



Belgrade Centre for Human Rights

Right to Asylum in the Republic of Serbia

Periodic Report for January–June 2023

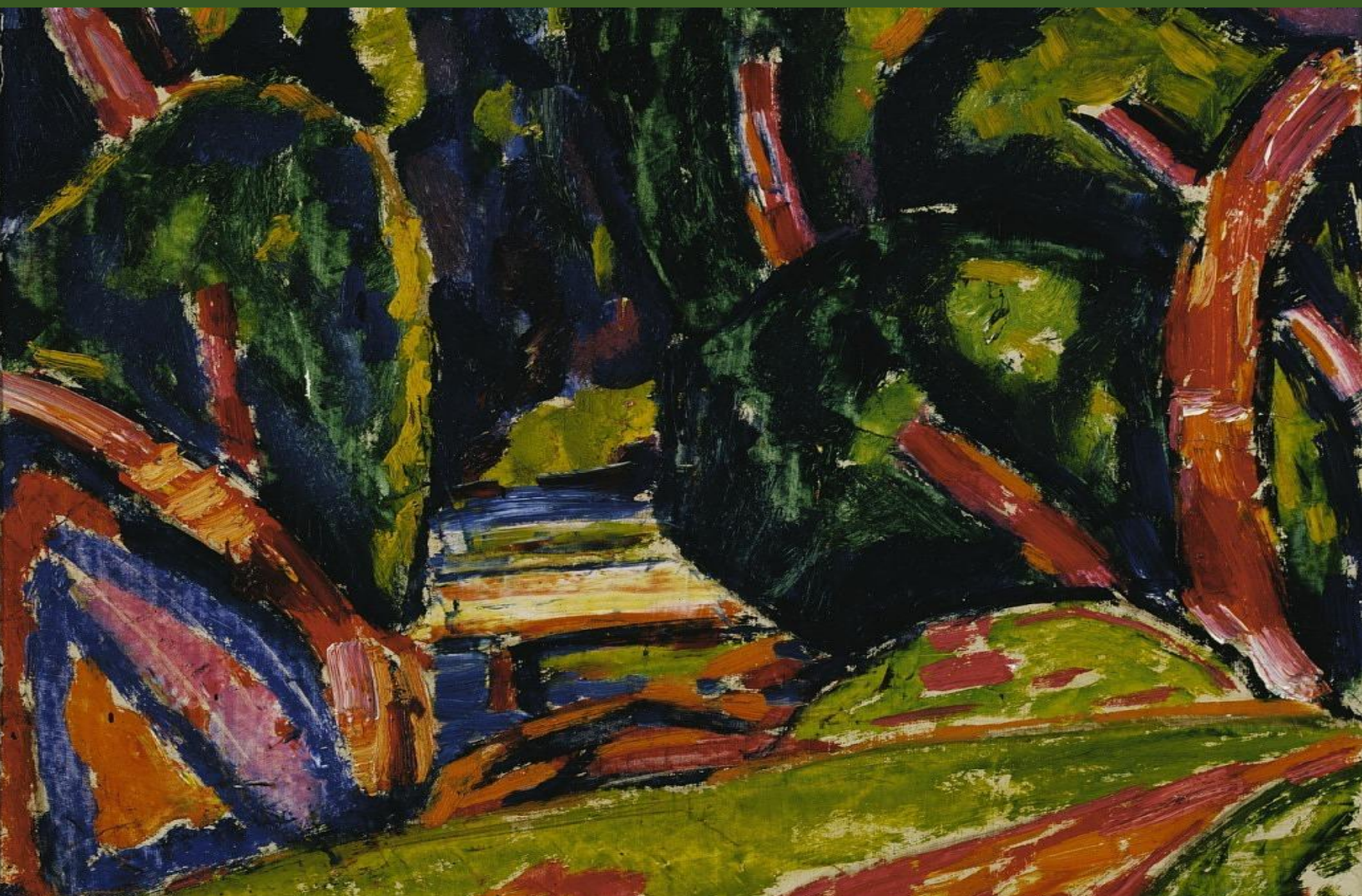


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Acronyms

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

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

EU – European Union

JRS – Jesuit Refugee Service

LATP – Law on Asylum and Temporary Protection

MOI – Ministry of the Interior of the Republic of Serbia

NPM – National Preventive Mechanism

RS – Republic of Serbia

RTC – Reception-Transit Centre

SWC – Social Work Centre

UN – United Nations

UNHCR –United Nations High Commissioner for Refugees

Photo Cover: Marsden Hartley, *Red Tree* (1910), available at: <https://bityl.co/KcUM>.

