020, the BCHR devoted attention to this topic in the Report, considering it important in the context of dispelling prejudice and xenophobia and suppressing the dissemination of fake news about refugees and migrants.

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

The Report is intended primarily for the state authorities charged with ensuring the realisation of the rights of asylum seekers and persons granted international protection in Serbia, as well other professionals and organisations monitoring the situation in the field of refugee law. Its authors aimed to draw attention to specific shortcomings and challenges concerning the right to asylum in the RS, guided by the desire to contribute to the establishment of a more functional asylum system.

The Report was prepared by the following BCHR team members and associates: Milena Ančić, Petar Vidosavljević, Jelena Ilić, Nina Miholjčić, Vuk Raičević, Miloš Tasovac, Ana Trifunović, Senka Škero Koprivica and Marko Štambuk, with the help of Anja Stefanović.

1. STATISTICS

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports and statistical data. The data in this Report cover the 1 January – 31 December 2021 period. The Asylum Office (the first-instance asylum authority) does not publish data or reports on its work on the MOI website. The Asylum Commission (the second-instance asylum authority) and the Administrative Court have replied to BCHR's requests for access to information of public importance and forwarded the requested data covering the 1 January – 15 October 2021 period. These data are presented below.

1.1. Number of Asylum Seekers and Other Migrants

A total of 2,306 people expressed the intention to seek asylum, i.e. were registered in accordance with the Law on Asylum and Temporary Protection (LATP) from 1 January to 31 December 2021. The number of foreigners who expressed the intention to apply for asylum was relatively smaller than in 2020³ and much smaller than before the pandemic struck.⁴ It does not reflect the actual number of migrants and asylum seekers who entered the RS during the reporting period.

UNHCR data show that the number of migrants and refugees in the RS was relatively stable all year, ranging between five and six thousand a month.⁵ December 2021 data show that a total of 60,407 foreigners were accommodated in CRM's facilities in the reporting period, slightly more than in 2020, when

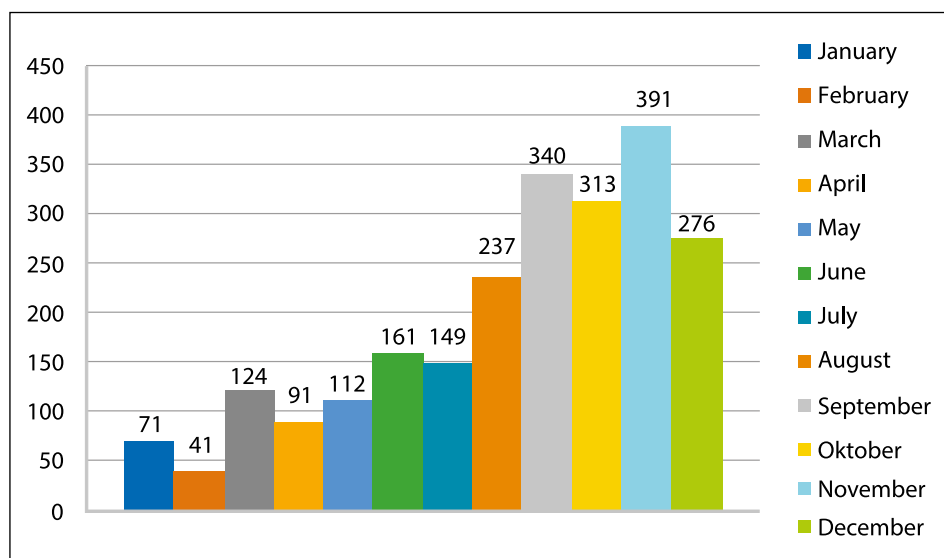
3 A total of 2,830 people expressed the intention to seek asylum in the RS in 2020.

4 E.g., a total of 12,937 people expressed the intention to seek asylum in the RS in 2019.

5 For instance, 6,450 of the 7,100 new arrivals in January lived in CRM's facilities; 4,500 of the 5,450 new arrivals in March lived in ACs and RTCs; 4,250 of the 5,250 new arrivals in May lived in ACs and RTCs; 3,650 of the 4,700 new arrivals in July lived in CRM's facilities; 5,000 of the 6,225 new arrivals in September stayed at ACs and RTCs; 5,300 of the 5,650 new arrivals in November lived in ACs and RTCs. A total of 5,369 migrants and asylum seekers were registered in Serbia in December; 4,429 of them lived in CRM facilities, 30 in specialised institutions for unaccompanied children, 135 in private lodgings and 775 at informal venues. More is available in *UNHCR Serbia Snapshot, December 2021*, available at: <https://bit.ly/3KKMJXQ>.

58,103 migrants and asylum seekers lived in Serbian Reception-Transit Centres (RTCs) and ACs.⁶ The data show that the number of foreigners who expressed the intention to seek asylum in the RS was much smaller than the number of registered residents of CRM's reception facilities. Like in the past, although tens of thousands of migrants pass through or living in Serbia every year, a relatively small number of them intends to seek international protection in Serbia, as the following data illustrate.

Of the 2,306 foreigners who expressed the intention to apply for asylum in Serbia by end December 2021, 225 were women and 2,081 were men. Children accounted for 529 of them; 60 of them were unaccompanied or separated from their parents or guardians. Most of the unaccompanied children were nationals of Afghanistan (51). The number of registered asylum intentions stood at: 71 in January, 41 in February, 124 in March, 91 in April, 112 in May, 161 in June, 149 in July, 237 in August, 340 in September, 313 in October, 391 in November and 276 in December.

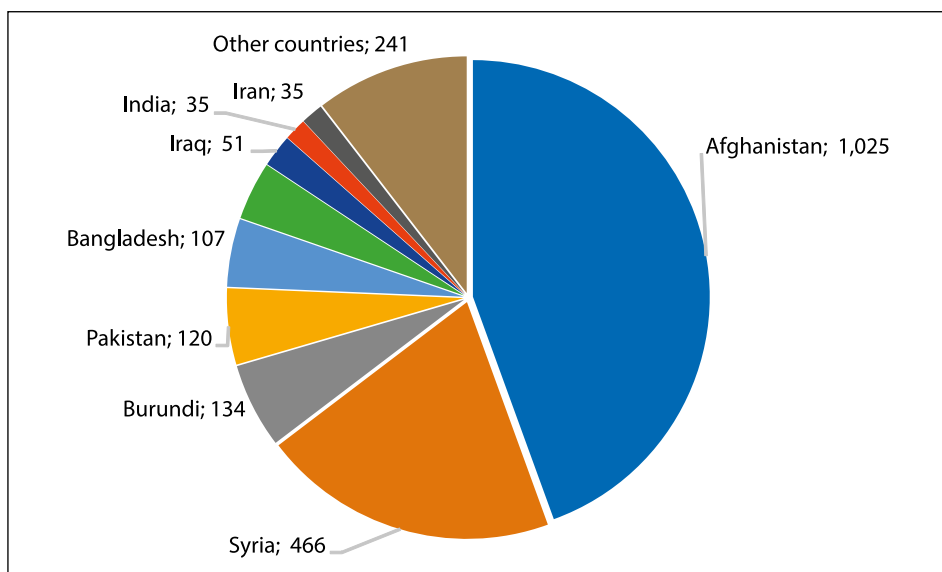


Graph 1. Number of expressed asylum intentions in 2021 (by month)

Most of the foreigners who expressed the intention to seek asylum were nationals of Afghanistan (1,025), followed by nationals of Syria (466), Burundi (134), Pakistan (120), Bangladesh (107), Cuba (92), Iraq (51), India (35) and

⁶ UNHCR Serbia Update, December 2021, available at: <https://bit.ly/33zirq7>.

Iran (35), Somalia (31), Morocco (29), Turkey (22), Egypt (18), Algeria (12), Armenia (11) and Palestine (11), Yemen (10), Cameroon (9) and Guinea Bissau (9), Libya (8), DR Congo (6) and Russia (6), Sierra Leone (4), North Macedonia (4) and other undetermined countries (4), Ghana (3), Togo (3), Guinea (3) and Burkina Faso (3). The fewest asylum seekers were nationals of the United States of America, Senegal, Jordan, Nigeria, Mali, Gambia, Croatia, Albania, Poland and Bulgaria (two were nationals of each of these countries), followed by nationals of Angola, Bosnia and Herzegovina, Columbia, Comoro, Congo, Equatorial Guinea, Georgia, Kyrgyzstan, Lebanon, Niger, South Sudan, Tajikistan, Turkmenistan, Mexico and Tunisia (one came from each of these countries).



Graph 2. Countries of origin of foreigners who expressed the intention to seek asylum (January-December 2021)

Most of the foreigners issued certificates of intention to seek asylum in the RS (registration certificates) were registered by the police stations in the interior of the country (1,605) and at border crossings (443), while 146 foreigners were registered at Belgrade Airport Nikola Tesla. No-one was registered at the Detention Centre for Foreigners. The intention to apply for asylum of 112 foreigners was registered at other locations, such as the ACs and the Asylum Office.

Table 1. Venues at which foreigners expressed the intention to seek asylum (January–December 2021)

Police Stations	1,605
Border Crossings	443
Nikola Tesla Airport	146
Detention Centre	0
Asylum Office	112

Table 2. Number of expressed asylum intentions from the establishment of the national asylum system in 2008 to 31 December 2021

2008	2009	2010	2011	2012	2013	2014
77	275	522	3,132	2,723	5,066	16,490

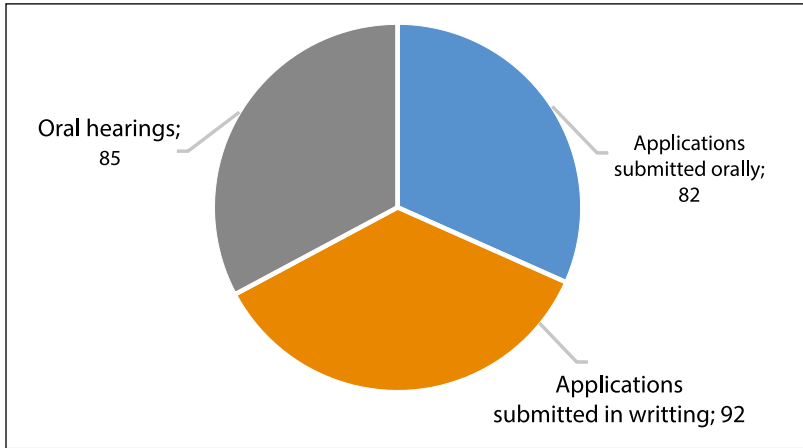
2015	2016	2017	2018	2019	2020	2021
577,995	12,821	6,199	8,436	12,937	2,830	2,306

1.2. Activities of the Asylum Office

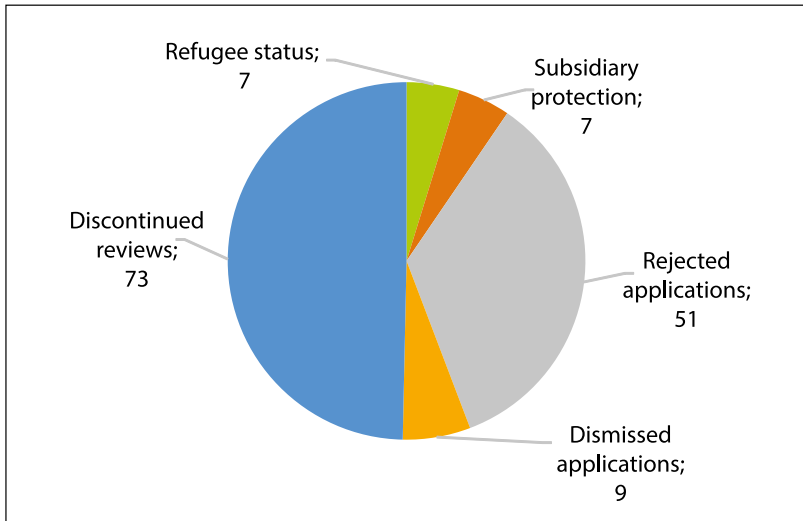
A total of 174 people applied for asylum from 1 January to end December 2021; 82 applications were filed orally before Asylum Office staff and 92 in writing. The number of asylum applications was higher than in 2020, when 144 claims were filed. Nationals of Afghanistan accounted for most applicants in 2021. The Asylum Office interviewed 85 applicants during that period.

The Asylum Office upheld 14 applications in total from January to end of December, less than half than in 2020, when it upheld 29 applications (for the sake of comparison, the Asylum Office upheld 35 applications in 2019). It rejected 51 applications concerning 51 persons and dismissed 9 applications concerning 9 persons. The Asylum Office discontinued the review of 73 cases concerning 73 applicants, because the vast majority of them had left Serbia while the asylum procedure was pending. Of the 14 upheld applications, the Asylum Office granted refugee status in seven cases and subsidiary protection in seven cases. Refuge was granted to nationals of Burundi, Iraq and Syria

(three coming from each of these countries), while subsidiary protection was granted to nationals of Somalia, Afghanistan, Pakistan, Libya and Iran (one from each country).

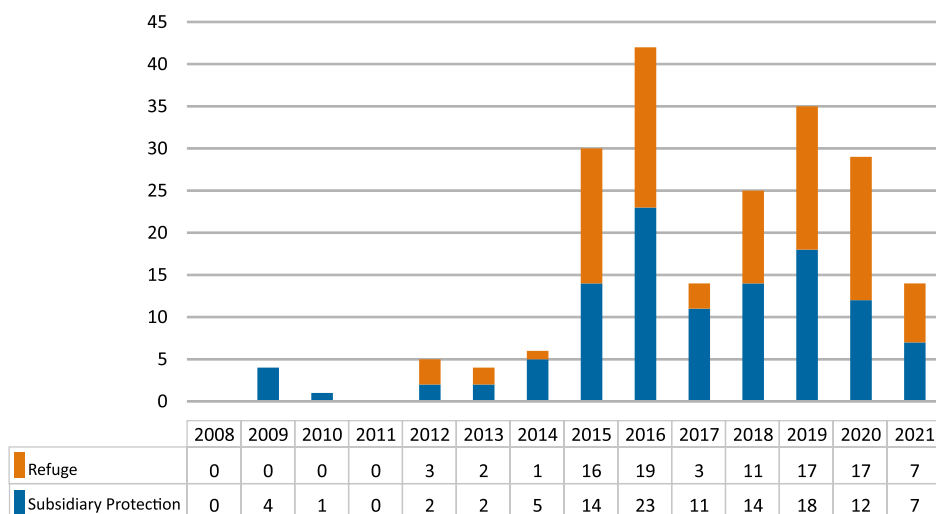


Graph 3. Number of procedural actions undertaken by end December 2021



Graph 4. Number of applicants whose cases were reviewed and decided by the Asylum Office in the January-December 2021 period

The Asylum Office upheld asylum applications of 208 foreigners from 2008, when the national asylum system was established, to 31 December 2021; 97 of them were granted refuge and 111 subsidiary protection.



Graph 5. Number of upheld asylum applications by year

1.3. Activities of the Asylum Commission and Administrative Court

The Asylum Commission received 41 appeals of Asylum Office decisions from 1 January to 15 October 2021. The Asylum Commission issued 65 decisions in that period, rejecting 39 and upholding nine appeals. It also issued six rulings rejecting appeals of silence of the administration and four rulings discontinuing reviews of appeals of silence of the administration. In this period, the Asylum Commission adopted seven rulings voiding the Asylum Office's rulings after the Administrative Court delivered judgments upholding the claims. Its reviews of two appeals were pending at the end of the reporting period. In all cases in which it upheld the appeals, the Asylum Commission overturned the Asylum Office's rulings and remitted the cases to it for reconsideration. Like in the past, it failed to itself rule on the merits of the asylum applications.

The Administrative Court received 35 asylum-related claims from 1 January to 15 October 2021. Three claims concerned the silence of the administration (the lower authority's failure to issue a rule within the statutory deadline).⁷ The Administrative Court adopted 23 decisions on claims against the Asylum Commission in the 1 January-15 October 2021 period: it rejected 13, upheld nine and dismissed one asylum-related claim. Like in the past, the Court did not itself rule on any asylum cases in 2021.

⁷ Pursuant to Art. 151(3) of the LGAP.

2. ACCESS TO THE ASYLUM PROCEDURE

By ratifying the Convention Relating to the Status of Refugees (the Refugee Convention),⁸ and its Protocol on the Status of Refugees,⁹ the Republic of Serbia assumed the obligation to respect the principle of non-*refoulement*, i.e. the prohibition from returning a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened.¹⁰ In addition, by acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)¹¹, Serbia committed to respecting the principle of non-*refoulement* in the context of the prohibition of torture.¹² That means, inter alia, that Serbia is under the obligation to ensure access to the asylum procedure to all foreigners who have a well-founded fear of persecution in their country of origin or who would face a real risk of torture if returned to their country of origin or a third country.¹³

The right to asylum is guaranteed by the Constitution of the Republic of Serbia (Constitution),¹⁴ while the asylum procedure is governed by LATP¹⁵. The LATP entrusts asylum issues to the MOI's Asylum Office, specifying that it shall

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

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

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

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

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

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

14 Art. 57 of the Constitution, *Official Gazette of the RS*, No. 98/06. The Constitution equates asylum with refugee protection in terms of the definition of a refugee in Art. 1(A) of the Refugee Convention.

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

conduct the asylum procedure and decide on asylum applications and revocation of the right to asylum.¹⁶ During the asylum procedure, the Asylum Office shall allow foreigners to present all the relevant facts relating to the hardships they would face if they were returned to their country of origin, country of residence, or to another country. The Law on the General Administrative Procedure (LGAP)¹⁷ shall apply to all procedural issues not regulated by the LATP.

Foreigners may access the asylum procedure in Serbia by expressing their intention to apply for asylum in writing or orally before an authorised MOI officer. The LATP entitles foreigners in Serbia to express their intention to seek asylum,¹⁸ whereupon the authorised MOI officers shall issue them a registration certificate.¹⁹ The expression of intention is, therefore, the initial step that foreigners need to undertake to access the asylum system,²⁰ and the issued certificates constitute grounds for their residence in ACs or RTCs, which they must report to within 72 hours.²¹ Expression of intention to seek asylum, however, does not mean that the asylum procedure has formally been initiated.²²

Foreigners in need of international protection still lack effective access to the asylum procedure, as corroborated by the years-long practice of the relevant authorities the BCHR has been alerting to and offering recommendations on how to improve it. Namely, foreigners in the RS are not always able to promptly apply for asylum or face other difficulties accessing the asylum procedure. On the other hand, foreigners in need of international protection outside the RS are sometimes denied access to its territory at the border crossings despite the fact that they expressed their intention to seek asylum to the police officers.

In its Serbia 2021 Report,²³ the European Commission said that Serbia needed to improve access to and provision of information regarding the asylum procedure, as well as access to information and legal counselling for asylum

16 Art. 20, LATP.

17 *Official Gazette of the RS*, Nos. 18/16 and 95/18 – authentic interpretation.

18 Art. 4, LATP.

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

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

21 Art. 35(3), LATP.

22 The asylum procedure is formally initiated by an oral submission of the asylum application to an Asylum Office staff member or by the submission of the filled paper copy of the asylum application to the Asylum Office.

23 *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy, Serbia 2021 Report*, Strasbourg, 19 October 2021, p. 51.

seekers at Belgrade international airport, where transit procedures, envisaged by the LATP, were not yet being implemented. In its most recent Concluding observations,²⁴ the UN Committee against Torture expressed concern that, in practice, asylum seekers were prevented from accessing the asylum procedure and being identified at an early stage due to insufficient procedural safeguards for the assessment of claims and the granting of international protection, particularly in the transit zone of Nikola Tesla international airport in Belgrade and at the border entry points.²⁵

Access to the asylum procedure in the RS was further exacerbated in 2021 by the ongoing coronavirus pandemic. This Chapter will present the main challenges foreigners faced in accessing the asylum procedure during the reporting period.

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

The LATP allows foreigners to express their intention to seek asylum within the territory of Serbia and at its border crossings, i.e., in the border zones. In principle, the border police have the discretion to decide whom to admit into Serbia. However, the principle of *non-refoulement* requires of border police officers to ensure that persons in need of international protection have access to the asylum procedure.²⁶

The intention to seek asylum was expressed by 2,306 foreigners in 2021; like in the past, most of them expressed such an intention in police directorates in the RS, which issued a total of 1,605 registration certificates in the reporting period. A total of 443 foreigners expressed the intention to seek asylum in the border zones in 2021. In addition, Belgrade police relocated unregistered foreigners to reception centres at least once a week throughout the year.²⁷

The MOI's operations were scaled down during 2021 due to the unstable epidemiological situation. This contributed to the issuance of a smaller num-

24 UN Committee against Torture, *Concluding observations on the third periodic report of Serbia*, CAT/C/SRB/CO/3, 20 December 2021, para. 33, available at: <https://bit.ly.co/Al5k>.

25 This included the absence of a protection-sensitive screening mechanism within the refugee status determination process and an insufficient number of well-trained staff, including within the Border Police and the Asylum Office, to ensure fair and effective decision-making in line with relevant international standards.

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

27 Information obtained from the Crisis Response and Policy Centre (CRPC). These foreigners were mostly staying in hotels, hostels and in private lodgings.

ber of certificates in 2021 compared to the pre-pandemic years.²⁸ Notwithstanding, the number of expressed intentions to seek asylum does not reflect the foreigners' genuine intention to apply for asylum in the RS. In other words, the number of foreigners who actually want to apply for asylum is much lower, as the situation on the ground corroborated.²⁹ The fact that only 174 foreigners filed their asylum applications in the reporting period indicates that most foreigners in need of international protection still did not perceive the RS as a destination country.³⁰

2.1.1. Challenges in Accessing the Asylum Procedure

The BCHR has repeatedly alerted to circumstances impinging on effective access to the asylum procedure. These difficulties have persisted practically since the RS established its asylum system; the relevant authorities' practices have not improved in the meantime.³¹

Two problems stand out. The first is reflected in the fact that the MOI continued issuing registration certificates exclusively in Serbian and in the Cyrillic script.³² The vast majority of foreigners expressing the intention to seek asylum do not understand Serbian and cannot be expected to comprehend the text of the certificates, which is important for the further course of the

28 According to information the BCHR obtained from CRPC, some of the foreigners that asked it for help in 2021 had to wait up to five days to be registered by the Foreigners Directorate in the Savski venac police station. On occasion, the Commissariat for Refugees and Migration (CRM) referred the foreigners to an RTC (usually the one in Preševo) where they could register and obtain their certificates; they were subsequently referred to an AC that had room to take them in. A smaller number of certificates were issued in 2020 as well. More about the situation in 2020 in Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2020*, BCHR (Belgrade, 2020), p. 23 (hereinafter: *Right to Asylum 2020*), available at: <https://bit.ly.co/ApIK>.

29 More in Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade 2019), p. 22 (hereinafter: *Right to Asylum 2019*), available at: <https://bit.ly.co/5Z8G>.

30 According to the information the BCHR obtained from CRPC and during its field visits in 2021, RTCs in Divljana and Preševo were mostly designated for the accommodation of single foreigners, while the Bosilegrad RTC was designated for the accommodation of families. The Bogovađa AC, which had accommodated only children earlier, accommodated adult foreigners as well in 2021. So did the Sjenica AC, which had also been designated for children; 16 adult males were living in it in December 2021. A large number of foreigners were referred to the Krnjača AC in the last quarter of 2021.

31 More in *Right to Asylum 2020*, p. 23.

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

procedure.³³ Furthermore, the MOI has not been issuing any formal documents on how the registered foreigners are to make their way to the RTCs they are referred to.³⁴ Foreigners who expressed the intention to seek asylum after they are referred to an AC or RTC had an easier time;³⁵ to the best of the BCHR's knowledge, this occurred on a number of occasions during the reporting period.³⁶

Second, the question still arises whether and to what extent foreigners who want to apply for asylum are actually informed about their asylum-related rights and obligations at the time of registration.³⁷ Police and other relevant officers are under the obligation to provide the asylum seekers with access to basic information about the asylum procedure in a language they understand, as well as access to an interpreter, legal aid, et al.³⁸ They have to be provided the information in a reliable manner, so that they can clearly understand their rights and obligations, and the consequences of non-compliance with the latter. Furthermore, there are no special procedures for the registration of vulnerable categories.³⁹ Foreigners obtain basic information in the language they understand mostly from legal aid providers and representatives of international and non-government organisations assisting them in the field.⁴⁰ On the other hand, Asylum Office staff notify

33 Under Art. 35(3) of the LATP, the certificates shall specify the name of the AC or RTC the foreigners are referred to and which they have to report to within 72 hours from the moment they are registered, i.e. issued their certificates. However, in the event they do not comply with the instructions in the certificates, they shall be subject to less favourable regulations on the legal status of foreigners, which may result in the risk of their *refoulement*.

34 Information the BCHR obtained from CRPC.

35 Under Art. 35(2) of the LATP, foreigners may exceptionally express the intention to seek asylum also in asylum centres or other facilities designated for the accommodation of asylum seekers under Article 51 of this Law, as well as in the Detention Centre for Foreigners.

36 For instance, a substantial number of foreigners in need of international protection in Belgrade were referred to an RTC or AC (pursuant to an agreement between the MOI and the CRM) so that they would not have to wait long for registration by the MOI Foreigners Directorate. CRM staff in the ACs and RTCs usually provided the foreigners with logistical support in registration. Foreigners referred to the ACs in Krnjača or Banja Koviljača (until the latter closed for renovation in the first half of 2021) had the opportunity to express their intention to seek asylum to authorised Asylum Office staff in the ACs, who issued them registration certifications. Information the BCHR obtained during its field activities.

37 Pursuant to Art. 56 of the LATP.

38 *Reception Standards for Asylum Seekers in the European Union*, UNHCR, Geneva, July 2000, p. 7, Section C/II, available at: <https://bit.ly/2Qbwwq9>.

39 According to information the BCHR team obtained from CRPC, in practice, the authorities devote particular attention to vulnerable categories of foreigners in Belgrade, despite the lack of adequate procedures.

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

the asylum seekers of their rights and obligations during the asylum procedure only when they are applying for asylum or during their oral hearings.⁴¹

2.1.2. Conclusion and Recommendations

The MOI's current practice still does not ensure unimpeded access to the asylum procedure in Serbia. This conclusion is supported above all by the fact that the registration certificates are still not issued to foreigners in a language they understand, and that police do not inform foreigners about their asylum-related rights and obligations adequately, i.e. in a way they can understand. Furthermore, the unstable epidemiological situation impinged on prompt registration in police stations. The relevant authorities should ensure that the foreigners register as soon as possible by first referring them to an AC or RTC that has room to accommodate them, where they can register.

The MOI should start issuing registration certificates to foreigners in languages they understand and notifying them of their rights and obligations in a reliable manner during registration. This will ensure that the foreigners are familiarised with all the opportunities they have during the asylum procedure, as well as warned of the legal consequences of non-compliance with their obligations. In addition, the MOI should ensure that registered foreigners are provided with precise information in a language they understand on how to reach the AC or RTC they are referred to safely and without delay. This would also be an opportunity for MOI to effectively implement their international obligations, as these gaps are currently being filled by local and international organisations.

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

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

Commercial flights to and from Serbia gradually resumed in 2021 but did not go back to the pre-pandemic normal.

With the exception of several isolated cases, the authorities did not register a large number of foreigners who wanted to express their intention to seek asylum

41 At the very outset of the oral hearing.

in the RS at Belgrade Airport in the first eight months of the year. Their number increased in the last quarter of 2021.

The authorised officers of the Border Police Station (BPS) at Belgrade Airport Nikola Tesla issued a total of 146⁴² registration certificates, most of them in November and December (35 and 53 respectively).⁴³

Due to the unstable epidemiological situation throughout 2021, BCHR's lawyers did not visit the Belgrade Airport regularly to directly extend legal aid⁴⁴ to foreigners denied entry into Serbia and often extended it by phone, via the BPS officers. They, unfortunately, concluded that the shortcomings in the work of the MOI identified earlier persisted, impinging on access to the asylum procedure at the Airport,⁴⁵ as will be described in greater detail below.

2.2.1. *Foreigners Denied Entry into the RS*

According to the data provided by the BPS in its letter⁴⁶ in response to BCHR's request for access to information of public importance, it denied entry into the RS to 2,015 foreign nationals at the Surčin – Belgrade border crossing from 1 January to 15 October 2021.⁴⁷ Their entry was denied because the BPS doubted that they had come for the reason they declared.⁴⁸ They included 657 nationals of Turkey,⁴⁹ 418 nationals of Tunisia,⁵⁰ 450 nationals of India,⁵¹ 344 nationals of Cuba,⁵² 78 nationals of Guinea Bissau,⁵³ 20 nationals of Burundi,⁵⁴ 16 nationals of China,⁵⁵ 22 nationals of Bangladesh,⁵⁶ and 10 nationals of

42 The border police issued 44 registration certificates in 2020 and 68 certificates in 2019.

43 Data obtained from the UNHCR Office in Serbia and covering the entire reporting period.

44 BCHR's lawyers have temporary permits to access the Belgrade Airport transit zone, which they ordinarily used when foreigners in the transit zone asked them for legal aid and information about the asylum procedure in the RS. They visited the Airport in 2021 when necessary, epidemiological situation permitting.

45 More in *Right to Asylum 2020*, pp. 28–32.

46 RS MOI BPS Letter Ref. No. 07–377/21–2 of 2 December 2021, containing data covering the 1 January–15 October 2021 period, obtained in response to BCHR's request for access to information of public importance of 25 October 2021.

47 All of them were adults or accompanied children. None of the children were unaccompanied.

48 Pursuant to Art. 15(1(12)) of the FL.

49 589 were men, 19 were women, 45 were boys and four were girls.

50 394 were men, 15 were women, seven were boys and two were girls.

51 442 were men, three were women, four were boys and one was a girl.

52 224 were men, 19 were women, 13 were boys and eight were girls.

53 49 were men, 28 were women, and one was a boy.

54 12 were men, six were women and two were girls.

55 All of them men.

56 All of them men.

Nepal.⁵⁷ Most of them had flown in from Turkey, Russia, Qatar, the United Arab Emirates and Cyprus.

The BPS said in its letter that the foreigners denied entry into the RS at the airport “are not removed forcibly” and that they “return to their initial destinations on the next flight”. It specified that, when this was impossible, they spent the time until the flight to their initial destinations in the Airport transit zone (a room for the temporary accommodation of individuals denied entry into the country). The BPS also said that foreign nationals denied entry “were in no way limited from enjoying all their rights” and that there were “no cases indicating that the authorised police officers had abused them or exceeded their powers”. The BPS emphasised that the police officers performed their duties in accordance with Serbian law, impartially and professionally and that they respected the fundamental human rights and freedoms of the foreigners denied entry, as well as the non-discrimination principle. The BPS also stressed that the officers had not noticed that any of the foreigners denied entry feared persecution on grounds of race, sex, language, religion, nationality, membership of a particular social group or political opinion.

The question remains whether the BPS had examined whether all the foreigners it denied entry needed international protection, especially the cases of those coming from politically unstable countries and countries known for large-scale human rights violations.⁵⁸ Furthermore, BCHR’s experience and the information it obtained from foreigners denied entry into the RS indicate that the BPS’ practice often differs from the one it describes, as the ensuing paragraphs will demonstrate.

2.2.2. BCHR Interventions and Challenges Arising from Border Police Actions

BCHR usually intervenes when foreigners claiming that they had expressed their wish to seek asylum to BPS officers are denied entry into the RS.⁵⁹ Under the Foreigners Law (FL), foreigners not fulfilling the requirements for lawful entry may be allowed to enter Serbia on humanitarian grounds, which is precisely why they seek asylum.⁶⁰

A large number of foreigners of various nationalities held at the Belgrade airport contacted BCHR’s legal team asking it for legal aid in 2021, especially

57 Six were men and four were women.

58 E.g. Turkey, Burundi or Cuba.

59 As arranged with BPS representatives, BCHR’s legal team put up posters with the e-mail and telephone number via which the foreigners in need of international protection can call it in case they need legal aid.

60 Art. 15(2), FL.

in the latter half of the year.⁶¹ Most such requests came from nationals of Cuba in the latter half of September and early October. A large number of Burundian nationals contacted BCHR's legal team in October, November and December.⁶² Like in the past, BCHR's team was unable to assess in each individual case whether the foreigners genuinely intended to seek asylum in the RS or merely wanted to avoid deportation to their country of origin or transit.⁶³

These foreigners were held in the transit zone after they were denied entry into the RS at the Belgrade airport. Dozens of them wanted to express the intention to seek asylum in the RS. Most of those who asked the BCHR to extend it legal aid said that the BPS officers had ignored their oral and written requests⁶⁴ to express the intention to seek asylum in the RS and that they feared their lives would be in danger if they were returned to their countries of origin. The BPS officers seized the cell phones of some of the foreigners, precluding them from seeking legal aid or contacting their families. Many of the foreigners BCHR's legal team talked to said that they were held for days in the substandard and unheated room in the transit zone.⁶⁵ On occasion, large numbers of foreigners denied entry,⁶⁶ including families with children, were held in the room, in which they could not comply with physical distancing measures.

As a rule, the BPS officers BCHR's lawyers talked to either on the phone or during their visits to the airport in response to the requests for assistance of foreigners held in the transit zone denied that the foreigners had at any point said they wanted asylum in the RS. However, the fact that the foreigners, who had contacted the BCHR, were registered after the legal team's interventions indicates that foreigners intending to seek asylum in the RS are usually granted access to the territory of the RS only after lawyers intervene on their behalf.

Border police are under the obligation to comply with the LATP to establish the foreigners' identity and facilitate their access to the asylum procedure in the event they express the intention to seek asylum at a border crossing. The law lays

61 It should be noted that, as in the previous years, the BCHR team could not assess in each individual case whether the real intention of the foreign national was to seek asylum in RS, or to avoid deportation to the country of origin or transit country.

62 The situation was further complicated in December, when BCHR's lawyers intervened because the relevant authorities prevented seven adults and two families with underage children, nationals of Burundi, Egypt and China, from accessing the asylum procedure in the RS.

63 More in *Right to Asylum 2020*, p. 66.

64 Many asylum seekers expressed their intention to seek asylum in writing, in legible English, stating that their lives would be at risk if they were returned to their countries of origin.

65 Several Burundian nationals held in the transit zone told BCHR's lawyers that individual BPS officers applied force against them when they complained and protested because they were denied entry into the RS.

66 Information that BCHR lawyers received from foreigners who contacted them for free legal assistance.

down clear measures precluding abuse of the asylum procedure.⁶⁷ In addition, if there are suspicions that a foreigner does not genuinely intend to seek asylum, i.e. may abuse the right to asylum, the Asylum Office is entitled to adopt a decision restricting his or her freedom of movement and referring him or her to the Detention Centre for Foreigners in Padinska Skela.⁶⁸

Under the FL, border police are under the obligation to issue a (bilingual) decision to foreigners denied entry, specifying why they are not allowed into the country; the ban is then entered into the foreigners' passports.⁶⁹ In BCHR's experience, Belgrade border police do not issue individual decisions to all foreigners denied entry into Serbia, thus precluding them from appealing the decisions,⁷⁰ which indicates that the denial of entry into Serbia is in most cases still conducted in an informal manner, a practice criticised by domestic and international bodies⁷¹ and alerted to by the BCHR.⁷²

Recalling its previous recommendations, the Committee against Torture⁷³, *inter alia*, further recommends⁷⁴ that Serbia ensure access to the territory and sufficient and effective protection from *refoulement* at Nikola Tesla international airport by making sure that persons detained in the transit zone of the airport receive information about their right to seek asylum, including effective access to the asylum procedure, in language they understand.⁷⁵ The Committee also said that Serbia should introduce a border monitoring mechanism that includes representatives of independent entities, such as international organisations and civil society with expertise in international refugee law and international human

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

68 Arts. 77–78 LATP.

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

70 Pursuant to Art. 16, FL.

71 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the National Preventive Mechanism within the Office of the Protector of Citizens.

72 More in *Right to Asylum 2020*, p. 33.

73 UN Committee against Torture, *Concluding observations on the third periodic report of Serbia*, CAT/C/SRB/CO/3, 20 December 2021, para. 33, available at: <https://bit.ly.co/AlMw>.

74 *Ibid.*, para. 34.

75 As well as to ensure that all internal documents and standard operating procedures include sufficient safeguards against *refoulement*.

rights law, to ensure that border authorities are acting in line with the principle of non-*refoulement* and the prohibition of collective expulsion and ensure that asylum seekers and migrants held in detention are provided with adequate medical and mental health care, including a medical examination upon arrival and routine assessments, record any indications supporting their claims of being subject to torture or ill-treatment and provide them with support services.

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

2.2.3. Accommodation Conditions in the Nikola Tesla Airport Transit Zone

The LATP provides for the implementation of the asylum procedure at border crossings or transit areas of airports or inland ports⁷⁶ provided that the asylum seekers are ensured adequate accommodation and food.⁷⁷ However, the Belgrade Airport premises in which the foreigners denied entry are held still do not fulfil even the minimum standards.⁷⁸ Consequently, no asylum procedures have been initiated and conducted at border crossings since the LATP entered into force.

The National Preventive Mechanism (NPM) team visited Belgrade Airport to inspect the newly-built rooms for the accommodation of foreigners denied entry into the RS. The NPM has for years been alerting to the inadequacy of the room now used and recommending that the authorities secure facilities fulfilling the valid standards and that the held foreigners be provided with the opportunity to spend time outdoors. The Protector of Citizens said in December that the new facility would fulfil all the standards, for which the NPM particularly commended the Belgrade Airport management and the MOI.⁷⁹

In February 2021, the NPM paid a follow-up visit to the Constantine the Great Airport in Niš to monitor the fulfilment of the recommendations it made after its 2019 visit. In its report on the 2021 visit,⁸⁰ it noted that its previous

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

77 More in *Right to Asylum 2019*, p. 28.

78 *Ibid.*

79 Protector of Citizens' press release on International Human Rights Day on 10 December 2021, available in Serbian at: <https://bit.ly.co/AILN>.

80 Available in Serbian at: <https://bit.ly.co/AILI>.

recommendations had been fulfilled and praised Airports of Serbia Ltd for the measures and activities it has undertaken to improve the conditions in the room designated for holding foreigners denied access to the country. The room is now equipped with additional beds, an air conditioner and a call button. Foreigners held in this room have opportunity to spend time outdoors. Data relevant to the foreigners held in the room are registered in a logbook. In its 2021 report, the NPM required additional information from the Airport and the MOI on compliance with individual recommendations. It quoted the relevant authorities as saying that a notice of providers of legal aid to foreigners denied entry into the country was displayed in the room⁸¹ and that the equipment for registering foreigners who expressed the intention to seek asylum donated by UNHCR would be installed in the offices of the Border Police Station at the Niš Airport.

2.2.4. Conclusion and Recommendations

The number of people who expressed the intention to seek asylum at Belgrade Airport in 2021 indicates that the BPS recognised the foreigners' need for international protection in specific cases. However, given the BPS' practice to date, the risk that the foreigners' need for international protection will not always be recognised still exists. Border police officers thus need to continuously keep abreast of the situation in war-ravaged countries and countries with poor human records. To avoid non-recognition of *prima facie* refugees, before denying the foreigners entry into Serbia, border police officers should always interview them about the reasons why they had left their countries of origin; such interviews should be conducted with the assistance of interpreters⁸² and in consultation with Asylum Office staff.

The BCHR therefore reiterates its recommendation that thought should be given to improving the existing modalities of its cooperation with the BPS. The BPS and BCHR might wish to consider developing a system of mutual support in identifying foreigners genuinely in need of international protection, in the context of preventing abuse of the asylum system.

Some other BCHR recommendations still stand as well. Belgrade BPS officers should issue foreigners not fulfilling the requirements to access Serbian territory reasoned entry denial decisions in a language they understand that would be subject to appeal and instruct them on the right to appeal, as provided for by the FL.⁸³

81 BCHR's team had not visited the Niš Airport by the time this Report was completed; nor had it received information of foreigners in need of international protection who were held at it.

82 Given that the border police may have difficulty arranging interpretation in each individual case, the MOI should give thought to providing the BPS with an interpreter, with the support of UNHCR and other organisations.

83 Art. 15, FL.

The MOI should review the possibility of proposing an amendment to the FL to ensure judicial reviews of such decisions. The FL now provides for the filing of a complaint without suspensive effect with the MOI, which is an administrative authority.

The Belgrade BPS should at all times ensure unobstructed communication between foreigners and representatives of relevant domestic and international organisations helping them exercise their asylum-related rights. It is crucial that foreigners denied entry into the RS are accommodated in adequate transit zone facilities in order to align with international standards and ensure protection from refoulement as soon as possible. In that regard, the relevant authorities should attach priority to the situation and the personal circumstances of particularly vulnerable categories of foreigners.

2.3. Access to the Asylum Procedure during Misdemeanour Proceedings

Immunity from punishment of refugees for illegal entry or stay in a country is one of the principles of refugee law. This principle is laid down both in the Refugee Convention and the LATP.⁸⁴ Such protection is extended to refugees unable to comply with the legal entry requirements who fled persecution, war or grave human rights violations in their countries of origin. The principle of non-penalisation applies to refugees who have taken all reasonable steps to report to the authorities within a reasonable time and demonstrated that they have violated immigration law in order to seek international protection.⁸⁵ On the other hand, foreigners who have entered the country or are staying in it illegally without having applied for asylum may be penalised for a misdemeanour. In addition, they may be forcibly removed from the country.

