



RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2022



Belgrade Centre
for Human Rights

Series
Reports
40

Series
Reports

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Publisher

Belgrade Centre for Human Rights
Kneza Miloša Str. 4, Belgrade,
Tel/fax. (011) 308 5328, 328 4244
e-mail: bgcentar@bgcentar.org.rs
www.bgcentar.org.rs www.azil.rs

For the publisher

Sonja Tošković

Editor

Ana Trifunović

Translation

Duška Tomanović

Cover illustration

Thorvald Hellesen (1888–1937), *Composition* (1920)

Circulation

300

ISBN 978-86-7202-235-3

Prepress and printing

Dosije studio, Belgrade

RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2022



**Belgrade Centre
for Human Rights**

Belgrade, 2023



The research and publication of this report were supported by the UNHCR.

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ACRONYMS

- AC – Asylum Centre
- ADL – Anti-Discrimination Law
- APC – Asylum Protection Centre
- BCHR – Belgrade Centre for Human Rights
- BPS – Border Police Station
- CEDAW – Committee on the Elimination of Discrimination against Women
- CoE – Council of Europe
- CRC – Convention on the Rights of the Child
- CRPC – Crisis Response and Policy Centre
- CRM – Commissariat for Refugees and Migration of the Republic of Serbia
- CSO – Civil society organisation
- DRC – Danish Refugee Council
- ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECTHR – European Court of Human Rights
- FL – Foreigners Law
- FRN – Foreigner Registration Number
- GREVIO – Group of Experts on Action against Violence against Women and Violence against Women
- HCIT – Humanitarian Centre for Integration and Tolerance
- HCL – Health Care Law
- IAN – International Aid Network
- ICESCR – International Covenant of Economic, Social and Cultural Rights
- IDEAS – Centre for Research and Social Development
- IOM – International Organization for Migration
- LATP – Law on Asylum and Temporary Protection
- LEF – Law on the Employment of Foreigners
- LGAP – Law on the General Administrative Procedure
- MoE – Ministry of Education
- MLEVSI – Ministry of Labour, Employment and Veteran and Social Issues

- MOI – Ministry of the Interior
- NES – National Employment Service
- NGO – Non-Government Organisation
- NHIF – National Health Insurance Fund
- NPDIF – National Pension and Disability Insurance Fund
- NPM – National Preventive Mechanism
- OHCHR – Office of the High Commissioner for Human Rights
 - PIN – Psychosocial Innovation Network
- RTSL – Road Traffic Safety Law
 - RS – Republic of Serbia
- RTC – Reception-Transit Centre
- SGBV – Sexual and Gender Based Violence
 - SPL – Social Protection Law
- SOPs – Standard Operating Procedures
- SWC – Social Work Centre
- UDHR – Universal Declaration of Human Rights
 - UN – United Nations
- UNHCR – United Nations High Commissioner for Refugees
- UNICEF – United Nations International Children’s Emergency Fund
- WHO – World Health Organization

FOREWORD

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

This is the 11th annual right to asylum report, covering 2022, which the authors prepared based on BCHR's experience in extending legal aid to asylum seekers and representing them in the asylum procedure, on their field work, and in supporting the integration of people granted asylum in the RS. The Report is based on an overview and analysis of the application of national and international asylum law, other regulations relevant to the status of asylum seekers and refugees, and procedures before public authorities and independent bodies important for integration in the RS's society. The BCHR team obtained some information in regular cooperation and communication with the state authorities and UNHCR, as well as partner and other organisations extending various forms of support to refugees and asylum seekers in the RS. Additionally, some data were obtained pursuant to the Law on Free Access to Information of Public Importance,¹ as well as from perusing media reports on the situation of migrants, refugees and asylum seekers in the RS.

In February 2022, Europe faced a massive influx of refugees from Ukraine after the escalation of this state's conflict with Russia. 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.² The RS Government followed suit and adopted a Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine³ (Decision), which entered into force on 18 March and was to remain valid for one

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

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

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

year. The Decision activated the temporary protection mechanism envisaged by the Law on Asylum and Temporary Protection (LATP).⁴

The crisis 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 reached 103 million for the first time on record.⁵

In general, although there has been some progress regarding the exercise of the right to asylum, the asylum system in the RS is still far from being fully functional. That is true particularly considering that asylum seekers and refugees depend heavily on the assistance provided by NGOs and international organisations, and that the systemic solutions and effective coordination between the state authorities are lacking. The shortcomings impeding access to and implementation of the asylum procedure and (im)possibility of long-term refugee integration in the RS, which the BCHR has been alerting to for years, persisted in 2022. Although most persons in need of international protection still do not perceive the RS as a country of asylum, the relevant authorities should continue investing additional efforts in establishing a fair and effective asylum procedure and integration system. That is also in accordance with the RS' obligation to align its legislation with the European Union (EU) *acquis* it undertook within the accession talks.

During the reporting period, the BCHR took part in several consultative meetings with representatives of the relevant state authorities and civil society organisations (CSOs) within the process of amending the set of laws governing the status of refugees, asylum seekers and foreigners in the RS,⁶ which was launched in late 2021. A public debate on the draft amendments to the LATP was held in late 2022. The BCHR submitted to the Ministry of the Interior (MOI) its comments on the drafts of all three amending laws and the amendments to specific articles it was proposing. However, no concrete headway in amending the regulations in this area was made by the end of the reporting period.

Although a number of migrants, some of whom may be in need of international protection but have not applied for asylum, were present in the RS, this Report focuses on the situation of asylum seekers and persons who have been granted asylum. The Report uses the term 'refugee' to denote primarily persons granted asylum and other foreigners in need of international protection, as well

4 Art. 74, LATP.

5 More on UNHCR's website: <https://bit.ly.co/H7wJ> and <https://bit.ly.co/Gx4z>.

6 Amendments to the Law on Asylum and Temporary Protection, the Foreigners Law and the Law on Employment of Foreigners. The consultative meetings that began in 2021 were organised by the MOI and the Ministry of Labour, Employment and Veteran and Social Issues (MLEVSI).

as the terms 'foreigner' and 'migrant' to denote all foreigners in the RS, whether or not they have sought asylum.

This document aims to draw attention to certain shortcomings regarding the right to asylum in RS, and to propose solutions for overcoming those issues through recommendations. This publication is the product of team work in which the following BCHR team members and associates took part: Petar Vidosavljević, Jelena Ilić, Katarina Kitanović, Andrijana Miljković, Nina Miholjčić, Vuk Raičević, Anja Stefanović, Miloš Tasovac, Ana Trifunović, Senka Škero Koprivica and Marko Štambuk.

1. STATISTICS

All statistical data were obtained from the UNHCR Office in the RS, to which the MOI has been forwarding its operational reports and statistical data. The data in this Report cover the 1 January – 31 December 2022 period. The Asylum Office (the first-instance asylum authority) does not publish data or reports on its work on the MOI website. The Asylum Commission (the second-instance asylum authority) and the Administrative Court have replied to BCHR's requests for access to information of public importance and forwarded the requested data covering the 1 January – 15 October 2022 period. These data are presented below.

1.1. Number of Asylum Seekers and Other Migrants

A total of 4,181 people expressed the intention to seek asylum, i.e. were registered in accordance with the LATP from 1 January to 31 December 2022. The number of registered foreigners almost doubled over 2021,⁷ but was still substantially lower than in the pre-pandemic era.⁸ The figure does not reflect the actual number of migrants and asylum seekers who entered in the RS during the reporting period.

UNHCR data⁹ show that the number of refugees and migrants in the RS fluctuated in 2022, between four and eight thousand a month on average.¹⁰ Furthermore, the Commissariat for Refugees and Migration of the Republic of Serbia (CRM) data available at the end of the reporting period showed that the number of new arrivals in asylum centers (AC) and reception-transit centers (RTC) 2022 increased substantially and stood at 119,127; most of them were nationals of Afghanistan, Syria, Pakistan, Morocco and India.¹¹ These data also confirm that the number of foreigners who expressed the intention to seek asylum in the RS was much smaller than the number of those admitted to CRM-run facilities. Like in the past, only a relatively

7 A total of 2,306 people expressed the intention to seek asylum in the RS in 2021.

8 For instance, 12,937 people expressed the intention to seek asylum in the RS in 2019.

9 The UNHCR office in Belgrade obtains statistical data from the CRM.

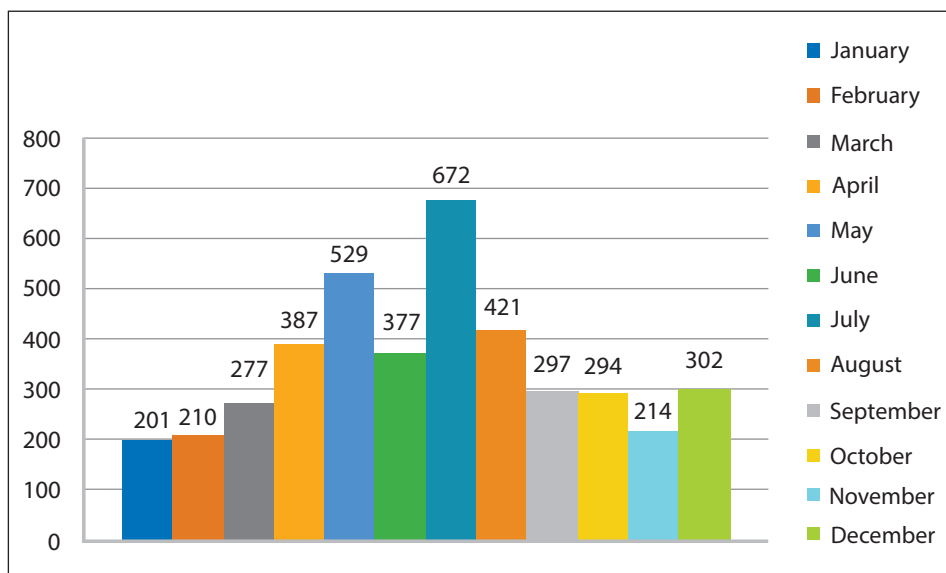
10 See: <https://bityl.co/H2rI>.

11 Commissariat says 120,000 refugees registered in Serbia, *NI* (30 December 2022), available at: <https://bityl.co/H70C>.

small share of the tens of thousands of asylum seekers and migrants passing through and living in the RS intended to seek international protection in it, as the following statistical data corroborate.

A total of 4,181 foreigners (3,731 male and 450 female) expressed the intention to seek asylum in 2022. The intention to seek asylum in the RS was expressed by 679 children, 82 of whom were unaccompanied by their parents or guardians. Children from Afghanistan accounted for most – 69 – of the unaccompanied or separated children. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered in 2022: 201 in January, 210 in February, 277 in March, 387 in April, 529 in May, 377 in June, 672 in July, 421 in August, 297 in September, 294 in October, 214 in November and 302 in December 2022.

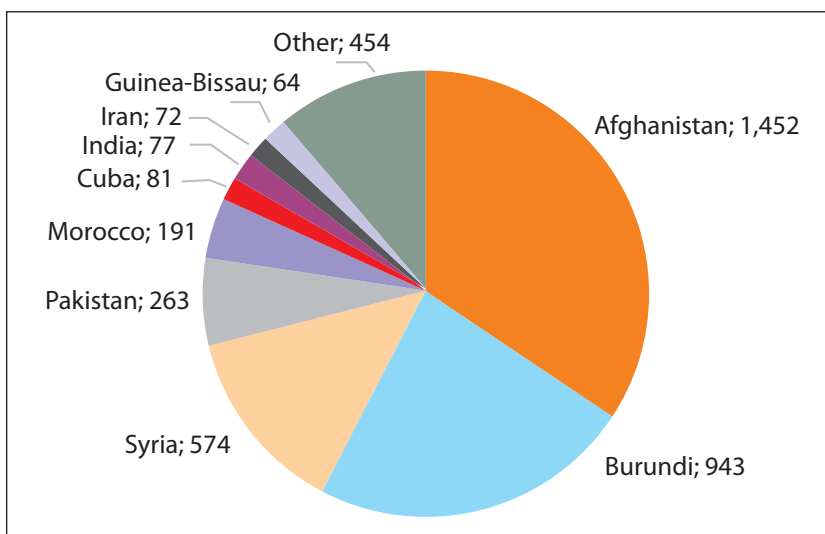
Graph 1. Number of Expressed Intentions to Seek Asylum in 2022 (by Month)



Most of the foreigners who expressed the intention to seek asylum were nationals of Afghanistan (1,452), followed by nationals of Burundi (943), Syria (574), Pakistan (263), Morocco (191), Egypt (81), India (77), Iran (72), Guinea Bissau (64), Cuba (49), DR Congo (45), Palestine (40), Iraq (36), Russia (34), Tunis (31), Congo (27), Bangladesh (23), Ghana (23), Turkey (15), Somalia (13), Cameroon (12), Congo (12), Guinea (9), Ukraine (8), North and South Sudan

(5), Algeria (6), Bosnia and Herzegovina (4), Bulgaria (4), Libya (4), Sierra Leone (4), three nationals of China, Comoro, the Ivory Coast, Eritrea, Gambia, and Germany. Two nationals of Angola, Belarus, Georgia, Kyrgyzstan, Mauritania, Nigeria, Poland, Senegal, Tanzania and Yemen also expressed the intention to seek asylum in the RS. 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, Benin, Bolivia, Canada, Croatia, Ecuador, Equatorial Guinea, France, United Kingdom, Jamaica, Kazakhstan, Myanmar, Mongolia, North Macedonia, Slovenia, Sri Lanka, Togo and the USA. One stateless person also expressed the intention to seek asylum in the RS.

Graph 2. Countries of Origin of Foreigners Who Expressed the Intention to Seek Asylum (January-December 2022)



Most of the foreigners issued certificates of intention to seek asylum in the RS (registration certificates) were registered by the police stations in the interior of the country (2,498), and at border crossings (888), while 689 foreigners were registered at the airports in the RS. The intention to seek asylum of four foreigners was registered in the Detention Centre for Foreigners. The intention to apply for asylum of 102 foreigners was registered at other locations, such as the ACs and the Asylum Office.

Table 1. Venues at Which Foreigners Expressed the Intention to Seek Asylum (January–December 2022)

Police Stations	2,498
Border Crossings	888
Airports	689
Detention Centre	4
Asylum Office	102

Table 2. Number of Expressed Intentions to Seek Asylum from the Establishment of the National Asylum System in 2008 to 31 December 2022

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

2015.	2016.	2017.	2018.	2019.	2020.	2021.	2022.
577,995	12,821	6,199	8,436	12,937	2,830	2,306	4,181

1.2. Activities of the Asylum Office

A total of 320 persons applied for asylum from 1 January to end December 2022.¹² As many as 252 of them applied for asylum in writing, i.e. filled the asylum application forms themselves or with the help of their legal representatives and submitted them to the Asylum Office.¹³ By 31 December 2022, most of the asylum applications were filed by nationals of Burundi (181). The Asylum Office held oral hearings during which it reviewed the cases of 106 asylum seekers during the reporting period.¹⁴

The Asylum Office upheld 30 asylum applications during the reporting period, a substantial increase over 2021.¹⁵ It rejected 63 applications filed by 63 asylum seekers and dismissed two applications filed by two asylum seekers. The

12 A substantial increase over 2021, when 174 foreigners applied for asylum.

13 Only seven asylum applications were filed orally, i.e. before the relevant Asylum Office staff in the latter half of 2022.

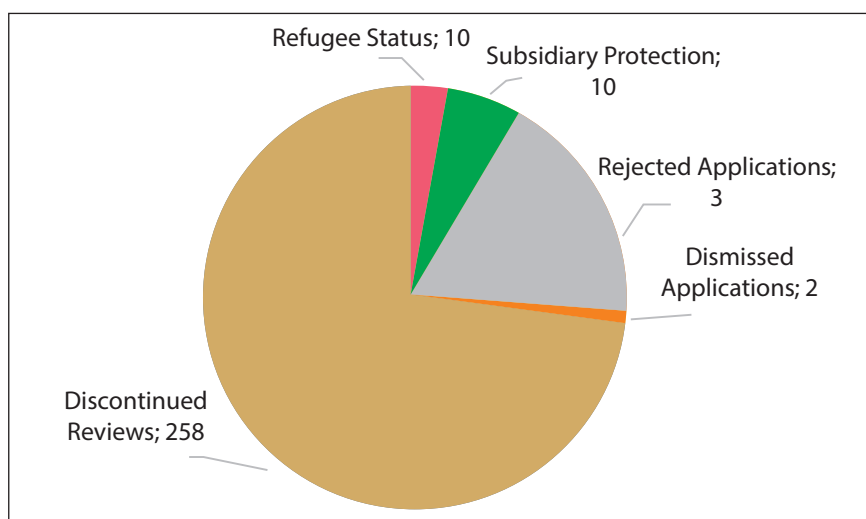
14 Most of these oral hearings were held in November (17), and the fewest in October (1).

15 When 14 asylum applications were upheld.

Asylum Office discontinued the review of 258 asylum applications, mostly because the applicants left the RS in the meantime.

In ten of the 30 cases in which it upheld the asylum applications, the Asylum Office granted refuge to the applicants. It granted subsidiary protection to 20 applicants. Refugees was granted to four Afghani, three Iranian, one Libyan, one Ukrainian and one Burundian national and subsidiary protection to 10 Syrian and three Ukrainian nationals, two nationals of Congo, two nationals of Afghanistan, one national of Cameroon, one national of Cuba and one national of Niger. Twenty of the 30 successful applicants were represented by the BCHR legal team.

Graph 3. Number of Asylum Office Decisions Enacted in 2022



The Asylum Office upheld asylum applications filed by 238 foreigners from 2008, when the asylum system was established, to 31 December 2022. It granted refuge to 107 and subsidiary protection to 131 applicants in that period.

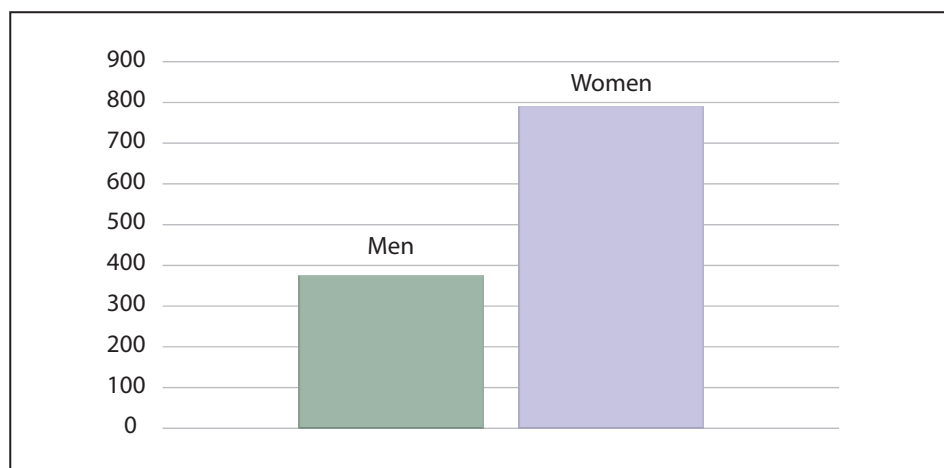
Table 3. Number of Positive Decisions on Asylum Applications by Year

Year	2008.	2009.	2010.	2011.	2012.	2013.	2014.	2015.	2016.	2017.	2018.	2019.	2020.	2021.	2022.
Refugee Status	0	0	0	0	3	2	1	16	19	3	11	17	17	7	10
Subsidiary Protection	0	4	1	0	2	2	5	14	23	11	14	18	12	7	20

1.2.1. Temporary Protection

In 2022, the Asylum Office issued 1,115 rulings granting temporary protection to persons displaced from Ukraine pursuant to the RS Government Decision. Applications for temporary protection were filed during the reporting period by a total of 1,164 individuals; 795 of them were women and 369 were men, out of which 295 were children. None of the children were unaccompanied or separated from their parents or guardians. Most of the foreigners granted temporary protection are nationals of Ukraine (1,073), followed by nationals of Russia (25), Uzbekistan (6), Armenia (5), China (2), Belarus (1), Bosnia and Herzegovina (1), Georgia (1) and Latvia (1).

Graph 4. Number of Decisions Granting Temporary Protection Adopted in 2022 by Sex of the Applicants



1.3. Activities of the Asylum Commission and Administrative Court

The Asylum Commission received 35 appeals of Asylum Office decisions from 1 January to 15 October 2022. It ruled on 39 cases during that period, rejecting 34 and upholding four appeals. The Asylum Commission also issued a ruling dismissing an appeal filed contesting the silence of the administration. In all cases in which it upheld the appeals, the Asylum Commission voided the Asylum Office rulings and remitted the cases to it for reconsideration. True to form, it failed to rule on the merits of the asylum applications itself in 2022.

A total of 21 asylum-related claims were filed with the Administrative Court from 1 January to 15 October 2022. None of them contested the lower authority's failure to rule on the case within the statutory deadline (silence of the administration).¹⁶ The Administrative Court ruled on 18 claims against the Asylum Commission's decisions in the 1 January-15 October 2022 period. It rejected 13 claims, upheld four of them, and discontinued the review of one claim. Like in the past, the Court did not itself rule on any asylum cases in 2022.

¹⁶ Pursuant to Art. 151(3) of the Law on the General Administrative Procedure (LGAP).

2. ACCESS TO THE ASYLUM PROCEDURE

By ratifying the Convention Relating to the Status of Refugees (the Refugee Convention),¹⁷ and its Protocol on the Status of Refugees,¹⁸ the RS assumed the obligation to respect the principle of *non-refoulement*, i.e. the prohibition from returning a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened.¹⁹ In addition, by acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)²⁰ the RS committed to respecting the principle of *non-refoulement* in the context of the prohibition of torture.²¹ That means, *inter alia*, that the RS is under the obligation to ensure access to the asylum procedure to all foreigners who have a well-founded fear of persecution in their country of origin or who would face a real risk of torture if returned to their country of origin or a third country.²²

The right to asylum is guaranteed by the Constitution of the Republic of Serbia (Constitution),²³ while the asylum procedure is governed by the LATP.²⁴ The LATP²⁵ entrusts the first-instance asylum procedure to the Asylum Office

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

18 *Official Gazette of the SFRY – International Treaties and Other Agreements*, 15/6.

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

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

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

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

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

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

25 Art. 20, LATP.

(operating within the MOI Foreigners Directorate), which provides the applicants with the opportunity to present all the relevant facts concerning the risks they would be exposed to if they returned to their country of origin or another country. The Law on the General Administrative Procedure (LGAP)²⁶ shall apply to all procedural issues not regulated by the LATP.

Foreigners may access the asylum procedure in the RS by expressing their intention to apply for asylum before an authorised MOI officer. The LATP entitles foreigners in the RS to express their intention to seek asylum,²⁷ whereupon the authorised MOI officers shall issue them a registration certificate.²⁸ The expression of intention is, therefore, the initial step that foreigners need to undertake to access the asylum system²⁹ and the issued certificates constitute grounds for their residence in ACs or RTCs, which they must report to within 72 hours.³⁰ Expression of intention to seek asylum, however, does not mean that the asylum procedure has formally been initiated.³¹

In its Serbia 2022 Report, the European Commission said that the RS continued to significantly contribute, as a transit country, to the management of the mixed migration flows towards the EU by playing an active and constructive role and cooperating effectively with its neighbours and EU Member States. It said that the RS continued to satisfactorily implement the EU-Serbia readmission agreement and to carry out border control and surveillance effectively and adopted the new integrated border management strategy for 2022–2027 and its action plan. The Commission noted that access to and provision of information regarding the asylum procedure had yet to be improved, and that access to information and legal counselling for asylum seekers at Belgrade Nikola Tesla Airport has still not been ensured.³²

The European Border and Coast Guard Agency (Frontex) reported that according to preliminary calculations more than 308,000 irregular entries were detected at the external borders of the European Union in the first eleven months of 2022, which represented an increase of 68% compared with the same period

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

27 Art. 4, LATP.

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

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

30 Art. 35(3), LATP.

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

32 *Serbia 2022 Report*, European Commission, 12 October 2022, p. 48, available at: <https://bitly.co/H2s5>.

of last year and was the highest since 2016. Frontex said that the Western Balkan route remained the most active, with 45% of all irregular entry detections to the European Union recorded since the beginning of 2022. Frontex further reported that “sustained migratory pressure on the Western Balkans route can be attributed to repeated attempts to cross the border by migrants already present in the region, and the fact that some migrants abuse visa-free access to the region to approach the EU external borders.”³³

The practices of the relevant RS authorities show that many foreigners in RS territory in need of international protection have been denied efficient access to the asylum procedure. Notably, they are unable to promptly apply for asylum or have difficulties accessing the asylum procedure due to specific circumstances. This chapter provides an overview of these practices and developments that impacted on the efficiency of access to the asylum procedure in 2022.

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

The LATP allows foreigners to express their intention to seek asylum within the territory of the RS and at its border crossings, i.e., in the border zones. In principle, the border police have the discretion to decide whom to admit into the RS. However, the principle of *non-refoulement* requires of border police officers to ensure that persons in need of international protection have access to the asylum procedure.³⁴

In 2022, the intention to seek asylum was expressed by 4,181 foreigners. Like in the past, most of them did so in police directorates in the interior of the country, where a total of 2,498 registration certificates were issued from 1 January to end December 2022. A total of 888 foreigners expressed the intention to apply for asylum at RS borders in the same period.

Furthermore, the Belgrade police periodically relocated unregistered foreigners to RTCs.³⁵ Such relocations were also conducted in the territory of Subotica and along the border with Romania, in the vicinity of Kikinda.³⁶ Apart from

33 The situation led to mounting political pressures on the RS in the last quarter of 2022; in late November, the RS introduced visas for nationals of Burundi, Tunis, et al. More in the Chapter: Public Discourse.

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

35 Information the BCHR team obtained from representatives of the Crisis Response and Policy Centre (CRPC). Most of these foreigners had been staying in hotels, hostels and at private lodgings.

36 Information the BCHR team obtained from representatives of the Humanitarian Centre for Integration and Tolerance (HCIT). Most of these foreigners had been staying in abandoned buildings in the border strips.

relocating to RTCs foreigners along the borders with Hungary and Romania, the Serbian authorities registered a visible increase in the number of foreigners presumably in need of international protection³⁷ who were pushed back by the police officers of these two countries to the RS.³⁸ The fact that even foreigners who had never transited through the RS or spent a longer period of time in it were subjected to such treatment is particularly concerning. The authorities of these neighbouring EU Member States have been arbitrarily applying this practice for years now, often resorting to excessive force and physical violence against the migrants.³⁹ Fewer pushbacks by Croatian police officers were registered in 2022 compared with 2021,⁴⁰ while various sources, including the refugees themselves, claimed that the Hungarian authorities have been resorting to this practice continuously.

The MOI operated at reduced capacity during the first half of 2022 due to the COVID-19 pandemic. This was one of the reasons why it issued fewer certificates in 2022 than in the past.⁴¹ Some foreigners had to wait for days to be registered during the reporting period,⁴² while the officers of some police stations in the RS refused to register foreigners in need of international protection, for no apparent reason.⁴³ Some asylum seekers had no place to stay in the meantime.⁴⁴ In some instances, the Commissariat for Refugees and Migration of the

37 So-called *prima facie* refugees, i.e. foreigners coming from refugee-generating countries such as, e.g., Afghanistan, Syria, Burundi, et al, fleeing large-scale human rights violations and general insecurity in those countries.

38 Information the BCHR team obtained from HCIT representatives. Most of these foreigners had been staying in abandoned buildings in the border strips.

39 See, for instance, the account of an asylum seeker from the DR Congo, whom the Hungarian authorities had deported to the RS, which she had never set foot in: Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2021*, BCHR (Belgrade, 2021), pp. 173–174 (hereinafter: *Right to Asylum 2021*), available at: <https://bityl.co/HDKx>.

40 *Ibid.*

41 Furthermore, fewer certificates were issued both in 2021 and 2020. More in BCHR's reports available at www.azil.rs.

42 Because, e.g. the Foreigners Directorate had a large caseload or for other reasons; in some cases, the foreigners were not provided with an explanation for the delay. Information obtained by the BCHR in the field. Furthermore, the police officers ordinarily deployed in the Krnjača AC to register foreigners were absent from this centre for a longer period of time during the last quarter of the year, which impinged on registration and adequate access to the asylum procedure. The CRPC said that foreigners staying at the Bogovađa AC also had trouble registering due to difficulties of transporting them to the Valjevo police.

43 BCHR's lawyers also registered the case of a national of Uzbekistan, whom the Valjevo police refused to register without explanation. The HCIT said that foreigners in Vojvodina were registered only in the Sremska Mitrovica Police Directorate, specifically in the Šid and Sremska Mitrovica stations, provided they were in the catchment area of this PD. The MOI refused to register foreigners elsewhere, which is particularly problematic in towns in which a substantial number of foreigners on the move are staying (e.g. Subotica, Sombor and Kikinda).

44 That was the situation in Belgrade, according to information the BCHR team obtained from CRPC representatives. Furthermore, the BCHR registered a case of four Burundian nationals,

RS (CRM) referred the foreigners to an RTC where they could register and be issued certificates and then referred those who wanted to apply for asylum to an AC that had room to admit them. In some cases, the foreigners went to an AC without registering first.⁴⁵

Nevertheless, the number of foreigners who expressed the intention to seek asylum does not reflect the number of foreigners who genuinely intend to seek asylum in the RS. In other words, the number of the people who actually want to seek asylum is much smaller, like in the past.⁴⁶ The fact that only 320 foreigners applied for asylum in the reporting period corroborates the conclusion that most foreigners in need of international protection still do not perceive the RS as a destination country.⁴⁷ The BCHR's interlocutors in the field ascribe this mostly to the length of the asylum procedure in the RS, during which the asylum seekers are not provided with financial support. Furthermore, most foreigners find it problematic that the RS does not issue travel documents for refugees and that the naturalisation process is fraught with difficulties.⁴⁸

On 14 July 2022, the Asylum and Migration Working Group of the European Network of National Human Rights Institutions (ENNHRI), which the RS National Preventive Mechanism (NPM) is also part of, published its report entitled "Strengthening Human Rights Accountability at Borders".⁴⁹ The report provides guidelines on preventing human rights violations of migrants and refugees at borders. Building on the practices and solutions presented in the report and expanding on the recommendations put forward on specific gaps, the ENNHRI

who were sent to the misdemeanour judge for being in the RS illegally when they wanted to register. They were issued rulings ordering them to leave the country because they had stayed in the country illegally after the expiry of the period of time they were allowed to stay in the RS without a visa, and were registered subsequently. They were also imposed a fine for the misdemeanour. However, these foreigners had exceeded the time period also because the police had repeatedly refused to register their intention to seek asylum.

45 In several instances, the police directly referred the foreigners to the Tutin AC, without registering them first. The BCHR also met a number of foreigners who were admitted to the Krnjača AC without a registration certificate and were then registered and issued registration certificates by the Asylum Office staff member deployed there.

46 More in Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2019), p. 21 (hereinafter: *Right to Asylum 2019*), available at: <https://bityl.co/H2sA>.

47 According to the information the BCHR obtained during its field visits, in 2022, the Preševo and Adaševci RTCs and the Obrenovac, Tutin and Sjenica ACs were mostly designated for the accommodation of single migrants, while the Bosilegrad and Bujanovac RTCs were designated for the accommodation of families. The Bogovađa AC, which had been designated exclusively for the accommodation of children, admitted adults in 2022 as well. Large numbers of foreigners were referred during the reporting period to the Krnjača AC, which had usually accommodated families.

48 More in the section: Integration.

49 The report is available at: <https://bityl.co/H2sK>.

concludes the report by presenting five key messages on human rights accountability at borders. All these messages are applicable to the current situation in the RS and the actions of its relevant authorities:

1. Independent and effective monitoring and reporting at borders, in line with international standards and human rights obligations.
2. Access to justice that is guaranteed in theory and in practice, in full respect of the right to an effective remedy and the possibility of redress for violations. This includes the existence of independent, accessible, and effective complaints mechanisms.
3. Independent investigations being carried out where allegations are received, which ensure that victims can be heard, lead to active steps to identify perpetrators, and which are capable of triggering or recommending appropriate consequences.
4. Revision of practices, policies, and legislation to ensure compliance with human rights standards and prevention of violations at borders. This encompasses following-up and implementing the recommendations of NHRIs.
5. A culture of respect for human rights, where national authorities responsible for border control and other actors at borders are trained on human rights, take their obligations seriously, and cooperate with Human Rights Defenders (HRDs).

2.1.1. Challenges in Accessing the Asylum Procedure

Some of the challenges persisting since the asylum system was established in the RS continued undermining effective access to the asylum procedure in the RS in practice, as the BCHR team has been warning for years.⁵⁰ First of all, the problems that appear at the very start arise from the fact that the MOI has continued issuing registration certificates exclusively in Serbian and in the Cyrillic script.⁵¹ The certificates include the name of the AC or RTC the foreigner is referred to and must report to within 72 hours from the moment of registration, i.e. receipt of the registration certificate.⁵² Given that the vast majority of

50 More in *Right to Asylum 2021*, p. 24.

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

52 Art. 35(3), LATP. Exceptionally, under paragraph 2 of this Article, foreigners may express the intention to apply for asylum also in RTCs and ACs; the best of the BCHR's knowledge, they expressed such an attention in the Krnjača AC, while an MOI officer was deployed there.

asylum seekers do not speak Serbian, they cannot be expected to understand the content of the certificates they are issued.⁵³ The MOI has not been issuing any formal documents explaining to the registered foreigners how they are to make their way to the RTCs they are referred to.⁵⁴ In that sense, unless they act in accordance with the instructions in the certificate, the asylum seekers may find themselves at risk of *refoulement*.

Another problem arises from the fact that foreigners in need of international protection are not familiarised with their rights and obligations in the RS in the context of their residence or with other important information at the time of registration.⁵⁵ Police and other relevant officers are under the obligation to provide the asylum seekers with access to basic information about the asylum procedure in a language they understand, as well as access to an interpreter, legal aid, et al.⁵⁶ The foreigners have to be provided the information in a reliable manner, so that they can clearly understand their rights and obligations, and the consequences of non-compliance with the latter. Furthermore, there are no special procedures for the registration of vulnerable categories.⁵⁷ According to information available to BCHR's legal team, foreigners obtain basic information in the language they understand mostly from legal aid providers and representatives of international and non-government organisations assisting them in the field.⁵⁸ On the other hand, Asylum Office staff notify⁵⁹ the asylum seekers of their rights and obligations during the asylum procedure only when they are applying for asylum or during their oral hearing.

53 According to HCIT representatives, foreigners being registered are often not instructed that they must report to the designated centre within 72 hours, which has been creating additional problems in practice for persons in need of international protection.

54 Information the BCHR team obtained from CRPC and HCIT representatives. CRPC representatives reported that foreigners referred to centres very far from Belgrade usually did not know how to reach them and often lacked the funds to make their way there, wherefore they asked for instructions and financial aid to cover their travel costs.

55 Art. 56, LATP.

56 *Reception Standards for Asylum Seekers in the European Union*, UNHCR (Geneva, July 2000), p. 7, section C/II, available at: <https://bityl.co/HDLZ>.

57 As far as the situation in Belgrade is concerned, according to information the BCHR team received from CRPC representatives, the officers always pay particular attention to vulnerable categories, despite the absence of adequate procedures. The question, however, arises whether they pay as much attention to vulnerable categories of foreigners who are not accompanied by the representatives of CSOs when they come to register.

58 Hardly any of the interviewed foreigners said they had been notified of their rights and obligations at the time of registration. The question arises whether the police officers advise them of their rights and obligations at all and to what extent, and whether asylum seekers receive all the information they need in a language they understand. On the MOI's website there is a brochure translated to six most frequent languages of potential asylum seekers. Available in Serbian at: <https://bityl.co/H70p>.

59 At the very outset of the oral hearing.

In the BCHR's opinion, the fact that Asylum Office staff received a much smaller number of asylum applications and interviewed a much smaller number of asylum seekers also impinged on effectiveness and promptness of access to the asylum procedure. As opposed to the past, the registered foreigners mostly submitted their asylum applicants in writing⁶⁰ during the reporting period, while they were living the ACs or RTCs. Namely, the epidemiological situation was much better in 2022 than in the past although the pandemic still existed officially. It could thus not be used as an excuse for the smaller number of actions undertaken by the asylum authorities. Some other factors contributed to the situation to a much greater extent. They included the smaller number of Asylum Office staff, their focus on reviewing requests for temporary protection filed by refugees from Ukraine⁶¹ and the expiry of the terms in office of the Asylum Commission members.⁶²

Furthermore, during its field work in the last quarter of 2022, the BCHR team ascertained that CRM representatives in a number of ACs and RTCs refused to forward to the Asylum Office written asylum applications of foreigners living in the facilities under their jurisdiction, which they had regularly done in the past. BCHR's lawyers registered such cases in the Tutin and Sjenica ACs, while HCIT lawyers registered it in the Šid RTC. However, the information obtained by BCHR's lawyers at the end of the reporting period indicates that the CRM started applying this approach in all ACs and RTCs. This further impeded access to the asylum procedure of individuals in need of international protection, an issue that will be discussed in detail in the section of the report analysing the CRM's operations.⁶³

2.1.2. Recommendations

The MOI is still not facilitating unimpeded access to the asylum procedure in the RS given that the many obstacles identified in the past have not been eliminated yet. The BCHR therefore reiterates its recommendations the fulfilment of which, primarily by the MOI as well as by the other relevant authorities, would help improve the situation in this area and enable foreigners to promptly apply for asylum in the RS:

- First and foremost, when they establish contact with foreigners who may be in need of international protection, police officers should act

60 252 of the 320 asylum applications were filed in writing.

61 The BCHR gained the impression that the Asylum Office gave priority to refugees from Ukraine and that its officers faced various administrative difficulties because this was the first time the temporary protection mechanism was activated in the RS, and that this generally slowed down the work of the Office, including its reviews of pending asylum cases.

62 Information the BCHR team obtained in communication with the relevant asylum authorities.

63 More in the chapter: Accommodation of Asylum Seekers.

in accordance with their competences, whilst complying with the principle of *non-refoulement*, particularly in cases of *prima facie* refugees.

- The MOI must issue registration certificates to foreigners in all police stations in the RS in a language they understand; the police officers must notify the foreigners of their rights and obligations during the asylum procedure in an appropriate and comprehensible manner, to reduce the risk of foreigners suffering legal consequences for unknowingly failing to comply with their obligations.
- The MOI should regularly distribute brochures with important information in languages spoken by most (potential) asylum seekers. That would bridge the language barrier between the foreigners and state officials in the absence of interpreters and ensure that the former have access to information about their main rights and obligations within the Serbian asylum procedure, including information on how to reach the AC or RTC they are referred to.
- The Asylum Office should perform the official asylum-related actions efficiently and promptly and increase its staff complement in the coming period.
- The MOI and the CRM should as soon as possible together review the downsides of the new AC and RTC managements' practice of not forwarding the written asylum applications to the Asylum Office and the consequences it has on the asylum seekers themselves and they should find a more adequate solution to ensure that foreigners have prompt access to the asylum procedure in the RS.⁶⁴

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

Commercial air traffic in the RS started recovering and returning to normal in 2021. Air traffic substantially increased in 2022 over 2021, but still did not reach the pre-pandemic level, i.e. 2019.⁶⁵

The number of foreigners who wanted to seek asylum on arrival at Belgrade Airport increased in 2022 over 2021.⁶⁶ In May 2022, BCHR's lawyers were also

64 Ibid.

65 For instance, data available on the Belgrade Airport website show that passenger traffic tripled in the first quarter of 2022 y-o-y, but was 46.1% lower than in 2019. In the second quarter of 2022, it was three times higher than in the same period in 2021, but 27% lower than in 2019. In the third quarter, passenger traffic was 85% higher than in the same quarter in 2021, while the difference vis-à-vis 2019 fell to 22%. More available at: <https://bityl.co/H2sT>.

66 The number of foreigners who wanted to express the intention to seek asylum in the RS substantially increased over 2021 and was higher than in the last pre-pandemic year.

contacted by foreigners at Niš Airport Constantine the Great. During the reporting period, the Border Police Station (BPS) officers at Serbian airports issued 689⁶⁷ registration certificates to foreigners who expressed the intention to seek asylum in the RS.⁶⁸

BCHR's lawyers extended direct legal aid⁶⁹ to foreigners during their visits to Belgrade Airport and intervened with BPS officers on their behalf by phone. They ascertained that, unfortunately, many of the irregularities in the MOI's operations still persisted and impinged on effective access to the asylum procedure at the Airport.⁷⁰ These will be discussed in greater detail in the ensuing sections.

2.2.1. Airport Border Police Denied 4,092 Foreigners Entry into the RS

According to the data the MOI BPS forwarded to the BCHR team⁷¹ its officers denied entry to 4,092⁷² foreigners at the Surčin-Belgrade, Niš and Morava airport border crossings in the first nine months of the year.⁷³ The reasons for denying these people entry included, notably, doubts that they had come for the reason they declared (3,728), invalid travel documents or visas (292), other reasons (25), state security grounds (21), they had been issued protective measures or prohibited from entering the RS (17), they lacked funds to cover their stay (1), or had exceeded their residence permits (5).⁷⁴ The vast majority of foreigners

67 For the sake of comparison, 146 registration certificates were issued in 2021, 44 certificates were issued in 2020 and 68 certificates were issued in 2019.

68 Information obtained from UNHCR's Office in the RS covering the January-December 2022 period.

69 BCHR's lawyers have temporary passes allowing them to visit the transit zone of the Nikola Tesla Airport. In normal circumstances, they allow them to visit foreigners held in the transit zone requesting of BCHR to extend them legal aid and information about the asylum procedure in the RS. BCHR's lawyers visited the Airport when necessary, pandemic permitting.

70 More in: Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2020*, BCHR (Belgrade, 2020), pp. 29-33 (hereinafter: *Right to Asylum 2020*), available at: <https://bityl.co/HDLm>.

71 MOI BPS letter no. 26-627/22 of 20 October 2022. The data cover the January-September 2022 period and were provided under the Law on Access to Information of Public Importance in response to BCHR's request of 7 October 2022. As opposed to 2021, the MOI did not respond to the request to disaggregate the data by sex or specify whether adults or accompanied or unaccompanied minors were at issue. It also failed to disaggregate the data by the countries the foreigners had come from and were deported to.

72 According to the data the BPS forwarded the BCHR in response to its request for access to information of public importance, 2,105 foreign nationals were denied entry in the 1 January – 15 October 2021 period at the Surčin-Belgrade border crossing. More in: *The Right to Asylum 2021*, p. 27.

73 Specifically, 3,908 foreigners were denied entry into the RS at the Belgrade-Surčin border crossing, four foreigners were denied entry at the Morava border crossing and 180 foreigners were denied entry at the Niš border crossing.

74 The number of statistical data totalled 4,089 – the discrepancies in data is visible in MOI's letter to the BCHR that includes two tables with different sums of the numbers of refused entries.

denied entry hailed from India (1,499) and Tunis (1,244), Turkey (584), Cuba (145), Egypt (91) and Burundi (79).⁷⁵ In late 2022, the RS authorities decided to introduce visas for nationals of Burundi and Tunis⁷⁶, and were expected to introduce visas for nationals of India as of 1 January 2023.⁷⁷

The BPS also denied entry to 17 Syrian nationals in the first nine months of the year, explaining that it doubted the reasons each of them individually declared for visiting the RS. The question arises whether the BPS had violated the law in their case, given that these foreigners came from a war-torn country and are considered *prima facie* refugees. The situation is all the more concerning if these people had expressed the intention to seek asylum in the RS before the BPS officers and the latter had ignored the fact.

