



**Right to Asylum in the
Republic of Serbia
Periodic Report for
January–June 2022**



**Belgrade Centre
for Human Rights**

Contents

Acronyms	3
Introduction	4
1. Statistics	6
1.1. Registration of Asylum Seekers	6
1.2. Work of the Asylum Office.....	8
2. Massive Influx of Refugees from Ukraine	10
3. Practice of the Asylum Authorities	13
3.1. Asylum Office Decisions	13
3.2. Asylum Commission	25
3.3. Administrative Court.....	28
3.4. Extradition Procedure.....	31
4. Integration	39
4.1. Introduction	39
4.2. Statistics	40
4.3. BCHR Clients' Accounts of Successful Integration.....	44

Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

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

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

ECtHR – European Court of Human Rights

EU – European Union

IOM – International Organisation for Migration

LATP – Law on Asylum and Temporary Protection

LGAP – Law on the General Administrative Procedure

LILACM – Law on International Legal Assistance in Criminal Matters

MOI – Ministry of the Interior of the Republic of Serbia

PIN – Psychosocial Innovation Network

R4R – Refugees for Refugees

RS – Republic of Serbia

RTC – Reception-Transit Centre

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

Introduction

In 2022, the Belgrade Centre for Human Rights (BCHR) continued extending free legal aid to refugees and asylum seekers in Serbia within the project Support to Asylum Seekers in Serbia implemented with the support of the United Nations High Commissioner for Refugees (UNHCR). BCHR's legal team also continued representing foreigners who applied for asylum in the RS, perceiving it as their country of refuge. In addition to representing asylum seekers and refugees before the relevant Serbian authorities and international institutions, BCHR's team has been extending them assistance with a view to facilitating their integration in the country's social, economic and cultural life.

This Report analyses the treatment of the asylum seekers and refugees in Serbia in the first six months of 2022, based on information the BCHR team obtained during their legal representation in the asylum procedure and provision of support in their integration, and during its field work. The Report also comprises data the BCHR collected through regular cooperation and communication with the state authorities and UNHCR. The statistical data cover the 1 January-30 June 2022 period. The Report has been prepared by the BCHR legal and integration team.

The beginning of 2022 was marked by the war conflict in Ukraine that triggered a new wave of refugees across Europe. The massive influx of refugees from Ukraine and the risk that the national asylum systems would not be able to respond efficiently to the number of new applications prompted the EU to adopt an Implementing Decision activating temporary protection of persons fleeing Ukraine in early March.¹ The RS Government followed suit and adopted a Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine² (Decision), which entered into force on 18 March. The Decision activated the temporary protection mechanism envisaged by the Law on Asylum and Temporary Protection (LATP).³

The war in Ukraine overshadowed many old as well as new hotbeds of crisis in Middle Eastern and African countries. UNHCR data show that the number of people who had to flee armed conflict, persecution or natural disasters caused by climate change has exceeded 100 million for the first time on record.⁴ Refugees now account for one percent of the world's population.

¹ Council Implementing Decision (EU) 2022/382, The Council of the European Union, 4 March 2022, available at: <https://bityl.co/Dn6t>.

² *Official Gazette of the RS*, No. 36/2022.

³ Art. 74, LATP.

⁴ More on UNHCR's website: <https://bityl.co/Dn71>.

The RS has been extending humanitarian care to Ukrainian refugees, like it has to other refugees to date, by providing them with accommodation and basic protection. The statistics of the Committee for Refugees and Migration (CRM) show that nearly 40,000 Ukrainians entered the RS and that slightly over 8,000 of them registered their residence.⁵ During June, around 5,000 foreigners from refugee population were living in the Asylum Centres (ACs) and Reception-Transit Centres (RTCs), while some continued living at informal venues. CRM data show that over 38,900 people passed through Serbian ACs and RTCs in the first half of the year, a 55% increase over the same period last year.⁶

However, the deficiencies of the RS asylum system that have not been eliminated for years became even more conspicuous in the current situation. The greatest challenges include the length of the asylum procedure and uncertainties surrounding its outcome, low share of asylum seekers granted protection and the RS state authorities' non-compliance with the relevant domestic and international regulations. Furthermore, comprehensive durable solutions for the long-term integration of refugees in the RS are still lacking. The BCHR illustrated the problems in its analyses of the select decisions of the relevant authorities adopted during the reporting period and their (non)action in individual, sensitive cases. With a view to providing a more comprehensive illustration of the positive and negative aspects of the asylum authorities' work, where relevant, the authors described their practices in the past or referred to prior BCHR reports.

The section of the Report on integration includes accounts of one Burundian and two Iraqi nationals who have been granted international protection in the RS by the Asylum Office. BCHR interviewed these three clients about their years-long integration in the local community in order to familiarise the public with the process of integration in the new community from the refugees' perspective and the challenges they have been facing on the way.

The Report is primarily addressed to state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals and organisations monitoring the situation in the field of asylum. Its authors endeavoured to point out good practice examples, as well as specific shortcomings in the work of the relevant authorities and offer recommendations on how to address them in order to help the relevant RS authorities establish a more functional asylum system.

Photo Cover: '*Kosmisches Diagramm*', auf Leinwand, (213 x 157 cm, 1989), Wolfgang E. Biedermann

⁵ "Migration waves yet to sweep over Europe," *Politika*, 19 June 2022, available in Serbian at: <https://bitly.co/Dn79>.

⁶ "CRM: 38,909 people passed through reception centres for migrants in the first half of the year," *Danas*, 6 July 2022, available in Serbian at: <https://bitly.co/Dn7B>.

1. Statistics

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports. The data in this Report cover the 1 January – 30 June 2022 period. The national asylum authorities do not publish information about their work on their websites.

1.1. Registration of Asylum Seekers

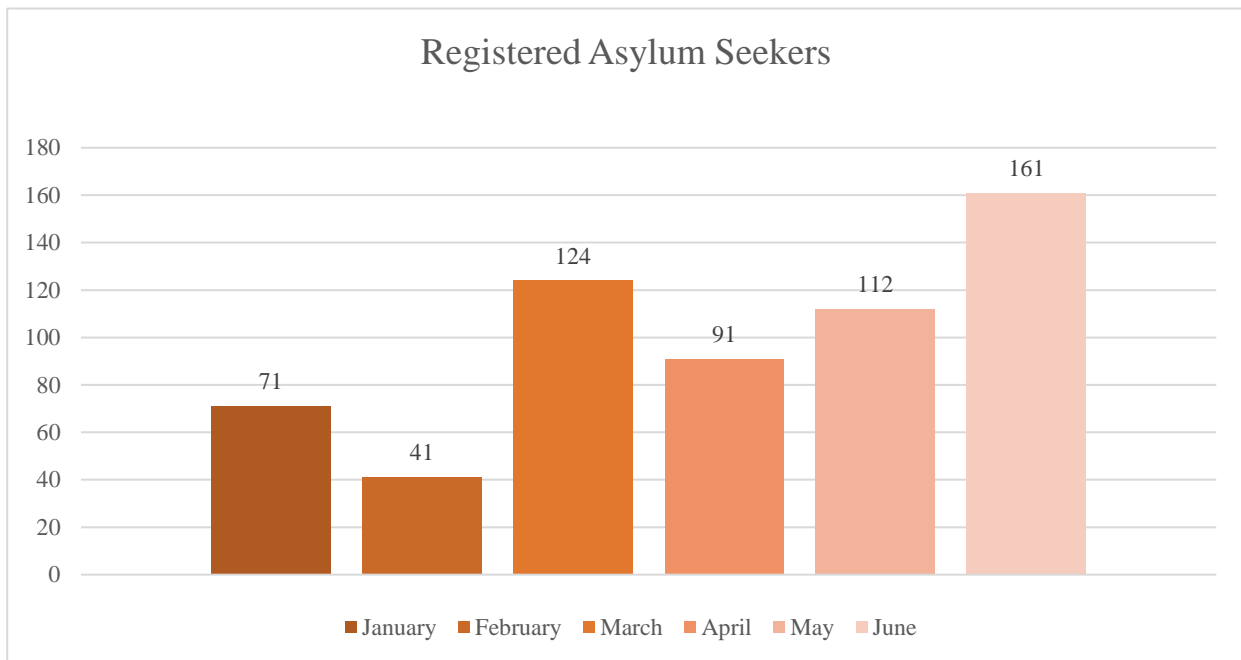
A total of 1,981 foreigners expressed the intention to seek asylum in the RS since the beginning of 2022; 1,728 of them were men and 253 were women. The intention to seek asylum in the RS was expressed by 374 children, 57 of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered since the beginning of the year: 201 in January, 210 in February, 277 in March, 387 in April, 529 in May and 377 in June 2022.

Most of the foreigners who expressed the intention to seek asylum were nationals of Afghanistan (835), followed by nationals of Burundi (543), Syria (155), Pakistan (124), Morocco (54), Cuba (28), Guinea-Bissau (24), Ghana (21), Bangladesh (20), India (18), Palestine and Russia (14 from each), DR Congo (12), Iran and Turkey (11 of each) and Cameroon (10). The intention to seek asylum in the reporting period was also expressed by nationals of Iraq, Somalia and Tunisia (8 of each), Equatorial Guinea and Sudan (5), Bosnia and Herzegovina, Libya and Ukraine (4 of each), Comoro, Egypt, Gambia and Sierra Leone (3 of each), Bulgaria, Congo, Eritrea, Georgia and Senegal (2 of each). The fewest foreigners who expressed the intention to seek asylum in the RS in the reporting period – one – were nationals of the following countries: Albania, Angola, Benin, China, Ecuador, Equatorial Guinea, France, Germany, Ivory Coast, Mauritius, Mongolia, Nigeria, North Macedonia, Poland, Slovenia and Sri Lanka. One stateless person also expressed the intention to seek asylum.

Like in the previous period, most foreigners issued certificates confirming they had expressed the intention to seek asylum (registration certificates) in the first six months were registered in police departments in the interior of the country (1,301) and at Belgrade Airport Nikola Tesla (285), while 334 foreigners were registered at border crossings. A total of 61 foreigners were registered at other locations, such as ACs and RTCs.

A total of 653,790 foreigners expressed the intention to seek asylum in Serbia from 2008 to end June 2022. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577,995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018, 12,937 in 2019, 2,830 in 2020 and 2,306 in 2021. Registration certificates were issued to 1,981 foreigners during the first half of 2022.

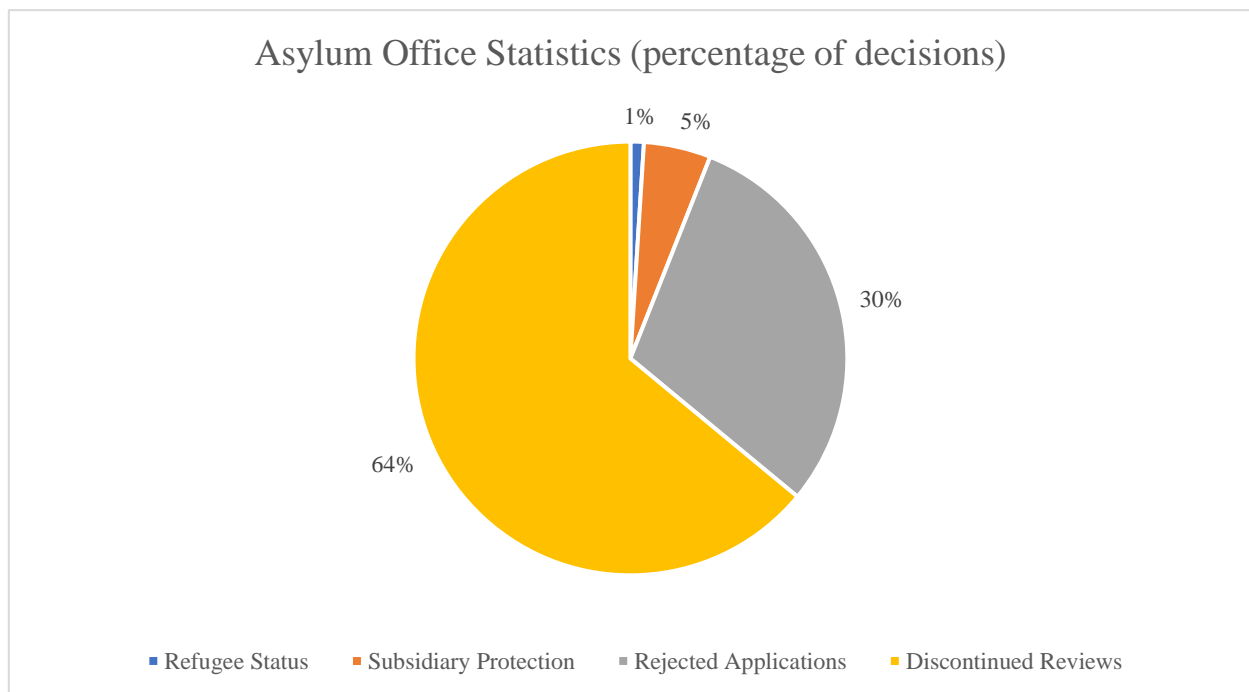
The number of registered foreigners in the first half of 2022 was higher than in the same period in 2020 and 2021.⁷ The reason lies, *inter alia*, in the influx of foreigners from Ukraine, who have been registered in Serbia and are eligible for temporary protection, as the Report will discuss.



⁷ More in Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2020*, Belgrade Centre for Human Rights (Belgrade, 2020, hereinafter: *Right to Asylum in the Republic of Serbia 2020*), pp. 15-16, available at: <https://bityl.co/Dnqs> and Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2021*, Belgrade Centre for Human Rights, (Belgrade, 2021, hereinafter: *Right to Asylum in the Republic of Serbia 2021*), pp. 15-18, available at: <https://bityl.co/Dnqy>.