Overview of the Situation in Serbia

The Belgrade Centre for Human Rights (BCHR) in 2023 continued extending free legal aid to refugees and asylum seekers in the Republic of Serbia (RS) within the project *Support to Asylum Seekers in Serbia* implemented with the support of the United Nations High Commissioner for Refugees (UNHCR). In addition to providing free legal aid and representing asylum seekers and refugees before the relevant Serbian authorities and international institutions, BCHR's team has been extending them assistance with a view to facilitating their integration in the country's social, economic and cultural life.

This Report analyses the treatment of the asylum seekers and refugees in Serbia in the first six months of 2023, based on information the BCHR team obtained during their legal representation in the asylum procedure and provision of support in their integration, and during its field work. The Report also comprises data the BCHR collected through regular cooperation and communication with the state authorities and UNHCR. The statistical data cover the 1 January-30 June 2023 period. The Report has been prepared by the BCHR legal and integration team.

The Commissariat for Refugees and Migration (CRM) reported that 35,714 migrants and asylum seekers had been registered in the RS Asylum Centres (ACs) and Reception-Transit Centres (RTCs) in the first six months of 2023¹ - slightly less than 4,000 foreigners resided in the CRM-run facilities over the same period last year.² These numbers demonstrate that large numbers of migrants have continuously and persistently been moving along the Balkan Route.

Due to the ongoing international armed conflict between Russia and Ukraine, European Union (EU) Member States extended the duration of temporary protection granted refugees from Ukraine for at least one year.³ The RS Government followed suit and adopted a Decision Amending the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine of 17 March 2022 (2023 Decision)⁴ and extending temporary

¹ "Commissariat: 35,714 refugees and migrants registered in Serbia since the beginning of 2023," *Beta*, 20 June 2023, available in Serbian at: <https://bityl.co/KLpc>.

² CRM reported that over 38,900 people passed through ACs and RTCs in the first half of 2022. More in *Right to Asylum In the Republic of Serbia, Periodic Report for January-June 2022*, Belgrade Centre for Human Rights (Belgrade, 2022) p. 5, available at: <https://bityl.co/KcRk>.

³ More in EUAA, "Temporary protection for displaced persons from Ukraine", available at: <https://bityl.co/KYbm> and European Commission, "EU Solidarity with Ukraine: one year of temporary protection for people fleeing Russian aggression against Ukraine", 8 March 2023, available at: <https://bityl.co/KYbp>.

⁴ *Official Gazette of the RS*, Nos. 36/22 and 21/23.

protection by one year, until 18 March 2024. A section of this report is devoted to the BCHR team's analysis of the situation of temporary protection beneficiaries in the RS since the decision entered into force, as well as the advantages and challenges they faced in practice.

Following their endorsement by the relevant parliamentary committees, the Draft Law Amending the Law on Foreigners⁵ and the Draft Law Amending the Law on the Employment of Foreigners⁶ were submitted to the National Assembly for adoption on 31 March 2023. The Draft Law Amending the Law on Citizenship was published on the parliamentary website on 5 May 2023.⁷ None of these laws were adopted by the time this report was completed.⁸ The Preliminary Draft Law Amending the Law on Asylum and Temporary Protection was presented to the public back in late 2022.⁹ However, the text was not completed by the end of the reporting period, notwithstanding announcements. BCHR's representatives took part in these legislative processes in 2022 and 2023 and their oral and written suggestions, if adopted, will improve the status of refugees and asylum seekers in the RS.

The deficiencies of the RS asylum system, which the BCHR has been alerting to for years, persisted in the reporting period. The greatest challenges in practice concerned the foreigners' access to the asylum procedure, the duration of the asylum procedure and the uncertainties of its outcome. The competent RS authorities still failed to fully comply with the relevant national and international rules, while the number of upheld asylum applications remained very low. As per the foreigners' access to their integration-related rights, despite progress in some areas over the past few years, systemic solutions ensuring their long-term protection and effective access to all the rights they are guaranteed are still missing. The BCHR interviewed three of its clients in the process of integrating in Serbia's society for this report, who agreed to publicly share their experiences from their countries of origin, the problems they faced and the situation they are now in. The BCHR thus continued with its practice of publishing the accounts of refugees, whose perspectives and sides of the story rarely reach the public.

The Report is primarily addressed to state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals and organisations monitoring the situation in the field of asylum. Its authors endeavoured to point out good practice examples, as well as specific shortcomings in the work of

⁵ Available in Serbian at: <https://bityl.co/KbgP>.

⁶ Available in Serbian at: <https://bityl.co/KbgS>.

⁷ Available in Serbian at: <https://bityl.co/KbgW>.

⁸ The public debate on the former two draft laws was held in late February 2023, while the public debate on the latter law was held in mid-April 2023.

⁹ Available in Serbian at: <https://bityl.co/KYeo>.

the relevant authorities and offer recommendations on how to address them in order to help the relevant RS authorities establish a more functional asylum system.