According to the letter communicating the above data to the BCHR, the officers of the MOI Border Police Directorate are charged with border control on RS' state borders and with ascertaining whether the foreigners who want to enter the country fulfil the statutory requirements. The letter notes that the air companies that flew in foreigners denied entry are under the obligation to return them without delay and at their own expense to the initial destination on the next flight, wherefore the border police do not possess data on which countries they have come from or were returned to, or their sex or age.⁷⁸

2.2.2. BCHR Legal Team's Interventions in 2022

In 2022, BCHR's lawyers intervened in 17 cases in respect of 47 foreigners denied entry into the RS by the BPS, extending legal aid to those who wanted to seek international protection in the RS. These foreigners were nationals of Burundi, Tunis, Pakistan, Cuba, Afghanistan, Iran and India.

Nationals of Burundi, as well as Cuba, Turkey and Iran, who were held in the Belgrade Airport transit zone after they were denied entry into the RS, accounted for most foreigners at the airport who sought help from BCHR's lawyers. Most of them wanted to seek asylum in the RS, which is why they asked the BCHR for free legal aid. The BPS issued registration certificates to Burundian and Iranian nationals after BCHR's lawyers intervened. On the other hand, the telephone conversation during BCHR's intervention on behalf of a Cuban was

75 Fifty of fewer nationals of other countries were denied entry.

76 The fact that Tunisian nationals did not need a visa to enter the RS since 1962 testifies to the seriousness of the changes in RS' visa policy.

77 The decision was welcomed by the EU Commissioner for Neighbourhood and Enlargement Olivér Várhelyi on 10 December 2022. See: <https://twtr.in/3OL8>.

78 The MOI did not respond to the BCHR's requests to disaggregate the data by sex or specify whether adults or accompanied or unaccompanied minors were at issue, although it did so the previous year at the BCHR's request.

suddenly cut off, wherefore the BCHR was unable to extend him adequate aid. Most of the foreigners held in the transit zone a number of days complained that the MOI officers at the airport did not react to their oral and written requests to access to asylum procedure.

In May 2022, BCHR's lawyers were asked to extend free legal aid to a Burundian national and her child, who came to the Niš Airport Constantine the Great on a flight from Istanbul, but were denied entry into the RS although they had expressed the intention to seek asylum to BPS officers. After BCHR's lawyers intervened, the two of them were registered in accordance with the LATP and referred to the Tutin AC.

In the second half of 2022, BCHR's lawyers were contacted the most often by nationals of Pakistan, Turkey, Burundi and Tunis; as noted, the RS introduced visas for the nationals of the latter two countries during the reporting period. Most of these foreigners claimed that they were in need of international protection in the RS and asked the BCHR to extend it free legal aid. This group of foreigners also claimed that BPS officers ignored their oral and written requests to be provided with unimpeded access to the asylum procedure.⁷⁹ The BPS registered nationals of Turkey and Burundi after the BCHR intervened. Some Pakistani nationals were registered after BCHR's lawyers intervened but it cannot be ascertained with reliability whether all of them were issued registration certificates since they stopped communicating with the BCHR after a while.

2.2.2.1. The BCHR Initiated Procedure before the Protector of Citizens

In light of the RS' decision to introduce visas for the nationals of the above-mentioned countries, a large number of Tunisian nationals denied entry into the RS contacted the BCHR in October 2022, asking for help. The group was put in the Belgrade Airport transit zone premises for the accommodation of foreigners. These Tunisian nationals forwarded to the BCHR photographs and video recordings⁸⁰ clearly demonstrating that the conditions in these premises are inhuman. Furthermore, the BCHR received reports that the police used force against some of the apprehended foreigners who refused to sign the decisions denying them entry into the RS.⁸¹

Prompted by its reasonable fears that such treatment may recur and, in light of the inhuman accommodation conditions, BCHR's lawyers contacted the RS

79 These foreigners said that they had spent days in the transit zone.

80 Photographs and video recordings were directly e-mailed to BCHR's lawyers.

81 According to CRPC's representatives, such a fate also befell nationals of Burundi during the year. They suffered violence at the hands of the BPS and were also forced to sign decisions denying them entry into the RS. Some of them were flown back to Turkey, from which they had come to the RS.

Protector of Citizens⁸² and asked him to initiate a review of BPS' operations in response to the allegations. The BCHR also requested of the Protector of Citizens to take all measures and activities within his remit to ensure that all individuals held in the transit zone premises are able to enjoy their fundamental human rights.

In his response to the BCHR's letter, the Protector of Citizens said he had immediately gotten in touch with the Nikola Tesla Airport BPS. Furthermore, the National Preventive Mechanism (NPM)⁸³ paid an unannounced visit to the airport on 22 November 2022, during which it checked the conditions in the transit zone premises in which foreigners denied entry into the RS were being held. The NPM team toured the premises and talked to the foreigners held there at the time of the visit and interviewed BPS officers about how they and those earlier denied entry into the RS were treated.⁸⁴ The Protector of Citizens also said in his letter to the BCHR that the report on the visit and recommendations would be published.

In the second half of 2022, the Belgrade Airport BPS again violated the law twice when it returned Tunisian nationals to the countries from which they had flown to the RS, prompting the BCHR legal team to react again. Namely, the BPS returned these foreigners although they had expressed the intention to seek asylum in the RS and despite the BCHR's intervention after they asked it for free legal aid.

2.2.3. Challenges Arising from BPS Actions in Airport Transit Zones

The BCHR continued intervening in 2022 when foreigners claiming that they had expressed their wish to seek asylum to BPS officers were denied entry into the RS.⁸⁵ Under the Foreigners Law (FL), foreigners not fulfilling the requirements for lawful entry may be allowed to enter the RS on humanitarian grounds, which is precisely why they seek asylum.⁸⁶ The BPS obviously continued failing to act fully in compliance with the law, thus impeding or precluding access to the asylum procedure for foreigners in need of international protection and consequently putting

82 Letter of 31 October 2022 and a follow-up letter of 8 November 2022.

83 Pursuant to the Law Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

84 More in the press release issued by the Protector of Citizens, available in Serbian at: <https://bit.ly.co/H2se>.

85 In agreement with BPS officers, the BCHR legal team put up posters with the e-mail and telephone numbers foreigners in need of international protection can use to contact it and seek legal aid.

86 Art. 15(2), FL.

them at risk of *refoulement*.⁸⁷ Such a practice is particularly problematic if access to RS territory is denied to people coming from countries known for large-scale human rights violations and serious security instability.

Border police are under the obligation to comply with the LATP to establish the foreigners' identity and facilitate their access to the asylum procedure in the event they express the intention to seek asylum at a border crossing. The law lays down clear measures precluding abuse of the asylum procedure.⁸⁸ To recall, under the FL, border police are under the obligation to issue a (bilingual) decision to foreigners denied entry, specifying why they are not allowed into the country; the ban is then entered into the foreigners' passport.⁸⁹ In the BCHR's experience, Belgrade border police do not issue individual rulings to all foreigners denied entry into the RS, thus precluding them from appealing the decisions.⁹⁰

It needs to be noted that the Airport does not have interpreters for languages spoken by foreigners who may be in need of international protection present at all times⁹¹ and that many foreigners and some BPS officers are not fluent in English. Such a situation exacerbates the difficulties in communication between the officers and foreigners who want to seek asylum because it impedes the officers' adequate provision of relevant information to the foreigners and their prompt familiarisation with their rights in the RS.

It may therefore be concluded the procedure in which foreigners are denied entry into the RS is mostly still conducted in an informal fashion. The border police's practice of denying entry was criticised by international and independent bodies in the past as well.⁹² Unfortunately, the MOI has not yet undertaken all the measures to eliminate the identified deficiencies.

87 Which could have been the case of, e.g. the 17 Syrian nationals denied entry into the RS during the reporting period.

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

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

90 Pursuant to Art, 16, FL.

91 Given that it is complicated for the border police to secure an interpreter in each individual case, they are in practice usually extended the assistance of interpreters accompanying legal aid providers, such as the BCHR. The question, however, arises, how the BPS treats foreigners who have sought asylum but not contacted either the BCHR or any other legal aid providers.

92 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the National Preventive Mechanism within the Office of the Protector of Citizens, which the BCHR alerted to earlier as well. More in *Right to Asylum 2019*, pp. 25–29.

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

Furthermore, the BCHR reiterates again that the LATP provides for the implementation of the asylum procedure at border crossings or transit areas of airports or inland ports.⁹³ One of the conditions that must be fulfilled to facilitate the effective implementation of the asylum procedure in the transit zone is to ensure the asylum seekers adequate food and accommodation.⁹⁴ However, the Belgrade Airport premises in which the foreigners denied entry are held still do not fulfil even the minimum standards,⁹⁵ as the above situation in which the Tunisian nationals found themselves testifies.

2.2.4. Recommendations

The Belgrade BPS' practice, which persisted in 2022, still gave rise to risks that its officers would be unable to always recognise foreigners' need for international protection, especially in the light of the recent changes of RS' visa regime with individual countries, which partly acquired political connotations as well. The pressing problems impeding access to the asylum procedure at airports have to be addressed to improve the situation in practice and standardise the BPS' operations, with a view to ensuring respect for the right to asylum. Herewith the BCHR's recommendations, some of which it made in the past as well:

- Border police officers, including those deployed at the Niš and Kraljevo airports, must continuously keep abreast of the situation in countries ravaged by war or human rights violations. To ensure that they recognise *prima facie* refugees, before denying foreigners entry into the RS, the border police officers should always interview them about their reasons for leaving their country of origin, with the help of interpreters and in consultation with Asylum Office staff. The MOI should give thought to placing interpreters at the disposal of the Belgrade BPS, with support from UNHCR and other organisations.

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

94 More in *Right to Asylum 2019*, p. 29.

95 *Ibid.*

- Belgrade BPS officers should issue foreigners not fulfilling the requirements to access Serbian territory reasoned entry denial decisions in a language they understand that would be subject to appeal and instruct them on the right to appeal, as provided for by the FL.⁹⁶
- The MOI should as soon as possible review the possibility of proposing an amendment to the FL to ensure judicial reviews of such decisions. The FL now provides for the filing of a complaint without suspensive effect with the MOI, which is an administrative authority. BPS should at all times ensure unobstructed communication between foreigners and representatives of relevant domestic and international organisations helping them exercise their asylum-related rights.
- It is crucial that foreigners denied entry into the RS are accommodated in adequate transit zone facilities in order to align with international standards and ensure compliance with the principle of *non-refoulement* as soon as possible.
- The BCHR has already recommended giving thought to improving the existing modalities of its cooperation with BPS officers. That would facilitate the development of a system of mutual support in identifying people in genuine need of international protection, in the context of preventing abuse of the asylum system.

96 Art. 15, FL.

3. PRACTICE OF THE ASYLUM AUTHORITIES

In accordance with the LATP, the asylum authorities in the RS include the Asylum Office, the Asylum Commission, and the Administrative Court. The Asylum Office, which operates within the MOI Border Police Directorate, is tasked with conducting first-instance procedures on asylum applications and revocation of asylum.⁹⁷ The Asylum Office has a Department for Determination of the Right to Asylum⁹⁸ and a Department for the Collection and Documentation of Information on Countries of Origin.⁹⁹

The Asylum Commission,¹⁰⁰ comprising a Chairperson and eight members appointed by the RS Government, reviews appeals of Asylum Office decisions. Although the Asylum Commission is independent in principle, perceptions of its absolute impartiality are affected by the fact that it is headquartered at the same address as the Border Police Directorate and that the Commission's Chairperson was the head of the Department for the Implementation of Readmission Agreements of the MOI Administrative Affairs Directorate at the time of her appointment.¹⁰¹ Two more MOI members of staff also sit on the Commission. The Asylum Commission's final decisions on appeals or failure to rule on appeals within the statutory deadline may be contested with the Administrative Court¹⁰² within 30 days. The following sections of the report analyse the work of these bodies, specifically the decisions they adopted on cases in which the asylum seekers were represented by the BCHR legal team.

97 Art. 20, LATP.

98 The Department for Determination of the Right to Asylum is, *inter alia*, charged with receiving asylum applications, interviewing the applicants, drafting rulings on asylum applications and undertaking actions requisite for addressing the status-related issues of applicants and asylees.

99 The Department for the Collection and Documentation of Information on Countries of Origin is tasked with investigating, collecting, documenting, updating and analysing and processing data about the asylum seekers' countries of origin, and preparing reports on the situation in them.

100 Under Art. 21, LATP.

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

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

3.1. Asylum Office

A total of 30 foreigners were granted international protection in the RS in 2022. Over 60% of the successful applicants were represented by the BCHR legal team.¹⁰³ Most of these decisions were adopted by the Asylum Office, as the first-instance authority; its staff are highly specialised for working asylum seekers, as opposed to the representatives of the Asylum Commission and Administrative Court.¹⁰⁴ The Asylum Office issued 1,115 rulings granting temporary protection to persons displaced from Ukraine pursuant to the RS Government Decision on Temporary Protection of 18 March 2022.¹⁰⁵

In general, the excessive length of the asylum procedure remained one of the main shortcomings of the work of the Asylum Office. By adopting decisions after the statutory deadline,¹⁰⁶ the first-instance authority has been violating the principle of economy of procedure and failing to ensure the continuity of procedural actions,¹⁰⁷ which often had a demotivating effect on asylum seekers who had been considering making a life for themselves in the RS. Most asylum applications were filed in writing in 2022, because Asylum Office staff rarely paid visits to the ACs during which the foreigners could apply for asylum orally.¹⁰⁸ Rather than waiting for these rare Asylum Office visits, the foreigners opted for filling the asylum applications either themselves or with the help of their legal representatives in order to officially initiate the asylum procedure as soon as possible.

The situation can be ascribed to the fact that the Asylum Office was substantially understaffed during the reporting period¹⁰⁹ and that its staff focused, accor-

103 In addition, all unaccompanied and separated children whose asylum applications were upheld in 2022 are BCHR's clients.

104 The chairwoman and members of the Asylum Commission are primarily engaged in other state institutions, while Administrative Court judges also rule on other administrative law cases.

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

106 Under Art. 39 of the LATP, a decision on an asylum application in the regular procedure shall be rendered within three months from the day of submission of the asylum application or the subsequent asylum application at the latest. The deadline may be extended by three months in the event the application includes complex factual and/or legal issues or a large number of foreigners have submitted their asylum applications at the same time. Exceptionally, the deadline may be extended again, but the decision on the application must be rendered within 12 months from the day the application was submitted at the latest.

107 Although Article 39 of the LATP imposes upon the Asylum Office the obligation to notify the applicants or their legal representatives of the reasons for the deferral of the decision, the BCHR rarely received such notifications in the past few years.

108 As many as 252 of the 320 asylum applications filed in 2022 were submitted in writing.

109 The Department for Determination of the Right to Asylum was staffed by only four officers for most of 2022.

ding to BCHR's opinion, on temporary protection claims filed by refugees from Ukraine, wherefore many of the pending asylum cases were put on the backburner.

The Asylum Office has set an extremely high threshold the applicants must pass to prove that they are at risk of persecution or other harm, wherefore it has been granting asylum only to *prima facie* refugees, i.e. individuals who had already been subjected to persecution or serious harm in their countries of origin. Notwithstanding, the Asylum Office commendably granted international protection to many more foreigners than in the past. It, *inter alia*, upheld the applications of asylum seekers belonging to particularly vulnerable groups, including survivors of sexual and/or gender based violence, women travelling alone or with their children, persons with disabilities and unaccompanied children. However, the Asylum Office continued with its practice of adopting decisions based on incorrect or incomplete findings of fact, issuing substandard and selective explanations, disregarding evidence submitted by the asylum seekers' legal representatives, including requests to question witnesses, as the following sections will elaborate.¹¹⁰

3.1.1. Asylum Office's Disregard of Relevant Facts and Evidence

One of the Asylum Office's main duties is to properly, accurately and fully establish all the facts and circumstances important for rendering a lawful decision.¹¹¹ In addition to the facts and evidence presented by the asylum seeker, the first-instance authority is under the obligation to take into account the latest reports on the applicant's country of origin and, if necessary, in the countries they passed through on their way to the RS.¹¹² That, however, was one of the most frequently identified deficiencies in its work. For instance, after its review of the case of Burundian national Y., whose asylum application it had earlier dismissed¹¹³

110 The summaries of some of the decisions analysed in greater detail in BCHR's prior reports, including the BCHR's report covering the January–June 2022 period, provide insight in the work of Asylum Office in 2022.

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

112 Pursuant to Art. 32 LATP. Information on the situation in the asylum seekers' countries of origin can be found in various reports by international bodies, such as UNHCR and the European Union Agency for Asylum (EUAA), as well as organisations focusing on human rights.

113 The Asylum Commission rejected as ill-founded the BCHR's lawyers appeal of the Asylum Office's ruling dismissing the applicant's asylum claim under Article 43 of the LATP. The BCHR filed a claim contesting the Asylum Commission's decision with the Administrative Court, which found that the Asylum Commission's ruling was in violation of substantive and procedural law. After holding an additional hearing of the applicant in December 2021, the Asylum Office again issued a ruling rejecting his asylum application.

by applying the first country of asylum concept¹¹⁴, the Asylum Office issued a ruling rejecting his claim, without having reviewed the facts and circumstances relevant to the adoption of a proper and lawful decision. In its new ruling,¹¹⁵ the Asylum Office noted – in just one sentence – that it had *taken into account all the submitted evidence during the review of the submitted asylum application*. However, the Asylum Office took into account only parts of Y.'s statement and drew blanket, ill-founded and inadequately reasoned conclusions on the findings of fact, thus failing to fully and properly examine the existence of any risks that Y. would be persecuted if he returned to Burundi. In addition, the Asylum Office did not conduct a diligent and scrupulous assessment of the evidence and reports BCHR's lawyers submitted during the procedure.¹¹⁶ 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 his additional oral hearing during the repeat procedure.¹¹⁷

In February 2022, the Asylum Office adopted a decision rejecting, for the second time, the asylum application filed by Iranian national G.M.¹¹⁸ in which it 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.¹¹⁹ During the repeat procedure, the Asylum Office relied in its

114 Under Art. 42(1(1)) of the LAMP, a decision rejecting 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 the LAMP. Under Art. 43(1) of the LAMP, a country shall be considered to be the first country of asylum if the applicant has been recognised refugee status in that country and is still able to avail himself/herself of that protection or if the applicant enjoys effective protection in that country, including the guarantees arising from the *non-refoulement* principle.

115 Asylum Office Ruling No. 26–1515/19 of 25 May 2022.

116 More in: *Right to Asylum in the Republic of Serbia, Periodic Report for January–June 2022*, BCHR (Belgrade 2022, hereinafter: *Right to Asylum, Periodic Report for January–June 2022*), available at: <https://bityl.co/HDNM>.

117 The asylum authorities' inadequate actions have adversely affected Y., who has done his utmost over the past three years to integrate in Serbian society.

118 Asylum Office Ruling No. 26–1672/19 of 1 April 2022.

119 The Asylum Office first rejected G.M.'s asylum application in January 2021 because it considered that she was not at risk of persecution in her country of origin on account of her membership of a particular social group. The Asylum Commission upheld the BCHR's appeal of the ruling because of the identified irregularities and shortcomings, and remitted the case for reconsideration to the Asylum Office. However, the Asylum Office based its new decision on the case on a selective assessment of the asylum seeker's claims without providing an explanation or taking into account pieces of evidence corroborating her allegations. More about this case in: *Right to Asylum in the Republic of Serbia, Periodic Report for January–June 2021*, BCHR (Belgrade, 2021) pp. 24–27 (hereinafter: *Right to Asylum, Periodic Report for January–June 2021*), available at: <https://bityl.co/HDNk> and *Right to Asylum, Periodic Report for January–June 2022*, pp. 17–19.

reasoning 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. The Asylum Office not only assessed pieces of evidence in a selective fashion,¹²⁰ but fully disregarded some of them as well.¹²¹ 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 torture¹²² and the *non-refoulement* principle. The BCHR appealed the new Asylum Office ruling with the Asylum Commission. However, the Asylum Commission rejected BCHR's appeal and upheld the views of the Asylum Office. Its decision is discussed in the section on the operations of the Asylum Commission below.

In the case of the married Burundian couple A.A. and B.B., the Asylum Office in September 2022 issued a conclusion¹²³ rejecting the request filed by their BCHR legal representatives to question a witness¹²⁴, who would confirm the claims the applicants made during their oral hearing. Namely, the BCHR suggested that the Asylum Office question an internationally recognised Burundian human rights activist, who had been persecuted in his country of origin and fled with his family to Belgium where he was granted asylum. A.A. and B.B. told the Asylum Office they had been persecuted in their country of origin because they were friends with the witness and helped him flee the country. In its conclusion, the Asylum Office said that it had concluded that the questioning of the witness would be inexpedient and irrelevant, but failed to explain how it came to this conclusion.

Another interesting case is that of a young man from Afghanistan, asylum seeker X, to whom the Asylum Office granted subsidiary protection.¹²⁵ Namely, when reviewing asylum applications, the Asylum Office first determines whether the applicants fulfil the requirements to be granted refugee status¹²⁶, and, if they do not, it goes on to examine whether they qualify for subsidiary protection.¹²⁷ In its ruling upholding X's application, the Asylum Office found that there would be a serious and individual threat to his life if he returned to his country of origin

120 For instance, relevant media articles on the status of women in Iran, or a report by a Psycho-social Innovation Network (PIN) psychologist.

121 The Asylum Office ignored the submissions on the state of human rights in Iran submitted by the applicant's legal representatives and relativised the submitted evidence – videos and photographs corroborating G.M.'s claims about her modeling career in her country of origin, women's rights activism and her support for the anti-hijab movement in Iran.

122 Under Article 3 of the ECHR.

123 Asylum Office Conclusion No. 26–73/22 of 29 September 2022.

124 Pursuant to Art. 126 of the LGAP.

125 Asylum Office Ruling No. 26–277/21 of 13 July 2022.

126 Pursuant to Art. 24 of the LATP.

127 Pursuant to Art. 25 of the LATP.

due to indiscriminate violence in Afghanistan. The Asylum Office, however, disregarded X.'s claims of persecution by the Taliban and the written threat explicitly mentioning his first and last names that arrived at his home address, which was submitted in evidence.¹²⁸ Rather, it repeatedly emphasised that X. had not proven that he personally had been persecuted. Although the Asylum Office commendably granted X. international protection, in the BCHR's opinion, it should have assessed the circumstances of the case more diligently and comprehensively and taken into account all the relevant facts and all the submitted evidence.

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

The Asylum Office adopted various decisions granting the right to asylum to foreigners in need of international protection during the reporting period. The following section analyses some of its decisions concerning BCHR's clients.

Under the LATP in conjunction with the RS Government Decision on the Provision of Temporary Protection,¹²⁹ all people displaced from Ukraine are entitled to apply for asylum once they are granted temporary protection. Some Ukrainian nationals decided to initiate the asylum procedure as soon as they arrived in the RS. For instance, in June 2022, the Asylum Office issued a ruling¹³⁰ upholding the asylum application of a three-member Ukrainian family and granting it subsidiary protection¹³¹ in the RS after the armed conflict in Ukraine escalated in February.¹³² Since Ukrainian national O. came to the RS on 18 February and was unable to return to her country of origin because of the security situation there¹³³, the Asylum Office reviewed all the presented facts and circumstances and decided that the *sur place* principle was applicable in this case. The Asylum Office's conclusion that O. and her daughters would be subjected

128 X., who was an unaccompanied and separated child when he arrived in the RS, reached the age of majority during the asylum procedure. During his oral hearing, X. said that he had left Afghanistan because of the problems he had with the Taliban, who had repeatedly assaulted and beaten him up in the street and threatened both him and his family.

129 Under paragraph 4 of the Decision on the Provision of Temporary Protection to Persons Displaced from Ukraine, individuals granted temporary protection shall have access to all rights in Article 76 of the LATP, which entitles individuals granted temporary protection to apply for asylum.

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

131 Pursuant to Art. 25, LATP.

132 More on this case in *Right to Asylum, Periodic Report for January-June 2022*, pp. 15-17.

133 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.

to inhuman and degrading treatment if they returned to Ukraine was correct and lawful. The Asylum Office commendably ruled on their asylum application within three months.¹³⁴ In the BCHR's opinion, the Asylum Office's deliberation of this case clearly demonstrates that it possesses the capacity to decide on applications of asylum seekers of other nationalities more promptly and efficiently, which is not its well-established practice.

During the reporting period, the Asylum Office upheld the asylum application of another Ukrainian national, A., also a BCHR client.¹³⁵ Like O., A., a journalist and human rights activist, came to the RS in February, just before the armed conflict in her country of origin escalated. In 2014, A. reported on events in Donbas, where, in her opinion both Russian and Ukrainian forces committed war crimes. A. was thus targeted by the media, the extreme right and pro-government organisations, which labelled her as the enemy of the people, accused her of separatism and issued her death threats. A. left Ukraine because her safety was at risk, but returned in August 2021, thinking that the situation calmed down. However, as tensions mounted in early 2022, the authorities started banning opposition media and A. again found herself in danger and decided to leave her country of origin. During the asylum procedure, A. submitted to the Asylum Office evidence corroborating her claims that she was exposed to public pressures and threats (in the media and on social media) in Ukraine because of her activities, which the Asylum Office thoroughly examined, together with the statement she gave.¹³⁶ The Asylum Office also consulted relevant international reports on the increase in harassment and violence against journalists and political activists after the Ukrainian conflict in late 2013,¹³⁷ and the UN report confirming the killing of seven journalists in Ukraine since the beginning of the Russian invasion in February 2022.¹³⁸ The Asylum Office thus correctly concluded that A.'s persecution was serious in character and that she could not be efficiently protected by the relevant Ukrainian authorities.¹³⁹ Having ascertained that A. feared persecution because of her political opinions,¹⁴⁰ the Asylum Office granted her refugee status.

134 The Ukrainian nationals applied for asylum on 24 March 2022. The Asylum Office issued rulings on them after 83 days.

135 Asylum Office Ruling No. 26–463/22 of 22 August 2022.

136 A. inter alia claimed that the Ukrainian Criminal Code had been amended and now included the crime of justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine that started in 2014 (more at: <https://bit.ly/3QNb2b0>). According to the new regulations, A. faced three years' imprisonment for voicing her personal opinion.

137 E.g., the Freedom House report *Freedom of the Press 2014-Ukraine*, available at: <https://bit.ly/3kvLkeM>.

138 Available at: <https://bit.ly/3IZtsDA>.

139 Pursuant to Art. 28, LATP.

140 Pursuant to Art. 26(1(4)), LATP.

In late October 2022, the Asylum Office adopted a ruling¹⁴¹ granting refugee status to a three-member family from Iran – E., his wife and underage daughter. The family fled Iran in fear of persecution because E. expressed anti-government views on social media, where he criticised the Iranian regime and Islam's detrimental influence on society and advocated democracy. E.'s anti-government opinion prompted threats against him on his profiles, which increased in frequency even after the family arrived in the RS. To recall, the family's asylum application filed in 2018 was initially rejected by the Asylum Office by its ruling¹⁴² of August 2019. The Asylum Commission rejected¹⁴³ the BCHR's appeal of the Asylum Office ruling, whereupon the BCHR filed a claim with the Administrative Court. In its judgment of September 2021,¹⁴⁴ the Court upheld the BCHR's claim and voided the Asylum Commission's ruling. The BCHR analysed the asylum authorities' reviews of the case and course of the asylum procedure in detail in its prior reports.¹⁴⁵

Before adopting a new decision, the Asylum Office held an additional oral hearing in March 2022, at which it was supposed to eliminate all the procedural flaws identified by the Administrative Court. E. reiterated the statement he had made earlier during the procedure, submitted additional evidence and apprised the Asylum Office of the reasons why his and family's lives would be at risk if they returned to Iran.¹⁴⁶ During its review of the merits of the asylum application, the Asylum Office perused the evidence submitted by the applicants' legal representative, the applicants' claims, especially the more recent facts and circumstances of relevance to its decision that were presented. Furthermore, in the opinion of BCHR's lawyers, the Asylum Office took into account the degree to which the family integrated during the 4+ years they have been living in the RS, their efforts to adjust to the local community and their intention to continue living in the RS. Commendable the Asylum Office's decision is, the asylum procedure nevertheless took much too long, which is in contravention of both the LAMP and LGAP, and the interests of the applicants.

The Asylum Office in 2022 issued a number of decisions upholding asylum applications filed by Syrian nationals. Most of them were granted subsidiary pro-

141 Asylum Office Ruling No. 26–1607/18 of 14 October 2022.

142 Asylum Office Ruling No. 26–1607/18 of 26 August 2019.

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

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

145 More in: *Right to Asylum in the Republic of Serbia, Periodic Report for July–September 2019*, BCHR (Belgrade 2019), pp. 11–15, available at: <https://bitly.co/HDOK> and *Right to Asylum 2021*, pp. 61–62.

146 E. told the Asylum Office about the state of human rights in Iran and grave violations of the rights of government opponents, as well as about the recent threats pro-regime individuals voiced against him when he was already in the RS.

tection. The Asylum Office continued stating in these rulings that rule of law, and therefore, institutions and human rights protection mechanisms, were not established in Syria due to the current security and political situation in that country. For instance, the Asylum Office upheld the asylum application filed by BCHR's client, Syrian national C.C.,¹⁴⁷ who left his country of origin in 2019 because of the war and fear of conscription. Having examined claims about the state of human rights in Syria and other relevant reports submitted by BCHR's lawyers, the Asylum Office ascertained that Syrian draft dodgers who returned to their country of origin were still being arrested and tortured. Therefore, having concluded that C.C. would be at real risk of suffering serious harm if he returned to his country of origin, the Asylum Office upheld his asylum application. The Asylum Office's decisions on asylum applications filed by Syrian nationals are commendable but the time it takes to rule on the claims of these people forced to leave their homes due to security deterioration and indiscriminate violence in situations of armed conflict is unreasonably long.¹⁴⁸

As per particularly vulnerable groups of asylum seekers, the BCHR in this section highlights the Asylum Office's decision to grant subsidiary protection¹⁴⁹ to Cameroonian national D.D., who claimed he had been discriminated against in his country of origin on account of his disability.¹⁵⁰ The Asylum Office established the accuracy of D.D.'s claims that the protection of the rights of persons with disabilities in Cameroon was inconsistent and that high medical costs were

147 Asylum Office Ruling No. 26-1591/21 of 19 September 2022 granting the applicant, C.C., subsidiary protection. The Asylum Office said that it had not found the existence of persecution in C.C.'s case. It specified in the reasoning of its ruling that "deserters and military service evaders" could be categorised as a particular social group and that, in some cases, an applicant could be granted asylum only on grounds of military service evasion, in the event he proved that he would have been required to participate in military actions during his military service, in contravention of his political, religious or ethical beliefs, i.e. that he was a conscientious objector. The Asylum Office did not dispute that C.C. could be categorised as a member of a particular social group of military service evaders in Syria, where military service is mandatory and its evasion is punishable by law, while desertion is always a crime. However, the Asylum Office said that C.C. had not presented valid reasons of conscience during the oral hearing and had failed to prove that that he would have been required to participate in military actions during his military service.

148 Over a year passed from the day C.C. applied for asylum to the day the Asylum Office issued its ruling on his case.

149 Asylum Office Ruling No. 26-346/21 of 29 June 2022.

150 D.D. was left a paraplegic after a traffic accident he was in as a young man in his country of origin. During the procedure, D.D. claimed that he had been discriminated on grounds of disability in Cameroon: he had difficulty accessing health and other services, finding a job, using public transport, etc. He had also been discriminated against by health staff, which impinged on the quality of the health care he was provided. He is undergoing dialysis in the RS, after the local doctors determined he had kidney problems.

the main reason why persons with disabilities had difficulty accessing their rights to health care. Furthermore, many persons with disabilities are unemployed and have difficulty accessing their other rights and services in Cameroon. The Asylum Office also took into account D.D.'s family circumstances – that D.D. has no strong family ties and that there is no-one in his country of origin who can look after him, as well as his inability to secure his subsistence there. The Asylum Office bore in mind that *the applicant's health has seriously deteriorated and that any dislocation of an individual like him would have serious effects on his health, and probably his life and that the applicant's grave state of health is in itself a factor impeding his return to his country of origin.* The Asylum Office relied on both the submitted relevant documents, its own decisions in similar cases and ECtHR case-law¹⁵¹, which BCHR's lawyers referred to in their submissions. However, having examined whether the applicant fulfilled the requirements to be granted asylum, the Asylum Office failed to explain precisely and in detail why it concluded that D.D. should not be granted refuge; it merely noted that D.D. had not been subjected to acts of persecution defined in the LATP¹⁵² because he belonged to a particular social group (persons with disabilities).

3.1.3. Asylum Office Decisions Granting Temporary Protection

After the RS Government adopted the Decision on the Provision of Temporary Protection to Persons Displaced from Ukraine, the Asylum Office started issuing rulings granting such protection to all applicants fulfilling the eligibility requirements in the Decision.¹⁵³ It issued 1,115 such rulings by the end of 2022. All individuals who wanted to apply for temporary protection first had to register at a nearby police station, just like asylum seekers, and indicate that they were registering with a view to obtaining temporary protection. The Asylum Office ruled on these cases relatively quickly.¹⁵⁴ In the first few months after the RS Government Decision entered into force, it received a large number of applications and ruled on them within a month on average; subsequently, it issued the

151 Specifically, cases concerning the interpretation of Article 3 of the ECHR and protection of individuals in need of medical care and lack of adequate health care in the country of origin.

152 Pursuant to Art. 28 of the LATP.

153 The Decision lays down that the following individuals shall be considered displaced: a) nationals of Ukraine and members of their families who had been residing in Ukraine; 2) asylum seekers, stateless persons and foreign nationals granted asylum or equivalent national protection in Ukraine and members of their families granted residence in Ukraine; 3) foreign nationals granted permanent or temporary residence in Ukraine who cannot return to their countries of origin in durable and long-term conditions.

154 According to the BCHR's estimates, the Asylum Office ruled on the applications within two months on average during the first few months and in less than a month in the latter half of 2022.

rulings within few weeks from the day the applicants registered. Together with the rulings on temporary protection, the Asylum Office forwarded the successful applicants or their legal representatives Ukrainian and Russian translations of the RS Government Decision, as well as guidance on the rights and obligations of persons granted temporary protection in the RS. The first-instance authority should be commended for this practice of adequately familiarising the refugees with the relevant regulations on their situation and legal status.

The Asylum Office did not grant temporary protection to all applicants displaced from Ukraine. For instance, it issued a ruling¹⁵⁵ in June 2022 rejecting the application filed by Ukrainian national S.¹⁵⁶, after it consulted the Security Intelligence Agency and ascertained that *security impediments* disqualified him from obtaining temporary protection. On the other hand, the Asylum Office granted temporary protection in the RS to S.'s wife and daughter.¹⁵⁷ The situation gave rise to the risk of violation of the family unity principle since the Asylum Office ordered S. to leave the RS within 30 days from the day of service of the ruling. Since S. was unable to find out the reasons on which the Asylum Office based its decision and, consequently, defend himself adequately, he filed an appeal via his BCHR lawyers with the Asylum Commission. This part of the procedure is described in greater detail in the section of the report on the work of the second-instance authority.

3.1.4. Recommendations

The greater number of positive decisions adopted by the Asylum Office in 2022 demonstrates that it was able to recognise the applicants' reasonable fear of persecution. However, many of the identified shortcomings in its work persisted in the reporting period, impinging on the situation of persons in need of international protection and their exercise of their statutory rights. In the BCHR's opinion, the Asylum Office would substantially improve the quality of its work if it took on board the following recommendations:

- The Asylum Office must to promptly perform the asylum-related actions within its remit and render decisions on applications filed by asylum seekers of all nationalities within the deadline laid down in the LATP. The application of provisions allowing for the extension of the deadline should be an exception rather the rule. On the other hand, the

155 Asylum Office Ruling No. 26-1658/22 of 23 June 2022.

156 S. fled the armed conflict in his country of origin and came to the RS with his wife and underage daughter. He went to the MOI and sought temporary protection for himself and his family the day after he arrived.

157 Asylum Office Ruling No. 26-908/22-1 of 22 June 2022.

Asylum Office should notify the applicants or their legal representatives of the deferral and when they can expect a decision wherever there is a likelihood that it will not rule on their application within the statutory deadline.

- With a view to adopting correct, quality and lawful decisions, it is imperative that Asylum Office staff thoroughly examine all evidence submitted during the procedure¹⁵⁸ and themselves comprehensively research the human rights and security situation in the applicants' countries of origin.
- On a related point, the Asylum Office should reason its decisions in detail, especially decisions rejecting individual applications. Rather than merely noting that specific evidence is irrelevant to its decision, the first-instance authority should provide clear reasons why it considers it relevant or irrelevant. The Asylum Office should apply this practice also in cases in which it upholds the applications but grants the asylum seekers subsidiary protection rather than refugee status.
- The Asylum Office should bear in mind that an applicant's statement may be the only evidence of their fear of persecution. In that sense, an applicant's eligibility for international protection does not require their prior subjection to persecution or serious harm or the Asylum Office's certainty that they will be persecuted in the future. Reasonable rather than high probability that they will be subject to persecution or serious harm suffices.

3.2. Asylum Commission

The RS Constitution lays down that everyone shall have the right to an appeal or another legal remedy against any decision on their rights, obligations or lawful interests.¹⁵⁹ Therefore, asylum seekers dissatisfied with the Asylum Office's decisions are entitled to appeal them with the Asylum Commission as a second instance body within 15 or 8 days.¹⁶⁰ The Asylum Commission may reject or dismiss the appeal or uphold it and void part or the entire impugned

158 In addition to the submissions on the state of human rights in the asylum seekers' countries of origin filed by their legal representatives, such evidence includes reports on the asylum seekers' psychological health, requests to question witnesses and all other relevant documents corroborating the statements the applicants made during the procedure.

159 Art. 36(2), RS Constitution.

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

ruling. The Asylum Commission is also entitled to itself rule on the administrative matter or remit the case to the first-instance authority for reconsideration.¹⁶¹

Thirty-five appeals were filed with the Asylum Commission and it adopted 39 decisions from 1 January to 15 October 2022.¹⁶² It rejected 34 appeals, upheld four appeals and adopted one decision rejecting the appeal filed because the ruling was not adopted within the statutory deadline. This means that the Asylum Commission upheld only 10% of the appeals of first-instance rulings. These statistics do not differ substantially from those in the prior reporting periods and testify to the slim chances asylum seekers have in this stage of the asylum procedure.¹⁶³

Like in the past, the Asylum Commission did not exercise all its statutory powers (e.g. did not hold oral hearings) or itself rule on the merits of the asylum applications in 2022. It continued with its well-established practice of not upholding any asylum claims. Lack of substantial headway in the Asylum Commission's operations is also corroborated by the fact that this authority mostly assessed the claims in the appeals selectively, and, consequently, adopted decisions based on incomplete or incorrect findings of fact.

The BCHR team commends the Asylum Commission for forwarding in 2022 to the BCHR its anonymised decisions on cases in which the asylum seekers were not represented by BCHR's lawyers. It thus demonstrated transparency, whilst preserving the confidentiality of the applicants' identity. The ensuing section provides an analysis of some of the Asylum Commission's decisions adopted during the reporting period in cases of asylum seekers represented by BCHR's legal team.

3.2.1. Change of Asylum Commission's Practice with Respect to the Discontinuation of the Asylum Procedure

Under the LATP,¹⁶⁴ it shall be considered that applicants have withdrawn their application if they failed to notify the Asylum Office of their change of address within three days or have prevented the service of summons or other written official communication in another manner, without providing a valid reason. In such cases, the Asylum Office is entitled to discontinue the asylum procedure.¹⁶⁵

161 Art. 167, LGAP.

162 Asylum Commission's letter in response to BCHR's request for access to information of public importance No. 27-A-128-3/22 of 4 November 2022.

163 More on Asylum Commission's practice in 2020 and 2021 in *Right to Asylum 2020*, pp. 56–65 and *Right to Asylum 2021*, pp. 50–56.

164 Art. 47, LATP.

165 In conjunction with Art. 101(1) of the LGAP, under which a procedure shall be discontinued in the event the administrative authority concludes that the conditions for continuing it do not exist.

In August 2022, the Asylum Office issued a ruling¹⁶⁶ discontinuing the review of the asylum application filed by BCHR's client M. A., a national of Syria. It specified in the ruling that M.A. had left the AC he was accommodated in of his own initiative and failed to return to it within the statutory deadline and that he had not provided a reason for failing to notify the Asylum Office of his change of address. BCHR's lawyers appealed the Asylum Office ruling with the Asylum Commission, claiming that the first-instance authority had drawn an incorrect conclusion on the facts and misapplied the law. Namely, M.A.'s legal representative talked to the CRM management, which confirmed that M.A. was still living in the AC and forwarded written evidence thereof to the BCHR, which it submitted to the Asylum Commission together with the appeal. The Asylum Office discontinued the review of M.A.'s claim without first checking his whereabouts with the CRM or his legal representatives, wherefore the BCHR noted in the appeal that it could not have discontinued the procedure without first attempting to serve on him or his legal representatives documents relevant to the course of the procedure. The BCHR also emphasised that the Asylum Commission had already taken the view in its prior decisions that the Asylum Office was under the obligation to establish whether service of summons or other documents had been attempted.¹⁶⁷ Furthermore, the BCHR underlined that M.A., a national of Syria, was considered a *prima facie* refugee and that he had sought legal aid in the asylum procedure from the BCHR as soon as he arrived in the RS.

In early September 2022, the Asylum Commission adopted a ruling¹⁶⁸ upholding the appeal and voiding the Asylum Office decision to discontinue the review of M.A.'s asylum application. The Asylum Commission said in the decision that the first-instance authority had not ascertained all the facts, wherefore it could not assess the lawfulness of the impugned ruling. It thus remitted the case for reconsideration to the Asylum Office.

The Asylum Office issued a ruling¹⁶⁹ discontinuing the review of an asylum application filed by another BCHR client, Burundian national L.M., in an identical manner. However, the Asylum Commission rejected the BCHR's appeal of the decision as ill-founded.¹⁷⁰ Having reviewed the BCHR's claims in the appeal that the Asylum Office should not have discontinued the procedure before it tried to serve the documents relevant to the procedure on the applicant, the Asylum Commission took an opposite view, referring to Administrative

166 Asylum Office Ruling No. 26-1796/22 of 1 August 2022.

167 Asylum Commission Ruling No. AŽ-47/18 of 19 November 2018.

168 Asylum Commission Ruling No. AŽ-23/22 of 7 September 2022.

169 Asylum Office Ruling No. 26-74/22 of 8 July 2022.

170 Asylum Commission Ruling No. AŽ 21/22 of 27 September 2022.

Court judgments.¹⁷¹ In its judgments, the Administrative Court held that the requirements for discontinuing the asylum procedure were fulfilled in the event the claimant had left the AC on their own initiative, failed to return to it within three days or failed to notify the relevant authority of their change of address. The Administrative Court also said that the law imposed upon the applicants the duty to provide valid reasons for failing to comply with their obligations within the statutory deadline and that it did not require of the relevant authority to establish *ex officio* why the applicants had failed to comply with their obligations.

It remained unclear why the Asylum Commission changed its view on this issue in a matter of days. The Asylum Commission was commendably guided by the case-law of Administrative Court as the superior authority, but the question arises why it only took its case-law into account in 2022 rather than in 2019 and 2020, when the Court ruled on cases concerning identical or similar findings of fact. Inconsistent decisions of the relevant authorities do not instil confidence of the parties, because they undermine legal certainty and may impinge on the outcome of the submitted asylum applications, particularly given the applicants' vulnerabilities.

