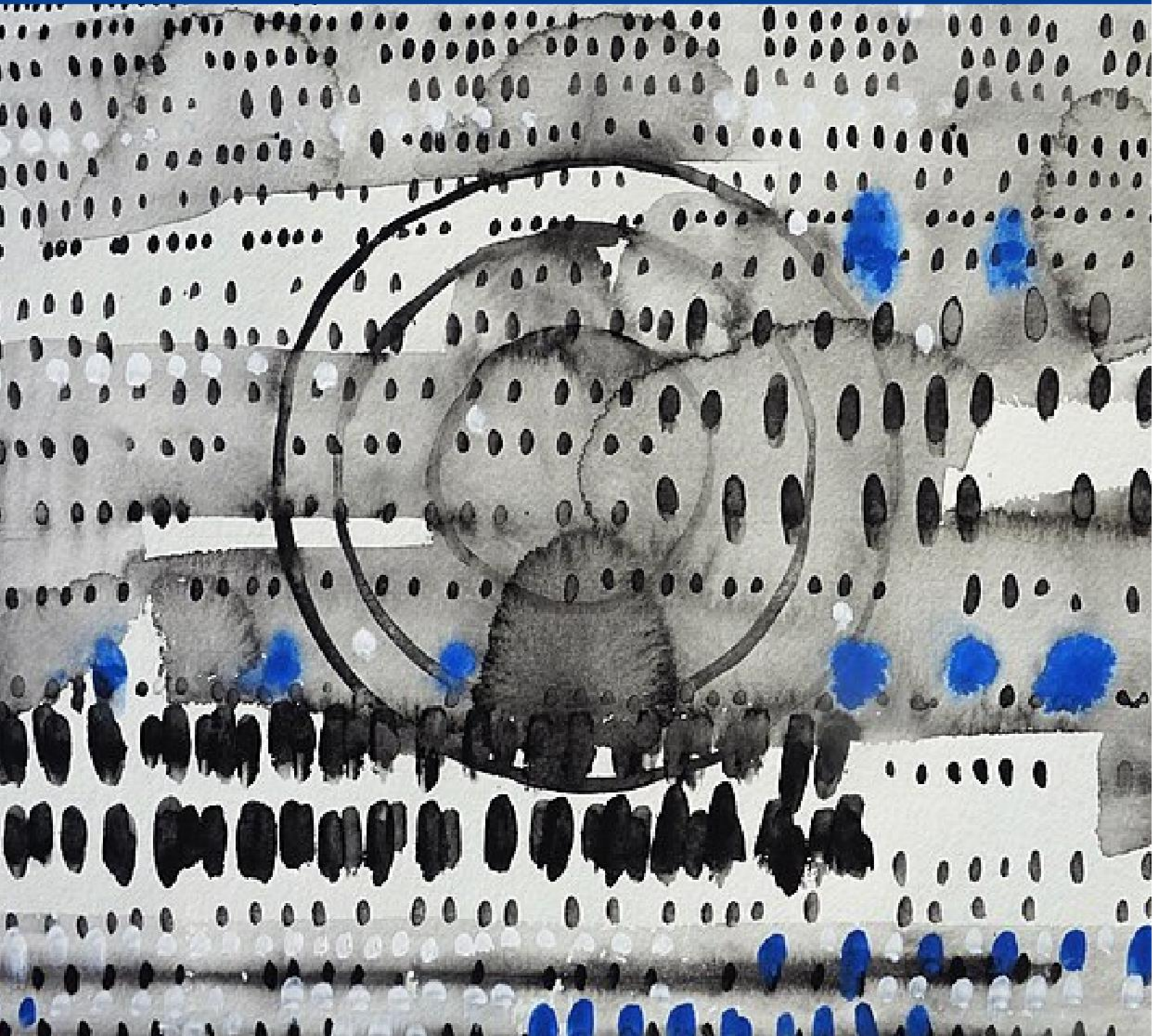




Belgrade Centre for Human Rights

# One Year of Application of Temporary Protection in the Republic of Serbia Comparative Analysis and Recommendations



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ONE YEAR OF APPLICATION OF TEMPORARY PROTECTION IN THE REPUBLIC OF SERBIA:  
COMPARATIVE ANALYSIS AND RECOMMENDATIONS

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Comparative Analysis and Recommendations

Belgrade Centre for Human Rights

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## Preface

UNHCR data show that over eight million refugees fleeing the international armed conflict in Ukraine have found shelter across Europe. The Council of the European Union (EU) activated the 2001 Temporary Protection Directive (Directive 2001/55/EC of 20 July 2001) for the first time in response to the conflict. The EU had referred to but had not activated the Directive in previous instances, when it faced large scale arrivals from Northern Africa in 2011 and the 2015 refugee crisis.

The concept of temporary protection is not defined per se in any international legal instrument. In the words of UNHCR, temporary protection constitutes “a specific provisional protection response to situations of mass influx providing immediate emergency protection from refoulement.” Therefore, temporary protection should be perceived as a form of international protection resorted to when the circumstances of entering the state do not permit asylum seekers to immediately access the regular procedure for the determination of refugee status or, alternatively, for granting them subsidiary protection.

The temporary protection mechanism was activated in the Republic of Serbia (RS) for the first time in March 2022 under the Government Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine (2022 Decision). The RS Government thus aligned its policy on the mass influx of Ukrainian refugees with that of the EU. In March 2023, the RS Government adopted another decision amending the 2022 Decision and extending temporary protection. This means that people displaced from Ukraine are entitled to seek international protection in the RS until March 2024.

In executive partnership with the United Nations High Commissioner for Refugees (UNHCR), the Belgrade Centre for Human Rights (BCHR) has been extending free legal aid to refugees, asylum seekers and individuals granted temporary protection in the RS since 2012. We have together been making efforts to improve the national asylum and refugee integration system, both by directly working with our clients and by improving public policies with a view to ensuring the implementation of international refugee law standards.

This publication - *One Year of Application of Temporary Protection in the Republic of Serbia: Comparative Analysis and Recommendations* - was prepared within the above-mentioned UNHCR project “Support to Refugees and Asylum Seekers in Serbia”. Its purpose is to highlight the importance of the realisation of the rights of refugees, particularly through the prism of the temporary protection mechanism that was activated for the first time in the RS.

The BCHR has been legally representing persons from Ukraine who want to apply for temporary protection in the RS and assisting them in accessing their economic, social and

cultural rights, which has provided it with the opportunity to identify good practices, as well as shortcomings in the beneficiaries' access to their rights.

We hope that our analysis of the application of the temporary protection mechanism will contribute to the improvement of national policies and refugee protection. This publication is based on an analysis of relevant RS law, as well as a comparative analysis of RS and EU law, notably the EU Temporary Protection Directive. The publication includes an analysis of the application of the temporary protection mechanism through access to rights enshrined in the Serbian Law on Asylum and Temporary Protection (LATP), such as the rights to work, education, healthcare, et al. It also provides an overview of the relationship between the temporary protection mechanism and the asylum procedure.

The publication is also informed by a survey the BCHR conducted among temporary protection beneficiaries in late February and early March 2023 to gain insight in the process of application of this legal mechanism and the extent to which individuals from Ukraine can exercise their rights.

Our recommendations aim to draw attention to specific deficiencies in order to improve the situation of refugees in the RS through open dialogue. We hope that the findings in our publication will provide guidance and assistance not only to experts and state authorities charged with facilitating the exercise of rights conferred on temporary protection beneficiaries, but also to all those committed to improving the status of refugees.

The analysis was prepared by Katarina Kitanović, Jelena Ilić, Nina Miholjčić Ivković and Petar Vidosavljević, who were supported by their BCHR colleagues.

Editor Jelena Ilić



## 1. Introduction

The concept of temporary protection is not defined per se in any international legal instrument. In the words of UNHCR, temporary protection constitutes “a specific provisional protection response to situations of mass influx providing immediate emergency protection from refoulement.”<sup>1</sup> Therefore, temporary protection should be perceived as a form of international protection resorted to when the circumstances of entering the state do not permit asylum seekers to immediately access the regular procedure for the determination of refugee status or, alternatively, for granting them subsidiary protection.