1.2. Work of the Asylum Office

From 1 January to 30 June 2022, 205 asylum applications were submitted in person, before Asylum Office staff or in writing.⁸ During the same period, the Asylum Office held 50 hearings. It upheld eight asylum applications, granting refuge in one and subsidiary protection in seven cases. It rejected 44 applications concerning 44 foreigners. It did not dismiss any asylum applications. The Asylum Office discontinued the review of 93 applications concerning 93 foreigners, primarily because the applicants had left the RS before the completion of the asylum procedure.



Available data indicate that the RS authorities have upheld the asylum applications of 216 foreigners since 2008. They have granted refugee status to 98 and subsidiary protection to 118 applicants to date.

⁸ Sixty-one foreigners applied for asylum orally before Asylum Office staff, while 144 applied in writing, submitting the asylum application forms.

1.2.1. Temporary Protection

A total of 772 people (228 men, 544 women and 204 children) applied for temporary protection in the RS in the first six months of the year pursuant to the RS Government Decision on the Provision of Temporary Protection to People Displaced from Ukraine.⁹ Of them, 749 were Ukrainian nationals, 15 were nationals of the Russian Federation, five were Armenian nationals, one was a national of Belarus, one a national of Bosnia and Herzegovina and one a national of China. The Asylum Office granted temporary protection to 719 of the applicants by the end of June 2022.

⁹ *Official Gazette of the RS*, No. 36/22.

2. Massive Influx of Refugees from Ukraine

Years-long political tensions between Ukraine and the Russian Federation intensified at the end of 2021, as the possibility of addressing the two states' open issues through diplomacy dwindled. The Western European and US senior officials' talks with their Russian counterparts over the past few months have not been successful.¹⁰

On 21 February 2022, the Russian Federation recognised the Donetsk and Luhansk National Republics, two self-proclaimed republics in the Ukrainian region of Donbas, which have been under the control of pro-Russian separatists since 2014, when the conflict between Ukraine and Russia broke out. On 24 February 2022, Russian President Vladimir Putin announced a “special military operation” in Ukraine, against which he launched a large-scale invasion. The escalation of the conflict, which has been ongoing for eight years now, is the largest military conflict in Europe since World War Two.

In addition to numerous casualties and extensive destruction, the fighting in Ukraine also caused the largest refugee crisis on the European continent since the wars in the former Yugoslavia. According to UNHCR data, over five million refugees from Ukraine were recorded in Europe in mid-June 2022. Over 8.5 million people fled Ukraine from 24 February to end June.¹¹ IOM's data show that over seven million people were displaced in Ukraine in May; most of them were from eastern parts of the country.¹²

The number of people displaced from Ukraine, as well as other hotbeds of crisis across the world, crossed the staggering milestone of 100 million for the first time on record. Refugees now account for over one percent of the world population.¹³

Although most of the people who fled Ukraine went to the neighbouring countries (Poland, Russia, Romania, Moldova, Slovakia, Hungary and Belarus) or West European countries (Germany, Italy, Spain and France), some of them made their way to the RS.¹⁴ In response to the

¹⁰ Namely, Russia's calls on the international community not to admit Ukraine and other former Soviet republics to NATO and to freeze all NATO military activities in East Europe went unheeded. Russian soldiers were deployed on the border with Ukraine in November 2021. NATO built up its military presence in East Europe in January 2022.

¹¹ Available at: <https://bitly.co/Dn96>.

¹² Available at: <https://bit.ly/3zRvBfI>.

¹³ Available at: <https://bit.ly/3xwPhTz>.

¹⁴ Mostly people who have family, relatives or friends in the RS. Some refugees from Ukraine spent short periods of time in the RS, usually until their 90-day residence expired, with the intention of travelling on to other countries in

increased influx of refugees, the Serbian President and senior officials said that the RS was willing to take in and accommodate them. The MOI and the CRM reached an informal decision to designate the newly-renovated AC in Vranje for families from Ukraine. Seventy-eight Ukrainian refugees were living in this AC in mid-June.¹⁵ CRM data show that around 7,000 refugees from Ukraine were living in the RS in May, most of them in private lodgings.¹⁶

The massive influx of refugees from Ukraine and the risk that the national asylum systems would not be able to respond efficiently to the number of new applications prompted the EU on 4 March 2022 to adopt an Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.¹⁷ Aiming to extend rapid and efficient assistance, the Decision and Directive provide for a set of rights refugees from Ukraine may enjoy in EU Member States for the duration of the temporary protection.

The RS Government followed suit and adopted a Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine¹⁸ (Decision), which entered into force on 18 March. The Decision applies to individuals who have been forced to leave or have been evacuated from Ukraine, as their country of origin or habitual residence, and who are unable to return in safe and durable conditions to their country of origin due to the situation in that country.¹⁹ Under the Decision, temporary protection shall also be extended to Ukrainian nationals and their family members who were legally residing in the RS at the time of adoption of the Decision but whose residence permits expire before the Decision is terminated. The MOI is charged with registering individuals intending to apply for temporary protection, which is granted by the Asylum Office and is valid for one year from the day the Decision entered into effect.

Thanks to the temporary protection mechanism, activated under the Decision for the first time since the asylum system was established in the RS, refugees from Ukraine have been provided with safety and the possibility of exercising their fundamental rights laid down in the LATP. They

the region or EU Member States. The BCHR team drew this conclusion from its interviews with foreigners hailing from Ukraine.

¹⁵ Available on CRM's website: <https://bit.ly.co/Dnr6>.

¹⁶ "Around 7,000 refugees from Ukraine in Serbia," *Danas*, 27 May 2022, available in Serbian at: <https://bit.ly.co/Dnr9>.

¹⁷ Council Implementing Decision (EU) 2022/382, The Council of the European Union, 4 March 2022. Available at: <https://bit.ly.co/DnrC>.

¹⁸ *Official Gazette of the RS*, No. 36/2022.

¹⁹ The Decision applies to Ukrainian nationals and their families who had lived in Ukraine, asylum seekers, stateless persons and foreign nationals granted asylum or equivalent protection in Ukraine and their families who had lawfully resided in Ukraine. The Decision also applies to third-country nationals with permanent or temporary residence permits in Ukraine who cannot return to their countries of origin.

include: the right to live in Serbia for the duration of the temporary protection period, the right to a document confirming their status, the right to healthcare, the right to access the labour market, the right to free primary and secondary education, the right to free legal aid under the same terms as asylum seekers, the right to freedom of religion, the right to collective accommodation in designated facilities and the right to appropriate accommodation for persons who need special reception guarantees. The Decision illustrates the RS authorities' commendable response and efforts to protect the rights of refugees seeking international protection in the RS.

Available MOI data show that the Asylum Office issued a total of 719 rulings granting temporary protection to refugees from Ukraine in May and June 2022. It remains to be seen how they will exercise their individual rights in practice and to what extent they will succeed in integrating in Serbian society, in view of the fact that this is the first time foreigners in the RS have been granted temporary protection provided for by the LATP.

BCHR's team will continue extending legal aid to individuals in need of temporary protection in the RS and assisting them in their integration in the local community. It will simultaneously actively monitor the treatment of this category of foreigners by the relevant institutions and their ability to exercise their rights in accordance with the law.

3. Practice of the Asylum Authorities

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

From January to the end of June 2022, the Asylum Office rendered 21 decisions in cases in which the asylum seekers were represented by the BCHR; it upheld five applications (granting refuge in one case and subsidiary protection in four cases), rejected seven asylum applications and discontinued the review of nine cases. Furthermore, in May and June 2022, the Asylum Office issued 13 rulings granting temporary protection to 29 BCHR clients, nationals of Ukraine. The Asylum Commission adopted six decisions during the reporting period, rejecting three and upholding three appeals of Asylum Office decisions filed by the BCHR. During the first six months of the year, the Administrative Court delivered seven judgments rejecting claims filed on behalf of seven BCHR clients.

This part of the Report contains the BCHR legal team's analysis of individual decisions on asylum cases adopted in the first six months that it considers important. Apart from specific positive segments of the asylum authorities' work, most of their decisions illustrate the same irregularities and deficiencies that have been plaguing their practice for years now. This chapter will discuss in greater detail some of their decisions.

3.1. Asylum Office Decisions

3.1.1. Libyan National Granted Asylum Nearly Half a Decade after Applying for It

In early February, the Asylum Office granted asylum to Libyan national R., who applied for international protection in the RS back in June 2017. The Asylum Office granted R. refuge after it finally established that he would be at risk of political persecution if he returned to his country of origin on account of his political opinions.²⁰

²⁰ R. was a sympathiser and collaborator of the ousted Libyan leader Muammar al-Gaddafi. Fearing the extremist rebel groups, he fled Libya in 2011.

a) *Main Facts*

The Asylum Office had rejected R.'s application twice – first in September 2019 and then in January 2021. The Asylum Commission, however, upheld the appeals of these decisions filed by the BCHR and both times remitted the case for reconsideration to the first-instance authority. These rulings were analysed in detail in BCHR's prior asylum reports.²¹

In addition to the overly long procedure before the Asylum Office, it needs to be noted that the Office's second ruling in this case had been based exclusively on the view of the Security Intelligence Agency (SIA) that R. did not fulfil the criteria for international protection because he posed a "risk to national security", a view the SIA did not elaborate.²² After only several months, the Asylum Commission received another opinion from the SIA, that the applicant no longer posed a risk to national security. Given the seriousness of such a claim, the question legitimately arises how the authorities can draw such qualifications and whether they are solely the result of their arbitrary assessments.

The excessive length of the first-instance procedure in R's case prompted the BCHR legal team to file a complaint about the silence of the administration. Since the Asylum Commission failed to act on it, it was forced to file a claim with the Administrative Court. In order to corroborate R.'s claims, the BCHR submitted over 20 various submissions to the Asylum Office in the 2017-2022 period, containing reports on the applicant's country of origin, newspaper articles on the armed conflict in Libya, individual pieces of evidence and other relevant documentation. It may be concluded that the BCHR lawyers' persistent approach in the case of this Libyan national substantially influenced the Asylum Office to end the marathon procedure in line with the instructions of the supervisory authority and uphold the asylum application. During its review of the application, the first-instance authority consulted a number of international reports analysing the status and treatment of collaborators of al-Gaddafi's former regime, as well as those on the security situation in Libya.²³ The Asylum Office also took into account evidence of the applicant's

²¹ More in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2019*, Belgrade Centre for Human Rights (Belgrade, 2019, hereinafter: *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2019*), pp. 8-11, available at: <https://bit.ly/co/DnrI>; Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, Belgrade Centre for Human Rights (Belgrade 2019, hereinafter: *Right to Asylum in the Republic of Serbia 2019*), p. 51, available at: <https://bit.ly/co/DnrX>; *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2021*, Belgrade Centre for Human Rights (Belgrade 2021, hereinafter: *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2021*), pp. 14-19, available at: <https://bit.ly/co/DnrZ>.

²² Asylum Office Ruling No. 26-1389/17 of 16 September 2019.

²³ *UNHCR Position on Returns to Libya - Update II*, UNHCR (September 2018), available at: <https://bit.ly/2MVIQSG>; *Country Policy and Information Note Libya: Actual or perceived supporters of former President Gaddafi*, UK Home Office (April 2019), available at: <https://bit.ly/3ud9InH>; *DFAT Country Information Report – Libya*, Australian

family life in the RS. Namely, he is married to a Serbian national and their child, now an adult, is also a Serbian national. The Office thus concluded that a positive decision on the application would ensure the inviolability of Article 9 of the Law on Asylum and Temporary Protection,²⁴ as well as of Article 8 of the European Convention on Human Rights.²⁵

b) Conclusion

Although the Asylum Office's final decision to grant Libyan national R. asylum is commendable, it remains unclear how it reached two diametrically opposed decisions – one in September 2019 and another in February 2022 – on the same findings of fact. Furthermore, most of the international reports based on which the first-instance authority concluded that R.'s fear of persecution was well-founded were also available three years ago, when it rejected his application. Contradictory assessments of identical circumstances in the same administrative matter inevitably undermine legal certainty and public trust in the relevant asylum institutions.

3.1.2. Asylum Office Upheld Three-Member Ukrainian Family's Asylum Application

In June 2022, the Asylum Office issued a ruling²⁶ upholding the asylum application of a three-member Ukrainian family and granting it subsidiary protection.²⁷ The refugee mother and her two daughters were among the first to apply for and obtain international protection²⁸ in the RS after the armed conflict in Ukraine escalated in February and before the Serbian Government adopted its Decision on the Provision of Temporary Protection to People Displaced from Ukraine.

Government Department of Foreign Affairs and Trade (4 April 2016), available at: <https://bit.ly/3Nzwa17>; *Torture and Deaths in Detention in Libya*, UN Office of the High Commissioner for Human Rights (October 2013), available at: <https://bit.ly/3OwL4q1>; and, *Libya August Humanitarian Bulletin*, UN OCHA – UN Office for the Coordination of Humanitarian Affairs (September 2021), available at: <https://bit.ly/3yuFIWL>.

²⁴ Under the principle of family unity, the competent authorities shall take all the measures at their disposal to maintain family unity during the procedure, as well as upon granting asylum or temporary protection

²⁵ *Everyone has the right to respect for his private and family life, his home and his correspondence.*

²⁶ Asylum Office Ruling No. 26-462/22 of 15 June 2022.

²⁷ Pursuant to Art. 25, LATP.

²⁸ In 2015, the BCHR represented a Ukrainian asylum-seeking woman of Russian descent, who had left her country of origin in fear of persecution in the context of the armed conflicts in Ukraine in 2014. The Asylum Office in 2015 granted subsidiary protection to this applicant, who had come to the RS alone.

a) Main Facts

Ukrainian national O. from Kiev came to visit her friend in the RS on 18 February. She was planning on returning to her country of origin in ten days' time. However, on the night of 24 February, O.'s mother let her know that the Russian forces have started shelling Ukraine and that she should come back as soon as possible, to join her children, who were with their father.