Protection of Serbia's state borders is regulated by two laws – the FL and the Law on Border Control (LBC).⁸⁶ Both laws govern illegal crossing of the state border, while the issue of illegal stay is regulated by the FL. Under the LBC, crossing of the state border shall denote any movement of people across the state border. The state borders must be crossed at border crossings, with a valid travel

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

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

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

or another document prescribed for crossing the state border, during the working hours of the border crossing point, and in accordance with the international treaties.⁸⁷ Crossing of the border in any other way is a misdemeanour warranting a fine and imprisonment. Illegal entry into Serbia is also defined in the FL.⁸⁸ Illegal stay, for the purposes of the FL, denotes staying in the RS without a visa, a residence permit or on other legal grounds.⁸⁹

The principle of non-penalisation is applied by Serbian misdemeanour courts that establish the misdemeanour liability of foreigners for illegal entry or illegal stay.⁹⁰ Pursuant to the Misdemeanours Law (ML),⁹¹ misdemeanour courts must provide defendants with procedural guarantees. The ML specifically guarantees the defendants' right to a lawyer.⁹² The ML provides for the principle of legality,⁹³ and the principle of assistance to ignorant parties⁹⁴ which are particularly relevant for foreigners.

Judges must take into account all the circumstances of the case, and in particular, whether the defendants intend to seek asylum in Serbia. At that point, the defendants may apply for asylum before the judge, i.e., the court may issue a decision practically allowing them access to the asylum procedure.⁹⁵ Foreign defendants may express the intention to seek asylum indirectly as well; in such cases, the judges may clearly conclude on the basis of their testimony that they are in need of international protection. To be able to establish that fact, the judges need to examine all the reasons why the defendants left their country of origin, as well as the reasons why they came to Serbia.⁹⁶

Misdemeanour courts thus play a delicate role, since it is up to them to penalise any violation of the regulations governing the crossing of the state borders. On the

87 Art. 12, LBC.

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

89 Art. 74, FL.

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

91 *Official Gazette of the RS*, Nos. 65/2013, 13/2016 and 98/2016 – CC Decision.

92 Art. 93, ML.

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

94 Art. 90, ML.

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

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

other hand, they need to protect the rights of all persons eligible for refugee status under international and national law. Therefore, the courts need to be familiar with and properly interpret and connect specific regulations when assessing whether to initiate misdemeanour proceedings against foreigners who have entered or are living in Serbia illegally, and how they will conduct and complete such proceedings.⁹⁷

2.3.1. Data on Misdemeanour Proceedings

According to the data BCHR obtained in 2021,⁹⁸ 994 misdemeanour proceedings were initiated for illegal crossing of the state border under the LBC, while 119 proceedings were conducted for illegal entry into the RS under the FL. Another 1,149 proceedings for illegal stay in the RS in violation of the FL were conducted during the reporting period.

The misdemeanour courts found 652 foreigners guilty of illegally crossing the state borders, 43 of illegal entry into and 947 of illegal presence in the RS.⁹⁹ They ordered the removal of the foreigners in 16 cases and discontinued proceedings in only two cases because the foreigners sought asylum.¹⁰⁰ Several judgments illustrating the practice of most misdemeanour courts in Serbia towards foreigners who may be in need of international protection are analysed in the ensuing paragraphs.

2.3.2. Analysis of Misdemeanour Court Decisions

a) Recognition of Foreigners in Need of International Protection

The Loznica Misdemeanour Court's judgment¹⁰¹ acquitting the national of Cameroon is interesting.¹⁰² He had been granted temporary residence on humanitarian grounds¹⁰³ by a final judgment of the Administrative Court in 2019 and his temporary residence permit expired in February 2021. In March 2021, he filed a subsequent asylum application and he submitted to the Court that he

97 Radmila Dragičević Dičić et al, *Application of the Refugee Immunity Principle in Misdemeanour Proceedings*, BCHR (Belgrade, 2016), p. 9, available in Serbian at: <https://bityl.co/Al6Z>.

98 The 1 January-15 October 2021 statistics and copies of anonymised judgments forwarded by 12 Serbian misdemeanour courts to the BCHR in response to its requests for access to information of public importance. The BCHR sent such requests to Misdemeanour Courts in Belgrade, Niš, Subotica, Senta, Kikinda, Sremska Mitrovica, Loznica, Negotin, Vranje, Pirot, Preševo and Zaječar. All of them except the Vranje Court forwarded the requested information.

99 The courts usually imposed the following penalties: 5,000–10,000 RSD fines, warnings and reprimands.

100 Decisions of the Pirot Misdemeanour Court, which will be described below.

101 Judgment 6-Pr No. 1381/21 of 6 July 2021.

102 He was charged with violating Art. 122(2(1)) of the ML.

103 Art. 61, FL.

had resided at the AC in Banja Koviljača and was subsequently transferred to the AC in Krnjača by the CRM. The Loznica Misdemeanour Court established that it had not been notified by the Loznica police that the Cameroonian national had been instructed on his right to submit a subsequent asylum application. The Court noted that he asked the Asylum Protection Centre (APC) for assistance as soon as the first-instance misdemeanour proceedings ended and then again expressed his intention to apply for asylum. The Misdemeanour Court referred to the relevant provisions of the LATP¹⁰⁴, and the principle of non-punishment of refugees for illegal entry or residence in the receiving country under the Refugee Convention. Finally, the Court found that the FL did not apply to foreigners who have applied for asylum or been granted asylum or temporary protection in the RS.¹⁰⁵

The Pirot Misdemeanour Court discontinued proceedings against two Iranian nationals.¹⁰⁶ In both cases, it ascertained that the Iranian nationals explicitly expressed the intention to seek asylum in the RS before the court. The Court relied on the principle of immunity from punishment of refugees for illegal entry or residence in the RS,¹⁰⁷ according to which asylum seekers shall not be penalised for illegally entering or staying the RS. The Court ordered the Dimitrograd BPS to issue the two Iranian nationals registration certificates and facilitate their access to the asylum procedure in the RS. Although the described decisions are good practice examples, there are still instances in which the misdemeanour courts rule against the foreigners who did not explicitly express the intention to seek asylum in the RS. The impression is that the judges are still not properly examining all the circumstances and reasons why the foreigners have left their countries of origin and come to the RS. The courts need to devote particular attention to foreigners coming from war-ravaged countries and countries with poor human rights records, which are reason enough to enable them access to the asylum procedure even when they do not express such an intention explicitly.

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

The right to use one's own language in court, laid down in the ML,¹⁰⁸ lies at the core of the right to a defence in general terms.¹⁰⁹ The ML entitles parties to

104 Art. 56 of the LATP lays down that foreigners who expressed the intention to seek asylum in the RS are entitled to be notified of their rights and obligations throughout the asylum procedure; Art. 46 of the LATP entitles foreigners to submit subsequent asylum applications; Art. 8 enshrines the principle of immunity from punishment of refugees for illegally entering or staying in the RS.

105 Pursuant to Art. 2(1(1)), FL.

106 Judgments 02 Pr 2436/21 and 02 Pr 2437/21, both delivered on 15 August 2021.

107 Under Art. 8 of the LATP.

108 Art. 94, ML.

109 Radmila Dragičević Dičić et al, *Application of the Refugee Immunity Principle in Misdemeanour Proceedings*, BCHR (Belgrade, 2016).

proceedings, who are not nationals of Serbia, to an interpreter and to use their native language or the language they understand during proceedings. The reasoning of the court decisions must clearly show that the court respected this right.

Available data¹¹⁰ covering the January-September period show that misdemeanour courts engaged interpreters for Albanian, English, Chinese, German, Turkish, Romanian, Spanish, Greek and Bulgarian. The Kikinda and Subotica Misdemeanour Courts engaged Arabic interpreters¹¹¹, the Sremska Mitrovica Misdemeanour Court used the services of a Persian interpreter and the Subotica Misdemeanour Court engaged an interpreter for Kurdish. Only the Pirot Misdemeanour Court said it did not keep records of engaged interpreters or the languages spoken during the proceedings.

The BCHR was unable to ascertain whether interpreters were present during the questioning of the defendants during its perusal of the brief statements of justification of a large number of judgments.¹¹² Consequently, it could not draw any conclusions on whether the defendants had understood the language spoken in court. It is absolutely unclear how the courts ascertained specific facts if they had not engaged an interpreter. The courts did not specify that they had engaged interpreters even when they did.

The misdemeanour courts continued with the practice of engaging English interpreters in hearings of nationals coming from non-English speaking countries. Their judgments, however, did not include information indicating that the defendants were able to follow the proceedings in English.¹¹³

A negligible few defendants appealed the misdemeanour courts' judgments.¹¹⁴ Only two defendants expressed the intention to seek asylum in the RS

110 Data communicated by misdemeanour courts in response to BCHR's requests for access to information of public importance.

111 E.g. Subotica Misdemeanour Court's judgments against Iraqi national Nos. 7 PR 623/2021, 7 PR 624/2021, 7 PR 625/2021 and 7 PR 626/2021 of 27 January 2021. This Court, however, did not engage Arabic interpreters for all cases of Arabic-speaking defendants.

112 For instance, Senta Misdemeanour Court's judgment against an Afghan national No. II-3 PR 14/2021 of 20 January 2021; Sremska Mitrovica Misdemeanour Court's judgment against a Palestinian national No. 3 PR 2887/21 of 3 September 2021; Preševo Misdemeanour Court's judgment against a Pakistani national, No. 3 PR 766/2021 of 9 July 2021; Subotica Misdemeanour Court's judgments against Afghan nationals Nos. 8 PR 1488/2021 of 26 February 2021 and 8 PR 1545/2021 of 3 March 2021.

113 For instance, Loznica Misdemeanour Court's judgments 4-Pr No. 1576/21 of 13 April 2021, 2-Pr No. 135/21 of 13 January 2021, 3-Pr No. 1923/21 of 17 May 2021, 4-Pr No. 2228/21 of 26 May 2021, 4-Pr No. 627/21 of March 2021, 4-Pr No. 1575/21 of 13 April 2021, 2-Pr No. 1220/21 of 2 April 2021 and 2-Pr No. 1921/21 of 16 May 2021; Senta Misdemeanour Court – Kanjiža Department judgments against Afghan nationals, specifically No. II-4 PR 197/2021 of 16 February 2021 and II-7 PR 336/2021 of 2 March 2021.

114 Available data indicate that only 10 of over 1,500 judgments were appealed.

and the courts discontinued the proceedings against them. Another worrying fact is that the courts failed to examine the existence of any circumstances that might have absolved the defendants from liability because they were in need of international protection.

c) Children in Misdemeanour Proceedings¹¹⁵

Misdemeanour proceedings involving children are urgent. Such urgency, however, cannot justify lack of procedural guarantees, especially adequate guardianship protection. Before imposing correctional measures or penalties, the courts must obtain the opinion of the competent guardianship authority.¹¹⁶

Unaccompanied and separated children must be notified of their right to a defence counsel in misdemeanour proceedings. The BCHR again emphasises that the courts are under the obligation to ensure that the parties' rights are not adversely affected by their ignorance and unfamiliarity with the law.¹¹⁷ It is reasonable to assume that children, who are unaware of their right to a defence, will not know that they have the right of appeal. As per the rights to a defence in the broader sense, the BCHR hereby notes that its analysis of the judgments it perused shows that the children had not been instructed of their right to interpretation and conduct of proceedings in their native language or a language they understand.¹¹⁸

For instance, the Kanjiža Department of the Senta Misdemeanour Court issued a reprimand to an unaccompanied child from Iraq caught trying to cross the border illegally, without a valid passport.¹¹⁹ The child used another person's passport. The text of the ruling does not shed light on whether an interpreter and the child's guardian were present at the hearing or whether the court obtained the opinion of the competent guardianship authority or, for that matter, whether he was notified he had the right to a lawyer. The Court also failed to examine the existence of any circumstances that might have absolved the child from liability because he was in need of international protection.

2.3.3. Conclusion and Recommendations

When penalising migrants from war-torn territories, misdemeanour courts still fail to examine any circumstances absolving them from liability in the event they are in need of international protection. As per the right to a defence, the

¹¹⁵ See more in *Right to Asylum 2020*, p. 39–41.

¹¹⁶ Art. 292 (1 and 2) ML.

¹¹⁷ Art. 90, ML.

¹¹⁸ Art. 94(5), ML.

¹¹⁹ Senta Misdemeanour – Kanjiža Department Ruling No. II-4 Prm 54/21 of 12 September 2021.

judges question the defendants only about the circumstances related to the misdemeanours they committed. Misdemeanour courts do not specify in each judgment whether an interpreter was present during the proceedings and whether the defendants understood the language of the court.

Where there are indications that the defendants are in need of international protection, the courts must thoroughly examine the fulfilment of requirements for applying the principle of immunity from punishment for illegal entry or presence under the LATP¹²⁰ and the Refugee Convention¹²¹. The courts should properly explain the (non-) fulfilment of such requirements in their decisions.¹²² In order to properly assess the applicability of the principle of immunity from punishment, the courts have to review publicly available information about the defendant's country of origin, whether it is in a state of war or has a poor human rights record.

The BCHR has for years now been calling on misdemeanour courts to provide elaborate explanations of their judgments in cases in which the defendants are potential refugees.¹²³ The reasoning should clearly indicate whether or not an interpreter or another person guaranteeing the conduct of the proceedings in the language the defendant understands was present at the trial. The court decisions also have to be translated into the language the defendants understand.¹²⁴

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

120 Art. 8, LATP.

121 Art. 31, Refugee Convention.

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

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

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

3. PRACTICE OF THE ASYLUM AUTHORITIES

The Asylum Office, which operates within the MOI Border Police Directorate, is tasked with conducting first-instance procedures on asylum applications and revocation of asylum.¹²⁵ The Asylum Office has a Department for Determination of the Right to Asylum and a Department for the Collection and Documentation of Information on Countries of Origin. The Department for Determination of the Right to Asylum is, *inter alia*, charged with receiving asylum applications, interviewing the applicants, drafting rulings on asylum applications and undertaking actions requisite for addressing the status-related issues of applicants and asylees. The Department for the Collection and Documentation of Information on Countries of Origin is tasked with investigating, collecting, documenting, updating and analysing and processing data about the asylum seekers' countries of origin, and preparing reports on the situation in them.

The Asylum Commission¹²⁶ reviews appeals of Asylum Office decisions. Its Chairperson and eight members are appointed by the RS Government. The Asylum Commission is headquartered at the same address as the Border Police Directorate. The Commission's Chairperson was the head of the Department for the Implementation of Readmission Agreements of the MOI Administrative Affairs Directorate at the time of her appointment.¹²⁷ Two more MOI members of staff also sit on the Commission. At best, these factors merely lead to perceptions that the Asylum Commission is not sufficiently independent.¹²⁸ At worst, they risk to undermine the Commission's impartiality. The Asylum Commission's final decisions on appeals or failure to rule on appeals within the statutory deadline may be contested with the Administrative Court¹²⁹ within 30 days. This section of the Report analyses some of the asylum-related decisions illustrating the practices of these authorities in 2021.

125 Art. 20, LATP.

126 Under Art. 21, LATP.

127 RS Government Ruling 24 No. 119–8644/2018 on the Appointment of the Asylum Commission Chairperson and Members (*Official Gazette of the RS*, No. 69/2018).

128 Art. 21(7) of the LATP lays down that the Asylum Commission shall operate independently.

129 Art. 22 of the LATP in accordance with the provisions of the LGAP.

3.1. Asylum Office

Most asylum-related decisions in the RS are adopted by the Asylum Office, as the first-instance authority. Its officers are highly specialised for work with asylum seekers, as opposed to the members of the Asylum Commission or the judges of the Administrative Court.¹³⁰ The COVID-19 pandemic continued impeding the Asylum Office's work in 2021. Its impact primarily reflected on the duration of the procedures, specifically the frequency of official actions and compliance with the deadlines for ruling on asylum applications. The number of asylum applications filed in writing was the highest since this possibility was introduced by the LATP, which came into force in 2018.¹³¹ Asylum seekers were forced submit to the Asylum Office their asylum applications that they had filled themselves or with the help of their representatives, since they were deprived of the opportunity to submit their applications orally to the authorised Asylum Office staff.

The shortcomings concerning the quality of the statements of justification of some of the analysed Asylum Office rulings BCHR already alerted to in its prior annual reports still stand. First of all, most decisions were adopted after the deadline stipulated by the LATP. In its decisions on the merits of the applications, the Asylum Office often (un)intentionally misinterpreted the available evidence and tendentiously ignored the facts set forth by the applicants and their legal representatives. The decrease in the number of upheld applications in 2021 can be attributed to this practice, as well as the fact that many asylum seekers leave the RS before the asylum procedure is completed.¹³² The analysis of the positive decisions gives rise to the impression that the Asylum Office granted international protection only to the most vulnerable categories of applicants, such as victims of torture, sexual and gender based violence¹³³ and victims of trafficking in human beings.¹³⁴ In the view of BCHR's legal team, such a practice is definitely commendable. However, in the other cases, the Asylum Office set such an extremely high evidentiary threshold that the asylum seekers and their legal representatives found it impossible to prove risk of persecution or other harm. Conclusions about the Asylum Office's practice in 2021 can be drawn from the

130 The Asylum Commission Chairperson and members are primarily engaged in other state institutions, while Administrative Court judges also review other administrative law cases, not just asylum cases.

131 Art. 36(2), LATP.

132 The Asylum Office upheld 14 asylum applications in 2021.

133 See more in the section: Situation of Asylum Seekers Survivors of Gender-Based or Sexual Violence, pp. 108–113.

134 Ibid.

ensuing summaries of decisions, which were analysed in detail in BCHR's 2021 periodic reports.¹³⁵

3.1.1. Disregard of Relevant Facts and Submitted Evidence

One of the Asylum Office's main duties is to properly, accurately and fully establish all the facts and circumstances important for rendering a lawful decision.¹³⁶ That, however, was one of the most frequently identified deficiencies in its work. For instance, on 13 January 2021, the Asylum Office rejected¹³⁷ the asylum application Iranian national A. filed on 9 December 2019.¹³⁸ It said in its reasoning that his legal representatives submitted ample evidence,¹³⁹ but it failed to evaluate it. Its erroneous and contradictory interpretation of the report the Asylum Office itself referred to was even more problematic.¹⁴⁰ Furthermore, the first instance authority

135 *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2021*, BCHR (Belgrade 2021, hereinafter: *Right to Asylum, Periodic Report for January-March 2021*), available at: <https://bit.ly.co/AqQO>, *Right to Asylum in the Republic of Serbia, Periodic Report for January-June 2021*, BCHR (Belgrade 2021, hereinafter: *Right to Asylum, Periodic Report for January-June 2021*), available at: <https://bit.ly.co/AqTG> and *Right to Asylum in the Republic of Serbia, Periodic Report for July-September*, BCHR (Belgrade 2021, hereinafter: *Right to Asylum, Periodic Report for July-September 2021*), available at: <https://bit.ly.co/AqTQ>.

136 This obligation derives from Art. 10 of the LGAP, on the principle of truth and free evaluation of evidence. This Article sets out that decisions must be based on a scrupulous and diligent evaluation of all individual pieces of evidence and the evidence in its entirety, as well as on the results of entire procedure.

137 Asylum Office Ruling No. 26–3079/19 of 13 January 2021.

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

139 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, as well as a submission containing 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. Additionally, BCHR submitted a psychological assessment report of the applicant.

140 One of them was the Human Rights Committee's 2011 Concluding observations which read 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 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." See more in: *Consideration of*

did not explain why it had deviated from its practice of upholding asylum applications by Iranian converts. 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 diverged from its established practice.

The Asylum Office adopted a decision¹⁴¹ rejecting the asylum application submitted by B. from Burundi, who had left his country of origin in fear of persecution on account of his assumed political beliefs and ethnicity.¹⁴² The Asylum Office did not take into account any material evidence B. presented via his legal representatives, nor the fact that he had been frequently subjected to police ill-treatment and intimidation in his country of origin because of his profession. During its review of BCHR's appeal, the Asylum Commission found that the first-instance authority had not established all the facts, which resulted in its misapplication of substantive law and incorrect conclusions about the facts.¹⁴³ The Asylum Commission notably held that the Asylum Office should not have rejected B.'s asylum application without first reviewing the risk of his *refoulement*. After it held a supplementary oral hearing¹⁴⁴, the Asylum Office issued a new ruling again rejecting B.'s asylum application. The Asylum Office assessed the status of journalists in Burundi exclusively based on media reports.¹⁴⁵ Furthermore, the Asylum Office interpreted the information in these articles selectively, drawing incorrect conclusions. Furthermore, it did not explain anywhere in the ruling why it considered inconsequential the information describing the situation of Burundian journalists in much greater detail, which the BCHR had included in its submissions.¹⁴⁶ The Asylum Office made a number of errors for

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://bit.ly.co/6pD6>.

141 Asylum Office Ruling No. 26–3131/19 of 19 January 2021.

142 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.

143 Asylum Commission Ruling No. Až-47/20 of 26 March 2021.

144 The supplementary oral hearing was held on 20 April 2021.

145 Articles published on The Africa Report (theafricareport.com) and Africa News websites.

146 Various reports published by UN bodies (HRC, GA, UNHCR, CAT et al), EASO, International Criminal Court, US Department of State, Human Rights Watch, Freedom House, Am-

the second time, primarily because it did not assess all the individual circumstances and failed to adequately qualify the reasons for B's persecution. Furthermore, it drew blanket conclusions on the merits of the application, based on its selective assessment of the submitted evidence. Such actions contribute to the violation of the asylum seekers' fundamental human rights and of the prohibition of ill-treatment.

3.1.2. *Non-Compliance with Instructions of Higher Authorities*

In early March 2021, the Administrative Court delivered a judgment¹⁴⁷ upholding the claim filed by BCHR lawyers on behalf of the Iranian family V. and voiding the Asylum Commission's ruling.¹⁴⁸ The judgment will be analysed in greater detail below, in the section on the Administrative Court's decisions. Namely, the V. family applied for asylum due to persecution on religious grounds. In the meantime, their daughter was born in the RS, who had not been included in the asylum procedure before the decision was adopted, although BCHR's lawyers had notified the Asylum Office of that fact.¹⁴⁹ In its ruling rejecting the asylum applications, the Asylum Office ordered the V. family to leave the RS within the statutory timeframe.¹⁵⁰ After the Asylum Commission remitted the case for reconsideration in accordance with the Court's judgment,¹⁵¹ the family's legal representatives applied for asylum on behalf of the V. family's underage child.¹⁵²

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.¹⁵³ 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. The Asylum Office made no mention of the fact that the V. family's infant had no personal documents, except a birth certificate issued by the relevant RS authorities. Furthermore, the Asylum Office failed to eliminate the identified procedural deficiencies by the very fact that it included family V's baby daughter in the asylum procedure. Notably, the Asylum 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 that are an integral part of the RS

nesty International, IFHR, IRRI, Immigration and Refugee Board of Canada, International Federation of Journalists, etc.

147 Asylum Commission Ruling No. Až-06/19 of 5 April 2021.

148 Asylum Commission Ruling No. Až-06/19 of 1 April 2019.

149 More in *Right to Asylum, Periodic Report for January-March 2021*, p. 31.

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

151 Asylum Commission Ruling No. Až-06/19 of 5 April 2021.

152 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.

153 Asylum Office Ruling No. 26-1382/18 of 20 July 2021.

legal order.¹⁵⁴ Additionally, the Asylum Office yet again acted in contravention of the LATP,¹⁵⁵ 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. The rejection of the appeal filed by BCHR's lawyers will be described in greater detail below.

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..¹⁵⁶ In March 2021, the Asylum Office issued a ruling¹⁵⁷ rejecting the Cuban nationals' asylum applications as ill-founded. In May 2021, the Asylum Commission issued a ruling¹⁵⁸ upholding the BCHR's appeal, voiding the Asylum Office's decision because of the identified deficiencies and remitting the case to it for reconsideration. Specifically, the Asylum 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.¹⁵⁹ However, the Asylum Office again rejected the asylum application in September,¹⁶⁰ without first in-

154 Notably, the LATP, LGAP, UN Convention on the Rights of the Child and the ECHR.

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

156 Y. Y. and her underage daughter K. K. 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 at the hands of 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.

157 Asylum Office Ruling No. 26–2619/19 of 31 March 2021.

158 Asylum Commission Ruling No. Až-41/20 of 31 May 2021.

159 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.

160 Asylum Office Ruling No. 26–2619/19–1 of 14 September 2021.

interviewing Y.Y.'s husband and re-examining all the facts and circumstances of relevance to the administrative matter at hand.

Furthermore, the Asylum Office again selectively assessed the facts presented during the procedure, in a manner weighing towards a negative decision. BCHR's lawyers also emphasise that the Asylum Office merely noted in its new decision that it had received the submitted reports¹⁶¹ on the human rights situation in Cuba, focusing on the status of opposition activists and members of their families, but that it had failed to assess them. However, the Asylum Office did not take any of them under advisement, thus rendering a decision based on incomplete and improper findings of fact.

3.1.3. Applications Filed by Asylum Seekers Represented by BCHR's Legal Team Upheld

In 2021, international protection in the RS was granted to asylum seekers who obviously fulfilled the conditions set out in the Refugee Convention and the LATP. In those cases, the degree of persecution or harm they had suffered or were at risk of suffering "satisfied" even the extremely high criteria set by the Asylum Office.

In April 2021, the Asylum Office upheld the asylum application of Somali national F.¹⁶² and granted him subsidiary protection.¹⁶³ During its review of the merits of F.'s asylum application, the Asylum Office assessed that the general security situation in Somalia was extremely unfavourable, for the most part due to Al-Shabaab's activities.¹⁶⁴ BCHR lawyers applaud the fact that the Asylum Office referred to the latest problems in Somalia in its decision. Based on them, the Asylum Office correctly concluded that F. would be at risk of serious harm due to the individual threat to his life, caused by the internal armed conflicts in his country

161 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.

162 F. had fled his country of origin because of the threats he had been receiving from the terrorist organisation Al-Shabaab. Namely, members of this organisation considered him an enemy because he was a civil servant in the Somali government. Al-Shabaab had earlier killed his relative, a senior public official, with whom F. had been living. Fearing persecution, F. left Somalia and legally entered Turkey and then crossed into Greece illegally. He entered Serbia from Albania in early 2020.

163 Asylum Office Ruling No. 26-1357/20 of 21 April 2021.

164 Al-Shabaab is one of the main destabilising factors in Somalia; its actions have greatly impinged on the general security situation in the country, characterised also by a weak central government and numerous mutually conflicting local tribal alliances and clans.

of origin. It thus concluded that returning F. to his country of origin would be in contravention of Article 3 of the ECHR. The Asylum Office unfortunately failed to explain in greater detail why it concluded that the did not fulfil the requirements to be granted asylum. In that regard, the BCHR expects of the Asylum Office to hereinafter perform a more detailed analysis when deciding which of the two forms of international protection it will grant in individual cases.

In late June 2021, the Asylum Office issued a ruling¹⁶⁵ upholding Burundian national M.'s asylum application and granting him refuge on account of persecution for reasons of political opinion. Namely, M. had been a member of an opposition party and took part in the 2015 demonstrations in his country of origin. Whilst in prison, M. was subjected to some of the gravest forms of torture and sustained injuries with permanent consequences.¹⁶⁶ With a view to substantiating claims that M. had been a victim of torture, the BCHR legal team commissioned a report of a court medical expert, who performed a clinical examination of M. The Asylum Office, notably, took into account the court medical expert's findings, opinion and photographs in their entirety during its review of the merits of M.'s application. In addition to medical documentation regarding M.'s claims of torture, the Asylum Office also examined a report on his mental state of health, in which M. was found to have, *inter alia*, strong symptoms indicating the existence of the Post-Traumatic Stress Disorder (PTSD), such as flashbacks, physical response to reminders of trauma and emotional withdrawal. On the other hand, with a view to ascertaining the existence of the objective element of fear, the Asylum Office assessed M.'s statement in the context of the security situation in Burundi. Namely, having referred to a number of credible international reports,¹⁶⁷ the Asylum Office concluded that the situation in M.'s country of origin was extremely unfavourable, and that political opponents and prisoners have been in dire straits since 2015 and the demonstrations.

The Asylum Office upheld the asylum application and granted refuge¹⁶⁸ to another victim of torture from Burundi on the same grounds in early July 2021.¹⁶⁹ The BCHR commissioned a report of a court expert in psychology in

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

166 His wife and children fled Burundi in fear for their safety. M. was first convicted to twenty years' imprisonment but was released in 2018 when a decision to pardon political prisoners was adopted. However, many of the inmates, including M.'s two close friends, were killed soon after they were released. After the police came to his family home looking for him, M. realised his safety was under serious threat and decided to leave Burundi.

167 E.g. 2015 Report of the UN Security Council Secretary General, the UN General Assembly Report, and the report of the Immigration and Refugee Board of Canada.

168 Asylum Office Ruling No. 26–103/21 of 30 June 2021.

169 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, was soon after-

this case as well, in addition to the submitted material evidence and relevant reports on the human rights situation in Burundi. In both cases, the Asylum Office properly evaluated the submitted pieces of evidence, both individually and cumulatively. Especially encouraging is its assessment of the medical documentation and acknowledgement of the findings and opinion of the specialist doctor on the treatment the asylum seekers had been exposed to, in contravention of Article 3 of the ECHR. The multidisciplinary approach in asylum procedures facilitates the proper evaluation of all facts and circumstances, based on which lawful decisions on the submitted applications are adopted.

3.1.4. Conclusion and Recommendations

Some headway was noted in the Asylum Office's 2021 decisions on applications filed by particularly vulnerable categories of asylum seekers. However, the BCHR's criticisms of the quality of the Asylum Office's decisions and operations and its recommendations on how to improve them made in the past few years still stand. Furthermore, the Asylum Office must render its decisions on asylum applications within the statutory deadlines, particularly given that the timeframe set in the LATP is six times longer than the one laid down in the LGAP.¹⁷⁰

Most of the Asylum Office's negative decisions lack adequate assessments of evidence submitted by asylum seekers or their legal representatives (e.g. various documents, photographs, reports, news articles, etc.). In most rulings, the Asylum Office noted all the evidence submitted during the procedure but failed to explain why it considered some pieces of evidence more valuable than others. It referred solely to the information it itself had collected, whilst disregarding or selectively evaluating the other evidence.

In cases in which the Asylum Office upheld the asylum applications, the applicants had already been subjected to persecution or serious harm, wherefore they *prima facie* fulfilled the requirements for receiving international protection. This should not be the rule, however, since asylum seekers are not under the obligation to irrefutably prove the merits of their claims to the decision-makers.

wards abducted, arrested, and tortured. He 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.

170 Art. 145(3) of the LGAP lays down that authorities ruling on administrative matters at the initiative of the parties and in their interest, where the procedure does not involve direct ruling, must issue their rulings within 60 days from the day the procedure was initiated. On the other hand, Art. 39 of the LATP sets out that decisions on asylum applications shall be adopted within three months, but also provides for extending the time limit to 12 months.

Reasonable rather than high probability that they will be subject to persecution or serious harm suffices.

Therefore, a first-instance procedure is implemented lawfully if the deadlines are complied with and if evidence and all other facts presented by the asylum seekers or their legal representatives are assessed fairly. That is the only way to ensure the adoption of proper and legal decisions on the submitted asylum applications.

3.2. Asylum Commission

Asylum seekers dissatisfied with the Asylum Office's decisions are entitled to appeal them with the Asylum Commission within 15 or 8 days.¹⁷¹ The fact that the Asylum Commission rejected over 86% of the appeals in the 1 January-15 October period illustrates the chances asylum seekers stand in the second-instance procedure. On the other hand, the Asylum Commission continued with its well-established practice of not upholding any asylum applications. In other words, cases in which it voided the Asylum Office's rulings and itself rendered a decision on the matter at hand are the exception. In one case, the Asylum Commission actually reviewed the merits¹⁷² of the application and found that there were no grounds for rejecting it; rather than itself granting international protection to the asylum seeker, it remitted the case for reconsideration to the Asylum Office.¹⁷³

The deficiencies the BCHR alerted to in its 2020 report¹⁷⁴ persisted in the reporting period, indicating lack of substantial headway in the work of the Asylum Commission. In most cases, it continued selectively assessing the claims in the appeals, resulting in improper or incomplete findings of facts, which, in turn, led to its misapplication of substantive law. In addition, the Asylum Commission did not exercise all its statutory powers, including to hold oral hearings, which would be, in view of BCHR, extremely useful for clarifying the issues at hand.

The several cases in which the Asylum Commission upheld the appeals and enumerated in detail all the steps the first-instance authority should take during their re-examination are good practice examples. It is also worth noting that the Asylum Commission forwarded to the BCHR its anonymised decisions taken in

171 Under Art. 95 of the LATP, first-instance asylum decisions may be appealed within 15 days from the day of receipt. Decisions adopted in an accelerated procedure, decisions dismissing asylum applications and subsequent asylum applications may be appealed with the Asylum Commission within eight days from the day of service.

172 In vast majority of cases, the Asylum Commission does not review the merits of the applications, which questions whether the appeal at second instance could be considered as effective remedy in line with international standards.

173 Asylum Commission Ruling Až-29/19 of 23 September 2021.

174 More in *Right to Asylum 2020*, pp. 56–66.

2021 concerning applicants not represented by BCHR's lawyers. It thus demonstrated transparency, whilst preserving the confidentiality of their identity. The ensuing section provides an analysis of some of the Asylum Commission's decisions adopted during the reporting period in cases of asylum seekers represented by BCHR's legal team.

3.2.1. Selective and Blanket Assessments of the Claims in the Appeals

The Asylum Commission's main role is to control the lawfulness of the Asylum Office's decisions and thus provide guidance to the first-instance authority on how to improve its operations. However, it cannot achieve this by making blanket assessments of the appeals, like it did in most cases in 2021. Asylum seeker C. had left Burundi because of his ethnicity (Tutsi), but the Asylum Office dismissed his application, holding that he had not proven that he had been subject to persecution in his country of origin. In its review of the merits, the Asylum Office failed to act in accordance with the LATP and consult the latest reports on the situation in the applicant's country of origin. BCHR's lawyers therefore referred in the appeal to a number of reports not mentioned during the first-instance procedure. In its decision rejecting C.'s appeal¹⁷⁵, 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 referred to Article 159(2) of the LGAP¹⁷⁶ and said that C.'s legal representatives should have explained in the appeal why they had not referred to the reports earlier. However, BCHR's lawyers are of the view that their action cannot be in contravention of the law because they 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 findings of fact, its wrong conclusions on C.'s claims and ultimately its decision that his asylum application was ill-founded.

The above-mentioned case of the Iranian family V.¹⁷⁷ was again reviewed by the Asylum Commission, which again rejected it, notwithstanding the Administrative Court's judgment directly associating the international law standard of best interests of the child with the legal guarantees inherent in the principle of the protection of the best interests of the child laid down in the LATP. Furthermore, the decision explicitly noted the necessity to respect the family unity principle. In the Asylum Commission's view, the Asylum Office had acted in accord-

175 Asylum Commission Ruling No. AŽ-55/20 of 3 February 2021.

176 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.

177 See pp. 45–46.

ance with the LATP, the LGAP and the Convention on the Rights of the Child, as well as the best interests of the child. The Asylum Office did not eliminate in its new decision the procedural errors by the mere inclusion of the V. family's infant in the asylum procedure. Rather, it was under the duty to take particular account of her best interests, a fact of primary relevance in this case. The Asylum Commission saw nothing wrong in the Asylum Office's decision, wherefore BCHR's lawyers were forced to again initiate a dispute before the Administrative Court. The case was still pending at the end of the reporting period.

The Asylum Commission upheld¹⁷⁸ the first-instance ruling rejecting the asylum application filed by Burundian journalist B. as described in the section on the operations of the Asylum Office.¹⁷⁹ In its decision, the Asylum Commission first said that B. had not made genuine efforts to substantiate his application with evidence, because he had submitted it only after the Asylum Office adopted its ruling. Namely, the Asylum Commission argued that B. 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.¹⁸⁰ 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 Office¹⁸¹ and the psychological assessment report the Asylum Office received the same day BCHR's lawyers received the new first-instance decision.¹⁸² However, the Asylum Commission failed to note that 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.¹⁸³

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 had forwarded to it during the procedure.

178 Asylum Commission Ruling No. Až-47/20 of 5 July 2021.

179 See pp. 44–45.

180 Asylum Office Ruling No. 26–3131/19 of 19 January 2021, p. 3.

181 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 photos of the documents by phone, because their safety would be at risk if they had sent the documents by post.

182 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.

183 The oral hearings were held on 21 October 2020 and 20 April 2021. BCHR's 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 BCHR's lawyers emphasised in the appeal.

Hence the erroneous conclusion that B. had not been subject to persecution and that there was no risk of that happening if he returned to his country of origin.

The Asylum Commission's opinion about 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.¹⁸⁴ However, the Asylum Commission ignored B.'s detailed claims that he had been abused by the police in those cases. The case was pending before the Administrative Court at the end of the reporting period.

3.2.2. BCHR Legal Team's Appeals Upheld

In a small number of cases, rather than ruling on the asylum applications itself, the Asylum Commission upheld the appeals and remitted the cases to the Asylum Office for reconsideration. For instance, in mid-March 2021, the Asylum Commission overturned¹⁸⁵ the Asylum Office's ruling issued two months earlier and rejecting the asylum application of an unaccompanied stateless child.¹⁸⁶ Namely, S. had fled Pakistan, his country of habitual residence¹⁸⁷ and the risk of persecution on account of the fact that he is a stateless person from Afghanistan.¹⁸⁸

The Asylum Commission first emphasised that it agreed with the claims in the appeal that Pakistan was not a signatory of the UN Refugee Convention and that the status of refugees in this country was effectively unfavourable. It found that the BCHR team had correctly noted in the appeal that the asylum authorities had to review also the relevant international reports on the status of stateless persons in Pakistan, given that S. was both stateless and a refugee.¹⁸⁹ Asylum

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

185 Asylum Commission Ruling No. Až-46/20 of 17 March 2021.

186 Asylum Office Ruling No. 26-2349/19 of 12 January 2021.

187 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.

188 Due to his specific status, S. had difficulty accessing his rights, such as the rights to education and health care. 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.

189 Asylum Commission Ruling No. Až-46/20 of 17 March 2021. pp. 3-4.

Commission thus requested of the Asylum Office to review these reports, especially in the context of refugees and stateless children in Pakistan. In the Asylum Commission's opinion, there was indisputably an objective risk that S. would be returned to Afghanistan (potential chain *refoulement*), especially since the applicant was an unaccompanied stateless child. The Asylum Commission found that the Asylum Office had not substantiated that its decision was in the best interests of the child. Furthermore, it correctly noted that S. was vulnerable on two grounds – he is a child and he is stateless. Therefore, it requested of the Asylum Office to review all the circumstances relevant to the application of the principle of the best interests of the child. The Asylum Commission also said that the Asylum Office should take into account the opinion of the relevant guardianship authority, which had said that the setting S. was living in at the moment was safe and conducive to his further development.

The BCHR also stated in its appeal that S. did not have any personal documents wherefore he would violate the law if he had to comply with the first-instance ruling¹⁹⁰ and tried to cross the RS border.¹⁹¹ The Asylum Commission consequently instructed the Asylum Office to examine these circumstances and ascertain whether S. was at risk of falling victim to trafficking in children.¹⁹²

Like in S.'s case, the Asylum Commission in late April upheld¹⁹³ BCHR's appeal of the Asylum Office's ruling¹⁹⁴ rejecting as ill-founded the asylum application filed by Iranian national G. M.¹⁹⁵ During its deliberation of the merits of G.M.'s case, the Asylum Office made incomplete and improper findings of fact, based on which it concluded that the applicant was not at risk of persecution in

190 Dismissing S.'s asylum application and ordering him to leave the RS.

191 Namely, under Article 71(1(1)) of the Law on Border Control, individuals 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 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 (Art. 12(2)).

192 Asylum Commission Ruling No. AŽ-46/20 of 17 March 2021, p. 4.

193 Asylum Commission Ruling No. AŽ-8/21 of 26 April 2021.

194 Asylum Office Ruling No. 26–1672/19 of 29 January 2021.

195 Namely, in her country of origin, G.M. had supported a movement advocating the abolition of the obligation to wear a hijab and the protection of women's rights and freedoms. Like other Iranian women supporting the movement, G.M. had appeared in public without her hijab in defiance of the regulations, wherefore she had been repeatedly taken into custody by the Iranian authorities and subjected to threats and harassment. Furthermore, G.M. worked as a model in her country of origin, in contravention of the Moslem patriarchal culture and the interpretation of the status of women in the Koran, which gave rise to her conflicts with her family. After she was held in police custody in August 2018, G.M. received a court summons. Risking a years-long prison sentence if convicted on the charges levelled against her, she decided to leave Iran several days later.

her country of origin because of her membership of a particular social group. In its ruling upholding the BCHR's appeal, the Asylum Commission enumerated the steps the Asylum Office needed to take to eliminate the identified shortcomings during its re-examination of the case. They included, inter alia, the consideration of three submissions by G.M.'s lawyers, material evidence – photographs and video recordings of G.M., media reports corroborating her claims and her psychological assessment report.