The need for States to apply this form of protection in situations of mass influx comes from the obligation of non-refoulement both under international refugee law and international human rights law. It is a kind of “interim protection” for people who may prima facie qualify as refugees, but whose conditions of arrival mean that they cannot proceed immediately through an regular refugee status determination procedure.<sup>2</sup> A very important feature of the temporary protection concept is the fact that it provides the possibility of extending protection to entire groups or categories of persons, without conducting individual procedures, in order to protect their fundamental human rights pending the potential granting of refugee status and a sustainable solution. As opposed to complex procedures for granting refugee status or subsidiary protection, temporary protection and its collective character allow for an efficient and flexible response at times of crisis.<sup>3</sup>

Although temporary protection is neither defined nor regulated by any generally binding international legal instruments, the UNHCR Executive Committee adopted Conclusions<sup>4</sup> and Guidelines<sup>5</sup> on the standards of provision of this form of international protection. According to these documents, temporary protection is international protection temporary in character, focusing on achieving a quicker solution in the absence of a more adequate form of protection and by application of minimum standards of international refugee law.<sup>6</sup> The UNHCR Executive Committee underlined that, in mass influx situations, persons seeking asylum should always receive at least temporary refuge and be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin or physical incapacity. In particular, they should not be penalised or exposed to any

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<sup>1</sup> International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, Practitioners Guide No. 6, Updated Edition 2014, p. 77.

<sup>2</sup> International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, p. 89.

<sup>3</sup> Goran Sandić. *Complementary Forms of International Protection in the Republic of Serbia*. Belgrade: Belgrade Centre for Human Rights, 2019, p. 16.

<sup>4</sup> UNHCR, ExCom, Protection of Asylum-Seekers in Situations of Large-Scale Influx, No. 22 (XXXII), 21 October 1981, available at: [www.refworld.org/docid/3ae68c6e10.html](http://www.refworld.org/docid/3ae68c6e10.html).

<sup>5</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Temporary Protection or Stay Arrangements, February 2014, available at: <https://www.refworld.org/docid/52fba2404.html>.

<sup>6</sup> Goran Sandić, *Complementary Forms of International Protection in the Republic of Serbia*, p. 17.

unfavourable treatment solely on the ground that their presence in the country is considered unlawful and they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order.<sup>7</sup> International law also sets out the obligations of the temporary protection beneficiaries to respect the laws and regulations of host countries and, on the other hand, the state itself shall gradually increase the scope of rights enjoyed by the beneficiaries in absence of a timely and adequate solution to replace temporary protection.<sup>8</sup>

## 2. The Temporary Protection Directive and Its Application in the EU

The large-scale influx of refugees from the former Yugoslavia in the 1990s prompted the Member States of the then European Community (now the European Union) to address the issue of temporary protection at the Community level to prevent bottlenecks in the asylum system.<sup>9</sup> Until then, the Member States applied various forms of national and temporary protection mechanisms. Temporary protection differed greatly, however, from one Member State to another, in particular with regard to the status, the maximum duration, procedures gaining access to asylum procedures, and the rights and benefits. The application of the different regimes started producing visible undesired effects; e.g. large discrepancies between the numbers of people seeking refuge in the different Member States, secondary movements etc., and revealed the dire need for harmonisation and the setting of common standards on the provision of this form of protection. With the introduction of the Amsterdam Treaty and in line with the aim to establish a Common European Asylum System (CEAS) as called for by the 1999 Tampere Conclusions, the EU Council adopted a number of the regulations and directives introducing new rules on standards and closer cooperation among the Member States.<sup>10</sup> Among them, the 2001 Temporary Protection Directive was adopted with an aim to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.<sup>11</sup>

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<sup>7</sup> International Commission of Jurists (ICJ), *Migration and International Human Rights Law*, p. 89.

<sup>8</sup> Goran Sandić, *Complementary Forms of International Protection in the Republic of Serbia*, p. 18.

<sup>9</sup> *Ibid*, p. 19.

<sup>10</sup> European Commission, *Study on the Temporary Protection Directive: Final Report*, Luxembourg: Publications Office of the European Union, 2016, available at: [https://home-affairs.ec.europa.eu/system/files/2020-09/final\\_report\\_evaluation\\_tpd\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/final_report_evaluation_tpd_en.pdf), p. 11.

<sup>11</sup> 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; 7.8.2001, 2001/55/EC, available at: <https://www.refworld.org/docid/3ddcee2e4.html>.

The Directive introduces a procedure for the provision of immediate and temporary protection to displaced persons if there is a risk that the asylum system will be unable to process the mass influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.<sup>12</sup> Therefore, the temporary protection mechanism is resorted to in exceptional circumstances, in the event of a mass influx of displaced persons who are unable to return to their country of origin.<sup>13</sup> The Directive includes quite a broad definition of “mass influx” - arrival in the Community of *a large number* of displaced persons, who come from a specific country or geographical area.<sup>14</sup> The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the European Commission.<sup>15</sup>

Under Article 2(c) of the Directive, ‘displaced persons’ means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights.<sup>16</sup>

Once the Directive is activated, each EU Member State is under the obligation to ensure unimpeded enjoyment of the rights laid down in Articles 8-16 to persons granted temporary protection. Actually, the rights set out in these Articles largely reflect those subsequently incorporated in various CEAS legal instruments, especially the Qualification Directive.<sup>17</sup> The guaranteed rights include the rights to a personal document and residence permit, access to the labour market, suitable accommodation, education, social welfare, necessary medical assistance and family reunification.<sup>18</sup>

Although temporary protection beneficiaries do not have to apply for asylum to enjoy protection in the EU Member States they are in,<sup>19</sup> they must be able to lodge an application for asylum at any time.<sup>20</sup> The examination of any asylum application not

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<sup>12</sup> Directive 2001/55/EC, Article 2.

<sup>13</sup> Directive 2001/55/EC, Article 2 (a).

<sup>14</sup> Directive 2001/55/EC, Article 2 (d).

<sup>15</sup> Directive 2001/55/EC, Article 5.

<sup>16</sup> Directive 2001/55/EC, Article 2 (c).

<sup>17</sup> European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <https://www.refworld.org/docid/4f197df02.html>.

<sup>18</sup> Directive 2001/55/EC, Articles 8-16.

<sup>19</sup> Goran Sandić. *Complementary Forms of International Protection in the Republic of Serbia*, p. 19.

<sup>20</sup> Directive 2001/55/EC, Article 17.

processed before the end of the period of temporary protection shall be completed after the end of that period.<sup>21</sup>

Temporary protection is initially granted for a period of one year and may be automatically extended by six monthly periods for a maximum of one year. Where reasons for temporary protection persist, the Council may decide by qualified majority to extend that temporary protection by up to one year.<sup>22</sup> Hence, temporary protection may last three years at most. Additionally, temporary protection shall come to an end at any time, by Council Decision based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement.<sup>23</sup>

For the first time since the Directive was adopted, the EU Council on 4 March 2022 adopted the implementing decision establishing the existence of a mass influx of displaced persons from Ukraine and having the effect of introducing temporary protection.<sup>24</sup> The object of the Decision, which entered into effect on the same day,<sup>25</sup> was to introduce temporary protection for persons residing in Ukraine who have been displaced on or after 24 February 2022 as a result of the international armed conflict that began on that date.<sup>26</sup>

The Decision explicitly regulates three issues: establishes the existence of a mass influx (Article 1); establishes categories of persons displaced from Ukraine within the meaning of Article 2(c) of the Directive (Article 2); and, regulates issues of cooperation and joint monitoring by EU Member States and agencies, with the central and coordination role of the European Commission (Article 3). Although the Directive does not include precise indicators for establishing a situation of mass influx of displaced persons, the Council referred to several facts in the Decision. Firstly, it took into account the number of people who had already entered EU territory, by pointing out that, as of 1 March 2022, more than 650,000 displaced persons had arrived in the Union from Ukraine through Poland, Slovakia, Hungary and Romania.<sup>27</sup> Furthermore, the Council expressed its expectations that the Union was likely to be faced with a very large number of displaced persons, especially since nationals of Ukraine were exempt from the requirement to be in possession of a visa for short-term stays in the EU.<sup>28</sup> It went on to conclude that the scale of the influx would likely

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<sup>21</sup> Ibid.