3.2.2. *Blanket and Selective Assessments of the Claims in the Appeals*

The Asylum Office's role is to control the work of the first-instance authority and the lawfulness of its decisions, and, thus, calibrate and guide it towards improving its decisions on the submitted asylum applications. However, like in the past, the Asylum Commission often failed in 2022 to diligently assess the claims in the appeals and made the same mistakes the Asylum Office did. Such a practice is particularly problematic in case of asylum seekers whose asylum applications contain particularly sensitive elements. For instance, during the reporting period, the Asylum Commission adopted a decision¹⁷² rejecting the BCHR's appeal of the Asylum Office's ruling rejecting for the second time the asylum application filed by Iranian national G.M.¹⁷³, which the BCHR reported

171 Administrative Court Judgment No. 11 U 7716/18 of 7 November 2019 and Administrative Court Kragujevac Department Judgment No. I-3 U 3937/18 of 5 May 2020.

172 Asylum Commission Ruling No. Až-8/21 of 27 June 2022.

173 The Asylum Office first rejected G.M.'s asylum application 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. 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 re-consideration. However, in February 2022, the Asylum Office again issued a ruling rejecting G.M.'s asylum application.

on in its prior reports.¹⁷⁴ G.M. was a sympathiser of the White Wednesday movement rallying women opposing the obligation to wear a hijab in Iran. G.M., who had a modelling career and ties with a women's rights activist, was repeatedly deprived of liberty in Iran because of her activities. The Asylum Commission made a blanket assessment of the BCHR's claims in the appeal that the Asylum Office had ignored facts of relevance to a lawful decision and the evidence proving G.M. had suffered persecution in her country of origin which she had submitted via her legal representatives.¹⁷⁵ Like the Asylum Office before it, the Asylum Commission failed to perform a diligent assessment of the risks G.M. would face if she were forced to return to her country of origin and concluded that she had not been and would not be at risk of persecution. The relevant authorities should have, albeit failed to take into account the developments and deterioration of the human rights situation in Iran in the latter half of 2022, above all the large-scale anti-hijab protests, all of which are relevant to G.M.'s situation.

The Asylum Commission also rejected the BCHR's appeal filed on behalf of Cuban nationals Y.Y. and K.K.¹⁷⁶ whose asylum application was rejected for the third time by the Asylum Office.¹⁷⁷ The applicants had 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. The BCHR analysed in detail the Asylum Office's and Asylum Commission's decisions on the application filed by Y.Y. and her daughter in its prior reports.¹⁷⁸ In its latest ruling, the Asylum

174 More on the Asylum Office's first decision in this case in *Right to Asylum, Periodic Report for January-June 2021*, pp. 23–26, and on its second decision rejecting G.M.'s asylum application in the *Right to Asylum, Periodic Report for January-June 2022*, pp. 17–19.

175 Via the BCHR, G. M. submitted to the Asylum Office numerous pieces of material evidence, including photographs and video recordings corroborating the statement she gave during the procedure, as well as relevant media reports and submissions on the human rights situation in Iran, which the first instance authority either assessed selectively, ignored, or qualified as inapplicable to the case at hand.

176 Asylum Commission Ruling No. Až-41/20 of 10 May 2022.

177 The Asylum Office issued two rulings rejecting the Cuban nationals' asylum applications from March 2021 to March 2022. The BCHR appealed both rulings with the Asylum Commission claiming they were based on incomplete and incorrect findings of fact. The Asylum Commission upheld both of BCHR's appeals, voided the first-instance rulings and ordered the Asylum Office to eliminate the identified irregularities when it reconsidered the case. The Asylum Office eliminated the procedural shortcomings, but did not change its view on the case and again rejected the asylum application. The BCHR appealed this third ruling as well. However, the Asylum Commission upheld the Asylum Office's claims and rejected BCHR's appeal as ill-founded.

178 More on the procedure in this case in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2021*, BCHR (Belgrade 2021), pp. 19–24, *Right to Asylum 2021*, pp. 46–47, and *Right to Asylum, Periodic Report for January-June 2022*, pp. 19–22.

Commission qualified as ill-founded the claims in the appeal about the incomplete and incorrect findings of fact and error of law. Without examining the circumstances of the case in detail, the Asylum Commission merely relied on the Asylum Office's blanket conclusion that Y.Y. and her daughter had not been subjected to persecution and did not fear persecution in their country of origin. Therefore, the relevant asylum authorities either ignored or selectively assessed the applicants' claims of discrimination and inhuman and humiliating treatment they had been subjected to in Cuba. Furthermore, they failed to comply with the principle of the best interests of the child under the law,¹⁷⁹ whereby they gave rise to the risk of violation of the principle of family unity,¹⁸⁰ which is in contravention of the European Convention on Human Rights (ECHR),¹⁸¹ the UN Convention on the Rights of the Child, (CRC), as well as the RS Constitution and the LATP.

The BCHR filed claims contesting the Asylum Commission's rulings rejecting appeals by the two Cuban nationals and the Iranian national with the Administrative Court. Both cases were pending at the end of the reporting period. These two cases, which have been ongoing for an unreasonably long time, are a good illustration of the inadequacy of the Asylum Commission's practice of remitting cases for reconsideration to the Asylum Office (more than once)¹⁸² when it considers the appeals well-founded, rather than on ruling on the merits of the asylum applications itself.

3.2.2.1. Asylum Commission Rejected BCHR's Appeal in Temporary Protection Case

After the temporary protection institute was activated, the Asylum Office adopted a number of decisions on applications for temporary protection, most of which were positive. But, in some cases, the Asylum Office rejected the temporary protection applications filed by Ukrainian nationals. One of them was BCHR's client S., whose application was rejected in June 2022. Namely, S. applied for temporary protection with the MOI as soon as he, his wife and underage daughter fled to the RS. Two months later, S's wife and daughter were served a ruling granting them temporary protection,¹⁸³ while S. was served a ruling

179 Pursuant to Art. 10 of the LATP and the UN CRC.

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

181 Art. 8, ECHR.

182 Such was also the case of BCHR's client, a Libyan national, whose asylum case remained pending for nearly half a decade. More in *Right to Asylum 2021*, pp. 55–56 and *Right to Asylum, Periodic Report for January-July 2022*, pp. 13–15.

183 Asylum Office Ruling No. 26–908/22–1 of 22 June 2022.

rejecting his application.¹⁸⁴ The Asylum Office said in the ruling that it had consulted the Security Intelligence Agency during its review of the applicant's eligibility for temporary protection¹⁸⁵ and concluded that *security impediments* disqualified him from obtaining temporary protection.

BCHR's lawyers filed an appeal with the Asylum Commission, in which they notably emphasised that the Asylum Office had not provided any concrete explanations for its view in the impugned ruling.¹⁸⁶ Consequently, S. was unable to find out the reasons it had based its decision on and defend himself adequately¹⁸⁷, which is in contravention of the RS Constitution¹⁸⁸ and the LGAP.¹⁸⁹ There was also a risk of violation of the family unity principle¹⁹⁰ in this case because S.'s wife and daughter were granted temporary protection, while he was under the obligation to leave the RS within 30 days.

In August 2022, the Asylum Commission issued a ruling¹⁹¹ rejecting the appeal the BCHR filed on S.'s behalf. The Commission said that the appeal was ill-founded because the Asylum Office provided a sufficiently clear explanation of its decision, although the Commission's reasoning on the security impediments consisted of only two sentences. Furthermore, the Asylum Commission said that *the Asylum Office and the Security Intelligence Agency had clearly communicated in writing, as may be concluded from the wording of the sentence stating that the Asylum Office was notified of the existence of security impediments in a document classified as "confidential"*. However, there is no such sentence in the impugned ruling of the Asylum Office. The Asylum Commission also dismissed BCHR's claims of the risk of violation of the family unity principle as ill-founded, explaining that the Asylum Office *granted temporary protection to the appellant's wife and daughter, whose cases it had joined, and that it bore in mind the particular situation and best interests of the underage child*. The Asylum Commission

184 Asylum Office Ruling No. 26–1658/22 of 23 June 2022.

185 Pursuant to paragraph 3 of the RS Government Decision on the Provision of Temporary Protection to Persons Displaced from Ukraine.

186 Specifically, the Asylum Office ruling did not list the documents, reports or case files on which the decision was based, or the reference number and date of the enactment based on which the conclusion on the existence of security impediments was drawn.

187 The Asylum Office thus also violated the applicant's right to an effective legal remedy, since it did not specify concrete reasons he could contest in an appeal.

188 Under Art. 198(1) of the RS Constitution, all parties to proceedings are entitled to reasoned decisions.

189 Under Art. 141(4) of the LGAP, the reasoning of the decision must be comprehensible and outline, inter alia, the findings of fact and relevant evidence, the reasons that were decisive in assessing each piece of evidence, the regulations and grounds for rendering the decision in the operational part of the ruling in light of the findings of fact, etc.

190 Art. 66 of the RS Constitution and Art. 9 of the LATP.

191 Asylum Commission Ruling No. Až-20/22 of 12 August 2022.

consciously ignored the fact that S. is also a member of that family, and that he was forcibly separated from it by the Asylum Office's decision. The BCHR filed a claim with the Administrative Court contesting the Asylum Commission's decision. The case was pending before the Court at the end of the reporting period.

3.2.3. Recommendations

The illustrated cases show that the Asylum Commission's decisions still include numerous deficiencies precluding the general improvement of the second-instance asylum procedure, and, hence, the Commission's effective oversight of the Asylum Office's operations with a view to improving them. The BCHR therefore issues the following recommendations Asylum Commission staff should take on board when reviewing appeals of Asylum Office rulings:

- First and foremost, the Asylum Commission should diligently assess the claims in the appeals and provide comprehensible explanations for its decisions, including detailed enumeration of reasons that were decisive in assessing each piece of evidence.¹⁹²
- Rather than merely listing the procedural deficiencies of the appealed Asylum Office rulings and remitting the cases to it for reconsideration, the Asylum Commission should itself rule on the merits of cases. It would thus exercise all its statutory powers and, at the same time, avoid the unnecessary prolongation of the asylum procedures.
- On a related point, the Asylum Commission should hold oral hearings and continuously monitor the situation in the applicants' countries of origin; this will facilitate its correct and full findings of fact in each individual case.
- In the interest of legal certainty, the Asylum Commission should bear in mind existing case-law on similar or identical administrative issues and provide a full and detailed explanation and list legitimate arguments in case it diverges from it.

3.3. Administrative Court

An administrative dispute may be initiated against a final Asylum Commission ruling,¹⁹³ wherefore the Administrative Court is the third instance ruling on asylum applications in the RS. During the reporting period, the Administrative

192 In some cases, the Asylum Commission commendably enumerated all the deficiencies of the first-instance procedure and issued precise instructions on which actions the Asylum Office should take if it needed to reconsider the case.

193 Art. 22, LATP.

Court adopted 18 decisions on claims against Asylum Commission rulings on asylum applications.¹⁹⁴ It upheld four claims, rejected 13 of them and discontinued the review of one claim. Perusal of the anonymised decisions adopted during the reporting period the Administrative Court forwarded to the BCHR in response to its request for access to information of public importance did not reveal of a diversity of judgments delivered by this court. In the cases in which it upheld the claims,¹⁹⁵ the Administrative Court overturned the Asylum Commission's rulings and remitted the cases to it for reconsideration because it held that the second-instance authority had violated the law to the detriment of the claimants. However, these reasons mostly concerned violations of the rules of procedure¹⁹⁶ or the Asylum Commission's inaccurate references to important elements in its rulings.¹⁹⁷ The impression is that the Administrative Court reviews the merits of each individual case extremely rarely, if ever, and primarily uphold the claims in the event it establishes the existence of manifest procedural violations.

The Administrative Court yet again did not hold oral hearings on asylum claims or rule on the merits of the cases in 2022. There were presumably asylum cases where it could have ruled on the merits in the past 14 years. The BCHR has been alerting to this deficiency for years now in its previous reports.

As per the timeframe within which the Administrative Court is to rule on claims, practice has shown that this stage of the asylum procedure takes the longest – in most cases, it took the Court more than a year to rule on an asylum-related claim.¹⁹⁸ The Administrative Court received 21 cases disputing Asylum Commission decisions by mid-October 2022, but it ruled on only one of them, and, in that case, it discontinued the review of the claim.¹⁹⁹ This lack of promptness is presumably due to the Court's years-long huge backlog of a variety of administrative cases.²⁰⁰

194 Administrative Court's reply to a request for access to information of public importance No. Su II-17a 76–22 of 10 November 2021.

195 Administrative Court Judgments U 19178/17, U 4760/20, U 8549/20 and U 4730/21.

196 For instance, in its judgment in case U 8549/20, the Court noted that the appeal rejected by the impugned ruling had been filed by the asylum seeker via their legal representative, while the operative part of the impugned Asylum Commission's ruling set out that the legal representative's appeal was rejected, wherefore the Commission had violated the rules of procedure.

197 In its judgment in case U 4760/20, the Court found that the impugned ruling had been adopted by the Asylum Commission as a collegiate body but that the case file did not contain any minutes of the Commission's review of the appeal and or how its members had voted on it.

198 BCHR's statistics show that 401 days pass on average between the day a claim is filed with the Administrative Court and the day it rules on it.

199 Administrative Court's reply to a request for access to information of public importance No. Su II-17a 76–22 of 10 November 2021.

200 Slightly over 53,000 cases were filed with the Administrative Court in the first 11 months of the year. See more at: <https://bityl.co/H7xD>.

The following section discusses some of the Court's 2022 judgments on asylum-related claims filed by BCHR on behalf of its clients. The analyses of the judgments illustrate the Court's negative practices, which have persisted for years now and corroborate the BCHR's view that the entire asylum procedure in the RS cannot be deemed functional or efficient yet.

3.3.1. Administrative Court Rejected BCHR Legal Team's Claims in Particularly Vulnerable Cases

Most of the claims the BCHR legal team filed with the Administrative Court in 2022 were rejected, as opposed to 2021, when this court upheld most of its claims because of the Asylum Commission's various violations of substantive or procedural law.²⁰¹ Not only is the fact that the Court not find any errors on the part of the lower-instance authorities problematic; it itself broke the law, which particularly impinged on asylum seekers falling in the category of vulnerable groups.

BCHR filed a claim on behalf of Tunisian national N., which contested the Asylum Commission's ruling²⁰² upholding the Asylum Office's opinion that N. did not fulfil the criteria for refugee protection. Namely, the BCHR asserted that both the first- and second-instance asylum authorities had made a number of errors resulting in the denial of asylum to N., who is of a different sexual orientation²⁰³ and hails from a country in which homosexuality is a crime²⁰⁴. The BCHR thoroughly analysed this case and the actions of the asylum authorities in its prior reports.²⁰⁵

In addition to submissions corroborating N.'s well-founded fear of persecution in Tunisia, the BCHR submitted to the Administrative Court the ECtHR judgment in the case of *B. and C. v. Switzerland*,²⁰⁶ which is applicable to N.'s case given

201 More in the *Right to Asylum 2021*, p. 58.

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

203 Due to his different sexual orientation, N. faced numerous problems for which he left his country of origin – 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, which can undoubtedly be qualified as humiliating treatment.

204 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 Penal Code of the Republic of Tunisia, available in French at: <https://bitly.co/H7xE>.

205 More in *Right to Asylum in the Republic of Serbia, Periodic Report for July-September 2020*, BCHR (Belgrade 2020), p. 19, available at: <https://bitly.co/HDsc> and *Right to Asylum, Report for January-June 2022*, pp. 28–30.

206 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

the circumstances of the case. 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.²⁰⁷

However, in early 2022, the Administrative Court delivered a judgment rejecting the BCHR lawyers' claim²⁰⁸, 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.²⁰⁹ Furthermore, particularly problematic was the fact that the Administrative Court failed to assess the evidence attached to the claim²¹⁰ because it was in English – 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 LATP 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.²¹¹ 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.

Several months after it adopted the above decision, the Court ruled on a claim filed by T., another Tunisian national, also an LGBTI person, who relied

his partner's request for family reunification. The applicant claimed he would be at risk of ill-treatment if he were deported to his 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. 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." ECtHR judgment in the case of *B. and C. v. Switzerland*, Application Nos. 43987/16 and 889/19, available at: <https://bityl.co/H7xG>.

207 Available at: <https://bityl.co/H7xJ>.

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

209 The Court 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.

210 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.

211 Pursuant to Article 32, LATP.

on nearly identical facts as N. in his asylum application. To support T's claim, the BCHR legal team filed the same ECtHR judgment, this time along with its translation into Serbian. In its decision on the BCHR's claim, the Administrative Court reiterated the view it voiced in its judgment on N's claim,²¹² again ignoring ECtHR's case-law, although it this time received a Serbian translation of the judgment submitted in evidence.

The BCHR legal team also notified the Administrative Court that the ECtHR had indicated an interim measure with respect to N.²¹³ and that there was a great likelihood that it would indicate such a measure in T's case as well, should his asylum application meet the same fate. However, the Administrative Court held that this had no bearing on its assessment of the lawfulness of the impugned ruling, since "two different administrative disputes" were at issue and that the "ECtHR reviews each case individually, examining its specific circumstances, and indicates an interim measure when it considers it in the interest of the parties or in the interest of proper conduct of the proceedings before it."

In the opinion of BCHR's lawyers, the described Administrative Court's practice is dangerous because, by ignoring ECtHR's judgments and its views on violations of the ECHR, which is an integral part of the RS legal order, it places the RS at risk of being found responsible for human rights violations. True, the ECtHR does examine each case individually. It is also generally well-known that the ECtHR takes into account identical or similar ECHR violations it found in its prior case-law. In that sense, its sanctions against the RS in the case of asylum-seeker T. may be even harsher if it has already found that the national asylum authorities responsible for the violation of asylum-seekers' fundamental human rights.

3.3.2. Recommendations

The analysis of the Administrative Court's judgments shows that it continued with its negative practices, impeding the improvement of the RS asylum system on the whole. In the experience of BCHR's legal team, the higher the authority ruling on an asylum case, the briefer and more modest in terms of substance its reasoning for rejecting the asylum application. Higher authorities, like the

212 Judgment U 24542/20 of 27 May 2022.

213 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 (Under Art. 47 of the ECtHR's Rules of Court). Four days later, on 17 March 2022, the BCHR received ECtHR's response, by which it indicated to the Government of the RS that N. should not be expelled for the duration of the proceedings before that Court. The BCHR legal team subsequently filed an application on N's behalf with the ECtHR. More in: Supplement: Cases of Belgrade Centre for Human Rights's Clients Pending before the European Court of Human Rights.

Administrative Court, which should rectify the errors of those whose operations they are overseeing and set an example for them, are expected to demonstrate a higher degree of normative awareness and “legal creativity” in their decisions. The fulfilment of the following BCHR recommendations would improve its functionality:

- The Administrative Court should take a proactive approach in its examination of asylum claims, inter alia, by holding oral hearings and ruling on the merits of the cases, something it has never done yet.
- Given the specificities of refugee law and the effects unfair rejection of claims has on asylum seekers, the establishment of specialised chambers within the Administrative Court and further trainings on asylum for its judges would contribute to more efficient and prompter decisions on these administrative disputes. Such a change would also help the Court judges improve the reasoning of their judgments especially since their views should provide the lower asylum authorities with guidance on adjudicating asylum cases and facilitate development of diverse case-law.

3.4. Supplement: Cases of Belgrade Centre for Human Rights’s Clients Pending before the European Court of Human Rights

3.4.1. Case of Bahraini National Unlawfully Extradited to His Country of Origin

The case of Ahmed Jaffar Mohammed Ali, a national of the Kingdom of Bahrain, whom the RS extradited to his country of origin on 24 January 2022 despite the ECtHR’s interim measure requiring of the relevant authorities to refrain from his extradition until 25 February 2022, garnered a lot of public attention both in the RS and the world. The BCHR analysed the case in detail in its most recent semi-annual report.²¹⁴

After he was arrested in November 2021 in Belgrade following Interpol’s Red Notice issued by Bahrain, Ahmed Jaffar Mohammed Ali unsuccessfully sought asylum from Serbian extradition authorities on several occasions. Although he denied committing the crimes he was accused of and claimed he would be at risk of torture if returned to Bahrain, the Belgrade Higher and Appeals Courts and the Ministry of Justice decided not to review his claims on the merits or notify the relevant asylum authorities of his obvious intention to seek protection from the RS.

²¹⁴ More in: *Right to Asylum, Periodic Report for June-January 2022* (BCHR, 2022), pp. 31–36, available at: <https://bityl.co/H7xL>.

Given that Ahmed Jaffar Mohammed Ali was extradited less than three days after the ECtHR indicated its interim measure, there was no longer any point in keeping it place. The ECtHR thus withdrew it and invited Ahmed Jaffar Mohammed Ali's legal representative to file an application with the Court. The BCHR's legal team submitted the application on 18 February 2022, complaining of a violation of a number of articles of the ECHR. It relied on Articles 3 and 13 of the ECHR, complaining that the RS had not adequately reviewed the merits of the applicant's claims that he would be subject to torture if returned to Bahrain. It also relied on Article 6(3(c)), claiming that the applicant had not been allowed to telephone his family whilst in the Belgrade District Prison or engage a lawyer of his choosing, and on Article 34 of the ECHR, because the RS had not complied with the ECtHR's interim measure.²¹⁵ The BCHR also initiated proceedings before the RS Constitutional Court, complaining of violations of Mr. Ali's rights under Articles 25, 57, 32(1) and 33(2) of the RS Constitution.

Following a preliminary examination of the admissibility of the application, the ECtHR on 16 June 2022 decided to invite the RS Government to submit in writing its observations on the admissibility and merits of the application pursuant to Article 54(2(b)) of its Rules of Court. The RS Government submitted its observations after 16 weeks, whereupon the applicant's lawyers were provided with six weeks to respond to its observations.

The case was still pending before the ECtHR at the time this Report was finalised. The BCHR cannot precisely indicate when the ECtHR will rule on the application. In general, its efficiency in ruling on cases depends on various circumstances. However, the very fact that the ECtHR asked the RS Government to submit its observations on the application less than four months after it had been submitted may be indication that it considers Mr. Ali's case a priority.

After Mr. Ali was extradited, the Bahraini court retried him for the crimes he had been convicted of in absentia. He is currently serving six individual terms of imprisonment: two life sentences, one 10-year prison sentence, one three-year prison sentence, one one-year prison sentence and one one-month prison sentence. All his appeals have been rejected. Mr. Ali's family claims that his right to a fair trial was violated during the trials, because he was not represented by a defence counsel during some of them and was even prevented from attending a number of hearings, because the police held him in the police car until they ended.

215 Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment. Article 6(3(c)) provides everyone charged with a criminal offence with the right to defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Article 13 lays down the right to an effective legal remedy and Article 34 the right to an individual application.

Mr. Ali's family also claims that there is no evidence that he had committed the crimes and that the court relied solely on confessions of the other indictees and witnesses that were extorted by torture.

The BCHR will continue pursuing the proceedings it initiated before the ECtHR and the RS Constitutional Court. In the event the ECtHR finds one or more violations of Mr. Ali's rights under the ECHR, he will be entitled to compensation of damages by the RS, more precisely, its tax payers. Although it is still too early to prejudge the outcome of the proceedings, the just compensation awarded by the ECtHR may be as high as €20,000. The Council of Ministers of the Council of Europe (CoE) is responsible for monitoring the execution of ECtHR's final decisions.

The RS should put an end to its practice of extraditing individuals who have sought asylum and fear persecution in their countries of origin. The relevant state authorities, as well as lawyers, should familiarise themselves in detail with domestic and international refugee law. Judicial institutions need to be aware of the importance of legal mechanisms safeguarding human rights and the consequences the RS may face if they are not complied with.

The BCHR reminds of the relevant extradition authorities' obligation to respect the 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, especially in extradition cases. Otherwise, there is a risk that the years-long harmful practice, exemplified both by Mr. Ali's and other cases well-known to the domestic and international public, will persist.²¹⁶

3.4.2. Case of Tunisian National Whose Asylum Application Was Rejected by a Final Decision

The BCHR legal team filed a request to the European Court of Human Rights to indicate an interim measure²¹⁷ in the case of a Tunisian national N., an LGBTI person, whose claim contesting the Asylum Commission's decision was rejected by the Administrative Court in early 2022.²¹⁸ The interim measure was

216 More on the case of Kurdish dissident Cevdet Ayaz, whom the Serbian authorities extradited to Turkey in the night of 25 December 2017 despite the UN Committee against Torture interim measure requesting of the RS not to extradite Mr. Ayaz to Turkey until the proceedings before the CAT were completed in *Right to Asylum 2019*, pp. 193–209. In 2022, domestic and foreign media reported on the case of another Turkish dissident – Ecevit Piroğlu – who went on a hunger strike whilst in extradition prison. See: “Turkish Politician and Activist on Hunger Strike in Serbia,” *Danas* (2 June 2022), available at: <https://bityl.co/H1tn> and “Serbia to Extradite Kurdish Politician to Turkey over ‘Terrorism’ Charges,” *BIRN* (31 May 2022), available at: <https://bityl.co/H1tt>.

217 Pursuant to Rule 47 of the ECtHR Rules of Court.

218 More in the section on the Administrative Court.

requested to prevent the execution of the Asylum Office's final decision ordering N. to leave the RS within 15 days and the risk of him being returned to his country of origin, where he would be at real risk of persecution and inhuman and degrading treatment at the hands of the Tunisian authorities.²¹⁹

The ECtHR indicated the interim measure four days later, requesting of the RS to refrain from N.'s deportation while the proceedings before this international body were pending.²²⁰ The ECtHR also requested of the BCHR to file an application in this case

BCHR's lawyers submitted the application to the ECtHR promptly. They complained that the RS had violated Articles 3 and 5 of the ECHR when it rejected N.'s asylum application.²²¹ Under the Court's well-established case-law, "[t]he Court's examination of the existence of a risk of ill-treatment in breach of Article 3 at the relevant time must necessarily be a rigorous one in view of the absolute character of this provision...".²²² Sufficient grounds for claiming that N. would face such a risk if he returned to his country of origin are reflected in the fact that he had already been subjected to torture and inhuman and degrading treatment there and that neither his personal circumstances nor the position of LGBTI people in Tunis have changed in the meantime. It needs to be emphasised that N. is entitled to protection from forcible return to Tunis where he would be at risk of torture or inhuman or degrading treatment whether or not he fulfils the requirements to be granted international protection. The BCHR's legal team is of the view that the relevant RS authorities failed to adequately examine the existence of all risks to N. when they reviewed the merits of his asylum application.

Furthermore, N. would be unable to leave the RS legally and thus comply with the Asylum Office's final ruling ordering him to leave the country within 15 days because his travel document had expired in the meantime.²²³ The Asylum Office was well aware of that fact because it had seen N.'s passport and had a copy of it in the case files, wherefore its decision put N.'s safety at risk. Without a valid passport or another adequate document in its stead, N. would have been forced to leave the RS by illegally crossing the border by himself or with the help of smugglers, which would have placed him at additional grave risk of treatment in contravention of Article 5 of the ECHR. Not only did the relevant RS authorities neglect this fact; they did not even ascertain which state in the region would admit N. to its territory.

219 Pursuant to Rule 47 of the ECtHR Rules of Court.

220 ECtHR's reply of 17 March 2022.

221 Article 3 prohibits torture while Article 5 enshrines the right to security and liberty.

222 See the ECtHR's judgment in the case of *J.K. and Others v. Sweden*, Application No. 59166/12 (30 October 1991).

223 N. initiated the asylum procedure in 2019.

N's legal representatives also initiated proceedings before the Constitutional Court, claiming violations of a number of his rights enshrined in the RS Constitution – the right to asylum,²²⁴ the right to a fair trial²²⁵ and the right to inviolability of physical and mental integrity.²²⁶ The proceedings before the ECtHR and the Constitutional Court were pending at the end of the reporting period.

224 Art. 57, RS Constitution.

225 Art. 32(1), RS Constitution.

226 Art. 25, RS Constitution.

4. ACCOMMODATION OF ASYLUM SEEKERS AND MIGRANTS

4.1. Facilities under CRM Jurisdiction

The LAMP affords asylum seekers, inter alia, with the right to material reception conditions.²²⁷ Under the LAMP, material reception conditions shall include: housing accommodation, food, clothes and a cash allowance for personal needs.²²⁸ The LAMP entrusts the CRM with the provision of material reception conditions.²²⁹ The CRM is charged with providing asylum seekers and migrants with accommodation in ACs and RTCs established by a decision of the Serbian Government.²³⁰

In the context of its EU integration efforts, the RS must comply with specific asylum and migration related standards laid down in EU law.²³¹ In its Serbia 2022 Report, the European Commission said that the Serbian authorities continued to increase the capacity to accommodate and care for migrants, with due consideration for their specific vulnerabilities in relation to COVID-19. It emphasised the role of the CRM in taking care of the material conditions for receiving asylum seekers, but noted that it was operating without a full complement of staff, while staffing in the reception centres remained fully dependent on external (EU) funding. The Commission also said that one centre hosted persons under temporary protection from Ukraine.²³²

The living conditions in the CRM-run facilities accommodating migrants and asylum seekers are regulated by the Rulebook on House Rules in Asylum Centres and Other Facilities Accommodating Asylum Seekers.²³³ The House Rules are posted on the bulletin boards in all these facilities and are available in the various languages spoken by the residents. The Rulebook on Accommodation

227 Art. 48, LAMP.

228 Art. 50(1), LAMP.

229 Art. 23, LAMP.

230 Art. 51, LAMP.

231 See: Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available at: <https://bitly.co/GQ1q> and *EASO guidance on reception conditions: operational standards and indicators*, European Asylum Support Office (September 2016), available at: <https://bitly.co/GQ29>.

232 European Commission, Serbia 2022 Report, pp. 61–63, available at: <https://bitly.co/HDCC>.

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

and Basic Living Conditions in Asylum Centres²³⁴ governs in greater detail the living conditions in these accommodation facilities. Foreigners who have been registered and referred to one of the CRM-run facilities first undergo a medical examination on admission. They are provided with beds and bed linen, heating, water, electricity and bathrooms. Under the Rulebook, all residents shall be provided with items for maintaining personal hygiene and hygiene in the centre. The Rulebook lays down that the residents shall be accommodated in accordance with the principles of non-discrimination, family unity, gender equality and care for persons with special needs. The basic living conditions also include meals, which are prepared within or delivered to the facilities.

The BCHR legal team had unimpeded access to ACs and RTCs throughout 2022, during which it was able to regularly extend free legal aid to residents in need of international protection, as well as see for itself the living conditions in the facilities. CRM staff managing the ACs and RTCs provided visiting BCHR lawyers with private rooms in which they extended legal aid to their clients in safety and confidentiality.

This chapter will provide a brief explanation of the differences between ACs and RTCs, particularly with respect to the exercise of rights by asylum seekers living in them. It will also provide a detailed overview of the situation of asylum seekers in all ACs in the RS, whilst focusing on access to the asylum procedure in the ACs and accommodation of individuals granted temporary protection.

4.1.1. Reception-Transit Centres

Under the LATP, the Government shall, in addition to ACs, designate one or more other accommodation facilities that shall also be managed by the CRM. The ongoing refugee-migrant crisis, which intensified in 2015, prompted the RS to increase efforts to accommodate as many as possible foreigners in need of international protection in its territory, wherefore it opened a number of RTCs across the country.²³⁵

According to information available on CRM's website, 11 RTCs in the RS were active at the time this Report was prepared.²³⁶ Like in the past, slower migrant movement due to cold weather led to an increase in the number of RTC residents. The trend again resulted in the overcrowding of some CRM-run facilities, notably the RTCs in Adaševci, Preševo, Sombor and Šid.²³⁷

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

235 See the BCHR's 2015–2021 *Right to Asylum* reports, available at: <http://azil.rs/>.

236 RTCs in the following towns were active in 2022: Adaševci, Bosilegrad, Bujanovac, Kikinda, Preševo, Principovac, Sombor, Subotica and Šid. The RTCs in Pirot and Divljana were reopened in late 2022.

237 Information available on CRM's website: <https://kirs.gov.rs/lat/azil/profil-centara>.

Under the LAMP, registered asylum seekers are under the obligation to report to the AC or RTC specified in their registration certificates within 72 hours.²³⁸ In 2022 the MOI continued its years-long practice of referring asylum seekers to remote RTCs and transferring them to ACs after a short period of time, although the ACs were not full at the time they were registered. Asylum Office staff have not been conducting official actions in RTCs.

During its regular monthly visits²³⁹ to RTCs in which it has been conducting its activities, the BCHR legal team noted the substandard living conditions of migrants and asylum seekers in those establishments. For instance, the residents of the RTCs in Adaševci and Preševo were accommodated in large rooms furnished with between 10 and 15 beds. Such rooms are not conducive for longer stays as they undermine the residents' dignity and right to privacy. Maintenance of hygiene in these RTCs is also questionable, given that unpleasant odours permeate the dormitories almost all the time. Asylum seekers the MOI referred to the RTC in Preševo, to whom the BCHR team extended legal advice, repeatedly complained about the accommodation conditions and asked whether they could transfer to another, better equipped centre. The Bosilegrad RTC, which families were referred to and which was not overcrowded in 2022, was the exception – it is renovated, clean and well-maintained.

In general, fewer occupational activities, such as language courses and various thematic workshops, were implemented in RTCs than in ACs. In addition, many of the RTCs were in need of interpretation services²⁴⁰ and psycho-social support services.²⁴¹ However, the exceptions were the RTCs in Sombor²⁴², Šid²⁴³,

238 Art. 35(3), LAMP.

239 In 2022, BCHR's lawyers regularly visited the RTCs in Adaševci, Bosilegrad, Bujanovac and Preševo and the other RTCs when necessary. In December, for instance, they visited the RTCs in Šid and Principovac to extend legal advice to asylum seekers.

240 For instance, the Principovac and Subotica RTCs do not have enough interpreters to help the residents and CRM staff.

241 Information available on CRM's website: <https://kirs.gov.rs/lat/azil/profil-centara>. A conclusion the BCHR team also drew during its field visits.

242 Various creative workshops, Serbian and English language courses, sports activities and monitoring of the protection of refugee children were conducted in the Sombor RTC during the reporting period. The RTC was visited in 2022 by UNHCR, International Organisation for Migration (IOM), EHO, Caritas, PIN, and UNICEF. CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

243 In the Šid RTC, activities were conducted by UNHCR and IOM, EHO, which organised the children's corner and occupational activities; PIN extended psychological support services. Atina, ADRA and Info Park organised workshops for empowering women and girls and for work with other vulnerable groups. During the reporting period, the Šid RTC was also visited by the DRC, which focused on the informal education of the residents, as well as by the HCIT, whose team extended free legal aid. CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

Bosilegrad²⁴⁴ and Preševo²⁴⁵, where CSOs implemented a number of activities in 2022.

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

4.1.2. Asylum Centres

Under the LATP, asylum seekers shall be accommodated in one of the ACs run by CRM. The Serbian Government shall establish one or more ACs at the proposal of the CRM, which is charged with their internal organisation and staffing.²⁴⁶ The difference between ACs and RTCs is legal in character. The Asylum Office conducts the asylum procedure in ACs, where it receives the asylum applications and interviews the asylum seekers, but not in RTCs. The ACs in the following towns were active in 2022: Bogovađa, Krnjača, Obrenovac, Tutin, Sjenica and Vranje. The CRM provides accommodation in ACs for all asylum seekers, regardless of their sex, age or other personal characteristics.

Under an informal CRM and MOI decision, some ACs are designated for the accommodation of families or foreigners travelling alone, while others accommodate exclusively single male migrants. None of the ACs was designated exclusively for the accommodation of unaccompanied and separated children throughout the reporting period,²⁴⁷ presumably because a small number of unaccompanied and separated children seek asylum in the RS. According to information obtained by the BCHR team during the year, CRM continued making sure that unaccompanied children were accommodated separately from adult

244 The CRM representatives informed the BCHR legal team during its regular monthly visits to the Bosilegrad RTC of the activities implemented in this facility. In addition to BCHR's legal team, this RTC was visited in 2022 also by UNHCR, IOM, UNICEF, Sigma +, Indigo and Atina.

245 According to the information the BCHR legal team obtained during its field visits to the RTC in Preševo, international and civil society organisations, such as UNHCR, IOM, UNICEF, Indigo, Info Park, Caritas, Asylum Protection Centre (APC) and the BCHR, extended numerous services and held various workshops for the residents of this RTC: interpretation, psychological and legal aid services, educational and creative workshops, English language courses and other occupational activities. CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

246 Arts. 35 and 51, LATP.

247 Information available on CRM's website: <https://kirs.gov.rs/lat/azil/profil-centara>.

asylum seekers. ACs accommodating families made sure that the family unity principle was complied with.

In its press release of 28 February 2022,²⁴⁸ the CRM said that it had the capacity to urgently take in Ukrainian refugees who fled their country after the conflict with Russia escalated. The CRM designated the AC in Vranje for the accommodation of refugees from Ukraine and the first residents arrived on 8 March 2022.²⁴⁹ The CRM regularly updated its website with information on the accommodation and activities for the residents of the Vranje AC. It, however, did not follow its own good practice example in case of the other facilities it manages.²⁵⁰

Under the Migration Management Law²⁵¹ migration shall be managed in accordance with the principles of balanced and planned economic development and prohibition of the artificial change of the ethnic composition of the population. Most ACs are located outside urban settlements or on the outskirts of towns or cities. Of the six ACs active in 2022, four are far from Belgrade, where the Asylum Office is headquartered, which has often impinged on the scheduling of asylum-related actions, even more so due to the pandemic. Given that most ACs far from Belgrade are located in isolated and economically underdeveloped areas, the asylum seekers' integration in the local community is often much slower and more difficult.

All ACs are open-type facilities, which means that asylum seekers are free to leave them without asking for permission, but they are under the duty to comply with the Rulebook on House Rules. Under the Rulebook, the ACs shall be locked from 10 pm in wintertime (11 pm in summertime) to 6 am. Asylum seekers are allowed to spend a maximum of 72 hours outside their AC. If they do not return within that period, the CRM deletes their names from the list of AC residents, which affects reviews of their applications. Namely, when the AC management forwards the information on the deletion of a name from the list of AC residents, the Asylum Office issues a ruling discontinuing the asylum procedure, unless the asylum seeker promptly notifies it of their new address.²⁵²

Asylum seekers who want to live in private lodgings need to submit a request for approval to the Asylum Office.²⁵³ For their request to be approved, they

248 Available in Serbian at: <https://bit.ly/3ZQ3dpd>.

249 See the CRM press release, available at: <https://bityl.co/H62B>.

250 See the CRM's website.

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

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

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

must have sufficient funds and must have already formally applied for asylum.²⁵⁴ The BCHR did not identify any problems concerning the asylum seekers' move from CRM-run facilities to private lodgings in 2022. In addition, the Asylum Office continued with its practice of approving residence in private lodgings in particularly sensitive cases and for justified reasons even before the foreigners at issue applied for asylum.

The ensuing section will discuss in greater detail access to the asylum procedure in CRM-run accommodation facilities, the situation of asylum seekers in all ACs and the situation and conditions in which people from Ukraine granted temporary protection were living. The BCHR legal team focused on the ACs since the vast majority of foreigners who genuinely wish to apply for asylum in the RS reside in them and since the Asylum Office conducts the asylum procedure in them. The overview of the situation of asylum seekers and living conditions in ACs is based on the perusal of official CRM reports and the CRM's response to the BCHR's request for information of public importance, UNHCR reports, on observations of the BCHR legal team during its field visits and information it obtained from AC residents during the reporting period.

4.1.2.1. Access to the Asylum Procedure in RTCs and ACs

As noted, the Asylum Office does not conduct official actions in RTCs. Foreigners accommodated in RTCs are transferred to ACs after they apply for asylum. In practice, this usually occurs when their representatives notify the MOI and the CRM that their clients want to apply for asylum in the RS or the asylum seekers submit their written asylum applications to the MOI either on their own initiative or via their representatives.

Foreigners apply for asylum by filling a four-page asylum application form in a language they understand. Such forms are available in CRM-run accommodation facilities.²⁵⁵ However, during its field visits, the BCHR legal team saw for itself that such forms were not available in all RTCs.

CRM staff in ACs and RTCs used to e-mail the residents' written application forms to the MOI. However, according to information the BCHR legal team obtained in the field in the last quarter of 2022, the CRM managements in some ACs and RTCs stopped e-mailing the filled application forms to the Asylum Office,²⁵⁶

254 The Asylum Office grants individual applications by issuing decisions in the form of rulings.

255 In addition to Serbian, the asylum application forms are available in English, French, Spanish, Arabic, Russian, Pashto, Urdu and Persian.

256 Information the BCHR obtained during its field visits to the ACs in Tutin and Vranje and the RTC in Sid.

while the staff in some of these facilities explained that the forms should be submitted by the lawyers visiting the foreigners.²⁵⁷

In the BCHR's opinion, this change is problematic in practice in terms of the right to access the asylum procedure for a number of reasons. First of all, the BCHR legal team does not regularly visit all RTCs in the RS,²⁵⁸ while it usually visits the RTCs it regularly visits once a month.²⁵⁹ On the other hand, foreigners often want to initiate the asylum procedure before they are visited by the BCHR or another CSO and before they obtain legal aid and other relevant information on the asylum procedure in the RS.²⁶⁰ Consequently, many of the filled application forms were not promptly delivered to the Asylum Office in the last months of 2022, impinging on the foreigners' access to and realisation of their rights enshrined in regulations governing the rights of this category of foreigners.²⁶¹ Impeded access to the asylum procedure further demotivates people in need of international protection to stay longer in the RS and seek asylum in it.

In the first half of 2022, an MOI officer was deployed in the Krnjača AC, who registered foreigners who expressed the intention to seek asylum in the RS and issued them registration certificates without which they could not formally apply for asylum. No police officer was deployed at the Krnjača AC at the time this Report was prepared and it remained uncertain if and when the practice would resume. No police officers were deployed in the other ACs²⁶² during the

257 Whereby they are passing the responsibility from the state authorities to CSOs for no apparent reason.

258 The BCHR legal team visits specific RTCs regularly and other RTCs in extraordinary cases, when it hears that their residents need free legal aid.

259 BCHR's lawyers pay additional visits to specific RTCs they regularly visit where necessary and with the CRM's prior approval.

260 The well-established practice in the Preševo RTC was the exception. An UNHCR representative, who was present at all times in this RTC during the reporting period, profiled the new arrivals who expressed the intention to seek asylum, distinguishing between those who genuinely wanted to seek asylum and those temporarily accommodated in the RTC and not intending to apply for asylum in the RS. Consequently, BCHR's lawyers could immediately extend the legal advice and they were provided with adequate access to the asylum procedure.

261 For instance, foreigners cannot exercise the following rights until they apply for asylum: the right to a personal document – ID, which is issued three days after they apply for asylum (Art. 89, LATP); the right to move to private lodgings (Art. 47(2(3)), LATP); the right to apply for welfare (Art. 48(1(3))); and, notably, the right to access the labour market nine months after applying for asylum (Art. 13, LEF) – this overly long time period, which is further prolonged by the new harmful practice, is one of the main reasons why many asylum seekers decide to leave the RS.

262 According to information obtained by the BCHR team.

reporting period to register the foreigners and issue them personal documents, although they should be deployed in all ACs in the RS.²⁶³

The Asylum Office has almost regularly been conducting asylum-related actions in the Krnjača AC, which is the closest to its headquarters in Belgrade. According to information in the possession of the BCHR legal team, the Asylum Office did not conduct any official actions in the Obrenovac AC, which is also located in the territory of the capital.²⁶⁴ At the same time, the Asylum Office conducted official actions twice in the Tutin AC and once in the Sjenica AC²⁶⁵, two ACs it did not visit at all in 2020 and 2021.²⁶⁶ The Asylum Office did not conduct any official actions in the Bogovađa and Vranje ACs in 2022.