O.'s husband was called to join the Ukrainian army when the state of war was declared and could not stay at home with the children. With the security situation deteriorating from one hour to the next, O. was unable to return to her country of origin, while, on the other hand, her husband could not join her in the RS given that the Russian authorities prohibited all able-bodied men from leaving Ukraine. O. and her husband met on the Ukrainian-Hungarian border on 3 March and O. took their two underage daughters and brought them to the RS.

b) Asylum Office Applied the Sur Place Principle

During the oral hearing before the Asylum Office, O. set out the reasons why she had left her country of origin and why she could not return; she also described the security situation in Ukraine, in which the war is still raging. O. did the same on behalf of her daughters, in her capacity of their legal representative.

The Asylum Office assessed O.'s claims and established that, based on all the presented facts and circumstances, the *sur place* principle was applicable in this case.²⁹ Under this principle, a well-founded fear of being persecuted or a real risk of suffering serious harm may be based on the events that took place after the applicant had left their country of origin or habitual residence. In this case, O. had left Ukraine when it was peaceful but was unable to return to it because the war broke out; she stayed in the RS and applied for asylum. In the reasoning of its ruling, the Asylum Office noted that O. and her daughters would be subjected to inhuman and degrading treatment if they returned to Ukraine and consequently granted them subsidiary protection in the RS.

The Asylum Office also said in its ruling that it notified the applicants of the RS Government's Decision on Temporary Protection to People Displaced from Ukraine and that, under the LATP³⁰, foreigners granted temporary protection were entitled to apply for asylum.

²⁹ Pursuant to Art. 27, LATP.

³⁰ Art. 76(2), LATP.

c) *Conclusion*

In all asylum cases, the relevant asylum authorities should assess all the facts and other evidence objectively and thoroughly, whilst taking into account, *inter alia*, relevant reports on the situation in the applicants' countries of origin. In this case, the Asylum Office acted in a proper and lawful manner. It adopted a decision based on a thorough examination of the facts and circumstances, whilst bearing in mind the Ukrainian nationals' personal circumstances. Rather than adhering to such a practice in all cases, the Asylum Office has also been rejecting applications of asylum seekers, including those belonging to particularly vulnerable groups, without having adequately assessed all the circumstances and submitted evidence, as the ensuing sections illustrate.

3.1.3. Asylum Office Again Rejected Vulnerable Asylum Seekers' Applications

During the reporting period, the Asylum Office adopted decisions again rejecting applications by vulnerable asylum seeking women. Specifically, it rejected the applications filed by a Cuban mother and daughter and a young Iranian national, who had been persecuted in her country of origin because she was an activist and fought for women's rights. These Asylum Office decisions will be discussed in greater detail below.

a) Asylum Office Rejected Iranian Activist's Asylum Application for the Second Time

In February 2022, the Asylum Office adopted a decision rejecting for the second time the asylum application filed by Iranian national G.M. It first rejected her asylum application the previous year, in late January 2021, when, based on erroneous and incomplete findings of fact, it concluded that she was not at risk of persecution in her country of origin on account of her membership of a specific social group.³¹

BCHR's lawyers appealed the first-instance decision with the Asylum Commission. In May 2021, the Asylum Commission upheld BCHR's arguments about the irregularities and deficiencies of the first-instance ruling and remitted the case to the Asylum Office for reconsideration.³² During the review of the case, the Asylum Office was obligated to eliminate all the identified violations,

³¹ More on the Asylum Office's first decision in this case in *Right to Asylum in the Republic of Serbia, Periodic Report for January-June 2021*, pp. 23-26.

³² *Ibid.*

fully and properly examine all the facts and circumstances of relevance to the adoption of a legal decision and evaluate all the evidence based on the procedure in its entirety.

G.M.'s representatives, *inter alia*, argued in the appeal that the Asylum Office had inadequately examined the submitted evidence supporting the applicant's claims that she had been subjected to persecution and degrading treatment in her country of origin. The evidence, notably, substantiated G.M.'s claims about her modelling career, her activism in Iran³³, and ties with a women's rights activist, who, like G.M., had been arrested in their country of origin and convicted to a years-long prison sentence. Additionally, the Asylum Office had not considered BCHR's reports on the state of human rights in Iran and on the status of women defying Islamic traditional customs and endeavouring to live a life of freedom and dignity. Furthermore, the Asylum Office ignored the psychological assessment report drawn up by PIN's psychologist, which was key to its decision in this case, especially given G.M.'s vulnerability.

During its review of G.M.'s application in June 2021, the Asylum Office held an oral hearing³⁴ to examine the circumstances that it had not adequately ascertained, as noted by the Asylum Commission. In addition, the Asylum Office asked the NGO Atina to present a report including, *inter alia*, reasons for placing G.M. in its Safe House and her reasons for leaving it. The first-instance authority was also under the obligation to review thoroughly the other submissions G.M.'s representatives submitted on her behalf, which it had failed to do the first time round.

In February 2022, as many as seven months after the additional oral hearing was held, the Asylum Office rendered a decision rejecting G.M.'s application again. In its new decision,³⁵ the Asylum Office reaffirmed its prior conclusion that G.M. had not been subjected to persecution in her country of origin and gave practically the same explanations it set out in its first decision. One of them was that G.M. had "the possibility of accessing efficient and durable protection" of the judicial authorities of her country of origin since the sexual violence she had been exposed to was punishable under the Iranian Criminal Code. The Asylum Office corroborated its view by noting that G.M. had not complained to the relevant domestic authorities about sexual harassment she had allegedly been exposed to upon her arrival in the RS. The first-instance authority also ignored G.M.'s claims about her association with a well-known women's rights activist, who had also been repeatedly arrested and is now serving a 24-year prison sentence for crimes attributed to her by the Iranian authorities.

³³ G.M. was a sympathiser of the White Wednesday movement rallying women opposing the obligation to wear a hijab in Iran.

³⁴ Minutes of Oral Hearing No. 26-1672/19 of 10 June 2021.

³⁵ Asylum Office Ruling No. 26-1672/19 of 1 April 2022.

The Asylum Office based its reiterated explanations on its insufficient examination of the relevant facts, selective assessments of G.M.'s allegations about persecution and its blanket conclusion about the findings of fact. Rather than adequately explaining why it considered some of the submissions (e.g. the relevant media articles) filed by her representatives irrelevant or less valuable than others,³⁶ the Asylum Office merely briefly noted that they were not applicable to the case at hand. In that sense, it is especially problematic that the Asylum Office ignored BCHR's submissions on the situation in G.M.'s country of origin and yet again grossly ignored the material evidence comprising photographs and video footage of G.M., corroborating the statement she made during the procedure.³⁷ Furthermore, the Asylum Office said in its reasoning that G.M. had not submitted proof of a court summons she claimed she had received "which she could reasonably have been expected to possess", especially since she "had her mother's support" from the moment she left Iran, and that she "did not provide a satisfactory explanation why this piece of evidence is missing".

The Asylum Office thus yet again failed to properly establish whether G.M.'s fear of persecution was reasonable. The BCHR is of the view that it has disregarded the real risks of treatment G.M. would be subjected to by the Iranian authorities should she return to her country of origin, which is in contravention of the prohibition of torture³⁸ and the *non-refoulement* principle.

b) Asylum Office Again Rejected Applications Filed by Mother and Daughter from Cuba

Just a month later, in March 2022, the Asylum Office adopted a decision rejecting the asylum applications filed by Cuban nationals, Y.Y. and her underage daughter K.K., for the third time.³⁹ Namely, the applicants left their country of origin because of the numerous problems they faced as the mother and daughter of an opposition human rights activist in Cuba, who fled his country of origin in fear of persecution in 2016 and sought asylum in the RS in 2017.⁴⁰

³⁶ In the meaning of Art. 10 of the LGAP which proclaims the principle of truth and free evaluation of evidence.

³⁷ The Asylum Office merely reiterated its view that it could not establish with certainty that G.M. was on the submitted footage and assessed that the "evidentiary materials are of a relatively low standard".

³⁸ Under Article 3 of the ECHR.

³⁹ More on the case in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2021*, Belgrade Centre for Human Rights (Belgrade, 2021, hereinafter: *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2021*), pp. 19-24, and *Right to Asylum in the Republic of Serbia 2021*, pp. 46-47.

⁴⁰ Police and intelligence officers came to their home almost every day, summoned Y.Y. for questioning and subjected her to various forms of torture in the police station in order to find out about her husband, R.R., who fled Cuba in fear of persecution in 2016 and sought asylum in the RS. After he left the country, Y.Y. and K.K. continuously faced problems with public officials and were subjected to multiple discrimination. 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.

To recall, after reviewing the applications, the Asylum Office in March 2021 adopted a decision⁴¹ rejecting the Cuban nationals' applications as ill-founded. The BCHR team filed an appeal with the Asylum Commission on behalf of the mother and daughter, claiming that the Office's decision was based on incorrect and incomplete findings of fact. In particular, the BCHR complained that the Asylum Office had not ascertained the circumstances concerning Y.Y.'s husband R.R. and had rejected the request to interview R.R. in his capacity of witness. In May 2021, the Asylum Commission issued a ruling⁴² upholding BCHR's appeal and remitting the case for reconsideration to the Asylum Office, instructing it to provide a detailed explanation why it had refused to interview R.R. However, the Asylum Office again rejected the asylum application in September 2021⁴³ without first interviewing Y.Y.'s husband or re-examining all the facts and circumstances of relevance to the administrative matter at issue.

As per interviewing R.R., the Asylum Office merely cited part of his statement to the Asylum Office during the oral hearing on his asylum application in 2017. However, it again failed to clearly explain why it thought it unnecessary to interview R.R. as a witness during its review of Y.Y.'s and K.K.'s applications. Given that it had dismissed R.R.'s asylum application under Article 33 of the Asylum Law⁴⁴, which was in force at the time, the Asylum Office did not even review on the merits his reasons for leaving his country of origin or the existence of reasonable fear of persecution⁴⁵, as the BCHR pointed out in the fresh appeal it filed with the Asylum Commission. Furthermore, it argued that the Asylum Office's new ruling suffered from the same shortcomings as the first one, which was why the Asylum Office again adopted an unlawful decision in this administrative matter.

In early January 2022, the BCHR received a new ruling of the Asylum Commission,⁴⁶ which again upheld the BCHR's appeal, voided the first-instance decision and remitted the case to the Asylum Office for reconsideration. In this ruling, the Asylum Commission explicitly instructed the first-instance authority to hold an oral hearing and interview R.R. in the capacity of witness, eliminate the other identified deficiencies, establish all the relevant facts and provide an adequate reasoning.

⁴¹ Asylum Office Ruling No. 26-2619/19 of 31 March 2021.

⁴² Asylum Commission Ruling No. Až-41/20 of 31 May 2021.

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

⁴⁴ *Official Gazette of the RS*, No. 109/07.

⁴⁵ R.R.'s asylum application was dismissed because he had passed through Montenegro en route to the RS and Montenegro is on the RS Government's list of safe third countries.

⁴⁶ Asylum Commission Ruling No. Až-41/20 of 8 November 2021.

The Asylum Office complied with the Asylum Commission's instructions and held an oral hearing,⁴⁷ at which it interviewed R.R. in his capacity of witness. R.R. provided a thorough account of the persecution he had been subjected to in his country of origin, the status of dissidents such as himself, and his association with one of the leading opposition movements in Cuba, because of which Y.Y. and K.K. faced problems after he was forced to leave the country. In March 2022, the Asylum Office adopted a ruling⁴⁸ in which it rejected Y.Y.'s and K.K.'s asylum applications for the third time. In its new ruling, the first-instance authority reiterated its explanations based on blanket conclusions about Y.Y.'s claims that she and her daughter had been subjected to discrimination and inhuman and degrading treatment in their country of origin. Like in its previous two rulings, the Asylum Office held that Y.Y. had not been subjected to persecution, because she had "neither been charged nor convicted, which might be considered persecution". It also said that "the absence of a causal link between her husband's different political opinions and the measures she had suffered or feared indicate that she had not been subjected to persecution in her country of origin".⁴⁹

Apart from grossly neglecting the individual circumstances of the case and Y.Y.'s detailed account of the treatment she and K.K., as the wife and daughter of an opposition activist, had suffered in their country of origin, the Asylum Office also downplayed the importance of several other facts. For instance, it said in the reasoning of its decision that the fact that Y.Y., K.K. and R.R. had left their country of origin legally indicated that they had not been persecuted in the meaning of the LATP.⁵⁰ Furthermore, the Asylum Office again ignored the principle of the best interests of the child⁵¹ and merely reiterated its view on the issue, without explaining it in detail. Furthermore, the first-instance authority reiterated its blanket conclusion that "the fact that the applicant is accompanied by an underage child does not mean that there are *a priori* grounds for recognising their refugee status" and specified that "it has not identified reasons putting underage K.K. at a disadvantage because of her parents' activities". Had the Asylum Office reviewed the best interests of the child in compliance with the relevant regulations,⁵² it would not have placed K.K. at the risk of being separated from her other parent. The Asylum Office's new decision has given rise to the real risk of violation of the *non-refoulement* principle and the principle of the unity of the family by the relevant RS authorities if they return Y.Y. and K.K. to their country of

⁴⁷ Minutes of Oral Hearing No. 26-2619/19 of 17 January 2022.

⁴⁸ Asylum Office Ruling No. 26-2619/19 of 25 March 2022.

⁴⁹ See more in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2021*, p. 21 and *Right to Asylum in the Republic of Serbia 2021*, pp. 46-47.

⁵⁰ Arts. 24 ad 25, LATP.

⁵¹ Under Art. 10, LATP.