<sup>22</sup> Directive 2001/55/EC, Article 4.

<sup>23</sup> Directive 2001/55/EC, Article 6.

<sup>24</sup> 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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382>.

<sup>25</sup> Ibid, Article 4.

<sup>26</sup> Ibid, recital (11).

<sup>27</sup> Ibid, recital (5).

<sup>28</sup> Ibid, recital (6).

be such that there was also a clear risk that the Member States' asylum systems would be unable to process the arrivals without adverse effects on their efficient operation and on the interests of the persons concerned and on those of other persons requesting protection.<sup>29</sup> Finally, the Council noted that the UNHCR welcomed and supported the activation of the temporary protection provided for by Directive 2001/55/EC in order to enable immediate and temporary refuge of people fleeing Ukraine in the Union.<sup>30</sup>

Article 2 of the Decision lists the categories of persons eligible for temporary protection or another form of adequate protection under the national law of the Member States. Under this Article, Directive 2001/55/EC applies to: (a) Ukrainian nationals; (b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine; and, (c) family members of the persons referred to in points (a) and (b). Under the Decision, Member States shall apply either this Decision or adequate protection under their national law, also in respect of nationals of third countries who have permanent residence in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.<sup>31</sup> 'Adequate protection' under national law does not have to entail benefits identical to those attached to temporary protection as provided for in Directive 2001/55/EC, but the Member States must ensure respect for human dignity and therefore a dignified standard of living.<sup>32</sup> The Directive allows Member States to extend temporary protection as provided for in this Directive to additional categories of displaced persons, where they are displaced for the same reasons and from the same country or region of origin.<sup>33</sup> The Council, accordingly, calls on the Member States to admit such persons in any event into the Union on humanitarian grounds without requiring, in particular, possession of a valid visa or sufficient means of subsistence or valid travel documents.<sup>34</sup>

The Directive, as part of EU law, is binding upon the Member States but only as to the result to be achieved, whilst leaving the choice of form and methods to the national authorities. Therefore, as opposed to regulations, the directives are not directly applicable in the Member States, which are under the obligation to align their national law to ensure the fulfilment of the standards set in it.<sup>35</sup> This is why EU Member States developed various practices in fulfilling their obligations to grant protection to persons displaced from Ukraine.

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<sup>29</sup> Ibid, recital (7).

<sup>30</sup> Ibid, recital (9).

<sup>31</sup> Ibid, Article 2.

<sup>32</sup> Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 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 2022/C 126 I/01, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XC0321\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XC0321(03)).

<sup>33</sup> Directive 2001/55/EC, Article 7 (1).

<sup>34</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022, recital (13).

<sup>35</sup> Article 288 of the Treaty on the Functioning of the European Union, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

Although the Temporary Protection Directive sets minimum standards for giving temporary protection, it lays down that it shall not affect the prerogative of the Member States to adopt or retain more favourable conditions, standards and status for persons covered by temporary protection.<sup>36</sup>

In welcoming the application of the Temporary Protection Directive, UNHCR encouraged states to take an inclusive approach to its application in light of the urgent need to ensure admission to safety, protection from refoulement and assistance to those patently in need of it in a situation of mass influx from Ukraine.<sup>37</sup> Slovenia, Luxembourg and Portugal have expanded the scope of application to third-country nationals with short-term residence permits in Ukraine who are unable to return to their countries of origin, while Germany, Finland and Spain extended the application of temporary protection to Ukrainian nationals who resided in those countries prior to the outbreak of the crisis.<sup>38</sup> Some countries (such as the Czech Republic and Bulgaria) decided to enhance their registration capacity, while some other countries rapidly developed online systems to facilitate the process of registration. For instance, the Greek Ministry of Migration and Asylum launched an online site where beneficiaries can submit their application and preregister for acquisition of the temporary protection permit in Greek, Ukrainian and English.<sup>39</sup> In the Netherlands, persons displaced from Ukraine also filed asylum claims (which are dormant for the duration of temporary protection) in order to ensure that their protection can continue after the expiry of temporary protection. Pursuant to the EC's recommendations on identification, some states accept any available identity documents for registration and administration purposes.<sup>40</sup> In Slovakia, for example, applicants can prove their identity by presenting a driving licence together with a birth certificate or expired travel documents.<sup>41</sup> According to the obligation set out in the Directive,<sup>42</sup> EU Member States have developed leaflets and launched dedicated web platforms and helplines to support persons displaced from Ukraine with necessary information on their rights and available services.<sup>43</sup>

EU Member States guarantee temporary protection beneficiaries' access to an entire set of economic, social and cultural rights – to access the labour market, adequate accommodation, education, social welfare and necessary medical assistance. Although the Directive guarantees the right to work, its exercise remains subject to rules applicable to the profession and national labour market policies.<sup>44</sup> In practice, most EU Member States

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<sup>36</sup> Directive 2001/55/EC, Article 3 (5).

<sup>37</sup> UNHCR, The EU Temporary Protection Directive in practice 2022, available at: <https://data.unhcr.org/en/documents/details/93633>, p. 2.

<sup>38</sup> Ibid.

<sup>39</sup> <https://apps.migration.gov.gr/temporary-protection/?lang=en> Ibid, p. 4.

<sup>40</sup> Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382, p. 4.

<sup>41</sup> UNHCR, The EU Temporary Protection Directive in practice 2022, p. 5.

<sup>42</sup> Directive 2001/55/EC, Article 9.

<sup>43</sup> Ibid, p. 6.

<sup>44</sup> Directive 2001/55/EC, Article 12.

entitle persons granted temporary protection to access the labour market without any limitation, as soon as they are issued personal documents and residence permits.<sup>45</sup> Temporary protection beneficiaries must apply for work permits in Austria, although the procedure has been facilitated by the elimination of the labour-market test,<sup>46</sup> while France, Hungary and Italy have in the meantime abolished all restrictions and thus provided the beneficiaries with absolutely free access to the labour market.<sup>47</sup> According to a survey conducted by the EU Fundamental Rights Agency, the language barrier is the greatest obstacle to their successful integration in the labour market.<sup>48</sup> This is precisely why some host countries (e.g. Austria, Germany and Norway) provide language courses to Ukrainian refugees. In Latvia and the Czech Republic, the national employment services offer free language courses for registered jobseekers – temporary protection beneficiaries.<sup>49</sup>

Under the Directive, the Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.<sup>50</sup> In the EU, most countries supplement reception centre housing with private households; financial support for accommodation is provided either to local authorities or other accommodation providers offering housing or to persons fleeing Ukraine directly.<sup>51</sup> Latvia, for instance, provides monthly compensation of up to €300 to households that accommodate persons displaced from Ukraine. As an alternative, Latvia provides assistance with the rent of up to EUR 400 per month to persons displaced from Ukraine directly.<sup>52</sup> In addition to adequate accommodation, the Directive imposes upon the Member States the obligation to provide temporary protection beneficiaries necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources.<sup>53</sup> The majority of EU Member States provide financial support to temporary protection beneficiaries to cover their basic needs, but levels and mechanisms vary widely across countries. In some countries (such as Estonia, Latvia, Lithuania, Luxembourg, Malta and the Czech Republic), temporary protection beneficiaries access the same core social services as residents. On the other hand, some Member States decided to limit social protection to a specific period of time (Italy), while, in Austria, Finland, and France, an

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<sup>45</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, OECD Publishing, Paris, 2022, available at: <https://www.oecd.org/publications/rights-and-support-for-ukrainian-refugees-in-receiving-countries-09beb886-en.htm>.

<sup>46</sup> ECRE, *Information Sheet – Measures in response to the arrival of displaced people fleeing the war in Ukraine*, January 2023, available at: <https://ecre.org/wp-content/uploads/2022/12/ECRE-Update-November-2022-Implementation-of-the-TPD.pdf>, p. 54.