4.1.2.2. Accommodation Conditions and Situation of Asylum Seekers in Asylum Centres

As noted, the situation of asylum seekers living in ACs is generally better than that of those in RTCs. However, in the BCHR's opinion, the reception conditions in ACs do not fully comply with international protection standards and some services asylum seekers need almost on a daily basis are not sufficiently available to them. Furthermore, asylum seekers living in some ACs have had difficulty accessing some of their integration related rights, as the following section will elaborate.

a) Material Reception Conditions

The CRM is charged with providing material reception conditions, which as noted, include accommodation, food, clothing and a cash allowance for personal needs.²⁶⁷ To the best of the BCHR's knowledge, the CRM did not fulfil its statutory obligation to provide a cash allowance for asylum seekers in ACs by the end of the reporting period. Furthermore, the level of material reception conditions provided was not the same in all ACs.²⁶⁸

The Bogovađa AC, located in the former Red Cross Children's Resort,²⁶⁹ can take in 200 people. The residents of this AC share rooms, bathrooms and toilets.

263 To the best of the BCHR team's knowledge, before the pandemic struck in 2020, the Asylum Office deployed a police officer at the Banja Koviljača AC while it was operational and another police officer in the Bogovađa AC for a specific period of time.

264 The Obrenovac RTC was redesignated as an AC under a RS Government decision of 16 June 2021, whereupon the Asylum Office did not perform any official actions in this AC.

265 In August and September 2022, the Asylum Office interviewed asylum seekers in these ACs represented by BCHR's lawyers.

266 See *Right to Asylum 2020*, pp. 82–85, and *Right to Asylum 2021*, pp. 72–73.

267 Art. 50(1), LAMP.

268 The BCHR legal team drew this conclusion based on its field visits during the reporting period and the impressions of the asylum seekers it had talked to during its visits to the ACs.

269 The Bogovađa AC was established in June 2011.

The AC has a TV room. Although the Bogovađa AC accommodated more unaccompanied and separated children than any other CRM-run facilities in 2022, this AC was no longer reserved for the accommodation of only this vulnerable category of asylum seekers.²⁷⁰ Adult men and women, as well as families²⁷¹, lived in this AC during the reporting period alongside separated and unaccompanied children, but its management ensured that they were accommodated separately, as the BCHR legal team saw for itself during its field visits. Commendable as this practice is, the BCHR is of the opinion that unaccompanied children should be accommodated in separate facilities tailored to their needs to ensure that they are safe and that the best interests of the child are complied with.

The meals are served regularly, three times a day, in the cafeteria. The meals are prepared in the AC and none of the residents the BCHR team spoke to complained about their quality. However, the communication problems due to the weak Internet signal and poor reception remained unaddressed in 2022.

The Sjenica AC is located in the management building of the Vesna plant, around 250 km away from Belgrade²⁷², and can accommodate up to 400 people.²⁷³ On average, around 15 adult males, most of whom who have been or are still treated for their physical injuries, lived in this AC throughout 2022. The number of residents increased as of October 2022.²⁷⁴ Access to the facility and its yard are well-maintained. The building comprises rooms shared by the asylum seekers, a cafeteria and a TV room, which is used on a daily basis.

The asylum seekers are served three meals a day meeting their religious and health-related dietary requirements. Asylum seekers represented by BCHR's lawyers did not have any complaints about their food or accommodation.

The Tutin AC is located in a new building in Velje Polje, some 295 km away from Belgrade.²⁷⁵ The Tutin AC can take in up to 280 people. At the end of the

270 The Bogovađa AC was designated for the accommodation of unaccompanied and separated children under an informal CRM and MOI decision. The practice changed in 2021, when the number of unaccompanied and separated children in the AC was small and families and single asylum seekers, mostly from African countries, were referred to this AC. The practice persisted in 2022, as the BCHR legal team observed during its field visits in the reporting period.

271 The CRM management told the BCHR team during its visit in November 2022 that the Bogovađa AC would in the future accommodate only families and unaccompanied and separated children.

272 It was opened in March 2017.

273 Information available on the CRM's website: <https://kirs.gov.rs/cir/azil/profil-centara>.

274 Fifty-four asylum seekers of various nationalities were living in this AC at the time. Information the BCHR obtained from the CRM management in October 2022.

275 The old facility in the Tutin AC, in the old industrial building of the Dalas factory, was shut down.

reporting period, around 100 asylum seekers were living in this AC; with the exception of one family, all of them were adult males.²⁷⁶

The residents shared the toilets and bathrooms. The Tutin AC is a modern and clean facility with a TV room and cafeteria. During its visits, the BCHR legal team noted that the Tutin AC was clean and well-maintained.

The asylum seekers in this AC are provided with three meals a day, meeting their religious dietary requirements. The BCHR's clients did not complain about the food or accommodation in the Tutin AC.

The Krnjača AC is around four kilometres away from Belgrade. It is located within the complex of the construction company PIM Ivan Milutinović²⁷⁷ and can accommodate up to 1,000 asylum seekers – the AC comprises 16 pre-fab barracks with 240 rooms. Only a third of its capacity was filled at the time this Report was drawn up²⁷⁸, and the AC was not overcrowded at any time in 2022. Access to all the barracks is disability-friendly.²⁷⁹ Families, asylum seekers represented by the BCHR²⁸⁰, and foreigners with health problems were usually referred to this AC during the reporting period. The asylum seekers share rooms in the barracks and the CRM ensures respect for the family unity principle and accommodates families in separate barracks. The BCHR legal team noted that unpleasant odours permeated the barracks, while the asylum seekers it talked to complained of inadequate heating when the weather was cold.

The AC has a TV room and a cafeteria, in which the meals are served three times a day; school-children are provided with snacks as well. The BCHR's clients and other asylum seekers its legal team talked to during the reporting period often complained not only of the taste of the food and the way it was prepared, but of the size of the meals as well, and said that everyone who could afford to supplement their meals bought food and brought it to the AC.

The Obrenovac AC was redesignated from the RTC to AC by the RS Government's decision adopted in June 2021.²⁸¹ This AC could take in 650 residents at the time this Report was prepared²⁸² Around 500 foreigners²⁸³ were staying at this AC

276 Information obtained from the Tutin AC management in November 2022. On file with the BCHR.

277 Information available on CRM's website: <https://kirs.gov.rs/cir/azil/profil-centara>.

278 *Ibid.*

279 *Ibid.*

280 On a number of occasions, the CRM transferred the asylum seekers to the Krnjača AC to facilitate their communication with their BCHR legal representatives.

281 In January 2017, the CRM was granted use of the Obrenovac army barracks "Bora Marković" to expand the AC and RTC capacities.

282 Information available on CRM's website: <https://kirs.gov.rs/cir/azil/profil-centara>.

283 Only three of whom were asylum seekers.

during the BCHR legal team's last visit in 2022. The number of residents exceeded the AC's capacity on a number of occasions during the reporting period.²⁸⁴

According to data available on CRM's website, the Obrenovac AC comprises facilities for the accommodation and work of CRM staff, a living room, hair salon, training classrooms, recreation area, restaurant and a doctor's room. The AC has small and large rooms, with 10–15 beds, where foreigners from the same countries are accommodated. The AC also has smaller rooms for the accommodation of vulnerable residents and residents who need to be isolated for medical reasons, et al.²⁸⁵

All AC residents are provided with three meals a day and clean clothes and footwear when necessary. The CRM distributes hygiene packages to all asylum seekers on admission and throughout their stay in the AC.²⁸⁶

The **Vranje AC**, which is located in the renovated part of the Vranje Motel, was an RTC until the Serbian Government redesignated it in June 2021.²⁸⁷ The Vranje AC had been closed for renovation. Under the CRM decision, it was designated for the reception of first refugees from Ukraine.²⁸⁸ The AC can take in 150 residents. The AC mostly accommodated families and was not overcrowded during the reporting period. The AC has rooms with two, three or more beds, common areas such as a dining room, living room and children's corner²⁸⁹, toilets and bathrooms, and other rooms reserved for CRM staff and holding educational workshops. The AC is clean and well-maintained and evidently in a much better state of repair than the other ACs.²⁹⁰ Conditions of the Vranje AC is an example of good practice that should be followed by other ACs in the RS.

b) Health Care

Asylum seekers generally had access to primary health care in the ACs, which were staffed by medical teams during the reporting period. However, not

284 This AC had room to take in new arrivals after the number of its residents fell when other RTCs, such as the ones in Divljana and Pirot, opened in the latter half of 2022.

285 Information the BCHR team obtained from the CRM management when it visited the Obrenovac AC on 6 December 2022.

286 *Ibid.*

287 The Vranje AC was opened as an RTC in May 2017.

288 A telephone line for refugees from Ukraine was soon opened and they could contact the CRM if they needed accommodation or, in case they already had a place to live, food, clothes and footwear, urgent medical assistance or any other needs during the crisis. The BCHR and other CSOs were informed that all refugees from Ukraine were to be directly referred to the CRM if necessary.

289 In cooperation with UNHCR, IKEA donated the furniture for the living room and children's corner.

290 Following its renovation, the Vranje AC was furnished thanks to donations from IKEA. Information the BCHR obtained in the field.

all ACs had health care staff available at all times, wherefore some asylum seekers had difficulty obtaining medical assistance on time.

For instance, a medical team has not been present in the **Bogovađa AC** on a regular basis since 2021. This is why Group 484 arranged that a medical team visit this AC twice a week, on Tuesdays and Thursdays.²⁹¹

On the other hand, a general practitioner was present in the **Sjenica AC** every workday from 8 am to 2 pm. The AC was also staffed by a nurse and psychologist. The AC transported asylum seekers to the out-patient health clinic and other health centres if necessary.

The **Tutin AC** did not have a doctor present on a daily basis. The doctor visited this AC twice a week to examine residents of need of medical assistance and issue the necessary medical instructions. Asylum seekers were referred to the local out-patient health clinic or other health institutions if necessary.²⁹²

A general practitioner was available in the **Krnjača AC** every workday from 1:30 to 7:30 pm, extending medical services in a separate barracks adapted into a doctor's office. Asylum seekers were referred to other health institutions in the territory of Belgrade if necessary.

Medical teams (a doctor and a medical technician) worked in two shifts in the **Obrenovac AC** every day, from 7 am to 7 pm. Asylum seekers were referred to the local out-patient health clinic, a hospital or another health institution in case they needed additional specialist examinations.

The **Vranje AC** has a doctor's office staffed by a medical team every day. The residents are referred to and transported with the help of the AC management to the out-patient health clinic or other health institutions in Vranje if necessary.

c) Availability of Other Services of Relevance to Asylum Seekers in ACs and (Im)Possibility of Integration

The LATP entitles asylum seekers to receive information about their rights and obligations throughout the asylum procedure²⁹³, and information about CSOs extending assistance and relevant information to asylum seekers.²⁹⁴ The LATP also provides for the principle of free access to the UNHCR²⁹⁵ and the principle of free interpretation.²⁹⁶ However, in the BCHR's opinion, these rights are not equally or sufficiently available to asylum seekers in all ACs.

291 Information obtained from UNHCR.

292 *Ibid.*

293 Art. 56(1), LATP.

294 Art. 56(3), LATP.

295 Art. 14, LATP.

296 Art. 13, LATP.

The **Bogovađa AC** has a facility in which international and civil society organisations with access to this AC perform their regular activities. In addition to the BCHR, this AC was visited during the reporting period also by the Centre for Research and Social Development (IDEAS), Caritas, CRPC, Group 484, International Aid Network (IAN), IOM and UNHCR.²⁹⁷ These organisations implemented various activities both for young and older AC residents, including Serbian and English language courses and other creative workshops aiming to help the residents master specific skills or obtain useful and necessary information about their life in the RS, and extended them Persian interpretation/translation assistance, psychosocial assistance and legal aid.

The BCHR legal team extended the residents legal aid in a separate room designated for confidential and private conversations with the residents, or outdoors, weather permitting. During its regular monthly visits, the BCHR was accompanied by an interpreter to facilitate the provision of legal aid, given that this AC is not staffed with interpreters for all of the asylum seekers' native languages.²⁹⁸

This AC is not located in a settlement. It is surrounded by a forest. Most services necessary for everyday life²⁹⁹ are available in remote towns, such as Lajkovac (10 km away) and Valjevo. Therefore, the asylum seekers living in the Bogovađa AC have quite limited opportunities for integration and contact with the local population.

Fewer CSOs visited the **Sjenica AC** in 2022 than in 2021. The reason may lie in the smaller number of asylum seekers accommodated in this AC during the reporting period, as well as in its remoteness, which poses a particular challenge when the roads are snowed under in winter. In addition to UNHCR, IOM and the BCHR, the Refugee Organisation visited this AC and implemented its activities there. The CRPC visited the Sjenica AC in November 2022, and held a workshop on legal aid, the asylum procedure and refugee integration in the RS in cooperation with UNHCR, CRM and the BCHR.

The AC management placed a separate room at the disposal of BCHR's lawyers to extend legal aid to the asylum seekers, thus ensuring the confidentiality

297 Information obtained from the CRM management and available on CRM's website: <https://kirs.gov.rs/cir/azil/profil-centara>.

298 For instance, during its field visits, the BCHR provided the asylum seekers with access to a French interpreter, given that many of the residents come from French speaking countries (African states, such as Burundi, DR Congo, Cameroon, Guinea Bissau, etc.).

299 For instance, the closest grocery shop is almost 3 km away from the Bogovađa AC. The primary and secondary schools are located in Lajkovac; the primary school has a class in the Bogovađa village.

of all their conversations.³⁰⁰ Where necessary, the BCHR legal team engaged interpreters to facilitate its provision of legal aid, since interpreters were not present in the Sjenica AC at all times.

Thanks to CSOs, the residents of the **Tutin AC** had access to legal aid, psychosocial support, Serbian language lessons, sewing workshops and other activities during the reporting period. In addition to the BCHR, the following organisations conducted their activities in this AC in 2022: the Red Cross, DRC, Sigma Plus, Swiss Agency for Development and Cooperation (SDC), IOM and UNHCR. The CRPC visited the Tutin AC in November 2022, and held a workshop on legal aid, the asylum procedure and refugee integration in the RS in cooperation with UNHCR, CRM and the BCHR.

The AC management provided the legal aid and other assistance providers with a room where they could talk with the asylum seekers in confidence, and even let them use its own offices if other adequate rooms were unavailable. The residents of this AC had access to interpreters only when the latter accompanied CSOs that conducted activities in this facility.

The **Krnjača AC** is the closest to the headquarters of most international and non-government organisations extending assistance to refugees and asylum seekers, wherefore the greatest number of activities for asylum seekers were held in it in 2022. Numerous CSOs and international organisations conducted various activities of relevance to the AC's residents – from the extension of legal aid and interpretation services³⁰¹, to psychosocial support, language courses, craft courses and other educational activities. In addition to the BCHR, the following organisations implemented their activities in the Krnjača AC during the reporting period: APC, Caritas, CRPC, DRC, PIN, IDEAS, Indigo, Group 484, Atina, Serbian Red Cross, UNICEF, IOM, UNHCR and others.

BCHR's legal team paid both regular and ad hoc visits to this AC during 2021 and extended legal aid to its residents. Like in the past, BCHR's lawyers were provided with adequate conditions for confidential talks with their clients, in rooms designated for use by CSOs; the AC management went out of its way to accommodate them.³⁰²

300 CRM staff always went out of their way to help the BCHR legal team distribute the asylum application forms, find the registration certificates of the AC residents, et al, as well as share all information about the situation and conditions in this AC.

301 Interpretation services in the Krnjača AC were extended, e.g., by DRC, IOM, Caritas, as well as Atina, PIN and other organisations that visited the AC and implemented various activities for asylum seekers. CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

302 There is a classroom in the AC, which the CRM let the BCHR, CRPC and UNHCR use for their workshops on the asylum procedure and integration of refugees and asylum seekers in the RS.

Buses going to downtown Belgrade³⁰³ and running every 20 minutes stop at a station close to the AC. Asylum seekers living in this AC are more motivated to seek asylum in the RS since they have greater employment and integration opportunities³⁰⁴ due to the proximity of Belgrade.

The Obrenovac AC was visited during the reporting period by representatives of international and non-government organisations that extended various services and implemented activities for asylum seekers. In addition to the BCHR, which extended legal aid and visited this AC every month, the AC was also visited by representatives of IOM, UNHCR, Group 484, which held occupational activities for the AC residents twice a week, the Serbian Red Cross³⁰⁵ and Info Park. BCHR's lawyers were provided with a separate room to extend legal aid to its clients and other interested foreigners in privacy and confidentiality.

No interpreters engaged by the CRM were present in the Obrenovac AC on a regular basis, despite the large number of residents. According to the information the BCHR obtained from the CRM during the reporting period, interpretation services were provided by an interpreter engaged by the IOM,³⁰⁶ while the language courses were suspended due to lack of interest on the part of the residents.³⁰⁷

In addition to numerous educational activities, excursions and visits to historic and cultural monuments were organised for Ukrainian nationals (and several Russian nationals) accommodated in the Vranje AC. Familiarisation with the culture and tradition of the host country substantially facilitates the refugees' early integration in the new community. Thanks to CRM's assistance and other donations, the children enrolled in Vranje primary and secondary schools were provided with textbooks and school supplies.

Numerous international and civil society organisations visited the Vranje AC in 2022 and extended legal aid (the BCHR legal and integration team)³⁰⁸, psychosocial assistance, conducted various occupational activities, language and

303 BCHR's clients with disabilities complained that they could not board most buses on the 108 route, because they did not have ramps.

304 Given that the Krnjača AC was designated for the accommodation of families with children, the greatest number of asylum seeking children enrolled in RS schools were living in this AC.

305 Which visited the AC once a week.

306 CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

307 Information the BCHR team received from the CRM management in the Obrenovac AC in December 2022.

308 The BCHR legal and integration team started visiting the Vranje AC once a month after the first refugees from Ukraine arrived in February and March 2022. The BCHR extended free legal aid both to asylum seekers and foreigners who wanted to apply for temporary protection during the reporting period.

sewing courses and other educational activities, et al.³⁰⁹ Interpreters engaged by Indigo and DRC were also present in the AC.³¹⁰

4.1.3. Recommendations

The RS continued providing humanitarian accommodation to large numbers of migrants and asylum seekers in 2022, referring them to CRM-run facilities where they had access to fundamental rights. However, the relevant authorities did not assess in each individual case whether the foreigners were in need of international protection, wherefore they continued referring asylum seekers to RTCs rather than ACs. Furthermore, foreigners did not have at all times unimpeded access to the asylum procedure, integration opportunities or specialised services in all the ACs and RTCs. The BCHR therefore issues the following recommendations that will help improve the situation of foreigners living in ACs and RTCs:

- The CRM should continue improving the living conditions in all the AC and RTC facilities, especially in the context of maintaining hygiene, to ensure that all their residents live in warm, safe and quality accommodation facilities and in dignity. The CRM provided a good practice example by opening of the Vranje AC, and by providing adequate conditions for the reception of refugees from Ukraine, and transparent information on the situation in and needs of this AC, a practice it should follow when upgrading the living conditions in the other ACs and RTCs it runs.
- All ACs and RTCs should ensure regular presence of interpreters for the native languages of migrants and asylum seekers to provide them not only with effective access to legal information, but also to their other rights related to material reception, health care, psycho-social support, et al.
- All ACs and RTCs should provide their residents with continuous access to health care, given that doctors are not stationed on a daily basis in some ACs and RTCs.
- It is desirable that, in the context of accommodation standards, the example of good practice shown in the Vranje AC is followed by other ACs and RTCs.

309 In addition to the BCHR, this AC was visited also by representatives of DRC, Indigo, Sigma plus, PIN, IAN, the Red Cross of Serbia, CSW and UNHCR.

310 CRM's letter no. 019-4121/2-2022 of 8 December 2022 in response to the BCHR's request for access to information of public importance.

- Thought should be given to relocating ACs and RTCs far away from towns and cities, to enable asylum seekers to access the labour market more easily as soon as they are entitled to and to integrate in the local community through everyday communication with the local population.
- Asylum Office staff should conduct official actions in ACs further from the Office headquarters in Belgrade more often, in order to provide the asylum seekers living in these ACs with effective access to the asylum procedure and ensure it is not prolonged for reasons not provided for by the law. Ideally, an Asylum Office staff member should be deployed in each AC to conduct the duties within the remit of this authority.
- Asylum seekers should be referred to ACs rather than RTCs to avoid unnecessary delays in the initiation of their asylum procedure. Foreigners accommodated in RTCs who want to apply for asylum must be registered promptly and referred to one of the available ACs, given that the Asylum Office does not conduct official actions in RTCs.

5. ASYLUM SEEKERS WITH SPECIFIC NEEDS

The Convention does not list social groups, and the ratification history does not reflect the view that there are a number of identified groups that can be included on such grounds.³¹¹ UNHCR has created a concept under which a particular social group consists of a group of persons perceived by society as a group; sharing a common trait, which is often innate, unchangeable or relevant to identity, consciousness or the exercise of human rights.³¹² The LATP sets out that grounds of persecution shall be assessed taking into account, inter alia, membership of a particular social group, where members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that a person must not be forced to renounce them, and that group has a distinct identity in the relevant country of origin, because it is perceived as being different from the surrounding society.³¹³ Taking into account national and international practice, the most common examples of a particular social group include, inter alia, unaccompanied children, persons of different sexual orientations, women (victims of gender-based or sexual violence, women refusing to comply with the customs of the community – most commonly in Islamic countries).³¹⁴

Furthermore, under the LATP, the specific circumstances of individuals requiring special procedural or reception guarantees, including asylum seekers with specific needs, shall be taken into account during the asylum procedure. They include, inter alia, unaccompanied children, single parents and their underage children and victims of trafficking in human beings, as well as asylum seekers survivors of torture, rape or other grave forms of psychological, physical or sexual violence.³¹⁵

Prompt identification of vulnerable asylum seekers on the ground, adequate approach to and mapping of their individual needs are crucial for the application

311 UNHCR, *Guidelines on International Protection no. 2*, para. 3.

312 *Ibid.*, para. 11.

313 Art. 26(1), LATP.

314 In practice, the opinion was adopted that mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. The applicant must also have well-founded fear of persecution on account of their membership of such group as well.

315 Procedural and reception guarantees shall serve to provide appropriate assistance to asylum seekers, who, due to their personal circumstances, are unable to benefit from the rights and obligations under the LATP without such assistance. These guarantees are not, however explicitly defined in the law.

of the special procedural and reception guarantees in the meaning of the LAMP. This has, however, proven difficult in practice given the specific position, as well as the traumatic experiences of these categories of asylum seekers and the cultural barriers. Like in the past, they lacked adequate systemic support and protection, which was again mostly provided by non-governmental organisations (NGO).

The ensuing sections will focus on the situation of unaccompanied and separated children and SGBV survivors, and LGBTI persons. The analysis is based on the data and information BCHR's team collected in the reporting period whilst extending legal aid to and representing these groups with specific needs, during its field work and in communication with representatives of NGOs, international organisations and state authorities.³¹⁶ The analysis of some important decisions adopted by the relevant authorities in 2022 in cases of asylum seekers belonging to these groups and represented by the BCHR legal team will also be presented.

5.1. Situation of Unaccompanied and Separated Children

The RS has ratified and been directly applying the UN CRC,³¹⁷ which is the most important international instrument protecting the rights of the child. The CRC requires of all Serbian authorities to respect and ensure the rights of every child within the RS's territory and under its jurisdiction, without discrimination on any grounds.³¹⁸ The RS is also under the obligation to protect the best interests of the child and provide the same volume and scope of protection to migrant and refugee children enjoyed by other children living in the RS. The principle of the best interests of the child, laid down in the CRC, is also enshrined in the Serbian LAMP,³¹⁹ the Family Law³²⁰ and the Social Protection Law (SPL).³²¹

The BCHR gained the impression that the situation of unaccompanied and separated children in the RS improved in some respects in 2022, but that many systemic shortcomings in the context of their effective care and protection persisted, as the following section of this chapter discusses.

316 Including communication prompted by requests for access to information of public importance.

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

318 Art. 2, CRC.

319 Art. 10, LAMP.

320 Art. 6, Family Law.

321 Art. 26, SPL.

5.1.1. Identification of Unaccompanied and Separated Children and the Guardianship System

Under the Family Law³²² all unaccompanied children are entitled to a guardian, even if they are foreign nationals or stateless.³²³ Unaccompanied and separated children who are not nationals of the RS may be appointed only a temporary guardian;³²⁴ the rights and powers of temporary guardians are narrower in scope than those of permanent guardians.³²⁵ Guardianship is within the remit of the Social Work Centres (SWCs). SWCs are established by local self-governments³²⁶ and are mostly funded from the national budget,³²⁷ while the rest of the funds are provided by the local self-governments.³²⁸

One of the greatest challenges in extending protection to unaccompanied and separated asylum seeking and migrant children arises from the fact that guardianship authorities are unable to provide effective protection to each child. Through its communication and cooperation with social workers, the BCHR established that the greatest challenges faced by SWCs still included lack of qualified staff, huge caseloads, lack of vehicles and logistic capacity.

SWCs shall initiate the placement of a child under guardianship *ex officio* as soon as there are reasons for such placement.³²⁹ The initiative to place a child under guardianship may also be submitted by other institutions, such as the police, courts, CSOs and members of the public.³³⁰ The guardian appointment procedure is urgent in character.³³¹ According to the instructions of the relevant MLEVSI, the social workers in the field are to notify the relevant guardianship authority as soon as they receive information or themselves find out about an unaccompanied child.³³² The identification of the children needs to be fast and efficient for the procedure to be conducted as soon as possible. However, as the

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

323 Art. 132, Family Law.

324 Under Art. 132 of the Family Law. Serbian nationals may be appointed permanent guardians.

325 In most cases, their rights and duties concern ensuring the fulfilment of their wards' subsistence needs, that they are safe and get the health care they need.

326 Art. 10, SPL.

327 Art. 206, SPL.

328 Art. 209, SPL.

329 Art. 329, Family Law.

330 *Ibid.*

331 Art. 332, Family Law.

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

BCHR has continuously warned, the problem of identifying unaccompanied children has persisted for a long time now.³³³

The RS, however, still lacks nationwide records that would be used by the relevant authorities when they identified children who had been or are still living in RS territory. The existence of a sufficient number of field workers is another key condition for the adequate identification of unaccompanied and separated children in the RS.³³⁴ Various state authorities have been keeping different registers.³³⁵ Consequently, the numbers of identified children vary.

For instance, Asylum Office's January-December 2022 statistics show that registration certificates were issued to 679 unaccompanied and separated children.³³⁶ The BCHR encountered a higher number of children during its field activities. UNHCR reported that 97 unaccompanied and separated children entered the RS during the first three months of 2022 alone.³³⁷ The above data show that many unaccompanied and separated children still perceive the RS as a transit country, which is why they do not register and thus remain invisible to the state authorities, wherefore they lack access to adequate protection.

According to CRM's data, most unaccompanied and separated children under temporary guardianship in 2022 were living in the municipality of Lajkovac³³⁸ where the Bogovađa AC, which this vulnerable category of refugees and asylum seekers is referred to, is located.³³⁹ Two officers acted as their temporary guardians until April; only one temporary guardian looked after them thereafter. Their cases were handled by one caseworker in the relevant SWC unit.³⁴⁰

A large number of children were placed under temporary guardianship during the reporting period also in the municipality of Preševo, where the duties of

333 See *Right to Asylum 2019*, *Right to Asylum 2020*, and *Right to Asylum 2021*.

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

335 For instance, the MOI has been keeping records only of foreigners whose intention to seek asylum in the RS has been registered, the CRM has been keeping records of foreigners accommodated in ACs and RTCs, while the Labour Ministry has been keeping records of beneficiaries of their services.

336 Registration certificates were issued to 33 unaccompanied and separated children in the same period in 2021.

337 See: <https://bityl.co/H62e>.

338 A total of 296 unaccompanied and separated migrant children were living in this municipality from 1 January to 31 October 2022. Reply to BCHR's request for access to information of public importance No. 254 of 3 November 2022.

339 Families with children and individuals were also referred to the Bogovađa AC in 2022. More on the accommodation of unaccompanied and separated children below.

340 Reply to BCHR's request for access to information of public importance No. 254 of 3 November 2022.

guardian were performed by five SWC staff members and caseworker duties by four SWC members of staff.³⁴¹ The increased number of registered unaccompanied children in Preševo is not surprising because it is near the border and on the migrant route. The Preševo SWC said that the children they appointed guardians to stayed in this municipality between one and three weeks on average.³⁴² The children in the Lajkovac municipality were under guardianship around 60 days on average, wherefore it may be concluded that one temporary guardian and one caseworker dealing with a large number of children living in the Bogovada AC do not suffice. Minimum Standards for Child Protection in Humanitarian Action recommend ensuring one caseworker for every 25 children.³⁴³

The temporary guardians and caseworkers of the unaccompanied and separated children the BCHR represented in the asylum procedure in 2022 were changed often. For instance, the temporary guardian of BCHR's two underage clients, a brother and sister from Syria, was changed three times in just one year, impinging on the duration of the procedure, which should be urgent. Every time the siblings' temporary guardian was changed, the BCHR had to wait over a month for a new SWC ruling on the appointment of the new temporary guardian, without which the guardians cannot attend the procedural actions on behalf of the children. Nor can the procedural actions be conducted in accordance with the law in the absence of the temporary guardian.³⁴⁴ In case a child has not been appointed a temporary guardian, the guardianship duties may also be conducted by a caseworker, but the caseworker was changed three times in Belgrade from January to end October 2022.³⁴⁵

When ruling on the merits of an asylum application, the Asylum Office must take due account, inter alia, of the findings and opinion of the temporary guardian, i.e. the expert opinion of the relevant SWC. Temporary guardians prepare reports on the status and situation of their wards, which the caseworkers are to approve and forward to the Asylum Office. In this case, the SWC report arrived with more than a two-month delay – it took the SWC more than a month and a half to submit the report prepared by the temporary guardian of BCHR's clients to the Asylum Office for consideration.

341 According to SWC's records, 267 unaccompanied and separated migrant children were placed under the guardianship of this body. Reply to BCHR's request for access to information of public importance No. 254 of 3 November 2022.

342 Reply to BCHR's request for access to information of public importance No. 136–551 of 1 November 2022.

343 *Minimum Standards for Child Protection in Humanitarian Action* (2012), p. 138, available at: <https://bit.ly/co/H62k>.

344 Such as the submission of an asylum application or an oral hearing.

345 Reply to BCHR's request for access to information of public importance No. 550–487 of 14 November 2022.

Like in the past, a number of unaccompanied and separated children were living in CRM-run facilities and residential care institutions during the reporting period, as the following section describes.³⁴⁶

5.1.2. Accommodation of Unaccompanied and Separated Children

The Family Law and the Social Protection Law (SPL) provide modalities of alternative care of children temporarily or permanently deprived of their family environment.³⁴⁷ Under the SPL, children without parental care may be accommodated with their relatives or foster families, in homes, shelters or other facilities in accordance with their best interests and the law.³⁴⁸ Unaccompanied children and victims of trafficking in human beings are recognised as vulnerable groups in this law,³⁴⁹ as are unaccompanied and separated refugee and migrant children. Under the LAMP, when deciding on the accommodation of foreigners who expressed the intention to seek asylum, due attention shall be given in particular to their sex and age, their status of a person requiring special procedural and/or reception guarantees, as well as family unity.³⁵⁰

The guardianship authority is under the duty to issue a temporary conclusion on the child's accommodation within 24 hours from the moment it becomes aware that the child needs a guardian.³⁵¹ The children's right to express their opinion on alternative accommodation must be respected during the procedure.³⁵²

5.1.2.1. Accommodation of Children in CRM-Run Facilities

The MLEVSI's Instructions lay down detailed criteria guardianship authorities are to apply when deciding where to accommodate unaccompanied and separated children.³⁵³ Under these Instructions, they shall be accommodated in ACs only if they are over 16 years of age and their guardians applied for asylum on their behalf. The ACs must fulfil the requirements for the accommodation of

346 Twenty-six unaccompanied children were appointed guardians from 1 January to 25 October 2022. Reply to BCHR's request for access to information of public importance No. 550-487 of 14 November 2022.

347 Art. 40, SPL.

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

349 Art. 41(2), SPL.

350 Art. 50(3), LAMP.

351 Art. 332(2), Family Law.

352 Art. 12, CRC.

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

children and the fulfilment of all their needs, and the guardianship authorities have to conclude that placement in them is in the children's best interests.³⁵⁴ However, unaccompanied and separated children under 16³⁵⁵ were still referred in practice to ACs, such as the one in Bogovađa, where adult asylum seekers were accommodated as well.³⁵⁶ Although the CRM has been trying to accommodate unaccompanied children separately from adult asylum seekers, such a practice is incompatible with the best interests of the child, while the ACs are not fully equipped to satisfy the children's needs and do not guarantee their safety.³⁵⁷ The BCHR wrote about the Bogovađa AC in the context of unaccompanied and separated children and the NPM's findings on their suitability for this category of asylum seekers, as well as the capacities of the guardianship authorities, in its prior reports.³⁵⁸

Many unaccompanied and separated children were referred to ACs during the reporting period although they had not been registered first. In such cases, the ACs notified the guardianship authorities that they have admitted such children, and the latter appointed their temporary guardians in an urgent procedure. The children were informed of the RS asylum system by the CRM and organisations implementing activities in the ACs. In the event the unaccompanied and separated children wanted to seek asylum in the RS, the ACs took them to the local police stations with the support of the CRM management. Most of the children living in the Bogovađa AC were not registered; however, this is not a good practice since they do not have access to more adequate protection because their residence in the RS is not legalised.³⁵⁹

Unaccompanied and separated children living in the Bogovađa AC had access to primary and secondary education. Guided by the best interests of the child, the CRM helped five children who were admitted to the AC in the reporting period enrol in the local schools in the 2021/22 school year.³⁶⁰ Several

354 Ibid.

355 The youngest unaccompanied child in the Bogovađa AC was just 10 years old.

356 According to data collected by the BCHR, unaccompanied children were also living in the Krnjača AC, and, for a short period of time, in the Preševo RTC, during the reporting period.

357 The children may be exposed to multiple risks given that the AC accommodates a large number of asylum seekers of various ages, nationalities and other characteristics. The BCHR has already alerted to these shortcomings in practice. It also analysed the case of violence against unaccompanied children in the Bogovađa AC in 2020. More about the incident in *Right to Asylum 2020*, p. 118.

358 More in *Right to Asylum 2021* and *Right to Asylum 2020*.

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

360 CRM's reply to BCHR's request for access to information of public importance No. 019-4121/2-2022 of 8 December 2022.

international and non-government organisations conducted activities in ACs in which unaccompanied and separated children were staying.³⁶¹

In late December 2022, at the time this Report was being concluded, the CRM briefly notified the BCHR in writing that all unaccompanied and separated children in the Bogovađa AC would be transferred to the RTC in Šid, which would be designated for the accommodation of this category of asylum seekers in the RS.³⁶² The BCHR team was not apprised of the reasons for this decision and considers it disputable. Specifically, the RTC's proximity to the state border crossing may adversely influence the children and deter them from integrating in the RS system and enjoying adequate protection in accordance with the principle of the best interests of the child. The BCHR team will continue actively monitoring the situation of unaccompanied and separated children living in CRM-run facilities, their accommodation and respect for their fundamental human rights in practice.

5.1.2.2. Accommodation of Children in Residential Care Institutions

The above-mentioned MLEVSI's Instructions also provide for placement of children, especially those under 14, in foster family, residential care institutions or health institutions if they are in need of that form of care. Residential care facilities and foster families must provide the unaccompanied children with safety, health care, clothes, basic sanitary conditions and adequate nutrition. Placement of unaccompanied and separated children in foster care would probably be the best solution, however, it was the option least resorted to in practice. The number of foster families in the RS trained in looking after unaccompanied foreign children is still small and all of them live in Belgrade.³⁶³

Unaccompanied and separated children were referred to residential care institutions in exceptional cases in 2022.³⁶⁴ Various criteria are taken into consideration during the accommodation of children in residential care facilities: their age and vulnerabilities; whether they have any physical or mental disabilities; how long they have been living in the RS; whether they attend school, et al. Children are usually referred to residential care facilities at the request of their temporary guardians. Although such an option is envisaged for unaccompanied children who have formally applied for asylum, children only in possession of registration certificates were also accommodated in such institutions in practice.

361 More in the section: Accommodation of Asylum Seekers and Migrants.

362 On the other hand, only single adult migrants will be accommodated in the Bogovađa AC. Information CRM e-mailed to the BCHR on 23 December 2022..

363 Information obtained from SWCs in response to the BCHR's requests for access to information of public importance.

364 In the event the AC or another facility designated for the accommodation of asylum seekers cannot provide suitable conditions for the child's accommodation.

Three residential care institutions took in unaccompanied and separated children in 2022 – a unit of the Belgrade Home for Children and Youth,³⁶⁵ the Youth Home in Niš and the Belgrade orphanage Jovan Jovanović Zmaj. During the reporting period,³⁶⁶ a total of 25 children lived in these institutions, which were not overcrowded at any point in time.³⁶⁷ The accommodation conditions in residential care institutions are better than in CRM-run facilities from the perspective of the principle of the best interests of the child.³⁶⁸

In addition to residential care institutions, unaccompanied and separated migrant children were also accommodated in two houses run by CSOs³⁶⁹ – the Pedro Arrupe Integration House in Belgrade, which can accommodate 15 boys,³⁷⁰ and the House of Rescue in Loznica, which has the capacity to take in 15 children (of both sexes).³⁷¹ Although these houses are not part of the official network of residential care institutions, their work is overseen by the SWCs with territorial jurisdiction. However, the Loznica House of Rescue closed in April 2022, and the children's temporary guardians working in the Loznica SWC were instructed to move the children to other alternative accommodation.³⁷² Four unaccompanied and separated children were living in the House of Rescue before it closed.³⁷³

5.1.3. Asylum Office's Practice in Asylum Cases of Unaccompanied and Separated Children

According to UNHCR's Guidelines, children may face similar or identical forms of harm as adults.³⁷⁴ The fact that the refugee claimant is a child may be a central factor in the harm inflicted or feared.³⁷⁵

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

366 Information the BCHR received in response to its request for access to information of public importance.

367 The three institutions can take in a total of 55 children.

368 More in *Right to Asylum 2021*, pp. 88–90.

369 The RS still does not have institutions specialised for providing alternative care to unaccompanied and separated children.

370 Only boys are referred to it because it cannot provide separate accommodation for boys and girls.

371 More on these homes in: *Right to Asylum 2021*, p. 90.

372 In early 2022, the Loznica SWC was notified that the House of Rescue would be closed, but was not provided with any additional clarification of the reasons for the decision.

373 The two boys were transferred to the Jovan Jovanović Zmaj orphanage, one girl was moved to the AC in Bogovada and the other girl to the Zvezda Centre in Belgrade.

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

375 *Ibid.*, para. 18.

Respect of the best interests of the child is one of the main principles underpinning the CRC and best interests of the child must be the primary consideration in all procedures concerning children. Assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection all forms of physical or mental violence, injury or abuse, sexual harassment, degrading treatment, as well as protection against sexual, economic and other exploitation, forced labour, armed conflict, etc.³⁷⁶

The LATP also lays down the principle of the best interests of the child,³⁷⁷ during the assessment of which due account must be taken of their well-being, social development and background, protection and safety, especially if there are grounds for suspicion that the child is a victim of human trafficking, domestic violence or other forms of gender-based violence.

Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.³⁷⁸ No decision regarding a child may be adopted if its outcome impinges on the child's right to life, survival and development.³⁷⁹ The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests.³⁸⁰

With a view to properly deciding on the protection of the rights of the child, the relevant authorities should obtain the findings and opinion of the guardianship authority. The authorities' obligation to comply with the opinion is not provided explicitly by the LATP but it is set out in the Family Law.³⁸¹

The Asylum Office improved its practice of reviewing asylum applications filed by unaccompanied and separated children in 2022. Its officers consulted with the children's temporary guardians and their BCHR legal representatives, and commendably endeavoured to make sure that all the procedural actions were

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

377 Art. 10, LATP.

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

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

380 *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, CRC Committee, CRC/C/GC/14, 29 May 2013, para. 97.

381 Art. 270, Family Law.

implemented in accordance with the children's best interests and in as pleasant an atmosphere as possible. They did their utmost to schedule the oral hearings in the institutions in which the unaccompanied and separated children were accommodated and that the children were assisted by interpreters they knew and trusted, which they had not been in the habit of doing. All the unaccompanied and separated children granted some form of international protection by the Asylum Office in 2022, including the unaccompanied boy who reached the age of majority during the reporting period, were represented by the BCHR.³⁸²

However, notwithstanding the indisputable positive headway the Asylum Office made in the reporting period, despite the fact that it was understaffed, the shortcomings the BCHR had alerted to in the past persisted.³⁸³ Unaccompanied and separated children still waited much too long for the asylum procedure actions or decisions on their applications,³⁸⁴ although the LATP sets out that applications of unaccompanied children shall have priority over those filed by other asylum seekers.³⁸⁵ One unaccompanied child waited for a year for the Asylum Office to schedule an oral hearing on his asylum application in order to question him in detail about the reasons why he left his country of asylum. The Asylum Office did not issue a new decision on the merits of an asylum application filed by a stateless child by the end of the reporting period. It held an oral hearing on the case in July 2021. This case has been pending for an unreasonably long time.³⁸⁶

The following section analyses several decisions on asylum applications filed by unaccompanied and separated children represented by the BCHR. The Asylum Office issued decisions granting international protection to these children in the RS.

5.1.3.1. Boy from Niger Granted Subsidiary Protection

In April 2022, the Asylum Office issued a ruling³⁸⁷ granting subsidiary protection to an unaccompanied boy from Niger, A.C., who had lived in the tri-border area between Niger, Burkina Faso and Mali, a region subjected to

382 The Asylum Office granted refugee status to one unaccompanied boy and subsidiary protection to five unaccompanied and separated children.

383 More in: *Right to Asylum 2020* and *Right to Asylum 2021*.

384 The underage siblings from Syria waited slightly over four months for the oral hearing to be scheduled, while over a year passed from the day an unaccompanied Afghani child applied for asylum to the day the Asylum Office ruled on it.

385 Art. 12(9), LATP.

386 At the time this Report was concluded, BCHR's client, a stateless children from Afghanistan who reached the age of majority in the meantime, was still waiting for a new first-instance decision. The BCHR reported on this case in its prior reports. See: *Right to Asylum 2021*, pp. 53–54 and 93–95.

387 Asylum Office Ruling No. 26–1437/21 of 31 March 2022.

frequent attacks by Jihadists and members of the Boko Haram movement. His father and two brothers were killed and his house was burned to the ground during one such attack. Fearing for his safety, A.C.'s mother organised his departure from Niger.

During its assessment of the circumstances of the case, the Asylum Office concluded that A.C. had not presented facts proving that he had personally been persecuted by the authorities of his country of origin,³⁸⁸ wherefore there were no valid or justified reasons to grant him refugee status in the RS. The Asylum Office reviewed the latest reports on the security situation in Niger published by the relevant international bodies and organisations and corroborating A.C.'s statements during the oral hearing.³⁸⁹ The authorities of Niger were unable to provide their citizens with effective and adequately protection from the raids and random killings perpetrated by armed groups. The Asylum Office therefore correctly concluded that A.C.'s life and safety would be at risk due to the internal armed conflict in Niger in case he returned there and that he would face a risk of serious harm there. The Asylum Office said in its reasoning that it was guided by the CRC, under which the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies of the State parties, in this case the RS. Bearing in mind the ascertained unfavourable security situation in Niger and the risks A.C. would face if he returned to it, the Asylum Office adopted the correct and lawful decision to uphold A.C.'s asylum application.