⁵² Primarily the LATP and the UN Convention on the Rights of the Child.

origin.⁵³ That would be in contravention of the ECHR⁵⁴, the UN Convention on the Rights of the Child, the RS Constitution⁵⁵ and the LATP⁵⁶.

c) Conclusion

In these cases, the Asylum Office issued new rulings based on the blanket conclusions identical to those it had drawn earlier after selectively assessing the relevant facts and ignoring circumstances decisive for adopting decisions based on the law. Mere elimination of procedural deficiencies in the individual cases cannot be considered adequate and in compliance with the Asylum Commission's instructions. Namely, the Asylum Office's re-examinations of the cases still suffer from the identified shortcomings since it did not go into the merits of the described cases and yet again failed to review facts of relevance to a proper and lawful decision.

Consequently, in addition to the uncertainty about the outcome of the lengthy procedures, the asylum seekers again face the real risk of persecution in case they are *refouled* to their countries of origin. Their cases are particularly problematic in the light of their vulnerabilities.

The appeals BCHR filed with the Asylum Commission in both cases were pending at the end of the reporting period.

3.1.4. Asylum Office Rejected Application It Had Earlier Dismissed on First Country of Asylum Grounds

BCHR's lawyers have been representing Burundian asylum seeker Y., who had been granted the status of refugee in Uganda. He decided to leave the country that had extended him international protection due to the problems he faced there. On 7 March 2019, Y. arrived in the RS by regular flights from Uganda via Istanbul. His application for asylum filed in June 2019 was

⁵³ Especially in light of the fact that the asylum authorities are aware that R.R. is lawfully residing in the RS and has been granted temporary residence so that can live with his family, given his objective inability to return to his country of origin.

⁵⁴ Art. 8, ECHR.

⁵⁵ Art. 66, RS Constitution.

⁵⁶ Art. 9, LATP.

dismissed by the Asylum Office in August 2020,⁵⁷ pursuant to Article 43 of the LATP defining the concept of first country of asylum.⁵⁸

BCHR's lawyers appealed the Asylum Office's ruling on procedural grounds with the Asylum Commission. However, the Asylum Commission rejected BCHR's appeal as ill-founded.⁵⁹ BCHR's lawyers filed a claim against the Commission's unlawful decision⁶⁰, which the Administrative Court upheld in early September 2021 and remitted the case for reconsideration to the Asylum Commission. In its decision,⁶¹ the Administrative Court agreed with the BCHR lawyers' arguments about the unlawfulness of the Asylum Commission's ruling and the irregularities of the procedure in which it adopted the ruling.⁶² A supplementary hearing of the asylum seeker before the Asylum Office officer was held during the re-examination of the case, in December 2021.

a) Asylum Office Disregarded All the Submitted Evidence and Relevant Reports

During the repeat procedure, the Asylum Office failed to thoroughly, properly or comprehensively review all the facts and circumstances relevant for a proper and lawful decision. Namely, based on the facts presented during the entire asylum procedure, during which three oral hearings were held, the Asylum Office failed to identify the existence of persecution Y. had experienced in his country of origin. It did not analyse available and relevant international and domestic sources on the human rights situation in Burundi, thus failing to identify the existence of potential risks of Y.'s persecution should he return to his country of origin. In addition, the Asylum Office failed to conduct a diligent and careful assessment of the evidence and reports submitted by BCHR's lawyers. The Asylum Office's ruling rejecting Y.'s application contains only one sentence stating that it "took into consideration all the submitted evidence during its re-examination of the asylum application."⁶³ Consequently, the Asylum Office was unable to draw

⁵⁷ Asylum Office Ruling No. 26-1515/19 of 13 August 2020.

⁵⁸ Under Article 42(1(1)) of the LATP, a decision dismissing an asylum application without examining it on the merits shall be rendered if it is possible to apply the first country of asylum concept in accordance with Article 43 of this Law. Article 43(1) lays down that a country shall be considered a first country of asylum if the applicant has been recognised refugee status in that country and if he/she is still able to avail himself/herself of that protection and if the applicant enjoys effective protection in that country, including the guarantees arising from the *non-refoulement* principle.

⁵⁹ Asylum Commission Ruling No. Až-36/20 of 4 December 2020.

⁶⁰ A thorough analysis of the Asylum Commission's ruling is available in the *Right to Asylum in the Republic of Serbia 2020*, pp. 62-65.

⁶¹ Administrative Court judgment No. 8 U 734/21 of 3 September 2021.

⁶² More in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2021*, pp. 22-25.

⁶³ Asylum Office Ruling No. 26-1515/19 of 25 May 2022.

a proper conclusion on the existence of Y.'s well-founded fear of persecution in case he returned to his country of origin.

b) Asylum Office's Unacceptable Conclusion on the General Incredibility of the Asylum Seeker's Statement

Having assessed only parts of Y.'s statement which, in BCHR lawyers' opinion, are not crucial for a decision on his application, the Asylum Office drew a baseless and unacceptable conclusion on the general incredibility of the applicant's statement. The Asylum Office thus failed to take into account a number of facts and pieces of evidence key for the adoption of a decision based on the law.

For instance, the Asylum Office brought into question the credibility of Y.'s explanation of how he had obtained a valid passport in his country of origin, although it is well known that Burundi is an extremely corrupt country and that passports can easily be obtained outside the official channels. The Asylum Office also had doubts about Y.'s life outside his country of origin. In particular, it said in its ruling that Burundian security services had considered Y. dead, although Y. clearly said during the oral hearings that they had identified him while he was living in Uganda. Y. was also recognised by Burundian agents while he was in Turkey, wherefore he had to leave this country as well and head towards the RS. Furthermore, the Asylum Office analysed the death of Y.'s father, which occurred after the applicant had left Burundi, and concluded that it could not establish the circumstances of his death with certainty, although Y. had submitted relevant evidence of that fact.

On the other hand, the Asylum Office did not take into consideration at all the circumstances that had directly resulted in Y.'s decision to leave his country of origin, primarily the fact that Y. had headed his neighbourhood's committee opposing the Burundian President's intention to run for a third term in office and that he personally took part in the 2015 demonstrations. Furthermore, Imbonerakure, the youth wing, had tried to recruit Y. to join the ruling CNDD-FDD and threatened him when he refused to. Furthermore, Y. was tortured in 2015 by Imbonerakure intelligence officers, who deprived him of liberty and held him in detention and beat him with metal poles. Y. also mentioned another reason for leaving his country of origin – his sexual orientation. The Asylum Office, *inter alia*, did not review the fact that homosexuality is incriminated in Burundi. Nor did it review whether Y.'s fear of persecution if he was forced to return to his country of origin was well-founded.

c) Conclusion

The Asylum Office adopted its ruling rejecting Burundian national's asylum application in a blanket manner lacking any foundation in law, whilst failing to provide an adequate explanation for its decision. Notwithstanding ample evidence submitted to it, it failed to review the key circumstances of the case in detail or to ascertain the relevant facts thoroughly and properly. Consequently, the first-instance authority drew the wrong conclusion about Y.'s persecution and his potential return to his country of origin.

All of the above is all the more concerning in light of the fact that a decision reasoned in this manner was adopted nearly three years after Y. applied for asylum, i.e. more than five months after the additional oral hearing was held during the repeat procedure. The Asylum Office failed to notify BCHR's lawyers of the reasons why it failed to rule on Y.'s application within the statutory deadlines or when its decision could be expected. The asylum authorities' inadequate actions have adversely affected Y., who has done his utmost over the past three years to integrate in Serbian society – he has mastered the language, validated his Burundian college diploma, found a job and is renting an apartment. In view of all of the above, BCHR's lawyers again filed an appeal with the Asylum Commission. The procedure was pending at the end of the reporting period.

3.2. Asylum Commission

3.2.1. Asylum Commission Again Rejected Appeal by Bangladeshi Asylum Seeker

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.⁶⁴ 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 man.⁶⁵ 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

⁶⁴ Asylum Office Ruling No. 26–404/21 of 4 November 2021.

⁶⁵ They also threatened his family, which insisted that F. leave his country of origin.

because of the large-scale persecution of LGBTI activists.⁶⁶ BCHR's lawyers filed an appeal of the Asylum Office decision, which the Asylum Commission upheld in late 2021.⁶⁷

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

After reviewing the appeal, the Asylum Commission found that the Asylum Office had failed to establish all the relevant facts and circumstances properly, accurately and comprehensively.⁶⁸ In particular, it noted that the first-instance ruling did not explain that F. had left his country of origin not only because of his sexual orientation, but because he is an atheist as well.

The Asylum Commission observed that the first-instance authority had been under the obligation to explain that F. was at risk of persecution on account of his religion and instructed the Asylum Office to review the fact during the repeat procedure, and to take into account all the relevant evidence and circumstances⁶⁹ facilitating the adoption of a proper and lawful decision.

The Asylum Commission did not explicitly require of the Asylum Office to hold an additional oral hearing. Rather, it held that the first-instance authority was under the obligation to additionally question the applicant in case of any doubts, ambiguities or inconsistencies concerning the relevant facts.⁷⁰ However, the Asylum Commission considered that the other arguments in the appeal were irrelevant to a decision on the case.

b) Asylum Office Again Rejected F.'s Asylum Application during the Repeat Procedure, without Holding an Oral Hearing

In February 2022, the Asylum Office issued a new ruling, again rejecting F.'s asylum application.⁷¹ During the repeat procedure, it again failed to ascertain that F. had been persecuted in his country of origin on the basis of the facts and evidence presented earlier. The Asylum Office did not hold an additional oral hearing during the re-examination of the case.

As per his claims concerning his sexual orientation and atheism, F. said during the procedure that his life and the lives of the members of his families had been seriously threatened in his country of origin. Namely, extremist organisations in Bangladesh have been targeting homosexuals,

⁶⁶ See more in *Right to Asylum in the Republic of Serbia 2021*, p. 114.

⁶⁷ Asylum Commission Ruling No. Až-29/21 of 13 December 2021.

⁶⁸ Which is in contravention of Article 10 of the LGAP.

⁶⁹ Under Art. 32, LATP.

⁷⁰ Pursuant to Art. 37(2) of the LATP with a view to drawing proper conclusions and properly applying substantive law.

⁷¹ Asylum Office Ruling No. 26-404/21 of 25 February 2022.

atheists and promoters of secularism, as corroborated by the detailed information BCHR lawyers submitted to the Asylum Office. However, the latter did not take any of the information into consideration, merely stating that F. had been neither charged nor convicted in his country of origin, i.e. that he had not been subjected to government measures that were discriminatory and could be considered persecution. The Asylum Office merely quoted the UNHCR,⁷² without directly associating its views with F.'s claims that he and his family had received death threats because he was an atheist.

In addition, the Asylum Office referred in its new ruling to specific reports clearly inferring that abandoning Islam is considered a disgrace in Bangladesh.⁷³ The Asylum Office was under the duty to assess diligently and carefully the sources it had referred to and schedule an additional oral hearing in case it needed to clarify specific relevant facts and circumstances. The Asylum Office reiterated the conclusion it had drawn in its first ruling concerning the applicant's arguments about his sexual orientation.⁷⁴ For all these reasons, BCHR's lawyers filed a fresh appeal with the Asylum Commission.

c) Asylum Commission Rejected the Appeal Finding no Fault with the Asylum Office's New Ruling

In mid-May 2022, the Asylum Commission rejected the new appeal filed by BCHR's lawyers,⁷⁵ under the explanation that the Asylum Office had properly implemented the procedure and that its ruling was correct and based on the law. The Asylum Commission again merely drew a blanket conclusion that the first-instance authority had not committed any substantial violations of the LATP and the LGAP that would have rendered its ruling incorrect or unlawful.

Rather than analysing in detail most of the arguments in the appeal, described in BCHR's prior report, the Asylum Commission merely enumerated the explanations the Asylum Office gave in its ruling. Especially concerning is the fact that the Asylum Commission merely succinctly noted in one sentence that the Asylum Office had also considered the relevant international reports, although it had failed to do so properly.

As per specific arguments in the appeal filed by BCHR's lawyers, the Asylum Commission concluded, albeit failed to explain why, that they were irrelevant to a decision in this case, although

⁷² UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status.

⁷³ These reports specifically say that there are extremist organisations in Bangladesh that are resorting to violence to stifle secularism and recommend to the Bangladeshi Government to intensify its fight against terrorism and religiously motivated acts of violence and harassment.

⁷⁴ More in the *Right to Asylum in the Republic of Serbia 2021*, pp. 114-116.

⁷⁵ Asylum Commission Ruling No. AŽ-29/21 of 11 May 2022.

they are directly associated with the reasons why F. had left his country of origin. For instance, one of the arguments put forward in the appeal was that the Asylum Office had not reviewed the submissions concerning documented cases of violence, arrest and persecution of LGBTI persons in Bangladesh. In addition, the Asylum Office had failed to review the relevant case-law of UN human rights mechanisms and the ECtHR. All of this absolutely belies the Asylum Commission's claims that the Asylum Office's new ruling was rendered properly and in accordance with the law.

d) Conclusion

BCHR's lawyers are of the view that the Asylum Commission, too, acted in contravention of the LATP and LGAP in its review of F.'s appeal. It did uphold the prior appeal, but rather than assessing all the arguments in it, it merely based its decision to remit the case for reconsideration on the fact that the Asylum Office had not considered the applicant's religion as grounds for persecution.

The BCHR has already recalled that the Asylum Commission's primary obligation is to review the regularity and lawfulness of the rulings issued by the first-instance body, the Asylum Office, and thus improve its work. It has to pay equal attention to both procedural and substantive law. Finally, the Asylum Commission should review all the facts set out in the appeal in detail, correctly and thoroughly, rather than base its decisions on blanket conclusions. For all these reasons, BCHR's lawyers have filed a claim with the Administrative Court. The procedure before this court was pending at the end of the reporting period.