<sup>47</sup> ECRE, *Information Sheet*, pp. 26 and 36.

<sup>48</sup> FRA, *Fleeing Ukraine: Displaced people's experiences in the EU*, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2023-ukraine-survey\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2023-ukraine-survey_en.pdf), p. 43.

<sup>49</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 19.

<sup>50</sup> Directive 2001/55/EC, Article 13.

<sup>51</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 14.

<sup>52</sup> ECRE, *Information Sheet*, p. 44.

<sup>53</sup> Directive 2001/55/EC, Article 13.

allowance is scaled based on family situation and level of accommodation support.<sup>54</sup> Hungary, for instance, conditioned the social welfare by the beneficiaries' registration with the national employment service and regular monthly reporting to it.<sup>55</sup> In addition to social assistance, some Member States (such as Poland and Bulgaria) provide temporary protection beneficiaries with one-off financial aid to cover their urgent and basic needs.<sup>56</sup>

As per the right to education, the Directive lays down that Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State.<sup>57</sup> All EU Member States have provided children displaced from Ukraine with access to education in practice. In many countries, notably Germany and Greece, children attend reception classes where they receive some language support.<sup>58</sup> Although access to education for adults is less common in EU Member States, some of them have made financial support available for those who seek to pursue tertiary education.<sup>59</sup>

The Directive lays down the Member States' obligation to provide persons granted temporary protection with assistance necessary for medical care, at least emergency care and essential treatment of illness, in particular to beneficiaries 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.<sup>60</sup> Most Member States have apparently been providing temporary protection beneficiaries with access only to emergency medical care. Some states (e.g. Bulgaria, Sweden) have recognised the need to provide some vulnerable categories of beneficiaries access to health care under the same terms as their nationals.<sup>61</sup> The Czech Republic, for instance, limited the health insurance of persons displaced from Ukraine to 150 days.<sup>62</sup> On the other hand, some Member States (e.g. Italy, Greece<sup>63</sup>, Latvia, Malta, Portugal, Slovakia) have provided persons displaced from Ukraine free access to state health services.<sup>64</sup>

Although there is a widespread opinion that the European Union responded well to the mass influx of persons displaced from Ukraine and that this can largely be attributed to the activation of the temporary protection mechanism, the European Commission's 2020 proposal for the adoption of a new regulation within the New Pact on Migration and Asylum addressing situations of crisis and force majeure in the field of migration and asylum and

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<sup>54</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 16.

<sup>55</sup> [Frequently asked questions and answers for refugees from Ukraine - Hungarian Helsinki Committee](#)

<sup>56</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 16.

<sup>57</sup> Directive 2001/55/EC, Article 14.

<sup>58</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 17.

<sup>59</sup> Ibid.

<sup>60</sup> Directive 2001/55/EC, Article 13.

<sup>61</sup> OECD, *Rights and Support for Ukrainian Refugees in Receiving Countries*, p. 15.

<sup>62</sup> ECRE, *Information Sheet*, p. 19.

<sup>63</sup> [For Ukrainians - UNHCR Greece](#)

<sup>64</sup> ECRE, *Information Sheet*, p. 43, 46, 53, 64, and 74.



establishing a new institute – that of immediate protection - still stands. In its official proposal, the EC said that the Temporary Protection Directive no longer responded to the Member States' current reality and needed to be repealed. To recall, the temporary protection mechanism under the Directive had never been activated before the EC presented its proposal.

The fact that the legal existence of a mass influx and consequent activation of temporary protection is the result of a political decision is, perhaps, the greatest shortcoming of the Directive. Namely, under the Temporary Protection Directive, the EU Council is the one that establishes the existence of a mass influx.<sup>65</sup> It should particularly be borne in mind that the Council's decision need not be based on the assessment of the efficiency and effectiveness of the asylum system; rather, the broad definition of mass influx provides it with enough manoeuvring space to base the decision on its own, narrow interests.

On the other hand, the expert EU body - the European Commission – and not the Council would be the one deciding on activating “immediate protection”. It, however, needs to be borne in mind that Member States usually take decisions on asylum issues by a qualified majority. Therefore, the possibility of several states blocking the activation of the mechanism because of their narrow interests is quite limited. On the other hand, it is quite unlikely that the European Commission would propose anything the (key) Member States on the Council would oppose, wherefore this most oft-quoted advantage of “immediate” over “temporary” protection is questionable at the very least. The EU should not so easily discard the mechanism that has proven extremely efficient in achieving one of the main goals for which it was introduced – to relieve the Member States' asylum systems in situations of mass influx by introducing simplified procedures for granting protection and access to guaranteed rights.

### 3. Temporary Protection Mechanism in the Republic of Serbia

#### 3.1. Legislative Framework

The RS assumed the obligation to align its law with the EU *acquis* under Article 72 of the Stabilisation and Association Agreement,<sup>66</sup> which entered into force in 2013. Given that EU accession is a strategic commitment of the Republic of Serbia, headway in accession talks depends on the degree in which RS brings its domestic law into compliance with the EU

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<sup>65</sup> Directive 2001/55/EC, Article 5.

<sup>66</sup> Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, Official Gazette of the RS – International Treaties No. 83/2008, Article 72.

*acquis*. This obligation also extends to Chapter 24 – Justice, Freedom and Security within the first cluster, which includes the field of asylum and migration. The RS began aligning its law in this field with the relevant European standards by adopting, in 2007, the Asylum Law,<sup>67</sup> wherefore many of the institutes this law introduced and defined were taken directly from secondary EU legislation. However, the Asylum Law provisions on temporary protection were only partly in compliance with the EU 2001 Temporary Protection Directive. The Asylum Law generally defined the rights of individuals granted temporary protection. The major differences between it and EU law were visible in the definition of temporary protection, and included the non-specification of the maximum period of validity of temporary protection and the failure to guarantee temporary protection beneficiaries the rights to social welfare and to work.<sup>68</sup> Moreover, the legislator made the provision of temporary protection dependent on “the social, economic and other capacities of the Republic of Serbia.”<sup>69</sup> These shortcomings were addressed by the 2018 Law on Asylum and Temporary Protection (LATP),<sup>70</sup> the provisions of which are aligned with the valid EU Directive to a greater extent.

Under Article 74 of the LATP, temporary protection shall mean a form of protection that is provided in an extraordinary procedure, in case of a mass influx of persons who cannot be returned to the country of origin or habitual residence, particularly if there is a risk that the asylum system will be unable to process the arrivals without adverse effects on its efficient operation, in the interests of the persons concerned and other persons requesting protection. A decision on the provision of temporary protection shall be taken by the RS Government. The legislator further defines displaced persons as foreigners who were forced to leave the area or country of origin or habitual residence, or who were evacuated, and who are unable to return to durable and safe living conditions due to the situation that is prevalent in that country, in particular:

- 1) persons who have left the area of armed conflict or localised violence;
- 2) persons who face a serious threat of mass violations of human rights or who have been victims of such violations.

The LATP further lays down that temporary protection may be granted also to persons who were residing lawfully in the RS at the time of the adoption of the decision on temporary protection, whose right of residence expires before the decision on temporary protection is revoked. Such a solution is more favourable than the one at the EU level, since neither the EU Council’s Directive nor its Decision recognise this category of individuals, merely leaving it to the Member States to extend the personal scope of temporary protection to other individuals displaced for the same reasons and from the same country of

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<sup>67</sup> Asylum Law, Official Gazette of the RS, No. 109/07.

<sup>68</sup> Article 36, 37 and 38, Asylum Law.

<sup>69</sup> Article 36, Asylum Law.