5.1.3.2. Boy from Afghanistan Granted Refugee Status

In November 2022, the Asylum Office issued a conclusion³⁹⁰ granting refugee status to J.M., a boy from Afghanistan. J.M. had left his country of origin because he was threatened by his cousins, who wanted to seize the land he inherited after his parents died, and the problems he had with the Taliban because of his nationality (Tajik) and religion (Moslem Shi'a)³⁹¹ J.M. said during the procedure that he faced problems and was insulted and accused that he was an infidel and was not practicing Islam properly. Furthermore, in his country of origin, he witnessed a number of attacks by extremist groups against Shi'a practicing

388 Under Art. 28 in conjunction with Art. 24 of the LATP.

389 See Human Rights Watch reports, *Sahel: Top UN Rights Official Visits Burkina Faso, Niger* (1 December 2021), available at: <https://bit.ly.co/H20i>; and *Niger: Surging Atrocities by Armed Islamist Groups* (11 August 2021), available at: <https://bit.ly.co/H20p>.

390 Asylum Office Ruling No. 26–281/21 of 10 November 2022.

391 Namely, J.M. is a Shi'a Moslem from the Tajik tribe, while the Taliban are predominantly Pashtun and Sunni. Most of Afghanistan's residents are Sunni, while the minority Shi'a are regularly subjected to threats and killings.

religious rituals in their mosques. Fearing for his safety, J.M. decided to leave his country of origin.

The Asylum Office found that J.M. relied in his asylum application on his fear of persecution for reasons of his race and nationality (Tajik). It also took into account J.M.'s religion, because of which he had been persecuted in his country of origin.³⁹² During its review of the merits of J.M.'s application, the Asylum Office was guided by UNHCR Handbook,³⁹³ according to which race, in the present connexion, "has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as "races" in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population." UNHCR also noted in its Handbook that "persecution for 'reasons of religion' may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community."

As per J.M.'s nationality, the Asylum Office noted that there were no reliable data on the ethnic breakdown of Afghanistan's population at the time, but that the share of the Tajik population was roughly estimated at around 27%, and that most of whom were Sunni, with a minority of Twelver Imami Shi'a in the west around the city of Herat.³⁹⁴ Since J.M. told the Asylum Office that he came from a village near Herat, that he was Tajik and Shi'a, the Asylum Office concluded that he belonged to the Twelver Imami Shi'a group and that this was why he had suffered persecution.

In addition to UNHCR's Handbook, the Asylum Office also took into account the reports of the relevant international organisations stating that the current Taliban authorities in Afghanistan were unable to provide effective and durable protection to ethnic and religious minorities from attacks launched by extremist militant branches of the Islamic State. Since this information coincides with the facts J.M. presented about the situation in his country of origin, which are relevant to a decision on this legal matter, the Asylum Office concluded that his statement was consistent and credible.³⁹⁵

392 Under Art. 26(1(2)) of the LATP, grounds of persecution shall be assessed taking into account religion, referring to theistic and atheistic beliefs, the participation, in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of faith, or forms of personal or communal conduct based on or arising from religious beliefs.

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

394 World Directory of Minorities and Indigenous People-Afghanistan, <https://bityl.co/H7xv>.

395 Pursuant to Art. 32 of the LATP.

Furthermore, the Asylum Office concluded that J.M.'s fear of persecution was justified and well-founded, particularly given his personal circumstances, i.e. the fact that he was an unaccompanied and separated child in a particularly vulnerable position. The Asylum Office also took into account the report of J.M.'s temporary guardian, who stressed that J.M. would not be safe in his country of origin also because there was no-one there to look after him. The first-instance authority therefore concluded that it was in J.M.'s best interest to grant him asylum in the RS.

5.1.3.3. Syrian Siblings Granted Subsidiary Protection

In late 2022, the Asylum Office issued one more ruling upholding the asylum applications of unaccompanied and separated children.³⁹⁶ It granted subsidiary protection to a brother and sister from Syria. The children applied for asylum in May 2022 and the oral hearing on their applications was held in late September 2022. The siblings told the Asylum Office that they had left Syria together with their parents at a very young age. After spending several years in Turkey, the family split up – their mother took them back to Syria, while their father continued the journey to Europe. As the security situation in Syria deteriorated, and the children could not live a normal life, the father (with the mother's consent) arranged for smugglers to bring the children to his new home.

During its assessment of the merits of the siblings' asylum applications, the Asylum Office took into account all the facts and evidence presented during the procedure and found that the LATP requirements for granting them subsidiary protection, albeit not refugee status, were fulfilled.³⁹⁷ It had consulted the recent reports of international organisations³⁹⁸ on the situation in Syria.³⁹⁹ Namely, the children had left their country of origin because of the unstable security and political situation brought on by years-long fighting and general indiscriminate violence, wherefore they would have been at risk of suffering serious harm had they remained in Syria and they would face such a risk if they returned to it.

The Asylum Office particularly bore in mind the fact that the siblings were younger minors unaccompanied by their parents or carers, wherefore it took

396 Asylum Office Ruling No. 26-1177/22 of 2 December 2022.

397 Arts. 25 and 24 of the LATP.

398 Amnesty International, *Syria, Death everywhere' – war crimes and human rights abuses in Aleppo, Syria* (5 May 2015), available at: <https://bit.ly.co/H20w> and War Child International, *Children Paying the Highest Price of Increase in Violence in Syria* (30 September 2022), available at: <https://bit.ly.co/H213>.

399 In the reasoning of its ruling, the Asylum Office noted that UN Independent International Commission of Inquiry on Syria found in its report of March 2022 that five foreign militaries, various non-State armed groups and terrorist entities were present in Syria and that numerous attacks against civilians were registered throughout the year.

into consideration their particularly vulnerable status, guided by the principle of the best interests of the child.⁴⁰⁰ The Asylum Office also perused the temporary guardian's report on the position, situation and needs of the siblings. Based on this report and all the other foregoing considerations, the Asylum Office adopted the correct and lawful decision to grant them subsidiary protection.

5.1.4. *Recommendations*

The system of care for unaccompanied and separated children still cannot be qualified as adequate and in conformity with international documents ratified by the RS despite efforts and headway. In general, most persons belonging to this category of refugees and asylum seekers in the RS are outside the system, wherefore they face major difficulties accessing their fundamental rights and various forms of protection. They also remain invisible to the state authorities and providers of different kinds of aid, stakeholders which could protect them from a variety of migration-related risks. On the other hand, the capacity and promptness of the state authorities charged with protecting them is still dissatisfactory. Although it visibly improved its practice in 2022, the Asylum Office did not eliminate substantial deficiencies in its work, which were earlier identified in cases of unaccompanied and separated children. In the opinion of the BCHR team, the adoption and fulfilment of the following recommendations by the state authority would contribute to the improvement of the situation of unaccompanied and separated children in the RS:

- Everyone in contact with unaccompanied and separated children, whether or not they expressed the intention to seek asylum, must respect the principle of the best interests of the child.
- A nationwide register should be established to facilitate the inclusion of unaccompanied and separated children in the RS system and enable the relevant authorities and other stakeholders engaged in the protection of refugee children insight into their number and individual needs.
- All the relevant authorities, such as the CRM, the MLEVSI and SWCs, should continuously cooperate with a view to ensuring that unaccompanied and separated children receive prompt and adequate care.
- The MLEVSI should thus draw up long-term plans for engaging a sufficient complement of temporary guardians and caseworkers and counsellors and pedagogues specialised in working with children, in

400 The Asylum Office officer consulted the children's temporary guardian and their BCHR legal representative to tailor the procedural actions to the children as much as possible, all with a view to avoiding their further traumatisation.

order to provide unaccompanied and separated children with adequate and continuous support, given that many of them are still engaged on a project basis. This would put an end to frequent changes of staff performing guardianship duties, which impinge on the trust of their wards and are thus not in their best interest.

- The RS should also put in more efforts in developing foster care, as a family- and community-based solution, which is the most suitable for the proper development and well-being of every child, as well as their life in dignity in the new setting. The state and the relevant institutions need to invest greater efforts in motivating and empowering future foster families, to ensure that they are prepared to take in unaccompanied and separated migrant and asylum-seeking children,
- The state should continue investing in residential care institutions to provide as many unaccompanied and separated children as possible with the opportunity to live in them. This means that it needs to assume greater responsibility for their smooth operation and for the provision of long-term support in the form of accommodation, given that the facilities funded by non-government organisations are unsustainable, as demonstrated by the closure of the House of Rescue in Loznica during the reporting period.
- The Asylum Office should continue with the good practice it established in 2022 – to respect the principles concerning the best interests of the child and provision of special procedural and reception guarantees to unaccompanied and separated asylum-seeking children⁴⁰¹. On the other hand, it is imperative that it also bear in mind the vulnerabilities of the unaccompanied and separated children, and review and decide on their applications promptly. The Asylum Office, the Administrative Court and other relevant authorities should apply such an approach to cases of unaccompanied and separated children as well.

5.2. Situation of Survivors of Sexual and Gender-Based Violence and LGBTI Persons

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

⁴⁰¹ Pursuant to Art. 17 of the LATP, under which account shall be taken of the specific circumstances of the persons requiring special procedural or reception guarantees, which include unaccompanied children.

for this treatment.⁴⁰² UNHCR defines sexual and gender-based violence (SGBV) as violence targeting individuals on the basis of their sex or gender.⁴⁰³

Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals⁴⁰⁴ In many parts of the world, individuals experience serious human rights abuses and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity. LGBTI individuals are the targets of killings, sexual and gender-based violence, physical attacks, torture, accusations of immoral or deviant behaviour, denial of the rights to assembly, expression and information, and discrimination. LGBTI individuals are often highly marginalised in society and isolated from their communities and families.⁴⁰⁵

Gender-related asylum applications are mostly filed by women in light of the kinds of persecution they are subjected to in their countries of origin. However, men, especially boys and LGBTI persons, can also be the victims of gender-based violence, a widespread occurrence in war-ravaged areas.⁴⁰⁶ The BCHR's years-long practice confirms that quite a few men have also been submitting gender-based asylum applications. However, in such cases, it is much more difficult to ascertain whether violence occurred, because men are reluctant to openly talk about their traumatic experiences, out of shame, embarrassment and fear of stigmatisation.⁴⁰⁷

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

403 It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty. See more in: *Sexual and Gender Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response*, UNHCR, May 2003, available at: <https://bit.ly.co/H1wE>.

404 *Ibid.*

405 UNHCR, *Guidelines on International Protection No. 9 Smernice o medunarodnoj zaštiti br. 9*.

406 See, e.g.: “*That never happens here*”: *Sexual and gender based violence against men, boys, and including LGBTIQ+ people in humanitarian settings*, International Committee of the Red Cross, Norwegian Red Cross (February 2022), available at: <https://bit.ly.co/Gv43>; “*I lost my dignity*”: *Sexual and gender-based violence in the Syrian Arab Republic, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic*, Human Rights Council, A/ HRC/37/CRP.3 (8 March 2018), available at: <https://bit.ly.co/Ahbh>; *The Health of Male and LGBT Survivors of Conflict-Related Sexual Violence*, All Survivors Project (2020), available at: <https://bit.ly.co/Gv49>; *Sexual Violence against Men and Boys in Conflict and Displacement: Findings from a Qualitative Study in Bangladesh, Italy, and Kenya*, Women's Refugee Commission (October 2020), available at: <https://bit.ly.co/Gv4E>.

407 Another obstacle arises from the fact that men are culturally perceived as the “stronger sex”.

Gender-based violence may have occurred in the applicants' country of origin, *en route* or in the country in which they applied for asylum and decided to settle down. In addition to the basic needs common to all refugees, refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation.⁴⁰⁸ In addition, measures need to be taken to ensure that migrant, refugee and asylum-seeking women have access to their human and social rights in relation to individual freedoms, employment, housing, health, education, social protection and welfare where applicable; and access to information about their rights and the services available.⁴⁰⁹

In addition to challenges in the context of early identification, the RS institutions have not yet fully developed support to SGBV survivors, who are still generally extended assistance by domestic CSOs and international organisations. Furthermore, representatives of some relevant authorities are still insufficiently sensitised to refugee protection, as this chapter discusses.

5.2.1. Identification, Accommodation and Services Available to SGBV Survivors

A number of female migrants and asylum seekers have come to the RS alone, with their children or in the company of men they may not be married or related to. Unfortunately, the exact number of girls and women in the RS cannot be ascertained due to the fact that many of them do not register – women accounted for 450 of the foreigners the MOI issued registration certificates to in the reporting period.⁴¹⁰ However, judging by the situation in the field, the number of migrant women and girls in the RS was much higher in 2022. Furthermore, the RS lacks a national register on the number of migrants in the country.⁴¹¹ Consequently, there are no official data on the number of women victims of SGBV. Furthermore, many survivors of sexual abuse do not dare to report it. In addition to feeling ashamed and embarrassed to talk about the violence they have experienced, many migrant men and women feel dependent on their abusers; sometimes they are not even aware that they are victims and perceive the treatment they are subjected to as commonplace. Identification of sexual abuse and violence is particularly problematic in case of unaccompanied children, who

408 *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva (July 1991), para. 3, available at: <https://bitly.co/ALS8>.

409 *Gender Equality Strategy 2018–2023*, CoE, para. 60, p. 15, available at: <https://bitly.co/Ahso>.

410 The MOI's statistical data the BCHR obtained from UNHCR.

411 The conclusion the BCHR team drew from the information it obtained during its regular field visits and discussions with representatives of domestic CSOs and international organisations.

often deny it, or sometimes normalise it as an expected abuse of power, making this kind of violence particularly difficult to identify.⁴¹²

The relevant authorities' prompt identification of the personal circumstances and vulnerabilities of asylum seekers is extremely important for the enforcement of procedural and reception guarantees laid down in the LATP.⁴¹³ In practice, if MOI officers ascertain or assess that there are indications that a migrant woman they have registered is a victim of violence, they immediately refer her usually to NGO Atina's safe house, in consultation with the Asylum Office.⁴¹⁴ In exceptional cases of particularly vulnerable asylum seekers, the Asylum Office consents to their accommodation in private lodgings rather than an AC or RTC immediately after their registration,⁴¹⁵ usually at the request of their legal representative.⁴¹⁶ In other cases, the MOI (with the CRM's consent) refers the women to a CRM-run facility that generally offers a greater degree of safety and "better accommodation conditions". In 2022, most women travelling alone, single mothers⁴¹⁷ and LGBTI persons were therefore referred to the ACs in Krnjača and Bogovađa.⁴¹⁸ These ACs had been designated for the accommodation of these vulnerable categories of asylum seekers in the past as well; however, in the BCHR's years-long experience, this solution does not provide adequate comprehensive protection, particularly in view of the fact that large numbers of asylum seekers and migrants of various backgrounds and profiles live in them.⁴¹⁹

Despite the MOI's and Asylum Office's commendable practice of recognising the vulnerabilities of individuals in specific, particularly sensitive cases, in the BCHR's view, the relevant asylum institutions, such as the MOI and the

412 *Wherever we go, Someone does us Harm: Violence against refugee and migrant children arriving in Europe through the Balkans*, Save the Children (2022), available at: <https://bitly.co/Gv5R>.

413 Art. 17, LATP.

414 If it has spare beds. The Asylum Office is also notified of the vulnerabilities of individual asylum seekers directly by their legal representatives, guardians (in case the asylum seekers are unaccompanied children), or representatives of other CSOs, such as NGO Atina.

415 According to Art. 50(3), LATP. More in: *Right to Asylum 2021*, p. 101.

416 The conclusion the BCHR team drew from its practice to date.

417 With the exception of Ukrainian women, who came to the RS alone or together with their children and whom the CRM referred to the AC in Vranjce, unless they opted for private lodgings upon registration.

418 The BCHR team drew this conclusion based on the breakdown of migrants and asylum seekers accommodated in ACs and RTCs in the RS.

419 Like other asylum seekers living in the Bogovađa and Krnjača ACs, the BCHR's clients criticised the lack of safety in the ACs during the reporting period. For instance, the rooms are not kept locked in the Krnjača AC. There are large numbers of residents of different ages and sexes, personal circumstances and nationalities are living in the same space, which exacerbates feelings of insecurity, especially among vulnerable groups exposed to multiple risks.

CRM, still lack mechanisms for their prompt identification and provision of adequate support and protection. This role is, for the most part, fulfilled by domestic NGOs extending assistance to vulnerable categories of asylum seekers with the support of international organisations.

CRM staff notify⁴²⁰ the MOI and the relevant SWC of any cases of gender-based violence in an AC or RTC identified by them, NGOs during their field work, or the victims themselves.⁴²¹ The CRM said that its staff regularly reported all such cases in their “ad hoc/incident reports” and that all CRM staff in ACs and RTCs acted in compliance with the national Standard Operating Procedures for Prevention of and Protection from Gender Based Violence against People Involved in Mixed Migration (SOPs).⁴²² In addition to the possibility of moving women and girls at risk of SGBV to other ACs or alternative accommodation, the CRM can, in coordination with the MOI, also move the abusers to another AC or RTC, in order to separate them from their victims.

The CRM and other organisations have frequently been bringing individual cases of violence to the attention of the NGO Atina, which runs a Safe House that can take in asylum-seeking women and girls. Atina’s assistance is exceptionally important, because this NGO can provide safe accommodation to vulnerable women and girls for a specific period of time and extend them continuous support in empowerment throughout the asylum procedure.⁴²³ However, the problem that has persisted for years is that Atina’s Safe House is the only alternative accommodation for asylum-seeking and refugee women and girls who have survived or are at risk of SGBV. Apart from its extremely limited capacity,⁴²⁴ the Safe House does not provide a long-term solution, because it is project-funded and cannot adequately respond to the immense needs of the most vulnerable asylum seekers. Furthermore, it takes in only women and girls. In the BCHR’s opinion, the absence of alternative accommodation for men, including LGBTI males, who have experienced or are at risk of experiencing violence, is generally a persistent shortcoming in the context of providing care and adequate protection to vulnerable categories of refugees.⁴²⁵

420 Albeit extremely rarely.

421 More in: *Right to Asylum 2021*, p. 102.

422 The CRM’s reply to the BCHR’s request for access to information of public importance No. 019–4121/2–2022 of 8 December 2022.

423 The BCHR team has successfully been cooperating with the NGO Atina for years now. A number of BCHR’s clients availed themselves of Atina’s services in 2022 as well, by participating in the Advocacy Group promoting advocacy activities of refugee women with state institutions, events, as well as a cooking course within Atina’s social enterprise *Bagel/Bejgl*.

424 NGO Atina’s Safe House is also designated for the accommodation of and assistance to human trafficking victims.

425 In practice, there are no shelters for men and boys or LGBTI males.

In addition to Atina, single mothers at risk of or experiencing violence can exceptionally be referred to the Home for Mothers and Infants in Belgrade. In cooperation with the CRM, the relevant SWC department and Atina, the BCHR in 2022 helped in the case of a national of DR Congo, who was heavily pregnant at the time she was initially referred to one of the ACs, where she was exposed to multiple risks of violence. After delivery, the mother and child were transferred to the Home for Mothers and Infants.

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

Under Article 3 of the ECHR, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The ECtHR considers that SGBV is subject to this provision, which is why all signatories of the ECHR have an obligation to protect SGBV victims and prevent SGBV in the future.⁴²⁶ Article 25 of the RS Constitution guarantees the inviolability of physical and mental integrity and prohibits torture and inhuman or degrading treatment or punishment.

The CoE Convention on the Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)⁴²⁷ is the first legally binding document in the field of prevention of violence against women in Europe that has been ratified by the RS. The Istanbul Convention sets out clear standards concerning the protection of refugee and migrant women from violence. It, inter alia, obligates States Parties to comply with the principle of *non-refoulement* and develop gender-sensitive asylum procedures.⁴²⁸

In its 2020 Baseline Evaluation Report on Serbia's implementation of the Istanbul Convention,⁴²⁹ the CoE Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) identified a number of additional areas in which the state needs to make improvements in order to comply fully with the obligations under the Convention. As far as asylum-seeking and migrant women are concerned, GREVIO encouraged the RS's authorities to step up the efforts made to identify women asylum seekers who have experienced or are at risk of gender-based violence by developing and disseminating gender guidelines for refugee status determination. It also strongly encouraged the RS's authorities to strengthen the system of protection and support from violence and

426 See, e.g. the following ECtHR judgments: *Yazgüel Yılmaz v. Turkey*, App. no. 36369/06 (2011), *B.S. v. Spain*, App. no. 47159/08 (2012), *Maslova and Nalbandov v. Russia*, App. no. 839/02 (2018) and *E.B. v. Romania*, App. no. 49089/10 (2019).

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

428 Arts. 60 and 61, Istanbul Convention.

429 *GREVIO Baseline Evaluation Report Serbia, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)* (Strasbourg, 2020), available at: <https://bit.ly.co/GvzK>.

develop conditions conducive to the reporting of incidents of violence against women in reception facilities.⁴³⁰

The RS also ratified the Convention on the Elimination of All Forms of Discrimination against Women,⁴³¹ the enforcement of which by the Contracting States is monitored by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee). In 2019, the CEDAW Committee published its observations on Serbia's periodic report,⁴³² in which it expressed concern about reports that disadvantaged groups of women, including refugee and internally displaced women, continued to experience multiple and intersecting forms of discrimination and insufficient protection from gender-based violence, and issued recommendations for improving their situation. It recommended, *inter alia*, that the RS intensify its efforts to raise awareness among women, including disadvantaged groups of women, of their rights under the Convention and how to claim them.⁴³³

It needs to be emphasised that this vulnerable group of women often has limited access to justice in practice, both because of their reluctance to report violence, stereotypes and taboos and their distrust of the domestic system. In addition, some survivors of violence have had difficulty communicating with people helping them and representatives of state authorities, which is partly the reason why they are insufficiently informed of the rights they can exercise.⁴³⁴ On the other hand, some of the relevant authorities not only lack capacity to extend effective support, but are still not responding to violations of the regulations by migrants promptly and adequately, which can be attributed to the fact that the migrants are only temporarily in the RS.⁴³⁵

Challenges in protecting people who experienced or are at risk of SGBV are reflected in the fact that many of them journeyed in the company of their abusers – most often the smugglers, other migrants, but members of their families as well⁴³⁶ – on whose decisions both their situation and, oftentimes, their journey and future hinge. Unaccompanied children are at greatest risk in such situations

430 More in the *Right to Asylum 2021*, p. 104.

431 *Official Journal of the SFRY – International Treaties*, No. 11/81.

432 *Concluding observations on the fourth periodic report of Serbia*, CEDAW, UN Doc. CEDAW/C/SRB/CO/4 (14 March 2019).

433 More in *Right to Asylum 2019*, p. 150.

434 Victims of gender-based violence should be aware that culture, custom, tradition or so called 'honour' are not considered as justification for any acts of violence, negative social control, or any violation of their human rights, as provided by these conventions. More in: *Gender Equality Strategy 2018–2023*, CoE, para. 64.

435 More in *Right to Asylum 2021*, p. 105.

436 The impression BCHR's lawyers gained during their years-long experience in extending legal aid and representing asylum seekers from various countries.

– in exchange for sexual services, smugglers have been bribing the children with money, privileged status compared to others travelling with them, protection, or a ‘free’ pass across the border.⁴³⁷

In the BCHR’s experience, most victims of SGBV are nationals from Afghanistan, Burundi, DR Congo, Bangladesh, Somalia and Iraq. Women accounted for most of SGBV survivors,⁴³⁸ but male survivors of SGBV were also registered. In addition to sexual violence in the context of armed conflicts and insecurity in the asylum seekers’ countries of origin, discrimination against migrants on account of their LGBTI orientation is also commonplace. In many cases, sexual and/or gender-based violence is continuous and occurs not only in the migrants’ country of origin, but *en route* to the RS as well.⁴³⁹

The national SOPs deal with the provision of assistance in SGBV cases in ACs and RTCs.⁴⁴⁰ However, they obviously do not provide the victims with sufficient protection.⁴⁴¹ As already noted, under the SOPs, the CRM notifies the police and the relevant SWC⁴⁴² in the event it ascertains that a crime involving SGBV has been committed in an AC or an RTC,⁴⁴³ and the victim is promptly provided with medical assistance and an interpreter.

According to the data covering the 1 January–20 October 2022 period the BCHR obtained from the CRM, its staff in ACs and RTCs registered a total of seven cases “which had the elements of sexual, gender-based or domestic violence”; two were domestic violence cases, two were GBV cases and three cases concerned suspicions of sexual violence. One other case concerned suspicions of sexual violence, labour exploitation and other traumatic experiences.⁴⁴⁴ The

437 According to the accounts of the children interviewed by Save the Children, this practice is prevalent on the Balkans route, especially in the RS and Bosnia and Herzegovina, where children stop after a long and arduous journey without the means to continue safely. More in: *Wherever we go, Someone does us Harm: Violence against refugee and migrant children arriving in Europe through the Balkans*, Save the Children (2022), available at: <https://bitly.co/Gv5R>.

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

439 More in *Right to Asylum 2020.*, p. 134 and *Right to Asylum 2021*, pp. 103–107. See also the analysis of the decision in the case of P.P., a national of DR Congo, in the section on the decisions of the asylum authorities.

440 The SOPs were drawn up by the MLEVSI, MOI, Ministry of Health, Ministry of Justice, the Coordination Body for Gender Equality and the CRM.

441 More in *Right to Asylum 2019*, str. 144–146.

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

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

444 Most of the cases were registered in one AC, while the other cases were registered in two RTCs.

CRM also said that its staff had not registered any cases of violence against unaccompanied and separated children in the facilities it manages.

According to data the BCHR obtained, none of the SWCs that responded to the BCHR's requests for access to information of public importance, save one,⁴⁴⁵ intervened in domestic violence cases involving migrants.⁴⁴⁶ Some of the SWCs that responded to the requests did not have special teams of experts for preventing domestic violence and extending support to victims who are not RS nationals.⁴⁴⁷ Nevertheless, almost all of them had in-house teams for protecting foreign victims and developed individual plans for supporting the victims,⁴⁴⁸ the implementation of which was monitored by caseworkers.⁴⁴⁹ The BCHR was unable to obtain from the MOI information on how many domestic violence cases involving migrants it had received;⁴⁵⁰ according to the available case-law of RS judicial authorities, migrant abusers are usually issued temporary restraining orders.⁴⁵¹ In general, the prosecution authorities' persisting reluctance to penalise the abusers for their crimes further discourages the victims from reporting the violence and does not provide them with guarantees that they will be fully protected whilst in the RS, a practice that was registered in the past as well.⁴⁵²

5.2.3. Gender-Sensitive Approach and the Asylum Authorities' Decisions on Gender-Based Asylum Applications

The Constitution of the RS guarantees the right to refugee protection (asylum) to foreign nationals and recognises sex or gender as grounds of persecu-

445 The Belgrade SWC intervened in two cases of domestic violence involving foreign nationals. One of them concerned individuals from a refugee-generating country (Iraq).

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

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

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

449 A slight improvement over 2021. More in: *Right to Asylum 2021*, p. 107.

450 The BCHR sent such requests to 14 police directorates near ACs and RTCs. None of the police directorates that responded to the requests kept separate records that included data on foreign nationals against whom measures provided by the Domestic Violence Law were implemented.

451 Under Art. 17 of the Domestic Violence Law. According to the information available to the BCHR, motions to extend the validity of urgent temporary move-out and restraining orders against two nationals of Syria and one national of Afghanistan were filed with the Sombor Basic Court from 1 January to 30 October 2022. In the same period, the Belgrade First Basic Court delivered two judgments in domestic violence cases in which the defendants were foreign nationals. One of them concerned a Syrian national and ended with a plea bargain and the Court ordered he undergo alcohol treatment (Art. 84 of the Criminal Code, *Official Gazette of the RS*, Nos. 5/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

452 More in the 2019, 2020 and 2021 *Right to Asylum* reports.

tion.⁴⁵³ Accordingly, the LATP explicitly recognises sex or gender as grounds of persecution and as grounds for asylum in the RS⁴⁵⁴ extending these grounds beyond those set out in the Refugee Convention.⁴⁵⁵

Under the LATP, acts of persecution may include physical or mental violence, including sexual and gender-based violence, as well as acts of a gender-specific nature.⁴⁵⁶ The LATP also recognises membership of a particular social group as grounds of persecution. Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sex, gender, gender identity or sexual orientation.⁴⁵⁷

The LATP enshrines the principle of gender equality and sensitivity,⁴⁵⁸ which entails the obligation of the competent asylum authorities to respect gender equality and interpret the LATP in a gender-sensitive manner.⁴⁵⁹ That entails, inter alia, that migrant women and girls accompanied by their family members, give their statements at asylum hearings in their absence which is particularly important in case of gender-sensitive asylum applications.⁴⁶⁰ This principle also entails the asylum seekers' right to request to be interviewed by police officers of the same sex, or to be assisted by translators or interpreters of the same sex.⁴⁶¹ The BCHR legal team has over the past few years provided asylum seekers with the opportunity to declare whether they wanted to be represented, interviewed or receive interpretation assistance by a person of the same or opposite sex.⁴⁶² The Asylum Office heeded such requests by BCHR clients and their representatives during the reporting period.

Furthermore, the LATP prohibits discrimination, inter alia, on grounds of sex, gender, gender identity and sexual orientation in the course of implementation of its provisions.⁴⁶³ During their interviews, Asylum Office staff should comply with the established measures and standards⁴⁶⁴ tailored to survivors of

453 Art. 57(1), of the RS Constitution.

454 Art. 24, LATP.

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

456 Art. 28, LATP.

457 Art. 26, LATP.

458 Art. 16, LATP.

459 More in *Right to Asylum 2021*, p. 128.

460 The asylum authorities need to bear in mind that asylum seekers experiencing gender-based violence may be afraid and embarrassed to discuss what they have been going through in front of their partners, family members and compatriots.

461 Art. 16(2), LATP.

462 More in *Right to Asylum 2020*, str. 140 *et seq.*, *Right to Asylum 2021*, str. 109.

463 Art. 7 LATP.

464 They should, in particular, remain neutral and compassionate, bearing in mind cultural differences and vulnerabilities characterising asylum seekers, as well as the traumas they expe-

gender-based violence. The BCHR legal team has over the years gained the impression that the Asylum Office staff's approach in some cases was insufficiently sensitised and tailored to the applicants' personal circumstances, which may impinge on the quality and credibility of their statements. It is crucial and in the interest of particularly vulnerable asylum seekers that they are interviewed in an enabling environment, in which they feel relaxed and encouraged to openly speak about their problems and traumatic experiences. It, nevertheless, needs to be emphasised that the Asylum Office's practice in this respect has generally improved compared to the past, when its officers did not bear in mind all the segments of gender-sensitive treatment at all times, a practice the BCHR criticised in its reports.⁴⁶⁵

From January to the end of December 2022, the BCHR lawyers extended legal aid to 26 migrants and asylum seekers⁴⁶⁶ who have or are presumed to have experienced SGBV in the reporting period. They represented 11 of them in the legal procedure. BCHR's lawyers also extended legal advice to 15 LGBTI persons and represented seven of them in the asylum procedure. The Asylum Office and Commission adopted several decisions on asylum applications filed by BCHR's clients in which the gender component dominated. An analysis of these decisions meriting attention is also provided in the following section of this Report.⁴⁶⁷

5.2.3.1. Asylum Office Granted Subsidiary Protection to a Mother and Child from DR Congo

In August 2022, the Asylum Office issued a ruling⁴⁶⁸ upholding the asylum application of two nationals of DR Congo, P.P. and her son, and granting them subsidiary protection. In 2016 and 2017, the armed conflicts between the regime and opposition movement of dissatisfied residents headed by the village elder escalated in the province the applicants were living in. P.P.'s husband, a police captain, who joined the movement in the meantime, suddenly disappeared and was probably killed in 2018; the police and army troops raided the applicants' village and their family home. P.P. was raped and, together with her underage son and other villagers, taken to the woods where they were subjected to continuous torture and questioning about the village elder the government forces

rienced. See also: *UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, 2019), p. 90.

465 See, e.g.: *Right to Asylum 2019*, pp. 132–136 and *Right to Asylum 2020*, pp. 128–129.

466 Twenty-three of whom were female and three of whom were male.

467 Some of the decisions in the cases of vulnerable asylum-seeking women – women travelling by themselves and women travelling with their children are analysed in the section: Practice of the Asylum Authorities.

468 Asylum Office Ruling No. 26–532/21 of 15 August 2022.

were looking for. After a fortnight of everyday sexual, physical and psychological abuse, P.P. fled the woods with the help of a policeman and hid in a convent for three months until she and her son their country of origin. P.P. and her son managed to leave DR Congo with the help of her father's friend, who had been a police officer before the conflicts erupted in the province they had been living in. Before coming to the RS, P.P. spent some time in the countries through which she transited, where she was also subjected to SGBV. In the RS, she first lived in an AC but soon had to move because she did not feel safe there and her son's health had seriously deteriorated.

After the initial oral hearing,⁴⁶⁹ the Asylum Office held an additional oral hearing⁴⁷⁰ to clarify some of P.P.'s claims in order to adopt a proper and lawful decision on the merits. It reviewed P.P.'s statement and the general security situation in her country of origin and, as prescribed by the LATP,⁴⁷¹ the claims in reports of the relevant international organisations on the state of human rights and the status of women in DR Congo the BCHR referred to in its submissions.⁴⁷² In addition to these international reports, the BCHR submitted to the Asylum Office numerous media reports⁴⁷³ and other documents substantiating P.P.'s statement, including PIN's report on the effects of her ordeals on her mental health. Having considered all the presented facts and circumstances, the Asylum Office found P.P.'s claims accurate and credible, corroborated by publicly available data about the persistent instability in the region of DR Congo where she had lived. It concluded that the mother and her son had to leave their country of origin because of the real risk to their lives.

However, the Asylum Office held that the reasons and events on which P.P. based her application "are unrelated to her personally"⁴⁷⁴ and that problems

469 The oral hearing was held on 1 April 2022.

470 The additional oral hearing was held on 19 July 2022.

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

472 Including, *inter alia*, the following reports: *Committee Against Torture examines the situation in the Democratic Republic of the Congo*, OHCHR (25 April 2019); *Violent attacks displace thousands in DR Congo's Kasai Region*, UNHCR (16 April 2021); *Conflict Displacement in the Kasai*, International Refugee Rights Initiative, (January 2018); *Will You Hear Us? 100 children in DRC tell their stories*, World Vision (September 2018); *Kasai Conflict Assessment; Current Dynamics & Potential Interventions* (February – March 2019), Mercy Corps (10 June 2019); *Violent attacks displace thousands in DR Congo's Kasai Region*, UNHCR (16 April 2021); *KASAI: A CHILDREN'S CRISIS, Coping with the impact of conflict in the Democratic Republic of the Congo*, UNICEF (May 2018).

473 Including, notably, the following reports: "DR Congo: Flaring tensions could 'plunge Kasai region into new violence', UN warns" United Nations, *UN news* (6 March 2018), "UN Investigator: Atrocities in DRC Fall Short of Genocide," *Voice of America* (3 August 2018); "DR Congo: Child soldiers and the conflict in Kasai-Central," *Al Jazeera* (29 July 2019).

474 Pursuant to Art. 24 of the LATP.

caused by the general lack of security in the region she was living in were at issue. It explained in the reasoning of its decision that P.P. had herself said that she had “lived without any problems until 2018” in the province. The BCHR welcomes the Asylum Office’s decision, but holds that, in the light of P.P.’s statement in its entirety, including all her personal reasons, it should have performed a more adequate review of grounds for granting refugee status to her and her son.

The Asylum Office recognised fears of persecution of asylum seekers who filed gender-based applications in the past as well.⁴⁷⁵ However, the Asylum Office’s practice was not consistent either then or in 2022. For instance, it issued rulings rejecting a number of gender-based claims filed by applicants at real risk of persecution on account of their personal characteristics and its views were upheld by the Asylum Commission.⁴⁷⁶

5.2.3.2. Asylum Commission again Rejected the Appeal filed by a Bangladeshi National

The Asylum Office issued a ruling⁴⁷⁷ in November 2021 rejecting the asylum application filed by a Bangladeshi national F., who had left his country of origin on account of his sexual orientation and religion.⁴⁷⁸ The BCHR contested the Asylum Office’s decision with the Asylum Commission, which found that the Asylum Office had committed procedural errors and failed to take into account F.’s religion as grounds for persecution. The Asylum Commission upheld the appeal and remitted the case to the Asylum Office for reconsideration. However, in February 2022, the Asylum Office again issued a ruling rejecting F.’s application; it did not change its views on the merits of his claims. The BCHR thoroughly reported on this case in its 2021 annual and 2022 semi-annual reports.⁴⁷⁹ The BCHR appealed the Asylum Office’s new decision with the Asylum

475 Specifically those filed by SGBV survivors, a single mother with children from a war-torn country and LGBTI persons. See BCHR’s analyses of specific decisions in: *Right to Asylum 2019*, pp. 138–140, *Right to Asylum, Periodic Report for January-March 2020*, pp. 18–20, *Right to Asylum 2020*, pp. 125–127, *Right to Asylum 2021*, pp. 110–114.

476 See the section: Practice of the Asylum Authorities.

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

478 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. 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 because of the large-scale persecution of LGBTI activists.

479 More in *Right to Asylum 2021*, pp. 114–116 and *Right to Asylum, Periodic Report for January-June 2022*, pp. 25–28.

Commission, claiming that the Asylum Office had again failed to ascertain that F. had experienced persecution in his country of origin on the basis of the facts and evidence presented earlier.⁴⁸⁰

However, the Asylum Commission rejected the BCHR's appeal in its new ruling⁴⁸¹ 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,⁴⁸² 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.

All of the above belies the Asylum Commission's claims that the Asylum Office's second ruling was adopted in a correct and lawful manner, wherefore the Commission also acted in contravention of the LATP and the LGAP. Their incorrect findings of fact expose F. to the risk of persecution in case he returns to his country of origin and to treatment in contravention of the *non-refoulement* principle. The claim the BCHR filed with the Administrative Court for these reasons was pending at the end of the reporting period.

5.2.4. BCHR Focus Groups and Recommendations for Improving the Situation of Asylum-Seeking and Refugee SGBV Survivors and LGBTI Persons

As noted, despite some headway in recognising vulnerable refugees and asylum seekers, they have continued continuously facing challenges on their journey, during the asylum procedure, as well as during their integration in the local community. Their problems and specific needs are either disregarded or not addressed in an adequate and tailored manner. Furthermore, an effective

480 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, atheists and promoters of secularism, as corroborated by the detailed information BCHR lawyers submitted to the Asylum Office. In addition, the Asylum Office referred in its new ruling to specific reports clearly inferring that abandoning Islam is considered a disgrace in Bangladesh.

481 Asylum Commission Ruling No. Až-29/21 of 11 May 2022.

482 For instance, the BCHR's claims that the Asylum Office had not reviewed the submissions on documented cases of violence, arrest and persecution of LGBTI persons in Bangladesh. Furthermore, the Asylum Office had not taken into account the relevant case-law of UN human rights mechanisms or the ECtHR.

multi-disciplinary approach relying on the individual personal circumstances of persons in need of comprehensive support is still lacking.

In 2022, the BCHR initiated the holding of focus groups on the situation of asylum-seeking and refugee SGBV survivors and LGBTI persons. The focus groups are part of the process the BCHR initiated with a view to bringing together the relevant actors to analyse thoroughly the status of these vulnerable categories in the RS through a multi-sectoral and multi-perspective approach. The BCHR decided to rally in the focus group CSOs focusing on gender-based violence, LGBTI rights and rights of refugees, as well as the relevant representatives of state institutions dealing with these vulnerable groups of refugees and asylum seekers. The BCHR held two focus groups with the representatives of 14 CSOs and two focus groups with the representatives of four state institutions⁴⁸³; together, they identified the specific challenges faced both by asylum-seeking and refugee SGBV survivors and LGBTI persons and by regular providers of services to these groups.

The focus groups aimed to formulate joint recommendations to improve the situation of these two vulnerable categories in order to facilitate their comprehensive and effective support in the RS. The recommendations should serve as guidance for the relevant state authorities, CSOs and other relevant stakeholders. The process of finalising the set of recommendations was under way at the time this Report was prepared.⁴⁸⁴ The below text summarises these recommendations and the above BCHR analysis of the situation of asylum-seeking and refugee SGBV survivors and LGBTI persons.

- Secure particularly marginalised categories of refugees and asylum seekers adequate access to information providing them with clear insight into all forms of protection (legal, psychological, health, etc.) at their disposal and security guarantees protecting their identity and status. This is imperative given that many vulnerable migrants are beyond the system's reach and, consequently, difficult to identify.
- Service providers should continue improving and strengthening their multi-disciplinary approach to helping asylum-seeking and refugee SGBV survivors and LGBTI persons, from their registration to their full integration. It should be based on an individual approach to each person, and necessarily respect the principle of confidentiality. The RS must make available information on the existing services and resources

483 Representatives of the CRM, the Ministry of Labour, Employment and Veteran and Social Issues, the Belgrade SWC and the Office of the Commissioner for the Protection of Equality took part in the focus group.

484 The recommendations have so far been supported by nine CSOs that actively participated in the focus groups. The process is still ongoing.

to these individuals, so that they can access them themselves when they want to.

- Standardise the system of referrals by all service providers; clearly define the division of roles, the individual approach to the beneficiaries, as well as mutual coordination and communication (so-called referral pathways), whilst acknowledging the limited capacities of each provider extending services to vulnerable groups.
- Secure a high degree of safety and standardisation of services available in ACs and RTCs, along with the presence of individuals trained in extending support in gender-sensitive cases.
- Ensure full sensitisation of all stakeholders communicating and working with SGBV survivors and LGBTI persons, including facilitators, interpreters, legal aid providers, providers of health care and psychosocial support, as well as civil servants directly working with SGBV survivors and LGBTI persons (above all the staff of the MOI, the CRM and social protection authorities).
- Put in place all (financial and organisational) prerequisites for the maintenance of the existing and/or opening of new accommodation facilities (such as safe houses) for vulnerable categories of refugees and asylum seekers, including SGBV survivors and LGBTI persons, with the support of the state institutions; develop a plan outlining the criteria and requirements for referral to such accommodation and accompanying activities aimed at empowering the residents of such facilities.

6. INTEGRATION

6.1. Introduction

Under the LATP, integration denotes the inclusion of persons granted asylum in the RS's social, cultural, and economic life. The LATP lays down that the state shall also enable the naturalisation of refugees.⁴⁸⁵ Furthermore, the LATP also sets out that the RS shall extend support to the implementation of the integration-related provisions of that law commensurate with its capacities.⁴⁸⁶

Integration of refugees in the host country's society ranks high on the international agenda and is in keeping with Sustainable Development Goal 16.⁴⁸⁷ Refugee integration is a complex and multi-dimensional process, and its main aspects are legal, economic, social and cultural. 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 success of integration of refugees and the process of their adaptation in the host country depends on a number of factors. Namely, many refugees have come away with traumatic experiences from their countries of origin, caused, *inter alia*, by physical and psychological torture, extreme poverty, murder of their family members or friends and many other human rights violations. People fleeing their country of origin often face risks to their lives. Although they initially feel a sense of relief when they arrive in a safe place, many of them start feeling frustrated as they encounter new problems, including separation from their families, the language barrier, unregulated legal status due to the long asylum procedure, unemployment, or difficulties accessing education or health care. The refugees' adequate adaptation in the host country is also affected by the mental health issues they may have developed, in particular the post-traumatic stress disorder (PTSD) and depression.