3.3. Administrative Court

3.3.1. Administrative Court Rejected Claim Filed by LGBTI Asylum Seeker from Tunisia

In early 2022, the Administrative Court delivered a judgment rejecting the claim BCHR lawyers filed on behalf of Tunisian national N.⁷⁶ The claim contested the Asylum Commission's

⁷⁶ Judgment U. 24541/20 of 31 January 2022.

ruling⁷⁷ upholding the Asylum Office's opinion that N. did not fulfil the criteria for refugee protection, which the BCHR wrote about in its prior report.⁷⁸

a) *Main Facts*

N., an LGBTI person, was born in the Tunisian town of Bizerte. N. left his country of origin because of the numerous problems he faced because of his sexual orientation all his life. He was sexually abused by his close relative when he was a young child and his own family rejected him because of his sexual orientation. The Tunisian police repeatedly deprived N. of liberty and applied force against him for the same reasons.

Article 230 of the Tunisian Penal Code defines sexual relations with persons of the same sex as a criminal offence warranting up to three years' imprisonment. The investigative authorities perform anal examinations of people charged with homosexuality to ascertain whether they have committed the crime. Furthermore, under Article 226 of the Tunisian Penal Code, anyone found guilty of intentionally and publicly promoting indecency shall be sentenced to six months' imprisonment and fined.⁷⁹ Such treatment by Tunisian state authorities, which N. had also been subjected to, can undoubtedly be qualified as humiliating treatment

b) *Administrative Court Ignored Existence of Risk of N.A.'s Persecution and Adduced Evidence*

During its review of the appeal, the Asylum Commission failed to identify the Asylum Office's erroneous conclusions about N.'s claims of persecution in his country of origin. Instead, it merely upheld the Asylum Office's views resulting in the rejection of N.'s asylum application. BCHR's lawyers filed a claim with the Administrative Court, contesting the many errors the first- and second-instance asylum authorities had made to N.'s detriment.

Furthermore, in their submission, BCHR's lawyers drew the Administrative Court's attention to the ECtHR's judgment⁸⁰ that was applicable to N.'s case. This ECtHR judgment concerned same-sex partners, one of whom was at risk of *refoulement* to Gambia after the Swiss authorities dismissed his asylum application and rejected his partner's request for family reunification. The applicant claimed he would be at risk of ill-treatment if he were deported to his

⁷⁷ Ruling Až-33/20 of 15 September 2020.

⁷⁸ More in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2020*, Belgrade Centre for Human Rights (Belgrade 2020), pp. 19-21, available at: <https://bit.ly.co/DnCu>.

⁷⁹ Penal Code of the Republic of Tunisia, available in French at: <https://bit.ly.co/DnCs>.

⁸⁰ ECtHR judgment in the case of *B. and C. v. Switzerland*, Application Nos. 43987/16 and 889/19, available at: <https://bit.ly.co/DnCq>.

country of origin on account of his homosexuality, which was a criminal offence in Gambia. Based on all the facts and circumstances of the case, the ECtHR found Switzerland in violation of the prohibition of torture.⁸¹ It, *inter alia*, quoted the Court of Justice of the European Union (CJEU), which held that: [W]hen assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.” The BCHR also referred to the Preliminary observations on the visit to Tunisia of UN’s Independent expert on protection against violence and discrimination based on sexual orientation and gender identity.⁸²

The Administrative Court ignored all the arguments pointing to the errors of the asylum authorities and merely briefly concluded that the Asylum Commission had rightly rejected N.’s appeal as ill-founded. It also said that it did not dispute the fact that N. feared returning to his country of origin, but that it concluded that his fear was subjective “in the domain of his perception of the situation he is in” and his mental state.

Furthermore, the Administrative Court failed to assess the evidence attached to the claim⁸³, because it was in English. Rather than reviewing the evidence, it merely noted that N. should have submitted a translation of it certified in accordance with the law and that the evidence had no bearing on the decision on the case. The Administrative Court disregarded the fact that the RS has ratified the ECHR, which is an integral part of its legislation, and that it is bound also by ECtHR’s case-law. Consequently, the Administrative Court was under the obligation to take into consideration the ECtHR’s judgment submitted with the claim and to have itself arranged for its translation. Furthermore, the LAMP lays down that the relevant asylum authorities shall collect and consider reports by relevant international organisations (primarily UN bodies) when ruling on the merits of individual asylum applications.⁸⁴ Given the circumstances of the case, the Administrative Court should have adequately assessed the risks of N.’s deportation to Tunisia and ascertained whether the Asylum Office and Asylum Commission had properly and lawfully ruled on his case.

⁸¹ *Ibid.*, para. 63.

⁸² *Preliminary observations on the visit to Tunisia by the Independent expert on protection against violence and discrimination based on sexual orientation and gender identity*, OHCHR, 18 June 2021, available at: <https://bit.ly.co/DnCK>.

⁸³ The ECtHR judgment and the Preliminary observations on the visit to Tunisia of UN’s Independent expert on protection against violence and discrimination based on sexual orientation and gender identity.

⁸⁴ Pursuant to Article 32, LAMP.

c) ECtHR's Interim Measure

In order to prevent the execution of the Asylum Office's final decision and the risk of N.'s *refoulement* to his country of origin, where he would be at genuine risk of persecution and inhuman and degrading treatment by the Tunisian authorities, BCHR's lawyers filed a request for an interim measure with the ECtHR.⁸⁵ Four days later, on 17 March 2022, the ECtHR indicated to the Government of Serbia that N. should not be expelled for the duration of the proceedings before that Court.⁸⁶ The BCHR also sent the original of the application form on behalf of N. to the ECtHR by 19 April 2022, as instructed by that court. The case was pending at the end of the reporting period.

3.4. Extradition Procedure

3.4.1. Serbia Extradited Bahraini National Despite ECtHR's Interim Measure

Unimpeded access to the asylum procedure is one of the main prerequisites for exercising the right to asylum. Any (un)intentional disregard of a request for international protection may cause irreparable damage and far-reaching consequences to the applicant, as well as the state the authorities of which act in such a manner. Interpretation of the RS Constitution, the Convention relating to the Status of Refugees and the European Convention on Human Rights leads to the clear conclusion that all decision makers are under the obligation to exercise due diligence in such cases.

Mr. Ahmed Jaffar Mohammed Ali⁸⁷ was born in 1973 in Manama, the capital of the Kingdom of Bahrain. He is a banker, married and a father of four children. In early November 2021, he was arrested in Belgrade following Interpol's Red Notice issued by Bahrain, where he was convicted to a life sentence in 2013. He unsuccessfully sought asylum from Serbian extradition authorities until the early morning hours on 24 January 2022, when he was extradited to the Bahraini authorities although the ECtHR issued an interim measure requiring of the RS Government to refrain from his extradition until 25 February 2022.⁸⁸

⁸⁵ Under Article 47 of the ECtHR's Rules of Court.

⁸⁶ ECtHR's reply of 17 March 2022.

⁸⁷ The first and last names of this Bahraini national are not anonymised in the report, since his identity has been revealed in numerous domestic and foreign media reports.

⁸⁸ The BCHR legal team got involved in the case nearly four days before the extradition decision was executed.

a) *Extradition Procedure and Futile Asylum Applications*

Mr. Ali wrote to the first-instance court soon after he was detained in the Belgrade District Prison. In his first of five letters to the relevant authorities,⁸⁹ he denied committing the crimes he had been found guilty of, claiming he was falsely accused of terrorism in Bahrain. He said that he was a Shia Moslem and a political activist, who had fought against the “tyrannical” Sunni government in his country of origin. He requested of the court to let him call up his family to hire him a private lawyer. He ultimately sought asylum, claiming that he would be tortured and killed if he were extradited to Bahrain. He ended the letter claiming that the Bahraini regime had stripped him of citizenship. The court, however, did not take any steps in response to the letter, which had been properly addressed to the Belgrade Higher Court and the preliminary proceedings judge. Rather, it merely forwarded it to Mr. Ali’s *ex officio* lawyer. The relevant asylum authorities were not notified of Mr. Ali’s request for asylum; nor was he provided with the opportunity to contact his family and engage a lawyer of his choosing.⁹⁰ These were the first of the many omissions the relevant RS authorities made in the proceedings against this Bahraini national.

The relevant authorities are under the obligation to assess the existence of an individual’s fear of persecution, torture or inhuman or degrading treatment or punishment based on all the circumstances and available information. As a rule, foreigners facing extradition in the RS, most of whom do not speak even English let alone know Serbian law, are represented by *ex officio* lawyers and have to invest additional efforts in drawing the attention of the relevant institutions; seeking international protection before the court or the Justice Minister does not suffice. This may turn into “mission impossible” in the absence of adequate legal aid extended by a diligent and expert lawyer.

Bahrain is an island state in the Persian Gulf; its economic power mostly derives from two resources – petroleum and natural gas. It is a constitutional monarchy and has been ruled by the Sunni dynasty al-Khalifa for two and a half centuries now. This family has been maintaining friendly relations and an alliance with the USA, the Fifth Fleet of which is based in Manama. The root of the rift lies in the fact that most of Bahrain’s population are Shia Moslems, while the minority religious group runs the country, with Shias accusing Sunnis of systemic discrimination and repression, while Sunnis often claim that Shias are resorting even to terrorism to achieve their

⁸⁹ The Belgrade Higher Court and the Belgrade Appeals Court, to which he presented the letters at the hearings.

⁹⁰ The rulebook on pre-trial detention does not provide the right to a phone call, but, in justified cases, the relevant court can allow a detainee to make a phone call. Due to the denial of the right to a phone call, detained foreign nationals, whose lawyers are their only contact with the outside world because they do not have close relatives who can visit them in detention, are almost totally isolated. Owing to the features of the detention regime, written correspondence, especially with people in foreign countries, is an extremely inefficient form of communication.

political goals. Large-scale anti-government protests broke out in 2011, followed by a rebellion the regime stifled whilst committing massive large-scale human rights violations. According to data from various sources, around 200 people were killed, around 8,000 were wounded and nearly 20,000 were deprived of liberty at the time. The regime also resorted to dismissing workers from their workplace and students from university, and even to stripping Bahrainis of their citizenship.⁹¹

This information alone should have been enough to presume that Mr. Ali's request for international protection in the RS was warranted. However, the Belgrade Higher Court totally ignored the circumstances in Bahrain and, on 7 December 2021, found that all the requirements for his extradition to Bahrain under the Law on International Legal Assistance in Criminal Matters (LILACM)⁹² were fulfilled. Although extradition authorities are not authorised to examine the merits of someone's asylum application, it is nevertheless a preliminary issue that may be decisive for a lawful decision on their extradition. After the first-instance court issued its ruling, Mr. Ali sent another three letters, on 9, 14 and 16 December 2021 respectively, emphasising that he had been convicted in Bahrain solely because he had lobbied for workers' rights and that he and his family fled to Iran after the 2011 protests because his life was in danger. He again requested of the court to let him call his family and to meet the "United Nations Human Rights Office", because he had come to the RS to seek asylum. The Belgrade Higher Court, however, failed to take any steps to allow him to exercise his rights under the Serbian Constitution and law.

During the appeal stage, Mr. Ali's *ex officio* lawyer described to the court the difficulties faced by Shias in Bahrain, and referred to the provisions of the LATP prohibiting the deportation or *refoulement* of individuals to a territory where their lives or freedom would be at risk for reasons of race, sex, language, religion, nationality, membership of a particular social group or political opinion, or where they would be at risk of torture or inhuman or degrading treatment or punishment. At the hearing before the Belgrade Appeals Court on 17 January 2022, Mr. Ali handed the judges of the second-instance court a letter in which he also tried to explain that he was at risk of persecution in his country of origin and that he had no contacts with his family or the possibility to engage a lawyer of his own choosing. The Appeals Court did not take any of the arguments into consideration; rather, it rejected the appeal and upheld the Belgrade Higher Court's decision on the same day. Mr. Ali's *ex officio* lawyer was served the ruling 24 hours later, whereby the court decision became final.

⁹¹ More in Human Rights Watch, *World Report 2012 - Bahrain* (22 January 2012), available at: <https://bit.ly/3z0G8o6>; Amnesty International, *Amnesty International Annual Report 2012 - Bahrain*, (24 May 2012), available at: <https://bit.ly/3aESsBi>; and the United States Department of State, *2011 Country Reports on Human Rights Practices - Bahrain* (24 May 2012), available at: <https://bit.ly/3O5MV4m>.

⁹² *Official Gazette of the RS* No. 20/09.

On the same day, on 18 January 2022, the Justice Minister issued a ruling granting the extradition requested by Bahrain. It cannot be concluded from the reasoning of his decision whether he had examined whether the request for international legal assistance concerned a political offence or an offence relating to a political offence, that is, a criminal offence comprising solely a violation of military duties, or whether the extension of international legal assistance in this case would violate the sovereignty, security, public order or other essential interests of the RS.⁹³ Mr. Ali was served the ruling on 21 January 2022, on the same day the MOI notified the Belgrade Higher Court that his extradition was scheduled for Tuesday, 25 January 2022.

The efficiency and expedition of the Belgrade Higher and Appeals Courts and the Justice Ministry in this case can presumably be attributed to the Bahraini Moscow Embassy's interventions with the RS Ministry of Foreign Affairs. Furthermore, the procedure would have probably been completed much earlier, had the Belgrade Bar Association not been on strike. A prompt ruling on such a complex case gives rise to justified concerns about the quality and lawfulness of the relevant authorities' work.

On 20 January 2022, Mr. Ali's sister requested assistance from new lawyers and the BCHR, emphasising that she had not been in touch with her brother for over two and a half months. The legal representatives she engaged visited Mr. Ali in the Belgrade District Prison the next day, at which time he told them that he had not been provided with the opportunity to contact his family and that he had repeatedly told the relevant courts that he wanted to seek asylum in Serbia, albeit in vain. The BCHR immediately sent a letter to the Border Police Directorate and the Asylum Office requesting that he be provided with access to the asylum procedure. However, Mr. Ali was denied such access because of the above-described developments before the judicial authorities.

b) ECtHR's Interim Measure

At the same time, the BCHR and Mr. Ali's lawyer filed a request for an interim measure with the European Court of Human Rights. They claimed that the courts and the Justice Minister had failed to review the existence of the risk of persecution, torture or inhuman or degrading treatment or punishment in the case at hand. Furthermore, Mr. Ali was denied access to the asylum procedure and the right to engage a lawyer of his own choosing to represent him during the extradition procedure. In the evening of 21 January 2022, the ECtHR issued an interim measure requesting of the RS not to extradite the applicant by 25 February 2022 and to respond to the following five questions:

⁹³ Pursuant to Art. 7 of the LILACM.