<sup>70</sup> Law on Asylum and Temporary Protection, Official Gazette of the RS, No. 24/2018.

origin. The LAMP further lays down that the persons granted temporary protection shall be registered in accordance with this law and that a decision granting temporary protection shall be rendered for each person individually.<sup>71</sup>

The temporary protection mechanism was activated at the national level for the first time in March 2022, when the RS Government adopted a decision to that effect<sup>72</sup>, thus aligning its policy with the EU Member States' approach to managing the situation of the mass influx of people caused by the international armed conflict in Ukraine. The Government Decision, which entered into force on 19 March 2022, applies to individuals forced to leave Ukraine as their country of origin or habitual residence or evacuated from Ukraine, who are unable to return in safe and durable conditions because of the situation prevailing in that country. The 2022 Decision applies to Ukrainian nationals and members of their families who were residing in Ukraine, asylum seekers, stateless persons and foreign nationals granted asylum or equivalent national protection and their family members legally residing in Ukraine, as well as foreign nationals granted permanent or temporary residence in Ukraine, who cannot return safely to their country of origin. Under the Decision, temporary protection shall also be granted to Ukrainian nationals and their family members legally residing in the RS at the time of adoption of the Decision, whose right of residence expires before the Decision is revoked.<sup>73</sup>

The Asylum Office, a unit of the Ministry of the Interior (MOI) Border Police Directorate, is charged with reviewing and ruling on temporary protection applications. Under the LAMP, temporary protection may be granted for a period of one year. However, its validity may be extended by six monthly periods for a maximum of one year where reasons for temporary protection persist.<sup>74</sup> Temporary protection shall cease upon the expiry of the period for which it was granted, or when the reasons why it was granted have ceased to exist, as decided by the Government. Exceptionally, temporary protection may cease to apply to foreigners on the basis of a decision taken by the Asylum Office, if the latter ascertains that there are grounds for denying them the right to refuge.

In March 2023, a year after the international armed conflict broke out in Ukraine, the RS extended the validity of temporary protection, by its Decision Amending the Decision on the Provision of Temporary Protection in the RS to Persons Displaced from Ukraine of 17 March 2022 (2023 Decision).<sup>75</sup> The 2023 Decision extends temporary protection by one

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<sup>71</sup> Article 74, LAMP.

<sup>72</sup> RS Government Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine, Official Gazette of the RS No. 36/2022.

<sup>73</sup> *Ibid*, paras 1 and 2.

<sup>74</sup> Art. 75, paras 1 and 2, LAMP.

<sup>75</sup> Decision Amending the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine, Official Gazette of the RS No. 21/2023-44.

year, until 18 March 2024, because the reasons for it persist. The LAMP entitles individuals granted temporary protection to apply for asylum in the RS.<sup>76</sup>

The LAMP and the 2022 Decision activating the temporary protection mechanism guarantee all temporary protection beneficiaries the right to access all rights enumerated in Article 76 of the LAMP, notably the right to:

- 1) legally reside in the RS during the validity of temporary protection;
- 2) a personal document confirming their status and right of residence;
- 3) healthcare in accordance with the law on healthcare of foreigners;
- 4) access the labour market (in accordance with regulations on the employment of foreigners);
- 5) free primary and secondary education in state schools, in accordance with the relevant regulations;
- 6) free legal aid extended to asylum seekers;
- 7) freedom of religion on the same terms as the nationals of RS;
- 8) live in collective accommodation in designated facilities (the decisions are taken by the Government on the proposal of the Commissariat for Refugees and Migration (CRM));
- 9) adequate accommodation for persons requiring special procedural and/or reception guarantees,<sup>77</sup> such as children, unaccompanied or separated children, persons with disabilities, elderly persons, pregnant women, single parents with children, victims of human trafficking, persons with serious medical conditions including mental health issues, victims of torture, rape and any other forms of serious psychological, physical, or sexual violence, such as female genital mutilation.

The LAMP also lays down that, in justified circumstances, the relevant authority may allow the reunification of temporary protection beneficiaries in the RS with their families, and thus extend temporary protection also to their family members. The LAMP imposes upon the beneficiaries the obligation to comply with the RS Constitution, laws, and other regulations and general enactments.<sup>78</sup>

It may therefore be concluded that the LAMP is generally in compliance with the EU Temporary Protection Directive, but that there are some differences between them. The greatest one concerns the maximum duration of temporary protection. As noted above, temporary protection may last three years at most under the EU Directive, while the LAMP envisages the extension of temporary protection for one year at most, i.e. its validity for a

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<sup>76</sup> Art. 76(2), LAMP.

<sup>77</sup> Art. 17, LAMP.

<sup>78</sup> Art. 76(2), LAMP.

maximum of two years. The contents of the guaranteed rights also differ. Under the LATP, temporary protection beneficiaries are entitled to collective accommodation in designated facilities or adequate accommodation if they are in need of special reception guarantees. As opposed to the Directive, the LATP does not entitle the beneficiaries to financial aid to cover the costs of renting private lodgings. Such assistance is envisaged only for individuals granted asylum in the RS.<sup>79</sup> Furthermore, the right to social welfare in accordance with the law is reserved only for individuals granted asylum and asylum seekers living in private lodgings.<sup>80</sup> Such a solution is not in compliance with the EU Directive or the practices of the Member States, which guarantee temporary protection beneficiaries the right to necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources.

### 3.2. Application of the Temporary Protection Mechanism in the Republic of Serbia

The BCHR team has been legally representing individuals displaced from Ukraine applying for temporary protection and extending them assistance in accessing their economic, social and cultural rights since March 2022. BCHR's team represented both the individuals living in private accommodation and those living in the Asylum Centre in Vranje, a facility managed by the CRM and designated for the reception of refugees from Ukraine. It has therefore had the opportunity to actively monitor the application of the temporary protection mechanism for over a year and been able to identify specific good practices, as well as the shortcomings both in the relevant authorities' treatment of this category of foreigners, as well as in the beneficiaries' access to their guaranteed rights.

Furthermore, the BCHR conducted a survey in late February and early March 2023 among temporary protection beneficiaries in the RS, with a view to gaining insight in the application of this legal mechanism and analysing the extent to which persons from Ukraine can exercise their rights. The BCHR surveyed both temporary protection beneficiaries living in the Vranje Asylum Centre and those living in private accommodation across RS.<sup>81</sup> The survey comprised 39 questions of various kinds; most of them were open-ended questions allowing the respondents to providing more detailed explanations of their answers. A total of 38 temporary protection beneficiaries took part in the survey.

The survey findings shed substantial light on how the respondents perceive the rights conferred upon them as temporary protection beneficiaries. First of all, they show

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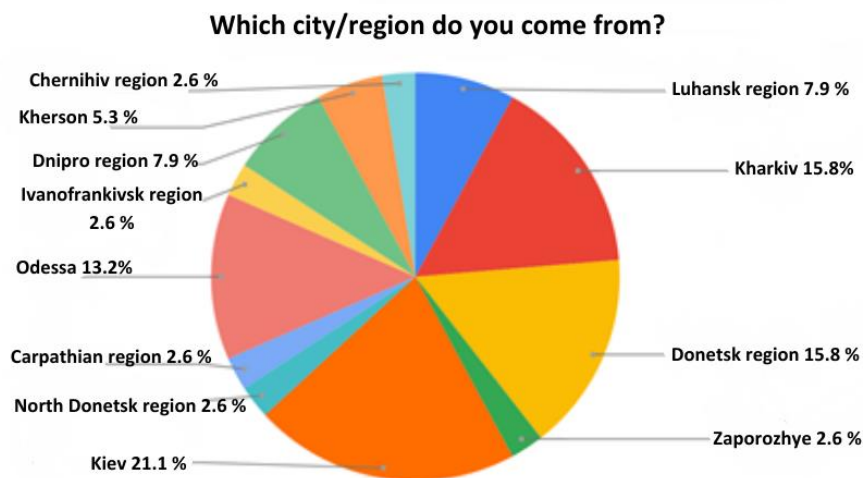
<sup>79</sup> Art. 61, LATP.

<sup>80</sup> Arts. 53 and 67, LATP.

<sup>81</sup> Most of the respondents received and filled the survey online. BCHR's team also surveyed several respondents in face-to-face interviews, during its regular visits to the Vranje Asylum Centre.

that the authorities kept the formalities to a minimum to simplify their access to the temporary protection procedure as much as possible. Once the foreigners were registered by the MOI, all they had to do for the Asylum Office to issue them a ruling granting them temporary protection was produce a document proving that they were a Ukrainian national, or had been granted asylum or equivalent protection, or had permanent or temporary residence in Ukraine. The Asylum Office issued 1,232 decision granting temporary protection from 19 March 2022, when the 2022 Decision entered into force, to 1 April 2023. A total of 1,262 people applied for temporary protection in that period: 856 of them were female and 406 were male; 309 of them were children (none of them unaccompanied).