BCHR lawyers applaud the Asylum Commission's decision unequivocally noting the deficiencies in the work of the Asylum Office, especially the fact that underage S. and G. M. belong to particularly vulnerable groups of asylum seekers. The Asylum Commission was correct to overturn the first-instance rulings rejecting their asylum applications and remit the cases for reconsideration. The decisions also properly reflect the role of the Asylum Commission, as the authority controlling the work of the Asylum Office. In addition to finding deficiencies in the Asylum Office's review of S.'s and G. M.'s asylum applications, the Asylum Commission also enumerated all the steps the Office should undertake during its re-examinations in order to adopt new decisions that will be in compliance with the law. In the opinion of BCHR's lawyers, the Asylum Commission has thus made a step forward both in its own practice of reviewing appeals and in the practice of the Asylum Office, as well as the adoption of comprehensive, appropriate and lawful decisions.

In mid-October, the BCHR was served with the Asylum Commission's ruling¹⁹⁶ overturning the Asylum Office's ruling issued at the beginning of the year¹⁹⁷ and remitting the case for reconsideration. This case, concerning the asylum application filed by Libyan national R., has been pending since 2017. The BCHR has already analysed the Asylum Office's ruling rejecting his asylum application for the second time.¹⁹⁸ The Asylum Office said that R., who had been a collaborator of Colonel el Gaddafi's regime, was ineligible for asylum in the RS for security reasons. Since the Office did not elaborate its decision, the BCHR noted in the appeal that it was in violation of the RS Constitution, the LGAP and the ECHR. In addition, the Asylum Office violated the LATP, the Refugee Convention and the Convention against Torture, because it had not reviewed the risk of *refoulement* in this case.¹⁹⁹ These are just some of the key points the BCHR set out in its appeal to the second-instance authority.

196 Asylum Commission Ruling Až-29/19 of 23 September 2021.

197 Asylum Office Ruling 26–1389/17 of 19 January 2021.

198 More in *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2021*, BCHR (Belgrade, 2021), pp. 15–16.

199 Art. 6(3) of the LATP prohibits *refouling* anyone to a territory where there is a risk that they would be subjected to torture or inhuman or degrading treatment or punishment.

The Asylum Commission said in its ruling that it had asked the Security Intelligence Agency whether R. was a threat to Serbia's national security and public order. After it was concluded that he no longer posed such a threat, the Asylum Commission proceeded to review the merits of the application and found that the main reason for the rejection of R's asylum application no longer existed. The Commission also perused all the evidence that R's legal representative attached to the appeal. Therefore, all the requirements for it to rule on the case itself were fulfilled.

Misapplication of substantive law was the second reason why the Asylum Commission voided the first-instance ruling. Namely, the Asylum Office ruled on the asylum application in accordance with the LATP, which entered into force in 2018, although it was filed at the time the prior asylum law was in force. The Asylum Commission ordered the first-instance authority to review which of the two laws was more favourable for the applicant and explain why the one it opted for was more favourable, pursuant to Article 103 of the LATP.²⁰⁰

The Asylum Commission also instructed the Asylum Office to ascertain all the relevant facts and circumstances properly, accurately and fully, pursuant to the LGAP,²⁰¹ by taking into account all the evidence presented by the asylum seeker. During the procedure, BCHR's lawyers submitted a number of reports by various state institutions and international and non-government organisations concluding that former officials of the Gaddafi regime, people closely associated with the Gaddafi family or with ties to the Libyan security forces during the 2011 clashes were among the most vulnerable categories of people in Libya. Due to the identified irregularities, the Asylum Commission overturned the Office's ruling for the second time. The Asylum Office is to rule on the case for the third time, which has been pending for over four years now.

3.2.3. Conclusion and Recommendations

The fact that the share of rejected appeals increased in 2021 over 2020 does not mean that the Asylum Office's decisions were in accordance with the law. The situation is partly due to the numerous errors and deficiencies in the work of the Asylum Commission. For it to improve, the Commission, first and foremost, needs to review the appeals diligently and thoroughly. The asylum seekers and their legal representatives frequently alerted to its tendentious disregard of irrefutable facts and circumstances.

200 Under this Article, asylum procedures initiated before the LATP entered into force shall be conducted in accordance with the Asylum Law, unless the provisions of the LATP are more favourable for the applicants.

201 Art. 10, LGAP.

The Asylum Commission upheld a number of BCHR's appeals in 2021, which is definitely commendable. However, its rulings boiled down to pointing out the procedural flaws and deficiencies in the Asylum Office's decisions and remitting the cases for reconsideration although it would have been far more expedient if it had upheld the asylum applications in cases in which it reviewed the merits of the appeals and found them well-founded. Quite a few asylum procedures have been dragging on for years because the Asylum Commission repeatedly remitted them for reconsideration.²⁰²

Furthermore, oral hearings and interviews of the asylum seekers would in some cases facilitate the correct and full findings of fact. The procedure would definitely be fairer if the Asylum Commission members took the opportunity to themselves see and hear the applicants on whose appeals they are ruling.

The BCHR's recommendations, aimed at improving control of the Asylum Office's work and eliminating the key shortcomings in the practice of the Asylum Commission, are motivated by its desire to contribute to the establishment of a sustainable and efficient asylum system in the RS.

3.3. Administrative Court

Like in the past, the Administrative Court in 2021 upheld one out of three (35%) claims against Asylum Commission rulings, corroborating that a substantial number of Asylum Commission rulings were in contravention of the law. However, the Court merely overturned these rulings and remitted the cases for reconsideration to the second-instance authority. More precisely, the Court has never itself ruled on the disputed matters and upheld the asylum applications. The judicial panel that renders a judgment granting asylum will be the first in the RS since it established the asylum system. The development of ample case-law by the asylum authorities is prerequisite for Serbia's asylum system to be considered functional and efficient.

In the judgments it delivered in 2021, the Administrative Court found that the Asylum Commission violated procedural and substantive law. It took clear views on the unlawfulness of discontinuing the procedure due to the so-called silence of the administration, on the status of persons in need (stateless children), and on incorrect findings of fact.

This section of the Report analyses some of these decisions. The BCHR commends the promptness with which the Administrative Court provided it with access to information of public importance, forwarding to it its anonymised decisions and statistics for the 1 January – 15 October 2021 period.

202 Such as, for instance, the case of the Libyan national.

3.3.1. Administrative Court's View on Delays in Adoption of Decisions on Asylum Applications

BCHR has repeatedly criticised the excessive length of the first-instance asylum procedure. In 2021,²⁰³ the BCHR analysed the Asylum Commission's decisions on its appeals of the "silence of the administration".²⁰⁴ The process began in October 2020, when the BCHR filed a number of appeals because the Asylum Office failed to rule on asylum applications within the deadlines set out in the LATP.²⁰⁵ The Asylum Office issued rulings on the merits of the asylum applications in most of the disputed cases soon after the BCHR filed appeals with the Asylum Commission.²⁰⁶ Notwithstanding the fact that the BCHR did not give up on its appeals, the Asylum Commission issued rulings²⁰⁷ discontinuing the proceedings, under the explanation that there were no grounds for continuing them since the Asylum Office had ruled on the asylum applications. This prompted the BCHR to complain to the Administrative Court.

The Administrative Court held that the impugned rulings violated the law to the detriment of the asylum seekers, since the LGAP provided for the discontinuation of the review of an appeal only on the request of the applicant.²⁰⁸ The BCHR thus tried to contribute to the asylum authorities' compliance with the statutory deadlines in the future.

3.3.2. BCHR Legal Team's Claims Upheld

The Administrative Court commendably delivered a number of judgments upholding the BCHR's claims against Asylum Commission decisions. In these cases, the Court found that the Commission had violated procedural and substantive law and remitted the cases for reconsideration, requiring the elimination of the identified deficiencies.

BCHR would first like to draw the readers' attention to the above-mentioned Administrative Court's judgment remitting for reconsideration the case of the Iranian V. family, which soon reappeared on its docket after the Asylum

203 *Right to Asylum, Periodic Report for January-March 2021*, pp. 29–31.

204 *Ibid.*

205 More in *Right to Asylum, Periodic Report for July-September 2020*, BCHR (Belgrade, 2020), p. 25.

206 More in *Right to Asylum, Periodic Report for January-March 2021*, p. 30.

207 Asylum Commission Ruling Až-43-1/20 of 9 December 2020, Asylum Commission Ruling Až-45-1/20 of 9 December 2020, Asylum Commission Ruling Až-42/20 of 15 January 2021, Asylum Commission Ruling Až-46/20 of 22 January 2021 and Asylum Commission Ruling Až-47/20 of 29 January 2021.

208 More in *Right to Asylum, Periodic Report for January-June 2021*, pp. 27–28.

Office again rejected their asylum application²⁰⁹ and the Asylum Commission upheld its decision.²¹⁰ The decisions are described above, in the sections on the operations of the Asylum Office and Asylum Commission.

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 unity²¹¹ and the principle of protection of the best interests of the child.²¹² 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.²¹³ 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.²¹⁴ 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 family V's claims that the principle had been breached were ill-founded. 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.

In March 2021, the Administrative Court delivered a judgment²¹⁵ upholding BCHR's claim in the case of Afghan national B.R. It overturned the Asylum Commission decision²¹⁶ and remitted the case for reconsideration. The Admin-

209 Asylum Office Ruling 26–1382/18 of 20 July 2021.

210 Asylum Commission Ruling Až-06/19 of 18 October 2021.

211 Art. 9(1), LATP.

212 Art. 10, LATP.

213 Art. 17(1) of the LATP reads as follows: "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 in human beings, 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."

214 Art. 17(3), LATP.

215 Administrative Court judgment No. 13 U 12125/17 of 17 March 2021.

216 Asylum Office Ruling No. Až-53–1/16 of 31 May 2017.

istrative 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 substantial procedural violations and to itself review other solutions provided by substantive law.²¹⁷ 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. It is worth noting that it took the Administrative Court more than three and a half years to rule on the claim.²¹⁸ Such dilatoriness has a demotivating effect on asylum seekers in the RS, since it indicates that the asylum procedure can actually last much longer than it did in this case.²¹⁹

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. This scenario, however, seem unrealistic for the time being, given that the Administrative Court is one of the Serbian courts with the heaviest caseloads.

The case of Burundian applicant Y., represented by BCHR's lawyers, is interesting. Namely, Y. had been granted the status of refugee in Uganda. However, he decided to leave Uganda because of the problems he faced in it. 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 2020.²²⁰ To recall, 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 concept of the first country of asylum.²²¹ Just one workday later, the Asylum Office sent the BCHR its ruling dismissing Y.'s asylum application under Article 43.²²² Y. was denied the possibility to comment the Asylum Office's intention to apply the concept of first country of asylum and to

217 See page 4 of the judgment, on file with the BCHR.

218 The lawsuit was filed on 9 August 2017 and the Court delivered its judgment on 17 March 2021.

219 The procedure before the Administrative Court took place after the completion of the first- and second-instance procedures.

220 Asylum Office Ruling No. 26-1515/19 of 13 August 2020.

221 Under Art. 42(1(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 s/he is still able to avail him/herself of that protection or still enjoys effective protection in that country, including the guarantees arising from the non-*refoulement* principle.

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

challenge its application given his personal circumstances.²²³ The Asylum Commission upheld²²⁴ the ruling and rejected the appeal as ill-founded.²²⁵

In its judgment,²²⁶ 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.²²⁷ Also, the Administrative Court 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.²²⁸ The Court clearly ascertained that the applicants 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.

Finally, in September 2021, the Administrative Court delivered a judgment²²⁹ upholding the claim BCHR's lawyers filed on behalf of Iranian nationals E., his wife and underage daughter, overturning the Asylum Commission's ruling²³⁰ and remitting the case for reconsideration to the lower instance authority. The Iranian family applied for asylum in September 2018, which the Asylum Office rejected by its ruling²³¹ in August 2019.²³² The family fled Iran in fear of persecution because E. expressed anti-government views on social media. Namely, E. has been politically active on Facebook, Instagram and Telegram in his country of origin since 2016, where he has criticised the Iranian regime, Islam's detrimental influence on society and advocated democracy. He published his comments under a pseudonym given the stringent free speech restrictions and strict Internet control in Iran.²³³

223 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.

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

225 The analysis of the Asylum Commission's decision is available in: *Right to Asylum 2020*, p. 63.

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

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

228 The Court assessed that such a conclusion could not be drawn since Y. had not even been asked to comment the circumstances.

229 Administrative Court judgment No. 6 U 19743/19 of 23 September 2021.

230 Asylum Commission Ruling No. Až-28/19 of 17 October 2019.

231 Asylum Office Ruling No. 26-1607/18 of 26 August 2019.

232 More in *Right to Asylum, Periodic Report for July-September 2019*, pp. 11-15.

233 Minutes of the Oral Hearing in Case No. 26-1607/18 of 20 December 2018.

E.'s anti-government opinion prompted threats against him on his profile in 2017. The threats, however, increased in frequency and gravity after the Iranian supreme leader issued a public proclamation.²³⁴ After E. and his family arrived in the RS, E. revealed his identity and continued his activities on social media, even more intensely, resulting in an increase in threats and, consequently, the entire family's greater fear of returning to Iran.

Perceived government critics or those offending public morality, including social media users, may be subjected by the Iranian authorities to harassment, intimidation, arbitrary arrest, flogging, severe custodial sentences, *incommunicado* detention, unfair trial and torture.²³⁵ Furthermore, Iranian authorities have been filtering tens of thousands of foreign websites, including news sites and leading social network platforms.²³⁶

In its judgment on BCHR's claim, the Administrative Court referred to the relevant international and domestic provisions on the right to refuge or subsidiary protection and on the deportation of foreigners from the RS. It disagreed with the Asylum Commission's conclusion that the Asylum Office had correctly established that the family had not proven that Iran was not a safe country of origin for them. The Court said that the asylum authority failed to provide clear and valid reasons why it considered irrelevant the facts that E. and his family members were atheists, that E. criticised the Iranian authorities in his posts prompting threats, including messages branding him "traitor selling his fatherland," etc. The Asylum Commission's decision was erroneous in light of these considerations, E.'s other statements during the oral hearing, the submitted information on the situation in his country of origin and other evidence in the case file, as well as the reasons set out in the impugned ruling. The Court disagreed with the Commission's conclusion that the Asylum Office had conducted the procedure properly and that its decision to reject the family's asylum application was lawful. It held that the Asylum Commission had itself violated the rules of procedure,²³⁷ significantly impinging on the legality and regularity of the decision on this administrative matter and remitted the case for reconsideration.

234 In June 2018, the supreme leader of the Islamic Republic of Iran issued a public proclamation, encouraging Iranian citizens to rally and contribute to the monitoring and punishment of individuals opposing the regime. A group of government supporters opened an Internet account under a different name, via which it monitored the activities of political opponents, including E., and forwarded information about them to the Iranian police and intelligence agency.

235 *Country Policy and Information Note – Iran: Journalists and internet-based media, Version 2.0, United Kingdom, Home Office*, 26 October 2016, p. 6. Available at: <https://bit.ly/2BU3hdB>.

236 *Freedom on the Net 2018*, Freedom House. Available at: <https://bit.ly/co/Al73>.

237 The Court found that the adoption of the ruling was in breach of Art. 141(4) in conjunction with Art. 168 of the LGAP.

3.3.3. Conclusion and Recommendations

Asylum seekers can resort to two legal remedies to protect their rights and interests in the asylum procedure – appeals and claims. The establishment of an effective control mechanism requires a pro-active approach of those entrusted with reviewing the actions of authorities citizens are complaining about. In light of this, the Administrative Court should start holding oral hearings and itself deciding on the asylum applications, which it has never done since the asylum system was established 13 years ago. It may be assumed that there were asylum cases in which it could have adjudicated the matter itself. Further training of judges and their associates in asylum law and the establishment of specialised chambers would ensure prompt and effective adjudication of such administrative disputes.

As the judgments analysed in this section demonstrate, the Administrative Court upheld complaints on various grounds in 2021, which is important for a number of reasons and definitely contributes to the diversity of case-law. First, the Court commendably noted that the circumstances of a case had to be evaluated cumulatively and with due diligence. Second, it stated that the asylum seekers' personal circumstances had to be taken into account properly and reasoned clearly and comprehensibly, and within the context of the situation in their countries of origin and the scale of human rights violations in them. The Court's views in its judgments provide clear guidance to the lower-instance authorities and should help improve the quality of their decisions in similar cases in the future. The Asylum Commission should be guided by the Administrative Court's judgments, which will help it fulfil its control role better and identify the deficiencies in the Asylum Office's work more easily.

4. ACCOMMODATION OF ASYLUM SEEKERS AND MIGRANTS

4.1. Facilities under CRM Jurisdiction

The LATP affords asylum seekers, inter alia, with the right to material reception conditions.²³⁸ Under the LATP, material reception conditions shall include: housing accommodation, food, clothes and a cash allowance for personal needs.²³⁹ The LATP entrusts the CRM with the provision of material reception conditions.²⁴⁰ The CRM is charged with providing asylum seekers and migrants with accommodation in ACs and RTCs established by a decision of the Serbian Government.²⁴¹

Given Serbia's commitment to join the EU, it needs to comply with specific asylum and migration related standards laid down in EU law. In its Serbia 2021 Report, the European Commission said that the Serbian authorities continued to strengthen the capacity for the accommodation and care for migrants under consideration of their specific vulnerabilities due to the COVID-19 pandemic. It noted that Serbian reception facilities had a capacity of overall 6,000 places and that there were five centres for asylum with a total capacity of 1,700 places. The EC said that reception conditions were regularly monitored in view of the EASO guidance on reception conditions and that 95% of the relevant standards were reached.²⁴²

The living conditions in the CRM-run facilities accommodating migrants and asylum seekers are regulated by the Rulebook on House Rules in Asylum Centres and Other Facilities Accommodating Asylum Seekers.²⁴³ The House Rules are posted on the bulletin boards in all these facilities and are available in English, French and Arabic and in other languages, if necessary, to ensure that all residents can read them.

Migrants and asylum seekers must undergo a check-up on admission to an AC or RTC, primarily to prevent the spread of COVID-19. The period of time

238 Art. 48, LATP.

239 Art. 50(1), LATP.

240 Art. 23, LATP.

241 Art. 51, LATP.

242 *Serbia 2021 Report*, pp. 51–52, available at: <https://bityl.co/AIP0>.

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

new arrivals must spend in the isolation units is decided by the relevant doctors. This practice was introduced by the CRM to safeguard the health of all AC and RTC residents. Masks, disinfectants and other protection equipment were purchased with funds from the budget or donations of international organisations and were available to both the staff and migrants and asylum seekers in all ACs and RTCs throughout the year. All migrants and asylum seekers also had the opportunity to vaccinate themselves against coronavirus,²⁴⁴ as BCHR's clients confirmed.

According to information BCHR's legal team obtained during the year, the epidemiological situation in the ACs and RTCs was mostly stable. BCHR's lawyers were thus able to perform regular and *ad hoc* visits to the ACs and RTCs throughout the year and generally extend their free legal counselling services to asylum seekers in the RS.

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

4.1.1. Reception-Transit Centres

Serbia has made efforts to address the problem of the large number of migrants in its territory in response to the situation that emerged in 2015, when the refugee-migrant crisis intensified, and which persists to this day, albeit to a somewhat lesser extent.²⁴⁵ For that purpose, it established RTCs throughout the country. RTCs are established under Government decisions and run by the CRM.

Eight RTCs were active at the time this report was prepared.²⁴⁶ The number of their residents grew as the weather got colder and some RTCs, e.g. the ones in Kikinda, Sombor and Subotica, took in a much greater number of migrants than they had the capacity to accommodate.

In 2021, BCHR's legal team regularly visited the RTCs in Adaševci, Bosilegrad, Bujanovac, Divljana, Pirot, Obrenovac, Preševo and Vranje, and the other RTCs if necessary.²⁴⁷

244 CRM's Reply No. 019–4483/2–2021 of 7 December 2021.

245 See BCHR's 2015–2020 annual Right to Asylum Reports, available at: <http://azil.rs/>.

246 The RTCs in the following towns were active: Adaševci, Bosilegrad, Kikinda, Preševo, Principovac, Sombor, Subotica and Šid. Information available on CRM's website: <https://bit.ly/3i8Yvjw>.

247 The RTCs in Bujanovac, Divljana, Pirot and Vranje were dormant at the end of the reporting period. The Bujanovac RTC was open until 9 June, the Divljana RTC until 21 August, the Pirot RTC until 17 June and the Vranje RTC until 16 June 2021. The Principovac RTC was

By its Decision of 16 June 2021,²⁴⁸ the RS Government redesignated the Vranje and Obrenovac RTCs as ACs. With CRM's approval, the BCHR legal team had the opportunity to regularly visit the accommodated migrants and extend legal advice to those who wanted to inform themselves about the right to asylum in Serbia

In 2021, the MOI continued its years-long practice of referring asylum seekers to RTCs instead of ACs in a large number of cases. BCHR's legal team is aware of numerous cases of asylum seekers first referred to remote RTCs and transferred to ACs after a short period of time, although the ACs were not full at the time they were registered.

The Asylum Office does not perform official duties in RTCs. At the moment, asylum applications of foreigners staying in RTCs are forwarded by the CRM to the Asylum Office, whereupon they are moved to one of the five ACs, where the Asylum Office staff conduct the asylum procedure.²⁴⁹

Save for a few exceptions,²⁵⁰ the material reception conditions in RTCs are generally poorer than in ACs. Most of the facilities are old, underinvested and overcrowded, with high turnovers of residents. The hygiene in them is mostly unsatisfactory.²⁵¹ Lack of privacy was also a problem in some RTCs that took in more residents than their capacity allows.

The RTCs in Adaševci and Principovac lacked interpreters. The residents of the Principovac and Subotica RTCs did not have access to psychosocial aid at all times.²⁵²

Like in the past, most foreigners accommodated in the RTCs did not want to apply for asylum and stay in the RS²⁵³, hoping they would ultimately reach their final destination – West European countries. Indeed, life in overcrowded RTCs close to Serbia's borders with EU Member States could hardly have led them to change their minds and decide to apply for asylum in the RS. The resi-

closed for renovation from 26 June to 28 September 2021. CRM's Reply No. 019–4483/2–2021 of 7 December 2021.

248 Serbia Government Decision No. 02–5650/2021, available in Serbian at: <https://bit.ly/3nqLK4Z>.

249 Foreigners in RTCs can apply for asylum in writing, by filling the application forms in a language they understand. Such application forms are available in facilities accommodating migrants and asylum seekers.

250 Such as, e.g. the renovated RTC in Bosilegrad, which accommodated mostly families in 2021; the AC's occupancy rate never exceeded its accommodation capacity. More in *2020 Right to Asylum*, p. 76.

251 The impression BCHR's team gained during its visits to RTCs. Its clients often complained of hygiene in the camps and the fact that they had to share toilets.

252 Data as of September 2021, retrieved from CRM's website: <https://bityl.co/Aj5v>.

253 According to the information obtained from the CRM representative, the average duration of stay of newly arrived asylum seekers and migrants in RTCs on the north is about 30 days.

dence of foreigners in RTCs, who have not applied for asylum, is not regulated in accordance with national law.

4.1.2. Asylum Centres

Under the LATP, asylum seekers shall be accommodated in one of the ACs run by CRM. The Serbian Government shall establish one or more ACs at the proposal of the CRM, which is charged with their internal organisation and staffing.²⁵⁴

The difference between ACs and RTCs is legal in character. The Asylum Office conducts the asylum procedure in ACs – it receives the asylum applications and interviews the asylum seekers. However, as noted above, asylum seekers are first referred by the MOI to RTCs and they are transferred to the ACs later, which unnecessarily protracts their access to the asylum procedure.

The ACs in Bogovađa, Krnjača, Obrenovac, Sjenica and Tutin were active throughout the year. The AC in Banja Koviljača closed temporarily in April for renovation. The CRM provides accommodation in ACs for all asylum seekers, regardless of their sex, age or other personal characteristics. There were some changes in the categories of AC residents during the reporting period; for instance, unaccompanied and separated children were no longer accommodated in the Bogovađa AC²⁵⁵ or the Sjenica AC.²⁵⁶

Under the Migration Management Law,²⁵⁷ migration shall be managed in accordance with the principles of balanced and planned economic development and prohibition of the artificial change of the ethnic composition of the population. Most ACs are located outside urban settlements or on the outskirts of towns or cities. Of the six ACs active in 2021, four are far from Belgrade, where the Asylum Office is headquartered, which has often impinged on the scheduling of asylum-related actions, even more so due to the pandemic. Given that most ACs far from Belgrade are located in isolated and economically underdeveloped areas, the asylum seekers' integration in the local community is often much slower and more difficult.

All ACs are open-type facilities, which means that asylum seekers are free to leave them without asking for permission, but they are under the duty to comply with the Rulebook on House Rules. Under the Rulebook, the ACs shall be locked from 10 pm in wintertime (11 pm in summertime) to 6 am. Asylum seekers are

254 Arts. 35 and 51, LATP.

255 The migrants and asylum seekers in the Divljana RTC were moved to the Preševo RTC and Bogovađa AC when the Divljana facility was closed for renovation.

256 More on CRM's website. BCHR's lawyers saw for themselves that no children were living in this AC during their September and October field visits to the Sjenica AC.

257 *Official Gazette of the RS*, No. 107/12–4.

allowed to spend a maximum of 72 hours outside their AC. If they do not return within that period, the CRM deletes their names from the list of AC residents, which affects reviews of their applications. Namely, when the AC management forwards the information on the deletion of a name from the list of AC residents, the Asylum Office issues a ruling discontinuing the asylum procedure, unless the asylum seeker promptly notifies it of their new address.²⁵⁸

In addition to accommodation in ACs, asylum seekers are entitled to reside in private lodgings provided they can afford the rent. Even in such cases, they are under the obligation to first report to the AC specified in their registration certificates, where they can submit a written request to the Asylum Office to approve that they live in private lodgings.²⁵⁹ In practice, asylum seekers are entitled to file such requests with the Asylum Office only once they have applied for asylum;²⁶⁰ thereupon, the Asylum Office issues them rulings on their requests.

The following section of the Report provides brief descriptions of the situation of asylum seekers in each AC. The BCHR legal team focused on the ACs since the vast majority of foreigners who genuinely wish to apply for asylum in Serbia reside in them and since the Asylum Office conducts the asylum procedure in them. The overview of the situation of asylum seekers and living conditions in ACs is based on BCHR's perusal of CRM's and UNHCR's reports and its legal team's observations during its field visits, as well as information obtained from the AC residents during the reporting period.

a) Banja Koviljača Asylum Centre

The Banja Koviljača AC is 151 km away from Belgrade. The closest public services, primary school and police station are around one kilometre away from the AC. The AC is located in an urban setting, near the city of Loznica. This was the first asylum centre that opened in Serbia, back in 2008. The Banja Koviljača AC was closed for renovation on 28 April 2021 and did not reopen by the end of the reporting period.

This AC had the capacity to accommodate 120 residents before it closed. It was designated for the accommodation of both single asylum seekers and larger asylum-seeking families.²⁶¹ The residents of the Banja Koviljača AC did not complain to BCHR's team about the separation of families on admission or about their accommodation when it visited this facility before it closed down.

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

259 Art. 58(1(2)) of the LATP obligates asylum seekers to notify the Asylum Office of any change of address of their private lodgings.

260 In specific, particularly sensitive cases, the Asylum Office may approve residence in private lodgings before the foreigners applies for asylum.

261 See CRM's website: <https://bit.ly/3i04DHT>.

This AC was not overcrowded while it was active during the reporting period. The AC had a TV room, a cafeteria and a children's corner where various creative activities and workshops were regularly organised. The residents were provided with three meals a day meeting their religious and health-related dietary requirements. BCHR's general impression was that the living conditions in the Banja Koviljača AC were satisfactory.

According to information the BCHR collected during its field visits, the requisite health care was available in the Banja Koviljača AC from 8 am to 2 pm.²⁶² The asylum seekers in this AC were looked after by doctors engaged via the Loznica Out-Patient Health Clinic. Representatives of some international and civil sector organisations visited the Banja Koviljača AC before it closed and implemented a variety of activities, such as extension of legal aid, interpretation services, psycho-social counselling and a number of educational workshops. They included the BCHR, Psychosocial Innovation Network (PIN), Crisis Response and Policy Centre (CRPC), Danish Refugee Council (DRC), Humanitarian Centre for Integration and Tolerance (HCIT), Group 484, Atina, International Organisation for Migration (IOM) and UNHCR.

The AC did not have its own interpreters; interpreters usually accompanied the NGOs implementing activities in it. In BCHR's experience, the Banja Koviljača AC did not have a separate room in which the asylum seekers could meet with their legal aid providers. If the TV room or the classroom were unavailable, legal aid providers extended their advice in the hall or outside, which was problematic in terms of protecting the asylum seekers' privacy.

An Asylum Office official was deployed to the AC while it was active, issuing IDs to asylum seekers and receiving their asylum applications. The staff of the Asylum Office in Belgrade visited the AC to interview the asylum seekers.²⁶³ In 2021, Asylum Office staff on two occasions implemented asylum-related actions concerning asylum seekers represented by BCHR's lawyers.

b) Bogovađa Asylum Centre

The Bogovađa AC, established in June 2011 in the former Red Cross Children's Resort, can take in 200 people. Its three-hectare grounds have a lot of green areas and are surrounded by a forest. Since the AC is not located in a settlement, its residents have difficulty accessing the services they need and are isolated from the local community.

262 On file with the BCHR.

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

The Bogovađa AC was designated for the accommodation of unaccompanied and separated children during the reporting period.²⁶⁴ They had access to all information about the asylum procedure in the RS and about legal aid extended by civil society organisations that was tailored to their age.²⁶⁵ The AC notified the guardianship authority of all new arrivals and the latter urgently appointed their temporary guardians.

However, a substantial number of adult foreigners were transferred to the Bogovađa AC from the Divljana RTC before the latter closed on 21 August 2021. During its visits to the AC, BCHR's legal team saw for itself that the children were accommodated separately from the adults. Notwithstanding, the BCHR is of the opinion that unaccompanied children should be accommodated in separate facilities tailored to their needs to ensure that they are safe and that the best interests of the child are complied with.²⁶⁶

The residents of this AC share rooms, bathrooms and toilets. The AC has a TV room. The meals are served regularly, three times a day, in the cafeteria. None of the residents BCHR's team spoke to complained about their quality. They did, however, continued complaining about the poor Internet signal in the AC, impeding their communication with the outside world. Many residents of the Bogovađa AC also complained about bedbugs.

The Bogovađa AC is not fenced. It has video surveillance and security guards. The AC comprises several buildings; one houses offices used by the management, the doctor, the Asylum Office staff and Red Cross employees. Asylum seekers are accommodated in the largest building. Humanitarian organisations, such as Caritas, implement their activities in a separate building. The AC has a playground in the yard.

All children living in the Bogovađa AC have access to education. Twenty-four children were enrolled in the local school at the end of the reporting period, 11 of them in the 2020/2021 school-year and another 13 in the 2021/2022 school-year.²⁶⁷ The AC management told BCHR's lawyers that some children were not enrolled because they refused to go to school, mostly because of the language barrier and because they did not plan on staying in the RS long.

Lack of access to health care in the AC became a problem in 2021, when the GP quit and the nurse went on temporary sick leave. The Lajkovac Out-Patient Health Clinic staff visited the AC. The situation did not improve by the end of the reporting period.

²⁶⁴ Pursuant to an informal CRM and UNHCR decision.

²⁶⁵ CRM's Reply No. 019-4483/2-2021 of 7 December 2021.

²⁶⁶ More in *Right to Asylum, Periodic Report for January-March 2020*, p. 29.

²⁶⁷ *Ibid.*

Various workshops for children and youth and language lessons were held in the Bogovađa AC during 2021. Representatives of the following organisations visited and implemented activities in this AC: the BCHR, Centre for Research and Social Development (IDEAS), Caritas, CRPC, Group 484, ADRA, IOM and UNHCR. CRPC organised Serbian language lessons and painting workshops, the Red Cross familiarised the residents with the anti-trafficking programme, while Group 484 extended them psychosocial support.²⁶⁸

Asylum seekers have access to legal aid provided by civil society organisations. During their regular monthly visits, BCHR's lawyers were accompanied by interpreters to facilitate legal counselling. They talked in confidence to the interested asylum seekers in a separate room, sometimes outdoors, weather permitting. To the best of BCHR's knowledge, Asylum Office did not visit the Bogovađa AC at all in 2021 to perform any asylum-related actions there.²⁶⁹

c) Sjenica Asylum Centre

The Sjenica AC is located in the management building of the Vesna plant, around 250 km away from Belgrade. It was opened in March 2017. The distance between this AC and Belgrade and the underdeveloped road infrastructure pose particular difficulties for civil society organisations implementing various activities for asylum seekers in this facility.

The Sjenica AC can accommodate up to 400 people.²⁷⁰ Only 16 people were living in it at the time the BCHR visited it last, in December. The AC's occupancy rate was way below its capacity throughout the year.

A major change occurred in the Sjenica AC in 2021. Namely, unaccompanied and separated children were no longer referred to this Centre. According to the latest information BCHR's legal team had, all the AC's residents were adult men.²⁷¹

Access to the facility and its yard are well-maintained. The building comprises rooms shared by the asylum seekers, a cafeteria and a TV room. The asylum seekers are served three meals a day meeting their religious and health-related dietary requirements. Asylum seekers represented by BCHR's lawyers did not have any complaints about their food or accommodation.

268 Information obtained from the CRM management.

269 The Asylum Office should change its practice given that the Bogovađa AC accommodates asylum seekers. On the other hand, according to the information the BCHR collected during its field visits, the residents of this AC are generally not interested in applying for asylum in the RS.

270 Information retrieved from CRM's website, available at: <https://bitly.co/ArLa>.

271 Specifically, foreigners who have been or are still treated for their physical injuries. The AC management said that the residents claimed that they had been injured when they tried to cross the border, usually the one with Hungary.

A GP was on duty in the AC every workday, from 8 am to 2 pm. The AC organised the residents' transfer to the out-patient health clinic or another health centre if necessary. The BCHR was, for instance, notified that one of its clients had been transferred to the Užice Health Centre because of his health problems. All residents suspected or confirmed to be infected with COVID-19 were placed in the isolation room. The entire AC was disinfected once a week.

Various civil society and international organisations conducted activities in the Sjenica AC in 2021 (extended legal aid, organised language and PC literacy courses, et al). They included: the BCHR, DRC, IDEAS, PIN, Sigma plus, the Refugees Foundation and UNHCR.²⁷² Representatives of these organisations visited the Sjenica AC whenever the epidemiological situation permitted. The AC management placed a separate room at the disposal of BCHR's lawyers to extend legal aid to the asylum seekers, thus ensuring the confidentiality of all their conversations. The Sjenica AC does not have full-time interpreters; rather, interpretation services are extended by interpreters accompanying NGOs visiting the AC.

No Asylum Office staff member is present in the Sjenica AC on workdays. Asylum seekers may submit their asylum applications in this AC in principle, albeit only in writing, given that, to the best of BCHR's knowledge, the Asylum Office staff again failed to visit, receive asylum applications or hold oral hearings in this AC in 2021.²⁷³

d) Tutin Asylum Centre

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

The Tutin AC can take in up to 280 people. It was not full at the end of the reporting period.²⁷⁴ Single asylum seekers shared rooms, while families were usually accommodated in rooms of their own by the AC management. The residents shared the toilets and bathrooms. The Tutin AC is a modern and clean facility. It has a TV room, a cafeteria and a playground, as well as disability-friendly areas.²⁷⁵

272 Information obtained during an interview with the Sjenica AC management.

273 To the best of BCHR's knowledge, the Asylum Office has not implemented any official actions in the Sjenica AC for over three years.

274 Information retrieved from CRM's website, available at: <https://bityl.co/ArLm>.

275 However, people with disabilities could not access the first floor for technical reasons and could move only on the ground floor.

Asylum seekers accommodated in the new AC building were provided with three meals a day; the management took particular care to meet the residents' religious dietary requirements. BCHR's clients did not complain either about the food or the accommodation. The entire AC was disinfected every week.²⁷⁶ During their visits, BCHR's lawyers noted that hygiene in the AC was well-maintained.

The old facility of the Tutin AC, located in the Dalas factory's management building, was still operational during the reporting period. During its regular visit, BCHR's legal team noted that hygiene and accommodation conditions in this facility were poor. Asylum seekers housed in this building told BCHR's team that living in it had its advantages, because it was in the city of Tutin.

Health professionals were on duty in the AC every workday from 9 am to 3 pm.²⁷⁷ All new arrivals underwent check-ups and were accommodated in the isolation rooms for a fortnight. If necessary, they were referred to other medical institutions for treatment. Those with coronavirus symptoms were tested.²⁷⁸

Lack of interpreters for languages spoken by most residents on a daily basis has obstructed communication between them and the AC management. Interpreters were present in the AC and available to the asylum seekers only when they accompanied civil society organisations implementing activities in this AC.

NGOs extended legal aid and psychosocial support, held Serbian language lessons and implemented other activities during their regular visits to the AC. In addition to the BCHR, activities in the AC were conducted by Sigma Plus, PIN, IOM and UNHCR. The AC management provided the legal aid providers with a room where they could talk with the asylum seekers in confidence, and even let them use its own offices if other adequate rooms were unavailable.

The Asylum Office did not perform any official duties in the Tutin AC in 2021, wherefore it may be concluded that, like the residents of the Sjenica AC, the foreigners living in it did not have effective access to the asylum procedure. This practice should change since protracted access to the procedure may discourage individuals in need of international protection from seeking asylum in the RS.

e) Krnjača Asylum Centre

The Krnjača AC is around four kilometres away from Belgrade. It is located within the complex of the construction company PIM Ivan Milutinović. Buses going to downtown Belgrade and running every 20 minutes stop at a station

276 Information obtained from the Tutin AC management during an interview in June 2020. On file with the BCHR.

277 Information obtained from the Tutin AC management during an interview in June 2020. On file with the BCHR.

278 CRM's Reply No. 019-4483/2-2021 of 7 December 2021.

close to the AC. Asylum seekers living in this AC are more motivated to seek asylum in Serbia since they have greater employment and integration opportunities due to the proximity of Belgrade.

The AC comprises 16 prefab barracks with 240 rooms that can accommodate up to 1,000 asylum seekers.²⁷⁹ Only a third of its capacity was filled at the time this Report was drawn up.²⁸⁰ This AC was not overcrowded at any point in time in 2021. However, when the Banja Koviljača AC was closed for reconstruction, a large number of its residents were moved to the Krnjača AC, which resulted in problems in organising the space and preparing enough meals.²⁸¹

The AC has a TV room and a cafeteria, in which the meals are served three times a day; school-children are provided with snacks as well. Asylum seekers share rooms in the barracks. One barracks is designated for unaccompanied children. The family unity principle is complied with and families are accommodated in separate barracks. Asylum seekers BCHR's team talked to during the reporting period were generally satisfied with the living conditions in this AC; however, several asylum-seeking women complained about the lack of safety and privacy in some barracks.²⁸²

Two GPs work in shifts, from 8 am to 7 pm on workdays.²⁸³ If the asylum seekers are in need of a specialist examination, the GPs refer them to a health institution in Belgrade. Asylum seekers displaying COVID-19 symptoms are placed in the barracks serving as quarantine.

BCHR's legal team paid both regular and *ad hoc* visits to this AC during 2021 and extended legal aid to its residents. Like in the past, BCHR's lawyers were provided with adequate conditions for confidential talks with their clients, in rooms designated for use by CSOs; the AC management went out of its way to accommodate them.

Representatives of other CSOs and international organisations also visited the AC in Krnjača, providing organised assistance in specific areas (legal aid, psychological counselling, interpretation services, and educational workshops). The following organisations implemented their activities in this AC, in addition to the BCHR: APC, Caritas, CRPC, DRC, PIN, Group 484, ADRA, Atina, IOM, UNHCR, et al.

279 Information retrieved from CRM's website, available at: <https://bit.ly.co/ArLs>.

280 *Ibid.*

281 Information obtained during the regular visit to the Krnjača AC in May 2021.

282 They said that they were uncomfortable and feared intrusion by some AC residents because rooms in some barracks could not be locked.

283 Health care services in the AC are provided in a barracks adapted for that purpose.

Most CSO representatives visiting the AC were accompanied by interpreters for the asylum seekers' native languages. A Persian and Urdu interpreter engaged by the IOM was present on a daily basis at the AC.²⁸⁴ In addition, interpreters engaged by the CRPC held cultural mediation workshops during the year in this centre to help the asylum seekers learn the language and integrate in Serbian society.

Children living in the Krnjača AC have access to primary and secondary education;²⁸⁵ 123 of them attended primary school in the 2021/2022 school-year.²⁸⁶ Not all children started school by the end of the year although they were formally enrolled, mostly because of communication problems or lack of motivation.²⁸⁷

An MOI officer deployed in the Krnjača AC registered foreigners who expressed the intention to seek asylum in the RS and issued them registration certificates. The Krnjača AC is near the Asylum Office's headquarters in Belgrade, wherefore its staff conduct official asylum-related duties in this AC much more often than in other ACs.