1. Was the applicant sentenced to life imprisonment that precludes early release and/or release on parole in Bahrain?
2. What are the concrete mechanisms, if any, and under which legal basis is the applicant entitled to have his life sentence reviewed in Bahrain?
3. Has the Government requested or received any evidence or assurances which confirm that the applicant, if extradited, would have access to “a review mechanism requiring the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds”? What is the relevance of the note of the Embassy of the Kingdom of Bahrain that the applicant refers to, containing a guarantee that the applicant would be entitled to re-open his criminal case?
4. Have the Serbian courts taken into consideration the possible risks of torture and/or ill-treatment that the applicant would face if extradited to Bahrain? Did the applicant sufficiently bring those risks to the attention of the Serbian courts?
5. Has the applicant been allowed to access the asylum procedure in Serbia?

The ECtHR clearly drew the RS Government’s attention to the fact that its failure to comply with its interim measure might entail a breach of Article 34 of the ECHR. The interim measure was forwarded to the State Attorney’s Office – Department for Representation before the ECtHR at 19:57h. The following day, the MOI notified the Belgrade Higher Court that the extradition planned for 25 January 2022 was rescheduled and would take place earlier, in the morning of 24 January 2022. The case files show that, on Sunday, 23 January 2022, the MOI officer charged with the extradition, notified the Belgrade Higher Court that the ECtHR had issued an interim measure and asked it whether the court could “finally deal with the matter”. The preliminary proceedings judge referred him to the Justice Ministry, the only authority entitled to act on the case once an extradition decision has been issued. The sudden change of the extradition date and acceleration of the procedure presumably ensued to avoid compliance with the ECtHR’s measure, which all the responsible institutions had evidently been aware of.

Mr. Ali was extradited at dawn on 24 January 2022. More precisely, he was handed over to Bahrain’s representatives at around 5 am at the Belgrade Airport Nikola Tesla, put on a charter flight No. ROJ23 and directly flown to Manama. The airplane belongs to the fleet of the luxury airlines Royal Jet, headed by a member of the Abu Dhabi royal family and co-owned by Presidential Flight, the company charged with transporting members of the Abu Dhabi Government. On the same day, the Bahraini Ministry of the Interior issued a press release that a fugitive, Ahmed Jaffar Mohammed Ali, who has been sentenced to three life sentences and one ten-year prison sentence, had been returned with the help of a friendly country. All of the above

demonstrates the importance of this case for Bahraini and RS authorities, as well as the willingness of some of the relevant authorities to circumvent any obstacles that may have delayed it ending in extradition.

After it was notified of the extradition, the ECtHR requested of Serbia to provide it with information about Mr. Ali's extradition within three days. The RS said in its response that it had not complied with the interim measure because of the short period of time between the ECtHR's issuance of measure and the extradition. The RS also stated that it has always complied with ECtHR's interim measures. However, the state's arguments are unjustifiable. First of all, it is a well-known fact that ECtHR interim measures require urgent action. All the authorities involved in this case should have been aware of it, since this legal mechanism is applied in practice very often. The state's response that it has always complied with the ECtHR's interim measures is also untrue, given its failure to comply with the one issued in the case of a foreigner with dual citizenship, of Canada and Bosnia and Herzegovina, whom it extradited to the United States in 2016.⁹⁴ Furthermore, in 2017, Serbia extradited Turkish national Cevdet Ayaz to Turkey, although the UN Committee against Torture requested of the RS to refrain from his extradition pending the conclusion of the procedure before this international human rights body.⁹⁵ Mr. Ali is currently held under high security in the notorious Jau prison in East Bahrain, where he has already been physically assaulted by the guards once.

3.4.2. Extradition of Turkish National Prevented by UN Committee of Torture Interim Measure

During the reporting period, the BCHR was involved in one other case of an individual who applied for asylum in the RS during the extradition procedure. The individual at issue is Turkish national M.P., who was a member of the Hizmet movement⁹⁶, the members of which have been subjected to large-scale persecution by the Turkish authorities since 2016. M.P. has been detained in Serbia since early June 2021 pending his extradition based on a warrant Turkey issued against him in 2016.

⁹⁴ *Antić v. Serbia*, ECtHR, Application no. 41655/16.

⁹⁵ More in Sonja Tošković (ed.), *Right to Asylum in the Republic of Serbia 2017*, Belgrade Centre for Human Rights (Belgrade, 2018), pp. 39–42, available at: <https://bityl.co/DnsG> and *Right to Asylum in the Republic of Serbia 2019*, pp. 193-209.

⁹⁶ Fethullah Gülen is the leader of the Hizmet or Cemaat movement.

a) *Main Facts*

After he was detained, M.P. expressed the intention to seek asylum in the RS, claiming he was at risk of torture and political persecution in his country of origin. BCHR got involved in the case at the request of his family. M.P. lodged his asylum application with the Asylum Office on 13 July 2021, which the latter rejected in its ruling of 4 April 2022.⁹⁷ Dissatisfied with the decision, M.P.'s representatives filed an appeal with the Asylum Commission, which rejected it by its ruling of 10 May 2022.⁹⁸ BCHR lawyers filed a claim contesting the Commission's decision with the Administrative Court.

In the meantime, on 17 May 2022, the Belgrade Higher Court adopted a ruling stating that the requirements for M.P.'s extradition to his country of origin have been fulfilled. The Court adopted its decision before the asylum procedure was completed by a final decision, i.e. before the Administrative Court ruled on the claim contesting the Asylum Commission's decision. The asylum authorities were thus prevented from thoroughly examining whether the complainant was at risk of torture or inhuman or degrading treatment or punishment in case he was extradited to his country of origin given that the deadline for filing a claim with the Administrative Court (a legal remedy with suspensive effect) had not expired yet.

In addition to filing a claim with the Administrative Court, M.P.'s representative also filed an appeal with the relevant Appeals Court contesting the Higher Court's ruling on the fulfilment of the extradition requirements. Furthermore, at BCHR's request, the UN Committee against Torture indicated an interim measure on 26 May 2022, requiring of the RS to refrain from extraditing M.P. pending its decision on his case. The cases were still pending before the Administrative and Appeals Courts at the time this Report was completed.

3.4.3. Conclusion

Mr. Ali applied for asylum to the only institution he had been in contact with whilst he was deprived of liberty. The letter he had sent the Belgrade Higher Court was forwarded to his *ex officio* lawyer, but not to the relevant asylum authority. Although the court was under the obligation to itself examine whether a person to be extradited was at risk of ill-treatment, it should have, first and foremost, notified the Asylum Office of Mr. Ali's intention to seek asylum. The fact that it familiarised Mr. Ali's lawyer with the content of the letter did not relieve it of the obligation to bring it to the attention of the administrative authorities deciding on international

⁹⁷ Asylum Office Ruling No. 26-1182/21 of 4 April 2022.

⁹⁸ Asylum Commission Ruling No. Až-03/22 of 10 May 2022.

protection as well. The court's failure to do so confirms that the judiciary is insufficiently familiar with domestic and international regulations in the field of refugee law. On the other hand, the passivity of his *ex officio* lawyer, i.e. his failure to take any steps to facilitate Mr. Ali's application for asylum indicates that the same problem exists also among lawyers in the RS.

Apart from CSOs, such as the BCHR, only a few lawyers in the RS deal with refugee cases. Mr. Ali's family succeeded in contacting them only a few days before his extradition. Nevertheless, the interim measure the BCHR and lawyers of his choosing succeeded in obtaining did not suffice to stop his extradition before the authorities examined whether he would be at risk of persecution, torture or inhuman or degrading treatment or punishment in his country of origin. The relevant extradition authorities have to be aware of the importance of legal mechanisms such as the ECtHR interim measure, as well as of the consequences the RS will suffer if it does not comply with it.

The above applies also in cases in which the Committee against Torture indicates an interim measure, like it did in the case of Turkish national M.P., requiring of Serbia to refrain from deporting the individual at issue while his case is under consideration by this Committee. Otherwise, there is a risk that the years-long harmful practice, exemplified both by Mr. Ali's case and other cases described above, will persist.

4. Integration

4.1. Introduction

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.

This chapter provides an overview of statistical data illustrating the work of the BCHR integration team, the structure of its clients and the degree of their integration in the RS. It also includes accounts of the integration of three BCHR clients, their first steps in accessing their economic, social and cultural rights, as well as their personal struggles and the difficulties they have faced in the process. The BCHR clients' personal experiences illustrate the small and big successes of individuals who have perceived the RS as a country in which they want to reside, create, school themselves and pursue their lives after they were forced to leave their countries of origin. The accounts also aim to familiarise Serbia's citizens and the public at large with the refugees' personal experiences and the integration process and illustrate the problems they have faced in adapting to the new community, as well as pave the way for discussing the issue from a different perspective. The BCHR wants to convey the following messages in the process: in addition to the need to help all individuals live a life of dignity, the contribution the refugees can bring to the development of the host society with their knowledge and experience is of great significance. It is primarily the local community that can support them in that respect.

Foreigners granted the right to asylum, i.e. refuge or subsidiary protection, are guaranteed the following rights: the right to residence, accommodation, property, healthcare, education, work, legal and social aid, family reunification, freedom of religion, freedom of movement, and assistance in integration.⁹⁹ Under the law, they enjoy equal rights as RS nationals to education, intellectual property, access to courts and legal aid.¹⁰⁰ In addition, they enjoy the same rights as RS nationals to a waiver of court and other fees of proceedings before state authorities. Access to

⁹⁹ Art. 59, LATP.

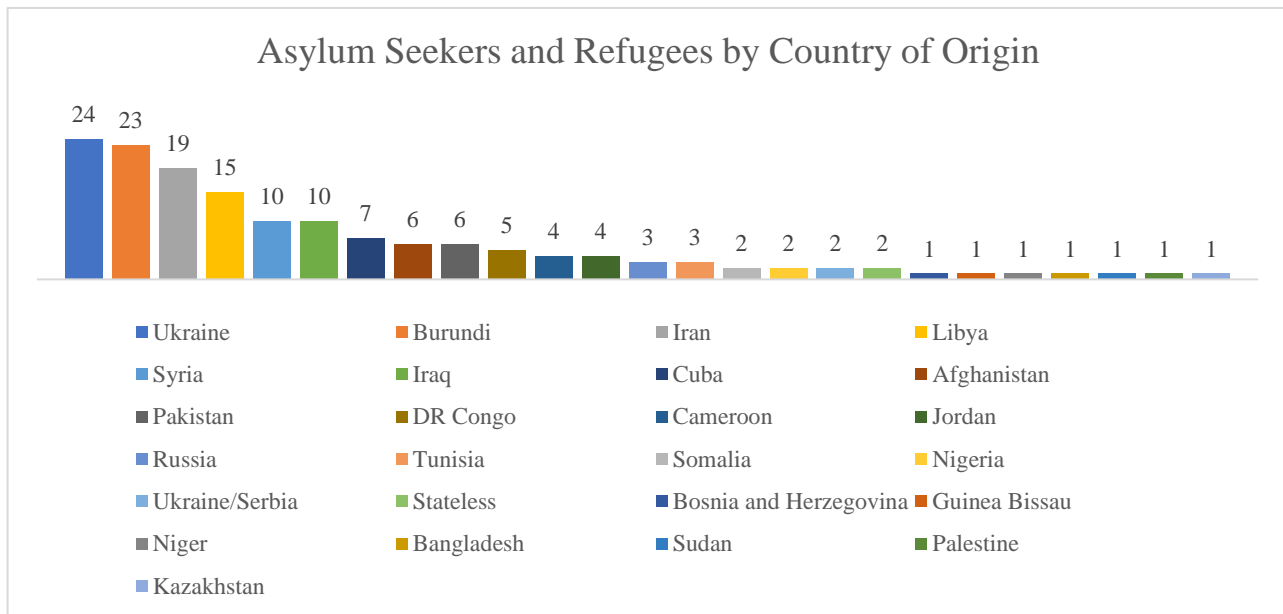
¹⁰⁰ Arts. 60-73, LATP.

the labour market, healthcare and the right to movable and immovable property of foreigners granted asylum in the RS is governed by regulations on the status of foreigners in these areas.¹⁰¹

4.2. Statistics

All the statistical data were collected by the BCHR integration team during its work with refugees and asylum seekers and, as of March 2022, with nationals of Ukraine granted temporary protection in the RS. The statistics cover the 1 January-17 June 2022 period and concern solely BCHR’s clients, both those who initiated the integration process recently and those who have been living in the RS for years now.

In sum, a total of 155 BCHR clients (83 of them male and 72 female) have been undergoing the process of integration since the beginning of the year. Most of them have fled Ukraine (24), Burundi (23), Iran (19) and Libya (15).