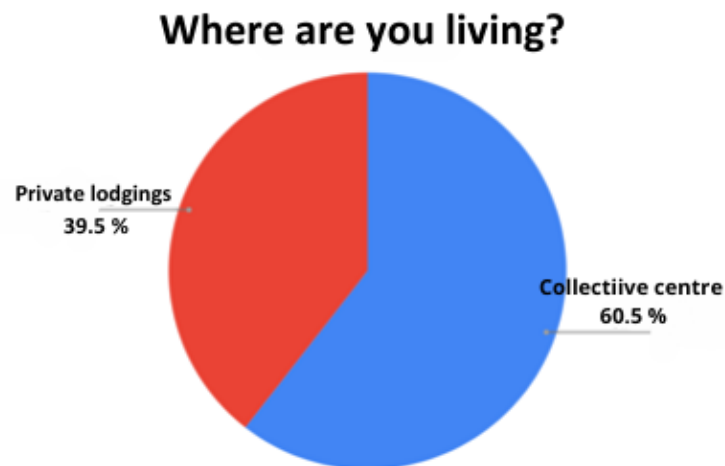
Most of the people granted temporary protection are nationals of Ukraine (1,166), but the Asylum Office also granted temporary protection to nationals of Russia (28), Uzbekistan (6), Armenia (5), Libya (3), China (2), Belarus (1), Bosnia and Herzegovina (1), Georgia (1) and Latvia (1). Most of the respondents who took part in BCHR’s survey came from Kiev (21.1%), Kharkiv (15.8%), the Donetsk region (15.8%), and Odessa (13.2%).



Another good practice introduced by the Asylum Office involved the distribution of an info sheet in Ukrainian and Russian notifying the successful applicants of their rights and encouraging them to forward any additional questions to a specially created e-mail address, along with the rulings granting them temporary protection. Most respondents said that they had been notified of their rights by the BCHR, CRM and MOI, while several of them said they had informed themselves via the Internet, social media, and their friends and relatives. Many of them also reported they had perused a combination of the above-mentioned sources of information.

Refugees from Ukraine granted temporary protection in the RS had no difficulty crossing the RS border and entering and leaving the country during the reporting period. The border police allowed third-country nationals subject to the visa requirement but falling under the scope of the 2022 Decision to enter the RS without a visa. The EU Member States applied a similar practice. Such conduct by the border police is a good practice example, as is the fact that the beneficiaries' temporary and occasional trips to Ukraine did not impinge on their enjoyment and continuity of temporary protection in the Republic of Serbia.

Most of the survey respondents (63.2%) said that they had been living in the RS for a year now, while 15% of them indicated that they had arrived in Serbia over six months ago. Sixty percent of the respondents were living in the Vranje Asylum Centre, while the other 40% were living in private accommodation, primarily in Belgrade, as well as Novi Sad, Smederevo and Kragujevac. Most of the respondents said that they were satisfied with their accommodation.



Under the LAMP, the Asylum Office shall issue identity cards (IDs) in the prescribed format to individuals granted temporary protection, which shall be valid for the period for which they are granted temporary protection.<sup>82</sup> The content and format of the ID is laid down 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.<sup>83</sup> The Rulebook includes the template of the ID; the paper form is filled manually and the holder's colour photograph and Asylum Office seal are affixed to it.

The content of the ID issued to temporary protection beneficiaries is one of the main

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<sup>82</sup> Art. 87, LAMP.

<sup>83</sup> 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, Official Gazette of the RS, No. 42/18.

challenges in their exercise of their guaranteed rights. Namely, these IDs are incomplete since they do not include the Foreigners Registration Number (FRN). Furthermore, the Rulebook is not in compliance with the Law on Identity Cards,<sup>84</sup> in particular the provisions on the issuance of biometric documents. The BCHR has for years now been alerting to the importance and necessity of issuing biometric personal documents, especially in light of the important role they play in facilitating the refugees' everyday lives and their access to their rights. The inadequate design of IDs issued to this category of foreigners, which does not include all the requisite elements, gives rise to the risk of discrimination by the authorities. As per the period they had to wait for the Asylum Office to issue them a ruling granting them temporary protection and an ID, most respondents said that they had waited around a month for the decision and as long or a little bit longer for their IDs. The Asylum Office issued personal documents valid for the duration of temporary protection specified in the Government 2022 Decision, regardless of the time the beneficiaries applied for an ID.

Under the LAMP, access to the labour market shall be applied in accordance with regulations governing the employment of foreigners. The Law on the Employment of Foreigners<sup>85</sup> recognises temporary protection beneficiaries as individuals falling in a special category of foreigners, who are entitled to personal work permits at their request. The validity of the personal work permits coincides with that of temporary protection and the IDs issued to the temporary protection beneficiaries.<sup>86</sup> As opposed to asylum seekers, persons displaced from Ukraine are entitled to access the labour market as soon as they are issued decision granting them temporary protection. Their access to the labour market is easier than that of other special categories of foreigners because they are partly exempted from paying the personal work permit fee on account of indigence, in accordance with an Opinion issued by the Finance Ministry. In practice, that meant that temporary protection beneficiaries did not have to pay the entire 14,360 RSD permit fee and the 330 RSD application fee, but 10,000 RSD less, pursuant to Article 19 of the Law on Republican Administrative Fees.<sup>87</sup> Given the particular vulnerabilities of this category of foreigners, the National Employment Service (NES) has been reducing the initial fee in accordance with the above-mentioned law, guided by the assessment that the fee would impinge on the subsistence of temporary protection beneficiaries and their immediate families. On the other hand, the NES waived the entire fee in case of applicants living in the Vranje Asylum

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<sup>84</sup> Law on Identity Cards, Official Gazette of the RS, Nos. 62/2006, 36/2011 and 53/2021.

<sup>85</sup> Official Gazette of the RS, Nos. 128/2014, 113/2017, 50/2018 and 31/2019.

<sup>86</sup> Arts. 12 and 13, Law on the Employment of Foreigners, Official Gazette of the RS, Nos. 128/2014, 113/2017, 50/2018 and 31/2019.

<sup>87</sup> An authority charged with the adoption of a document or implementation of an action, which assesses that an applicant – a natural person – cannot afford to pay the fee without undermining their necessary subsistence or that of their immediate family shall, at the applicant's request and based on proof of the applicant's income, issue a ruling waiving the payment of a fee under 10,000 RSD or, in the event the fee exceeds 10,000 RSD, a ruling instructing the applicant to pay the difference between the prescribed fee and 10,000 RSD. Art. 19(3), Law on Republican Administrative Fees, Official Gazette of the RS, Nos. 43/2003, 51/2003 - corr., 61/2005, 101/2005 – other law, 5/2009, 54/2009, 50/2011, 62/2021 ... 138/2022.



Centre. The time it took the relevant authority to issue a personal work permit was quite long, especially in Vranje, where some applicants had to wait more than three months for their personal work permits.

The survey results corroborate the above findings. Namely, most respondents possessed a personal work permit at the time of the survey, but many of them, especially those living in the Vranje Asylum Centre, said that they had waited several months for them. The survey showed that three-quarters (78.4%) of the respondents were jobless.



Persons from Ukraine faced other difficulties in accessing the labour market, in addition to long waiting times for the personal work permits. The key obstacles included, notably, their lack of knowledge of Serbian, as well as their obligations to care for their children, or their elderly or ill family members. The latter difficulties were experienced mostly by women, who, as statistics show, account for most temporary protection beneficiaries in the RS. In addition, the Asylum Centre is located in Vranje, a city with a high unemployment rate of the domicile population. Some of the respondents complained that they had difficulties finding a job, claiming that employers were reluctant to hire refugees.