4.1.3. New Asylum Centres

a) Obrenovac AC

In January 2017, the CRM was granted use of the Obrenovac army barracks "Bora Marković" to expand the AC and RTC capacities. Other facilities were subsequently renovated to provide migrants with adequate accommodation. This AC could take in 650 residents at the time this Report was prepared.²⁸⁸

As noted above, the RS Government adopted a decision redesignating the Obrenovac RTC as an AC on 16 June 2021. The Asylum Office did not perform any official duties in this AC by the end of the reporting period. Its failure to do so was justified only if none of its residents were interested in seeking asylum since the RTC was transformed into an AC. On the other hand, the CRM organised transportation of foreigners represented by BCHR's lawyers to the Krnjača AC to apply for asylum. According to information obtained from the CRM in October, it remained unknown when the Asylum Office would begin performing its duties in the AC.²⁸⁹

284 Information BCHR's team obtained during its field visits.

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

286 CRM's Reply No. 019-4483/2-2021 of 7 December 2021.

287 Information obtained during BCHR's regular visit to the Krnjača AC on 7 December 2021.

288 See CRM's website: <https://bityl.co/ArLv>.

289 A member of the AC management told BCHR's lawyer visiting the AC in October 2021 that the management needed to undergo "training" because the facility has been redesignated. Information on file with the BCHR.

b) Vranje AC

As noted above, the RS Government in June adopted a Decision redesignating the Obrenovac and Vranje RTCs as ACs. Although months have passed since, no asylum seekers were accommodated in the Vranje AC at the time this report was completed, both according to information available to the CRM and to the best of BCHR's knowledge.

The BCHR legal team paid its last visit to the Vranje facility on 4 June 2021. The CRM management then notified it that the RTC would be renovated and that its 60 residents would be transferred to other ACs and RTCs.

4.1.4. Conclusion and Recommendations

Like in the past, asylum seekers were accommodated both in ACs and RTCs in 2021. Given that the Asylum Office does not perform official duties in RTCs, the MOI should change its practice of referring asylum seekers to RTCs, since the ACs had room to accommodate them in 2021. The problem still arises from the fact that foreigners who expressed the intention to seek asylum are not clearly separated from those who have not,²⁹⁰ which has substantially impinged on access to asylum of those who genuinely wish to seek asylum. Despite the fact that asylum seekers are entitled to apply for asylum in writing, their transfer from RTCs to ACs was still prolonged in some cases in practice. The MOI should thus start referring foreigners to ACs as soon as they register or ensure that the Asylum Office performs its official duties also in the RTCs.

Given that the living conditions in some RTCs are worse than in the ACs, the CRM should improve the conditions in the latter, especially in terms of hygiene and health care. Conditions in the ACs should be improved further as well, in order to also accommodate the needs of persons with disabilities, women with children and unaccompanied children. Furthermore, each AC and RTC should set aside a room in which providers of legal aid and other support can have fully confidential conversations with the residents.

Asylum seekers in all ACs have been provided with basic material reception conditions (a place to live and sleep, food, health care, et al.). However, the Asylum Office has for years failed to implement the asylum procedure in ACs far from Belgrade, or even visit some of them (the Sjenica and Tutin ACs). This brings into question the efficiency of access to the asylum procedure of foreigners living in these establishments

²⁹⁰ The MOI should nevertheless clearly separate foreigners who genuinely want asylum from those who do not; however, the state must provide both categories with minimum living conditions respecting their dignity. More in *Right to Asylum 2020*, p. 92.

The presence of interpreters in the ACs was mostly made possible by international and non-government organisations implementing activities in these centres. The CRM should ensure full-time presence of interpreters in all ACs, for languages spoken by their residents.

Asylum seekers continued benefiting regularly from legal aid and many other activities, such as language courses, psychosocial assistance workshops, workshops for children, etc. thanks to the CSOs that implemented them and their cooperation with the CRM. Given that migrants and asylum seekers fled their homes and faced numerous difficulties, police abuse and other challenges and problems *en route* to the RS, these activities aim to ease the situation they unwillingly found themselves in and are actually the first steps towards their successful integration in Serbia's society.

5. ASYLUM SEEKERS WITH SPECIFIC NEEDS

Under the LATP, the specific circumstances of individuals requiring special procedural or reception guarantees, including asylum seekers with specific needs, shall be taken into account during the asylum procedure. They include, inter alia, unaccompanied children, single parents and their underage children and victims of trafficking in human beings, as well as asylum seekers survivors of torture, rape or other grave forms of psychological, physical or sexual violence. Procedural and reception guarantees shall serve to provide appropriate assistance to asylum seekers, who, due to their personal circumstances, are unable to benefit from the rights and obligations under the LATP without such assistance.

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

Identification in the field, adequate access and mapping of individual needs were frequently difficult, given the specific situation of particularly vulnerable asylum seekers, their traumatic experiences and cultural barriers. To the best of BCHR's knowledge, systemic support and protection were unavailable to these groups of asylum seekers in 2021 as well; they boiled down to assistance provided by NGOs, wherefore their status did not improve substantially over the previous period. Furthermore, challenges in their prompt identification and providing them with adequate accommodation persisted.

The ensuing sections will focus on the situation of unaccompanied and separated children and SGBV survivors. The analysis is based on the data and information BCHR's team collected in 2021 whilst extending legal aid to and representing these groups with specific needs. The rest of the information was collected during BCHR team's work in the field and in communication with representatives of specific civil society organisations or the data it received in response to its requests for access to information of public importance. This chapter also analyses some of the asylum authorities' noteworthy decisions upholding or rejecting asylum applications filed by unaccompanied children and SGBV survivors.

5.1. Situation of Unaccompanied and Separated Children

Serbia has ratified and directly applies²⁹¹ the UN Convention on the Rights of the Child (CRC),²⁹² which is the most important international instrument protecting the rights of the child. The CRC requires of all Serbian authorities to respect and ensure the rights of every child within Serbia's territory and under its jurisdiction, without discrimination on any grounds.²⁹³ Serbia is also under the obligation to protect the best interests of the child and provide the same volume and scope of protection to migrant and refugee children enjoyed by other children living in Serbia. The principle of the best interests of the child is also guaranteed by the LATP²⁹⁴, the Family Law²⁹⁵ and the Social Protection Law (SPL).²⁹⁶

The situation of unaccompanied and separated children was still unfavourable during 2021 given the ongoing COVID-19 pandemic. Furthermore, the years-long various challenges in terms of the identification and effective protection of this category of refugees and asylum seekers were not eliminated during the reporting period, as the following section will describe.

5.1.1. Guardianship System

Under the Family Law,²⁹⁷ all unaccompanied children are entitled to a guardian, even if they are foreign nationals or stateless.²⁹⁸ Guardianship is within the remit of the Social Work Centres (SWCs). SWCs are established by local self-governments²⁹⁹ and are mostly funded from the national budget,³⁰⁰ while the rest of the funds are provided by the local self-governments.³⁰¹

One of the greatest challenges in extending protection to unaccompanied and separated asylum seeking and migrant children arises from the fact that guardianship authorities are unable to provide effective protection to each child.

291 Art. 16(2), Serbian Constitution.

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

293 Art. 2, CRC.

294 Art. 10, LATP.

295 Art. 6, Family Law.

296 Art. 26, SPL.

297 *Official Gazette of the RS*, Nos. 18/05, 72/11 and 6/15.

298 Art. 132, Family Law.

299 Art. 10, SPL.

300 Art. 206, SPL.

301 Art. 209, SPL.

The MLEVSI identified the main reasons why they have failed to extend such protection promptly – lack of qualified staff, huge caseloads, lack of vehicles and logistic capacity.³⁰² The Protector of Citizens issued a recommendation to the MLEVSI back in 2018, after he noted the SWCs' lack of professional staff.³⁰³

According to information the BCHR obtained from SWCs³⁰⁴ by the time this Report was completed, most unaccompanied children were appointed temporary guardians in the Lajkovac Municipality, in which the Bogovađa AC, designated for the accommodation of unaccompanied and separated migrant and asylum-seeking children, is located.³⁰⁵ Two members of staff performed the duties of their temporary guardians, while one staff member performed the duties of caseworker. This means that each guardian looked after around 210 children, while the caseworker was charged with all 425 children. Under the Minimum Standards for Child Protection in Humanitarian Action, one caseworker should not be responsible for more than 25 children.³⁰⁶ After visiting the Bogovađa AC in late 2020, the National Preventive Team (NPM) of the Protector of Citizens issued a report in which it stated that the number of guardians did not suffice to provide all the AC residents with the protection they needed, given the role and importance of social workers and the fact that guardians had to be present every time their wards had any contact with external institutions.³⁰⁷ Notwithstanding, the NPM commended the social workers for knowing each resident well and for knowing so much about them, as well as for their high motivation for performing their everyday activities.³⁰⁸

In its response to the NPM report,³⁰⁹ the MLEVSI said that it and the SWC “Solidarity” had neither been consulted by the CRM, nor notified beforehand that the Bogovađa AC would be designated for the accommodation of migrant children. At the time the authorities started referring the children to this AC³¹⁰,

302 See the MLEVSI's Study: *Human and Social Resource Management in Social Work Centres in the Republic of Serbia* (Belgrade, 16 July 2018), p. 13, available in Serbian at: <https://bit.ly/2QJHnIX>.

303 Recommendation 13–1–1657/18 of 30 November 2018.

304 In response to BCHR's requests for access to information of public importance.

305 Temporary guardians were appointed for 425 unaccompanied children in the 1 January–15 October 2021 period. Reply to BCHR's request for access to information of public importance No. 356 of 29 October 2021.

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

307 Report on Visits to Institutions Accommodating Unaccompanied Foreign Children, No. 415–53/2021 of 29 April 2021, available in Serbian at: <https://bit.ly.co/AlQN>.

308 *Ibid.*

309 MLEVSI's reply to NPM's Report No. 551-00–00271/2021–19 of 30 July 2021, available in Serbian at: <https://bit.ly.co/AlQO>.

310 The CRM started accommodating children in the Bogovađa AC on 4 January 2020.

the SWC “Solidarity” had only two social workers in the Lajkovac Department, both of them nearing retirement and untrained in working with asylum seeking and migrant children. A field social worker was soon hired and the Ministry subsequently engaged two professional guardians.³¹¹ The number of unaccompanied children in the Bogovada AC dropped substantially in the last quarter of 2021, wherefore the authorities again began referring families to it.³¹² The MLEVSI engaged a total of nine professional guardians during the year, who covered all areas with institutions accommodating unaccompanied and separated children.³¹³

The Sjenica AC was also designated for the accommodation of unaccompanied and separated migrant children, as of late 2018.³¹⁴ The situation in its was better in terms of guardianship protection. In that AC, one officer performed the duties of temporary guardian and one officer the duties of caseworker in 2021. Eighteen separated and unaccompanied children living in the AC had a temporary guardian from January to October 2021, which indicates that the Sjenica SWC had the capacity to look after the children living in the local AC.

A substantial number of unaccompanied children lived in the Belgrade city limits as well. Some of them were accommodated in the Krnjača AC, whereas others were living in residential care institutions. The Belgrade SWC reported that unaccompanied and separated children had “a sufficient number” of temporary guardians at their disposal.³¹⁵

5.1.1.1. Appointment of Guardians of Unaccompanied and Separated Children and Registration-Related Challenges

The decisions on the appointment of guardians of unaccompanied and separated children are taken by the relevant SWCs. Serbian law provides for permanent and temporary guardianship. The scope of rights and duties of temporary guardians is usually much narrower than of permanent guardians. In most cases, the former are charged with ensuring that the children’s basic needs are met, that they are safe and have access to health care. The Family Law lays down that only

311 The two professional guardians, engaged within a project, have been working in the SWC since February 2021.

312 Information BCHR lawyers obtained from CRM’s representative in the Bogovada AC during their field visit. The authorities referred families to the Bogovada AC before as well.

313 MLEVSI’s reply to NPM’s Report No. 551-00-00271/2021-19 of 30 July 2021, available in Serbian at: <https://bit.ly.co/AlQO>.

314 Minutes of the meeting of the working group for the protection of children of November 2018.

315 In the 1 January-15 October 2021 period, 15 unaccompanied children were appointed guardians and nine officers performed the duties of temporary guardian. Reply to request for access to information of public importance No. 550-406 of 10 November 2021.

a temporary guardian may be appointed for unaccompanied children who are foreign nationals.³¹⁶ The Sjenica SWC's problematic practice of placing unaccompanied and separated children living the Sjenica AC under collective guardianship did not recur in 2021.³¹⁷ This negative practice, to which the BCHR alerted in its prior reports,³¹⁸ has commendably been dispensed with.

SWCs shall initiate the placement of a child under guardianship *ex officio* as soon as there are reasons for such placement.³¹⁹ The initiative to place a child under guardianship may also be submitted by other institutions, such as the police, courts, CSOs and members of the public.³²⁰ The guardian appointment procedure is urgent in character.³²¹ According to the instructions of the relevant MLEVSI, the social workers in the field are to notify the relevant guardianship authority as soon as they receive information or themselves find out about an unaccompanied child.³²² The identification of the children needs to be fast and efficient for the procedure to be conducted as soon as possible. However, as the BCHR has continuously warned, the problem of identifying unaccompanied children has persisted for a long time now.³²³

The existence of a sufficient number of field social workers and the establishment of an adequate system for registering each child that enters the RS are prerequisite for the adequate identification of unaccompanied and separated children in the RS.³²⁴ The RS still lacks a nationwide register of unaccompanied and separated children present in the RS. For instance, the MOI only keeps records of foreigners whose intention to seek asylum in the RS has been registered, the CRM keeps only records of AC and RTC residents, while the MLEVSI keeps records of the individuals it has extended services to.

For instance, Asylum Office statistics show that registration certificates were issued to 33 unaccompanied and separated children from 1 January to end October 2021, while many more newly-arrived were observed on the field in the

316 Art.132, Family Law.

317 In the 1 January-15 October 2021 period. As it stated in its reply to BCHR's request for access to information of public importance No. 1845/2021 of 1 November 2021, the Sjenica SWC issued a ruling appointing a temporary guardian for 18 unaccompanied children.

318 More on this illegal practice in the Sjenica AC in *Right to Asylum 2019*, pp. 103–104.

319 Art. 329, Family Law.

320 *Ibid.*

321 Art. 332, Family Law.

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

323 See the 2019 and 2020 *Right to Asylum* reports.

324 *Concluding observations on the combined second and third periodic reports of Serbia*, CRC Committee, UN. Doc. CRC/C/SRB/CO/2–3, (Geneva, 7 March 2017), para. 57(a).

same period.³²⁵ The discrepancy in numbers show that many unaccompanied children continue perceiving Serbia as a transit country, wherefore a lot of them do not register at all and, consequently, do not have access to any form of protection.

Under the LATP, children must be appointed temporary guardians as soon as it is determined that they are not accompanied by their parents or guardians, before they apply for asylum at the latest.³²⁶ Furthermore, the Rulebook on Registration³²⁷ lays down that unaccompanied children shall be registered in the presence of their temporary guardians. However, registration of unaccompanied children in the absence of their guardians still occurred in 2021, usually because they had not been appointed a guardian yet.³²⁸

Another problem persisting in practice arises from the lack of an adequate way for reliably determining the asylum seekers' age if they do not have any personal documents. Therefore, in the absence of a procedure, the relevant MOI officers usually write down the age the foreigners give during registration. The BCHR has registered a number of cases where adult asylum seekers said that they were under age, assuming that they would be provided with better accommodation and opportunities to exercise their fundamental rights. Furthermore, MOI officers often wrote down arbitrary dates of birth of the asylum seekers during their registration;³²⁹ the data were subsequently changed if the correct personal data were obtained during the procedure.³³⁰

5.1.1.2. Conclusion and Recommendations

It is imperative that the RS establish a nationwide identification system and official records of the number of children entering and staying in the RS if the state is to protect all children in its territory and perform actions in their best interests. The authorities must take account of the best interests also of unaccompanied children who do not express the intention to seek asylum in the RS. It could provide them with the chance to obtain temporary residence on human-

325 Conclusion made by BCHR staff during field work.

326 Art. 12(1), LATP. Under paragraph 3 of this Article, guardians are under the duty to provide to their wards all the requisite information about the asylum procedure and their rights and obligations.

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

328 For instance, one BCHR underage client was issued a registration certificate on 10 October 2021, in the absence of his guardian; he received the ruling on the appointment of his guardian after the 30-day statutory deadline had already expired.

329 The officers usually entered 1 January of a specific year when the asylum seekers were unable to give their exact date of birth.

330 2003 was entered as the year of birth in the registration certificate of one BCHR client from Afghanistan; when his birth certificate arrived from his country of origin, he proved that he was born in 2005, i.e. that he was still under age.

itarian grounds or on other grounds provided by the FL to ensure that they can benefit from various forms of protection in the RS.

The number of people performing the duties of the children's guardians needs to be increased to ensure that their capacity to recognise and adequately assess the needs of each child is not undermined by their heavy caseloads. The MLEVSI should develop long-term plans for engaging temporary guardians and caseworkers working directly with asylum seeking and migrant children. The prevailing practice – their engagement under various projects – is unsustainable, especially in the context of providing the children with effective protection.

Respect for the best interests of the child principle must be the priority of the relevant authorities in all stages of the asylum procedure, without exception. In that sense, the MLEVSI and the SWC are under the obligation to promptly appoint temporary guardians for all unaccompanied and separated children, to ensure that they are afforded effective protection and support while they are in the RS. Given the particular relevance of guardianship protection during the registration procedure, MOI officers should make sure that they provide the foreigners they suspect are unaccompanied or separated children with adequate protection, in coordination with the relevant SWCs.

5.1.2. Accommodation of Unaccompanied and Separated Children

The Family Law and the Social Protection Law (SPL) provide modalities of alternative care of children temporarily or permanently deprived of their family environment.³³¹ As already noted, the RS is under the obligation to provide adequate protection to all children, regardless of their legal status, i.e. to unaccompanied and separated asylum seeking and migrant children as well.

Alternative care shall be provided to children temporarily or permanently deprived of their family environment in accordance with the law if that is in their best interest.³³² States Parties shall assure to children capable of forming their own views the right to express those views freely in all matters concerning them, including on alternative care, and give the views of the children due weight in accordance with their age and maturity.³³³ Under the SPL³³⁴ children without parental care may be accommodated with their relatives or foster families, in homes, shelters or other facilities in accordance with their best interests and the law. Unaccompanied children and victims of trafficking in human beings are recognised as vulnerable groups in this law.³³⁵

331 Art. 40, SPL.

332 Art. 332(2), Family Law.

333 Art. 12, CRC.

334 Art. 47, SPL (*Official Gazette of the RS*, No. 24/11).

335 Art. 41(2), SPL.

The MLEVSI's Instructions lay down detailed criteria guardianship authorities are to apply when deciding where to accommodate unaccompanied and separated children.³³⁶ Under these Instructions, they shall be accommodated in ACs only if they are over 16 years of age and their guardians applied for asylum on their behalf. The ACs must fulfil the requirements for the accommodation of children and the fulfilment of all their needs, and the guardianship authorities have to conclude that placement in them is in the children's best interests.³³⁷ Notwithstanding, unaccompanied children under 16 have in practice also been referred to ACs and to facilities in which adult asylum seekers are residing.³³⁸

Unaccompanied and separated children, especially those under 14, may be placed with foster families if they require such protection.³³⁹ Residential care facilities and foster families must provide the unaccompanied children with safety, health care, clothes, basic sanitary conditions and adequate nutrition.³⁴⁰ In addition, the children must be provided with recreational activities, care and education in accordance with the relevant regulations.³⁴¹

Although probably the best solution, placement of unaccompanied and separated children in foster care was the option least resorted to in practice. In 2021, only one child, a 14-year-old boy from Pakistan, was placed in a foster family.³⁴² Specialised foster care, as a form of alternative care of unaccompanied and separated children, is still undeveloped in the RS, inter alia, due to the lack of foster families trained in caring for such children.³⁴³

Unaccompanied and separated children lived in several ACs and residential care institutions. Their situation and the challenges accompanying their accommodation in these facilities are described below.

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

337 *Ibid.*

338 The youngest unaccompanied child that stayed in the Bogovada AC was only 10 years old. Unaccompanied children between 10 and 12 years old stayed in the Preševo Transit Centre.

339 MLEVSI Instructions for Social Work Centres – *Guardianship Authorities on the accommodation of unaccompanied migrant and refugee children*, para. 3.

340 *Ibid.*

341 *Ibid.*

342 Reply to BCHR's request for access to information of public importance e-mailed on 27 October 2021. The boy from Pakistan was placed with a foster family in Belgrade.

343 There are 23 families in Belgrade trained in caring for unaccompanied foreign children. There is only one such family in the rest of Serbia, in Bačka Palanka. Replies to BCHR's requests for access to information of public importance No. 31144-550-26/2021-1 of 28 October 2021 and e-mail sent on 27 October 2021.

5.1.2.1. Accommodation of Children in Asylum Centres

Pending a final decision on their asylum applications, asylum seekers shall be provided with material reception conditions, specifically accommodation, food, clothes and a cash allowance for their personal needs, in facilities designated for the accommodation of asylum seekers.³⁴⁴ Under the LATP, when deciding on the accommodation of foreigners who expressed the intention to seek asylum, due attention shall be given in particular to their sex and age, their status of a person requiring special procedural and/or reception guarantees, as well as family unity.³⁴⁵ The CRM reported that guardianship authorities are notified without delay of admission of unaccompanied children in ACs; they are under the duty to appoint the children's temporary guardians urgently, while the children are notified of the opportunity to access legal aid free of charge.³⁴⁶

To recall, in early 2020, the CRM decided that unaccompanied and separated children should be referred to and accommodated both in the Sjenica and Bogovađa ACs.³⁴⁷ A number of unaccompanied children also lived in the Krnjača AC during the reporting period.³⁴⁸ The BCHR earlier warned that unaccompanied and separated children should not be referred to the Krnjača AC, despite its advantages.³⁴⁹ Namely, children may be exposed to multiple risks and bad influence in this AC, which accommodates a large number of asylum seekers of various ages, nationalities and other characteristics.³⁵⁰

In April 2021, the Protector of Citizens published the NPM Team's report on its visit to the ACs in Bogovađa and Sjenica to check the living conditions of the unaccompanied and separated refugee children living in these camps. It found that, despite some improvements, more efforts needed to be invested in improving the material conditions in them, especially the Bogovađa AC.³⁵¹ The NPM also recommended to the CRM to take continuous measures to motivate the AC residents to maintain hygiene in their living quarters.³⁵²

344 Art. 50(1), LATP.

345 Art. 50(3), LATP.

346 Extended by civil society organisations, such as the BCHR. CRM's reply to BCHR's request for access to information of public importance No. 019-4483/2-2021 of 7 December 2021.

347 More on this issue and BCHR's view on the accommodation of unaccompanied and separated children in the Bogovađa AC in *Right to Asylum in the Republic of Serbia, Periodic Report for January-June 2020*, BCHR, (Belgrade, 2020), pp. 37-40 available at: <https://bitly.co/ArNA> and *Right to Asylum 2020*, pp. 118-122.

348 For instance, 22 unaccompanied and separated children were living in the Krnjača AC in October 2021.

349 Proximity of Belgrade, and faster and easier access to various services.

350 More in *Right to Asylum 2020*, p. 115.

351 Report on Visits to Institutions Accommodating Unaccompanied Foreign Children, No. 415-53/2021 of 29 April 2021, available in Serbian at: <https://bitly.co/AIQc>.

352 *Ibid.*

A number of activities tailored to children and implemented by representatives of various international and domestic non-government organisations were available in both ACs during the year.³⁵³ The medical technician of the Sjenica Out-Patient Health Clinic was stationed in the AC every day,³⁵⁴ but the residents of the Bogovada AC had difficulties accessing health care during the reporting period. The CRM said that none of the doctors wanted to work in this AC and that its residents were taken to the local Out-Patient Health Clinic if necessary.³⁵⁵

With the CRM's support, both ACs took unaccompanied and separated children who wanted to seek asylum in the RS to the local police stations to register. However, most of the children living in the Bogovada AC were unfortunately not registered, wherefore their residence in the RS was not legalised; consequently, they did not have access to adequate protection.³⁵⁶

The decision not to accommodate exclusively unaccompanied children in the Sjenica AC was taken in the last quarter of 2021.³⁵⁷ No unaccompanied children were living in this AC at the end of the reporting period. In its reply to BCHR's request for access to information of public importance of October, the CRM said that the only AC designated for the accommodation of unaccompanied and separated children was the one in Bogovada. In addition to unaccompanied children, families from Africa were referred to the Bogovada AC in the latter half of 2021.³⁵⁸

5.1.2.2. Accommodation of Children in Residential Care Facilities

Unaccompanied asylum seeking children may exceptionally be accommodated in residential care facilities, in other accommodation facilities or with families.³⁵⁹ In addition to the above-mentioned ACs, unaccompanied and separated children were also accommodated in 2021 in three residential care institutions and two Houses³⁶⁰ managed by CSOs in the RS.³⁶¹ Such children were accom-

353 More in the section Accommodation of Asylum Seekers and Migrants, pp. 68–76.

354 New arrivals must undergo a check-up. The AC has an isolation room.

355 More in the section Accommodation of Asylum Seekers and Migrants, pp. 71–72.

356 Given that their residence is not regulated on other grounds in accordance with the relevant regulations.

357 Information the BCHR obtained from CRM's representatives during its field visits.

358 Information BCHR's legal team obtained during its visits to the Bogovada AC.

359 If they cannot be accommodated in an AC or another facility designated for the accommodation of asylum seekers.

360 Two NGOs, Jesuit Refugee Service and Border Free, fund these houses.

361 Serbia still does not have institutions specialised for providing alternative care to unaccompanied and separated children.

modated in a unit of the Belgrade Home for Children and Youth,³⁶² the Youth Home in Niš and the Jovan Jovanović Zmaj orphanage in Belgrade, as well as the Jesuit Pedro Arrupe Integration House in Belgrade and the House of Rescue in Loznica. A total of 66 unaccompanied children lived in these five institutions in the first half of 2021.³⁶³

Various criteria are taken into consideration during the accommodation of children in residential care facilities: their age and vulnerabilities; whether they have any physical or mental disabilities; how long they have been living in Serbia; whether they attend school, et al. Children are usually referred to residential care facilities at the request of their temporary guardians. Although the Integration House and the House of Rescue are not part of the network of state residential care institutions, their work is overseen by the SWCs with jurisdiction over the territory in which they are located and children are referred to them exclusively based on these SWCs' rulings.³⁶⁴

Unaccompanied children are referred to the Belgrade orphanage Jovan Jovanović Zmaj, which can accommodate 10 residents, pursuant to a request of the Savski venac SWC.³⁶⁵ Children expected to stay longer in the RS are placed in this orphanage. Nine unaccompanied and separated migrant boys lived there in 2021. Six counsellors working in three shifts looked after the children.³⁶⁶ The orphanage has five two-bed rooms and a living room. It also has a common kitchen, a gym and a large balcony used by all the children. After its visit to the orphanage, the NPM commended the staff for facilitating the residents' involvement in various extracurricular activities they liked.³⁶⁷

Between seven and 13 unaccompanied migrant children stayed in the Centre for Accommodation of Foreign Children Unaccompanied by Their Parents or Guardians in Vodovodska Street in Belgrade from January to mid-October 2021.³⁶⁸ They were looked after by six counsellors.³⁶⁹ The Centre can take in 15 children, ten boys and five girls. In addition to six bedrooms, the Centre has a living room, a gym and an IT corner. Extracurricular and educational activi-

362 The Centre for Accommodation of Foreign Children Unaccompanied by Their Parents or Guardians is located in Vodovodska Street in Belgrade.

363 MLEVSI's reply to NPM's Report No. 551-00-00271/2021-19 of 30 July 2021.

364 *Ibid.*

365 The institution's expert team checks whether all admission criteria are fulfilled.

366 Reply to BCHR's request for access to information of public importance No. 5080 of 29 October 2021.

367 For instance, one resident takes guitar lessons, while another has been training in martial arts.

368 Most of whom were boys. Six girls lived in the Centre during this period.

369 Reply to BCHR's request for access to information of public importance of 1 November 2021.

ties are organised by representatives of non-government organisations.³⁷⁰ As opposed to the past, when only children in Belgrade were referred to the Centre, children from across Serbia are now accommodated in the Centre.³⁷¹ The initiation of the guardian appointment procedure suffices for referral of children to this institution.

The number of children living in the Home for Youth in Niš varied during the year, from just three in April to 13 in July. All of them were boys. Six counsellors looked after the children.³⁷² This Home has the capacity take in 15 boys and 15 girls.³⁷³

The Pedro Arrupe Integration House can take in 15 children. Only boys are referred to it because it cannot provide separate accommodation for boys and girls.³⁷⁴ The House has a living room, a dining room, a workshop area and an IT corner that can be used by all the residents; most of the residents share two-bed rooms. Creative, educational and recreational activities are organised for the children. They are looked after by eight professionals – two social workers, a special pedagogue, a cultural mediator, three counsellors and the Integration House Coordinator. The children are mostly referred to from the centre for migrants Miksalište or the Krnjača AC. Their admission is requested by the field social workers, whereupon consultations with the House manager are held. The Integration House team then usually goes to the field and interviews the children. Children in Miksalište are registered and issued certificates referring them to the House. Children in the Krnjača AC are admitted via the Belgrade City SWC, which issues rulings on their accommodation in the House.

The House of Rescue in Loznica opened in 2019. It has a living room, a dining room and a workshop area. There is a house in the yard where the children can spend time and relax. The House of Rescue can take in 15 children; three beds are always kept free for emergencies. The House can take in both boys and girls, who are referred to it by field social workers, mostly from Miksalište. Once the children are escorted by the field social workers to the House, they are appointed a temporary guardian. Unregistered children are taken to the Loznica PS where they are issued registration certificates. The children are notified of the house rules and code of conduct on admission.

370 To the best of BCHR's knowledge, the children are extended psychological support by PIN.

371 The SWCs send admission applications and issue accommodation rulings once they are approved.

372 Reply to BCHR's request for access to information of public importance No. 02-1065/2 of 28 October 2021.

373 The Home's accommodation capacity was increased by 10 places in 2021.

374 An eight-year-old boy was the youngest resident of the House. Children stay in the House 7–8 months on average.

5.1.2.3. Conclusion and Recommendations

The system of care for unaccompanied and separated children still cannot be qualified as adequate and in conformity with international documents ratified by the RS despite continuous efforts invested in its improvement. Given the recent changes in categories of foreigners referred to ACs, the CRM should, in coordination with the MOI and MLEVSI, designate an AC that will accommodate exclusively unaccompanied and separated migrant and asylum-seeking children. They will thus be separated from adult asylum seekers and thus protected from harmful influence or violence. Furthermore, the authorities should ensure a sufficient complement of guardians, counsellors, pedagogues and other professionals specialised in working with children to ensure continuous and adequate cross-sectoral support to this vulnerable category of refugees and migrants.

On the other hand, the Serbian authorities should continue investing in residential care institutions to provide as many unaccompanied and separated children with the opportunity to live in them. However unrealistic expectations that all unaccompanied and separated children are referred to such institutions as soon as they are identified given their limited capacity may be, the authorities should give preference to this kind of accommodation. Residential care institutions, as well as the two Houses run by NGOs are good practice examples and an adequate form of care for unaccompanied and separated children. However, the NGO-run Houses cannot be considered a sustainable solution, wherefore the authorities need to ensure long-term support to the accommodation of such children.

The RS also needs to put in more efforts in developing foster care, as a family- and community-based solution. The state and the relevant institutions need to work more on motivating and empowering future foster families, to ensure that they are prepared to take in unaccompanied and separated migrant and asylum-seeking children, provide them with adequate accommodation and life in dignity in their new community.

5.1.3. Practice of the Relevant Asylum Authorities in Cases of Unaccompanied Children

According to UNHCR'S Guidelines, children may face similar or identical forms of harm as adults.³⁷⁵ The fact that the refugee claimant is a child may be a central factor in the harm inflicted or feared.³⁷⁶

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

376 *Ibid.*, para. 18.

The following four core CRC principles must be complied with: non-discrimination, best interests of the child, child's right to life, survival and development, and the children's right to freely express their views in proceedings concerning them.³⁷⁷ Under the CRC, assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse, sexual harassment, degrading treatment, as well as protection against sexual, economic and other exploitation, forced labour, armed conflict, etc.³⁷⁸

Assessment and determination of the child's best interests are two steps to be followed when required to make a decision.³⁷⁹ 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.³⁸⁰ 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.³⁸¹ No decision regarding a child may be adopted if its outcome impinges on the child's right to life, survival and development.³⁸²

As already noted, the LATP also lays down the principle of the best interests of the child.³⁸³ With a view to properly deciding on the protection of the rights of the child, the relevant authorities should obtain the findings and opinion of the guardianship authority. The authorities' obligation to comply

377 See: Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018*, BCHR, (Belgrade, 2018), pp. 51–57, available at: <https://bit.ly.co/AlQt>.

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

379 In the opinion of the Committee on the Rights of the Child, 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) – if possible a multidisciplinary team. *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, CRC Committee, CRC/C/GC/14, 29 May 2013, para. 47.

380 *Ibid.*, para. 97.

381 *Ibid.*, para. 74.

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

383 Under Art. 10(2) of the LATP, when assessing the best interests of the child, due attention shall be given, inter alia, to the child's well-being, social development and background; the child's protection and safety, especially where there are suspicions that that the child might be a victim of trafficking in human beings, domestic violence or other forms of gender-based violence.

with the opinion is not provided explicitly by the LATP but it is set out in the Family Law.³⁸⁴

Although there has been headway in the work of the relevant asylum authorities over the past few years, the numerous shortcomings the BCHR alerted to persisted in practice.³⁸⁵ Unaccompanied and separated children still waited much too long for the asylum procedure actions or decisions on their applications,³⁸⁶ although the LATP sets out that applications of unaccompanied children shall have priority over those filed by other asylum seekers.³⁸⁷ Furthermore, the principle of the best interests of the child was still not respected in a legal and comprehensive manner in decisions taken in procedures concerning unaccompanied and separated children.

The text below provides an analysis of two decisions rendered in procedures concerning two unaccompanied and separated children, BCHR's clients. One decision was taken by the Asylum Office and the other by the Asylum Commission. The analysis highlights the deficiencies in the work of these two authorities in these procedures.

5.1.3.1. Asylum Office Rejected 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.³⁸⁸ S. had fled Pakistan, his country of habitual residence³⁸⁹ and the risk of persecution on account of the fact that he is a stateless person from Afghanistan.³⁹⁰ Although it ascertained during the procedure that the applicant was a stateless child, the Asylum Office failed to consult the relevant international reports on the situation of stateless children, specifically in Pakistan, the applicant's country of habitual residence.³⁹¹ The Asylum Office should have attached 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.³⁹² Furthermore, S., a stateless child, cannot exercise an adequate and

384 Art. 270, Family Law.

385 More in: *Right to Asylum 2019* and *Right to Asylum 2020*.

386 For instance, the unaccompanied Afghan child, BCHR's client, applied for asylum in February 2021. The oral hearing on his application was not held by the time this Report was completed.

387 Art. 12(9), LATP.

388 Asylum Office Ruling no. 26–2349/19 of 12 January 2021.

389 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.

390 See more in *Right to Asylum, Periodic Report for January – March 2021*, pp. 22–25.

391 For instance: *Pakistan Situation of Afghan Refugees*, EASO (May 2020), available at: <https://bit.ly.co/6roI>.

392 Art. 3, Convention on the Rights of the Child.

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. BCHR's lawyers also alerted to this fact, but the Asylum Office did not take any of these considerations into account.³⁹³

The Asylum Office also acted in contravention of the principle of the best interests of the child,³⁹⁴ particularly in respect of S.'s protection and safety. Namely, during the procedure, S. said that he had been a victim of a group of smugglers in the countries he had transited through where he had not been extended any form of support (legal, medical, psychological, or otherwise), which is particularly problematic given that he is an unaccompanied child in an extremely vulnerable position.³⁹⁵

The Asylum Office did not comment at all the opinion submitted by the relevant Social Work Centre³⁹⁶ 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 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.³⁹⁷ The 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.³⁹⁸

393 The reasoning of the decision did not refer to the submissions on the human rights situation in Afghanistan and Pakistan including facts of relevance to a decision on the case.

394 Art. 10 of the LATP reads as follows: "In assessing the best interest of the child, due attention shall be given to the child's well-being, social development and background; the child's opinion, depending on his/her age and maturity; the principle of family unity; and the protection and safety of the child, especially where there are suspicions that the child might be a victim of trafficking in human beings or domestic violence or other forms of gender-based violence."

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

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

397 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."

398 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

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.³⁹⁹ Furthermore, the UN Convention on the Rights of the Child⁴⁰⁰ 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 in illegal border crossing.⁴⁰¹

Decisions denying stateless persons the right to protection in the RS must be explained in detail, and definitely include guarantees that they will not be at risk of human rights violations in their country of habitual residence. The Asylum Office failed to provide such an explanation, wherefore the BCHR appealed its ruling with the Asylum Commission. The Commission upheld the appeal and remitted the case for reconsideration.⁴⁰² The procedure was pending at the end of the reporting period.

5.1.3.2. Asylum Commission Rejected an Unaccompanied Iraqi Child's Appeal

The Asylum Commission⁴⁰³ also violated the principle of the best interests of the child when it rejected BCHR's appeal of the Asylum Office's ruling⁴⁰⁴ rejecting the asylum application filed by X., an unaccompanied child from Iraq. X., an ethnic Kurd, lived with his family in Erbil, Iraq. He left his country of origin

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.”

399 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 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.

400 Art. 6, Convention on the Rights of the Child.

401 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.

402 More in the section Practices of the Asylum Authorities, Asylum Commission, pp. 53–54.

403 The Asylum Commission rejected BCHR's appeal and confirmed the Asylum Office's negative decision in its ruling No. Až-43/20 of 9 December 2020.

404 X. applied for asylum on 17 April 2018. His application was rejected by the Asylum Office in its ruling No. 26–1946/18 of 9 October 2020.

in fear of persecution because of his imputed political opinion and fearing forced conscription⁴⁰⁵ Afraid that 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.

In its review of the appealed ruling, 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.⁴⁰⁶ The second-instance body thus demonstrated its essential non-comprehension of the principle of the best interests of the child and itself violated the principle by drawing an erroneous conclusion about the Office's assessment of X's best interests. Additionally, 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 LATP⁴⁰⁷ and does not alter the fact that the Asylum Office actually did not act in compliance with the principle of the best interests of the child.⁴⁰⁸ Besides, 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.⁴⁰⁹

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

405 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.

406 Art. 10, LATP.

407 Arts. 11 and 12 LATP.

408 Under Art. 10(2) of the LATP, when assessing the best interests of the minor, due attention shall be given to the child's well-being, social development and background; the child's opinion, depending on his/her age and maturity; the principle of family unity; and the protection and safety of the child, especially where there are suspicions that the child might be a victim of trafficking in human beings, domestic violence or other forms of gender-based violence.

409 *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. 46.

findings and opinion were or how it had proceeded to assess the best interests of the child. Neither did the Asylum Commission.

Given that it did not identify the above violations by the Asylum Office, the Asylum Commission violated not only national asylum law, specifically the principle of the best interests of the child, but the Convention on the Rights of the Child as well.⁴¹⁰ The Asylum Commission violated the LGAP⁴¹¹ in this case because it did not take into account all of the complaints in BCHR's appeal. By upholding the Asylum Office's ruling, the Asylum Commission increased the risk of violation of the *non-refoulement* principle, which is particularly problematic since the applicant is particularly vulnerable.

5.1.3.3. Conclusion

The Asylum Office must duly consider the children's best interests during all stages of the asylum procedure, especially when deciding on their asylum applications, just as it must always take into account the opinion of the guardianship authority. The Asylum Commission must identify all of the Asylum Office's failures to do so and render proper decisions based on the law, thus precluding further violations of the children's rights and risks of their *refoulement*. However, asylum authorities are rarely guided by these standards in their rulings on applications submitted by unaccompanied children,⁴¹² as the above decisions of the Asylum Office and Asylum Commission illustrate.

In addition, the asylum authorities should devote particular attention to the applicants' statelessness when reviewing their applications. This particularly holds true in cases of unaccompanied stateless children. Therefore, their decisions must include explanations proving that they had reached them in accordance with the best interests of the child.

5.2. Situation of Asylum Seekers Survivors of Sexual or Gender-Based Violence

Although neither the Refugee Convention nor its Protocol specifically reference gender or sex in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons

410 Article 3, CRC.

411 Art. 158(1), sub-paragraphs 1, 3 and 4 of the LGAP.

412 They are solely guided by it when they adopt rulings upholding asylum applications. More in *Right to Asylum 2020*, p. 108 and section Situation of Asylum Seekers Survivors of Sexual or Gender-Based Violence below, pp. 112–114.

for this treatment.⁴¹³ Back in 1991, UNHCR recommended a broad interpretation of the refugee definition to include individuals persecuted on account of their gender.⁴¹⁴ UNHCR defines sexual and gender-based violence (SGBV) as violence targeting individuals on the basis of their sex or gender.⁴¹⁵

Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.⁴¹⁶ This part of the Report will mostly focus on women, since they are the victims of these types of persecution the most often.