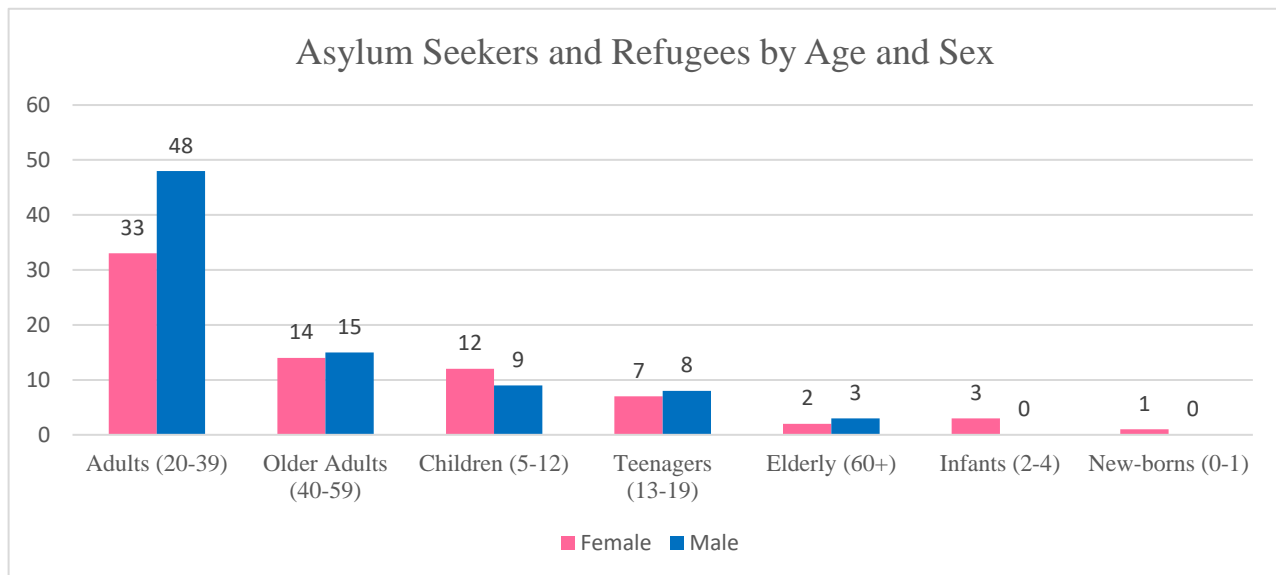


The data on the number of asylum seeking and refugee women show that most of them are nationals of countries most BCHR clients come from: 19 BCHR’s female clients are Ukrainian

¹⁰¹ *Ibid.*

and 10 of them are Burundian. The number of males from countries most of BCHR’s clients come from is more even – most are nationals of Iran (13) and Burundi (13).

More than half of BCHR’s clients are adult males, aged between 20 and 39.¹⁰² These data follow the general migration trend in the RS, also reflecting on the integration process. In all other age categories, the number of male and female BCHR clients is even. In general, most BCHR clients, over 70% of them,¹⁰³ are adults – they are between 20 and 59 years old. These data shed a lot of light on the integration process and the refugees’ and asylum seekers’ needs. Namely, most of the clients have already acquired a specific level of formal education and need to join the labour market. Specifically, fulfilment of their subsistence needs, recognition of their education qualifications, and difficulties in collecting documents required for marriage are merely some of the main challenges and issues they need to address during their integration in the RS.

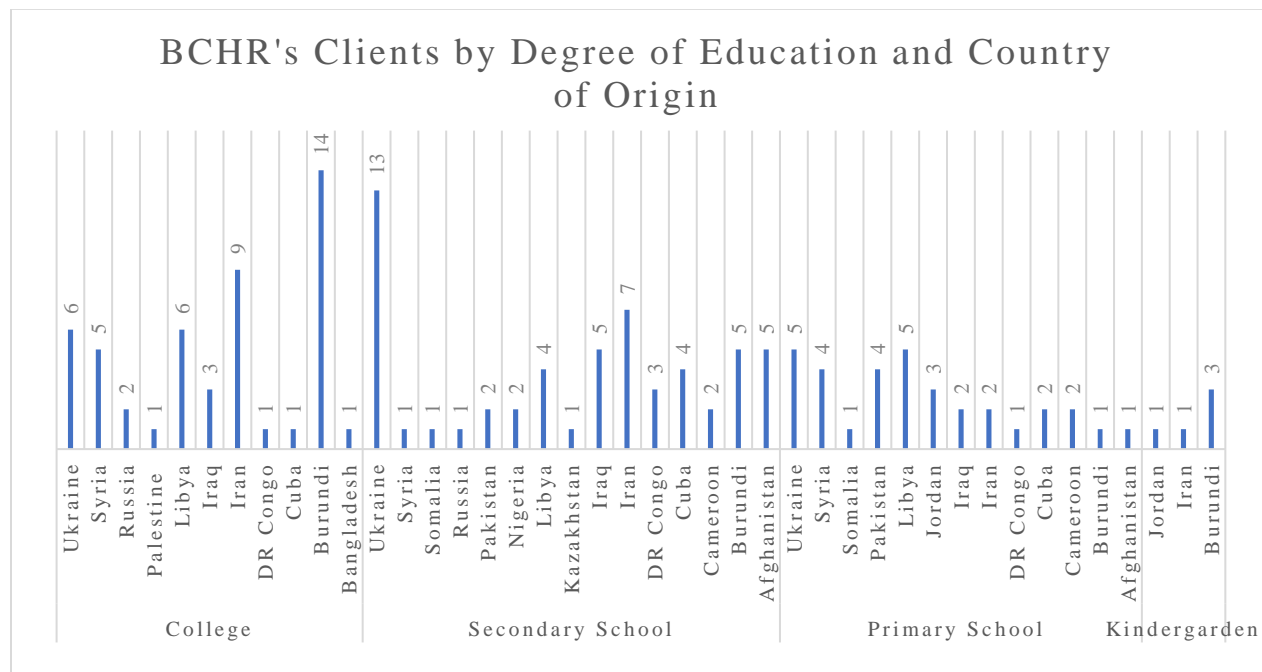


Most of BCHR’s clients aged between 40 and 59 have fled Ukraine (8). They are, for the most part, women who have come to the RS with their school-aged children and retired parents. Their needs in the process of accessing economic, social and cultural rights are mostly associated with their children’s integration in the school system and healthcare issues.

¹⁰² Eighty-one clients (48 of them male) are over 18, i.e. adults.

¹⁰³ Most of whom are nationals of Burundi (16) and Iran (10).

BCHR's clients undergoing the process of integration have various levels of education, which mostly depends on the conditions in their countries of origin. The nationals of Burundi (14), Iran (9), Libya (6) and Ukraine (6) are the most highly educated.¹⁰⁴ Most of BCHR's clients (13) with secondary education are Ukrainian nationals. The greatest number of BCHR's clients who have completed or are still in primary school have also come from Ukraine (5) and Libya (5). Given the influx of refugees fleeing the ongoing armed conflict in Ukraine, BCHR's team presumes that the number of Ukrainian children who will enrol in RS schools in September will increase.¹⁰⁵



Most of BCHR's clients (38) speak Arabic, and usually another language (English, Serbian or French). Thirty-one clients, originating from Africa, speak French. Only 27% (42) of BCHR's clients speak Serbian, more or less fluently. The latter data are not encouraging given that knowledge of Serbian is key for successful integration in the RS. BCHR's clients have the opportunity to learn Serbian in the ACs and RTCs they are living in, where support programmes are being organised, while the UNHCR provides Serbian language courses for clients in private

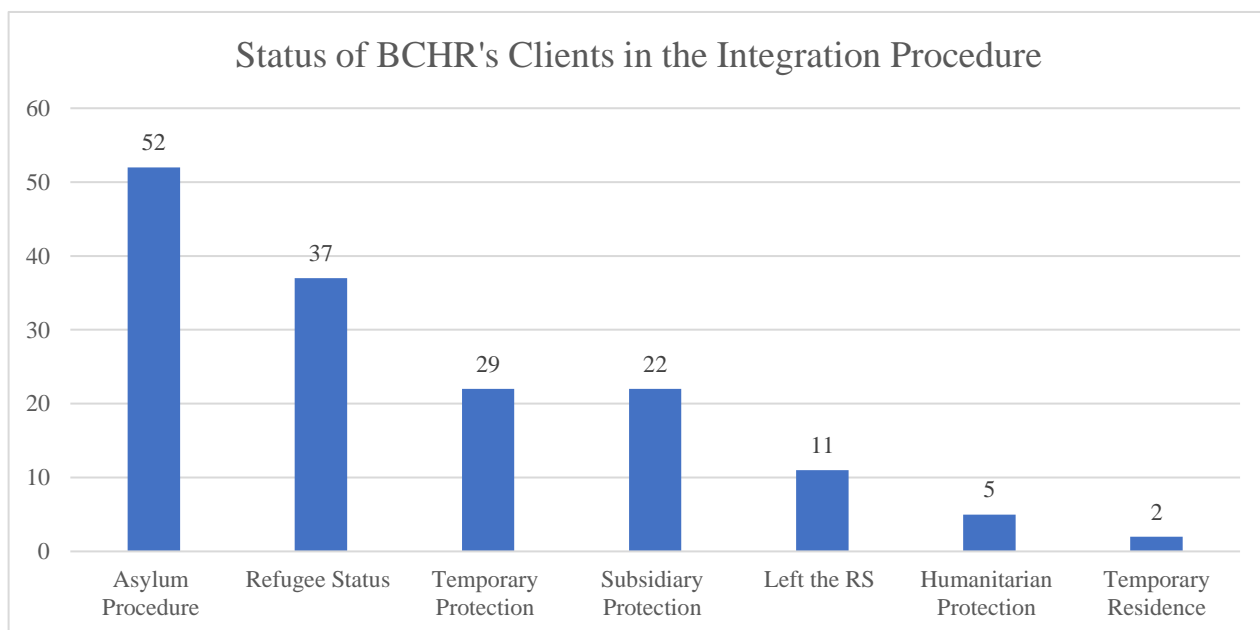
¹⁰⁴ The data include both clients now attending college and those who have graduated from college.

¹⁰⁵ Namely, according to BCHR's clients and other refugees from Ukraine its team has interviewed, most of the children were following online classes held in their country or were focusing on learning Serbian in order to enrol in a local primary or secondary school in 2022.

lodgings. Pursuant to the Integration Decree, the CRM organises Serbian language lessons for foreigners granted asylum.

Most of the clients the BCHR integration team has been extending assistance – 59 of them - have been granted one of the two forms of international protection in the RS; 37 have been granted refugee and 22 subsidiary protections. The asylum procedure of fifty-two BCHR’s clients was pending at the time this Report was completed. The number of BCHR’s clients from Ukraine increased during the reporting period. They were granted temporary protection under the LATP, activated for the first time in March 2022 under the Government’s Decision. Given that temporary protection is valid for one year, the number of people applying for this form of protection is expected to increase in the near future.

An analysis of BCHR’s clients by their country of origin and their status in the RS shows that Burundian and Iranian nationals accounted for most of BCHR’s clients – 15 and 10 respectively - whose asylum applications were pending at the end of the reporting period. Refuge was granted to eight nationals of Iran, six nationals of Libya and five nationals of Burundi. Most of BCHR’s clients granted subsidiary protection – 9 - are nationals of Libya.



As per the nationality and accommodation of BCHR’s clients, most of them – 121 (78%) – are living in private lodgings. Nineteen of them are nationals of Iran, 19 are nationals of Ukraine, 15 are nationals of Libya and 13 are nationals of Burundi.

4.3. BCHR Clients' Accounts of Successful Integration

4.3.1. Kathia – Future Biochemist¹⁰⁶

Kathia first came to the RS from faraway Burundi in search of refuge in 2019 in the company of her mother. The twenty-three-year-old Burundian knew nothing about the country she had come to, let alone that she would soon adjust to the Serbian way of life, learn the language, start studying biochemistry at a state college, thus becoming one of the few refugee college students in Serbia.

Kathia said that her first days in the RS were extremely challenging because she had no idea what to expect. She missed her friends, as well as Burundian food. When they arrived in the RS, Katja and her mother lived in the AC in Bogovađa. She said that she felt good there and that asylum seekers were treated well. However, they did not feel as welcome when they moved to another AC. Katja said that the local population generally harboured various prejudices against refugees and migrants and that she felt she could not move around freely.

Kathia and her mother were granted refuge in early 2020. That marked the beginning of the long and complex process of their integration in Serbian society. They soon moved to Belgrade, where they rented private lodgings and began adjusting to the busy life of the Serbian metropolis. Katja felt that she and her mother were generously welcomed by their new neighbours, who were always there to step in in case they needed help. Asked how life in Burundi differed from life in the RS, Katja replied that the ways of life in the two countries differed and that she had many more duties and responsibilities in the RS. Another challenge in fulfilling her own expectations and those of the people around her arises from the fact that she is a full-time college student in the RS and has to follow class in Serbian.

In Kathia's opinion, people in the RS are nice, friendly and kind-hearted. She admits that she had not expected that the local population would accept her and her mother with open hands. She finds it interesting that people often ask her about her origins, why she has moved to the RS and about her impressions of Serbia. In Katja's opinion, the communication openness of people in Serbia is one of the greatest cultural differences between them and people in Burundi.

In addition to the local population, Kathia has developed a great fondness for the Serbian cuisine. She adores Shopska salad and admits she has not tried *sarma* (stuffed cabbage rolls) yet.

¹⁰⁶ Kathia consented to the publication of her account before BCHR interviewed her during the reporting period.

She also really enjoys the many lush Belgrade parks, in which she takes walks and relaxes every day.

Asked whether she has successfully integrated in Serbian society, Kathia says yes, but not fully – she still doesn't feel she is fully accepted by the new community or that she fully belongs. Despite the years she has been living in the RS, she feels she still needs to put in extra effort to exercise many of the rights guaranteed by law. She says:

I still have to wait for days and months for something that can generally be obtained in a few hours.

Kathia is referring to the administrative obstacles and institutional inefficiency refugees in the RS face on an almost daily basis. Consequently, they have to wait a long time for documents they need for various reasons, while, on the other hand, some of the relevant institutions do not recognise the validity of these documents. Refugees are also in need of greater integration-related and legal aid in order to overcome the obstacles in communicating with individual state authorities and to access their economic, social and cultural rights in the RS more easily.