The BCHR integration team in 2022 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. This social enterprise designs and manufactures sustainable fashion pieces 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 piece they manufactured, which encourages their economic empowerment, individuality, occupational activities and facilitates their local integration. Another advantage of this form of employment is that they can keep flexible hours and work from home. Most other temporary protection beneficiaries, who had found jobs, were hired in the territory of the City of Belgrade; however, they were as a rule employed in lower-skilled jobs than the ones they held in their country of origin. This trend persisted although the BCHR's survey shows that most of the respondents – as many as 60% of them – have a university education and that they are doctors, economists, lawyers, IT experts, as well as those with secondary education such as cooks, tailors, etc. A good practice example in this area is the employment of a Ukrainian doctor granted temporary protection as a general practitioner in the Vranje Asylum Centre, after the Serbian Qualification Agency ENIC/ NARIC Centre in Belgrade validated her college diploma and qualifications. The BCHR team helped the doctor complete her medical licensing exam, obtain her licence and register with the Medical Chamber of Serbia.

Another problem that impinged on the temporary protection beneficiaries' access to the labour market arose in March 2023, at the time temporary protection was extended under the 2023 Decision<sup>88</sup>. The validity of all personal documents issued to the beneficiaries, including personal work permits, expired when the initial one-year period of temporary protection under the 2022 Decision expired. Temporary protection beneficiaries in the RS thus found themselves in a vacuum, without valid personal documents, and were precluded from holding on to their jobs, from the time the 2023 Decision was adopted until they were issued new rulings and personal documents. By comparison, at the EU level, the European Commission held at the Council session in October that the temporary protection granted should be extended for a further year until March 2024 automatically and the Member States promptly extended temporary protection at the national level accordingly. Moreover, some countries (e.g. Austria, Finland, Slovakia, Norway) opted for automatically extending the validity of personal documents until March 2024.

The BCHR integration team also noted shortcomings in the temporary protection beneficiaries' access to their right to healthcare. The LAMP entitles health care in the RS in accordance with the regulations on the health care of foreigners.<sup>89</sup> Law on health care in terms of methods provision of health services equates refugees and asylum seekers with RS

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<sup>88</sup> Decision Amending the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine, Official Gazette of the RS No. 21/2023-44.

<sup>89</sup> Art. 76(6), LAMP.

citizens.<sup>90</sup> However, persons granted temporary protection are not recognized by law. Law on health insurance provides that foreigners who are employed have the right to be health insurance but this provision excludes a large number of refugees who are unemployed. The Republic Health Insurance Fund (RFZO) also does not recognize refugees, except for refugees from the former Yugoslavian republics.<sup>91</sup> Due to the above, persons with approved temporary protection in terms of the provisions of the LTP do not have the right to mandatory health insurance and the right to issue a health card insurance. In practice, unemployed temporary protection beneficiaries do not have medical insurance and are entitled only to free emergency medical assistance. The Danish Refugee Council (DRC) and the humanitarian organisation ADRA have been implementing projects involving the provision of emergency financial aid for the purchase of medications for chronically ill patients.

Article 76 of the LTP clearly entitles temporary protection beneficiaries to free primary and secondary education in state schools. The BCHR team did not identify any major challenges in their access to education in the 2022/2023 school year. Most parents from Ukraine granted temporary protection enrolled their children in primary schools themselves. The BCHR team was asked to help out with the enrolment of one only Ukrainian child, in an upper grade of a primary school in Belgrade. The school required of the parents to obtain validation of their child's prior education from the Serbian Qualification Agency ENIC/ NARIC Centre. The mother applied for the validation of her daughter's certificates herself but the Centre dismissed her application because she had not submitted the originals. The BCHR team first contacted the primary school staff, insisting they enrol the child without the Centre's qualification. It referred to the Education Ministry's Professional Guidance<sup>92</sup> instructing schools to admit asylum-seeking and refugee children even if they lack all the documents and proof of prior schooling and to enrol such children in the adequate grade based on an assessment of their knowledge. Since the school did not heed BCHR's request, in contravention of the Professional Guidance, the BCHR contacted the Education Ministry. The school agreed to enrol the child without evidence of her prior schooling in her country of origin only after the Ministry intervened.

The BCHR team continued successfully cooperating with the Qualifications Agency ENIC/NARIC Centre team in the reporting period. The Centre qualified a secondary school diploma of one BCHR's Ukrainian client. Two other procedures for qualifying college diplomas initiated by temporary protection beneficiaries were under way at the time this publication was finalised. The ENIC/NARIC Centre upheld the BCHR's requests to waive all the fees for its clients given the particular vulnerabilities of this category of foreigners.

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<sup>90</sup> Art. 21 Law on Health Care.

<sup>91</sup> Art. 11, paragraph 10 of the Law on Health Insurance.

<sup>92</sup> Ministry of Education, Science and Technological Development, Professional Guidance on the Inclusion of Refugee/Asylum-Seeking Pupils in the Education System, 5 May 2017, available in Serbian at: <https://bit.ly/40Yrvxj>.

As per long-term residence and integration in the RS, nearly a quarter of the survey respondents said that they planned on returning to Ukraine when the international armed conflict there ended. In addition, over a quarter of the respondents assessed their integration in the RS positively, saying that they would stay on in the RS if they found a job or regulated their long-term residence in another legally prescribed manner. On the other hand, a substantial number of respondents said that they still did not know whether they would like to go on living in the RS or had not even given any thought to the idea.

#### 4. Relationship between the Temporary Protection Mechanism and the Asylum Procedure

As noted, personal protection beneficiaries are entitled to apply for asylum<sup>93</sup> and thus initiate the asylum procedure in the RS. The following section clarifies the relationship between the temporary protection mechanism and the asylum system in light of the fact that temporary protection is granted for a limited period of time and that the reasons for the displacement of the beneficiaries may persist after it expires. What should particularly be borne in mind here is that one of the main goals for introducing the temporary protection mechanism is to relieve the national asylum systems which would presumably be inundated with asylum cases in a situation of mass influx of displaced persons.

The right to refuge, or refugee status, shall be granted to applicants who are outside their country of origin or habitual residence and who have a well-founded fear of persecution on grounds of their race, religion, nationality, membership of a particular social group or political opinion, as a result of which they are unable or unwilling to avail themselves of the protection of that country.<sup>94</sup>

The RS has ratified the 1951 UN Geneva Convention Relating to the Status of Refugees (Refugee Convention) and incorporated the definition of a refugee in its law, specifically the LATP. However, as the number of people in need of international protection grew over time and many of them did not fulfil the refugee criteria set by the Refugee Convention (and its 1967 Protocol), the EU introduced subsidiary protection by its Qualification Directive in 2004.<sup>95</sup> Such protection is granted to individuals not fulfilling the criteria for asylum, if there are justified reasons indicating that they would face a *real risk of*

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<sup>93</sup> Art. 76, LATP.

<sup>94</sup> Art. 24, LATP.

<sup>95</sup> European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC, available at: <https://www.refworld.org/docid/4157e75e4.html>

*suffering serious harm* if returned to their country of origin or habitual residence.<sup>96</sup> Serious harm includes: 1) the death penalty or execution; 2) torture or inhuman or degrading treatment or punishment; 3) serious and individual threat to life by reason of indiscriminate violence in situations of international or internal armed conflict.<sup>97</sup> The relevant authorities are under the obligation to examine the risk of persecution or serious harm of each individual applicant, when deciding on whether they should grant them refugee status or subsidiary protection.