Gender-related asylum applications are also submitted by a substantial number of men, as BCHR legal team's experience in the past few years confirms.⁴¹⁷ Male victims of violence are usually much more difficult to identify since they are culturally and socially perceived as the "stronger sex".⁴¹⁸

Gender-based violence may have occurred in the applicants' country of origin, *en route* or in the country in which they applied for asylum and decided to settle down. In addition to the basic needs shared with all refugees, refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.⁴¹⁹ In addition, measures need to be taken to ensure that mi-

413 *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/01, 7 May 2002, para. 6.

414 *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva, July 1991, available at: <https://bit.ly/5Ycp>.

415 It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty. See more in: *Sexual and Gender Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, UNHCR, May 2003, available at: <https://bit.ly/39kqlSi>.

416 *Ibid.*

417 The BCHR has represented male LGBTI asylum applicants, most of whom had been sexually abused in their countries of origin. The BCHR has also represented unaccompanied boys, who had experienced sexual or gender-based violence in their countries of origin or *en route* to the RS.

418 Feelings of shame and embarrassment preclude migrant and asylum seeking men from openly talking about their traumatic experiences, such as rape. Men and boys are also victims of gender-based violence, which is especially widespread in war-torn countries. See, for instance: "I lost my dignity": *Sexual and gender-based violence in the Syrian Arab Republic*, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, A/HRC/37/CRP.3 (8 March 2018), available at: <https://bit.ly/co/Ahhb>.

419 *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva (July 1991), para. 3, available at: <https://bit.ly/co/AlS8>.

grant, refugee and asylum-seeking women have access to their human and social rights in relation to individual freedom, employment, housing, health, education, social protection and welfare where applicable; and access to information about their rights and the services available.⁴²⁰

PIN's 2021 research⁴²¹ showed that 96% of refugees experienced at least one traumatic event *en route* to Serbia, while one out of three experienced 13 or more different traumatic events, which is concerning. Comparison of the 2021 data with those obtained in PIN's 2017 research show that the number of traumatic events rose in the past five years, while the incidence of sexual violence suffered by refugees and asylum seekers increased over four times since 2017.⁴²²

A number of female migrants and asylum seekers have come to Serbia alone, with their children or in the company of men they may not be married or related to. Unfortunately, the exact number of girls and women in the RS cannot be ascertained due to the fact that the relevant authorities do not have a nationwide register of the number of migrants in the RS and that many migrants do not register. Consequently, there are no official data on the number of women who have experienced SGBV.

BCHR lawyers extended legal aid to 22 migrant women, who have or are presumed to have experienced SGBV in the reporting period. Eight of them were registered by the asylum authorities and five asked the BCHR to represent them in the asylum procedure.⁴²³

Systemic support to SGBV survivors is still underdeveloped in Serbia and is generally limited to assistance extended by NGOs and international organisations. There is still a lack of sensitivity to SGBV among some authorities responsible for the protection of refugees, which will be discussed in more detail below.

420 *Gender Equality Strategy 2018–2023*, Council of Europe, para. 60, p. 15, available at: <https://bityl.co/Ahso>.

421 *Mental Health and Wellbeing of Refugees & Asylum Seekers in Serbia, Five Years Data Trends* (PIN, 2021), available at: <https://bityl.co/ArQM>.

422 *Ibid.* Further analysis revealed an absence of gender differences in psychological vulnerability, i.e. the number of men and women experiencing psychological difficulties was proportionally equal. As PIN points out, it is important to note that some symptoms of psychological vulnerability are more common in women than men (e.g. symptoms of depression), while others are more common in men than women (e.g. restlessness). Therefore, while the overall prevalence of mental health difficulties is roughly equivalent across sexes, the manifestations of psychological vulnerability are likely to be gender specific.

423 The Asylum Office did not issue a decision on the merits of any of these applications by the end of the reporting period.

5.2.1. Identification of Vulnerabilities and Response of the Relevant Authorities

One of the reasons why Serbia lacks nationwide records of the number of migrants and asylum seekers who have experienced sexual violence lies in the fact that many of them do not dare report it. Most of them are afraid, ashamed or embarrassed to talk about their plight and some of them are reluctant to report their abusers, because they are dependent on them. Furthermore, some of them may not even be aware that they are abused; their exposure to continuous ill-treatment is exacerbated by their belief that what they are being subjected to not unusual.

BCHR's data⁴²⁴ show that women accounted for 225 of all foreigners whose intention to seek asylum was registered in 2021.⁴²⁵ However, the number of migrant women in the RS, who have not expressed the intention to seek asylum, i.e., who have not been registered by the MOI, is much higher than the above figures.⁴²⁶

As noted at the beginning of this chapter, the LATP provides for the provision of special procedural and reception guarantees to individual vulnerable categories of asylum seekers.⁴²⁷ The implementation of these safeguards is not clearly defined in law; nor are the ways in which this principle is to be applied to people who have survived or are at risk of gender-based violence,⁴²⁸ as the BCHR has already reported.

Prompt identification of the asylum seekers' vulnerabilities is crucial for applying special procedural and reception guarantees in the meaning of the LATP.⁴²⁹ These vulnerabilities are on occasion detected by MOI officers during initial contact, but they are usually identified by representatives of CSOs in the

424 Data obtained from UNHCR.

425 BCHR is not in possession of such data concerning underage girls.

426 This conclusion was drawn on the basis of the information obtained by the BCHR lawyers during their regular visits to ACs and RTCs throughout the RS.

427 Art. 17, LATP.

428 As BCHR was told by an Asylum Office staff member, all the asylum stakeholders secure the procedural and reception safeguards for the individual applicants, by extending them the support they need and "guiding them in the right direction". These stakeholders include the relevant state authorities, such as the MOI and the CRM (and other authorities if necessary, depending on the nature of the case at issue), as well as civil society organisations. The described application of the principle corroborates the necessity of applying a multidisciplinary and multi-sectoral approach in asylum procedures, especially the most sensitive cases, in order to extend comprehensive support to people in need of international protection.

429 Art. 17(2 and 3), LATP. The relevant authorities should carry out the procedure to determine the asylum seekers' personal circumstances continuously, as soon as reasonably possible after the initiation of the asylum procedure.

field, who extend them the support they need and facilitate access to their rights, as the ensuing section describes.

5.2.1.1. Identification, Accommodation and Services Available to SGBV Survivors

In practice, if they ascertain or assess that there are indications that a migrant woman they have registered is a victim of violence, MOI officers immediately refer her usually to NGO Atina's safe house, in consultation with the Asylum Office⁴³⁰. The Asylum Office is also notified of the vulnerabilities of individual asylum seekers directly by their legal representatives⁴³¹, guardians (in case the asylum seekers are unaccompanied children), or representatives of other CSOs, such as Atina.

In exceptional cases of particularly vulnerable asylum seekers, the Asylum Office consents to their accommodation in private lodgings rather than an AC or RTC immediately after their registration.⁴³² In all other cases, in consultation with the CRM, the MOI in principle refers the women as soon as they are registered to an AC or an RTC⁴³³ suitable for the accommodation of women, guaranteeing them a higher degree of safety and "better living conditions".⁴³⁴ The BCHR concluded that women travelling alone and single mothers with children were usually referred to the RTC in Bosilegrad or the Krnjača AC.⁴³⁵

Notwithstanding the Asylum Office's good practice in handling some particularly vulnerable cases, the MOI and the CRM, as the competent asylum institutions, still lack mechanisms for promptly identifying the vulnerabilities of specific groups of asylum seekers and providing special reception conditions.⁴³⁶ They are often assisted by NGOs focusing on the protection of these groups.

430 If it has spare beds. The Asylum Office identified the special needs and vulnerabilities of women survivors of SGBV earlier as well.

431 After receiving power of attorney, BCHR's lawyers notify the Asylum Office in writing that their client falls in the category of vulnerable asylum seekers and request that it bear that fact in mind during the asylum procedure.

432 According to Art. 50(3), LATP. See more in *Right to Asylum 2020*, p. 131.

433 The asylum seekers are under the obligation to report to the AC within 72 hours from the moment they are issued their registration certificates.

434 Information obtained from a staff member of the Asylum Office during the reporting period.

435 The BCHR team drew this conclusion based on the breakdown of migrants and asylum seekers accommodated in ACs and RTCs in the RS. In 2021, BCHR's female clients living in the Krnjača AC complained to the BCHR several times about the lack of security (the rooms are not locked, large numbers of people in one place, et al) exacerbating their feelings that they were not safe.

436 BCHR's opinion based on information obtained in the field and during representation of asylum seekers over the past few years.

CRM staff who identify a case of gender-based violence in an AC or RTC⁴³⁷ notify the MOI⁴³⁸ and the relevant SWC thereof. If they suspect domestic violence, CRM's staff refer the victim to another AC or RTC or to other alternative accommodation after notifying the MOI and the SWC, in order to separate the victim from the abuser.⁴³⁹

In practice, CRM staff who suspect gender-based violence notify⁴⁴⁰ the NGO Atina⁴⁴¹ or the Borderfree's House of Rescue in Loznica.⁴⁴² Their assistance is crucial, since they provide vulnerable migrants and asylum seekers with protection and safety in their shelters for a specific period of time, as well as support throughout the asylum procedure. These two organisations also organise various empowerment workshops for their beneficiaries.

Such alternative accommodation arrangements for migrants and asylum seekers at risk of violence, commendable as they are, are not a long-term solution. The shelters' capacities are limited, and their funding is project-based, insufficient to meet the major needs of the most vulnerable asylum seekers.⁴⁴³

Information collected in the field shows that, in addition to the NGO Atina, which extends support to and implements empowerment activities for SGBV victims, other international and non-government organisations focusing on migrant and refugee rights also extend various forms of support – psychosocial, legal etc. – to vulnerable groups.⁴⁴⁴ Such services are not provided to this population by the local institutions.

The NGO Atina⁴⁴⁵ also encourages advocacy activities via the Advocacy Group comprising refugee women, who have the opportunity to participate in policy-making, facilitating their direct inclusion in Serbia's society.

437 The violence is identified by CRM representatives, representatives of NGOs during their work in the field, or the victims themselves, albeit extremely rarely.

438 The MOI notifies the relevant prosecution office of any elements of violence it identifies during the investigation and the information it has collected so that the latter can prosecute the perpetrator.

439 The CRM said that the victims' transfer to alternative accommodation is always conducted in cooperation with the relevant SWC.

440 The CRM also notifies the Asylum Office that the victims of violence have changed their place of residence.

441 To the best of the BCHR's knowledge, Atina was until recently the only NGO in the RS providing accommodation in a safe house to refugees seekers at risk of SGBV. See more in *Right to Asylum 2019*, p. 138 and *Right to Asylum 2020*, p. 131.

442 CRM's reply to BCHR's request for access to information of public importance No. 019-4483/2-2021 of 7 December 2021.

443 *Ibid.*

444 PIN, DRC, ADRA, JRS, et al.

445 Information obtained from Atina's representatives.

The women migrants staying at the NGO Atina safe house include also victims of trafficking in human beings, who were previously identified by the state-run Centre for the Protection of Victims of Trafficking in Human Beings (hereinafter: Centre). In 2021, the Centre identified⁴⁴⁶ a total of 46 victims of human trafficking; most were Serbian nationals. One was an underage girl from Eritrea. Women account for a large share of the identified victims, while the share of child victims is generally low.⁴⁴⁷ The fact that most victims are women may be an indicator that human trafficking includes a component of gender-based violence. It may be presumed that the actual number of victims of human trafficking is higher since the Centre is charged with looking after identified victims of human trafficking and coordinating support for them.

In its report of July 2021,⁴⁴⁸ the State Department said that, despite headway in some areas, especially in the COVID-19 pandemic, there was still a lack of proactive identification efforts, including screening of migrant flows. It noted that thousands of migrants and refugees from the Middle East, Africa, and Asia transiting through or left stranded in Serbia were vulnerable to trafficking within Serbia.

5.2.1.2. Protection from Gender-Based Violence and Problems in Practice

Under Article 3 of the ECHR, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The ECtHR considers that SGBV is subject to this provision, which is why all signatories of the ECHR have an obligation to protect SGBV victims and prevent SGBV in the future.⁴⁴⁹

The Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)⁴⁵⁰ is the first legally binding document in the field of prevention of violence against women in Europe that has been ratified by the RS.⁴⁵¹ The Istanbul Convention

446 The Centre's monthly and annual reports for 2021 are available in Serbian at: <https://bit.ly.co/Ahsc>.

447 For instance, children often "defend" their exploiters when they talk with experts. Experts explained that they never talked about exploitation during their first meeting with a presumed victim. Sometimes, they need to meet several times before the victim opens up, starts trusting the professional and decides to talk about the traumatic experience. This confirms that building trust is the most important, as well as the most difficult step in identifying the existence of human trafficking. On the other hand, some presumed victims never come to the second meeting.

448 *Trafficking in Persons Report: Serbia*, State Department (1 July 2021), available at: <https://bit.ly.co/ArRV>.

449 See, for example, *M.C. v. Bulgaria*, ECtHR, Application No. 39272/98 (2003) and *Maslova and Nalbandov v. Russia*, ECtHR, Application No. 839/02 (2018).

450 *Official Gazette of the RS – International Treaties*, No. 12/13.

451 The Istanbul Convention is the first international treaty that includes the definition of gender as a "socially constructed category", defining "women" and "men" in relation to their socially

sets clear standards for protection from SGBV committed against women migrants, asylum seekers, and refugees.⁴⁵² The Istanbul Convention has been in effect in Serbia for 10 years now.

In its 2020 Baseline Evaluation Report on Serbia's implementation of the Istanbul Convention,⁴⁵³ the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) identified a number of additional areas in which the state needs to make improvements in order to comply fully with the obligations of the Convention. They include extension of specialist support services to women and ensuring all women, including migrant women, have *de facto* access to them. As per gender-related asylum claims, GREVIO recommended that the relevant RS authorities step up efforts to identify and support women asylum seekers who have experience or are at risk of gender-based violence by developing and disseminating gender guidelines for refugee status determination.⁴⁵⁴ GREVIO also encouraged Serbia to develop conditions conducive to the reporting of incidents of violence against women in reception facilities, for example by informing women migrants and asylum seekers of their rights to protection and support and ensuring their *de facto* access to support services.⁴⁵⁵

In 2019, CEDAW expressed concern because refugee women in the RS continued to experience multiple and intersecting forms of discrimination and inadequate protection from SGBV.⁴⁵⁶ CEDAW recommended that the RS should intensify its efforts to raise awareness among women, including disadvantaged groups of women and refugee women, of their rights and the existence of laws protecting them.

defined roles, behaviour, activities and attributes. The Convention also establishes a strong link between ensuring gender equality and the eradication of violence against women. Based on this premise, it recognises the structural nature of violence against women, as a manifestation of historically unequal power relations between men and women.

452 Thus, Article 59 of the Convention governs the residence status of migrant women in the event of the dissolution of the marriage or the relationship, in the event of particularly difficult circumstances, and for victims of forced marriage. Furthermore, Article 60 of the Istanbul Convention stipulates that the asylum procedures and accompanying procedures need to be gender-sensitive, and that states are required to develop gender-sensitive reception procedures and support services for asylum-seekers, as well as gender guidelines and gender-sensitive asylum procedures. In addition, Article 61 stipulates the principle of *non-refoulement*.

453 GREVIO *Baseline Evaluation Report Serbia*, (Strasbourg, 2020), available at: <https://bit.ly.co/AhqG>.

454 This includes ensuring the practical implementation of the right to an interpreter of the same sex who is trained in the nature of gender-based violence.

455 Such as domestic violence shelters and counselling services outside ACs and RTCs.

456 *Concluding Observations on the Fourth Periodic Report of Serbia*, CEDAW, UN Doc. CEDAW/C/SRB/CO/4 (14 March 2019), p. 14, para. 43.

Access to justice is crucial for this group of women. They, however, rarely avail themselves of it, for the most part due to the lack of trust, bias, taboos, stereotypes, lack of information⁴⁵⁷, as well as communication difficulties.⁴⁵⁸ Victims of gender-based violence should be aware that culture, custom, tradition or so called 'honour' are not considered as justification for any acts of violence, negative social control, or any violation of their human rights, as provided by these conventions.⁴⁵⁹

The rights and obligations laid down in national law, as well as penalties for violating it, apply not only to Serbian nationals, but to foreigners in its territory as well. The impression is that the relevant authorities have failed to respond adequately to violations of the law by migrants, which is particularly problematic in cases of gender-based violence perpetrated by migrants.⁴⁶⁰ Lack of response can be attributed both to the fact that the migrants are only temporarily in the RS and the victims' reluctance to report the violence or even unawareness that they are exposed to it.⁴⁶¹

In the experience of BCHR's lawyers, survivors of SGBV are most often women from Afghanistan, Burundi, DR Congo, Iraq, Iran, Bangladesh and Somalia.⁴⁶² Also, if they are travelling with their husband or another male companion, they depend on his actions and decisions about their common future.⁴⁶³ These factors also play a role in the women's decision to report the violence.⁴⁶⁴

Refugees and migrants are at greatest risk of SGBV from their smugglers, their travel companions, family members and even people forcing them to work *en route*. The risk faced by children⁴⁶⁵ travelling on their own⁴⁶⁶ is even greater.

457 On Serbian asylum law, existence of various services, et al. BCHR's conclusions after the December 2021 conference organised by NGO Atina.

458 Such as, e.g. lack of interpreters for the native language of the victim of violence.

459 *Gender Equality Strategy 2018–2023*, Council of Europe, para. 64.

460 More in *Right to Asylum 2019*, pp. 149–157.

461 *Ibid.*, pp. 135–136.

462 Especially in the context of multiple discrimination against women in those states and mass violations of their human rights.

463 BCHR formed this opinion based on its experience in representing and providing legal aid to some women coming from those countries.

464 Some women travelling with their families were less reluctant to report violence than those who were on their own. However, this is not a rule and does not apply to all cases. The asylum-seeking woman's general state is a major factor, as is the relationship of trust she is gradually to develop with her legal representative and other actors in the procedure. Some women opened up after a while and shared their experiences in detail, which is absolutely legitimate.

465 Unaccompanied girls are at the greatest risk.

466 For instance, the BCHR has represented a number of asylum-seeking unaccompanied and separated children who had experienced sexual violence in their country of origin.

It should also be borne in mind that refugees and migrants may have been exposed to brutality and multiple forms of violence, including gender-based violence, at the hands of the border police of many countries pushing them back.⁴⁶⁷

In addition to domestic violence, usually targeting women, sexual violence in the context of armed conflict and unstable security in the asylum seekers' countries of origin⁴⁶⁸ and discrimination against members of the LGBTI community are also common among the migrant population. In many cases, violence is continuous.⁴⁶⁹ It occurs not only in the country of origin, but also in the RS⁴⁷⁰, in ACs or RTCs.

The national Standard Operating Procedures (SOP) for the prevention and protection of refugees from SGBV deal with the provision of assistance in SGBV cases in ACs and RTCs.⁴⁷¹ However, they obviously do not provide the victims with sufficient protection.⁴⁷² As already noted, under the SOP, the CRM notifies the police and the relevant SWC in the event it ascertains that a crime involving SGBV has been committed in an AC or an RTC⁴⁷³ and the victim is promptly provided with medical assistance and an interpreter.

Judging by the information available to the BCHR, only two SWCs⁴⁷⁴ that responded to BCHR's request for information of public importance extended services to migrants.⁴⁷⁵ Judging by the replies, many SWCs lack teams of experts charged with preventing domestic violence and extending support to foreign vic-

467 *Girls on the move in the Balkans*, Save the Children (June 2020), p. 26, available at: <https://bityl.co/Ahwi>.

468 For instance, a large number of Burundian nationals, both women and men, had been raped or experienced other forms of sexual violence in their country of origin.

469 See *Right to Asylum in Serbia 2019*, p. 143, *Right to Asylum in Serbia 2020*, p. 134 and the analysis of the decision on F's asylum application, pp. 114–116.

470 See, e.g. the analysis of the decisions on A's and Z's asylum applications, pp. 110–114.

471 The SOP were developed jointly by the MLEVSI, the MOI, the Ministry of Health, the Ministry of Justice, the Gender Equality Coordination Body, the CRM, the Serbian Institute for Social Protection, the Public Health Institute Dr. Milan Jovanović-Batut, independent national human rights institutions, the UN Population Fund in Serbia, UNHCR, UNICEF, and civil society organisations present in the centres. Available in Serbian at: <https://bityl.co/Ahsr>.

472 See *Right to Asylum 2019*, pp. 152–155.

473 The victims report the violence to the AC or RTC management, which alerts the police and SWC.

474 The Pirot SWC notified the BCHR that it had extended assessment, counselling, evaluation and review services to a 38-year-old Syrian woman concerning her "disrupted family relationships". The Loznica SWC reported that its social workers extended services to a 15-year-old girl from Russia (Chechnya), a victim of violence, specifically that they accommodated her in the Rescue House and subsequently placed her under the guardianship of a social care institution outside Loznica.

475 The BCHR sent such requests to 14 SWC near ACs and RTCs.

tims of violence⁴⁷⁶ and do not keep records of individual plans for the protection and support of foreign victims.⁴⁷⁷

According to the data the BCHR received from the CRM,⁴⁷⁸ its staff registered six cases of domestic violence⁴⁷⁹ and one case of suspected sexual violence⁴⁸⁰ in ACs and RTCs in the 1 January – 15 October 2021 period. The CRM did not provide any details about the sex, nationality or age of the victims or the perpetrators.⁴⁸¹

When it comes to the practice of judicial bodies in this area,⁴⁸² according to information obtained by BCHR, migrant perpetrators of violence are usually issued temporary restraining orders,⁴⁸³ but are not prosecuted for their crimes. Such impunity for SGBV, registered in the past as well⁴⁸⁴, does not provide survivors with guarantees that they will be fully protected whilst in Serbia.

5.2.1.3. Conclusion and Recommendations

The RS authorities still do not promptly identify individuals who have experienced or are at risk of gender-based violence. Therefore, relevant authorities, especially the MOI and the CRM, must increase their resources and improve their cooperation and lay down rules for the prompt identification of SGBV survivors.

The possibility of referring particularly vulnerable refugees to one more institution, in addition to Atina's shelter, is commendable. However, the RS needs

476 Art. 11, Domestic Violence Law (*Official Gazette of the RS*, No. 64/16).

477 Art. 31(8), Domestic Violence Law.

478 CRM's reply to BCHR's request for access to information of public importance No. 019–4483/2–2021 of 7 December 2021.

479 One such case was registered in the Krnjača AC and one in the Banja Koviljača AC. The CRM registered three cases in the Šid RTC and one case in the Vranje RTC.

480 In the Krnjača AC.

481 However, at a conference organised by the NGO Atina, BCHR's representative learned from the MOI representative that a father and his underage daughter, nationals of Iran, who had been staying in the Banja Koviljača AC, were separated to put an end to domestic violence. He also said that they had cases of men reporting women for domestic violence.

482 According to Art. 7(1) of the Domestic Violence Law, the police, public prosecutors, courts of general jurisdiction and misdemeanour courts, and SWCs are charged with preventing domestic violence and extending assistance to victims of domestic violence and crimes determined by this law.

483 Under Art. 17 of the Domestic Violence Law. According to the information available to the BCHR, the Basic Public Prosecution Office in Niš filed a motion with the relevant court to extend its temporary vacate and restraining orders against a national of Turkey, suspected of domestic violence, because it found that there was an immediate risk of him committing violence. Information obtained in response to BCHR's request for access to information of public importance.

484 More in *Right to Asylum 2019*, pp. 154–156.

to increase the number of sustainable safe houses for victims of gender-based violence or provide them with other adequate accommodation, to protect them from violence.⁴⁸⁵ The state should also develop and facilitate the vulnerable individuals' access to community-based services, because the current arrangements are not sustainable in the long term.

The relevant asylum institutions and NGOs need to invest additional efforts in empowering victims to report violence and to extend them continuous support in that respect, especially in light of the recommendations of international bodies to Serbia. This will facilitate the provision of systemic and effective protection to SGBV survivors and people at risk of SGBV, regardless of their status in Serbia. The relevant asylum authorities, as well as NGOs, should definitely continue extending support in this area.⁴⁸⁶ They should, in particular, pay attention to the vulnerabilities of children and develop support and protection mechanisms tailored to their age and needs.

Migrant, refugee and asylum-seeking women and girls also often face double discrimination: they are sometimes restricted within their own communities by cultural codes, customs, religion or tradition and by different stereotypes and institutional barriers in host countries.⁴⁸⁷ Inter-cultural dialogue could be one of the mechanisms for preventing violence and dismantling the ingrained social mores imposed on women. All stakeholders working directly with migrants should familiarise themselves with their cultural codes and traditions, in order to understand them better and the problems they face. This would facilitate the refugees' empowerment and integration on a number of planes, bolstering their participation and development in the new community.

5.2.2. Asylum Authorities' Practice Concerning Gender-Based Asylum Applications

The Serbian Constitution guarantees the right to refugee protection (asylum) to foreign nationals and recognises sex or gender as grounds of persecution.⁴⁸⁸ Accordingly, the LATP explicitly recognises sex or gender as grounds of persecution and as grounds for asylum in Serbia,⁴⁸⁹ extending these grounds beyond those set out in the Refugee Convention.⁴⁹⁰

485 The CRM should give thought to designating one of the ACs or RTCs for the accommodation of persons who have experienced or are at risk of SGBV.

486 This entails the organisation of various joint activities and workshops raising awareness of SGBV among women, girls, as well as men, in a way appropriate for their age, culture and gender.

487 *Protecting the rights of migrant, refugee and asylum-seeking women and girls*, Council of Europe, Gender Equality Strategy, p. 11. available at: <https://bit.ly.co/Ahbw>.

488 Art. 57(1), Serbian Constitution.

489 Art. 24, LATP.

490 The LATP also recognises language as grounds of persecution and grounds for asylum.

Under the LATP, acts of persecution may include physical or mental violence, including sexual and gender-based violence,⁴⁹¹ as well as acts of a gender-specific nature.⁴⁹² The LATP also recognises membership of a particular social group as grounds of persecution.⁴⁹³ Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sex, gender, gender identity or sexual orientation.⁴⁹⁴

5.2.2.1. Gender Equality and Sensitivity in the Asylum Procedure

The LATP enshrines the principle of gender equality and sensitivity,⁴⁹⁵ which entails the obligation of the competent asylum authorities to respect gender equality and interpret the LATP in a gender-sensitive manner.⁴⁹⁶ This, *inter alia*, means that asylum-seeking women should be interviewed separately from their male companions, i.e., husbands,⁴⁹⁷ which is especially important in asylum applications comprising gender elements. Namely, the asylum authorities need to bear in mind that asylum seekers experiencing gender-based violence may be afraid and embarrassed to discuss what they have been going through in front of their partners, family members and compatriots.

The principle of gender sensitivity also entails the asylum seekers' right to request to be interviewed by police officers of the same sex, or to be assisted by translators or interpreters of the same sex.⁴⁹⁸ In light of the practice to date, the BCHR is of the view that it would be best to always provide asylum seekers with the possibility of choosing whether they would like to be interviewed by an officer and assisted by an interpreter of their sex.⁴⁹⁹ Asylum Office staff on occasion fulfilled the asylum seekers' requests to be assisted by interpreters they already knew and have grown to trust, with a view to efficiently implementing the procedure.⁵⁰⁰

491 Art. 28(2(1)), LATP.

492 Art. 28(2(6)), LATP.

493 Art. 26(5), LATP.

494 Art. 26(2), LATP.

495 Art. 16, LATP.

496 More in *Right to Asylum 2019*, pp. 140–141.

497 Art. 16(4), LATP. This principle is not applied in practice with respect to asylum-seeking children, who are always interviewed in the presence of their parents or guardians.

498 Art. 16(2), LATP.

499 There have been instances when asylum seekers expressed the wish to be assisted by an interpreter of the opposite sex for various reasons. More in *Right to Asylum 2020*, p. 129.

500 On behalf of J., an asylum seeker from Pakistan, the BCHR notified the Asylum Office that it was of the view that an interpreter of the opposite sex should attend the oral hearing, specifically the interpreter who was familiar with the complexity of the case and who the applicant has come to trust the most in the meantime.

During their interviews, Asylum Office staff should comply with the established measures and standards⁵⁰¹ tailored to survivors of gender-based violence. The Asylum Office's practices in this respect improved in 2021.⁵⁰²

It is crucial and in the interest of particularly vulnerable asylum seekers that they are interviewed in an enabling environment, in which they feel relaxed and encouraged to openly speak about their problems and traumatic experiences. A climate in which the asylum seekers feel free to relate in greater detail why they fear persecution strengthens the credibility of their statements in the asylum procedure. BCHR already emphasised the importance of fully applying this principle in practice, which is extremely relevant to asylum seekers whose applications include gender elements. It did not identify any deficiencies in this respect in the work of the Asylum Office during the reporting period.⁵⁰³

5.2.2.2. Asylum Office Decisions

As noted, the Asylum Office did not adopt a large number of decisions granting refuge to foreigners in need of international protection in 2021. It did, however, grant asylum to several applicants who filed gender-based claims. These cases are worthy of attention.

In late August 2021, the Asylum Office adopted a decision⁵⁰⁴ upholding the application filed by an Iraqi national of Kurdish origin A. and her minor daughter due to their fear of persecution for reasons of membership of a particular social group. A. experienced sexual and gender-based violence in her country of origin.⁵⁰⁵ A. was forced by her husband and family to leave her country of origin in 2018. She was separated from her husband in the RS, after she reported his

501 They should, in particular, remain neutral and compassionate, bearing in mind cultural differences and vulnerabilities characterising asylum seekers, as well as the traumas they experienced. See also: UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, 2019), p. 90 (hereinafter: UNHCR Handbook).

502 BCHR's legal team is of the impression that not all Asylum Office staff apply a sensitised and adequate approach. In BCHR's opinion, male staff are commendably visibly sensitised and tailor their actions in each gender-sensitive case adequately.

503 The Asylum Office's practice in this respect improved given that its staff had not borne in mind all the aspects of gender-sensitive treatment at all times in the past. More about the *Asylum Office's past practices in Right to Asylum 2019*, p. 143 and *Right to Asylum 2020*, p. 129.

504 Asylum Office Ruling No. 26–1601/20 of 30 August 2021.

505 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 violence in the presence of their daughter almost every day. Due to the deep-rooted cultural and traditional customs of her community, A. did not receive support or protection from the members of her primary family and was unable to report the years-long violence she was suffering to the

violent conduct and attempt to murder her in one of the RTCs. Thanks to the concerted response of the CRM, MOI and the relevant SWC, the mother and daughter were separated from the abuser and moved to NGO Atina's safe house, whereupon they applied for asylum in September 2020.⁵⁰⁶

Taking into account the applicant's need for special procedural or reception guarantees,⁵⁰⁷ the Asylum Office found that A. 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,⁵⁰⁸ the Asylum Office referred to leading international instruments on violence against women, which are an integral part of Serbia's legal order⁵⁰⁹ as well as UNHCR guidance⁵¹⁰ in the context of gender-based asylum claims. Pursuant to the LATP,⁵¹¹ the Asylum Office reviewed the relevant reports by international organisations⁵¹² and took into account the submissions containing the above-mentioned information on the status of women in Iraq and lack of institutional protection from gender-based violence, which A. submitted via her legal representative during the procedure.⁵¹³ Having established the existence of the subjective⁵¹⁴ and objective⁵¹⁵ elements of fear of persecution in

relevant authorities of her country of origin. A detailed analysis of the decision is available in: *Right to Asylum, Periodic Report for July-September 2021*, pp. 11–15.

506 The BCHR first extended legal counselling services to A. in 2019, but she was not psychologically prepared and empowered to embark on the asylum procedure at the time. After comprehensive support she was extended, primarily by the NGO Atina, A. and her daughter applied for asylum in September 2020.

507 Under Art. 17 of the LATP, given that a single mother with an underage child is at issue. The Asylum Office also complied with its legal obligation to be guided by the best interests of the child. In this case, it concluded that it was in the child's best interest to remain with her mother.

508 Art. 26(1(5)), LATP.

509 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).

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

511 Art. 32(2(2)), LATP.

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

513 The BCHR's submissions included information on the situation in Iraq and referred 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.).

514 An evaluation of the subjective element is inseparable from a comprehensive assessment of the personality of the applicant, his origin and personal experiences.

515 Involving the analysis of the actions and practices of the country of origin, in the context of its provision or non-provision of protection to individuals from potential persecutors.

this case, the Asylum Office considered A.'s statement credible, finding that her fear was well-founded and real not only in her country of origin, but also in the RS, where she had also experienced gender-based violence.

Another good practice example is the Asylum Office's decision to grant refuge⁵¹⁶ to Z., whose family forced him to engage in labour and sexual exploitation in his country of origin since he was eight.⁵¹⁷ Z. was solicited, continuously sexually abused and tortured until he left his country of origin. He said he decided to run away in 2016 after problems with his family, which could only deteriorate given his origin and the community he came from. Z. was subject to threats and various forms of physical and sexual violence *en route* and upon arrival in the RS. He told the Asylum Office that he was 13 at the time.⁵¹⁸ After numerous problems and risks he faced in the RS, Z.'s temporary guardian and other professionals in partner CSOs facilitated his transfer from an AC to an institution designated for the accommodation of unaccompanied and separated migrant children. Z. applied for asylum in December 2019.⁵¹⁹

Z., who was still a child at the time, was identified by the relevant RS institutions as a victim of human trafficking for the purpose of multiple sexual exploitation, which gravely impacted on his mental state.⁵²⁰ This fact was corroborated during the re-identification procedure.

Although he did not know his exact date of birth, Z. was a child at the time he applied for asylum. The Asylum Office was guided by the best interests of the child, taking into account, *inter alia*, Z.'s development, well-being and views considering his age and maturity, and his protection and safety in the context of the gender-based violence he had experienced. Judging by the reasoning of its ruling, the Asylum Office was fully guided by the guardianship authority's opinions submitted during the procedure.⁵²¹ During its examination of the sub-

516 Asylum Office Ruling No. 26–3064/19 of 14 September 2021.

517 Z.'s family forced him to engage in such activities in order to support his family since he was the eldest child.

518 Since Z. did not have any personal documents issued by his country of origin, the police took him for his word at the time they registered his intention to seek asylum in the RS. Given Z.'s general condition and difficulty situating numerous events in his life in a temporal context, his temporary guardian and the BCHR were not sure that he had given his correct age and actually believed that he was younger than he said.

519 In addition to objective reasons warranting Z.'s systemic and international protection, his asylum procedure was initiated to protect him as much as possible from his abusers and exploiters in the RS.

520 Report of the Centre for the Protection of Victims of Trafficking in Human Beings, on file with the BCHR.

521 Reports prepared by Z.'s temporary guardian, who followed his situation and development for years, were particularly important during the asylum procedure, given that Z. was unable to explain in detail specific events in his country of origin or openly talk about his experi-

mitted psychological assessment report,⁵²² the Asylum Office was guided by the principle of the buffer age⁵²³, i.e. of finding a solution enabling the child to continue education or training, or work between the age of majority and a durable solution.⁵²⁴ In that sense, the Asylum Office also took into account his specific situation and need for special procedural or reception guarantees.⁵²⁵ Based on all of the above considerations and other facts determined during the procedure⁵²⁶, and in accordance with UNHCR's guidelines on treatment of victims of human trafficking,⁵²⁷ the Asylum Office concluded that Z. would be subjected to persecution if he returned to his country of origin and upheld his asylum application.

Although it welcomes the Asylum Office's decision to uphold Z.'s application, the BCHR has to draw attention to the Asylum Office's delays in ruling on asylum applications both in this and most other cases.⁵²⁸ Such a practice is

ences, for the most part due to recurrent strong trauma caused by his long-standing sexual exploitation and other forms of abuse and violence he had been subjected to, which evidently left a deep mark, resulting in his subconscious deletion of some of his memories, their suppression and attempts to forget the traumatic experiences. The Asylum Office staff member who interviewed Z. saw for herself the state he was in, his conduct and reactions caused by the trauma he had suffered in the past.

522 Prepared by an accredited psychologist with *Médecins Sans Frontières* (MSF).

523 In accordance with recommendations made by the CoE Parliamentary Assembly in 2011 and the Guidelines for the Alternative Care of Children, supplementing the Convention on the Rights of the Child.

524 The Asylum Office also attached weight to the fact that Z. has been diagnosed with PTSD, that he was extremely vulnerable and still psycho-sexually, emotionally and socially immature for his age, although he turned 18 in the meantime.

525 Given that the applicant was a child victim of a human trafficking chain that began in his country of origin.

526 The Asylum Office also took into account Z.'s claims that he asked the police in his country of origin for help, albeit to no avail, because he was not recognised as a victim of sexual exploitation, which is widespread in his country of origin, as the Asylum Office established by researching the state of human rights and the situation of children in the country at issue.

527 UNHCR said in its Guidelines, inter alia, that the forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation was a form of gender-related violence or abuse that could even lead to death. "In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination. In individual cases, being trafficked for the purposes of forced prostitution or sexual exploitation could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm." More in: *Guidelines on International Protection, Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, CR/GIP/02/01 (7 May 2002), para. 18.

528 Over 640 days (one year and nine months) passed from the day Z. applied for asylum to the day his application was upheld. The Asylum Office did not notify Z. why it was late in ruling on his application or the deadline by which he could expect it, as required by Art. 39 of the LATP.

particularly problematic in sensitive cases, such as Z.'s, because the uncertainty about the outcome of the procedure may exacerbate the mental health of the applicants. The COVID-19 pandemic understandably led to delays in the Asylum Office's reviews, but it had failed to rule on the applications within the statutory deadlines even before the pandemic, as BCHR has consistently alerted.⁵²⁹ The Asylum Office and other asylum stakeholders thus need to adjust their operations to the current circumstances, to ensure that the most vulnerable groups of asylum seekers enjoy their rights guaranteed by law.⁵³⁰

The Asylum Office recognised fears of persecution of asylum seekers who filed gender-based applications in the past as well, specifically those filed by SGBV survivors, a single mother with children from a war-torn country and LGBTI persons.⁵³¹ However, the Asylum Office's practice was not consistent either then⁵³² or in 2021. For instance, it issued rulings⁵³³ rejecting a number of gender-based claims filed by applicants at real risk of persecution on account of their personal characteristic.

In November 2021, the Asylum Office rejected the asylum application submitted by Bangladeshi national F. who had fled his country of origin because of his sexual orientation and religion.⁵³⁴ F. had been targeted by an extremist student organisation in his country of origin; its members abused him verbally and physically because he is gay and an atheist and he had to abandon his college studies. He faced problems in the part of town where he lived on a daily basis, he was raped, and he lost his job because of his relationship with another

529 See: *Right to Asylum 2020*, pp. 54–55 and p. 111, *Right to Asylum 2019*, pp. 53–54.

530 The BCHR has been representing a number of asylum seekers, who have been waiting for the Asylum Office to rule on their applications for quite a long time and has been sending follow-up letters requesting of the first-instance authority to render its decisions in those cases, some of which included gender elements, as soon as possible. Some of the cases comprise gender components.

531 See BCHR's analyses of specific decisions in *Right to Asylum 2019*, pp. 138–140, *Right to Asylum, Periodic Report for January-March 2020*, pp. 18–20, *Right to Asylum 2020*, pp. 125–127.

532 For instance, the Asylum Office ruled three times on asylum applications filed by a single mother and her child from Iran, who were victims of domestic violence in their country of origin, which failed to extend them protection (see the analysis of the most recent decision in this case in *Right to Asylum, Periodic Report for January-March 2020*, pp. 21–23). The Asylum Office also rejected the asylum application filed by a Somali national, who had been subjected to genital mutilation in her country of origin (see the Asylum Office's Ruling No. 26–1599/19 of 13 October 2020). It also rejected an asylum application filed by a Turkish national, a single mother and her child; the mother was a victim of sexual and gender-based violence in her country of origin, *inter alia*, because she is bisexual (Asylum Office Ruling No. 26–1073/20 of 1 December 2020).

533 See, for instance, the analysis of the decision in the case of the Iranian national in section Practices of Asylum Authorities, pp. 54–55. The Asylum Commission commendably upheld BCHR's appeal of the decision. The case was still pending at the end of the reporting period.

534 Asylum Office Ruling No. 26–404/21 of 4 November 2021.

man.⁵³⁵ F's family forced him to marry a woman against his will. His partner committed suicide because he was also forced into an arranged marriage. F. was known for his LGBTI activism in his country of origin, but he abandoned the cause after the director of the organisation he was working for was killed and because of the large-scale persecution of LGBTI activists.

The Asylum Office took into account only F's statements about his sexual orientation, but not that he had declared that he was an atheist, which also caused him problems in his country of origin.⁵³⁶ Furthermore, the Asylum Office downplayed the fact that same-sex relationships are incriminated in Bangladesh, ignoring BCHR's submission⁵³⁷ pointing out the state's practice of punishing LGBTI persons. The Asylum Office also made blanket assessments about the problems F. had with his family, disregarding the fact that they had forced him into an arranged marriage and that a close family member had sexually abused him. It also said in the reasoning of its ruling that there was "no evidence that an eminent LGBTI activist in Bangladesh had been killed because he belonged to the LGBTI population" although the murder was reported by media across the world.⁵³⁸ The Asylum Office's assessment⁵³⁹ of the student organisation that persecuted F. was also concerning – it totally neglected the fact that the organisation was officially banned in Bangladesh.⁵⁴⁰ Consequently, the Asylum Office failed

535 They also threatened his family, which insisted that F. leave his country of origin.

536 F. claimed that he had received threats that his family would be killed and that he would be butchered unless he changed his sexuality *and religion*. He also said that people in Bangladesh who declared themselves publicly as atheists and propagated secularism were frequently targeted, that many of them had either been killed or fled the country.