485 Art. 71, LATP.

486 *Ibid.*

487 More about the goals and the Sustainable Development Agenda at: <https://bityl.co/H648>. Sustainable Development Goal 16 reads as follows: "Promote just, peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels." Particularly relevant is Target 16.10, which reads as follows: "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements". See more at: <https://bityl.co/H64G>.

Foreigners granted asylum or subsidiary protection in the RS are guaranteed the following rights: right to residence, accommodation, freedom of movement, property, health care, education, access to the labour market, legal aid, social assistance, freedom of religion, family reunification and assistance in integration.⁴⁸⁸ From the legal perspective, they have equal rights as Serbian nationals to education, intellectual property, access to justice and legal aid.⁴⁸⁹ Like Serbian nationals, they, too, may be exempted from paying court and administrative fees. The rights of foreigners granted asylum in the RS to access the labour market, health care and own movable and immovable property are governed by regulations on the status of foreigners in these fields.⁴⁹⁰

Integration is partly regulated also by a by-law – the Decree on the Integration of Persons Granted the Right to Asylum in the Social, Cultural and Economic Life (hereinafter: Integration Decree). The Decree on Criteria for Establishment of Priorities in Accommodation of Persons Granted the Right to Refugee Status or Subsidiary Protection and the Conditions of Use of Housing for Temporary Accommodation (hereinafter: Accommodation Decree) is also relevant to the integration of refugees.⁴⁹¹

Although the RS is not an EU Member State, its regulations on asylum are very similar to those of the Member States, although they still do not fully comply with the EU Directives. In its Serbia 2022 Report,⁴⁹² the European Commission said that the RS normative framework was largely aligned with the EU *acquis*, but recommended further alignment of the LATP provisions, including on integration. The Report specified that laws and by-laws needed to be harmonised with the LATP to provide beneficiaries of international protection with effective access to socio-economic rights and that biometric IDs and earlier access to the labour market could improve integration perspectives. The Report noted that travel documents for people under international protection were still not issued and that the RS should ensure that these measures were operationalised as a matter of priority, given their importance for a life in dignity of refugees.

Non-issuance of travel documents⁴⁹³ is still the key legal barrier and one of the main reasons why foreigners granted asylum have been leaving the RS.

488 Art. 59, LATP.

489 Arts. 60–73, LATP.

490 Ibid.

491 *Official Gazette of the RS*, Nos. 63/15 and 56/18.

492 *Serbia 2022 Report*, European Commission (12 October 2022), pp. 62–64.

493 Art. 91, LATP.

According to the BCHR's records, at least 35 people granted asylum left the RS over the past four years for this reason.⁴⁹⁴

The CRM plays a key role in integration.⁴⁹⁵ The MLEVSI is also tasked with administrative duties regarding the rights and integration of foreigners granted the right to asylum.⁴⁹⁶ Under the LATP, the Asylum Office shall notify them of their rights and obligations as soon as possible.⁴⁹⁷ However, in the BCHR's experience, the Asylum Office has never fulfilled this duty, while the CRM has not been developing individual integration plans in each individual case. CSOs are the only ones extending people granted asylum in the RS legal aid and support in integration, i.e. in accessing their economic, social and cultural rights.⁴⁹⁸

Under Serbian law, foreigners granted international protection have greater rights than asylum seekers. As practice has shown, the complex process of integration would be more expedient and successful if it were launched earlier, i.e. if asylum seekers were granted greater rights. Therefore, this chapter will discuss the integration of foreigners granted asylum, as well as how asylum seekers can realise individual rights that are important for their integration in Serbian society – the right to work, the right to health care, et al. This chapter will also discuss the challenges accompanying the process, which persisted in 2022, as well as some major steps forward, especially in the fields of education and the rights of persons with disabilities and the actions of independent human rights institutions that have recognised discrimination against this category of foreigners.

We will use the word 'refugees' to denote foreigners granted the right to asylum in the RS, except where it was important to specify the precise status of the foreigners under national law.

494 In general, refugees in the RS still perceive it as a transit country, in which they plan on staying only temporarily. In addition to poor systemic solutions and inconsistent enforcement of the law, the reasons for this situation lie also in their lack of motivation to learn the language and find a job and in cultural barriers.

495 Art. 10 (2), Migration Management Law, *Official Gazette of the RS*, No. 107/12.

496 Art. 19, Law on Ministries, *Official Gazette of the RS*, No. 128/20.

497 Art. 59(6), LATP.

498 In the BCHR's experience, the CRM has been providing successful asylees with Serbian language lessons in accordance with the LATP and financial aid for accommodation over a one-year period once they are granted asylum. More in the chapter: Right to Accommodation.

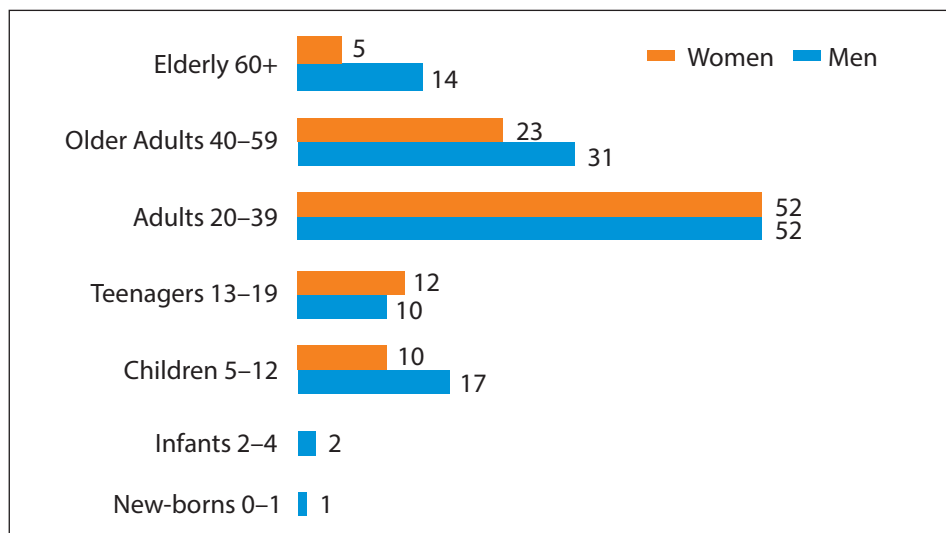
6.2. Statistics Concerning BCHR Clients in the Integration Process⁴⁹⁹

At the time this Report was completed, a total of 229 BCHR's clients were in the process of integration; 102 of them were male and 127 female. Mirroring the current migration trends, most of these BCHR clients were from Ukraine (94), Burundi (24), Iran (19) and Libya (15).

The number of refugee women reflects the general trend of countries from which most BCHR clients hail – most of them were nationals of Ukraine (74) and Burundi (11). The nationalities of refugee men are more even – most of them hailed from Ukraine (21), Iran (13) and Burundi (13).

Most of BCHR's clients were adults (20–39 years old) – 52 of them were men and 52 were women; they accounted for over 45% of all BCHR's clients in the integration process. Most of BCHR's clients (68%) were adults (adults and older adults);⁵⁰⁰ these data shed a lot of light on their integration-related needs. Namely, most of them have already acquired a specific level of education and need to join the labour market.

BCHR Clients Statistics (by Age and Sex)



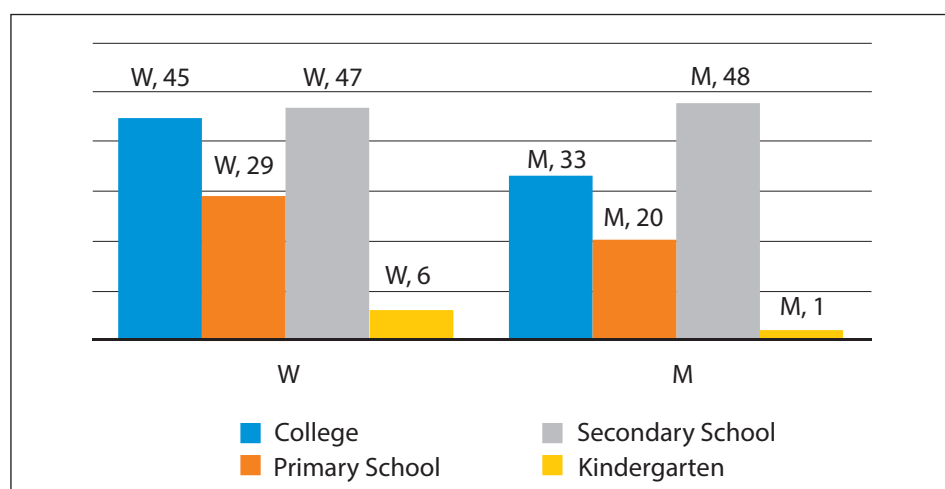
⁴⁹⁹ The data concern the BCHR's current clients at the time this Report was prepared, whose integration it has been supporting.

⁵⁰⁰ Aged between 20 and 59.

As noted, most of BCHR's clients during the reporting period hailed from Ukraine (94) and they made up the majority in all age categories – older adults (29), the elderly (17), children (11) and teenagers (11). Most of them were mothers of school-aged children and retirees. Most of BCHR's Burundian clients were adults (15). Their needs were mostly associated with pursuing their education and accessing health care.

The education profiles of BCHR's clients in the process varied. Ukrainian nationals accounted for most of the clients with university education (33); they were followed by nationals of Burundi (14) and Iran (9).⁵⁰¹ Most of BCHR's clients with secondary education (41) and those who have finished or were about to finish primary school (19) also hailed from Ukraine.

Clients' Degree of Education (by Sex)



In addition to their native languages,⁵⁰² most BCHR clients speak English or French. Only 23% (53) of BCHR's clients have some knowledge of Serbian, which is not encouraging given that they are in the process of integration and that knowledge of the language of the host country is crucial for finding a job, continuing one's education and adequate access to other rights guaranteed by law. BCHR's clients have the opportunity to attend Serbian language lessons in CRM-run accommodation facilities⁵⁰³; the CRM has also been funding Serbian language courses

501 Clients in college and those who have already acquired a college education.

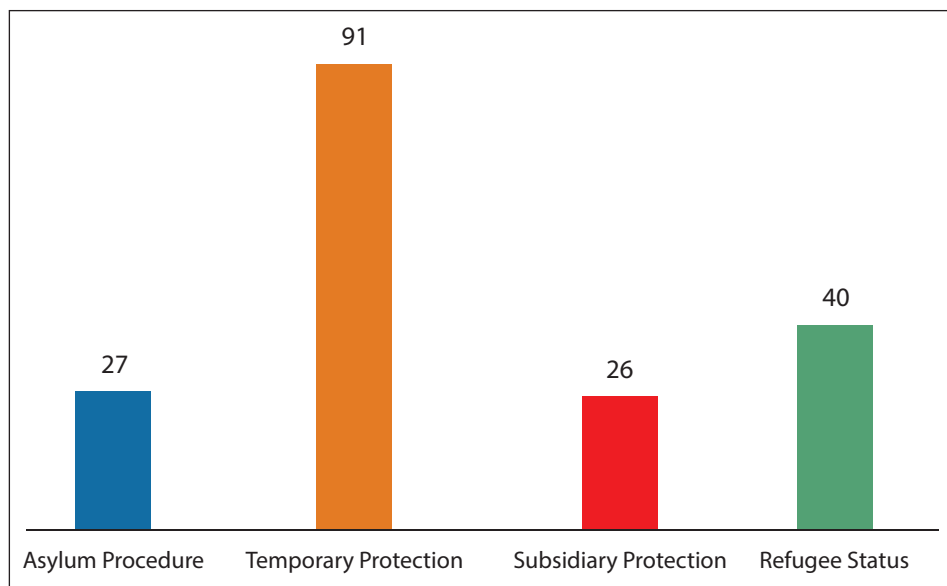
502 Ukrainian, Russian, Arabic, Farsi and French are the languages spoken by most BCHR's clients.

503 Serbian language lessons in ACs and RTCs are provided by UNHCR's partners, such as NGO Indigo and Sigma Plus.

for individuals granted asylum in accordance with the LAMP.⁵⁰⁴ Furthermore, the UNHCR has been providing asylum seekers and refugees living in private lodgings with additional Serbian language lessons through special support programs given that these foreigners are not covered by services extended by the CRM.

Most clients⁵⁰⁵ the BCHR was extending integration-related support to⁵⁰⁶ at the end of the reporting period have been granted some form of international protection in the RS – the Asylum Office had granted asylum and subsidiary protection to 42 and 35 BCHR clients respectively. In addition, the Asylum Office granted temporary protection to 91 BCHR clients from Ukraine in 2022. This was the first time this LAMP mechanism was activated in the RS (due to the war in Ukraine). At the time this Report was prepared, most of BCHR's clients – asylum seekers – hailed from Iran (7). BCHR's active clients who have been granted asylum were mostly nationals of Iran (11), Libya (6) and Burundi (5), while most of its clients granted subsidiary protection were nationals of Libya (9).

Legal Status of BCHR Clients



504 Art. 59, LAMP.

505 The BCHR team has been representing foreigners who have applied for asylum, who have been granted asylum or subsidiary or temporary protection, who have been granted temporary residence on humanitarian grounds, as well as RS nationals who have come from Ukraine.

506 The BCHR had over 220 active clients at the time this Report was finalised.

As per the nationality of asylum seekers and refugees and their current place of residence, most of BCHR's clients (157 or 68%) were living in private lodgings; most of them were nationals of Ukraine (57), Iran (19), Libya (15) and Burundi (13). A large share of BCHR's clients (39) were living in the Vranje AC, which had been dormant and reopened in early 2022 primarily to accommodate refugees from Ukraine.⁵⁰⁷ Mothers with school-aged children accounted for most residents of the Vranje AC.

6.3. Right to Accommodation

The right to housing (accommodation) was first guaranteed in Article 25 of the Universal Declaration of Human Rights (UDHR) and subsequently elaborated in Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR).⁵⁰⁸ Article 21 of the Refugee Convention, which also enshrines the right to housing, does not apply to asylum seekers.

The issue of the adequate housing of refugees, which arose after the large-scale influx of migrants to Europe in 2015, remained just as relevant in 2022; it is also one of the main prerequisites for finding durable solutions for refugees.⁵⁰⁹ The right to adequate housing is part of the right to an adequate standard of living, wherefore it is enshrined in a variety of international human rights instruments.

Under the LATP,⁵¹⁰ foreigners granted the right to asylum shall be provided with assistance in accommodation, commensurate to the state's capacities. Specifically, such persons are to be provided, via the CRM, with temporary housing or financial aid to rent temporary housing, for a period of one year from the day they are served the ruling granting them the right to asylum. The process is governed in greater detail by the Accommodation Decree.⁵¹¹

Despite the crucial importance the right to accommodation has for the refugees' housing stability and welfare, this right is often treated in practice as less significant than other refugee rights.⁵¹² In the BCHR's years-long experience,

507 Russian nationals were also sent to the Vranje AC during the reporting period.

508 The right is guaranteed also in a number of human rights instruments specific to this vulnerable category. According to the principles of indivisibility and universality of human rights, the right to adequate housing is guaranteed to "everyone, including non-nationals, such as asylum seekers and refugees [...]".

509 *The Right to Housing and its Applicability to Asylum Seekers in Europe* (30 October 2017).

510 Art. 61(2), LATP.

511 *Official Gazette of the RS*, No. 63/15.

512 The UN Special Rapporteur on the right to adequate housing went as far as qualifying it as one of the most jeopardised rights. Asylum seekers are at particular risk of restrictions of their right to housing because they rely on the state to provide them with accommodation.

foreigners whose asylum applications are upheld are in practice secured exclusively with financial aid,⁵¹³ since the CRM does not have temporary housing at its disposal. The financial aid in the amount of the minimum wage the previous month is granted to refugees, who have no income or whose income per family member does not exceed 20% of the minimum wage.⁵¹⁴ The identical amount of aid is granted single refugees and those living together with their families. It usually does not suffice to pay the rent and utility bills, especially in cities, and in case of larger families.

6.3.1. Challenges in practice

The numerous documents that refugees have to submit to the CRM together with the application for housing remained a major challenge in 2022. These documents include: photocopies of their IDs, Foreigner Registration Number (FRN)⁵¹⁵ certificates, bank card(s) and the rulings granting them asylum,⁵¹⁶ certificates of unemployment and statements certified by a notary public. The fact that some banks introduced stricter requirements for refugees and asylum seekers who wanted to open bank accounts in 2022 gave rise to substantial difficulties in that context, especially after the increased influx of people from Ukraine and Russia. In the BCHR's opinion, such a practice risks to further complicate and prolong the already long and often problematic account opening procedure.

Furthermore, refugees applying for assistance need to be registered with the National Employment Service (NES), which issues certificates of unemployment. However, the NES offices are usually in another city, the NES staff and/or the refugees do not speak foreign languages, while the form that they need to fill is in Cyrillic. The procedure takes longer if the refugee does not have a personal work permit, because, in the experience of BCHR's clients, its issuance takes at least a month.⁵¹⁷

All adult family members are to submit certified statements confirming that they do not earn any regular or occasional income from employment, entrepreneurship, or property. The statements must be certified by a notary public in the presence of a court-sworn interpreter for the applicant's language. Various difficulties in obtaining certified statements have been arising in practice, mostly due to the absence or lack of court-sworn interpreters in the RS for some of the

513 Art. 10(1(1), Accommodation Decree.

514 The aid amounted to slightly over 30,000 RSD.

515 FRN – Foreigner Registration Number the Asylum Office issues refugees and asylum seekers in accordance with the LATP.

516 Without explanation, in accordance with the confidentiality principle.

517 Some BCHR clients had to wait two or three months for their personal work permits in 2022.

refugees' native languages.⁵¹⁸ Additionally, the fees of notaries public and court-sworn translators and interpreters are still unreasonably high in light of the refugees' financial standing.⁵¹⁹

Once the CRM approves their applications for financial aid, the refugees have to move out of the AC within a month. However, landlords usually require of their new tenants to pay a deposit together with the first month's rent; since the total costs of moving into private lodgings are usually higher than the funds refugees have at their disposal, they rarely move out of the ACs within a month.⁵²⁰ During the reporting period, the CRM adopted only one ruling granting financial aid to a BCHR client. Unless the refugees or their legal representatives send a letter to the CRM waiving the right to appeal, the rulings become final after the expiry of the 15-day deadline for appeal.

Lack of adequate accommodation became particularly challenging in the case of BCHR's client S. from Cameroon, who was granted subsidiary protection in July 2022. Namely, S. is in a particularly vulnerable situation, since he is paraplegic and has to undergo dialysis treatment three times a week, wherefore he needs adequate accommodation tailored to his needs. The first challenge is reflected in his need for disability-friendly housing, possibly near a health institution where he can undergo dialysis treatment. The second problem arises from S.'s financial insecurity, which deteriorated during the reporting period due to the high inflation rate impinging not only on the situation of refugees, as a particularly vulnerable category of the population, but on most nationals of the RS as well. Uncertainties surrounding the finding and renting of private lodgings are further compounded by labour market volatility, on the one hand, and difficulties finding and keeping a job, on the other.⁵²¹

Lacking stable income, refugees and asylum seekers were frequently in need of aid, which they usually received from international or non-government

518 For instance, no court-sworn translators/interpreters for Persian, Urdu or Pashto are listed in the Ministry of Justice's electronic register of court-sworn interpreters (available at: <https://bit.ly/3EqoycS>). In such situations, the notaries public insist that the refugees be accompanied by a court-sworn translator/interpreter for another language they understand, usually English. However, some refugees do not speak any foreign languages. More in: *Right to Asylum 2021*, p. 120.

519 Court translators/interpreters charge around 6,000 RSD and the notaries public charge 2,160 RSD per individual for the certification of statements. More about the high fees of notaries public and lack of court-sworn interpreters and translators and the challenges they pose to refugees and asylum seekers in *Right to Asylum 2019*, p. 189.

520 In such situations, the BCHR assists its clients in applying for one-off financial aid with the UNHCR. They have to fill a form and explain why they need the aid.

521 S.'s case reflects the general situation in society and the problems generally faced by persons with disabilities. These problems are compounded if these persons are members of disadvantaged social groups, such as refugees and asylum seekers.

organisations.⁵²² In addition to the financial aid for temporary accommodation granted by the CRM, the financial aid granted to refugees and asylum seekers by UNHCR (CBI)⁵²³ was extremely helpful. There are numerous reasons why such support is extended: loss of a job, high rent, high inflation driving up prices of essential purchases, and difficulties finding employment. This is why the BCHR integration team devoted additional attention to these clients, with UNHCR's support, motivating them to look more actively for jobs and participate in various trainings to improve their employment prospects.

6.3.2. Recommendations

Most refugees in the RS fall in the socially vulnerable category of the population and are in need of all forms of aid and support, especially in securing basic housing conditions. In the context of the persistent effects of the economic crisis, due both to the ongoing COVID-19 pandemic and high inflation in 2022, most refugees faced uncertainties concerning finding stable employment and income, wherefore they had difficulties covering their rent. The BCHR therefore issues the following recommendations:

- The system providing refugees and asylum seekers with protection and financial aid should extend from international and non-government organisations also to state institutions, such as the SWCs or the CRM, commensurate to their capacity.
- The Government of the RS should amend the Accommodation Decree to ensure that the amount of financial aid for housing that is granted to refugees, especially those with one or more children, reflects the size of their families. Furthermore, the RS's Government should simplify the application procedure and lower the costs the refugees have to bear.⁵²⁴
- The aid eligibility period should be extended in case of vulnerable categories of refugees.

522 Under the LATP, refugees and asylum seekers living in private lodgings are entitled to welfare, for which they need to apply with the relevant SWC in the territory of the municipality they are living in. The amount of the monthly welfare varies depending on the applicant's circumstances, i.e. whether the applicant is single or has a family. To the best of the BCHR's knowledge, the SWCs rarely grant welfare to refugees and asylum seekers, who need to fulfil a number of eligibility requirements (above all, submit proof that they and their family members are unemployed, et al).

523 Cash-based intervention.

524 As the BCHR has already recommended. More in *Right to Asylum 2020*, pp. 139–142, and *Right to Asylum 2021*, pp. 119–122.

- Thought should also be given to providing employed refugees with financial aid to supplement their wages and pay for their temporary accommodation and thus stimulate them to join the labour market as soon as possible and become independent.⁵²⁵
- The Government of the RS should amend the Accommodation Decree and set participation in integration programmes as the requirement for exercising the right to accommodation.⁵²⁶
- The Accommodation Decree should simplify the procedure of certifying documents on the refugees' financial standing. Addressing the deficit or absence of court-sworn interpreters and translators for the refugees' native languages is a priority.

6.4. Personal Documents and the Right to Freedom of Movement

Under the Refugee Convention,⁵²⁷ the authorities of the state shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. The LATP entitles the MOI to issue four types of IDs and travel documents for refugees.⁵²⁸ The ID templates are set out in the Rulebook on the Content and Format of the Asylum Application and the Contents and Formats of Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection.⁵²⁹

The Minister of the Interior has not yet adopted the form of the travel document for refugees – a systemic deficiency persisting since the establishment of the asylum system back in 2008⁵³⁰ and impinging on the naturalisation of refugees in the RS. Furthermore, IDs for asylum seekers and foreigners granted

525 Given that the asylum procedure in the RS can last several years and that asylum seekers are entitled to access the labour market only nine months after they apply for asylum, it is quite likely that some of them will already have found a job by the time their applications are upheld.

526 Art. 59 of the LATP on loss of the right to financial aid in case of non-attendance of Serbian language lessons needs to be applied consistently. In the experience of the BCHR team, attendance of Serbian language lessons depends mostly on the refugees' motivation and will. Some foreigners granted asylum have never attended Serbian language lessons. On the other hand, the CRM lacks the capacity to check whether all foreigners are complying with this obligation.

527 Art. 25, Refugee Convention.

528 Art. 87 LATP provides for the issuance of IDs to asylum seekers, foreigners granted refugee status, subsidiary and temporary protection, and for the issuance of travel documents for refugees.

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

530 When the Asylum Law (*Official Gazette of the RS*, No. 109/07) entered into force.

asylum still lack all the requisite elements, which is an even greater obstacle to their everyday lives and full enjoyment of rights under the law. Namely, these categories of foreigners are still not issued biometric IDs, while the Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection has not yet been brought in line with the RS's Law on IDs.⁵³¹

In 2021 and 2022, the BCHR team took part in consultations with practitioners on draft amendments to the LATP, providing it with the opportunity to comment the proposed amendments and participate in thematic trainings on the issue. However, the LATP was not amended by the end of 2022; nor were the described problems eliminated.

Refugees and asylum seekers are also entitled to a driving licence, which they are issued by the MOI after they pass the driving test or apply for exchange of their valid foreign driving licences for Serbian ones. The procedure is set out in the Road Traffic Safety Law (RTSL)⁵³² and the Rulebook on Driving Licences.⁵³³ The legal lacunae in these regulations, however, impede the issuance of driving licences to refugees and asylum seekers. The RTSL does not recognise them as categories, which further complicates the exchange of their foreign driving licences by Serbian ones. These issues will be elaborated in greater detail in the ensuing sections.

6.4.1. Non-Issuance of Travel Documents

Under the Refugee Convention, states shall issue travel documents to refugees.⁵³⁴ Under the LATP, at the request of a person who has been granted refuge in the RS, the Asylum Office shall issue a travel document in the prescribed form, valid for a period of 5 years.⁵³⁵ In exceptional cases humanitarian in character, travel documents valid for one year may be issued also to foreigners granted subsidiary protection in the event they do not possess national travel documents.⁵³⁶

These provisions of the LATP are aligned with the relevant EU Directives.⁵³⁷ For instance the 2004 Qualification Directive laid down that Member States shall

531 *Official Gazette of the RS*, Nos. 62/2006, 36/2011 and 53/2021.

532 *Official Gazette of the RS*, Nos. 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law, 9/16 – CC Decision, 24/18, 41/18, 41/18 – other law, 87/18 and 23/19.

533 *Official Gazette of the RS*, Nos. 73/10, 20/19 and 43/19.

534 Art. 28, Refugee Convention.

535 Art. 91(3) of the LATP.

536 Under Art. 91(3) of the LATP, in case of individuals who do not possess travel documents issued by their countries of origin.

537 QD 2004/83/EC – Travel document Article 25, QD 2011/95/EU – Travel document, Article 25.

issue to beneficiaries of refugee status travel documents in the form set out in the Schedule to the Refugee Convention. On the other hand, it provided that Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.⁵³⁸ Given that this Article was overly restrictive towards beneficiaries of subsidiary protection, the revised Directive of 2011 omitted the impugned part of the provision. The LATP, however, kept the provision in the 2004 Directive, although it is no longer in effect.

Despite the national authorities' obligations under the law, no headway was made in facilitating the refugees' enjoyment of their right to a travel document during the reporting period. The MOI still has not adopted the long-awaited by-law setting out the form of the travel document for refugees.⁵³⁹ The problem also reflects the manifest lack of political will to address the issue systemically. The BCHR has for years now been alerting to the need to adopt the by-law governing the format and content of the travel document for refugees without any further delay, and finally enable the freedom of movement of this category of foreigners beyond the RS.

It needs to be noted that the refugees' passports issued by their countries of origin (if they even possess them) in most cases expire after a specific period of time and that they cannot extend them because they are unable to establish contact with the authorities in their countries of origin or their diplomatic and consular missions. They are thus inevitably left without any valid travel documents allowing them to go abroad. Their freedom of movement is therefore limited to the territory of the RS,⁵⁴⁰ exacerbating their and the asylum seekers' long-standing dissatisfaction with and disappointment in the RS asylum system.⁵⁴¹

The BCHR team singles out two cases in its 2022 practice, where the national authorities allowed refugees to leave and return to the RS based on requests by their legal representatives. Namely, the BCHR team asked the Asylum Office to issue a travel certificate allowing its client, a refugee from Ukraine, who has been

538 Directive 2004/83/EC. *Op.cit.*, Article 25 (2).

539 The Minister was to have adopted such a by-law within the deadline referred to in Article 101 in conjunction with Article 87(6) of the LATP. The Annex to the Refugee Convention contains a specimen of the travel document the Contracting States can use if they have not regulated the issue at the national level.

540 In rare cases, to the neighbouring countries in the region or former Yugoslav republics. More below.

541 Additionally, restrictions of the refugees' freedom of movement to the RS also result in violations of many of their other fundamental human rights, such as the right to a family life, because they are unable to see their family members living in other countries.

living in the RS since 2015 and whose passport issued by the Ukrainian authorities has expired, to travel to Montenegro. The BCHR emphasised in the request that its client's passport had expired and that she could not extend it in light of her legal status and the security situation in Ukraine. The Asylum Office granted the request and issued the refugee a travel certificate, with which she went to Montenegro during the summer and returned to the RS without any problems. The Montenegrin border police inspected the refugee's ID issued by the RS MOI and her travel certificate.

In the second case, the BCHR integration team asked the Montenegrin authorities to let its client, a national of Cameroon, to whom the RS granted asylum during the reporting period, enter the country only on the basis of his ID issued by the Asylum Office since he did not have a travel document issued by his country of origin. The BCHR integration team submitted a letter of the sports association of Montenegro, which is to host the refugee from Cameroon and which provided guarantees for him. The Montenegrin authorities upheld the request. Given that the BCHR client at issue still had not gone to Montenegro by the time this Report was finalised, it remains to be seen how he will cross the border in practice, i.e. whether he will face any problems entering Montenegro and then returning to the RS.

These and similar cases are isolated and regard only one-off travel abroad, which is still impeded by bureaucratic procedures and is not even applicable in most countries. The BCHR team assumes that Montenegro's approvals in the above cases are related to the fact that RS nationals can enter Montenegro with their IDs, i.e. that they do not need passports to enter that state. This implies that the RS has been de facto limiting the freedom of movement of refugees, which is in contravention of both the Refugee Convention⁵⁴² and the RS Constitution.⁵⁴³

6.4.2. IDs Lacking Essential Elements

The inadequacy of the IDs issued to refugees and asylum seekers have been a source of everyday problems the BCHR has been alerting to for years. The paper IDs issued by the MOI are simple in format, handwritten and laminated and lack biometric data, and have been impeding their holders access to rights guaranteed by the LATP.⁵⁴⁴

542 Freedom of movement is enshrined in Article 39 of the RS Constitution and Article 2(2) of Protocol 4 to the ECHR.

543 Art. 39, RS Constitution.

544 The IDs still lack any protective elements other than the seal. The template is filled manually by Asylum Office staff. More in the Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection (*Official Gazette of the RS*, No. 47/18).

These IDs, which resemble ordinary cards rather than personal identification documents, can also easily be forged given the way they are made and their appearance. Furthermore, such documents are met with distrust especially of representatives of state authorities and legal persons, who doubt their authenticity, usually because they are unfamiliar with them.⁵⁴⁵

In that sense, the fact that the ID template still lacks a box for the holder's FRN, which is equivalent to the personal identification numbers (PINs) all RS nationals have and which is used by refugees and asylum seekers in various situations, has been creating problems and complicated their everyday enjoyment of rights for years now. In order to claim specific rights, refugees and asylum seekers need to produce FRN certificates that are issued by the Asylum Office for each individual purpose and cannot be used for other purposes. This poses problems, especially given the fee⁵⁴⁶ that has to be paid for each copy of the certificate, except in specific cases set out in the law,⁵⁴⁷ when the fee is waived.⁵⁴⁸

Refugees and asylum seekers have been facing numerous problems in practice because of their inadequate IDs, e.g. in opening a patient file or bank account, as well as mistrust of potential landlords, bureaucratic problems during employment, et al. Civil servants and bank staff often do not know how to enter the FRNs in their systems, since refugees and asylum seekers do not have PINs or chips for reading the data in the personal document. In its comments of the draft amendments to the LAMP, the BCHR team suggested the improvement of the design of the IDs for refugees and asylum seekers. It also noted the necessity of aligning the Law on IDs with the LAMP to overcome the years-long administrative and other difficulties refugees and asylum seekers have been facing and which have often resulted in their discrimination.

6.4.3. Difficulties in Obtaining Driving Licences⁵⁴⁹

Under the RTSL, foreigners temporarily residing in the RS, who have valid travel documents, foreign IDs or visas, may operate vehicles provided they have

545 Many employees of the relevant state authorities are unfamiliar with the refugees' and asylum seekers' documents or the fact that they are issued by the RS MOI, or, for that matter, that IDs for refugees and asylum seekers are as valid as biometric IDs of RS nationals.

546 The refugees have to pay a 320 RSD fee for each copy of the certificate, plus the bank fee.

547 Art. 19, Law on Republican Administrative Fees (*Official Gazette of the RS*, Nos. 43/03, 51/03 – corr., 61/05, 101/05 – other law, 5/09, 54/09, 50/11, 70/11, 55/12, 93/12, 47/13, 65/13 – other law, 57/14, 45/15, 83/15, 112/15, 50/16, 61/17, 113/17, 3/18 – corr., 50/18, 95/18 and 38/19).

548 The fee is waived if the certificate is issued for the purpose of exercising labour, health care or welfare rights.

549 More in *Right to Asylum 2021*, pp. 127–128.

a foreign or international driving licence.⁵⁵⁰ The RTSL lays down that an international driving licence shall be valid for 12 months, as of the day the foreigner is granted uninterrupted temporary residence exceeding six months or permanent residence in the RS.⁵⁵¹

In addition to documents submitted by foreigners whose status is regulated by the FL, refugees and asylum seekers who want to exchange their driving licences with Serbian ones need to submit their FRN certificates and certificates of their status issued by the Asylum Office, together with their application form.⁵⁵² The procedure for exchanging the refugees' driving licences with Serbian ones is not complicated, but the collection of the requisite documents is time consuming. However, police departments and stations have not been applying a uniform or consistent practice concerning the issuance of driving licences to asylum seekers. Over the past few years, some police stations refused to issue asylum seekers Serbian driving licences in lieu of their foreign ones, since their staff believed they were not entitled to exchange them. On the other hand, the Belgrade traffic police consider that both refugees and asylum seekers are entitled to exchange their driving licences and have issued Serbian licences to all the applicants.

The BCHR has already alerted to potential problems surrounding the issuance of driving licences. Namely, the licence exchange procedure is set out in the Rulebook on Driving Licences⁵⁵³ which prescribes that the exchanged foreign driving licences shall be returned to the authorities of the states that had issued them via their diplomatic-consular missions in the RS.⁵⁵⁴ The application of this provision in case of refugees and asylum seekers would lead to the violation of the principle of confidentiality under the LATP,⁵⁵⁵ which prohibits the disclosure of their data to their countries of origin, given that such disclosure might put their safety at grave risk. This is why the BCHR has been referring to the LATP and the confidentiality principle whenever it applied for the exchange of its clients' driving licences.

550 Foreigners temporarily residing in the RS need to have proof of the duration of their uninterrupted residence in the RS.

551 Art. 178, RTSL.

552 Namely, foreigners who want to replace their foreign driving licences with Serbian ones need to submit the following documents together with their application: their valid foreign driving licence and its translation certified by a court-sworn translator, proof of identity, documents proving they have been granted temporary residence in the RS exceeding six months, proof of fee payment, and a medical certificate confirming they are fit to drive issued within the past six months.

553 *Official Gazette of the RS*, Nos. 73/10, 20/19, 43/19 and 128/20.

554 Art. 17, Rulebook on Driving Licences.

555 Art. 19, LATP.

6.4.4. Recommendations

The situation concerning the issuance of personal documents to refugees and asylum seekers has not changed in practice since the asylum system was established in the RS 14 years ago and has impinged on the quality of their integration. The BCHR has time and again ascertained that the refugees' and asylum seekers' inability to obtain adequate personal documents, especially travel documents, was one of the main reasons why many of them decided to leave the RS after a while. The RS should thus urgently take steps to ease the everyday lives of refugees and asylum seekers. The BCHR therefore issues the following recommendations:

- The Minister of the Interior should adopt a by-law governing the design and content of the travel document for refugees forthwith, or, at the very least, start using the specimen travel document set out in the Refugee Convention. The Rulebook on the Templates of the Asylum Application and Document Issued to Asylum Seekers and Individuals Granted Asylum or Temporary Protection needs to be aligned with Article 7 of the Law on IDs to ensure that the refugees' and asylum seekers' personal documents are of the same quality and enjoy the same level of protection as biometric IDs of RS nationals.
- The IDs for asylum seekers and refugees need to include their FRNs, which are the equivalents of the PINs of RS nationals. The RS's budget would not be substantially strained by the issuance of such biometric documents, while the issuance of new IDs upon expiry of the old ones or in case of change of address would be simplified.⁵⁵⁶
- The Government of the RS should propose the harmonisation of the RTSL with the LATP to clearly define the procedure for exchanging the driving licences of refugees and asylum seekers, in light of the fact that the RTSL applies to foreigners whose status is governed by the Foreigners Law, but its provisions do not apply to refugees and asylum seekers. The Rulebook on Driving Licences should then be brought into compliance with the amended law. Furthermore, the MOI Foreigners Directorate needs to promptly notify all MOI staff of the rights refugees and asylum seekers have, to put an end to refusals to replace their valid driving licences with Serbian ones.

⁵⁵⁶ In case of change of address, the new address would be entered as a biometric data via the chip. This would greatly facilitate matters given that asylum seekers and foreigners granted asylum often move house. The BCHR has filed several requests with the Asylum Office to replace the IDs of its individual clients every year.

6.5. Access to the Labour Market

The LATP guarantees the right to work to persons granted asylum,⁵⁵⁷ and asylum seekers in accordance with regulations on employment of foreigners.⁵⁵⁸ Labour and employment rights of this group of foreigners are governed by the Law on Employment of Foreigners (LEF),⁵⁵⁹ which defines in greater detail the categories of eligible foreigners, and the employment procedure and requirements.⁵⁶⁰

The LEF provides for the issuance of personal work permits,⁵⁶¹ *inter alia* to refugees and asylum seekers fulfilling the specified requirements. Persons granted refugee status or subsidiary protection are entitled to apply for their personal work permits as soon as they acquire the status, while asylum seekers may apply for them provided that they had applied for asylum over nine months ago and a final decision on their application is still pending. In practice, the first-instance procedure often takes more than a year, wherefore asylum seekers usually have to wait for the expiry of the nine-month period before they can apply for a personal work permit with the National Employment Service (NES). On the other hand, the nine-month period has been disputable for years, given that it demotivates asylum seekers to stay in the RS and often encourages them to join the grey economy and risk a misdemeanour penalty.⁵⁶² During the consultations on amendments to regulations on the rights of refugees and asylum seekers in 2021 and 2022, the BCHR suggested the shortening of the nine-month period and the abolition of the asylees' obligation to apply for personal work permits.⁵⁶³

Personal work permits, which provide for the free employment, self-employment and realisation of the right to unemployment insurance,⁵⁶⁴ differ from ordinary work permits inasmuch as they are not tied to a particular employer. Personal work permits issued to persons granted the right to asylum will be valid as long as their IDs are valid. The validity of personal work permits issued to

557 Art. 65 LATP.

558 Art. 57 LATP.

559 *Official Gazette of the RS*, Nos. 128/14, 113/17, 50/18 and 31/19.

560 The LEF recognises two categories of foreigners in the asylum category: 1) refugees, whose right to asylum has been recognised under asylum law (Art. 2(8)); and 2) asylum seekers, persons granted temporary protection and persons granted subsidiary protection (Art. 2(9)).

561 Art. 11, LEF.

562 Information obtained by the BCHR team during its interviews of asylum seekers in the field.

563 A comparative overview of practices of EU Member States in a similar economic situation like the RS, in which refugees are exempted from the obligation to obtain work permits is available in BCHR's report *Right to Asylum 2019*, p. 173.

564 Art. 12, LEF.

asylum seekers is six months and may be extended as long as they have the status of asylum seeker.⁵⁶⁵

High costs and the complicated personal work permit issuance procedure still pose major challenges to refugees and asylum seekers wanting to exercise their right to access the labour market. Refugees and asylum seekers living in private lodgings face an additional problem – they need to submit proof that they paid the administrative fees. According to the Fee Schedule, they need to pay 14,360 RSD,⁵⁶⁶ and a 330 RSD application fee.⁵⁶⁷ These fees may be waived under specific conditions set out in the LGAP,⁵⁶⁸ but, in practice, such waivers are granted only to foreigners living in ACs or RTCs at the time of application.

Furthermore, personal work permit application forms are available only in Serbian and the Cyrillic script, which most refugees and asylum seekers are unfamiliar with. They are therefore often forced to rely on help from their friends, legal representatives or other representatives of non-government organisations to fill the application forms.

Although the right to work remains one of the more complex rights refugees and asylum seekers have difficulty exercising, the BCHR integration team registered a high rate of employment of its clients in the reporting period. Once the NES issued them their personal work permits, refugees and asylum seekers found jobs relatively quickly despite the language barrier, the employers' unfamiliarity with the refugees' and migrants' right to access the labour market and the undeveloped domestic market.⁵⁶⁹ One of the reasons may lie in the fact that there is a general shortage of labour force in the RS and that there are more vacancies than in the past, especially since the COVID-19 pandemic broke out.

The BCHR integration team referred its clients to apply for jobs at companies with which UNHCR has been successfully cooperating with,⁵⁷⁰ which facilitated their employment. Most of these companies are engaged in the HORECA industry and offer jobs not requiring knowledge of Serbian or prior work experience. Kitchen and hygiene maintenance jobs, as well as other manual jobs in warehouses and depots have proven to be provide refugees and asylum seekers with solid employment opportunities.

565 Art. 13, LEF.

566 Fee Schedule 205, Law on Republican Administrative Fees.

567 Fee Schedule 1, Law on Republican Administrative Fees.

568 Art. 89, LGAP.

569 By end October 2022, the BCHR applied for and obtained 58 personal work permits for its clients. Ten of them were Ukrainian nationals.

570 Companies with which UNHCR has been cooperating with successfully, such as IKEA, Mercator, Mona Plaza and the Hilton, have demonstrated a high degree of openness and sympathy, particularly for refugees and asylum seekers.

The BCHR integration team continued closely cooperating with the UNHCR team for durable solutions in extending various forms of support to refugees and asylum seekers to facilitate their comprehensive economic empowerment. They have been helping refugees and asylum seekers find jobs and learn Serbian, cover the costs of their work permit fees, obtain their sanitary booklets and purchase work equipment, as well as emancipate and join the labour market. The integration team has also been helping its clients prepare their CVs and motivation letters.

6.5.1. Refugees as Entrepreneurs

The BCHR team welcomes the refugees' endeavours to emancipate and join the world of entrepreneurs and has been supporting those keen on launching their own business. Entrepreneurship opens new business opportunities and substantially contributes to the efficient integration of refugee entrepreneurs in local society.

Within its Refugees for Refugees (R4R) project activity, the BCHR integration team in 2022 organised a session on "Refugees as Entrepreneurs". The session aimed to bring together refugees who already have experience in this area and refugees interested in launching their own business in the RS.

The session was an excellent opportunity for the participants to share experiences on launching and running their own business and analyse the problems and challenges faced by refugee entrepreneurs and how they can be overcome. This successful event marked the beginning of future entrepreneurial cooperation among refugees and an opportunity for BCHR and UNHCR to pursue their joint advocacy efforts and continue extending support to refugees in their business endeavours.