As noted, the temporary protection mechanism was introduced to relieve pressure on the asylum systems of countries facing a mass influx of refugees, given that it may not always be possible to properly conduct the asylum procedure and rule on each and every asylum claim within a reasonable time. A very important feature of the temporary protection concept is the possibility of granting protection to entire groups or categories of displaced persons, without conducting individual procedures, in order to protect their fundamental human rights. As opposed to the complex procedures in which the relevant authorities grant refuge or subsidiary protection to the applicants, and in which each individual applicant has to prove they have a well-founded fear or persecution or face a real risk of suffering serious harm, temporary protection and its collective character allow for an efficient and flexible response at times of mass influx.<sup>98</sup>

Temporary protection resembles subsidiary protection the most, primarily in terms of the reasons why it is granted. Namely, both forms of protection aim to provide protection to individuals fleeing indiscriminate violence in armed conflict situations. However, whereas the relevant authorities grant temporary protection to applicants coming from a territory clearly not considered safe and they grant such protection to all individuals coming from a war-torn area, the conditions for granting subsidiary protection are more concrete and based on assessments of “serious and individual threat to life by reason of by reason of indiscriminate violence in situations of international or internal domestic armed conflict.”<sup>99</sup> This is why the relevant authorities do not review individual temporary protection applications and the applicants do not need to prove they fulfil the requirements like the ones seeking subsidiary protection do. However, in its judgment in the case of *Elgafaji*, the Court of Justice of the EU substantially diminished the importance of the individuality requirement in subsidiary protection cases; in its opinion, the existence of a threat of violence can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian would face a real risk of being subject to that threat solely on account of his presence on the territory.<sup>100</sup> In such cases, the only distinction between temporary and subsidiary protection is that the former

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<sup>96</sup> Art. 25(1), LATP.

<sup>97</sup> Art. 25(2), LATP.

<sup>98</sup> Goran Sandić, *Complementary Forms of International Protection in the Republic of Serbia*, p. 16.

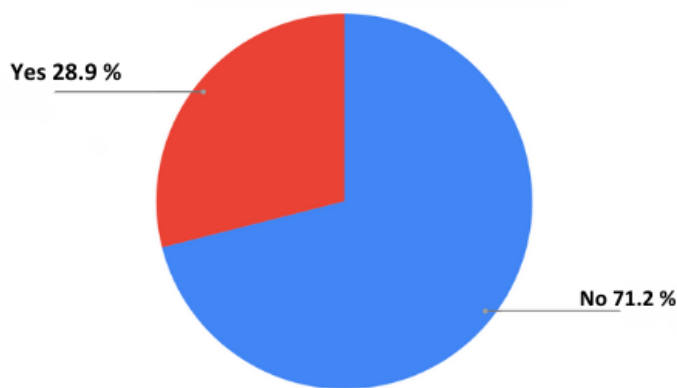
<sup>99</sup> Art. 25, LATP.

<sup>100</sup> ECJ C-465/07 *Elgafaji vs. Staatssecretaris van Justitie*

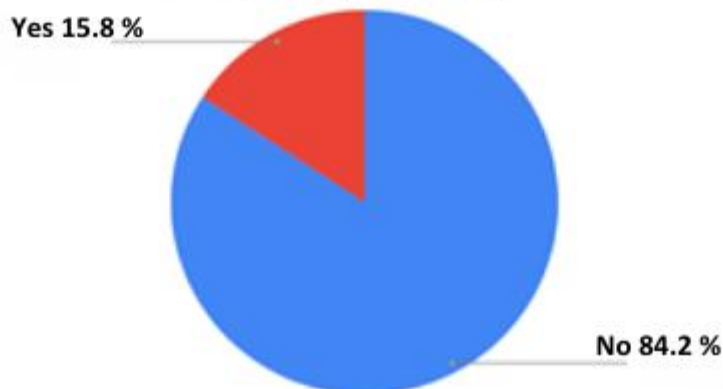
is activated only when a decision finding the existence of a mass influx of displaced persons is adopted while the latter does not entail such a restriction.

It needs to be noted that temporary protection is complementary to the international regime,<sup>101</sup> and is not a substitute for the asylum procedure. Therefore, individuals seeking international protection should be provided not only with temporary protection, but also with the right to access the asylum procedure if they require that form of protection.

**Were you aware you could apply for asylum although you have been granted temporary protection?**



**Have you applied for asylum?**



The vast majority of survey respondents (84.2%) said that they had not applied for asylum, but nearly three quarters of them (71.1%) said they had not even been aware of the possibility. Efficient access to the asylum procedure is particularly important where there is

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<sup>101</sup> UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, par. 3.

a likelihood that the armed conflict or large-scale human rights violations, the reasons that led to the adoption of the decision on temporary protection, will persist beyond the period for which temporary protection has been granted or extended. Given that the temporary protection mechanism is humanitarian in character and aims to prevent bottlenecks and inefficiency of the asylum system, the activation of temporary protection should not be used as a substitute for the asylum procedure in situations in which all individual asylum claims can be reviewed promptly.<sup>102</sup>

## 5. Recommendations for Improving the RS Legislative Framework on Temporary Protection and Its Proper and Consistent Application

The temporary protection mechanism has proven to be a rapid and efficient response to the refugee crisis caused by the international armed conflict in Ukraine. The BCHR welcomes the activation and extension of the mechanism providing persons displaced from Ukraine with protection and legal grounds for regulating their residence in the RS. Furthermore, the temporary protection mechanism provides them with access to their economic and social rights, such as the rights to personal documents and education, as well as to the labour market and healthcare in accordance with regulations governing the rights of foreigners, which is largely in line with the EU Temporary Protection Directive. However, the BCHR has identified specific shortcomings during its analysis of the valid law and its implementation and formulated recommendations to address them and improve the application of the temporary protection mechanism in the RS.

First and foremost, with a view to aligning national law with the EU *acquis*, the RS should bring its provisions on the maximum duration of temporary protection into compliance with those in the EU, and provide temporary protection beneficiaries the right to social welfare and with the right to financial assistance to cover their rent. The maximum duration issue may give rise to problems in 2024 when, as opposed to the EU, the RS will be unable to refer to any legal provision to extend temporary protection if reasons for it persist. Furthermore, the legislator should give thought to granting temporary protection beneficiaries living in private lodgings the right to financial assistance to cover their rent, a right conferred on asylum seekers living outside Asylum Centres and successful asylees. BCHR survey findings show that social welfare is a very important aspect of the life and well-being of the vast majority of temporary protection beneficiaries in the RS, which per se gives rise to the issue of introducing additional financial support. Furthermore, the legislator should put in place conditions for securing financial aid to cover the rent of temporary protection beneficiaries living in private lodgings. The state's support should focus on the

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<sup>102</sup> Goran Sandić, *Complementary Forms of International Protection in the Republic of Serbia*.

CRM's greater involvement in supporting individual integration, and on introducing additional administrative relief for the exercise of economic, social and cultural rights.

The RS should follow the example of EU Member States and introduce the possibility of increasing the capacity or developing a system for online registration and submission of temporary protection applications, with a view to further simplifying the procedures for issuing temporary protection rulings and IDs. Efforts should be made to ensure that such documents are issued without delay and as soon as possible, in light of the limited duration of temporary protection. Such a practice would facilitate the temporary protection beneficiaries' access to their guaranteed rights and their integration. The Asylum Office dispensed with the formalities in a way at the time the Government decided to extend temporary protection by another year, when it allowed temporary protection beneficiaries to apply for extension by e-mail. The Asylum Office also commendably did not lay down a deadline by which they had to submit their applications. However, since the Government did not adopt the 2023 Decision on the extension of temporary protection on time, beneficiaries who wanted to extend temporary protection were left with invalid personal documents until the Asylum Office issued them new rulings and IDs; naturally, they were unable to extend their personal work permits until they were issued new IDs.

Furthermore, the RS should secure additional support for and ensure early identification of particularly vulnerable categories of temporary protection beneficiaries, especially those who are vulnerable in terms of healthcare. The RS should follow the example of many EU Member States, which provided these categories of people with totally free access to the state healthcare system. Furthermore, the identification of these vulnerable people has been substantially impeded by the fact that most of the beneficiaries are living in private lodgings rather than CRM's collective accommodation. In addition, absolutely free access to the labour market without the need to obtain a personal work permit first would facilitate the employment and economic empowerment of temporary protection beneficiaries.

Finally, the RS should develop strategies for the transition of persons from the temporary protection system to the asylum procedure or another type of residence, given that the maximum duration of temporary protection in the RS is limited to two years. In that sense, the state should in particular invest efforts in improving the availability of information on the right to apply for asylum, given that the BCHR survey showed that most of the respondents had been unaware of the possibility.



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