537 Namely, under Article 377 of the Criminal Code of Bangladesh, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with life imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine."

Although the Code is not systematically applied and none of the cases ended up in court or convictions, LGBTI persons are subjected to substantial harassment, public exposure and stigma by the police and media, which frequently refer to Article 377. BCHR's lawyers also said in their submission to the Asylum Office that various countries recommended to Bangladesh during the 2008, 2013 and 2018 Universal Periodic Reviews to repeal Article 377 of the Criminal Code. However, Bangladeshi officials consistently rejected these recommendations, claiming that this would be in contravention of the Constitution and the strong traditional and cultural values in Bangladesh.

538 See, e.g. BBC's report "Bangladesh LGBT editor hacked to death," of 25 April 2016 (available at: <https://bit.ly.co/AghK>) and Vice's report "How Bangladesh's LGBT Community Is Dealing with Threats" of 1 June 2016 (available at: <https://bit.ly.co/AgiA>).

539 The Asylum Office referred only to its website, presenting it as a constructive and evolving democratic institute and educational academy.

540 Students associated with it are frequently arrested. Perusal of the organisation's website shows that its goals are to "mould the whole life of humans in accordance with the paradigm guidelines prescribed by Allah and exemplified by the Prophet" (Mohammed) and the promo-

to establish that F. had been persecuted by members of this extremist organisation because of his sexual orientation and atheism, and that he would be at risk of persecution if he were to return to his country of origin.

In the opinion of BCHR's lawyers, as opposed to the prior two cases, the Asylum Office in this case drew wrong and blanket conclusions based on erroneous findings of fact and failed to properly explain its decision. Consequently, F. faces the risk of persecution in case he returns to his country of origin. BCHR's appeal of the decision was pending before the Asylum Commission at the end of reporting period.

5.2.2.3. Conclusion and Recommendations

The situation of asylum seeking and refugee women is particularly sensitive since they leave their countries of origin due to well-founded fear for their lives, persecution on grounds of sex and various gender roles attributed to them in the societies they come from. They are frequently discriminated against and the violence they are victims of is often justified by their culture, tradition, and harmful practices in their countries of origin, which are based on the notion of women's inferiority. However, asylum-seeking men are also persecuted on these grounds, as the described decisions testify.

The relevant authorities must create a climate of trust to ensure proper re-examination of gender-based asylum applications and protection of the victims. This entails allowing asylum seekers to choose the sex of the officers and interpreters involved in all the official actions throughout the procedure. The Asylum Office should promptly notify the asylum seekers of the principle of gender equality and sensitivity and all forms of protection at their disposal.

In the opinion of BCHR's legal team, the Asylum Office's decisions in the cases of A. and Z. are important and of high quality, based on thoroughly reviewed facts and circumstances. The Asylum Office paid particular attention to the personal circumstances of the applicants, who belong to vulnerable groups of refugees. The Asylum Office should continue with the practice and recognise SGBV acts as persecution, continuously improve its work and fully comply with the LATP whilst implementing the asylum procedure. This requires that its staff familiarise themselves with the situation and violations of the human rights of particularly vulnerable groups of refugees who are victims of SGBV. It will thus further improve the quality of its decisions, which will be based on proper and thorough findings of fact in each individual case.

tion of Islamic teachings through work of young people willing to sacrifice themselves in the name of Allah. The organisation is also critical of the Bangladeshi education system, which it considers contrary to the teachings of Quran, immoral, inhuman and not fearing Allah, etc.

6. INTEGRATION

6.1. Introduction

Under the LATP, integration denotes the inclusion of persons granted asylum in Serbia's social, cultural, and economic life. The LATP lays down that the state shall also enable the naturalisation of refugees.⁵⁴¹ Furthermore, the LATP also sets out that the Republic of Serbia will extend support to the implementation of the integration-related provisions of that law commensurate with its capacities.⁵⁴²

Integration of refugees can be perceived as an extremely dynamic and two-way process. It will be successful if both the refugees and the host society adapt to each other and if both the local community and the state are willing to accept refugees. The main aspects of integration are legal, economic, social and cultural.

Foreigners granted asylum or subsidiary protection are guaranteed the following rights: to residence, accommodation, freedom of movement, property, health care, education, access to the labour market, legal aid, social assistance, freedom of religion, family reunification and assistance in integration.⁵⁴³ From the legal perspective, they have equal rights as Serbian nationals to education, intellectual property, access to justice and legal aid.⁵⁴⁴ Like Serbian nationals, they, too, may be exempted from paying court and administrative fees. The rights of foreigners granted asylum in Serbia to access the labour market, health care and own movable and immovable property are governed by regulations on the status of foreigners in these fields.⁵⁴⁵

Integration is partly regulated also by a by-law – the Decree on the Integration of Persons Granted the Right to Asylum in the Social, Cultural and Economic Life (hereinafter: Integration Decree). The Decree on Criteria for Establishment of Priorities in Accommodation of Persons Granted the Right to Refuge or Subsidiary Protection and the Conditions of Use of Housing for Temporary Accommodation (hereinafter: Accommodation Decree) is also relevant to the integration of refugees.⁵⁴⁶

541 Art. 71, LATP.

542 *Ibid.*

543 Art. 59, LATP.

544 Arts. 60–73, LATP.

545 *Ibid.*

546 *Official Gazette of the RS*, Nos. 63/15 and 56/18.

Although Serbia is not an EU Member State, its regulations on asylum are very similar to those of the Member States, although they still do not fully comply with the EU Directives. According to BCHR's records, at least 23 foreigners granted the right to asylum have left Serbia over the past three years because of their inability to integrate in its society in the long term. These data indicate that refugees may still be perceiving Serbia as a transit country where they plan on staying only temporarily, which, naturally, is not conducive to their integration. The reasons do not lie solely in the legal lacunae and poor enforcement of the law, but also in the lack of motivation among the refugees to learn the language and adjust to the local culture, as well as the fact that they have a hard time finding adequate jobs in the RS.

Non-issuance of travel documents is the key legal barrier and one of the main reasons why foreigners granted refuge have been leaving the RS.⁵⁴⁷ Persons who have decided to settle for good in Serbia have for years been facing obstacles arising from their inability to naturalise and lack of systemic support to their integration.

The CRM plays a key role in integration.⁵⁴⁸ The MLEVSI is also tasked with administrative duties regarding the rights and integration of foreigners granted the right to asylum.⁵⁴⁹ Under the LATP, the Asylum Office shall notify them of their rights and obligations as soon as possible.⁵⁵⁰ In BCHR's experience, the Asylum Office has never fulfilled this duty.

Under Serbian law, foreigners granted international protection have greater rights than asylum seekers. As practice has shown, the complex process of integration would be more expedient and successful if it were launched earlier, i.e. if asylum seekers were granted greater rights. Therefore, this chapter will discuss the integration of foreigners granted asylum, as well as how asylum seekers can realise individual rights that are important for their integration in Serbian society – the right to work, the right to health care, the right to marry, the right to education, et al. It will describe the difficulties and challenges in the process that persisted in 2021, as well as some major steps forward in the reporting period, notably with respect to the refugees' exercise of their right to education in the RS. It will also present positive practices through the online integration campaign the BCHR conducted in the first half of 2021, and the ongoing *Refugees for Refugees* pilot activity the integration team launched in the reporting period. We will use the word 'refugees' to denote foreigners granted the right to asylum in the Republic of Serbia, except where it was important to specify the precise status of the foreigners under national law.

547 Art. 91, LATP.

548 Art. 10 (2), Migration Management Law, *Official Gazette of the RS*, No. 107/12.

549 Art. 19, Law on Ministries, *Official Gazette of the RS*, No. 128/20.

550 Art. 59(6), LATP.

6.2. Right to Accommodation

Under the LATP,⁵⁵¹ foreigners granted the right to asylum shall be provided with assistance in accommodation, commensurate to the state's capacities. Specifically, such persons are to be provided, via the CRM, with temporary housing or financial aid to rent temporary housing, for a period of one year from the day they are served the ruling granting them the right to asylum. The process is governed in greater detail by the Accommodation Decree.⁵⁵²

Despite the crucial importance the right to accommodation has for the refugees' housing stability and welfare, this right is often treated in practice as less significant than other refugee rights under the LATP. The UN Special Rapporteur on the right to adequate housing went as far as qualifying it as one of the most jeopardised rights. Asylum seekers are at particular risk of restrictions of their right to housing because they rely on the state to provide them with accommodation. The issue of the adequate housing of refugees, which arose after the large-scale influx of migrants to Europe in 2015, remained just as relevant in 2021. This right is prerequisite for finding durable solutions for refugees.⁵⁵³ The right to adequate housing is part of the right to an adequate standard of living, wherefore it is enshrined in a variety of international human rights instruments.

The right to housing (accommodation) was first guaranteed in Article 25 of the Universal Declaration of Human Rights (UDHR) and subsequently elaborated in Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR).⁵⁵⁴ Article 21 of the Refugee Convention, which also enshrines the right to housing, does not apply to asylum seekers.

In BCHR's years-long experience, foreigners whose asylum applications are upheld are secured exclusively with financial aid,⁵⁵⁵ since the CRM does not have temporary housing at its disposal. The financial aid in the amount of the minimum wage the previous month is granted to refugees, who have no income or whose income per family member does not exceed 20% of the minimum wage.⁵⁵⁶ The identical amount of aid is granted single refugees and those living together with their families. It usually does not suffice to pay the rent and utility bills, especially in cities, and in case of larger families.

551 Art. 61(2), LATP.

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

553 *The Right to Housing and its Applicability to Asylum Seekers in Europe*, 30 October 2017.

554 The right is guaranteed also in a number of human rights instruments specific to this vulnerable category. According to the principles of indivisibility and universality of human rights, the right to adequate housing is guaranteed to "everyone, including non-nationals, such as asylum seekers and refugees [...]".

555 Art. 10(1(1)), Accommodation Decree.

556 The aid was slightly higher than 30,000 RSD (less than €300).

6.2.1. Challenges in Practice

The numerous documents that refugees have to submit to the CRM together with the application for housing remained a major challenge in 2021. These documents include: photocopies of their IDs, Foreigner Registration Number (FRN) certificates, bank card(s) and the ruling granting them asylum,⁵⁵⁷ certificates of unemployment and statements certified by a notary public.

Some banks imposed on refugees and asylum seekers stricter requirements for opening bank accounts in 2021. In addition to their IDs or other identification documents and their FRNs, they had to submit “proof” of the reason or purpose why they were opening an account.⁵⁵⁸ In BCHR’s view, such a practice may further complicate and slow down the already long account opening procedure and prevent the refugees from submitting their bank account numbers to the CRM. In such cases, they will first have to wait for the CRM’s ruling granting them financial aid for temporary accommodation, which they can then submit as proof of the reason why they are opening a bank account. The BCHR team will continue monitoring the banks’ practices and CRM’s response, if any, to the problem.

Furthermore, refugees applying for assistance need to be registered with the National Employment Service (NES), which issues certificates of unemployment. Refugees encounter similar problems here as well – the NES offices are usually in another city, the NES staff and/or the refugees do not speak foreign languages, while the form that they need to fill is in Cyrillic. The procedure takes longer if the refugee does not have a personal work permit, because, in the experience of BCHR’s clients, its issuance takes at least a month.

All adult family members are to submit certified statements confirming that they do not earn any regular or occasional income from employment, entrepreneurship, or property. The statements must be certified by a notary public in the presence of a court-sworn interpreter for the applicant’s language. Several difficulties in obtaining this certified statement arise in practice. First, some BCHR clients live in towns lacking court-sworn translators/interpreters for the language they speak and need to travel to those that do. Second, there are only a few, if any, court-sworn translators/interpreters for specific languages in the entire country. For instance, no court-sworn translators/interpreters for Persian, Urdu or Pashto are listed in the Ministry of Justice’s electronic register of court-sworn

557 Without explanation, in accordance with the confidentiality principle.

558 An employment, temporary employment or service contract, a ruling recognising the right to financial social assistance or another document certifying that the applicant is receiving financial aid.

translators and interpreters.⁵⁵⁹ In such situations, the notaries public insist that the refugees be accompanied by court-sworn translators/interpreters for another language they understand, usually English. However, some refugees do not speak any foreign languages. And, last but not the least, the fees of notaries public and court-sworn translators and interpreters are still unreasonably high in light of the refugees' financial standing.⁵⁶⁰

Once the CRM approves their applications for financial aid, the refugees have to move out of the AC within a month. However, landlords usually require of their new tenants to pay a deposit together with the first month's rent.⁵⁶¹ The CRM adopted five rulings granting financial aid to eight BCHR clients in 2021. Once they receive the rulings, their representatives need to send a letter on their behalf to the CRM that they waive the right to appeal, in order to speed up the process; otherwise, the ruling becomes final after the expiry of the 15-day statutory deadline.

BCHR's client Q., who has been granted refuge, started working soon after the Asylum Office upheld his asylum application. Although his salary was lower than the average wage, Q. did not qualify for CRM's financial aid for temporary accommodation. Refugees who started working after the CRM issued rulings granting them financial aid fared better – they not only earned their wages, but continued receiving financial aid for accommodation as well.

In addition to the financial aid for temporary accommodation granted by the CRM, the financial aid granted to refugees and asylum seekers by UNHCR (CBI)⁵⁶² was extremely helpful. Many BCHR clients lost their jobs after the COVID-19 pandemic broke out and have been in need of additional support to cover their basic costs.⁵⁶³ However, the number of BCHR clients receiving CBI gradually fell during the reporting period, inter alia, because they had been receiving it for years. This is why the BCHR integration team devoted additional attention to these clients, with UNHCR's support, motivating them to look more actively for jobs and participate in various trainings to improve their employment prospects.

559 Electronic evidence of permanent court translators and interpreters available at: <https://bityl.co/AITH>.

560 Court translators/interpreters charge around 6,000 RSD and the notaries public charge 2,160 RSD per individual for the certification of statements. More about the high fees of notaries public and lack of court-sworn interpreters and translators and the challenges they pose to refugees and asylum seekers in *Right to Asylum 2019*, p. 189.

561 In such situations, the BCHR assists its clients in applying for one-off financial aid with the UNHCR. They have to fill a form and explain why they need the aid.

562 Cash based intervention.

563 Rent, bills and food costs.

6.2.2. Conclusion and Recommendations

Most refugees in the RS fall in the socially vulnerable category of the population and are in need of all forms of aid and support, especially in securing basic housing conditions. Many refugees still faced uncertainties in terms of stable employment and income as the consequences of the economic crisis brought on by the pandemic continued to reverberate in 2021, impeding their ability to cover their housing costs. Refugees and asylum seekers, who had lost their regular income, were in need of aid, which was mostly provided by international organisations and local NGOs. The system for protecting this group needs to be extended also to state institutions, such as SWCs or the CRM, commensurate to their capacities.

The BCHR reiterates its recommendation⁵⁶⁴ that the Serbian Government should amend the Accommodation Decree to ensure that the amount of financial aid for housing that is granted to refugees, especially those with one or more children, reflects the size of their families. Furthermore, the Serbian Government should simplify the application procedure and lower the costs the refugees have to bear. In addition, the aid eligibility period should be extended in case of vulnerable categories of refugees. Thought should also be given to providing employed refugees with financial aid to supplement their wages and pay for their temporary accommodation and thus stimulate them to join the labour market as soon as possible and become independent. Given that the asylum procedure in the RS can last several years and that asylum seekers are entitled to access the labour market only nine months after they apply for asylum, it is quite likely that some of them will already have found a job by the time their applications are upheld. The Decree does not include incentives for employed refugees who managed to find a job through their own efforts. Finally, the Serbian Government should amend the Accommodation Decree and set participation in integration programmes as the requirement for exercising the right to accommodation.⁵⁶⁵

And, last, but not the least, the Decree should simplify the procedure of certifying documents on the refugees' financial standing. Addressing the deficit or absence of court-sworn interpreters and translators for the refugees' native languages is a priority.

⁵⁶⁴ More in *Right to Asylum 2020*, pp. 139–142.

⁵⁶⁵ Namely, Art. 59 of the LATP on loss of the right to financial aid for accommodation of refugees who do not attend Serbian language courses needs to be enforced consistently. In BCHR's experience, attendance of such courses mostly depends on the refugees' motivation and will. In practice, several foreigners granted refuge have never attended any Serbian language lessons, while, on the other hand, the CRM lacks the capacity to "monitor" attendance by all the individuals or check whether they comply with this obligation.

6.3. Personal Documents and the Right to Freedom of Movement

The LATP lays down that the MOI may issue four types of IDs and travel documents for refugees.⁵⁶⁶ The ID templates are set out in the Rulebook on the Content and Format of the Asylum Application and the Contents and Formats of Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection.⁵⁶⁷

The Minister of the Interior yet again failed to adopt the template of the travel document for refugees in 2021. Furthermore, the IDs for asylum seekers and foreigners granted asylum still lack all the requisite elements, while the Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection has not yet been brought in line with the Law on IDs.⁵⁶⁸ In its prior reports, the BCHR alerted to these problems in practice and issued the relevant recommendations to the MOI. In late 2021, the BCHR team again alerted to the importance of addressing these problems, in its comments of the draft amendments to the LATP.

Refugees and asylum seekers are also entitled to a driving licence, which they are issued by the MOI after they pass the driving test or apply for exchange of their valid foreign driving licences for Serbian ones. The procedure is set out in the Road Traffic Safety Law (RTSL)⁵⁶⁹ and the Rulebook on Driving Licences⁵⁷⁰. The legal lacunae in these regulations, however, impede the issuance of driving licences to refugees and asylum seekers. The RTSL does not recognise them as categories, which further complicates the exchange of their foreign driving licences by Serbian ones. These issues will be elaborated in greater detail in the ensuing sections.

6.3.1. Non-Issuance of Travel Documents

The Refugee Convention lays down that the Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory.⁵⁷¹ A specimen travel document is available in the Annex to the Convention.

566 Art. 87 LATP provides for the issuance of IDs to asylum seekers, foreigners granted refuge, subsidiary and temporary protection, and for the issuance of travel documents for refugees.

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

568 *Official Gazette of the RS*, Nos. 62/2006, 36/2011 and 53/2021.

569 *Official Gazette of the RS*, Nos. 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law, 9/16 – CC Decision, 24/18, 41/18, 41/18 – other law, 87/18 and 23/19.

570 *Official Gazette of the RS*, Nos. 73/10, 20/19 and 43/19.

571 Art. 28, Refugee Convention.

The Minister of the Interior still has not adopted a by-law governing the format of the travel document for refugees⁵⁷² although 13 years have passed since Serbia established the asylum system⁵⁷³ Namely, the MOI's (in)action de facto continued restricting the refugees' freedom of movement in 2021, which is in contravention of both the Refugee Convention⁵⁷⁴ and the RS Constitution.⁵⁷⁵

It needs to be noted that the refugees' passports issued by their countries of origin (if they even possess them) in most cases expire after a specific period of time and that they cannot extend them because they are unable to establish contact with their countries of origin or their diplomatic and consular missions. They are thus inevitably left without any valid travel documents allowing them to go abroad. Their freedom of movement is therefore limited to the territory of the RS, exacerbating their and the asylum seekers' long-standing dissatisfaction with and disappointment in the RS asylum system.⁵⁷⁶

To recall⁵⁷⁷, BCHR's integration team in November 2020 filed requests with the Asylum Office to issue travel documents to all BCHR clients granted refuge. It required of the Asylum Office to respond to each request in the format required by the LGAP and include the mandatory instruction on appeal, as the Protector of Citizens recommended on 14 October 2020.⁵⁷⁸

On 27 January 2021, the MOI's Border Police Directorate replied to BCHR's requests⁵⁷⁹ albeit not in the required format yet again.⁵⁸⁰ It merely stated that the individuals the requests concerned were entitled to travel documents under Article 91 of the LATP,⁵⁸¹ but that the MOI was unable to issue travel documents for refugees because the technical requirements for issuing biometric travel doc-

572 As he was under the duty to within the deadline set forth in Art. 101 in conjunction with Art. 87(6) of the LATP.

573 When the prior AL (*Official Gazette of the RS*, No. 109/07) entered into force.

574 The freedom of movement is enshrined in Art. 39 of the RS Constitution and Art. 2(2) of Protocol No. 4 to the ECHR.

575 Art. 39, RS Constitution.

576 In most cases, restrictions of the refugees' freedom of movement to the RS also result in violations of many of their other fundamental human rights, such as the right to a family life, because they are unable to see their family members living in other countries.

577 More in *Right to Asylum 2020*, BCHR, pp. 143 – 145.

578 Pursuant to the recommendations issued by the Protector of Citizens on 14 October 2020. To recall, Art. 145(3) of the LGAP lays down that authorities ruling on administrative matters at the initiative of the parties and in their interest, where the procedure does not involve direct ruling, must issue their rulings within 60 days from the day the procedure was initiated.

579 MOI, Border Police Directorate reply of 27 January 2021, No. 26–430/17.

580 Art. 141, LGAP.

581 The MOI did not refer to Art. 91 of the LATP in its prior replies to the BCHR.

uments were not fulfilled, that the Rulebook on Travel Documents for Refugees was being drafted and that the BCHR would be duly notified when the technical requirements were fulfilled.

The reasons why the MOI concluded that the technical requirements had not been met or why the requisite by-laws have not been adopted for over 13 years now remain unclear. The MOI could use the specimen travel document in the Annex to the Refugee Convention.⁵⁸²

On 26 March, the BCHR integration team filed a group complaint⁵⁸³ with the Protector of Citizens because of the MOI's incomplete reply of 27 January and its failure to comply with his instructions on the issuance of decisions in the format envisaged in the LGAP. The BCHR asked the Protector of Citizens to exercise his statutory powers⁵⁸⁴ and initiate a check of the legality and regularity of the MOI's operations in respect of the:

- Requirement that the MOI hereinafter qualify the parties' submissions by content by applying measures and activities within its remit and issue decisions in the format prescribed by law, and provide the parties with the chance to appeal its decisions, and
- The complainants' inability to exercise their right to a travel document under the LATP.

The BCHR requested of the Protector of Citizens to issue the relevant recommendations if he identified shortcomings in the MOI's operations.

To the best of BCHR's knowledge, the Protector of Citizens did not act on the complaint by the end of the reporting period. We nevertheless hope that this independent institution will initiate the protection mechanism at its disposal and contribute to the realisation of the right of refugees in the RS to travel documents, in accordance with the LATP.⁵⁸⁵

6.3.2. IDs Lacking Essential Elements

The MOI still has not eliminated the identified shortcomings of the IDs for refugees and asylum seekers although 13 years have passed since the asylum system was established in the RS.⁵⁸⁶ The paper IDs are simple in format, handwritten and laminated, lacking biometric data. Their holders have for years

582 More in *Right to Asylum 2020*, p. 144.

583 Complaint filed on behalf of 23 BCHR clients, whose requests for travel documents were rejected by the MOI Border Police Directorate in its letter of 27 January 2021.

584 Art. 25(5), Law on the Protector of Citizens.

585 Art. 91, LATP.

586 When the Asylum Law (*Official Gazette of the RS*, No. 109/07) was adopted.

now faced numerous problems in exercising their rights under the LATP.⁵⁸⁷ Furthermore, such documents are met with distrust especially of representatives of state authorities and legal persons, who doubt their authenticity, usually because they are unfamiliar with them. Such IDs have given rise to many unpleasant situations, often opening the issue of discrimination against refugees and asylum seekers. These IDs, which resemble ordinary cards rather than personal identification documents, can also easily be forged given the way they are made and their appearance.

The ID template still lacks a box for the RFN,⁵⁸⁸ which refugees and asylum seekers use in various situations. This has given rise to many difficulties in practice. In order to claim specific rights, refugees and asylum seekers need to produce FRN certificates that are issued by the Asylum Office for each individual need and cannot be used for other purposes. This poses problems, especially given the fee⁵⁸⁹ that has to be paid for each copy of the certificate, except in specific cases set out in the law⁵⁹⁰, when the fee is waived.⁵⁹¹

Refugees have encountered numerous problems in practice because of their inadequate IDs: in registering with a health institution and opening a patient file and having a check-up without a biometric ID, opening a bank account, mistrust of potential landlords, bureaucratic problems during employment, et al. Public officials and bank officers often do not know how to enter the FRNs in their system, given that refugees and asylum seekers do not have PINs and their IDs lack chips allowing for reading their data.

The BCHR therefore reiterates that the Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection needs to be aligned with Article 7 of the Law on IDs, under which the PIN (in this case the RFN) is a mandatory element of the document. Furthermore, asylum seekers, and especially refugees in the RS, would have a much easier time integrating in society and accessing the rights they have under the law if they had biometric documents. To recall, Arti-

587 The IDs still lack protective elements other than the seal. The templates are filled manually by the Asylum Office staff. See the Rulebook on the Content and Format of the Asylum Application and the Content and Format of Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection, *Official Gazette of the RS*, No. 47/18.

588 FRNs are equivalents of the Personal Identification Numbers (PINs) of Serbian nationals.

589 The refugees have to pay a 320 RSD fee for each copy of the certificate, plus the bank fee.

590 Art. 19, Law on Republican Administrative Fees (*Official Gazette of the RS*, Nos. 43/03, 51/03 – corr., 61/05, 101/05 – other law, 5/09, 54/09, 50/11, 70/11, 55/12, 93/12, 47/13, 65/13 – other law, 57/14, 45/15, 83/15, 112/15, 50/16, 61/17, 113/17, 3/18 – corr., 50/18, 95/18 and 38/19).

591 The fee is waived if the certificate is issued for the purpose of exercising labour, health care or welfare rights.

cle 25 of the Refugee Convention also lays down that states are obligated to issue refugees documents they would normally be issued by their country of origin.

6.3.3. *Difficulties in Obtaining Driving Licences*

Under the RTSL, foreigners temporarily residing in Serbia, who have valid travel documents, foreign IDs or visas, may operate vehicles provided they have a foreign or international driving licence.⁵⁹² The RTSL lays down that an international driving licence shall be valid for 12 months, as of the day the foreigner is granted uninterrupted temporary residence exceeding six months or permanent residence in Serbia.⁵⁹³

Foreigners who want to replace their foreign driving licences with Serbian ones need to submit the following documents together with their application: their valid foreign driving licence and its translation certified by a court-sworn translator, proof of identity, documents proving they have been granted temporary residence in the RS exceeding six months, proof of fee payment, and a medical certificate confirming they are fit to drive issued within the past six months. Refugees and asylum seekers also need to produce their FRN certificates and status certificates issued by the Asylum Office.

The procedure for exchanging the refugees' driving licences with Serbian ones is not complicated, but the collection of the requisite documents is time consuming. However, police departments and stations do not have a consistent practice concerning the issuance of driving licences to asylum seekers. Over the past few years, some police stations refused to issue asylum seekers Serbian driving licences in lieu of their foreign ones, since their staff believed they were not entitled to exchange them. On the other hand, the Belgrade traffic police consider that both refugees and asylum seekers are entitled to exchange their driving licences and have issued Serbian licences to all the applicants.

However, an additional problem concerning the payment of the administrative fees appeared in practice in the latter half of 2021. Until then, templates of the payment forms were available on the MOI's website, but they have since been generated via the e-Government portal. Refugees and asylum seekers cannot pay the fees because the system reports an error when they enter all the required data,⁵⁹⁴ presumably because it does not recognise their FRNs as PINs. BCHR's team was reassured orally by the Foreigners Directorate staff that the "old" slips confirming payment would be accepted. However, the police refused to admit

592 Foreigners temporarily residing in the RS need to have proof of the duration of their uninterrupted residence in the RS.

593 Art. 178 RTSL.

594 First and last names, PIN and address.

such slips as proof of payment produced by several BCHR clients, wherefore they had to go to the MOI Foreigners Directorate several times before their applications were ultimately accepted.

The BCHR again alerts also to the risk of disclosure of confidential information about refugees and asylum seekers during the issuance of their driving licences. The licence exchange procedure is set out in the Rulebook on Driving Licences.⁵⁹⁵ Under the Rulebook,⁵⁹⁶ the exchanged foreign driving licences shall be returned to the authorities of the states that had issued them via their diplomatic-consular missions in Serbia. The enforcement of this provision in case of refugees and asylum seekers would lead to a violation of the confidentiality principle under the LATP,⁵⁹⁷ which prohibits the disclosure of information about refugees to their countries of origin. This is why the BCHR has been referring to the LATP and the confidentiality principle whenever it applied for the exchange of its clients' driving licences.

6.3.4. Conclusion and Recommendations

The successful integration of persons granted asylum in Serbia is possible only if they can exercise all their guaranteed rights, in compliance with international conventions and other ratified documents. Given the current situation concerning personal documents, it may be concluded that the practice of issuing them has not been improved since the asylum system was established thirteen years ago. The adoption of the by-law on the format of the travel document for refugees is still pending, while the MOI is refusing to use the specimen travel document envisaged by the Refugee Convention. The MOI should adopt the by-law on the content and format of the travel document for refugees without delay, to facilitate their freedom of movement outside Serbia.

The Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection needs to be aligned with the Law on IDs to ensure that the refugees' and asylum seekers' personal documents are of the same quality and have the same degree of protection as the biometric IDs of RS nationals. Furthermore, the IDs for these categories need to include their FRNs, which are the equivalents of the PINs of RS nationals. Serbia's budget would not be substantially strained by the issuance of such biometric documents. This solution would also simplify the frequent issuance of new IDs upon expiry of the old ones or in case of change of address.⁵⁹⁸

⁵⁹⁵ *Official Gazette of the RS*, Nos. 73/10, 20/19, 43/19 and 128/20.

⁵⁹⁶ Art. 17, Rulebook on Driving Licences.

⁵⁹⁷ Art. 19, LATP.

⁵⁹⁸ In case of change of address, the new address would be entered as a biometric data via the chip. This would greatly facilitate matters given that asylum seekers and foreigners granted

As BCHR has already emphasised over the past few years, the RTSL applies to foreigners whose status is governed by the Foreigners Law, but its provisions do not apply to refugees and asylum seekers. The Serbian Government should propose the alignment of the RTSL with the LATP and the clear definition of the rules regarding the exchange of the refugees' and asylum seekers' driving licences. The Rulebook on Driving Licences should then be brought into compliance with the amended law. Furthermore, the Foreigners Directorate needs to promptly notify all MOI staff of the rights refugees and asylum officers have, to put an end to refusals to replace their valid driving licences with Serbian ones.

There is a risk that the identity of refugees replacing their driving licences will be revealed to their countries of origin. Rules regarding foreigners with temporary residence in Serbia should not apply to refugees and asylum seekers, since their rights may be violated if the Serbian authorities disclose their status and presence in Serbia to their countries of origin.

Many refugees did not take all their documents with them as they fled war and persecution. Many of them do not have their driving licences or the possibility of proving that they can drive. Hence the dilemma – whether these people should be required to take their driving tests all over again or undergo structured interviews and checks on the assumption that they possess foreign driving licences to facilitate their exchange for Serbian ones. The relevant Ministry should give thought to issuing guidelines and instructions on exchange or issuance of driving licences to refugees in accordance with the Refugee Convention.⁵⁹⁹

6.4. Access to the Labour Market

The LATP guarantees the right to work to persons granted asylum,⁶⁰⁰ and asylum seekers in accordance with regulations on employment of foreigners.⁶⁰¹ Labour and employment rights of this group of foreigners are governed by the Law on Employment of Foreigners (LEF),⁶⁰² which defines in greater detail the categories of foreigners, and the employment procedure and requirements.⁶⁰³

asylum often move house. The BCHR has filed several requests with the Asylum Office to replace the IDs of its individual clients every year.

599 Art. 25 of the Refugee Convention sets out that the authorities that granted international protection shall deliver or cause to be delivered under their supervision to refugees documents or certifications that would normally be delivered to aliens by or through their national authorities.

600 Art. 65, LATP.

601 Art. 57, LATP.

602 *Official Gazette of the RS*, Nos. 128/14, 113/17, 50/18 and 31/19.

603 The LEF recognises two categories of foreigners in the asylum category: 1) refugees, whose right to refuge has been recognised under asylum law (Art. 2(8)); and 2) asylum seekers, persons granted temporary protection and persons granted subsidiary protection (Art. 2(9)).

The LEF provides for the issuance of personal work permits,⁶⁰⁴ *inter alia* to refugees and asylum seekers fulfilling the specified requirements. Persons granted refuge or subsidiary protection are entitled to apply for their personal work permits as soon as they acquire the status, while asylum seekers may apply for them provided that they had applied for asylum over nine months ago and a final decision on their application is still pending. Holders of personal work permits are entitled to employment, self-employment and unemployment-related rights.⁶⁰⁵ Such a permit differs from an ordinary work permit because it is not tied to a particular employer. Personal work permits issued to persons granted the right to asylum will be valid as long as their IDs are valid. The validity of personal work permits issued to asylum seekers is six months and may be extended as long as they have the status of asylum seeker.⁶⁰⁶

During the reporting period, BCHR's integration team filed with the NES a total of 86 applications for personal work permits on behalf of its clients, out of which 73 were approved.⁶⁰⁷ Refugees and asylum seekers in Serbia still encounter problems in exercising their right to work, due, primarily to: the complicated personal work permit issuance procedure; the employers' unfamiliarity with the refugees' and migrants' rights to access the labour market, the high unemployment rate, and the underdeveloped domestic market.

In addition, the COVID-19 pandemic continued impinging on the labour market. Although the anti-pandemic measures in the RS are not too rigorous, large numbers of COVID-19 cases and work from home many companies have opted for have considerably diminished the refugees' and asylum seekers' prospects of finding a job. Some of them lack stable Internet connections, others the equipment they need to attend trainings or work online. On the other hand, employment in the manufacturing industry places them, as well as all other workers, at additional risk of contracting the disease, due to lack of compliance with the preventive measures and the physical distance requirements.

As per the economic empowerment of refugees, the BCHR integration team continued closely cooperating with the UNHCR team for durable solutions in extending various forms of support to refugees and asylum seekers. Refugees are assisted in finding a job, learning Serbian, covering the costs of work permit fees, obtaining their sanitary booklets, purchasing work equipment, emancipating and joining the labour market.

In addition, with UNHCR's support, the BCHR integration team helped some of its clients apply for internships with IKEA, designed specifically for ref-

604 Art. 11, LEF.

605 Art. 12, LEF.

606 Art. 13, LEF.

607 January-December 2021 Monthly Progress Reports.

ugees.⁶⁰⁸ Its assistance in the preparation of CVs and motivation letters helped some candidates find work in IKEA.⁶⁰⁹

6.4.1. *Personal Work Permits – Expensive and Complicated Issuance Procedure*

The Rulebook on Work Permits⁶¹⁰ defines in greater detail the issuance and extension of work permits, proof of eligibility, and the format and content of the work permits.⁶¹¹ The procedure in which personal work permits are issued to refugees and asylum seekers has not proven efficient or cost-effective in practice. BCHR's clients have been relying on its assistance because they do not speak Serbian and do not understand the regulations.

BCHR's integration team has been assisting its clients in collecting the requisite documentation to access the labour market and in applying for their personal work permits. Payment of administrative fees is particularly problematic for privately accommodated refugees and asylum seekers applying for personal work permits. According to the Fee Schedule, they need to pay 14,360 RSD (the amount was increased by 390 RSD in early July 2021),⁶¹² and a 330 RSD application fee.⁶¹³ Such high fees are unreasonable and exacerbate the realisation of the right to work by this vulnerable group of the population. These fees may be waived under specific conditions set out in the LGAP⁶¹⁴, but, in practice, such waivers are granted only to foreigners living in ACs or RTCs at the time of application.⁶¹⁵

Another persisting problem is the long time the asylum seekers have to wait for the NES to issue their work permits,⁶¹⁶ especially in Belgrade.⁶¹⁷ Given that

608 The training placement programme for refugees is part of a global programme IKEA has been implementing successfully in the countries in which it operates. IKEA launched the programme in the RS in 2021. See more at: <https://bityl.co/AIUO>.

609 The refugees were offered jobs in the logistics department and the kitchen, as well as jobs requiring greater experience in design and carpentry. However, due to the language barriers, refugees were not yet offered jobs involving contact with clients.

610 *Official Gazette of the RS*, Nos. 63/18 and 56/19.

611 The following documents need to be attached to the personal work permit application: photocopies of the ID and FRN certificate, and proof of payment of the administrative fee if the applicant is living in private lodgings. Applicants living in ACs need to submit certificates of accommodation in a collective centre issued by the CRM instead of proof of payment of the administrative fee.

612 Fee Schedule 205, Law on Republican Administrative Fees.

613 Fee Schedule 1, Law on Republican Administrative Fees.

614 Art. 89, LGAP.

615 More in *Right to Asylum 2020*, p. 151.

616 Art. 13, LEF.

617 They ordinarily have to wait for it one month, sometimes much longer.

personal work permits issued to asylum seekers are valid for six months, such long waiting times substantially reduce the time they can use them.⁶¹⁸ This may cause additional problems to refugees and asylum seekers in practice, because employers may not hire them if they do not have work permits and some employers are unwilling to wait long for their potential employees to finally get them.

At UNHCR's and the CRM's invitation, the BCHR took part in a meeting with NES staff charged with issuing work permits and employment-related training and assistance. The meeting focused on the challenges faced by NES staff and their clients and the NES' practice. The participants, inter alia, shared experiences and mapped the specific problems concerning the refugees' and asylum seekers' applications for personal work permits. They also discussed cooperation on the employment of refugees and asylum seekers and the additional support the NES extended through trainings and requalification programmes. Such joint activities by international, non-government and state actors is a good practice example of inter-agency cooperation that can improve the refugees' status in the Serbian labour market.

6.4.2. Additional Challenges in Accessing the Labour Market

The two most common challenges job-seeking refugees and asylum seekers face still arise from the employers' preference to hire Serbian nationals and their unfamiliarity with the rights and distrust of the refugees and asylum seekers. Furthermore, BCHR's clients can usually apply for only some jobs because they do not speak Serbian, wherefore most of them can perform lower-paying less qualified jobs.⁶¹⁹ The refugees' and asylum seekers' knowledge of foreign languages has, however, proven to be an advantage and a number of them have been hired by call centres.⁶²⁰

Therefore, the refugees' and asylum seekers' access to the Serbian labour market proved extremely complex and difficult in 2021. Many BCHR clients faced challenges in exercising their right to work, since the domestic market was still recovering from the pandemic's negative impact on the economy. Moreover, the Serbian labour market is still insufficiently developed to accept different profiles of workers and offer satisfactory conditions and financial satisfaction to refugees.

618 Although the permits may be extended another six months, the renewal procedure is just as complicated and just as long as the issuance procedure.

619 Refugees and asylum seekers mostly work in plants and factories, as well as catering jobs not requiring contact with the clients, et al. It also needs to be noted that a substantial number of them had to interrupt their schooling in their countries of origin and could not subsequently resume it or acquire professional qualifications. More in *Right to Asylum 2020*, pp. 151–152.

620 Several BCHR clients have found jobs in call centres, especially in the French, Arabic and English departments.

6.4.3. Conclusion and Recommendations

Refugees and asylum seekers in Serbia have had an even harder time finding a job and accessing useful employment-related information due to their lack of knowledge of the local language and culture. They need to be provided with systemic support in finding a job and in acquiring new skills and knowledge to improve their competitiveness in the labour market, and, consequently, increase their social security and live a life in dignity.

The LATP and the LEF should be amended to automatically recognise the right to work of persons granted the right to asylum, without them needing to first obtain personal work permits.⁶²¹ Such amendments would greatly facilitate their access to the labour market and the refugees could focus on qualification and requalification programmes. The NES, as well as the CRM,⁶²² should invest their resources in the design and implementation of effective programmes for the engagement of refugees in education and trainings and facilitate their access to the labour market through more effective active employment measures.

The LEF provision, under which asylum seekers may apply for personal work permits provided that they had applied for asylum over nine months ago, should be replaced by a provision allowing them to apply for their work permits as soon as they express their intention to seek asylum. The integration of asylum seekers in the Serbian labour market would be more efficient if this timeframe were shorter.

The BCHR has continued monitoring the situation in the labour market, workforce demand and demand for specific occupations in the context of the pandemic. The BCHR integration team has also continued extending assistance to its clients in applying for jobs and alerting them to vacancies matching their interests and experience.

6.5. Right to Family Reunification

Separation of families due to war, conflict and persecution has devastating effects on the well-being of their members, their unity and ability to rebuild their life together. Many difficult decisions are made in such circumstances and people often leave their families behind in their quest for safety in other countries. Family reunification is undoubtedly one of the greatest concerns of refugees, most of all those who are alone in countries where they enjoy international protection, and it is one of the main aspects of ensuring stability in the life of refugees.

621 More on the comparative practices of EU Member States in a similar economic situation as Serbia in which refugees do not need to obtain work permits in *Right to Asylum 2019*, p. 173.

622 Pursuant to Art. 2(1(6)) of the Integration Decree.

The right to family life and unity is guaranteed by many international and national laws. Under the Universal Declaration of Human Rights (UDHR)⁶²³ the family is entitled to protection by society and the state. The 1951 Refugee Convention does not explicitly mention the right to family reunification. However, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, adopted together with the Refugee Convention, states that unity of the family is an essential right of the refugee.⁶²⁴

The Family Reunification Directive⁶²⁵ guarantees the right to family reunification at the EU level. It, however, needs to be noted that unlike refugees, beneficiaries of subsidiary protection do not enjoy the favourable conditions associated with the right to family reunification.