6.5.2. Recommendations

Refugees and asylum seekers in the RS have had an even harder time than RS nationals finding a job and accessing useful employment-related information due to their lack of knowledge of the local language and culture. The BCHR issues the following recommendations that will help this category of foreigners exercise their right to work in the RS more efficiently and, consequently, increase their social security and live a life of dignity:

- It is necessary to provide asylum seekers and refugees with systemic support in finding a job and in acquiring new skills and knowledge to improve their competitiveness in the labour market.
- The provisions of the LATP and LEF need to be aligned to automatically recognise the right to work of persons granted asylum and obviate

the need to obtain personal work permits first. Such amendments would greatly facilitate their access to the labour market and the refugees could focus on qualification and requalification programmes. On the other hand, the nine-month time period laid down in the LEF, upon the expiry of which asylum seekers are entitled to access the labour market, needs to be shortened.

- The NES, as well as the CRM,⁵⁷¹ should invest their resources in the design and implementation of effective programmes for the engagement of refugees in education and trainings and facilitate their access to the labour market through more effective active employment measures. The NES should open a separate department that would provide refugees and asylum seekers with the information they need about the work permit application procedure. This would eliminate many of the dilemmas and questions they may have about obtaining a personal work permit, the crucial document for exercising the right to access the labour market. The personal work permit application form should be translated into a variety of languages to enable refugees to themselves apply for their permits.

6.6. Right to Family Reunification

Separation of families due to war, conflict and persecution has devastating effects on the well-being of their members, their unity and ability to rebuild their life together. Many difficult decisions are made in such circumstances and people often leave their families behind in their quest for safety in other countries. Family reunification is undoubtedly one of the greatest concerns of refugees, most of all those who are alone in countries where they enjoy international protection, and it is one of the main aspects of ensuring stability in the life of refugees. Family reunification for refugees is a pressing human rights issue. Without it, refugees are denied their right to respect for family life, have vastly diminished integration prospects and endure great additional unnecessary suffering, as do their family members. Such situations are particularly problematic when children are separated from their families.

The CoE Commissioner for Human Rights called on all CoE Member States to uphold their human rights obligations and ensure the practical effectiveness of the right to family reunification for refugees and other international protection beneficiaries. To do so, states should (re-)examine their laws, policies and practices relating to family reunification for refugees. For refugees in particular,

⁵⁷¹ Pursuant to Art. 2(1(6)) of the Integration Decree.

the right to family life normally requires swift reunification of families. Otherwise family members may be left in peril and the refugee's capacity to integrate is completely undermined.⁵⁷²

The right to family life and unity is guaranteed by many international and national laws. Under the UDHR,⁵⁷³ the family is entitled to protection by society and the state. The 1951 Refugee Convention does not explicitly mention the right to family reunification. However, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, adopted together with the Refugee Convention, states that unity of the family is an essential right of the refugee.⁵⁷⁴

The Family Reunification Directive⁵⁷⁵ guarantees the right to family reunification at the EU level. It, however, needs to be noted that unlike refugees, beneficiaries of subsidiary protection do not enjoy the favourable conditions associated with the right to family reunification, i.e. beneficiaries granted this form of protection are exempted from its application.⁵⁷⁶ The European Council on Refugees and Exiles (ECRE) criticised the omission of the right to family reunification from the EU Qualification Directive, in particular the fact that subsidiary protection beneficiaries are explicitly exempted from the application of the EU Directive on Family Reunification.⁵⁷⁷

On the other hand, the LTP includes a broader and more favourable provision guaranteeing the right to family reunification to individuals "granted the right to asylum".⁵⁷⁸ The LTP charges the Asylum Office with deciding on family reunification applications involving underage children born in or out of wedlock, underage adopted children or underage stepchildren of refugees who

572 *Realising the right to family reunification of refugees in Europe*, Issue paper published by the CoE Commissioner for Human Rights, 2017, see more at: <https://bit.ly/co/H68V>.

573 Art. 16(3), UDHR.

574 The Final Act emphasises that such unity is constantly threatened and recommends to the signatory states to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring the protection of refugees who are minors, in particular unaccompanied children and girls. See: *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons adopted together with the Refugee Convention* (25 July 1951), available at: <https://bit.ly/co/AIUc>.

575 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] SL L 251/12, available at: <https://bit.ly/co/Aiwb>.

576 Council Directive 2003/86/EC, Article 3(2): This Directive shall not apply where the sponsor is: (c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

577 Jane McAdam, *Complementary Protection in International Refugee Law*, Oxford University Press (Oxford, 2007), p. 96.

578 Art. 59(5), LTP.

have not founded a family of their own. Residence of other family members shall be regulated in accordance with regulations governing the legal status of foreigners.⁵⁷⁹ The Foreigners Law⁵⁸⁰ defines in greater detail the right to temporary residence of foreigners who are members of the refugee's immediate family. Under the LATP, family members of persons granted the right to asylum shall have, under equal conditions, all the rights and obligations, with the exception of the right to family reunification.⁵⁸¹

Exceptionally, the LATP also provides the right to family reunification also to individuals granted temporary protection in the RS. In such cases, the relevant authority shall grant temporary protection also to the beneficiaries' family members who come to the RS.

The practice of family reunification of persons granted international protection in the RS is still undeveloped. To the best of the BCHR's knowledge, such a procedure was conducted only once, in 2020.⁵⁸²

In the meantime, the BCHR integration team initiated two family reunification procedures, for an Afghani and a Burundian nationals who have been granted asylum. Both procedures were pending at the end of the reporting period.

6.7. Right to Marriage and Problems in Practice

The UDHR confirms the right to marry.⁵⁸³ This right is not defined in the Refugee Convention or the LATP. Several BCHR clients granted the right to asylum in the RS asked for its help in submitting documentation for entry into marriage to the relevant civil registry departments. Under the RS's law, the law of the state the foreigner is a national of shall apply in relation to conditions governing marriage.⁵⁸⁴ However, the question that arises in practice is whether this provision also applies to refugees, who are not in a position to enjoy the protection of their countries of origin, wherefore they are unable to contact the relevant institutions in their countries of origin to obtain the documents they need to marry in the RS, an issue which the BCHR has already reported on.⁵⁸⁵

579 Art. 70(3), FL.

580 Art. 56, FL

581 Art. 59(5), LATP.

582 In the case of an Afghani national granted asylum in the RS, who had been legally represented by the APC. More in *Right to Asylum 2021*, pp. 135-136.

583 Art. 16(1), UDHR.

584 Art. 32(1), Law on Resolution of Conflicts of Laws with Regulations of Other Countries, *Official Gazette of the SFRY*, Nos. 43/82 and 72/82 – corr., *Official Gazette of the FRY*, No. 46/96 and *Official Gazette of the RS*, No. 46/06 – other law.

585 According to the practice of civil registry departments, foreign nationals who wish to enter into marriage in the RS must submit documents issued by the relevant institutions of their

Under the LAMP,⁵⁸⁶ the state shall put in place conditions for the integration of persons granted the right to asylum in the RS's social, cultural and economic life and facilitate their naturalisation commensurate with its capacities. Most BCHR clients facing problems in fulfilling the formal requirements for entry into marriage are no other than refugees who want to settle down, marry and start a family in the RS and be full-fledged citizens of the community. Refugees denied the right to marry are denied their fundamental human rights, such as the right to respect for their private and family life.⁵⁸⁷ Given that the formal marriage requirements impede the integration process under the Integration Decree,⁵⁸⁸ the question arises whether refugee law is consistently applied in this area.

In 2022, the BCHR integration team helped refugees exercise their right to marriage in two cases. The first case concerned an Iranian national who had been granted asylum and wanted to marry a national of the RS. However, the procedure of collecting the requisite documents and overcoming the administrative obstacles took several years. The first problem BCHR's Iranian client faced was to obtain a single status certificate, which he could obtain only via the Iranian Embassy in Belgrade; needless to say, he was reluctant to contact it since he had fled his country of origin for political reasons. The civil registry departments' insistence that refugees submit such a document is disputable; as is their insistence that the refugees produce a valid national passport, which most persons granted asylum do not have, as the BCHR already reported.⁵⁸⁹ After consulting with the BCHR's integration team, its Iranian client succeeded in marrying his fiancé in the Belgrade municipality of Savski venac only with the permission to marry and the ID issued by the Asylum Office.⁵⁹⁰

countries of origin, which is unfeasible in the case of most refugees. More in *Right to Asylum 2020*, pp. 155–158.

586 Art. 71(2), LAMP.

587 Art. 8 ECHR (*Official Journal of Serbia and Montenegro – International Treaties*, Nos. 9/2003, 5/2005 and 7/2005 – corr. and *Official Gazette of the RS – International Treaties*, Nos. 12/2010 and 10/2015).

588 *Official Gazette of the RS*, No. 56/18.

589 Many refugees do not possess valid passports issued by their countries of origins, either because their validity has expired or they had entered the RS without a passport. They would in all likelihood have problems if they applied for the renewal of their national passports or for new ones, because that would involve contacting the embassies and official institutions of their countries of origin they had fled.

590 Under the Article 25 of the Refugee Convention the authorities of the countries the refugees are living in shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. Documents or certifications so delivered shall stand in stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

The second case concerned the marriage of two Burundian nationals, who asked the BCHR team to help them in the process in early 2022. The groom had been granted the status of refugee in the RS, while the bride's asylum application was still pending. The civil registry department of the Belgrade municipality of Zvezdara required of them to submit certified translations of their birth certificates and their single status certificates. The BCHR integration team helped the Burundian couple obtain certified translations of the requisite documents and they tied the knot.

6.7.1. *Recommendations*

Notwithstanding BCHR's positive experiences in 2022, the civil registry departments' divergent practices concerning the refugees' and asylum seekers' exercise of their right to marry still give rise to major challenges. The BCHR integration team will continue to invest efforts in eliminating the problems in practice to enable refugees and asylum seekers to exercise their right to marry although they do not possess all the required documents. It also issues the following recommendations to the relevant state authorities:

- The staff of civil registry departments should familiarise themselves with the status of refugees and asylum seekers and show greater understanding for their delicate situation concerning the collection of the personal documents they need to enter into marriage. This would facilitate the exercise of the right to marry of this category of foreigners and pave the way for their more efficient enjoyment of their fundamental human rights.
- As the BCHR has already noted, the obstacles to the refugees' formal entry into marriage could be eliminated by requiring of the registrars to issue a written ruling rejecting the intended marriage application, which the registrars are obligated to do within eight days from the day they orally rejected the application and only if so required by the applicant. The applicant then has 15 days to appeal the registrar's decision with the ministry charged with family protection, whereupon the national authorities would be entitled to issue a certificate that there are no legal impediments to the applicant's entry into marriage.⁵⁹¹
- Finally, the relevant ministries should prepare guidance regulating the marriage procedure in accordance with the Refugee Convention and forward it to the relevant civil registry departments to avoid the described problems in practice.

⁵⁹¹ A similar practice was developed in Greece, which substantially developed its refugee policies after the massive influx of migrants in 2015. More in the *Right to Asylum 2021*, p. 136.

6.8. Right to Education

The right to education is enshrined in the UDHR and other important international treaties.⁵⁹² In late 2018, the UN Security Council adopted the Global Compact for Safe, Orderly and Regular Migration,⁵⁹³ providing a blueprint for governments, international organisations, and other stakeholders to ensure that host communities get the support they need and that refugees can lead productive lives. Signatories of the Global Compact commit to providing inclusive and equitable quality education to migrant children and youth, as well as facilitating access to lifelong learning opportunities.

The RS Constitution guarantees everyone the right to education.⁵⁹⁴ The Serbian education system is regulated in greater detail by a number of laws: the Education System Law,⁵⁹⁵ the Preschool Education Law,⁵⁹⁶ Primary Education Law,⁵⁹⁷ the Secondary Education Law⁵⁹⁸ and the High Education Law.⁵⁹⁹

The Education System Law prohibits discrimination.⁶⁰⁰ Everyone, irrespective of their personal characteristics, is entitled to preschool, primary, secondary and higher education on equal terms.⁶⁰¹ The LATP lays down that asylum seekers are entitled to free primary and secondary education.⁶⁰² It also guarantees the right to preschool, primary, secondary and higher education to individuals granted the right to asylum in the RS on equal terms as Serbian nationals.⁶⁰³ Integration of refugees in the education system and provision of support to integration in the national education system is governed in greater detail by the

592 Art. 26, UDHR (*Official Journal of the SFRY – International Treaty*, No. 11/81). The right to education is also guaranteed by Arts. 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, (*Official Journal of the SFRY – International Treaties*, No. 7/71), and Art. 10 of the Convention on the Elimination of All Forms of Discrimination against Women (*Official Journal of the SFRY – International Treaty*, No. 11/81).

593 *Global Compact for Safe, Orderly and Regular Migration*, UN General Assembly, A/RES/73/195, (11 January 2019), Objective 15 (f), p. 36, available at: <https://bit.ly.co/H68y>.

594 Art. 71, RS Constitution.

595 *Official Gazette of the RS*, Nos. 88/17, 27/18 – other law, 10/19 and 27/18 – other law.

596 *Official Gazette of the RS*, Nos. 18/10, 101/17, 113/17 – other law, 95/18 – other law, 10/19, 86/19 – other law, 157/20 – other law, 123/21 – other law and 129/21.

597 *Official Gazette of the RS*, Nos. 55/13, 11/17, 10/19 and 27/18 – other law.

598 *Official Gazette of the RS*, Nos. 55/13 i 101/17.

599 *Official Gazette of the RS*, Nos. 88/17, 27/18 – other law, 73/18 and 67/19.

600 Art. 23, Education System Law.

601 Art. 19, Anti-Discrimination Law (*Official Gazette of the RS*, Nos. 22/09 and 52/21).

602 Art. 55, LATP.

603 Art. 64, LATP.

MoE's Professional Guidance on Integration of Refugee/Asylum Seeking Pupils in the Education System.⁶⁰⁴

The UNHCR's Refugee Education 2030: A Strategy for Refugee Inclusion,⁶⁰⁵ which was adopted in 2019, is an important document for refugees. The UNHCR Strategy aims to foster the conditions, partnerships, collaboration and approaches that lead to all refugee, asylum seeking, returnee and stateless children and youth and their hosting communities, including the internally displaced in those communities, to access education, including high education. The tertiary education target for 2030 is to enrol 15 per cent of college-eligible refugees in tertiary education; the most recent data show that only 6 per cent of refugees have access to higher education, which is far below the global average higher education enrollment among non-refugees, which stands at more than 40 per cent.⁶⁰⁶

Like in 2021,⁶⁰⁷ the BCHR identified major headway in refugee access to tertiary education in the RS. Visible progress in the field of education was also reflected in the RS' accession to the European Qualifications Passport for Refugees (EQPR) project in 2021, summarising and presenting available information on the refugee's educational level, work experience and language proficiency.

Given that education is one of the key factors for living a successful and quality life and that it facilitates refugee integration, the BCHR in 2022 continued with its activities and public advocacy efforts aimed at improving practices in this area. It focused, in particular, on facilitating refugees' access to education and strengthening cooperation with the University of Belgrade, as the following section will elaborate.

6.8.1. Preschool Education

Under the LATP, foreigners granted the right to asylum are entitled to preschool education under the same terms as Serbian nationals.⁶⁰⁸ However, this right is not guaranteed asylum seeking children.⁶⁰⁹ The BCHR team did not assist any refugees in enrolling their children in kindergarten during the reporting period.

604 Available in Serbian on the Ministry's website: <https://bityl.co/H1ek>.

605 *Refugee Education 2030: A Strategy for Refugee Inclusion*, UNHCR (2019), available at: <https://bityl.co/GNI4>.

606 More on UNHCR's website: <https://bityl.co/GNI8>.

607 More in *Right to Asylum 2021*, pp. 145–146.

608 Art. 64, LATP.

609 Art. 48, LATP.

The BCHR faced major challenges in enrolling refugee children in kindergarten over the past few years.⁶¹⁰ The valid regulations on access to preschool institutions should be revised, inter alia, to recognise refugee and asylum-seeking children as vulnerable categories entitled to subsidised kindergarten fees. The cultural aspect should also be borne in mind – many refugee women are not employed and stay at home looking after their children. This is why only a small number of refugee children are generally enrolled in kindergarten.

The BCHR team recognises the benefits of early inclusion of refugee and asylum-seeking children in the RS education system. Preschool education greatly facilitates the refugee children's integration and mastery of Serbian, and, consequently, their socialisation and social inclusion.

6.8.2. Primary and Secondary Education

Under the LATP, asylum seekers and individuals granted asylum are entitled to primary and secondary education free of charge.⁶¹¹ Primary education is free and mandatory in the RS.⁶¹² In addition, the LATP lays down that asylum-seeking children shall be provided with access to education immediately, within three months from the day they apply for asylum in the RS at the latest.⁶¹³

The Integration Decree⁶¹⁴ recognises help in accessing education as an important factor in the refugee integration process and envisages assistance⁶¹⁵ entailing the provision of textbooks and school supplies. Refugees are also entitled to study support and the relevant authorities are under the duty to secure funding for their involvement in extracurricular activities.⁶¹⁶ It also needs to be noted that the Integration Decree does not recognise asylum-seeking children as a particularly vulnerable category that also needs assistance in enrolment and in following class.⁶¹⁷

The enrolment of children living in ACs and RTCs is assisted and supported by the staff of the CRM,⁶¹⁸ while children living in private lodgings are assisted

610 More in *Right to Asylum 2020*, pp. 158–159. and *Right to Asylum 2021*, pp. 138–139.

611 Arts. 55(1) and 64, LATP.

612 Arts. 4 and 5, Primary Education Law.

613 Art. 55(2), LATP.

614 Art. 2(1(4)) (*Official Gazette of the RS*, Nos. 101/16 and 56/18).

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

616 Art. 6, Integration Decree.

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

618 Given that the Integration Decree charges the CRM with extending support to asylum seekers.

by NGOs. The enrolment of unaccompanied and separated children is facilitated by their temporary guardians.⁶¹⁹

The BCHR did not assist in the enrolment of refugee and asylum-seeking children in primary and secondary schools in 2022. Its integration team, however, continued actively monitoring the progress of its clients attending primary and secondary schools in the RS,⁶²⁰ whom it had helped access the schools and collect the documents for enrolment.⁶²¹

The BCHR integration team identified the following key problems in the schooling of refugee children: the language barrier and absence of additional support that would be provided by language assistants, who would interpret for them and help them follow class. Starting school, especially in a foreign country, is challenging for most refugee children, who need to adapt and master the language in order to follow class and do their assignments. Some parents were interested in the possibility of engaging assistants who would help their children fit in the new setting and master the curriculum during the initial period, until their children adapted to the new community and learned the language.⁶²²

The CRM's commendable practice of reimbursing the children's textbooks, however, suffers from two flaws. First, the refugees first have to buy the textbooks and then apply to the CRM for reimbursement. Second, the CRM only reimburses the costs of textbooks of international protection beneficiaries, but not of asylum seekers. In addition, children are usually given the lists of textbooks they need to buy at the start of the school-year, wherefore at least a month passes from the moment their parents/caregivers purchase them until the CRM issues a ruling upholding their application for reimbursement and reimburses them. In the meantime, the children are left without their textbooks, and have difficulty following class.

619 Children that have not applied for asylum need to submit a police certificate on enrolment, while asylum-seeking children need to submit also their FRN certificates, which are issued by the Asylum Office at the request of their parents or temporary guardians via their representatives in the asylum procedure.

620 According to information collected by the BCHR in the field, the share of refugee children attending secondary schools is much lower than that of refugee children attending primary schools, for the most part because the former lack motivation to pursue formal education. Furthermore, most of them attend vocational rather than classical high-schools, which are more difficult to enrol in.

621 The following documents need to be submitted for enrolment in first grade: a clean bill of health issued by the general practitioner, a vaccination card or proof of vaccination in the event the child has not received all the mandatory vaccines. In the BCHR's experience, most schools are open to enrolment of refugee children and, with the help of NGOs, the children's medical examinations and translations of the requisite documents are organised relatively easily and quickly.

622 The conclusion drawn by the BCHR team during its years' long work with refugees and asylum seekers.

6.8.3. Tertiary Education and Experiences from Practice

Under the LAMP, refugees are entitled to tertiary education under equal terms as nationals of the RS.⁶²³ In June 2022, the University of Belgrade published professional guidance on enrolment in state colleges in the 2022/2023 school-year.⁶²⁴ The professional guidance reiterates that foreign nationals who have the status of migrants/asylum seekers may enrol in college under the same terms as nationals of the RS, an issue the BCHR sought Belgrade University's opinion on in late 2020.⁶²⁵

During the reporting period, BCHR's client F.Z., a refugee from Iraq, enrolled in the Belgrade School of Applied Health Sciences in Belgrade. Her enrolment was facilitated by the fact that she had completed secondary education in the RS and did not need to cover the administrative fees for the translation and recognition of foreign certificates like some other refugees who enrolled in college in the RS.⁶²⁶ The BCHR integration team assisted F.Z. in pursuing her education in the RS, by helping her establish initial contact with the representatives of the school she wanted to enrol in and advising her on all the legal and administrative aspects of her enrolment in this college.

The UNHCR Office in Belgrade also greatly supported F.Z. by helping her win a DAFI scholarship,⁶²⁷ allocated to refugee students pursuing their Bachelor degrees. The DAFI scholarships cover a range of costs, including tuition, study materials, transportation, library membership fees, etc. Its recipients are also provided with a monthly allowance to cover their extracurricular activities. DAFI recipients are also extended additional support in the form of Serbian language lessons, mentorship and UNHCR support.

After the RS Government adopted its decision on temporary protection to refugees from Ukraine, the BCHR integration team in June 2022 requested of the University of Belgrade to clarify requirements for the enrolment of temporary protection beneficiaries in its colleges. The University invited the BCHR to a meeting at which it reaffirmed that the professional guidance on the inclusion of refugees and migrants in the RS education system applied also to beneficiaries of temporary protection. Specifically, that means that individuals granted tem-

623 Art. 64, LAMP.

624 *Official Gazette of the RS*, No. 66/2022.

625 In September 2020, the BCHR requested of the Belgrade University to issue an opinion clarifying the requirements foreigners granted refugee status or subsidiary protection had to fulfil to enrol in its colleges. The University issued its opinion the following month. More in *Right to Asylum 2020*, p. 162.

626 More on the validation of foreign school certificates in *Right to Asylum 2021*, pp. 144–145.

627 DAFI Tertiary Scholarship Programme, available at: <https://bitly.co/H6HV>.

porary protection under the LATP are entitled to access tertiary education in the RS under the same terms as RS nationals.

6.8.3.1. BCHR Session on High Education of Refugees in the RS

The BCHR welcomes UNHCR's efforts to make the education system as inclusive as possible and has been supporting refugees who want to pursue their college education in the RS. To that end, the BCHR integration team organised a session on the high education of refugees within its R4R project activity. The session was attended by refugees studying at Serbian colleges and refugees planning on enrolling in RS colleges.

The session aimed to provide the opportunity to refugees with experience of studying at Serbian colleges to familiarise those planning on enrolling in college and the BCHR them with the challenges they have faced in college, as well as bright sides of attending college in the RS. The refugee students shared also their experiences and details of the administrative procedures they faced when they were collecting the documents they needed for enrolment and validating their school certificates from their countries of origin.

Prospective refugee students had the opportunity to hear first-hand accounts of what it was like to attend college in the RS, which encouraged them to take the steps they needed to enrol in the college of their choice. The BCHR will continue its activities and public advocacy efforts, as well as strengthening its cooperation with the relevant institutions and schools to contribute to the improvement of the status of refugees who want to access high education in the RS.

6.8.4. Validation of Refugees' Foreign School Certificates

The Integration Decree charges the CRM with assisting refugees in initiating the procedure for the validation of their foreign school certificates.⁶²⁸ Given the CRM's lack of such support over the past few years, refugees have had to initiate and pay for the procedure before the Serbian Qualification Agency ENIC/NARIC Centre themselves.

Since the beginning of 2022, the validation procedure has been conducted exclusively online, and the applicants need to submit their documents via the Qualification Agency ENIC/NARIC Centre platform. Apart from applying on its clients' behalf for the validation of their foreign school certificates and submitting all the requisite documents, the BCHR also requested of the Agency to waive its fees in light of its clients' financial difficulties.⁶²⁹ The Qualification

628 Arts. 6 and 7(2), Integration Decree.

629 Pursuant to Art. 89 of the LGAP and the Rulebook on Fee Schedules for Validation of Foreign School and College Certificates for the Purpose of Employment and for Granting Other

Agency ENIC/NARIC Centre granted the requests and validated and qualified their certificates/diplomas free of charge. In addition to the application and proof of (refugee or asylum-seeker) status, the applicants need to submit scans of their original certificates/diplomas and their court-sworn translations, provide information on their prior schooling and fill the section on the school institution that issued the certificate/diploma to be validated.

In July and August 2022, the BCHR integration team applied for the validation of two high-school diplomas of its clients from Ukraine and Russia, and the validation of a college diploma of its client from the DR of Congo. The Agency validated the two high-school diplomas within a month, without requiring any additional documents or clarification. The validation of the Congolese client's college diploma was, however, still pending at the end of the reporting period. The Qualification Agency told the BCHR that the greatest problem lay in the fact that there was no ENIC/NARIC Centre in the DR of Congo, which would facilitate communication and the diploma validation process.

6.8.5. European Qualification Passport for Refugees⁶³⁰

In support of the Lisbon Convention⁶³¹ UNESCO and the CoE launched their European Qualifications Passport for Refugees-EQPR project in 2015.⁶³² The initiative helps refugees restore their lives in countries they plan on settling in and in which they enjoy legal protection, providing them with the possibility of assessing their qualifications even when they do not have all the documents proving them. The EQPR thus supports the implementation of Article VII of the Lisbon Convention, which facilitates recognition of refugees' qualifications even in the absence of all the documentation. The Convention was designed to streamline the legal framework at the European level and to replace in the long run six conventions adopted in this matter by the CoE or UNESCO. It provides that requests should be assessed in a fair manner and within a reasonable time, through clearly defined interviews with and evaluations of the applicants.

The European Qualification Passport for Refugees (EQPR)⁶³³ is a document listing the highest education qualifications obtained, language skills and work experience. It can be used by refugees when they wish to enrol in college,

Organisations Consent to Acquire the Status of a Publicly Recognised Organiser of Adult Education Activities (*Official Gazette of the RS*, No. 1/20).

630 More in *Right to Asylum 2020*, pp. 164–165.

631 Art. VII.

632 UNESCO qualifications passport for refugees and vulnerable migrants, available at: <https://bit.ly/37iOzuo>. European Qualifications Passport for Refugees, CoE, available at: <https://bit.ly/371G0it>.

633 More is available at: <https://bit.ly/3Jrb4B3>.

enter further studies and/or seek employment, and apply for scholarships. The recognition process involves three steps: assessment, explanation and practical use of the passport in further integration. The document includes information on the legal status of the document and a brief description of the project. Part three contains information on the next steps, contact details of state authorities and agencies, job-seeking steps and applications for continuing education. Although it does not constitute formal recognition, authorisation or licence to engage in a particular profession, the EQPR provides credible information that may be relevant during the refugees' access to the listed rights. The EQPR is valid for five years.⁶³⁴

To recall, with UNHCR's support, the BCHR in 2020 and 2021 participated in the implementation of the EQPR project, which the RS Qualification Agency ENIC/NARIC Centre joined in pursuant to the Lisbon Convention.⁶³⁵ Participants in the meeting organised in March 2021, which was attended by the highest UNHCR representatives in the RS and the representatives of the CoE Office in Belgrade, agreed that the RS would accede to the European Qualification Passport for Refugees. The MoE was involved in the process; it supported the initiative and refugees' access to high education. In early June 2021, the ENIC/NARIC Centre of the RS Qualification Agency sent a note of accession to the CoE, based on which the RS officially began implementing the EQPR project.

In cooperation with the representatives of the UNHCR team for durable solutions in Belgrade, the BCHR integration team launched the first pilot testing of the EQPR in November 2021.⁶³⁶ The BCHR team chose a refugee from Russia granted asylum⁶³⁷ as the first applicant, but the procedure was still pending at the end of the reporting period due to her lack of motivation and the complicated procedure. The BCHR will continue monitoring the progress of its Russian client's application process and how the qualifications will be used in the RS in the future.

The BCHR welcomes the launch of the EQPR project in the RS. The coming period will show if and how this novelty will facilitate the integration of individual refugees. The BCHR is convinced that, like in other European states, the EQPR will help future applicants pursue their education and find better and more promising jobs. The BCHR team also plans to work actively on harmonising

634 The goal is to provide refugees and migrants with the opportunity to improve their language skills, continue their studies, improve their employment prospects or apply for the formal recognition or approval of their education.

635 More in *Right to Asylum 2020*, pp. 164–165, and *Right to Asylum 2021*, pp. 145–146.

636 The Qualification Agency ENIC/NARIC Centre monitors the entire process, which is conducted with the support of the CoE, as the implementer of the project.

637 BCHR's client, a national of Russia from Chechnya, is at issue.

the application of the EQPR and foster policies in the context of refugee access to high education through affirmative measures and the LATP's alignment with national education laws.

6.8.6. Recommendations

National law provides refugees and asylum seekers with unimpeded and free access to primary and secondary education, while refugee children are also entitled to enrol their children in kindergarten and access tertiary education under the same terms as RS nationals. The state has commendably guaranteed the right to education to this category of foreigners in a non-discriminatory manner in its law, which is one of the key factors for their successful integration and prosperous future. However, there are some deficiencies at the systemic level in practice, which need to be dealt with to improve the status of refugees and asylum seekers at all education levels. The BCHR thus issues the following recommendations:

- By-laws on kindergarten education need to be aligned to eliminate inconsistent practices. Cities and municipalities need to review the refugees' right to subsidised kindergarten fees or abolish the fees for this category of children altogether. The relevant institutions and/or CSOs should develop various mechanisms to encourage refugee parents to enrol their children in kindergarten, which would facilitate their integration in the RS.
- As per primary and secondary education, refugee and asylum-seeking pupils should first and foremost be extended additional study support, not only to facilitate their mastery of the curriculum but also to adapt more efficiently to the school setting, and, integrate in the local community more easily. On the other hand, teachers directly working with these pupils should be motivated and supported systemically and continuously in the process. In the context of secondary education, young refugees and asylum seekers should be further familiarised with the benefits of pursuing their education and encouraged by the community, primarily their teachers, to enrol in classical high schools and vocational schools.
- As per the CRM's reimbursement of textbook costs, the MoE should amend the Decision on Funding Textbooks from the RS Budget, to entitle refugee and asylum-seeking children to free textbooks. Their parents would thus be relieved of additional costs and the children would not have to wait so long for their textbooks.
- In tandem with the MoE and universities in the RS, the CRM should initiate the recognition of refugees as a particularly vulnerable category

and the establishment of a system providing refugees with the support and financial aid they need to go to college and involving affirmative measures and preparatory programmes.⁶³⁸ In that sense, the RS educational institutions and employers should be continuously familiarised with the EQPR project to facilitate the refugees' employment and pursuit of education.

6.9. Health Care

The right to health is one of the fundamental human rights enshrined in many international treaties ratified by the RS.⁶³⁹ The LATP entitles asylum seekers to health care in the RS in accordance with the regulations on the health care of foreigners.⁶⁴⁰ The LATP also entitles persons granted the right to asylum to health care at the expense of the state.⁶⁴¹ Health care of foreigners is governed in greater detail by the Health Care Law (HCL),⁶⁴² the Health Insurance Law (HIL)⁶⁴³ and the Rulebook on Exercise of Compulsory Health Insurance Rights.⁶⁴⁴ The HCL guarantees respect for the right to equality, which entails the prohibition of discrimination in the provision of health care based on any personal characteristics.⁶⁴⁵

Refugees and asylum seekers still had difficulties accessing their right to health in the RS, due to inconsistent national regulations on health care extended to this category of foreigners and the health professionals' unfamiliarity with their rights. In 2022, the BCHR continued helping its clients eliminate the legal obstacles complicating their access to health guaranteed by law.

638 Facilitate enrolment in college or secure scholarships for college students. More in *Right to Asylum 2020*, pp. 164–165.

639 Art. 25 of the UDHR. Under Art. 12 of the ICESCR, the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Under Art. 24 of the CRC, States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Art. 5 of the Convention on the Elimination of All Forms of Racial Discrimination obligates States Parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without any distinction.

640 Art. 54, LATP.

641 Art. 63, LATP.

642 *Official Gazette of the RS*, No. 25/19.

643 *Official Gazette of the RS*, Nos. 107/25, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14 and 126/14 – CC Decision.

644 *Official Gazette of the RS*, Nos. 10/10, 18/10 – corr., 46/10, 52/10 – corr., 80/10, 60/11 – CC Decision and 1/13.

645 Art. 21, HCL.

According to the latest practice of the National Health Insurance Fund (NHIF), asylum seekers in the RS who do not have health insurance based on employment (who are unemployed) must submit a certificate from their country of origin that they do not have health insurance or any health-related debts. The NHIF, for instance, sought such a certificate from a BCHR client, an asylum seeker from Burundi, L.K., who was pregnant and unemployed and who had to regulate her health insurance as soon as possible. L.K. managed to obtain the requested document, which the NHIF accepted and granted her health insurance as an unemployed person.⁶⁴⁶

In the case of BCHR's client granted subsidiary protection, Cameroon national S.S., the BCHR integration team submitted a request to the National Pension and Disability Insurance Fund (NPDIF) to establish the degree of his disability and grant him the right to domiciliary care. Given that S.S. has been diagnosed with paraplegia and has to undergo dialysis treatment three times a week, the BCHR first contacted the state institutions to recognise his right to domiciliary care and assistance. The NPDIF adopted a ruling recognising that S.S. was suffering from a disability in the first degree and his right to financial assistance to pay for domiciliary care.⁶⁴⁷ Pursuant to the NPDIF's ruling, the Palilula SWC, in whose catchment area S.S. lives, will be paying him the allocated monthly financial aid.⁶⁴⁸

6.9.1. Inconsistent Law

The HCL does not distinguish between refugees and asylum seekers and Serbian nationals when it comes to the provision of health care.⁶⁴⁹ However, the HIL and the Rulebook on Exercise of Compulsory Health Insurance Rights have not been amended yet⁶⁵⁰ to benefit refugees and asylum seekers, wherefore these regulations do not govern their rights in greater detail.⁶⁵¹ Although the HIL entitles employed foreigners to health insurance,⁶⁵² it does not cover a large number of refugees and asylum seekers who are unemployed. The National Health

646 During the first three months, the health insurance covers only urgent interventions, and thereafter all health care services.

647 Pursuant to Art. 95 of the Pension and Disability Insurance Law.

648 This aid is allocated on a monthly basis and does not depend on whether or not the beneficiary is employed.

649 Art. 21, HCL.

650 Arts. 236(1) and 239, HCL.

651 For instance, the HIL does not recognise refugees and asylum seekers under the LATP as a separate category of insurance beneficiaries. See Art. 11 of the HIL, which enumerates the categories of insurance beneficiaries.

652 Apart from refugees from the former SFRY.

Insurance Fund (NHIF) does not recognise any other categories of refugees except those from the former Yugoslav republics.⁶⁵³ Consequently, refugees and asylum seekers in the meaning of the LAMP are not entitled to compulsory health insurance or health insurance cards.⁶⁵⁴

Refugees and asylum seekers have frequently been unable to exercise their right to health care because the health professionals refused to extend services to this vulnerable group, e.g. open their health files in outpatient health clinics. This can be attributed to the health professionals' unfamiliarity with the relevant regulations. Various obstacles arising from the refugees' and asylum seekers' de facto inability to enjoy their right to health care impinge on their quality of life in the RS.

No systemic solution to the problem has been found in practice yet. As far as BCHR's clients are concerned, many dilemmas were addressed informally by the BCHR integration team in individual cases.⁶⁵⁵

On the CRM's recommendation, foreigners in need of health care can register with the municipal commissioners for refugees and contact the Danish Refugee Council (DRC),⁶⁵⁶ which provides one-off financial aid to chronic patients to buy their medications. For all other interventions, refugees and asylum seekers are advised to go to the relevant outpatient health clinics with their FRN certificates, or if they are unsuccessful, to resolve their problem directly through the Ministry of Health with DRC's support.

6.9.2. Recommendations

Refugees and asylum seekers still face major challenges in accessing health care in the RS. Systemic solutions to the dilemmas and difficulties that have persisted in practice need to be found as soon as possible. The BCHR team therefore recommends the following:

- The Ministry of Health should align the operations of all health institutions in the RS to ensure the fulfilment of the refugees' and asylum seekers' health-related needs systemically.
- The Health Ministry should draft and the RS Government should submit to the National Assembly amendments to the HIL equating the status of refugees and asylum seekers with that of RS nationals in

653 Art. 11(10), HIL.

654 Art. 25, HIL.

655 The template letters the BCHR integration team started distributing in 2020 to all its clients in need of health care have contributed to the resolution of acute misunderstandings with health professionals in medical institutions.

656 Available at: <https://pro.drc.ngo/serbia>.

cases such as, e.g. issuance of health insurance cards to unemployed beneficiaries.

- Health professionals should familiarise themselves to a greater degree with the situation of this particularly vulnerable category of foreigners and perceive them as vulnerable. They should not require of refugees and asylum seekers to obtain documents from their countries of origin, given that such contacts may put their lives at risk; rather, they should find alternative ways to resolve any dilemmas.
- Refugees and asylum seekers should rely less on non-government and international organisations in accessing their right to health. A durable mechanism involving state support needs to be designed.

6.10. Refugees' (In)Ability to Acquire Serbian Citizenship

Access to the host country's citizenship is the highest degree of refugee integration i.e. the refugee's road to full naturalisation in the host country. Refugees, who acquire the host country's citizenship, have access to a broader scope of rights provided to the local population, enabling them to live easier and better quality lives.⁶⁵⁷ In addition to guarantees enshrined in the law, naturalised refugees gain a strong sense of social standing and their inclusion is a good signal to potential landlords, employers and other stakeholders in society. Therefore, naturalisation is not reflected only in the successfully completed procedure of integration, but in other, long-term, positive effects as well. Furthermore, a refugee who has acquired the citizenship of the host country fully enjoys the rights enshrined in the Refugee Convention.

The RS has not granted citizenship to any foreigners granted asylum although 14 years have passed since the first Asylum Law entered into force (and almost five years have passed since it was replaced by the LATP that is now in force). The Asylum Office's official statistics show that a total of 107 foreigners were granted asylum and that 131 were granted subsidiary protection from 2008 to 2022. The fact that the number of foreigners granted international protection in the RS is not high does not lessen the importance of addressing this years-long problem. The UN Committee on Economic, Social and Cultural Rights also voiced its concern because refugees in the RS did not have access to the naturalisation process.⁶⁵⁸

657 Namely, fully naturalised refugees acquire various legal advantages, including protection from deportation, broader rights in the judicial system, greater access to welfare benefits, the right to vote and travel abroad, eligibility to hold civil service jobs, join the army and engage in many spheres of politics, whereby they can also become decision makers.

658 CESCR, *List of Issues in relation to the third periodic report of Serbia*, November 2019, E/C.12/SRB/Q/3, para. 12. Available at: <https://bitly.co/H6Hs>.

Under the LAMP, the RS shall facilitate the naturalisation of refugees and the Government shall regulate the requirements, procedure and other issues of relevance to naturalisation proposed by the CRM. To the best of BCHR's knowledge, the CRM has not forwarded such a proposal to the Government yet.

Under the Refugee Convention, the Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees and make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.⁶⁵⁹ The type of residence granted refugees must correspond to the type of residence required for the acquisition of citizenship if Article 34 of the Refugee Convention is to be implemented in practice. More precisely, the RS needs to harmonise its laws on citizenship and foreigners with the Refugee Convention to enable individuals granted the right to asylum to apply for permanent residence. The amendments to the FL should define residence on grounds of asylum as a particular form of temporary residence and allow refugees to apply for permanent residence upon the expiry of the statutory time limit.⁶⁶⁰ This would facilitate the refugees' full naturalisation and constitute grounds for their acquisition of Serbian citizenship.

Refugees can fulfil the legal requirement for permanent residence – three or five years' temporary residence in the RS without interruption – only if they change the grounds of residence, i.e. “substitute” residence on grounds of asylum or subsidiary protection by one of the types of temporary residence enumerated in Article 40 of the FL.⁶⁶¹

The question arises how the relevant authority will respond to the “revocation” of the granted asylum. In the BCHR's view, the problem could be addressed

659 Art. 34, Refugee Convention.

660 Art. 67(2) of the FL reads as follows: Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 70 of this Law, who has, until the date of application for permanent residence in the RS, resided in it without interruption for over five years based on a temporary residence permit. Art. 68 of the FL reads as follows: (1) Permanent residence shall be granted to a foreigner fulfilling the requirements under Article 79 in this Law who: 1) has married or formed a civil union with a national of the RS or a foreigner with a permanent residence permit in the territory of the RS and at least three years with a temporary residence permit on grounds of family reunification; 2) is a minor with temporary residence in the RS, if one of the parents is a national of the RS, or a foreigner with a permanent residence permit; 3) originates from the RS; 4) has been issued a temporary residence permit on humanitarian grounds or in the interests of the RS.

661 Art. 40 of the FL sets out that foreigners may be granted temporary residence in Serbia on grounds of: employment, schooling or learning the Serbian language; university studies; participation in international pupil and student exchange programmes; professional specialisation, training and internship; scientific research and other scientific educational activities; family reunification; performance of religious services; medical treatment or health care; real estate ownership; humanitarian residence; status of presumed or actual victim of trafficking in human beings, and for other justified reasons in accordance with the law or international treaties.

by amending the LATP and simplifying the asylum revocation procedure or by replacing residence on grounds of asylum by residence on other grounds pursuant to the FL.

6.10.1. Recommendations

The BCHR team has for years now been alerting to the inconsistency of national regulations on citizenship and the fact that the full naturalisation of refugees, whose rights are regulated by the LATP, is still impossible. At the consultations of experts on the rights of foreigners in 2021 and 2022, the BCHR voiced its criticisms and sent its comments on the draft amendments to the Law on Citizenship. It remains to be seen if and when the RS will adopt a new Law on Citizenship and whether it will include provisions guaranteeing refugees the right to access Serbian citizenship. In that sense, the BCHR recalls its prior recommendations that have to be adopted:

- The MOI should initiate and the Government should propose amendments to the Law on Citizenship and FL to enable acquisition of Serbian citizenship by foreigners granted status under the LATP. The Law on Citizenship should also provide these individuals with the possibility of acquiring Serbian citizenship under more favourable terms than those applying to permanently residing foreigners in accordance with the FL, the solution adopted by many EU Member States.⁶⁶²
- The CRM has not yet fulfilled its duty to forward its proposal of the naturalisation procedure and requirements although 14 years have passed since the LATP entered into force. Although the MOI is charged with reviewing citizenship applications, the CRM should forward the draft amendments to the Law on Citizenship to the Government as soon as possible, in accordance with its competences in the field of refugee integration.

6.11. Discrimination against Refugees in the RS

As the BCHR has already noted in this Report, refugees and asylum seekers in the RS are discriminated against by employers, civil servants and non-state actors nearly every day. Such discrimination can usually be attributed to the latter's

⁶⁶² Refugees in Germany may acquire citizenship under more favourable terms than other foreigners. The duration of a former asylum procedure can be included in this waiting period. The residence period can be reduced to 7 years if applicants have attended an integration course successfully, and it can be reduced to 6 years if applicants have integrated particularly well into society. More at: <https://bit.ly.co/AlYx>.

unfamiliarity with the rights refugees and asylum seekers enjoy under domestic laws, as well as their negligence placing this particularly vulnerable category of foreigners at a disadvantage.