In Kathia's opinion, what refugees need to integrate in the host society is, first and foremost, the desire and motivation to integrate. She thinks that, at the same time, the local community should be open and willing to accept refugees, but, as Kathia says, this is something she and people like her cannot affect because it's "beyond their control".

Learning Serbian was the greatest challenge Kathia says she faced in adjusting to her new life. It required a lot of patience, time and perseverance, she specified. Adjusting to the new community and understanding its culture were the additional challenges she faced.

Kathia enrolled in the Belgrade University College of Chemistry as a full-time student in September 2021. She wants to become a biochemist and contribute to the development of this important field of the medical profession.¹⁰⁷ Kathia was one of the first refugees in the RS to enrol in a state college under the same terms as Serbian nationals, thus paving the way for the positive practice in the field of education for other refugees in the RS. The BCHR wrote about this issue and Kathia's preparations for the entrance exam in detail in its 2021 annual report on the right to asylum.¹⁰⁸

¹⁰⁷ More on Kathia's enrolment in the Chemistry College in *Right to Asylum in the Republic of Serbia 2021*, p. 143.

¹⁰⁸ *Ibid.*

Kathia is also engaged as an assistant in the Refugees for Refugees (R4R) project activity the BCHR has been implementing since April 2021. Successfully integrated refugees, like Kathia, are lending a hand to new refugees, sharing the experience they have gained in the RS and information that will help them adjust to life in Serbian society successfully and efficiently. With her R4R hat on, Kathia has helped a substantial number of BCHR's refugee and asylum-seeking clients exercise the various rights they are guaranteed under RS law.

Asked how she saw her future in the RS, this young and ambitious refugee from Burundi is very optimistic – Kathia sees herself as a college graduate holding a promising job. Kathia also hopes that she will achieve her personal plans and continue living a peaceful life in the RS.

4.3.2. Ahmed from Medak¹⁰⁹

Ahmed's story in the RS began in 2014, when he and his family – his father, two brothers and two sisters – came to Niš so that their father could complete his graduate studies. Ahmed was 16 when he left his hometown of Baghdad in Iraq and substituted Asia with the Balkans.

When he looks back at his first days in the RS and life in Niš, Ahmed remembers the stark differences between it and his country of origin – the first thing he noticed was the lush greenery and large parks, as well as the weather, describing the differences in the following way:

A complete opposite to my hometown.

Ahmed emphasised how surprised he was by the relationships between his peers in the RS, their obvious closeness and free communication, both among boys and among boys and girls, that he could talk freely with them and so on. Ever since he arrived in the RS, Ahmed has been surrounded by kind people, people who are extremely supportive of each other. He is of the impression that these qualities are particularly visible among people living in smaller communities in the RS.

Ahmed found his first friends in Niš through several of his Iraqi friends who were already living with their families in the RS. His teenage days in Niš and later in Belgrade totally differed from those in Baghdad. When we asked him what was different, he replied:

¹⁰⁹ Ahmed consented to the publication of his account before BCHR interviewed him during the reporting period.

Everything – absolutely everything! I relished the freedom the most, freedom is what I felt the most – freedom with friends, freedom on the street, in the family...

Since he came to the RS eight years ago, Ahmed went back to his hometown of Baghdad only twice, for very short periods of time¹¹⁰:

I didn't leave the house at all the first time. The second time, I took my sister's car to go and buy something and I literally lost my way! I don't know that city anymore, I have nothing there. I know Belgrade better. I'm more Ahmed from the [Belgrade suburb] Medak than Ahmed from Baghdad.

Belgrade holds a special place in Ahmed's heart. He says it's difficult to provide a simple explanation of why he loves the city and what he likes the most about it. As he puts it:

Belgrade as Belgrade, there is no other city like it! Parties every day, people on the streets, something's happening every day, it doesn't matter whether or not you have money. Belgrade has this craziness in itself, I think Belgrade has a soul.

Whenever his relatives or friends from Iraq visit him in Belgrade, Ahmed first shows them the Zemun Quay, Kalemegdan Park, the Dorćol Quay, the Zvezdara Woods and Dedinje. He says he loves having his coffee in his favourite neighbourhood café and spending time with his friends at other popular hangouts in Belgrade.

Ahmed is now working at Belgrade Airport Nikola Tesla, where he is engaged in catering - preparing Arabic food. He first came to love making food when his father asked him to take over cooking for their large family. He honed his skills in his father's restaurant, where he was sous chef. He went on to work at various restaurants and hotels and, for a while, worked as the head chef in the Iraqi Embassy. He says Serbian cuisine is like Arabic in many respects and singles out his favourites – stuffed cabbage rolls, cornbread and *ćevapčići*.

Asked how he imagined his future, Ahmed replies that he doesn't know what it holds in store for him – he may continue working in the hospitality business, or perhaps change his occupation

¹¹⁰ Ahmed and his family first came to the RS in 2014 so that his father could complete his graduate studies. However, as their personal circumstances changed in 2017 and the security situation in Iraq deteriorated, Ahmed's father was forced to seek international protection for himself and his children in the RS. In early 2018, the Asylum Office granted subsidiary protection to this five-member family.

altogether. He says that anything is possible, that he has no fears or prejudices and will not hesitate to seize all the opportunities that come his way.

Ahmed, who has been granted subsidiary protection in the RS, says he is often deprived of enjoying the “ordinary”, everyday things, which many of his friends in the RS take for granted. He illustrated one of them in his interview to the BCHR:

A co-worker of mine said yesterday: “Why don’t we go to the seaside, wouldn’t it be great?” and I told her: “I’ve never seen the sea in my life, I’ve never been to the beach. There’s nothing I’d rather do, but I can’t.”

Namely, Ahmed is facing a years-long problem of people granted international protection in the RS – they are unable to obtain travel documents. Ahmed’s freedom of movement beyond Serbia will be limited until the Serbian authorities finally regulate the procedure.¹¹¹ Until then, he can travel only with the passport issued by his country of origin. However, Ahmed needs a visa in his Iraqi passport to enter most countries. He told the BCHR he had once applied for a visa to enter Montenegro, but was rejected three months later. Although his travels to most countries in the world are limited, Ahmed has travelled extensively across the RS, basking in its natural wonders. He has also been attending music festivals and has visited many Serbian towns and thinks Arandelovac is the most beautiful one.

The BCHR talked with Ahmed about the cultural differences and how the RS differed from Iraq. We discussed *slavas*, family patron saint days celebrated by Serbs. Ahmed attended a number of them at the invitation of his friends. He thinks he has gotten so used to Serbian culture that he considers it his own more than the culture of the Arab nation he comes from. He also believes he would have had a harder time adjusting to the way of life in an EU country, primarily because of the congeniality and openness of the people in Serbia. In that context, Ahmed mentioned his brother, who, after years of travelling across Europe and living in Budapest, concluded that there was “no place like Serbia”. Here’s how he put it:

You’ll be a foreigner wherever you go, but not here, everyone here accepts you, your friends, your co-workers, and the girls. Here, you feel you’re part of the city, part of this country.

Ahmed said he understood that people might be wary of foreigners, of someone of a different skin colour or speaking a different language. He said he had twice experienced minor problems because of his religion in the RS. He said that his friends, neighbours and co-workers in the RS

¹¹¹ More about the refugees’ inability to obtain travel documents and access Serbian citizenship in *Right to Asylum in the Republic of Serbia 2021*, pp. 124 and 151.

generally treated him with respect and had understanding for the holidays of his culture. He said that during his many years in the RS, he noticed the many shortcomings of the social norms and customs in his country of origin, many of which he considers “incomprehensible” and “alien”.

During his interview with the BCHR, Ahmed said he could not single out any situation he could describe as particularly difficult since he came to the RS. He said that the greatest challenge he faced in adjusting to the new community was his lack of knowledge of Serbian, a challenge he succeeded in overcoming with his father’s support. He thinks it played the key role in his successful integration in the RS. He said his first girlfriend in the RS also helped him master the language – she didn’t speak English and he didn’t speak Serbian when they met, and they helped each other master those languages.

People unaware of Ahmed’s background would not even presume that this young Iraqi was not born and did not spend his childhood in the RS. He told the BCHR that he often told people the following:

You know that feeling when you’re living abroad but you can never fully be part of society and fully understand them because you don’t understand the slang and the inside jokes? Well, I know the inside jokes, I’ve grown up here, Belgrade is my city!

4.3.3. Safaa aka Sava – Iraqi Boasting the Longest Refugee “Service” in Serbia¹¹²

Safaa came from Baghdad to the RS back in 2008 and likes to say that he boasts the longest refugee “service” in Serbia. He had lived for over 50 years in Iraq, where he had obtained a degree in agriculture and launched his own business. After he fled persecution in his country of origin, Safaa decided to come to the RS – he had come to know Belgrade when he was younger, when he often visited it on business. Another reason for choosing Belgrade was the erstwhile friendship between Iraq and the former Yugoslavia, when many of his compatriots, including his four brothers, came to Serbia to study. The asylum system in the RS was established when the first Asylum Law was adopted in 2008, the same year Safaa moved to Belgrade.

When he arrived in Belgrade, Safaa contacted the UNHCR office with the intention of seeking asylum. He was referred to the AC in Banja Koviljača, the first asylum centre in the RS, in which he lived the following 13 years. Safaa, like many other refugees, did not have an easy time when he first arrived in their country of refuge. Although he was motivated from the start to

¹¹² Safaa consented to the publication of his account before BCHR interviewed him during the reporting period.

stay in the RS, he said that he had to invest a lot of efforts to fit in the new community, especially learn Serbian. No Serbian language courses or learning support were available at the time, like they are now – he mastered Serbian by himself, with the help of a dictionary. Safaa then started offering interpretation services to the CRM management in the Banja Koviljača AC, and subsequently to the local hospital and police station. He considered it his way of paying back to the RS for its hospitality.

Banja Koviljača became Safaa's home and one of the main reasons why he grew to love the RS. Having lived in the AC since his arrival in the RS, he came to know every inch of this quiet town, he had his favourite park and his favourite walking route. Safaa also had his favourite café in Banja Koviljača, where he always had his morning coffee and read the newspapers. The locals, who soon nicknamed him Sava, captured his heart with their candour and warmth. His local friends invited him to their family patron saint days and other fetes and extended him support whenever he needed it.

During his interview, Safaa recalled 2014, when large parts of Serbia were flooded. He and a group of over 40 refugees from the Middle East and Africa living in the AC joined in helping the people and controlling the damage. In his opinion, this period, difficult as it was, is a genuine example of inter-cultural empathy and solidarity with the vulnerable population.

The refugee situation in the RS substantially changed over time. Safaa witnessed the cycle from his perspective of a foreigner granted international protection. His experience was unique in view of the position he found himself in - a refugee helping refugees, a refugee who speaks Serbian, Arabic and English. After the massive influx of Middle East refugees and the opening of the Balkan route in 2015, Safaa often travelled across the RS; at the time, he mostly worked as an interpreter in a number of ACs and RTCs, on the border with Hungary and Croatia, as well as in Belgrade. In addition to the CRM, he was often engaged by a number of international and domestic non-government organisations extending various forms of support to refugees and asylum seekers.

Asked whether he had ever contemplated leaving the RS and going to West Europe, Safaa replied that he did not, because he had accepted the RS as his own country he felt good in. However, whenever he talks about his life in the RS, he always recalls that he has not travelled beyond the borders of the state that has granted him asylum since he arrived in 2008. Due to the fact that the adoption of the by-law on travel documents for refugees is still pending, the problem acquires a broader dimension in this specific case.¹¹³ Namely, Safaa has been living in the RS over

¹¹³ More about the refugees' inability to obtain travel documents *in Right to Asylum in the Republic of Serbia 2021*, p. 124.

a decade, more precisely for 14 years now; throughout this period, one of his fundamental rights, the freedom of movement, has been confined in the RS.

Safaa's life changed drastically during the coronavirus pandemic – he was forced to leave the AC in Banja Koviljača, which had closed for renovation, and he moved to Novi Sad where his brother is living. He worked in the Libyan primary school in Novi Sad for a while, teaching Arabic and history. Belgrade recently became Safaa's home, when he started working for IKEA, within its global refugee support programme. In the meantime, Safaa started writing his first Arabic language textbook, with practical examples and learning tools tailored to both children and adults. Safaa hopes that his textbook will soon be published although, as he says, he has difficulties raising the funds he needs to complete the process.

Asked what he most missed about his country of origin, Safaa said it was Arabic music, which reminded him the most of his hometown and the memories he brought with him – he said he managed to make up for everything else thanks to the warmth of the Serbian people, similar to that of Iraqis. He considers himself happy in the RS; he's been living here for so long he cannot even imagine living elsewhere. As he said:

I don't regret anything. I still have that heavy feeling because I can't travel to other countries but I know Serbia has done a lot for me and everything I've been doing and the help I've been extending since I came here have been motivated by my desire to express gratitude for the protection I've been extended.

4.3.4. Conclusion

These accounts of BCHR clients confirm, yet again, that refugees, to whom the RS has provided protection from persecution, conflict and inhuman treatment in their countries of origin, are in need of systemic support, which entails an adequately regulated legislative framework ensuring durable solutions in practice. Refugees also need to be accepted by their local community and promptly informed of their rights; they are in need of an inclusive approach, assistance and minimum conditions for building a life in dignity.

This is why the relevant institutions need to invest continuous efforts, in tandem with civil society organisations, to improve the efficiency of systemic and local integration of refugees in the RS – a country that has demonstrated that it has the capacity to take in this vulnerable category of the population.

Safaa's years-long experience in the RS, the experience acquired by Katja and Ahmet, as well as by other refugees who perceive the RS as their home and who have made effort to integrate in the local community, should serve as an additional motive for the relevant institutions to invest continuous efforts in building efficient systemic support for this category in the RS. A multi-sectoral approach and cooperation with civil society organisations is the most appropriate way to build such a system, a recommendation the BCHR has been reiterating for years now.