LATP guarantees persons granted asylum in Serbia the right to reunite with their families.⁶²⁶ The LATP charges the Asylum Office with deciding on family reunification applications involving underage children born in or out of wedlock, underage adopted children or underage stepchildren of refugees who have not founded a family of their own. Residence of other family members shall be regulated in accordance with regulations governing the legal status of foreigners.⁶²⁷ The Foreigners Law⁶²⁸ defines in greater detail the right to temporary residence of foreigners who are members of the refugee's immediate family. Under the LATP, family members of persons granted the right to asylum shall have, under equal conditions, all the rights and obligations, with the exception of the right to family reunification.⁶²⁹

EU Member States' data show that asylum seekers do reunite with their families. The practice in Serbia is, however, somewhat different. The family reunification procedure was conducted in the RS for the first time in July 2020 – APC's client from Afghanistan reunited with his wife and five children, who came to the RS from Afghanistan, with the help of the RS Consulate in India.

623 Art. 16(3), UDHR.

624 The Final Act emphasises that such unity is constantly threatened and recommends to the signatory states to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring the protection of refugees who are minors, in particular unaccompanied children and girls. See: Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons adopted together with the Refugee Convention (25 July 1951), available at: <https://bit.ly.co/AlUc>.

625 Family Reunification Directive, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

626 Art. 70(1), LATP.

627 Art. 70(3), FL.

628 Art. 56, FL.

629 Art. 59(5), LATP.

Although the reunification procedure took more than 10 months,⁶³⁰ this case is an important step in establishing the practice concerning family reunifications of foreigners granted asylum in the RS in the future.

In 2021, BCHR's client, also a national of Afghanistan, expressed the wish to reunite with his family. BCHR's integration team initiated the first steps and contacted the relevant RS diplomatic officials in India, but the procedure will likely last long due to the Consulate's heavy workload and inefficiency.

6.6. Right to Marriage and Problems in Practice

The UDHR confirms the right to marry.⁶³¹ This right is not defined in the Refugee Convention or the LATP.

Several BCHR clients granted the right to asylum in Serbia asked for its help in submitting documentation for entry into marriage to the relevant civil registry departments. Under Serbian law, the law of the state the foreigner is a national of shall apply in relation to conditions governing marriage.⁶³² However, the question that arises in practice is whether this provision also applies to refugees, who are not in a position to enjoy the protection of their countries of origin, wherefore they are unable to contact the relevant institutions in their countries of origin to obtain the documents they need to marry in the RS, an issue which the BCHR has already reported on.⁶³³

Under the LATP⁶³⁴ the state shall put in place conditions for the integration of persons granted the right to asylum in Serbia's social, cultural and economic life and facilitate their naturalisation commensurate with its capacities. Most BCHR clients facing problems in fulfilling the formal requirements for entry into marriage are no other than refugees who want to settle down, marry and start a family in Serbia and be full-fledged citizens of the community.⁶³⁵ Given

630 The APC client's asylum procedure lasted for years. See APC's press release of 20 July 2020, available in Serbian at: <https://bitly.co/AlUg>.

631 Art. 16(1), UDHR.

632 Art. 32(1), Law on Resolution of Conflicts of Laws with Regulations of Other Countries, *Official Gazette of the SFRY*, Nos. 43/82 and 72/82 – corr., *Official Gazette of the FRY*, No. 46/96 and *Official Gazette of the RS*, No. 46/06 – other law.

633 According to the practice of civil registry departments, foreign nationals who wish to enter into marriage in Serbia must submit documents issued by the relevant institutions of their countries of origin, which is unfeasible in the case of most refugees. More in *Right to Asylum 2020*, pp. 155–158.

634 Art. 71(2), LATP.

635 Art. 8, ECHR (*Official Gazette of the State Union of Serbia and Montenegro – International Treaties*, Nos. 9/03, 5/05 and 7/05 – corr. and *Official Gazette of the RS – International Treaties*, Nos. 12/10 and 10/15).

that the formal marriage requirements impede the integration process under the Integration Decree⁶³⁶ the question arises whether refugee law is consistently applied in this area.

Under the Refugee Convention⁶³⁷ the authorities of the countries the refugees are living in shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

6.6.1. Conclusion and Recommendations

One way to formally provide refugees and asylum seekers with the chance to enter into a marriage in the RS might involve requiring of the registrars to issue a written ruling rejecting the intended marriage application, which the registrars are obligated to do within eight days from the day they orally rejected the application and only if so required by the applicant. The applicant then has 15 days to appeal the registrar's decision with the ministry charged with family protection.

A similar practice was developed in Greece, which substantially developed its refugee policies after the massive influx of migrants in 2015. Namely, an appeal with the relevant ministry provides for the possibility of initiating extrajudicial proceedings in which the court can conclude that there are no legal impediments to the applicant's entry into marriage.

Furthermore, under the Refugee Convention, the relevant ministries should prepare guidance regulating the marriage procedure and forward it to the relevant civil registries to avoid the described problems in practice. BCHR's integration team will continue to invest efforts in eliminating the problems in practice to enable refugees and asylum seekers to exercise their right to marry although they do not possess all the required documents.

6.7. Education

The right to education is guaranteed by numerous international instruments ratified by Serbia, above all the UDHR.⁶³⁸ The Serbian Constitution lays

⁶³⁶ *Official Gazette of the RS*, No. 56/18.

⁶³⁷ Art. 25, Refugee Convention (*Official Gazette of the FPRY – International Treaties*, No. 7/60).

⁶³⁸ Art. 26(10). The right to education is also guaranteed by Arts. 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (*Official Gazette of the SFRY – International Treaties*, No. 7/71), and Art. 10 the Convention on the Elimination of All Forms of Discrimination against Women (*Official Gazette of the SFRY – International Treaties*, No. 11/81).

down that everyone is entitled to education.⁶³⁹ The Serbian education system is governed in detail by a set of laws: the Education System Law⁶⁴⁰, the Primary Education Law⁶⁴¹, the Secondary Education Law⁶⁴² and the Higher Education Law.⁶⁴³

The UN recommends that states should provide inclusive and equitable education for migrant children and facilitate their access to learning opportunities,⁶⁴⁴ including by strengthening the capacities of education systems and by facilitating non-discriminatory access to early childhood development, formal schooling and non-formal education programmes.⁶⁴⁵

The Education System Law prohibits discrimination.⁶⁴⁶ Everyone, irrespective of their personal characteristics, is entitled to preschool, primary, secondary and higher education on equal terms.⁶⁴⁷ The LATP lays down that asylum seekers are entitled to free primary and secondary education.⁶⁴⁸ It also guarantees the right to preschool, primary, secondary and higher education to individuals granted the right to asylum in Serbia on equal terms as Serbian nationals.⁶⁴⁹ Integration of refugees in the education system and provision of support to integration in the national education system is governed in greater detail by the Education Ministry's Professional Guidance on Integration of Refugee/Asylum Seeking Pupils in the Education System.⁶⁵⁰

UNHCR data⁶⁵¹ 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 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.

639 Art. 71, Constitution.

640 *Official Gazette of the RS*, Nos. 88/17, 27/18 – other law, 10/19 and 27/18 – other law.

641 *Official Gazette of the RS*, Nos. 55/13, 11/17, 10/19 and 27/18 – other law.

642 *Official Gazette of the RS*, Nos. 55/13 and 101/17.

643 *Official Gazette of the RS*, Nos. 88/17, 27/18 – other law, 73/18 and 67/19.

644 *Global Compact for Safe, Orderly and Regular Migration*, UN General Assembly, A/RES/73/195, (11 January 2019), Objective 15, (f), available at: <https://bit.ly.co/AlUz>.

645 *Ibid.*

646 Art. 23, Education System Law.

647 Art. 19, Anti-Discrimination Law (*Official Gazette of the RS*, No. 22/09).

648 Art. 55, LATP.

649 Art. 64, LATP.

650 Available in Serbian at: <https://bit.ly.co/AlUz>.

651 See the *Danas* article, available in Serbian at: <https://bit.ly.co/AlV5>.

Given the unstable epidemiological situation and anti-pandemic measures, in-person school attendance was not possible throughout the year and schools and universities had to revert to distance learning at times, depending on the number of infected pupils and teachers. The enrolment of the first refugees in Belgrade University with the status of full-time students was a positive step in the reporting period.

The BCHR's 2020 initiative that the Serbia join in the implementation of the CoE European Qualifications Passport for Refugees-EQPR project was a success. With the support of UNHCR's Office in Belgrade, the BCHR started cooperating with the Serbian Qualification Agency ENIC/NARIC Centre. The accession of the ENIC/NARIC Centre to the Council of Europe, as the implementer of the EQPR project, was initiated in early 2021, together with the representatives of the CoE Office in Belgrade and the EQPR project.

Given that education is both one of the key factors for living a successful and quality life and that it facilitates the integration of refugees, the BCHR continued trying to improve practice in this area through its activities and public advocacy efforts, as this section of the report will elaborate.

6.7.1. Preschool Education

Under the LATP, foreigners granted the right to asylum are entitled to pre-school education under the same terms as Serbian nationals.⁶⁵² However, this right is not guaranteed asylum seeking children.⁶⁵³

The BCHR team did not assist any refugees in enrolling their children in kindergarten during the reporting period. However, the refugees' lack of entitlement to subsidised kindergarten rates prompted the BCHR to request of the Belgrade City Assembly to issue an opinion on the Decision on Social Protection Rights and Services,⁶⁵⁴ specifically whether asylum seekers and foreigners granted refugee protection and living in Belgrade fulfil the Decision requirements for subsidised kindergarten rates.

Enrolment of refugee and asylum-seeking children in preschool would definitely facilitate their integration and mastery of the Serbian language. They would have a much easier time following the preparatory preschool programme and, later, classes in school.⁶⁵⁵

652 Art. 64, LATP.

653 Art. 48, LATP.

654 *Official Journal of the City of Belgrade*, Nos. 55/2011, 8/2012 – corr., 8/2012, 42/2012, 65/2012, 31/2013, 57/2013, 37/2014, 82/2015, 4/2016, 37/2016, 56/2016, 114/2016, 102/2017, 50/2018 and 103/2018.

655 In addition, their parents, especially asylum-seeking parents, would have the opportunity to work while their children are in kindergarten and provide their children with better living conditions.

The cultural aspect should also be borne in mind. Most refugee and asylum-seeking mothers do not have full-time or occasional jobs and spend most of their time looking after and raising their children, wherefore rarely any of them are enrolled in kindergarten.

6.7.2. Primary and Secondary Education

Under the LATP, asylum seekers and individuals granted asylum are entitled to primary and secondary education free of charge.⁶⁵⁶ Primary education is free and mandatory in the RS.⁶⁵⁷ In addition, the LATP lays down that asylum-seeking children shall be provided with access to education immediately, within three months from the day they apply for asylum in the RS at the latest.⁶⁵⁸

The Integration Decree⁶⁵⁹ recognises help in accessing education as an important factor in the refugee integration process and envisages assistance⁶⁶⁰ 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.⁶⁶¹ 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.⁶⁶²

The enrolment of children living in ACs and RTCs is assisted and supported by the staff of the CRM,⁶⁶³ while children living in private lodgings are assisted by NGOs. The enrolment of unaccompanied and separated children is facilitated by their temporary guardians.⁶⁶⁴

UNHCR data⁶⁶⁵ show that around 175 refugee children and youth were enrolled in Serbian schools at the beginning of the 2021/2022 school-year; 140 of them attended primary and slightly over 20 of them secondary schools.

Refugee children with proof of prior education are enrolled in primary and secondary schools in accordance with their age and education level. The knowl-

656 Arts. 55(1) and 64, LATP.

657 Arts. 4 and 5, Primary Education Law.

658 Art. 55(2), LATP.

659 Art. 2(1(4)) (*Official Gazette of the RS*, Nos. 101/16 and 56/18).

660 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.

661 Art. 6, Integration Decree.

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

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

664 Police certificates suffice for enrolment of children who have not applied for asylum, whereas 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 for asylum-seeking children.

665 See: <https://bit.ly/313RqJH>.

edge of children who lack such proof is tested by the Preliminary Knowledge Test Team. The Team may include: an interpreter, a foreign language teacher, a pedagogical assistant, the child's parent or temporary guardian in case the child is unaccompanied or separated and other individuals who know the child well.⁶⁶⁶

In order to enrol in first grade, children must undergo comprehensive medical check-ups and they must be vaccinated. 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, are still the key problems in the schooling of refugee and asylum-seeking children. In September, the BCHR assisted four families in enrolling their children in primary school, specifically the enrolment of six first graders and of one fifth grader.

The enrolment of a girl from Iraq, who is living in the RS with her mother, was conducted in cooperation with the NGO Atina, which has been extending support and protection to them for years now. The child was enrolled in first grade in the school closest to her home.⁶⁶⁷ After the girl was assigned to a class, the school defined the modality of work with her. The mother 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 homework. Refugee children attending after-school care have had less trouble mastering Serbian, which is particularly helpful when the parents, such as the mother in this case, do not speak Serbian and cannot help their children with their homework.

The school required that the following documents be submitted for the enrolment of a seven-year-old asylum-seeking child from Congo: the child's FRN, the ruling approving residence in private lodgings, serving as evidence of the family's registered temporary place of residence, and the health certificate issued after the child's check-up.⁶⁶⁸ Since the child spoke 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 class-

666 Schools are under the obligation to develop Support Plans for each pupil; such plans need to include an adaptation and stress coping programme, an intensive Serbian language course, individualised teaching activities and provide for the child's engagement in extracurricular activities.

667 A communication problem arose during enrolment, because the mother did not speak Serbian and was not proficient in English, wherefore a translator for their native language had to be engaged.

668 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.

mates. The mother and J.K.T.'s teacher agreed to communicate in the future via the Viber group, via which the teacher sends important school-related information to all the parents. They also agreed to communicate with the help of Google Translate.

Three children from Pakistan, living in the RS only with their mother, were also enrolled in first grade during the reporting period. Although they are not of the same age⁶⁶⁹, all of them were enrolled in first grade since they had never attended a Serbian school. The CRM 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. A communication problem arose in this case as well, since the mother spoke hardly any English. The school decided to enrol all three children in the same class for the first few months, so they would have an easier time settling in, follow the same curriculum and have the same homework. In order to help the children overcome the language barrier as soon as possible,⁶⁷⁰ 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. UNHCR approved the family one-off financial aid at BCHR's request.

The BCHR also helped a single mother from Syria living in Sombor enrol her two children in school. Her son was enrolled in fifth and her daughter in first grade. The children had their IDs and FRN certificates, which were submitted to the relevant primary school before the school-year began. 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,⁶⁷¹ which was then forwarded to the primary school in Sombor. The CRM assisted the family during enrolment. After CRM and BCHR representatives' joint visit, in the company of an Arabic interpreter, the boy was enrolled in fifth grade on the assumption that his integration in the school would be easier since he has already attended school in Serbia and has some knowledge of Serbian. The school provided the children with the basic school supplies. Since this family has been granted subsidiary protection in the RS, the BCHR filed a request with the CRM to cover the costs of the children's textbooks.⁶⁷²

669 The son was seven and the two daughters were nine and ten years old.

670 The girls luckily spoke English.

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

672 The CRM approved the request, but the mother and her children left the RS in the meantime, wherefore the entire procedure was discontinued.

The CRM's practice established in the 2021/2022 school-year also warrants mention in that respect. Namely, foreigners granted refuge 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.

6.7.3. Tertiary Education

Under the LATP, refugees are entitled to tertiary education under equal terms as nationals of Serbia.⁶⁷³ The professional guidance on enrolment in state-run colleges in the 2021/2022 school-year,⁶⁷⁴ which was published in June 2021, reiterates that foreign nationals who have the status of migrants/asylum seekers may enrol in college under the same terms as nationals of the RS, an issue the BCHR sought the Belgrade University's opinion on in late 2020.⁶⁷⁵

Four young refugees started exercising their right to tertiary education in the RS in 2021,⁶⁷⁶ which will be described in the ensuing paragraphs.

BCHR's client K. I. K., a Burundian refugee, expressed the wish to enrol in Medical School in 2020. The BCHR validated her high school diploma in February. With UNHCR's support, K.I.K. attended Biology and Chemistry lessons to prepare for the entrance exam since early 2021. K.I.K. has also been studying Serbian regularly since 2020.

Soon after the Belgrade University Medical School published the 2021/2022 admission competition in May, the BCHR got in touch with an official of the School's Centre for International Cooperation, who helped K.I.K. during the application procedure and collection of the documents needed for enrolment.⁶⁷⁷ Preliminary applications were submitted in the 17–21 June 2021 period.⁶⁷⁸ In

673 Art. 64, LATP.

674 *Official Gazette of the RS*, No. 59/2021.

675 In September 2020, the BCHR requested of the Belgrade University to issue an opinion clarifying the requirements foreigners granted refuge or subsidiary protection had to fulfil to enrol in college. See the University's opinion issued the following month in *Right to Asylum 2020*, p. 162.

676 Another five refugees are attending adult education schools. Information obtained from UNHCR in the RS.

677 In addition to the ruling on the validation of her high school diploma, K.I.K. was required to submit a photocopy of her identification document, her birth certificate, her Serbian language certificate, her medical certificate and her health insurance. In addition to these documents and proof of payment of the fees, the candidates need to buy the entrance exam preparation materials in the School's book shop.

678 Each applicant was given a number and the exact time at which they were to submit their documentation to the Medical School to avoid crowding.

addition to their personal data, the applicants were required to enter the number of points they earned in high school, which gave rise to dilemmas in this case given the different education systems and grading in the RS and Burundi, wherefore the BCHR asked the ENIC/NARIC Centre and the Medical School for assistance, albeit unsuccessfully.⁶⁷⁹ Ultimately, the Medical School told BCHR that K.I.K. should herself recalibrate her grades in the preliminary application and that the admissions committee would have the final say.

Around 1,250 candidates applied for Medical School. They had to earn at least 31 points to pass the entrance exam.⁶⁸⁰ Unfortunately, BCHR's client was among the 45% of the applicants who failed the exam, wherefore she did not enrol in the college of her choice.⁶⁸¹ K.I.K. instead enrolled at the Chemical College at Belgrade University, where she is majoring in biochemistry, during the next admission round in the first half of July. The Chemical College recognised K.I.K.' results at the Medical School entrance exam, wherefore the entire enrolment procedure was conducted without any difficulties.

Besides, K. I. K. from Burundi, a Libyan refugee, K.S.S., applied at the University of Belgrade College of Economy in 2022. The enrolment procedure at this college is less complicated than the one at the Medical School. The applicants could apply only online, from 23 to 26 June.⁶⁸² Furthermore, K.S.S. graduated from a high school in Serbia, wherefore he did not need to validate any school certificates. Given his completion of high school in Serbia, K.S.S. had fewer problems applying for college and taking the entrance exam. K.S.S. ranked 50th below the line of students whose studies are funded from the state budget and he enrolled as a self-funding student.⁶⁸³

Two other young men from Afghanistan, one of whom is BCHR's client, enrolled in the College of Applied Arts at the Belgrade University of Arts. Both had graduated from Serbian high schools.

With UNHCR's help, all the mentioned students are recipients of DAFI scholarships.⁶⁸⁴ These monthly scholarships cover a range of costs, including

679 More in *Right to Asylum, Periodic Report for January-June 2021*, p. 42.

680 The entrance exam carried a maximum of 60 points – 30 could be earned on the Biology test and 30 on the Chemistry test.

681 Most colleges do not set the minimum number of points applicants have to earn at the entrance exam. The studies of students who have at least 51 points are covered from the state budget, while students who have at least 30 points have to pay the tuition fees.

682 They needed to attach their high school certificates, diploma, proof of payment of the administrative fee and a statement allowing the College to use their personal data to draw up the enrolment ranking list.

683 The College of Economy held a practice test on 26 June and the entrance exam on 28 June.

684 This scholarship programme provides refugees and returnees with the opportunity to study in the country of asylum or their country of origin. The programme is supported by the

tuition, study materials, transportation, library membership fees, etc. The scholarships also cover the costs of academic preparatory and language classes based on students' needs. All the students have been attending such classes since October, to help them master their college courses.

6.7.4. Validation of Refugees' Foreign School Certificates

The Integraton Decree charges the CRM will assisting refugees in initiating the procedure for the validation of their foreign school certificates.⁶⁸⁵ Given the CRM's lack of such support over the past few years, refugees have had to initiate and pay for the procedure before the Serbian Qualification Agency ENIC/NARIC Centre themselves.⁶⁸⁶

In February 2021, the BCHR filed an application with the Qualification Agency ENIC/NARIC Centre to validate the high school diploma of its client K.I.K., a Burundian refugee, whose attempt to enrol in Medical School was described in the previous section. Given that K.I.K. wanted to pursue her education, her high school diploma had to be validated. She had all the requisite documentation⁶⁸⁷ certified by a court-sworn French translator. K.I.K. was also required to show her original diploma and fill the form available 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).

In addition to K.I.K.'s high school diploma, the BCHR submitted to the ENIC/NARIC Centre the college documents⁶⁸⁸ of another three of its clients from Burundi. The procedure of checking college diplomas is more complex⁶⁸⁹ and only one diploma was validated during the reporting period, that of BCHR's client T.N.

In addition to T.N.'s original diploma and diploma supplement, translated by a court-sworn French translator, T.N. had to fill an electronic application available on the Qualification Agency's website and submit a copy of an ID docu-

Governments of Germany, Denmark, the Czech Republic, UNHCR and other donors. The programme has supported university studies of over 18,500 young refugees in 53 countries across the world since 1992.

685 Arts. 6 and 7(2), Integration Decree.

686 BCHR's clients needed their representatives' help during the procedure.

687 Certificates for every year of schooling, diploma, state exam certificate and state exam results, and certificate of general classical education.

688 Diplomas, i.e. graduation certificates, grade/exam transcripts and diploma supplements.

689 Validation of one diploma may prove problematic, because the client has a graduation certificate but not the diploma itself.

ment,⁶⁹⁰ as well as a brief resume in Serbian and English describing his course of education, and the fee payment slip. The application form requires the filling of numerous data about the applicant, institution/university, college, programme/department/discipline, credits and the applicant's pre-university education. Given that T.N.'s diploma had not been properly legalised by a stamped official certificate (an apostille), the BCHR subsequently submitted a statement explaining that the applicant was an asylum seeker who could not go back to his country of origin to have an apostille attached to his diploma. Despite the many documents T.N. was to collect, the greatest delay in his case was caused by the time it took T.N.'s alma mater in Burundi to provide the Centre staff with the requested feedback. Finally, T.N. himself helped the Centre staff establish contact with the college officials.

After the eight-day deadline expired, the Agency issued a ruling validating T.N.'s diploma as a first degree of academic studies (240 ECTS) in humanities, specifically Management and Business, equivalent to NQFS level 6.2.⁶⁹¹ The BCHR notes that the ruling validating the diploma was issued to increase T.N.'s employment prospects and thanks to it, T.N. was soon hired by an international company to work in its finance and accounting department.

6.7.5. *European Qualification Passport for Refugees*⁶⁹²

In support of the Lisbon Convention⁶⁹³, UNESCO and the CoE launched their European Qualifications Passport for Refugees-EQPR project in 2015.⁶⁹⁴ The initiative helps refugees restore their lives in countries they plan on settling in and in which they enjoy legal protection, providing them with the possibility of assessing their qualifications even when they do not have all the documents proving them. The EQPR thus supports the implementation of Article VII of the Lisbon Convention, which facilitates recognition of refugees' qualifications even in the absence of all the documentation. The Convention was designed to streamline the legal framework at European level and to replace in the long run six conventions adopted in this matter by the Council of Europe or UNESCO. The Convention aims to facilitate the recognition of qualifications granted in one Party in another Party. It provides that requests should be assessed in a fair manner and within a reasonable time, through clearly defined interviews with and evaluations of the applicants.

690 ID card or passport.

691 NOKS corresponds to undergraduate academic studies (240 ECTS).

692 More in *Right to Asylum 2020*, pp. 164–165.

693 Art. VII.

694 See more at <https://bit.ly/37iOzuo> and <https://bit.ly/37lG0it>.

The European Qualification Passport for Refugees (EQPR)⁶⁹⁵ is a document listing the highest education qualifications obtained, language skills and work experience. It can be used by refugees when they wish to enrol in college, enter further studies and/or seek employment, and apply for scholarships. The recognition process involves three steps: assessment, explanation and practical use of the passport in further integration. Part two includes information on the legal status of the document and a brief description of the project. Part three contains information on the next steps, contact details of state authorities and agencies, job-seeking steps and applications for continuing education. Although it does not constitute formal recognition, authorisation or licence to engage in a particular profession, the EQPR provides credible information that may be relevant during the refugees' access to the listed rights. The EQPR is valid for five years.⁶⁹⁶

The BCHR in 2020 took the first steps in initiating the implementation of the EQPR project in the RS with UNHCR's support, which the ENIC/NARIC Centre would join in, in accordance with the Lisbon Convention.⁶⁹⁷ The top-most representatives of the UNHCR Office in the RS and representatives of the Council of Europe Office in Belgrade met in March 2021 to discuss the validation of the refugees' college qualifications and the EQPR. The UNHCR representatives also met with the Ministry of Education, Science and Technological Development (MOESTD), which welcomed the initiative and refugees' access to tertiary education. In early June 2021, the ENIC/NARIC Centre sent a note of accession to the Council of Europe, as the implementer of the EQPR project, whereby the RS began with its implementation.

In cooperation with UNHCR's team for durable solutions in the RS, BCHR's integration team launched the first pilot testing of the EQPR in November 2021.⁶⁹⁸ The BCHR team selected as the first testers a refugee from Russia⁶⁹⁹ and an asylum seeker from Burundi, who graduated from college in their countries of origin but had no documents proving their qualifications. The BCHR has continued monitoring the evaluation of these applicants and use of the EQPR in the RS. It hopes that the EQPR will help future applicants pursue their education and find better jobs, like in European countries.

695 More is available in Serbian at: <https://bityl.co/5LCo>.

696 The goal is to provide refugees and migrants with the opportunity to improve their language skills, continue their studies, improve their employment prospects or apply for the formal recognition or approval of their education.

697 More in *Right to Asylum 2020*, pp. 164–165.

698 The Qualification Agency ENIC/NARIC Center monitors the entire process conducted with the support of the Council of Europe, as the implementer of the project.

699 BCHR's client, a national of Russia, originating from Chechnya.

6.7.6. *Conclusion and Recommendations*

As far as preschool education is concerned, the cultural aspect is reflected in the fact that many refugee women do not have jobs and spend most of their time at home, wherefore a small number of refugee children are enrolled in kindergarten. Furthermore, the difficulties arising from the non-aligned by-laws and practices in this area have persisted. The Belgrade City authorities have not amended their regulations on preschool enrolment to recognise refugee and asylum-seeking children as vulnerable categories entitled to subsidised kindergarten rates. In addition to the City of Belgrade, other RS cities and municipalities should also give thought to allowing refugee and migrant children to attend kindergarten free of charge, irrespective of their legal status.

Problems in primary schools, which the BCHR has already alerted to, include lack of preparatory Serbian lessons and the fact that the support provided refugee pupils and their families depends entirely on the teachers and their motivation. The full-day model is definitely a good practice example and provides refugee and migrant children with the opportunity to integrate more easily in the Serbian education system, despite the absence of linguistic assistance. However, not all schools have full-day programmes.

The enrolment of refugee and migrant children in secondary schools is possible and has been further facilitated, but the number of such children attending secondary schools is much lower than the number of children attending primary school, for the most part due to lack of motivation of the older children to pursue secondary education. In addition, most of these children attend vocational secondary schools rather than classical high-schools, primarily because the criteria for enrolment in the latter are higher.

The CRM's new practice of covering the costs of the textbooks is commendable. 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. Another difficulty arises from the fact that pupils are usually given lists of the textbooks they need at the beginning of the school-year, wherefore up to a month can pass from the moment the application for covering textbook costs is submitted to the issuance of the ruling and the payment of the reimbursement. In the meantime, the children go to school without the textbooks they need to study and follow class. The MOESTD should amend the Decision on Funding Textbooks from the RS Budget, to entitle refugee and asylum-seeking children to free textbooks.

In cooperation with UNHCR, the BCHR will continue supporting young refugees and asylum seekers who want to continue their education in the RS.

In tandem with the MOESTD and universities in the RS, the CRM should initiate the recognition of refugees as a particularly vulnerable category and the establishment of a system providing refugees with the support and financial aid they need to go to college and involving affirmative measures and preparatory programmes.⁷⁰⁰

The Qualification Agency ENIC/NARIC Centre within the MOESTD commendably started implementing the EQPR project in 2021. It remains to be seen whether this will facilitate the integration of individual refugees, i.e. their employability, pursuit of education and how Serbian educational institutions and employers will view these qualifications.

6.8. Health Care

The right to health is one of the fundamental human rights enshrined in many international treaties ratified by Serbia.⁷⁰¹ The LATP entitles asylum seekers to health care in the RS in accordance with the regulations on health care of foreigners.⁷⁰² The LATP also entitles persons granted the right to asylum to health care at the expense of the state.⁷⁰³ Health care of foreigners is governed in greater detail by the Health Care Law (HCL),⁷⁰⁴ the Health Insurance Law (HIL)⁷⁰⁵ and the Rulebook on Exercise of Compulsory Health Insurance Rights.⁷⁰⁶ The HCL guarantees respect for the right to equality, which entails the prohibition of discrimination in the provision of health care based on any personal characteristics.⁷⁰⁷

700 Facilitate enrolment in college or secure scholarships for college students. More in *Right to Asylum 2020*, pp. 164–165.

701 Art. 25 of the UDHR. Under Art. 12 of the ICESCR, the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Under Art. 24 of the CRC, States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Art. 5 of the Convention on the Elimination of All Forms of Racial Discrimination obligates States Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without any distinction, to equality before the law, notably in the enjoyment of, inter alia, the right to public health, medical care, etc.

702 Art. 54, LATP.

703 Art. 63, LATP.

704 *Official Gazette of the RS*, No. 25/19.

705 *Official Gazette of the RS*, Nos. 107/25, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14 and 126/14 – CC Decision.

706 *Official Gazette of the RS*, Nos. 10/10, 18/10 – corr., 46/10, 52/10 – corr., 80/10, 60/11 – CC Decision and 1/13.

707 Art. 21, HCL.

Refugees and asylum seekers continued facing difficulties in exercising their right to health in the RS, due to the inconsistent national regulations on provision of health care to this category of aliens, as well as the health professionals' unfamiliarity with their rights. The BCHR continued assisting its clients in exercising their statutory rights to health care and eliminating the legal obstacles impeding the refugees' and asylum seekers' access to health care.

The reporting period was characterised by the fight against the coronavirus. In addition to Serbian nationals, all refugees and migrants in the RS had the chance to be vaccinated against the disease. To the best of BCHR's knowledge, free vaccination was organised for the residents of ACs and RTCs across Serbia, and for refugees and asylum seekers in private lodgings, who were vaccinated free of charge in the local out-patient health clinics and at other vaccination facilities.

6.8.1. Inconsistent Law

The HCL does not distinguish between refugees and asylum seekers and Serbian nationals when it comes to the provision of health care.⁷⁰⁸ However, the HIL and the Rulebook on Exercise of Compulsory Health Insurance Rights have not been amended yet⁷⁰⁹ to benefit refugees and asylum seekers, wherefore these regulations do not govern their rights in greater detail.⁷¹⁰ Although the HIL entitles employed foreigners to health insurance,⁷¹¹ it does not cover a large number of refugees and asylum seekers who are unemployed. The National Health Insurance Fund (NHIF) does not recognise any other categories of refugees except those from the former Yugoslav republics.⁷¹² Consequently, refugees and asylum seekers in the meaning of the LATP are not entitled to compulsory health insurance or health insurance cards.⁷¹³

Refugees and asylum seekers are often unable to exercise their right to health care in practice, due to the health professionals' refusal to extend health services to this vulnerable category, e.g. open their health files in out-patient health clinics. This can be attributed to the health professionals' unfamiliarity with the relevant regulations.⁷¹⁴ Various obstacles arising from the refugees' and

708 *Ibid.*, Arts. 236(1) and 239.

709 For instance, the HIL does not recognise refugees and asylum seekers as a separate category of insurees. See Art. 11 of the HIL listing the categories of insurees.

710 Except refugees from former Yugoslav republics.

711 Art. 11(10), HIL.

712 *Exercise of Compulsory Health Insurance Rights*, National Health Insurance Fund, Belgrade, May 2015, available in Serbian at: <https://bit.ly/37lCwww>.

713 Art. 25, HIL.

714 More in *Right to Asylum 2020*, pp. 167–168.

asylum seekers' *de facto* inability to enjoy their right to health care impinge on their quality of life in the RS.

No systemic solution to the problem has been found in practice yet. As far as BCHR's clients are concerned, many dilemmas were addressed informally by the BCHR integration team during the reporting period in individual cases. The template letters⁷¹⁵ the BCHR integration team started distributing in 2020 to all its clients in need of health care have contributed to the resolution of acute misunderstandings with health professionals in medical institutions.

6.8.2. Vaccination of Refugees and Asylum Seekers in the RS

The RS started vaccinating the population on 24 December 2020, with a view to suppressing and preventing the spread of COVID-19. All vaccines on offer are free of charge and approved by the National Drug Agency.

The Ministry of Health started conducting the vaccination in accordance with the Vaccination Operational Plan, developed by the national Public Health Institute Dr. Milan Jovanović Batut,⁷¹⁶ and World Health Organisation's recommendations. Under that plan, vaccination was to have been conducted in three stages, depending on the availability of the vaccines.⁷¹⁷

The coverage of refugees by the vaccination plan is an important sign of support the RS has been extending this vulnerable category. For instance, the Operational Plan provides for the vaccination of vulnerable individuals at high risk of contracting COVID-19, such as asylum seekers, refugees and migrants in collective centres.⁷¹⁸ Interest in voluntary vaccination may be expressed electronically or by calling the Call Centre. The application form is available on the e-Government website and the applicants need to enter their personal data and select one of the offered vaccines. The only difference between the data foreign nationals, including refugees and asylum seekers, and Serbian nationals need to enter are their FRN/PIN numbers. However, some refugees and migrants do not have access to the Internet, and thus, the application form. Another difficulty many BCHR clients have faced arises from the fact that the application form is

715 The template letters were drafted to familiarise health professionals with the rights of refugees and asylum seekers and the regulations on their health care.

716 Available in Serbian at: <https://bityl.co/6pLY>.

717 The first phase included vaccination of health workers, employees and people over 65 in nursing homes, people over 75 and people aged 65 to 75 with chronic diseases. The second phase began on January 19 for people under the age of 65 with chronic diseases, as well as for employees of national and local institutions.

718 This group includes the homeless, people living in substandard settlements and inmates over 50 years of age.

available only in the Serbian language and Cyrillic script, which the vast majority of BCHR's clients do not understand and cannot read.

Many BCHR clients living in private lodgings therefore relied on the support of BCHR's integration team, which filled the forms on their behalf. Refugees and asylum seekers had numerous dilemmas about the vaccination process, which the BCHR endeavoured to clarify based on the available general information.⁷¹⁹ Residents of ACs and RTCs were provided with the opportunity to receive their shots in the centres.

6.8.3. Conclusion and Recommendations

In the experience of the BCHR integration team, the greatest concerns arise in the field of health care. Although the legal framework is in place, the health institutions' practices are inconsistent, as is the NHIF's application of the regulations to refugees and asylum seekers in Serbia.

The Ministry of Health should ensure uniform operations of all health institutions in the country. The Ministry of Health and NHIF should supply unemployed refugees and asylum seekers with health cards, on an equal footing with Serbian nationals. The Ministry should thus initiate and the Government should propose amendment of the HCL to ensure that refugees and asylum seekers have full and unimpeded access to health care.

Despite the insufficiently inclusive health system and numerous outstanding issues in the context of refugees, the RS made a major step in the right direction when it provided this particularly vulnerable category of people with the opportunity to vaccinate themselves. It should continue with this positive practice and further encourage refugees and asylum seekers to contribute to the prevention of the disease by complying with epidemiological measures and receiving booster shots.

6.9. Refugees' (In)Ability to Acquire Serbian Citizenship

Acquisition of the host country's citizenship i.e. naturalisation is the highest degree of refugee integration. Naturalisation marks the end of the refugee status and is a lasting solution, reflected in the refugee's permanent residence in the host country and subsequent acquisition of its citizenship.

719 Some clients had their doubts about the vaccines' safety. They also sought the BCHR's advice about the vaccination process and the vaccines' effects. Some insisted on receiving only a specific vaccine, others requested additional information about the time and place of vaccination, since the information they received in text or e-mail messages were in Serbian.

The RS has not granted citizenship to any foreigners granted asylum although 13 years have passed since the first Asylum Law entered into force (and four years have passed since it was replaced by the LATP that is now in force). The Asylum Office statistics show that a total of 97 people were granted refuge and 111 subsidiary protection since 2008. The fact that the number of foreigners granted international protection in the RS is not high does not lessen the importance of addressing this years-long problem.

Under the LATP, Serbia shall facilitate the naturalisation of refugees and the Government shall regulate the requirements, procedure and other issues of relevance to naturalisation proposed by the CRM. To the best of BCHR's knowledge, the CRM has not forwarded such a proposal to the Government yet.

Under the Refugee Convention, the Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees and make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.⁷²⁰ The type of residence granted refugees must correspond to the type of residence required for the acquisition of citizenship if Article 34 of the Refugee Convention is to be implemented in practice. More precisely, the RS needs to harmonise its laws on citizenship and foreigners with the Refugee Convention to enable individuals granted the right to asylum to apply for permanent residence. The amendments to the FL should define residence on grounds of asylum as a particular form of temporary residence and allow refugees to apply for permanent residence upon the expiry of the statutory time limit.⁷²¹ This would facilitate the refugees' full naturalisation and constitute grounds for their acquisition of Serbian citizenship.

Refugees can fulfil the legal requirement for permanent residence – three or five years' temporary residence in Serbia without interruption – only if they change the grounds of residence, i.e. “substitute” residence on grounds of asylum or subsidiary protection by one of the types of temporary residence enumerated

⁷²⁰ Art. 34, Refugee Convention.

⁷²¹ Art. 67(2), FL: Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 70 of this Law, who has, until the date of application for permanent residence in the RS, resided in it without interruption for over five years based on a temporary residence permit. Art. 68, FL: (1) Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 79 in this Law who: 1) has married or formed a civil union with a national of the RS or a foreigner with a permanent residence permit in the territory of the RS and has resided at least three years with a temporary residence permit on grounds of family reunification; 2) is a minor with temporary residence in the RS, if one of the parents is a national of the RS, or a foreigner with a permanent residence permit; 3) originates from the RS; 4) has been issued a temporary residence permit on humanitarian grounds or in the interests of the RS.

in Article 40 of the FL.⁷²² The question arises how the relevant authority will respond to the “revocation” of the granted asylums. The MOI Foreigners Directorate, before which a BCHR client initiated the procedure, said it did not know how and on what grounds it could revoke the asylum granted to this Syrian national and replace his right to temporary residence on this ground by the right to temporary residence based on his marriage to a Serbian national. In BCHR’s view, the problem could be addressed by amending the LATP and simplifying the asylum revocation procedure or by replacing residence on grounds of asylum by residence on other grounds pursuant to the FL.

6.9.1. Recommendations Regarding Refugees’ Access to Citizenship

The MOI should initiate and the Government should propose amendments to the Law on Citizenship (LC) and the Foreigners Law to enable acquisition of Serbian citizenship by foreigners granted status under the LATP. The LC should also provide these individuals with the possibility of acquiring Serbian citizenship under more favourable terms than those applying to permanently residing foreigners in accordance with the FL, the solution adopted by many EU Member States.⁷²³

For instance, the period of time persons granted protection need to spend in the host country before they can apply for its citizenship differs from one country to another, from two years in Poland, three years in Bulgaria, to 15 years in Austria and 20 years in Malta.

The CRM has not forwarded its proposal of the procedure and requirements for the naturalisation of refugees since the LATP has entered into force. Although the MOI is charged with reviewing citizenship applications, the CRM should forward the draft amendments to the LC to the Government as soon as possible, in accordance with its competences in the field of refugee integration.

722 Art. 40 of the FL sets out that foreigners may be granted temporary residence in Serbia on grounds of: employment, schooling or learning the Serbian language; university studies; participation in international pupil and student exchange programmes; professional specialisation, training and internship; scientific research and other scientific educational activities; family reunification; performance of religious services; medical treatment or health care; real estate ownership; humanitarian residence; status of presumed or actual victim of trafficking in human beings, and for other justified reasons in accordance with the law or international treaties.

723 Refugees in Germany may acquire citizenship under more favourable terms than other foreigners. The duration of a former asylum procedure can be included in this waiting period. The residence period can be reduced to 7 years if applicants have attended an integration course successfully, and it can be reduced to 6 years if applicants have integrated particularly well into society. More at: <https://bit.ly.co/AlYx>.