The BCHR already alerted to discrimination against refugees and asylum seekers from individual African and Middle East countries by some banks in the RS.⁶⁶³ Notwithstanding the opinion issued by the Commissioner for the Protection of Equality in 2021,⁶⁶⁴ in which she found that the banks had discriminated against this category of foreigners by refusing to open accounts for them, and recommended that they refrain from such treatment in the future, the BCHR has noticed that many banks did not change their harmful practice in 2022. BCHR's clients from Iran and Burundi, for instance, faced the greatest challenges when they tried to open bank accounts; the bank staff almost invariably required of them to submit additional proof in support of their applications.⁶⁶⁵

In addition to problems with banks, refugees and asylum seekers in 2022 also faced challenges in communication with other legal persons, which impinged on their access to their right to work. The BCHR alerted to the case of its underage client who had been granted asylum in the RS and whose membership application was dismissed by a number of youth cooperatives. That case will be analysed in greater detail below.

6.11.1. Commissioner for the Protection of Equality found that youth cooperatives had directly discriminated against refugees and asylum seekers

The BCHR was contacted by a number of young refugees and asylum seekers, who asked it to help them join youth cooperatives. The BCHR integration team has been assisting its clients in the procedure, which they often find complicated since they are still not fluent enough in Serbian to fully comprehend their rights and duties in the RS.

Adult RS nationals only need an ID and a bank account to join a youth cooperative, while underage RS nationals also need to be accompanied by their parents or legal guardians. The General Regulations on Youth and Student Cooperatives⁶⁶⁶ lay down that “college students, high school pupils and unemployed individuals between 15 and 35 years of age may be members of cooperatives”. These regulations do not govern the membership of foreign nationals, asylum seekers or beneficiaries of international protection in the RS.

663 More in *Right to Asylum 2021*, pp. 155–158.

664 In response to a complaint filed by the BCHR team.

665 E.g. an employment contract or certificate of financial aid extended by UNHCR, et al..

666 Art. 23, the Regulations are available in Serbian at: <https://bit.ly.co/H6I3>.

The BCHR integration team on several occasions directly helped its clients, both its adult and its underage clients (accompanied by their guardians) join youth cooperatives. It ascertained that the staff of the youth cooperatives were unfamiliar with the personal and other documents refugees and asylum seekers possess and that they needed further clarification on the validity of IDs and FRN certificates, that these documents are issued by the RS MOI and that the FRNs are just as valid as the PINs of RS nationals. The problem also arises from the fact that there are no certificates confirming that the applicants are attending school, which the youth cooperatives required of BCHR's clients despite the fact that there are no provisions requiring the submission of such a document.

BCHR's underage client I., a national of Niger who was granted subsidiary protection in July 2022, asked the BCHR integration team for help via his temporary guardian, because he wanted to work. He had been looking for a job and his prospective employer wanted to hire him via a youth cooperative. The BCHR Integration Adviser went to the Mjob youth cooperative and explained I.'s legal status to the staff. They, however, declined to register I. as a member under the excuse that he was an underage foreign national and did not go to school.

The BCHR team then sent e-mails to a number of youth cooperatives with the same request, explaining I.'s legal status and attaching the documents confirming his status and issued by the MOI. All the youth cooperatives refused to register I. as their member, under the explanation that he was a minor and was not enrolled in school.

The Bulevar Youth Cooperative went a step further, directly discriminating against underage I. It sent a short reply to the BCHR stating merely: "We do not accept as members or employ asylum-seekers".

Considering Bulevar's treatment deeply discriminatory against refugees, the BCHR immediately filed a complaint with the Commissioner for the Protection of Equality (Commissioner).⁶⁶⁷ Not only did Bulevar's reply reveal its lack of good will to facilitate the integration of an individual lawfully residing in the RS; it also called him an asylum-seeker, a term that is both pejorative in the Serbian vernacular and legally inaccurate. As far as Bulevar's action is concerned, it is extremely important to distinguish between foreigners whose status is regulated by the FL and refugees, as a particularly vulnerable category of foreigners, to whom the LATP applies, the category BCHR's clients, such as underage I., belong to.

⁶⁶⁷ Pursuant to Art. 35 of the Anti-Discrimination Law, which prohibits discrimination on grounds of status or origin, and the inability to access to labour market.

Having reviewed the BCHR's complaint, the Commissioner found that Bulevar had violated the Anti-Discrimination Law⁶⁶⁸ when it refused to register underage I. as its member. She said that the youth cooperative had unjustifiably placed the refugee from Niger at a disadvantage because of his personal characteristic – the status of a beneficiary of subsidiary protection in the RS. The Commissioner also found that the youth cooperative had failed to present either facts or evidence showing that there were justified reasons for the unequal treatment of I. compared with other individuals that would lead her to conclude that his unequal treatment was warranted; rather, the cooperative automatically refused to review his membership application exclusively because of his status.

The Commissioner recommended that Bulevar re-examine I.'s membership application and, if it suffered from any formal deficiencies, instruct him how to fulfil the formal membership requirements, whilst ensuring that it treated him as it did Serbian nationals and that it apply an inclusive approach in the process. She also recommended that Bulevar not violate anti-discrimination law in the future, a recommendation the fulfilment of which is particularly important should such cases arise in the future.

In cooperation with A 11 – the Initiative for Economic and Social Rights, the BCHR in October 2022 conducted situation testing – refugees' admission to youth cooperatives. Two pairs of individuals of the same age and status – two RS nationals and two BCHR clients – refugees from Iraq and Afghanistan were engaged. None of them were employed or went to school at the time. The situation testing was conducted in the youth cooperative SAT on 7 October 2022. The first to apply for membership in the cooperative was BCHR's client from Afghanistan, whose application was dismissed by the staff because he was not a student; they said that they could not admit into membership foreigners who were not college students. An RS national then went to the same cooperative and joined it without any difficulty.

The BCHR again filed a complaint with the Commissioner concerning this case of discrimination and asked her to take action on it. The procedure before the Commissioner was still pending at the time this Report was finalised. The BCHR team expects a prompt response on its outcome.

In cooperation with the Commissioner and other independent human rights institutions and CSOs, the BCHR will continue actively informing the public of the legal status of refugees and asylum seekers. Public pressure is one of the ways to contribute to the protection of and support to particularly vulnerable categories of the population and thus facilitate their access to their rights in practice.

668 Specifically, Art. 8 in conjunction with Art. 16 of the Anti-Discrimination Law.

6.11.2. Recommendations

In cooperation with the Commissioner and other independent human rights institutions and CSOs, the BCHR will continue actively promoting the status of refugees and asylum seekers and protecting them from discrimination in the RS. It thus issues the following recommendations:

- The public should be continuously informed of the legal status and statutory rights of asylum seekers and asylees in the RS, as well as of the concept of discrimination and its prohibition on grounds of any personal characteristics.
- Discriminators should be guided by the opinions and recommendations of independent human rights institutions, such as the Commissioner, to ensure that they refrain from discriminatory treatment in the future. They should set an example to others, who are also under the obligation to respect the rights of refugees and asylum seekers if they come into contact with them.

6.12. Supplement: Situation of Persons Granted Temporary Protection

The concept of temporary protection is not defined by any international legally-binding instruments. UNHCR's formulation – that temporary protection constitutes “a specific provisional protection response to situations of mass influx providing immediate emergency protection from *refoulement*”⁶⁶⁹ – facilitates the understanding of the concept. In accordance with its remit, the UNHCR Executive Committee⁶⁷⁰ adopted Conclusions⁶⁷¹ and Guidelines on Temporary Protection or Stay Arrangements⁶⁷² According to these documents, temporary protection/stay arrangements are time-limited and solutions-oriented and include a minimum set of standards of international humanitarian law in the absence of a more adequate form of protection.⁶⁷³

669 International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, p. 88.

670 The UNHCR Executive Committee also said that, in situations of large-scale influx, persons seeking asylum should always receive at least temporary asylum and should be admitted without any discrimination on any personal grounds.

671 UNHCR, ExCom, *Protection of Asylum-Seekers in Situations of Large-Scale Influx*, No. 22 (XXXII), 21 October 1981, available at: <https://bit.ly.co/GxO6>.

672 UNHCR, *Guidelines on Temporary Protection or Stay Arrangements* (February 2014).

673 Goran Sandić. *Complementary Forms of International Protection in the Republic of Serbia*, p. 17.

Therefore, situations of mass influx of refugees impose upon states the obligation to provide this form of protection, which emanates from the principle of *non-refoulement*, both under international refugee law and under international human rights law. Temporary protection can be interpreted as a mechanism providing protection to people who may *prima facie* qualify as refugees, but whose conditions of arrival mean that they cannot proceed immediately through an ordinary asylum procedure.⁶⁷⁴ An important feature of the concept of temporary protection is the possibility of conferring such protection to whole groups or categories of individuals, without implementing individual procedures, with a view to protecting their fundamental human rights as they wait for a potential recognition of their status and a sustainable solution for their stay. In contrast to complex procedures by which refugee status or subsidiary protection are granted, the activation and scope of temporary protection or stay arrangements would be based on categories, groups or scenarios, allowing for a flexible and immediate response to the crisis in question.⁶⁷⁵ In cases of extended stay, or where transition to solutions is delayed, the standards of treatment would need to be gradually improved.⁶⁷⁶

Pursuant to the EU *acquis*, persons from Ukraine, who fled their country of origin after the conflict with Russia escalated in early 2022 and went to EU Member States, were granted temporary protection under the 2001 EU Temporary Protection Directive.⁶⁷⁷ The LATP is aligned with the 2001 Directive. Under the relevant article of this law, the Government shall issue a decision granting temporary protection in case of a mass influx of displaced persons⁶⁷⁸ who cannot be returned to their country of origin or habitual residence if there is a risk

674 International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, p. 89.

675 UNHCR, *Guidelines on Temporary Protection or Stay Arrangements* (February 2014), p. 3.

676 *Ibid.*, p. 4.

677 The 2001 Directive defines the minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The Directive lays down the procedures for granting immediate and temporary protection in case of mass influx which are activated in the event of a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection. More in: European Union: Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof*, (7 August 2001), OJ L.212/12–212/23, 2001/55/EC, available at: <https://bitly.co/GxPY>.

678 The definition of displaced persons in the LATP is fully aligned with the definition in Art. 2(c) in the EU Temporary Protection Directive.

that, due to such mass influx, it will not be possible to carry out effectively individual asylum procedures.⁶⁷⁹

As noted in the introductory part of the report, this legal mechanism was first activated in the RS in March 2022 when the RS Government, following the suit of EU Member States that started applying the 2001 Directive after the mass influx of refugees from Ukraine, adopted the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine. The Decision, which entered into force on 18 March, applies to all 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.⁶⁸⁰ 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's Asylum Office is charged with implementing the procedure and issuing rulings granting temporary protection. Under the LATP,⁶⁸¹ individuals granted temporary protection are entitled to apply for asylum in the RS. Temporary protection is granted for a period of one year; should the reasons why it was granted persist upon the expiry of that time period, its validity may be extended by six monthly periods for one year at most.⁶⁸²

The Asylum Office upheld the temporary protection applications of 1,115 people displaced from Ukraine during the reporting period. Under the LATP,⁶⁸³ persons granted temporary protection have access to, inter alia, the following rights: the right of residence, identity documentation, the right to education, access to the labour market and health care in accordance with the regulations governing the rights of foreigners.⁶⁸⁴

679 Art. 74, LATP.

680 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.

681 Art. 76(2), LATP.

682 Art. 75 (1) and (2), LATP. Paragraph (3) of this Article lays down that temporary protection shall cease upon the expiry of the time period it was granted for or upon the cessation of the reasons for which it was granted and that the RS Government shall render a decision to that effect.

683 Art. 76, LATP. See also: *Serbia 2022 Report*, European Commission, p. 60.

684 This provision of the LATP is largely in line with EU Directive 2001/55/EC, see Arts. 8–16 of the Directive.

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 more than 130,000 Ukrainians passed through the RS; over 4,000 of them were accommodated in the state facilities. The activation of the temporary protection institute in practice is a positive example of the relevant authorities' response enabling displaced persons to promptly access their rights prescribed by the law although the scope of their rights is narrower than that of individuals granted asylum.

The BCHR team represented persons from Ukraine who wanted to apply for temporary protection in the RS and continuously extended them assistance in integrating in the local community. The BCHR also actively monitored the application of this legal mechanism in the RS ever since the RS Government Decision entered into force in March 2022. Although the nine-month period of its implementation is much too short to establish a specific practice and objectively identify the deficiencies both with regard to the relevant authorities' treatment of this category of foreigners and the latter's access to the guaranteed rights, the BCHR has identified some of the shortcomings of the temporary protection mechanism, most of which are normative in character compared with the EU Directive.⁶⁸⁵ Some of them will be described in the ensuing section.

6.12.1. *Access to Individual Rights by Persons Granted Temporary Protection in the RS*

Access to the labour market was facilitated in the case of these foreigners because they acquired the right to access the labour market as soon as a ruling granting them temporary protection was adopted. On the other hand, in view of the fact that most refugees from Ukraine were women with their children, they, especially mothers with young children, had difficulty finding a job. During the reporting period, the BCHR integration team facilitated the engagement of two of its Ukrainian female clients in the social enterprise *Women on the Way*, which focuses on the employment of refugee women.⁶⁸⁶ This social enterprise designs and manufactures sustainable fashion garments inspired by the cultures in the refugee women's countries of origin. The refugee women receive 50% of the profits from the sale of each garment they manufactured, which encourages their economic empowerment; plus, they can keep flexible hours and work from

685 Under the 2001 EU Directive, persons displaced from Ukraine granted this form of protection automatically have access to specific integration-related rights. The situation regarding access to these rights in the RS was somewhat different.

686 The BCHR has for two years now been successfully cooperating with this social enterprise, which has engaged a number of BCHR's female clients to date.

home. In addition to clients engaged by *Women on the Way*, several other BCHR clients also found jobs in companies in the RS, mostly in Belgrade.

As per **the right to accommodation**, the EU Directive lays down that the Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing. The LATP⁶⁸⁷ envisages the right to collective accommodation in designated facilities and appropriate accommodation for individuals who need special reception guarantees, in accordance with the law. However, the LATP, lays down that the CRM shall provide financial aid only for the accommodation of individuals granted asylum; it does not extend this right to persons enjoying temporary protection as well.⁶⁸⁸ The BCHR integration team concluded during the reporting period that persons granted temporary protection could live in private lodgings only if they covered the costs of rent themselves.⁶⁸⁹ Persons enjoying temporary protection are also not entitled to social assistance, whereas, under the EU Directive, the Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources.⁶⁹⁰

The BCHR also noted shortcomings obstructing access to the **right to health care** on the part of individuals granted temporary protection, due to the non-aligned practices of primary health care institutions and lack of funds that would cover these individuals' health care costs. On the other hand, the EU Directive lays down that Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence. The definition of the right to health care in the LATP⁶⁹¹ is, however, extremely broad – it sets out that access to this right shall be exercised in accordance with regulations governing the health care of foreigners. According to information the BCHR had, DRC extended assistance in medical emergencies and helped Ukrainian nationals exercise this right during the reporting period.⁶⁹²

As per access to the **right to education**, the EU Directive lays down that the Member States shall grant to persons under 18 years of age enjoying tem-

687 Art. 76, (8) and (9),

688 Only individuals granted asylum in the RS can exercise this right. More in: Integration, Right to Accommodation.

689 While in the case of persons granted asylum, during the first year from the adoption of the decision, accommodation assistance is provided by the CRM.

690 Art. 13(2), EU Directive.

691 Art. 76(3), LATP.

692 The way it did it in the case of refugees from other countries.

porary protection access to the education system under the same conditions as nationals of the host Member State. The LATP clearly guarantees the right to free primary and secondary education in state schools, in accordance with the regulations governing education. In the 2022/23 school-year, the BCHR team assisted the enrolment of only one child from Ukraine granted temporary protection in the upper grades of the Belgrade primary school. Specifically, her parents had applied with the ENIC/NARIC Centre to validate her prior schooling in Ukraine. The Centre, however, rejected the application because the parents had not submitted the original certificates. They asked the BCHR team to step in and it first contacted the staff of the primary school and insisted that they enrol the child without the validated documents. It referred to the MoE's Professional Guidance⁶⁹³ providing for the enrolment of asylum-seeking and refugee children, as well as children granted temporary protection, even if they do not have all the requisite documents, given that they come from war-torn areas; in such cases, the children are to be enrolled based on their assessment by a team formed by the school. Since the school did not heed the BCHR's request, whereby it acted in contravention of the Professional Guidance, the BCHR contacted the MoE. The school agreed to enrol the child from Ukraine without the original certificates of her prior schooling in her country of origin.

The BCHR team will continue assisting persons enjoying temporary protection in the RS in accessing their economic, social and cultural rights and their integration in the local community. The BCHR will continue actively monitoring the relevant institutions' treatment of this category of foreigners in the RS and whether the latter have the possibility of exercising their rights in accordance with the legal regulations.

693 Professional Guidance on the Inclusion of Refugee/Asylum-Seeking Pupils in the Education System.

7. PUBLIC DISCOURSE ON REFUGEES AND MIGRANTS

7.1. Introduction

The analysis of media reports and public opinions on migrants in 2022 leads to the conclusion that public interest in this issue somewhat increased over 2021. Discussions of issues related to refugees and migrants again made the limelight during the reporting period, mostly due to the escalation of the Ukraine conflict, incidents registered in northern RS and the signing of regional border control agreements. Interest in the issue of migration somewhat increased among politicians, both those in government⁶⁹⁴ and in the opposition,⁶⁹⁵ who again tried to score political points on this issue.⁶⁹⁶

In addition to state institutions and NGOs, the topic of migrants in 2022 also featured in the discourse of rightist groups, whose members and sympathisers presented themselves as “guardians of the citizens from migrants”. Their activities contributed to the persistence of the negative narrative about this population in the RS.

The reporting period was also marked by examples of positive reports on refugees and migrants, as well as the commendation the RS received for the health care it extended to this category of foreigners.⁶⁹⁷ To recall, the RS was the first state in Europe to provide refugees and migrants with the chance to vaccinate themselves during the COVID-19 pandemic, which is definitely a positive example of the state’s and society’s attitude towards this population.⁶⁹⁸

This chapter analyses public opinions on migrants, asylum seekers and refugees the BCHR team gained insight in by interviewing the RS’s citizens in Bel-

694 “Vulin: Migrant Crisis not Over, We’ll Protect Our Way of Life,” *N1* (14 June 2022), available in Serbian at: <http://bitly.ws/wKHN>.

695 “Dveri Subotica: Only the Army Can Protect Our Borders from Smuggling of Migrants,” *Danas* (21 July 2022), available in Serbian at: <http://bitly.ws/wKII>.

696 More in *Right to Asylum 2020*, pp. 176–187.

697 The RS was commended by the World Health Organization (WHO) for its management of the migrant crisis and extending health care to refugees and migrants at the High-level Meeting on Health and Migration in Istanbul in March 2022. See more in: “HEALTH CARE AND VACCINATION AGAINST COVID-19, WHO: Serbia is an example of the humane treatment of migrants,” *Blic* (17 March 2022), available in Serbian at: <http://bitly.ws/wKNV>.

698 “Vaccination of Refugees in Reception Centres in Serbia Starts,” *Radio Free Europe* (26 March 2021), available in Serbian at: <https://bit.ly/3rl6s9l>.

grade and Vranje and analysing the media reports about them in 2022. To this end, the authors of this Report perused hundreds of media articles and reports and various other content published in the press, broadcast on TV and posted on online portals.

This part of the Report uses the term ‘migrants’ because it is used much more frequently in public discourse than the terms ‘refugees’ or ‘asylum seekers’, which experts, including the BCHR, use to distinguish between these three categories of foreigners with different statuses in the RS.⁶⁹⁹

7.2. Public Opinions on Refugees and Migrants Living in Serbia

The state authorities should release accurate and reliable data given their important role in shaping public opinion on migrants. Lack of such information and decades-long public mistrust of Serbian institutions are the main reasons for the citizens’ negative views and fears of refugees and migrants. The “silence” of the relevant authorities has greatly contributed to apprehension and distrust among many people who had not even been prejudiced against refugees and migrants.

Increased public focus on migration and the substantial amount of fake or semi-fake news about refugees and migrants published during the reporting period prompted the BCHR to conduct a public opinion survey in 2022, in addition to its regular activities aimed at promptly informing the public of the relevant issues. Although this survey was not as comprehensive as the ones the BCHR conducted in cooperation with the Ipsos polling agency in the past, its value derives from the direct and open conversations the BCHR team had with ordinary citizens on all issues concerning refugees and migration flows in the RS at various sites and in the absence of cameras.

The BCHR first singled out the towns and cities with ACs and RTCs as locations where the survey would be conducted. It recognised Belgrade and Vranje as the cities, which have been on the refugee-migration route for a long time now and which migrants have not only been passing through but been settling in as well. These cities have greater experience in the long-term reception of refugees than other towns hosting CRM-run facilities, which merely serve as temporary respites for migrants. The BCHR team wanted to gauge public opinion in face-to-face conversations not following any particular format. On the other hand, the BCHR team wanted to answer questions the citizens may have been

⁶⁹⁹ The term ‘migrant’ is broader and differs from the terms ‘asylum seeker’ and ‘refugee’. See the UNHCR definitions at: <https://bit.ly/30BC6BF>.

reluctant to ask in front of a camera and questions that remained unanswered due to the absence of expert public debates on the issue.

The first debate was organised in Vranje on 15 June within the Week of Multiculturalism and Tolerance by which the BCHR has been marking World Refugee Day. Given that refugees and migrants from various countries had been living in the Vranje AC before it was designated for the accommodation of refugees from Ukraine in 2022, we also wanted to explore whether this change has resulted in a change of public opinion. Due to the large fluctuation of people through the RS's capital, the second debate, which was held in Belgrade on 19 October, was attended both by Belgrade residents, and residents of other RS cities and members of the diaspora.

The debates focused on the following groups of issues: basic observations on migration flows through Belgrade and the RS in general; personal experiences with refugees and/or migrants; views on cohabitation with refugees (refugees as co-workers, employees, refugee children as classmates of the interlocutors' children); and, finally, the transparency of migration policies and the extent to which the political parties' views on refugees and migration affected our interlocutors' decision who they would vote for.

The residents of Vranje and Belgrade generally approved the RS' humanitarian approach to the reception of refugees and migrants. Most of the interlocutors noted the refugee history of the Serbian people and the solidarity with forcibly displaced people we should therefore nurture. Our interlocutors said they would have nothing against refugee children going to school together with their children or having refugee neighbours "if they don't cause problems". Nearly all our interlocutors in Belgrade were aware of the drastic increase in migration flows during the reporting period, as well as of the lack of publicly available information about them. Many of our interlocutors also said they felt ill at ease when they came upon large groups of migrants.

Vranje's residents said that they did not care about the nationality of the refugees living in the Vranje AC and that they had not noticed any major changes in the local community since the facility was located on the city outskirts. A substantial share of our interlocutors opined that Ukrainian refugees would have an easier time integrating because of the cultural, religious and linguistic similarities. A small share of the interlocutors had direct or close encounters with this population, with the exception of those working in schools or the public administration.

Finally, the Belgrade and Vranje interlocutors provided similar answers to the question about whether the political parties' views on refugees and migration affected their choice of who to vote for – nearly half of our interlocutors said that

they would be interested in hearing the parties' views on the issues but that these views did not crucially affect their vote.

All interlocutors in both cities, regardless of where they live, said they were glad that someone decided to openly discuss migration issues with them and that this was the first time anyone asked them what they thought of these issues. Most of them said that they did not have an opportunity to affect migration policies either at the local or national levels and that it was imperative to increase media coverage of and public discourse about this the topic. Given the success of the activity, the interlocutors' positive feedback and gained insights, the BCHR team will continue holding open discussions on migration and refugees with RS citizens in the future.

The creation of a positive and inclusive society based on mutual acceptance and respect notwithstanding individual differences largely rests on education. Therefore, in addition to the relevant authorities and CSOs, educational institutions, such as schools and colleges, should also teach the young citizens tolerance and to embrace diversity.

Traditional and social media are the ones steering public discourse nowadays. The following section will discuss their influence on public opinion and general perceptions of refugees and migrants.

7.3. Media Reports on Migrants and Refugees in 2022

Public interest in refugees and migrants increased in 2022 over 2021, although the media did not report extensively on migration during the reporting period.⁷⁰⁰ BCHR's analysis of media reports in 2022 shows that, with the exception of some outlets that approached the subject seriously, many media continued with their sensationalist coverage of all, even the most minor incidents involving migrants. They thus put the focus on the group the perpetrator of or participant in the incident belonged to, exacerbating negative views of refugees and migrants, while, at the same time, non-professional coverage contributed to generalisations, negative views or confusion about refugees and migrants.

In 2022, the media extensively reported on the events in the north of the country, particularly near the border with Hungary. Namely, migrants staying in the north of the country are presumably discontent with the prospect of having to cross yet another border. Large numbers of people in one place have led to various incidents. For instance, in the past few years, media reported that migrants damaged the crops of farmers, through whose fields they were passing

⁷⁰⁰ As they did, the last time in 2020. More in: *Right to Asylum 2020*, pp. 176–187.

in the attempt to cross the border. More serious disruptions of public law and order have been registered as well.⁷⁰¹

Clashes among migrants accounted for most disruptions of law and order. One such clash in July 2022 left one migrant dead and a number of them injured.⁷⁰² One individual was injured in another incident in the settlement of Makova sedmica in September 2022. Both incidents were reported on extensively by the media.

These and similar other incidents led to an increase in anti-migrant sentimenta in Subotica, prompting a group of citizens in the heart of the city to initiate the dislocation of the RTC from Subotica; their initiative was signed by more than 3,000 people.⁷⁰³ Dissatisfaction with the way the state and local authorities responded to the situation in the city also prompted several protests of Subotica's residents.⁷⁰⁴ Members of various anti-migrant groups, as well as some politicians, tried to use these rallies to score cheap political points, resorting to force against migrants to portray themselves as the "guardians" of the people from the so-called migrant peril.⁷⁰⁵ For instance, decent people were appalled by the photographs and videos published by the MOI, showing the then police minister Aleksandar Vulin watching over migrants, who were sitting or kneeling on a field, with their heads bowed and their hands on their heads, while armed uniformed officers patrolled around them.⁷⁰⁶

The public discourse in 2022 was rife with allegations of migrant smuggling and news of arrests of smugglers in the RS. The media often reported about the large amounts of money that went to the smugglers, including, reportedly the RS's citizens, who were colluding with or even heading the smuggling groups.⁷⁰⁷ The smugglers' violence and activities have created a distorted

701 "Major Clash between Two Groups of Migrants Prevented in Makova sedmica, One Wounded from a Firearm," *Subotica.com* (30 September 2022), available in Serbian at: <http://bitly.ws/wLba>.

702 "MIGRANTS CLASH IN FOREST NEAR SUBOTICA! One Person Killed, Six Injured, 16-Year-Old Girl Fighting for Her Life," *Blic* (7 July 2022), available in Serbian at: <http://bitly.ws/wLeU>.

703 "Group of Citizens Collecting Signatures for Relocation of Reception Centre in Subotica," *Danas* (6 August 2022), available in Serbian at: <http://bitly.ws/wLgn>.

704 "Third Protest against Migrants Held in Subotica: 'Citizens don't feel safe, state not addressing problem,'" *Danas* (23 July 2022), available in Serbian at: <http://bitly.ws/wLhw>.

705 "Only the Naïve Can be Surprised by Vulin Lining up Migrants," *Danas* (17 July 2022), available in Serbian at: <http://bitly.ws/wLpW>.

706 "'Sleazeball, Louse, the Scum of the Gutters': Sharp Reactions to Vulin Overseeing Migrants with their Heads Bowed," *Danas* (18 July 2022), available in Serbian at: <http://bitly.ws/wLpn>.

707 "Hungarian Police: Smuggler from Serbia Tried to Smuggle out 60 Migrants," *Danas* (13 September 2022), available in Serbian at: <https://bit.ly/3i5qDVV>.

public image of migrants. Such a warped narrative abounding in media reports has been detrimental to the refugees themselves, whose lives are actually at stake in such circumstances. Furthermore, the public, which has inevitably been affected by negative and superficial reports, often accompanied by unverified information, has stopped distinguishing between refugees and migrants, on the one hand, and smugglers, on the other, perceiving all of the former as potential criminals.

Although public dissatisfaction is justified, the media and institutions should do their utmost to prevent the creation of a climate of fear and hate of migrants. State institutions, primarily the MOI, should perform their job efficiently and transparently, and secure a functional and sustainable migration control system, especially in the border areas of the country. The RS's citizens have not been receiving concrete answers from the state and they lack information of what is really happening and how serious the situation is, or what the state is doing to address the problems. In such circumstances, they easily succumb to extremist views. The authorities should explain to the public that crimes and misdemeanours committed by refugees and migrants account for a negligent share of all offences in the RS and that their individual wrongdoings cannot serve as an excuse for hating the entire refugee-migrant population. Every misdemeanour or crime, irrespective of who perpetrated it, should be penalised without delay; however, any generalisation, including in this case, is dangerous and may impinge on the safety of the group at issue.

7.3.1. EU Reactions to the RS Visa Policy

Media picked up a press release of the RS Ministry of Foreign Affairs of 21 October 2022 on the reintroduction of visas for nationals of Burundi⁷⁰⁸ and Tunisia. The move was, *inter alia*, prompted by EU criticisms of the RS, an EU accession candidate, that it was fuelling an increase in the number of migrants entering the bloc from Turkey, India, Tunisia, Cuba and Burundi, who had not needed visas to enter the RS.⁷⁰⁹ A number of nationals of these countries have been trying to reach EU countries, usually with the help of smugglers, as evidenced by the increase in the number of asylum applications in some EU states, such as Austria and Hungary. The situation on the ground, and criticisms voiced against the RS, gave a political connotation to the entire issue as well.⁷¹⁰

708 Burundi withdrew its recognition of Kosovo* in 2018, whereupon the RS lifted the visas for its nationals.

709 "Serbia Ends Visa-Free Regimes with Tunisia and Burundi," BIRN, 25 October 2022, available at: <https://bitly.co/H6Ik>.

710 "Baerbock Warns of Hybrid War, Blames Serbia for Greater Migrant Influx," *NI* (15 October 2022), available in Serbian at: <http://bitly.ws/wNeE>.

Consequently, Western Balkan and EU officials agreed measures to halt illegal migration along the Balkan route, including, notably, the harmonisation of Western Balkan visa policies with EU standards and suppression of human smuggling.⁷¹¹ On 16 November, RS President Aleksandar Vučić met with Austrian Federal Chancellor Karl Nehammer and Hungarian President Viktor Orbán at the trilateral summit of Hungary, the RS and Austria. The three of them signed a Memorandum of Understanding between Austria, Hungary and the RS on strengthening trilateral cooperation to curb illegal migration. They also agreed to deploy joint police patrols and modern equipment along the RS' border with North Macedonia.⁷¹² It remains to be seen whether the RS will become a new “guardian” of the EU's borders under its pressure by moving the “defence line towards the south,” as the RS President put it, and whether it will take over the role of Hungary, which will, for its part, assume oversight and control of the implementation of the migration policy in the region.

7.3.2. Security and Humanitarian Narrative on Refugees and Migrants

Public discourse was still infested with narratives that all, or at least most, migrants were merely economic migrants and were illegally in the RS, that they were not fleeing war or persecution and that their sole motivation was to achieve economic prosperity in rich West European countries. Media portrayed their journey towards the West as a whim and them as “bad” migrants. Needless to say, such allegations are untrue. Most migrants in the RS fled countries ravaged by war, indiscriminate violence and widespread persecution on various grounds.⁷¹³ According to IOM, over 29,000 migrants have died while attempting to reach Europe since 2014, while 5,000 of them disappeared over the past two years. These statistics are just further proof that migrants embarking on this dangerous and potentially fatal journey do not decide to take this step easily or on a whim, but because they are forced to.⁷¹⁴ The media should thus report on them with greater empathy and ethics and publish the relevant facts. Such coverage would raise public awareness that even “illegal” and economic migrants are not automatically terrorists or a safety threat, that they are ordinary people who were forced to put their lives at such great risk to flee persecution, plight and poverty in their countries of origin.

711 “Bujumbura, Belgrade, Brussels: The Route is now Closed,” *Danas* (5 November 2022), available in Serbian at: <http://bitly.ws/wNea>.

712 “Serbia, Hungary and Austria Sign Memorandum of Cooperation in Fighting Illegal Migration,” *Danas* (16 November 2022), available in Serbian at: <https://bit.ly/3gAWHAQ>.

713 See more in *Right to Asylum 2021*, pp. 168.

714 “Over 29,000 Migrants Died on Their Way to Europe since 2014,” *NI* (25 October 2022), available in Serbian at: <http://bitly.ws/wNk2>.

In addition to covering the developments in the RS, the domestic media also reported on refugee/migrant issues in other countries. In addition to their habitual interest in events in the region,⁷¹⁵ the media and public focused in particular on the ongoing conflict in Ukraine. In addition to the huge number of casualties and destruction, the fighting in Ukraine also gave rise to the greatest refugee crisis in Europe since the wars in the former Yugoslavia. Over 7.7 million people left Ukraine from 24 February, when the conflict broke out, to 16 June 2022. Some of them subsequently returned to Ukraine.⁷¹⁶ Most refugees from Ukraine went to the neighbouring countries, such as Poland, Russia, Romania, Moldova, Slovakia and Belarus, or West European countries, such as Germany, Italy, Spain and France. However, a substantial number of Ukrainian refugees came to the RS as well, where they mostly stayed with their families or friends. Like other European countries, the RS Government adopted a Decision granting temporary protection to people displaced from Ukraine, which entered into force on 18 March 2022.⁷¹⁷

The media also reported tragedies that befell migrants during their journeys in 2022. One concerned the accident that took place near Pirot in early October, when a freight train hit a large group of migrants on the railroad between Dimitrovgrad and Sukov. Two people were killed and a number of them were injured in the accident.⁷¹⁸

During the reporting period, the media also reported on MOI campaigns conducted throughout 2022. Namely, the police rounded up larger groups of migrants they came upon in city centres and at informal venues, and transferred them to some of the RTCs in the RS.⁷¹⁹ The police rounded up several hundreds of migrants on occasion and took them to RTCs.⁷²⁰

Some outlets ran positive reports on the migrants and their plight, especially on migrant women and unaccompanied children.⁷²¹ The media extensively reported on refugees from Ukraine, who provoked a high degree of under-

715 “Hungary Strengthening Border Protection because of Migrants,” *Al Jazeera* (16 July 2022), available in Serbian at: <http://bitly.ws/wNnx>.

716 Available in Serbian at: <https://data.unhcr.org/en/situations/ukraine>.

717 *Official Gazette of the RS*, No. 36/2022. More on the Decision and the rights of individuals granted temporary protection on pp. 163–165.

718 “At Least Two People Dead after Freight Train Ran into Large Group of Migrants Near Pirot,” *Danas* (6 October 2022), available in Serbian at: <https://bit.ly/3u0bCYL>.

719 According to information available to BCHR’s team, the police usually took the migrants to the RTC in Preševo.

720 “Police Action in Belgrade: 135 Irregular Migrants Found in the Territories of Savski venac and Stari grad,” *Blic* (14 October 2022), available in Serbian at: <https://bit.ly/3Owe16t>.

721 “Underage and Alone Searching for a Better Life. This is How Migrants in Serbia Live: ‘The eldest child in the family is usually sent to send money back,’” *Blic* (26 June 2022), available in Serbian at: <https://bit.ly/3GIHM2b>.

standing and empathy, both among the journalists and the citizens of the RS.⁷²² The launch of the Math High School students' application "In Their Sneakers", aimed at helping refugees learn and master the Serbian language as soon as possible, was another example of positive media coverage of refugees.⁷²³

Although often resorting to the sensationalist style of reporting, the mainstream media's reports about refugees and migrants usually did not directly express hate or intolerance. However, most of the readers' comments were rife with bias and even a dose of hate, although the number of such comments was generally smaller than in the past.

Negative comments dominated reports on refugees and migrants from Africa and the Middle East but were very rarely voiced against Russians and Ukrainians. Negative comments were posted below the few articles reporting on migrants in a positive and humanitarian context. The cruel and unlawful treatment of migrants often met with the approval of the readers, who considered it the only right way to treat them. Migrants and refugees are often depersonalised and not treated as a group of individuals, but as part of a "horde" the RS should rid itself of as soon as possible if it is to protect its borders from terrorist threats. Such views, perceiving migrants as problematic and as a threat to the safety of the RS's citizens, have already been identified in public discourse.⁷²⁴

Apart from often ascribing problematic behaviour to them, migrants are often perceived by a substantial share of the population as a threat to society's security. People espousing such views greatly exaggerate the number of migrants and refugees in the RS, warning of their "invasion" or "onslaught" in the imminent future. They highlight the major cultural differences between migrants and the domicile population and warn of the threat migrants pose to the Serbian national corpus and social homogeneity. Some people see no reason to condemn xenophobia, racial or religious hate or intolerance, while society's and the state's response (or rather lack of it) to these phenomena appears to indicate that such a climate is neither unacceptable nor alarming. The situation gives rise to concerns because when associations of migrants with violence, danger and problems become generally accepted and commonplace, their future situation will be conditioned by various factors conducive to their instrumentalisation.⁷²⁵

722 "Serbia, Ukraine and Refugees: 'We had a beautiful city, it doesn't exist anymore,'" *BBC News in Serbian* (20 June 2022), available in Serbian at: <https://www.bbc.com/serbian/lat/svet-61758399>.

723 "Geniuses from Math High-School Develop Application to Help Refugees: 'In Their Sneakers' helping them learn Serbian," *NI* (12 December 2022), available in Serbian at: <https://bit.ly/3FKXQy0>.

724 See more in *Right to Asylum 2020*, pp. 176–179.

725 *Ibid.*

7.4. Role of Social Media and Rightist Groups in Moulding Public Discourse on Migrants

As already noted, the issue of refugees and migrants was often raised in 2022 by various rightist groups, which, together with their followers on social media, claim that they are “protecting the citizens from migrants”. However, these groups have substantially redirected their focus to other topical issues on their social media profiles, above all the war in Ukraine and its political implications for the RS. Most of their posts voiced their opposition to RS’ introduction of sanctions against Russia.

Refugees and migrants, i.e. the “threat” they posed to the RS, still featured among the favourite topics of rightist groups and their sympathisers. Their comments often described migrants as just a “cog” in the global conspiracy against Serbs, as well as against all mankind. They were rife with unverified and even absurd allegations geared at triggering hate and fear of refugees and migrants and affording legitimacy to such claims.⁷²⁶

Large-scale anti-migrant protests were not registered in Belgrade in 2022, but several protests did take place in northern RS. Most of them were staged in Subotica where, as mentioned, the residents of this city rallied to voice their dissatisfaction with the way the state and local authorities were responding to the situation in this city.⁷²⁷ Although it cannot be concluded that all, or even most of the protesters harboured strong anti-migrant sentiments, members of various anti-migrant groups tried to instrumentalise their dissatisfaction to spread their radical ideas at the protests, as well as justify their attacks on migrants.⁷²⁸

The rightist groups continued taking the law into their hands across cities in the RS. The “people’s patrols”, on whose activities the BCHR reported in detail in its prior reports,⁷²⁹ were the most fervent. The members of this informal rightist group often accosted migrants, claiming that they were “more and more aggressive” and that their attacks were “increasingly frequent”, restricted their freedom of movement and placed them under citizen’s arrest. They usually recorded their activities and published them on social media, under slogans such as “Step the Settlement of Migrants”, “The Streets Need to be Safe Again,” and “When Injustice Becomes the Law, Resistance becomes a Duty”, spreading xenophobia and anti-migrant sentiments. Members of “people’s patrols” justified their activities

726 *Ibid.*

727 “Third Anti-Migrant Protest Held in Subotica: ‘Citizens don’t feel safe, state not addressing the problem,” *Danas* (23 July 2022), available in Serbian at: <http://bitly.ws/wLhw>.

728 “Subotica: Police Prevents Clash between People’s Patrols and Group of Migrants,” *Danas* (27 March 2022), available in Serbian at: <http://bitly.ws/wLr4>.

729 More in *Right to Asylum 2020*, pp. 178–179 and *Right to Asylum 2021*, pp. 171–172.

by the inefficiency of the Serbian police and prosecutors, presenting themselves as patriots protecting Serbs from migrants.⁷³⁰ Although citizens have a legal duty to prevent crime, preventive vigilantism must not be a practice. Furthermore, it brings into question the purpose of the existence of the relevant state authorities. The citizen's arrest concept is incompatible with the concept of ad hoc organised groups arbitrarily meting justice.⁷³¹ Such actions are clearly unacceptable, dangerous and undermine the already fragile rule of law. If the state and society see nothing wrong in such groups taking the law into their own hands and clamping down on migrants, they will in all probability condone such treatment of other people these groups perceive as an enemy or a threat in the future as well, which would be the definite end of the rule of law.⁷³²

7.5. Recommendations

The above overview leads to the conclusion that interest in the issue of migration increased in the RS in 2022 over 2021, but that the migrant issue has been politicised to an extent, as well as that public discourse on migrants in the RS still has negative elements. The BCHR issues the following recommendations to improve the narrative on the refugee-migrant population:

- Having in mind that media still play the most important role in shaping public opinion on refugees and migrants, it is imperative that media workers comply with professional journalistic standards and refrain from sensationalist reporting deepening public fears and bias against refugees and migrants.
- Media should more frequently include humanitarian and integration narratives increasing the visibility of the positive aspects of the life and stay of refugees and migrants in the RS.⁷³³ Providing migrants with the opportunity to introduce themselves to the public via the media, talk about their plans and experiences and the problems they face would help dispel public bias against this population.
- Continuous efforts need to be made to improve public perceptions of migrants. They should include suppression of fake news and stereotyping, as well as hate and intolerance. Therefore, educational and

730 "Who's Letting People's Patrols Assume the Role of Police and Make Citizen's Arrests," *N1* (25 April 2022), available in Serbian at: <https://bit.ly/3GhAB0f>.

731 "People's Patrols Assuming Police Role and Making Arrest – 'This must not become a practice,'" *021.rs* (26 April 2022), available in Serbian at: <https://bit.ly/3XEyVUY>.

732 See more in *Right to Asylum 2021*, p. 171.

733 Extensive reports on refugees who enrolled in Serbian colleges on the same terms as RS nationals for the first time are a positive example. More in: *Right to Asylum 2020*, pp. 161–162.

other institutions should teach youth tolerance and to accept diversity and provide ordinary people with opportunities to themselves meet refugees and migrants, to dispel prejudices usually bred by ignorance. Local authorities should organise constructive debates on migration issues, in which migrants and expert and competent figures should take part, and at which the public will have the opportunity to hear accurate data about this population.

- The RS Government should begin conducting its migration policy in a clear and transparent fashion, to avoid various speculations and ensure that the citizens have access to accurate information about this topic. At the same time, all the relevant RS authorities should demonstrate a clearer intention to protect the migrant population and promptly and consistently respond to threats to their safety and rights, rather than act on an ad hoc basis.

CIP – Каталогизација у публикацији
Народна библиотека Србије, Београд
341.43(497.11)”2022”

RIGHT to Asylum in the Republic of Serbia 2022 / [editor
Ana Trifunović] ; [translation Duška Tomanović]. – Belgrade :
Belgrade Centre for Human Rights, 2023 (Belgrade : Dosije studio).
– 178 str. : graf. prikazi i tabele ; 23 cm. – (Series Reports / [Belgrade
Centre for Human Rights] ; 40)

Tiraž 300. – Napomene i bibliografske reference uz tekst.

ISBN 978-86-7202-235-3

a) Азил – Србија – 2022

COBISS.SR-ID 108376073

ISBN 978-86-7202-235-3



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