6.10. Other Issues of Relevance to Integration

6.10.1. Serbian Language Courses

Proficiency in the language of the host country is one of the main factors facilitating integration in the local community. Refugees and asylum seekers who can communicate in Serbian have an easier time finding a job or an apartment, completing their chores in banks and the post office, communicating with staff of out-patient health clinics and other public institutions, et al. Furthermore, refugee and asylum-seeking children who are proficient in Serbian have a much easier time following class and mastering the school and university curricula and get better grades.

Persons granted the right to asylum are under the obligation to attend Serbian language lessons.⁷²⁴ Under the LTP, they shall forfeit their right to financial aid for temporary accommodation if they fail to register for courses with the CRM within 15 days from the day the ruling granting them the right to asylum becomes final.⁷²⁵ They also forfeit that right if they do not attend the language lessons regularly or stop attending them without good cause. Persons granted asylum are under the obligation to attend 300 Serbian language lessons and may subsequently request additional classes. However, hardly anyone's right to aid has been forfeited due to irregular attendance.

The Integration Decree regulates the procedure for attendance of Serbian language courses in greater detail. The CRM is under the obligation to organise the lessons within two months from the day the ruling granting refuge or subsidiary protection becomes final.⁷²⁶ Schools organised online classes throughout 2021 due to the pandemic, posing difficulties to refugee children lacking a good Internet connection and adequate devices for following online classes.⁷²⁷ Another drawback of online schooling is that it is less interactive.

The CRM's contract with a foreign language school charged with holding Serbian language lessons for refugees in 2020 expired in late December 2020. Due to the CRM's procedures, the new contract was signed only in March 2021, so that the Belgrade primary school "Branko Pešić" was entrusted with holding Serbian language lessons during the first three months. The school, however, apparently failed to respond to all the refugees' needs. Refugees with jobs, who used to attend classes on weekends and in the evenings, were unable to follow class during the first quarter of the year, because the school usually held them

⁷²⁴ Art. 59(3), LTP.

⁷²⁵ Art. 59(4), LTP.

⁷²⁶ Art. 4(7), Integration Decree.

⁷²⁷ A three-member family, a mother and her three children, had only one cell phone via which the children could follow class.

during the day on workdays, when it is ordinarily open. Furthermore, the refugees followed a particular curriculum until the beginning of the year and had gotten used to their teachers and their teaching methods, wherefore many of them had a hard time getting used to the different programme and style.

The BCHR identified another challenge in practice. Serbian language teachers provide additional explanations and instructions in English, which slows down the learning process of refugees with limited or no English.

The UNHCR has been providing Serbian language lessons as well, which can be attended by privately accommodated asylum seekers. The NGO Sigma Plus has a Serbian language platform and holds classes, mostly in ACs and RTCs in southern Serbia. It started organising online classes because of the pandemic, which can be followed by refugees and asylum seekers across Serbia.

UNHCR has also organised study support for school children and various trainings in new skills and qualifications, to improve the refugees' and asylum seekers' employment prospects. Most of the trainings and study support were held in Serbian. IKEA organised its three-month internship programme for 15 refugees in Serbia for the first time in 2021. IT training for members of vulnerable groups and training in employment skills and career advice were organised as well. BCHR helped map the candidates for these trainings.⁷²⁸

6.10.2. Problems Opening Bank Accounts

A large number of asylum seekers and foreigners granted asylum in the RS asked the BCHR for help in opening a bank account. The integration team has been assisting its clients in the procedure, which is quite complicated for people coming from other countries and not speaking Serbian.

Refugees and asylum seekers have for years been facing problems opening bank accounts. Each bank has its own in-house operational procedures it follows when opening bank accounts for new clients. Quoting these procedures, as well specific laws and by-laws, some banks refused to open bank accounts at the request of individual refugees and asylum seekers, mostly those coming from Iran, Afghanistan, Iraq and Pakistan.⁷²⁹

Asylum seekers and foreigners granted refuge or subsidiary protection who want to open a bank account need to produce their IDs and FRN certificates.⁷³⁰

728 Furthermore, several clients who wanted to improve their skills and education were referred to courses in IT, the hotel industry and car repair, while one self-employed client was provided with equipment to boost his business.

729 Cases the BCHR is aware of.

730 Refugees who have valid passports issued by their countries of origin have an easier time opening a bank account but a rare few actually possess valid travel documents.

However, most bank officers are unfamiliar with these documents and need clarification that both are issued by the RS MOI and that the FRN is the equivalent of PINs Serbian nationals have. Refugees often had problems clarifying these matters to bank officers, who usually referred them to the bank HQ to try and open their bank accounts there.

In January, BCHR's client, an adult national of Iran, asked the BCHR integration team for assistance when the *Komercijalna banka* staff contacted him and asked him to come to their office in Belgrade and sign a request to close the account. The bank did not provide him with a clear explanation of the reasons why he had to close the account. The BCHR team wrote to *Komercijalna banka* 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)."⁷³¹

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.⁷³² However, this Bank allowed BCHR's client to open only an RSD account.

A similar problem arose in late March, 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 that was to be paid in foreign currency. Since they failed to open a foreign currency account in all other banks, they applied with the Postal Savings Bank, which told them 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, which the three young Afghan men did not have. Given all of the above, it is quite unlikely that the Bank will approve their requests to open bank accounts.⁷³³

731 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.

732 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.

733 More in *Right to Asylum, Periodic Report for January-March 2021*, pp. 47–48.

The banks' divergent practices prompted the BCHR integration team to send a request to the National Bank of Serbia (NBS) asking it to issue an opinion⁷³⁴ on the opening of bank accounts for asylum seekers and foreigners granted refuge in the RS. In February. In its reply of 14 April, the NBS said that it was crucial that banking regulations did not result in denying an entire category of individuals the possibility of opening a bank account on account of their national affiliation or citizenship. The NBS referred to national law prohibiting discrimination. In its Opinion, the NBS took a clear view and issued precise guidance for any similar situations, in which the banks must explain their suspicions without resorting to blanket or discriminatory assessments; furthermore, the NBS stated that the banks were under the obligation to operate in accordance with RS law, irrespective of their in-house procedures, rules or risk assessments.

The BCHR raised the issue also with the independent institutions, such as the Commissioner for the Protection of Equality (Equality Commissioner). Having reviewed its complaints, the latter found that some banks had discriminated against refugees and asylum seekers in specific cases. Her decisions will be elaborated in greater detail in the ensuing section.

a) Equality Commissioner Finds Banks Had Directly Discriminated against Refugees and Asylum Seekers

Having reviewed BCHR's complaint filed in April 2020,⁷³⁵ the Equality Commissioner found that Banca Intesa a.d. Belgrade had violated Article 6 of the Anti-Discrimination Law since it had directly discriminated against refugees and asylum seekers in Serbia, BCHR's clients, when it refused to allow them to open bank accounts.⁷³⁶ As she said in her Opinion published in July 2021,⁷³⁷ the Bank had thus negatively generalised against these people based solely on their nationality and place (country) of birth, whilst failing to assess whether they fulfilled the legal requirements to open an account in that Bank. The Equality Commissioner recommended that Banca Intesa refrain from such actions in the future and requested it notify her of measures it planned to take in order to implement her recommendation.

734 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*, Nos. 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – CC Decision and 44/2018).

735 In April 2020, the BCHR filed a complaint with the Equality Commissioner after Banca Intesa refused to open bank accounts for a number of BCHR clients – asylum seekers and refugees from Iran, Afghanistan and Iraq – because of their national affiliation, ethnicity or citizenship.

736 The Bank violated the Anti-Discrimination Law in all these cases.

737 The Equality Commissioner's Opinion No. 07-00-209/2020-02 of 25 May 2021 is available in Serbian at: <https://bityl.co/ADNc>.

Later, the Equality Commissioner found the same violation of the Anti-Discrimination Law. Having reviewed a complaint filed jointly by the BCHR and A11 – Initiative for Economic and Social Rights, the Equality Commissioner found that Raiffeisen Bank a.d. Belgrade acted discriminatory because it refused to open bank accounts for foreigners granted refuge in the RS. She reiterated that precluding individuals from opening bank accounts solely on account of their citizenship or national affiliation was inadmissible.⁷³⁸

6.10.3. Conclusions and Recommendations

Serbian language courses are still not organised within the statutory timeframe. This problem exists in larger towns in Serbia as well, but is even more visible in smaller and remote settlements refugees are living in.

The first difficulty can be overcome if the CRM starts providing persons granted the right to asylum with Serbian language courses within the two-month deadline. The second problem, organisation of Serbian language lessons in small and remote settlements, can be addressed by issuing vouchers for private Serbian language lessons. Vouchers could also be the solution for refugees unable to follow online classes.

The CRM should give thought to ways of ensuring the continuity of Serbian language lessons. When selecting the language teachers, it should ascertain which languages the refugees and the teachers speak, to ensure that they can communicate in at least one foreign language. Such “pairing up” of the teachers and refugees would contribute to the efficiency of the learning process.

The problems in opening bank accounts essentially arise from the fact that banks exclusively perceive refugees and asylum seekers as foreign nationals, not as a special category of foreigners who *de facto* have a different legal status⁷³⁹. Most refugees do not have all the requisite documents, such as valid passports issued by their countries of origin,⁷⁴⁰ for objective reasons and must not be placed at a disadvantage because of that. The LATP clearly prohibits any discrimination

738 After Iranian clients granted refuge in the RS complained that some banks refused to open bank accounts for them, the BCHR and A11 conducted a situation testing for discrimination in Raiffeisen Bank in May 2021. Since the testing confirmed that the Bank refused to extend its services, a complaint was filed with the Equality Commissioner. In her Opinion, the Equality Commissioner said that the Bank had not submitted evidence proving it had good cause to refuse the refugee and that its refusal would be justified only if it had found that there was a high risk of entering into a contractual relationship with the refugee and that it could not apply intensified actions and measures in accordance with the law and its in-house enactments.

739 Which LATP provisions primarily apply to.

740 Or a residence certificate, because foreign nationals are at issue, etc.

pursuant to anti-discrimination law, particularly on grounds of national affiliation, race, social background, birth, culture, etc.⁷⁴¹ 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. Given that refugees and asylum seekers from individual countries can open RSD accounts in only one bank in Serbia, 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 foreigners.

The Equality Commissioner's opinions on complaints of discrimination against refugees are good practice examples and provide banks with guidance on how to act in same or similar situations in the future. The Equality Commissioner's opinions and recommendations alert the banks to the need to act in accordance with the law and fairly, without making blanket and discriminatory assessments of persons belonging to specific groups, such as refugees and asylum seekers. This view is also corroborated by the NBS, which issued its opinion in response to BCHR's request concerning the banks' treatment of this category of foreigners. The BCHR will continue monitoring the actions of banks in the RS vis-à-vis refugees and their compliance with the recommendations.

6.11. *Refugees for Refugees Project Activity*⁷⁴²

During its years of work with refugees and asylum seekers, the BCHR recognised the need for the further empowerment of this vulnerable category of the population during the long-lasting and complex process of integration in Serbia's society. As exhausting as it may be, refugees have an easier time accepting a new community if they are highly motivated and if their motivation is encouraged by the systemic support of the local population, as well as of refugees and asylum seekers already integrated in the RS.

Therefore, in April 2021, the BCHR integration team started implementing the pilot *Refugees for Refugees* (R4R) activity within the Support to Refugees and Asylum Seekers in Serbia project. R4R focuses precisely on the extension of support to this population by refugee assistants who have themselves gone through the asylum procedure and the integration process in the RS. Refugee assistants help individuals who are in a similar situation integrate in society and embark on the naturalisation process as easily and efficiently as possible

R4R is specific inasmuch as it is the first such activity implemented in the RS, which is aimed at providing the most sensitive approach necessary in work

741 Art. 71, LATP.

742 More on R4R in *Right to Asylum, Periodic Report for January-June 2021*, pp. 46–48.

with this particularly vulnerable category.⁷⁴³ R4R aims at ensuring that refugees and asylum seekers are familiarised with their rights and duties during the asylum procedure and once they are granted asylum in the RS by their more experienced assistants in a simple and less formal manner.⁷⁴⁴ During the R4R activities implemented in 2021, the assistants helped the refugees and asylum seekers complete various everyday activities involving contacts with state institutions. The assistants emphasised the importance of learning Serbian, as the first and indispensable step in the beneficiaries' integration process, in finding their way around and building a social life.

Experiences of refugees and asylum seekers involved in R4R have so far been positive and encouraging. Given that they frequently face linguistic, legal and cultural obstacles in many social situations, refugees and asylum seekers greatly appreciate the help of refugee assistants, especially those coming from cultures similar to theirs, who have lived through similar crises. In addition, the assistants are also pleased with their role and activities, because they have recognised the needs and benefits of helping this vulnerable category, they themselves had once belonged to. Within R4R, refugee assistants help empower the new arrivals by passing on to them the various skills and knowledge they have gained. On the one hand, R4R empowers the assistants in economic and social terms and provides them with space for personal and professional growth, while, on the other, it helps and facilitates the social inclusion of refugees and asylum seekers open to this kind of support.

6.11.1. Conclusion

R4R has been designed to help refugees and asylum seekers build a life of dignity in the RS. People in need of international protection have fled persecution, conflict, injustice and inhuman treatment in their countries of origin and embarked on the search for a safe and more just life.

However, the process of their integration begins once they arrive in a new country; this process requires huge motivation and support in overcoming institutional and social barriers. Unfamiliarity with the regulations, culture and language of the new community can pose serious challenges to integration and necessitate additional support. Integrated refugees set an excellent example to

⁷⁴³ The BCHR involved assistants speaking the languages spoken by most refugees in the R4R pilot project. One of them is a woman, who helps female refugees and asylum seekers exercise their rights and fulfil their obligations, if necessary, wherefore such support is extended also in compliance with the gender sensitive approach.

⁷⁴⁴ For instance, they give them tips on accessing the labour market, education and health care, on the new social rules and values they need to adjust to, on developing social contacts, as well as on interesting cultural and social activities, et al.

new refugees and asylum seekers and assist them in dealing with the difficulties inherent in their adjustment to the host community.

The BCHR will continue implementing R4R project activities in the forthcoming period, as well as identifying and developing other efficient mechanisms for the empowerment of people in need of international protection and in vulnerable situations.

6.12. BCHR's Online Campaign #MiLjudiZajednoMožemoViše

The integration process plays the main role in the refugees' adjustment to the new social norms of the host country. Life in dignity, adjustment to the local community and cultural norms, as well as the major contribution refugees can make to society's development with their experience and knowledge are the results of successful integration. To achieve this, they need the help of the entire host country, above all their local community.

Public discourse in the RS, including on TV stations with national coverage, is rife with unverified reports and incongruous content about most social and political topics, including refugee issues. Manipulation of facts, especially of statistical data, abounds on Internet portals, fomenting hate speech, confusion, suspiciousness and even fear of refugees and migrants among Serbia's citizens.

Although public discourse on refugees cannot be qualified as totally negative, the run-up to the 2020 elections was characterised by strong anti-migrant rhetoric, which BCHR's team analysed in detail in its prior report.⁷⁴⁵ Such a situation in the public space, coupled with the lack of meaningful debates on the public stage, motivated the BCHR team to approach this topic from a different perspective, through the active participation of the local and refugee populations. BCHR's integration team thus designed a "good news" online campaign to provide the public with useful and credible information about refugees and migrants and inspire it think beyond stereotypes.

The campaign #MiLjudiZajednoMožemoViše (#WePeopleCanDoMoreTogether)⁷⁴⁶ was launched on 20 April on BCHR's online platforms and channels (Facebook, Instagram, Twitter and YouTube) and ended with the final central event staged during the Week of Multiculturalism and Tolerance marking World Refugee Day (14–20 June). The BCHR initiated the two-month campaign to familiarise the public at large with the refugee integration process, through the

745 More in *Right to Asylum* 2020, p. 175.

746 More about the campaign on the BCHR's websites www.bgcentar.rs and www.azil.rs, as well as its Facebook, Twitter and Instagram profiles, YouTube channel: <https://ytube.io/3PYs> and *Right to Asylum, Periodic Report for January-June 2021*, pp. 40–41.

refugees' success stories on their integration in the local communities, as well as the active participation of refugees and the local population in designing the campaign content. The campaign's primary goal was to emphasise the importance of social cohesion, multi-culturalism and bridging the gap between the refugees and the local communities for creating a more tolerant society in which everyone has the chance to live a life of dignity.

The BCHR's campaign aimed at informing the public at large of various issues, legal concepts in the field of refugee protection and clarifying the differences between various terms often used improperly in public discourse, such as: migrant, refugee, asylum seeker, stateless person and internally displaced person.⁷⁴⁷ To that end, the campaign included visual presentations of statistical data on IDPs in the RS, ways in which Serbian nationals could facilitate the refugees' integration in the community and the refugees' role in the process.⁷⁴⁸

The campaign also included other positive content targeting the general public, primarily the local communities: visual materials, posts, video clippings and messages highlighting the importance of the full integration of all members of society and the benefits it reaped from it. The campaign content was designed with the active participation of young refugees and local youth involved in BCHR's programme activity *CoolTour Tube*.⁷⁴⁹ It included, for instance, a quiz on integration "Inter-Cultural Questions" in which local and refugee youth took part. The participants' answers to the same questions showed that they liked the same food and viewed the world in a similar way. The quiz aimed to demonstrate that all of us have the same dreams, troubles and needs despite our different origins, cultures, languages and personal characteristics. The campaign also included short biographies of well-known Serbian refugees and their impact on societal development, complemented with motivation messages.

6.12.1. Conclusion

The campaign content helped the audience realise that inclusion is easier through art and creative processes, as well as active work with young people, and that they can help build a more tolerant society and a more open dialogue only if they work together. Local communities are crucial in the process as they should provide refugees and migrants with opportunities to share their plans, thoughts, experiences and problems in the new community.

747 Often contributing to the avalanche of fake news and incongruous content about refugees and migrants.

748 This part of the campaign elicited extremely positive reactions among social media users.

749 Within the Support to Refugees and Asylum Seekers in Serbia project.

Refugees can also contribute greatly to their host countries with their knowledge, experience and talents, as corroborated by the history of both the RS and other countries that took in people in need of assistance. Given the current public discourse on refugees and migrants in the RS, more efforts need to be invested in fighting fake news, stereotypes and intolerance in order to improve public perceptions of this population. This issue will be discussed at greater length in the following chapter.

7. PUBLIC DISCOURSE ON REFUGEES AND MIGRANTS

7.1. Introduction

The analysis of media reports and public opinion leads to the conclusion that public interest in migration and refugees in the RS waned in 2021 compared to 2020. Debates on issues concerning the refugee and migrant population appear to have largely moved from the mainstream media and daily politicking domains to the Internet and social media. In addition to state institutions and NGOs, the topic of migrants featured in the discourse of rightist groups, the members and sympathisers of which presented themselves as “protecting the citizens from migrants”.⁷⁵⁰

Politics influenced public opinion of refugees and migrants to a much lesser extent in 2021 than in 2020, when parliamentary and local elections were held in the RS.⁷⁵¹ Government representatives were reluctant to discuss the topic, while the opposition leaders, obviously drawing on their experience from the 2020 elections, shifted their focus to other issues, realising that they could not score many political points on it.

A positive example of the state's and society's attitude towards refugees and migrants is reflected in the fact that Serbia was the first European country to enable their vaccination against COVID-19.⁷⁵² A total of 309 migrants who signed up for vaccination received their shots during the first round of vaccination of this category in the RS, on 26 March 2021.⁷⁵³ Serbia's humane approach and efforts to extend health care to everyone in the country, including refugees and migrants, was hailed by international media as well.⁷⁵⁴

750 “Analysis of content on these groups’ profiles shows an increasing shift in focus from refugees and migrants to unverified theories and other issues related to coronavirus. Nevertheless, refugees and migrants, i.e. the “threat” they pose to the RS, remained among the favourite topics of the members of those groups and their sympathisers. See, for instance: “People’s Patrols Chasing Migrants Today, Who’s Next?”, *Istinomer* (26 March 2021), available in Serbian at: <https://bit.ly/3CTo7qq>.

751 More in *Right to Asylum 2020*, pp. 173–188.

752 “Vaccination of Refugees Begins in Serbian Reception Centres,” *Radio Free Europe* (26 March 2021), available in Serbian at: <https://bityl.co/AlZX>.

753 More on CRM's website: <https://bityl.co/AlZa>; see also “Serbia vaccinates migrants amid surge in COVID-19 cases,” *AP News* (26 March 2021), available at: <https://bityl.co/Adf4>.

754 “Serbia starts COVID-19 vaccinations at migrant camps,” *Reuters* (26 March 2021), available at: <https://reut.rs/30S4WjB>.

This chapter analyses public opinion on migrants, refugees and asylum seekers and media reports on this population in 2021. The authors of this report perused hundreds of media articles and reports and various other content published in the press, broadcast on TV and posted on online portals. Their analysis is also informed by the survey of public opinion on refugees and migrants conducted by Ipsos Strategic Marketing in November 2021 at BCHR's initiative.

This part of the Report uses the term 'migrants' because it is used much more frequently in public discourse than the terms 'refugees' or 'asylum seekers', which experts, including the BCHR, use to distinguish between these three categories of foreigners with different statuses in the Republic of Serbia.⁷⁵⁵

7.1.1. Public Opinion on Migrants and Refugees

The results of the public opinion survey conducted in November 2021 by Ipsos Strategic Marketing at BCHR's initiative show a more positive attitude towards refugees and migrants than in 2020. The results of the survey will be presented in the ensuing paragraphs and compared with the results of prior surveys about this population in Serbia.⁷⁵⁶

The fact that over 56% of the pollees would have nothing against African and Middle East migrants moving to their neighbourhood is encouraging, given that only around 29% of the citizens polled in 2020 thought so. Most of the respondents (78%) would have nothing against their children going to school with children from Africa or the Middle East; in 2020, only 38% of the respondents thought so.⁷⁵⁷ Over half of the respondents (59%) would have nothing against working together with African and Middle East refugees; a third of the respondents disagreed. The respondents' opinions on befriending migrants were split down the middle, like in 2020. Around half (54%) of the respondents would not be pleased if an African or Middle East refugee married into their family, an improvement over the prior survey, when 62% shared this view. Finally, slightly over half (56%) of the respondents thought that African and Middle East refugees should not be granted Serbian citizenship; 27% thought they should.

The state authorities should release accurate and reliable data given their important role in forming public opinion on migrants. Lack of such information

755 The term 'migrant' is broader and differs from the terms 'asylum seeker' and 'refugee'. See the UNHCR definitions at: <https://bit.ly/30BC6BF>.

756 Substantial differences can also be identified by comparing the 2021 results with the results of the poll Ipsos Strategic Marketing conducted in June 2020 at PIN's initiative, available in Serbian at: <https://bit.ly/3DWQk08>. Results of the public opinion polls conducted in 2019 and 2021 at BCHR's initiative are available at: <https://bityl.co/AIZY>.

757 The share of respondents opposed to working side by side with migrants fell from 46% in 2020 to just 13% in 2021.

and decades-long public mistrust of Serbian institutions are the main reasons for the citizens' negative views and fears of refugees and migrants. The "silence" of the relevant authorities has greatly contributed to apprehension and distrust among many people who had not even been prejudiced against refugees and migrants. Most of the information about migrants originates from the CRM, which has precise data on the situation in collective centres but is not always able to monitor the situation beyond them.⁷⁵⁸

The creation of a positive and inclusive society based on mutual acceptance and respect notwithstanding individual differences largely rests on education. Therefore, in addition to the relevant authorities and civil society organisations, education institutions, such as schools and colleges, should teach the young citizens tolerance and to embrace diversity.

Traditional and social media are the ones steering public discourse nowadays. The following section will discuss their influence on public opinion and general perceptions of refugees and migrants.

7.1.2. Media Reports on Migrants and Refugees

Although migration-related issues featured much less in the media in 2021 than in 2020,⁷⁵⁹ they did not lose all interest in them. BCHR's analysis of media reports in 2021 shows that, with the exception of some outlets that approached the subject seriously, many media continued with their sensationalist coverage of all, even the most minor incidents involving migrants.⁷⁶⁰ They thus put the focus on the group the perpetrator of or participant in the incident belonged to, exacerbating negative views of refugees and migrants. Furthermore, unprofessional coverage results in generalisations, confusion and public views that migrants are prone to crime, which is not supported by any official data of the relevant Serbian institutions.⁷⁶¹

The events in northern Serbia received a lot of coverage. Namely, as CRM reported, migrants in the north of the country were displeased by the fact that

758 CRM's press releases indicate that sporadic incidents occurred in RTCs, but that they were not widespread. For instance, the CRM registered a total of four incidents in January 2021. See also "People's Patrols' Chasing Migrants Today, Who's Next?," *Istinomer* (26 March 2021), available in Serbian at: <https://bit.ly/3CTo7qq>.

759 More in *Right to Asylum* 2020, pp. 173–191.

760 Nearly all media dramatically reported about migrants shoplifting a jacket in the heart of Belgrade. See "Group of Migrants Shoplifting in Zara in the Heart of Belgrade: Altercation with Staff Lasted 10 Minutes (VIDEO)," *24sedam.rs* (27 January 2021), available at: <https://bit.ly/3CQ5ofl>.

761 UNHCR's representatives say that less than one percent of crimes in the RS are committed by migrants. See more in "Bonelli: Around 7,000 migrants in Serbia, situation is not out of control," *Radio Free Europe*, 12 November 2020, available in Serbian at: <https://bityl.co/AIZs>.

they had to cross yet another border and various incidents occurred among the large number of people staying in one place. Migrants reportedly damaged the farmers' property by crossing their fields on their way to the border. Other, more serious disruptions of law and order were registered as well.⁷⁶² Rightist groups used such incidents to propagate their anti-migrant views. Although the citizens' dissatisfaction is justified in some instances, the media and institutions should do their utmost to prevent the creation of a climate of fear and hate of migrants. When the state fails to provide the public with answers, the latter easily falls prey to extremist views because it does not have information about what is actually happening and how serious the situation is, or what the state is doing to address the problems. The authorities should explain to the public that crimes and misdemeanours committed by refugees and migrants account for a negligent share of all offences in the RS and that their individual wrongdoings cannot serve as an excuse for hating the entire refugee-migrant population. Every misdemeanour or crime, irrespective of who perpetrated it, should be penalised without delay; however, any generalisation, including in this case, is dangerous and may impinge on the safety of the group at issue. Therefore, all institutions, primarily the MOI, should do their job efficiently and transparently, and secure a functional and sustainable migration control system, especially in the border areas of the country.

Public discourse was still infested with narratives that all, or at least most, migrants were merely economic migrants and were illegally in Serbia, that they were not fleeing war or persecution and that their sole motivation was to achieve economic prosperity in rich West European countries.⁷⁶³ Media portrayed their journey towards the West as a whim and them as "bad" migrants. Needless to say, such allegations are untrue. Most migrants in Serbia fled countries ravaged by war, indiscriminate violence and widespread persecution on various grounds. Media should thus report the actual facts and write about them with greater empathy, to raise public awareness that even "irregular" and "economic" migrants are not automatically terrorists or a threat, that they are just ordinary people forced by their misfortunes and poverty to embark on a dangerous and potentially lethal journey.⁷⁶⁴

The Serbian media actively monitored and picked up the news about refugees and migrants beyond Serbia as well. They extensively reported on the large influx of migrants in Bosnia and Herzegovina in early 2021.⁷⁶⁵ The large number

762 "Protest against Settlement of Migrants," SOINFO.ORG (11 October 2021), available in Serbian at: <https://bit.ly/2ZqmCma>.

763 See more in: *Right to Asylum 2020*, p. 177.

764 *Ibid.*

765 "EU Head in BiH: First Goal Achieved – 750 Migrants Accommodated at Bihać," *N1* (13 January 2021), available in Serbian at: <https://bit.ly/3CII2Z7>.

of migrants stranded on the border between Belarus and the EU also received broad coverage at the end of the year.⁷⁶⁶ Although the media mostly reported and discussed the developments in the context of geopolitics and migrants as a tool in the clash between the superpowers, they also focused on their egregious situation and treatment at border crossings. The footage of the brutal beating of migrants at the Croatian border recorded by a team of the Dutch organisation Lighthouse Reports astonished the public both in the RS and the rest of the region.⁷⁶⁷ It shows Croatian police officers truncheoning the migrants and pushing them to Bosnia and Herzegovina. The media reported that the news “distressed” all of Europe.⁷⁶⁸

Serbian media extensively reported on the Taliban takeover of power and deterioration of the security situation in Afghanistan in August, which BCHR wrote about in greater detail in its last 2021 periodic report.⁷⁶⁹ They devoted a lot of attention to the possibility of a new wave of refugees heading towards Europe, and, thus, the RS and other countries in the region.⁷⁷⁰ This was one of the rare topics that elicited public compassion and empathy, due to the years-long human rights violations and unstable security situation faced by nationals of Afghanistan.

Media also reported about the traffic accident in Pirot, when a van transporting migrants overturned, killing two and injuring 20 passengers. Nearly all the injured migrants were children. The Pirot police arrested an individual from Belgrade, suspected of committing a grave crime against public traffic safety, illegal crossing of the border and smuggling of people.⁷⁷¹ Most of the readers of the portals that published the news of the accident sympathised with the refugees and migrants and the misfortunes they faced on their way to their final destinations.

Media often reported on MOI campaigns in Belgrade and border towns throughout 2021,⁷⁷² during which the police rounded up larger groups of irreg-

766 “Lukashenko: We’re Expecting EU’s Answer whether It’s Taking over the Refugees,” *Telegraf* (22 November 2021), available in Serbian at: <https://bit.ly/3FG3BLZ>.

767 “Public Appalled by Footage of Migrants Beaten at Croatian Border: Go to BiH,” *N1* (7 October 2021), available in Serbian at: <https://bit.ly/3r54YzG>.

768 “Footage that Distressed Europe: Balaclavas, Truncheons, Guns... ..,” *Al Jazeera* (7 October 2021), available in Serbian at: <https://bityl.co/AdFq>.

769 More in *Right to Asylum, Periodic Report for July-September 2021*, pp. 36–38.

770 “‘Balkan Route’ Countries Ready for Refugees Fleeing the Taliban,” *Radio Free Europe* (17 August 2021), available in Serbian at: <https://bit.ly/3pZYuQl>.

771 “Van Full of Migrants Flips over in Pirot – Two Dead, 20 Injured,” *N1* (14 November 2021), available in Serbian at: <https://bit.ly/3COU8A3>.

772 “126 Illegal Migrants Found in Heart of Belgrade, Taken to Reception Centres,” *N1* (17 June 2021), available in Serbian at: <https://bit.ly/3oYkU3X>.

ular migrants they found in city centres and at informal venues and took them to RTCs. The police rounded up several hundreds of migrants on occasion. For instance, they found 358 irregular migrants in Sombor in October and bussed them to RTCs where they were accommodated. This intervention was conducted by the Sombor police, in cooperation with the CRM and the local authorities.⁷⁷³

Although often resorting to the sensationalist style of reporting, the mainstream media's reports about refugees and migrants usually did not directly express hate or intolerance. However, most of the readers' comments were rife with bias and even a dose of hate.

Negative comments were posted below the few articles reporting on migrants in a positive and humanitarian context. The cruel and unlawful treatment of migrants often met with the approval of the readers, who considered it the only right way to treat them. Migrants and refugees are often depersonalised and not treated as a group of individuals, but as part of a "horde" Serbia should rid itself of as soon as possible if it is to protect its borders from terrorist threats. Such views, perceiving migrants as problematic and as a threat to the safety of Serbia's citizens, have already been identified in public discourse. People espousing such views greatly exaggerate the number of migrants and refugees in the RS, warning of their "invasion" or "onslaught" in the imminent future. They highlight the major cultural differences between migrants and the domicile population and warn of the threat migrants pose to the Serbian national corpus and social homogeneity. Some people see no reason to condemn xenophobia, racial or religious hate or intolerance, while society's and state's response (or rather lack of it) to these phenomena appears to indicate that such a climate is neither unacceptable nor alarming. The situation gives rise to concerns because when migrants are associating of migrants with violence, danger and problems becomes generally accepted and commonplace, their future situation will be conditioned by various factors conducive to their instrumentalisation.

7.1.3. Role of Social Media and Rightist Groups in Moulding Public Discourse on Migrants

As mentioned in the Introduction, rightist groups claiming they were "protecting the citizens from migrants" and their followers on social media focused substantially on refugees and migrants in 2021. Their social media posts also indicated a major shift to other topical issues, such as anti-pandemic measures. Nevertheless, refugees and migrants, i.e. the "threat" they posed to the RS, still featured among the favourite topics of rightist groups and their sympathisers.

773 "358 Illegal Migrants Found in Sombor," RTV (21 October 2021), available in Serbian at: <https://bit.ly/3oZON3Q>.

Their comments often described migrants as just a “cog” in the global conspiracy against Serbs, as well as against all mankind. They were rife with unverified and even absurd allegations geared at triggering hate and fear of refugees and migrants and affording legitimacy to such claims.

No major anti-migrant protests resembling the ones in 2020 occurred in 2021. Several dozen people rallied to protest against migrants in border towns; they included the residents of those towns and members of anti-migrant groups,⁷⁷⁴ who even publicly labelled citizens assisting migrants. Such a case was registered in the city of Sombor.⁷⁷⁵

These rightist groups continued taking the law into their hands in various Serbian cities. The so-called “people’s patrols,” which the BCHR reported on in 2020,⁷⁷⁶ were especially active. The members of this informal rightist group often accosted migrants, claiming that they were “more and more aggressive” and that their attacks were “increasingly frequent”, restricted their freedom of movement and placed them under citizen’s arrest. They usually recorded their activities and published them on social media, under slogans such as “Step the Settlement of Migrants”, “The Streets Need to be Safe Again,” and “When Injustice Becomes the Law, Resistance becomes a Duty”, spreading xenophobia and anti-migrant sentiments. Members of “people’s patrols” justified their activities by the inefficiency of the Serbian police and prosecutors, presenting themselves as patriots protecting Serbs from migrants. Such “administration of justice” by any *ad hoc* group is clearly unacceptable and undermines the already fragile rule of law. It is particularly dangerous if the state and society see nothing wrong in such groups taking the law into their own hands and clamping down on migrants, because they will in all probability condone such treatment of other people these groups perceive as an enemy or a threat in the future as well.⁷⁷⁷ And that would be the definite end of the rule of law.

In addition to “patrolling”, these groups were also very active in spreading their anti-migrant sentiments on social media. In January 2021 alone, 64 posts

774 “Protest against Settlement of Migrants,” *SOINFO.ORG* (11 October 2021), available in Serbian at: <https://bit.ly/2ZqmCma>

775 For instance, the media in October published reports about Sombor residents whose names the rightist groups published on posters, publicly accusing them of helping refugees by renting their apartments and houses to them, and thus encouraging their large-scale settlement in this town. Such actions are especially problematic and dangerous in small towns where everyone knows each other. See more in “‘I’m Worried about My Family’: Sombor Man Threatened for Renting Housing to Migrants,” *Radio Free Europe* (12 October 2021), available in Serbian at: <https://bityl.co/AeHD> and “Sombor Has Become a Divided City,” *Danas* (25 October 2021), available in Serbian at: <https://bityl.co/AeHA>.

776 More in *Right to Asylum 2020*, pp. 178–179.

777 “People’s Patrols’ Chasing Migrants Today, Who’s Next?,” *Istinomer* (26 March 2021), available in Serbian at: <https://bit.ly/3CTo7qq>.

registered on their profiles described migrants as criminals threatening the citizenry and society, claiming also that migrants were privileged, because the state was allegedly giving them houses and there were plans for their large-scale immigration to the RS. The CRM explained that the aid in housing aid was being extended to refugees from Croatia and Bosnia and Herzegovina and Kosovo IDPs. This proves that the authors of the “news” either did not know what they were talking about or were posting uncorroborated allegations in order to provoke anti-migrant sentiments among the local population.⁷⁷⁸

7.1.4. Conclusion and Recommendations

Bearing in mind everything that has been said, it can be concluded that negative aspects were still present in the public discourse on migrants in the RS in 2021, despite the visible ebbing of interest in migration issues. The media still played the most important role in shaping public opinion on this population. It is therefore crucial that media workers comply with professional journalistic standards and refrain from sensationalist reporting deepening public fears and bias against refugees and migrants. Greater media focus on the humanitarian and integration narratives would render more visible the positive aspects of the life of refugees and migrants in the RS.⁷⁷⁹ Efforts should thus be made to give voice to both migrants and refugees, to provide them with more opportunities to introduce themselves in the media, to talk publicly about their plans, thoughts, experiences and problems. That is the best way to dispel prejudices about someone we do not know.

Continuous efforts need to be made to improve public perceptions of migrants. They should include suppression of fake news and stereotyping, as well as hate and intolerance. Therefore, educational and other institutions should teach youth tolerance and to accept diversity and provide ordinary people with opportunities to themselves meet refugees and migrants, to dispel prejudices usually bred by ignorance. Local authorities should organise constructive debates on migration issues, in which migrants and expert and competent figures should take part, and at which the public will have the opportunity to hear accurate data about this population, their personal accounts and get to know them better.

Last but not the least, all the relevant RS authorities need to demonstrate their intention to protect the migrant population more clearly and to react promptly and more frequently to any violations of their rights or safety.

⁷⁷⁸ *Ibid.*

⁷⁷⁹ For instance, the enrolment of first refugee students in Serbian colleges on the same terms as Serbian nationals was a widely reported good news story. More in the chapter on Integration, pp. 142–143.

7.2. Appendix – Pushback of an Asylum Seeker from Hungary to Serbia

Refugees and asylum seekers face numerous difficulties and risks as they flee persecution in their countries of origin and try to reach safe destinations, usually in Europe. Media often report on smuggling of migrants, of lives lost on the way to safety, as well as on the expulsion of asylum seekers from the countries they entered in search of international protection. Authorities of many European states have been increasingly resorting to violence and gross violations of the migrants' rights at their borders, denying them access to asylum, as the Croatian and Belarus cases mentioned in this Report illustrate.

UNHCR data show that over 27,792 people were pushed back to Serbia from neighbouring Hungary, Croatia, Romania, Bulgaria and Bosnia and Herzegovina in 2021.⁷⁸⁰ At least 18,741 of them were pushed back from Hungary alone. However, the BCHR has been meeting more and more foreigners claiming that the Hungarian authorities expelled them to the RS although they had never set foot in the latter. All of them found themselves in Hungary as asylum seekers, refugees or foreigners with unregulated legal status. The BCHR advised and legally represented dozens of foreigners who met with such a fate; they included nationals of Jamaica, Iraq, Moldova, Afghanistan, Gabon, et al. Hungary expelled all of them to Serbia usually under the cover of night, without good cause or notification of Serbia's relevant authorities.

One of the victims of the described Hungarian migration policy, which this EU Member State has been steadily implementing against unwanted foreigners it finds in its territory, is W., a national of the Democratic Republic of Congo, who asked BCHR's legal team for assistance in November 2021. She told the BCHR that she arrived alone at the Budapest Airport in late September and sought asylum because of the personal problems she had in her country of origin. However, the Hungarian police officers said that "asylum is not sought here", seized her passport and served her with the decision on her deprivation of liberty and documents in Hungarian. After spending an entire day in custody, W. and 13 other foreigners she did not know, some of whom were children, were expelled to the RS. After they were pushed back through a small door in the wire fence Hungary erected on the border with the RS, this group of migrants found themselves in the woods, in pitch black darkness, without any idea where they were.

BCHR's legal team has been extending legal aid to W. and representing her in the asylum procedure in the RS at the time this Report was completed. Given

780 See UNHCR's January-October (<https://bit.ly.co/AdcE>), November (<https://bit.ly.co/AdcI>) and December (<https://bit.ly.co/AdcN>) 2021 reports.

the Hungarian authorities' well-established practice of pushing unwanted foreigners back to the RS although they had never set foot in it, the BCHR decided to go public with W's story with her consent and ensuring that her personal data were protected. The BCHR team recorded and published a short video "Hungary – Asylum is Not Sought Here"⁷⁸¹ in which W. recounted the traumatic event she experienced in Hungary and her illegal deportation after she was denied the right to seek asylum in that country. W's experience drew the attention of the public; the audience's comments posted on the websites of the media that ran the story and the video, showed that they empathised and sympathised with her plight and sharply condemned the inhuman and degrading treatment the Hungarian authorities had subjected her to.

The BCHR team hopes that this short film about W's illegal expulsion will raise public awareness of the dangers, difficulties and violence refugees face on the road as they search for life in safety. The video also aims to prompt public calls for the immediate halt of illegal and atrocious practices many countries, including the RS⁷⁸², resort to when they want to banish unwanted foreigners and refugees, whilst grossly violating their fundamental human rights enshrined in national and international law.

781 Available at: <https://ytube.io/3PYv>.

782 Serbia's pushback "track record" is not as infamous as that of other states in the region, albeit it is not impeccable. UNHCR statistics show that Serbia pushed around 210 people back to North Macedonia in 2021, i.e. denied them access to its territory and the asylum procedure. The BCHR would also like to recall the Constitutional Court's decision of 29 December 2020, officially confirming that the relevant RS authorities collectively pushed back 17 Afghan migrants who had previously expressed the intention to seek asylum in the RS. The Court found that the authorities had also violated the asylum seekers' other rights enshrined in the Serbian Constitution and the ECHR. An analysis of the Constitutional Court's decision is available in *Right to Asylum, Periodic Report for January-March 2021*, pp. 40–44.

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