1. Statistics

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports. The data in this Report cover the 1 January – 30 June 2023 period. The national asylum authorities do not publish information about their work on their websites.

1.1. Registration of Asylum Seekers

A total of 705 foreigners (548 of them male and 157 female)¹⁰ expressed the intention to seek asylum in the RS since the beginning of the year; 128 of them were children, three of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered in the reporting period: 136 in January, 55 in February, 166 in March, 83 in April, 110 in May and 155 in June.

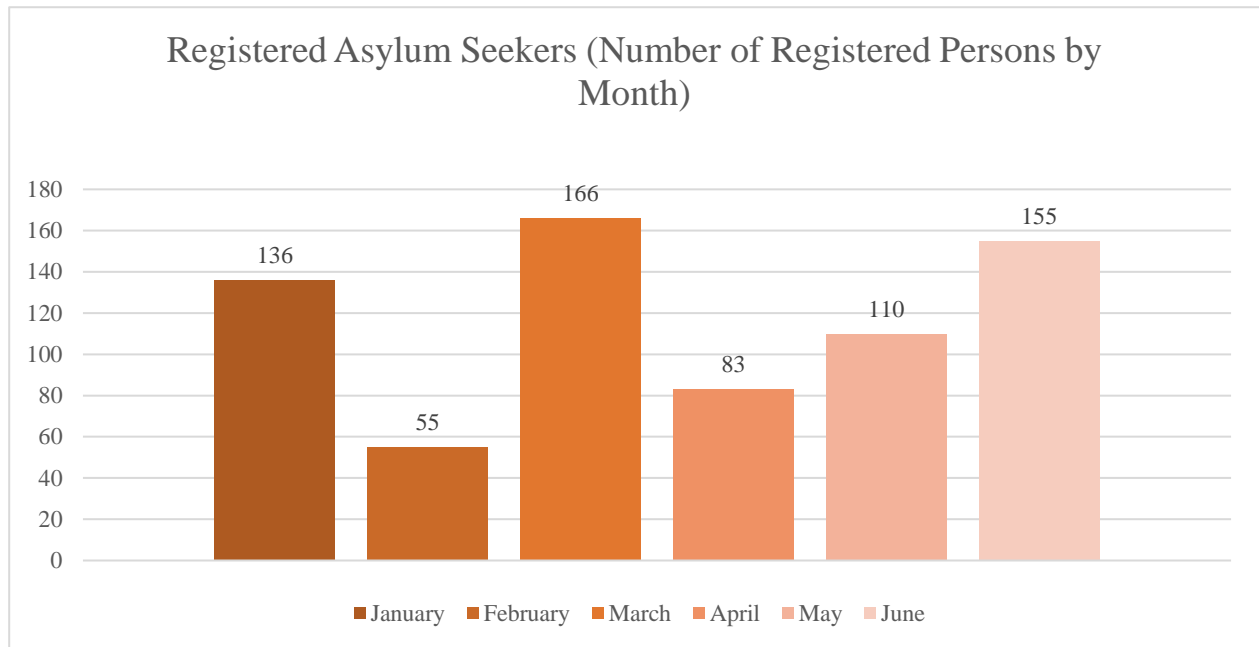
Most of the foreigners who expressed the intention to seek asylum were nationals of Syria (125), Afghanistan (99), Iran (62), Pakistan (58), Cuba (56), Morocco (38), Burundi (36), Iraq (35), Russia (33), India (21), Democratic Republic of Congo (20), Turkey (16), Tunisia (13) and Egypt (10). The intention to seek asylum was also expressed by nationals of Mongolia (9), Congo (7), Cameroon (6), Romania (6), China (5), Armenia (4), Croatia (4), Niger (4), Somalia (4), Ethiopia (3), Guinea (3), Moldova (3), Palestinian territories (3), two nationals of each of the following countries: Algeria, Bulgaria, Jamaica, Libya, Sierra Leone and Sudan. The fewest foreigners who expressed the intention to seek asylum in the RS in the reporting period – one – hailed from the following countries: Benin, Bosnia and Herzegovina, Brazil, Gambia, Germany, Greece, Kyrgyzstan, North Macedonia, Tanzania and Togo.

Most of the foreigners issued certificates of intention to seek asylum in the RS (registration certificates) were registered in the police stations in the interior of the country (284) and Belgrade Airport “Nikola Tesla” (246), while 173 foreigners were registered at the border crossings. Only two foreigners were registered at other locations, such as ACs, RTCs and the Asylum Office.

A total of 656,695 foreigners expressed the intention to seek asylum in the RS from 2008 to end June 2023. Herewith a breakdown by year: 77 in 2008; 275 in 2009; 522 in 2010; 3,132 in

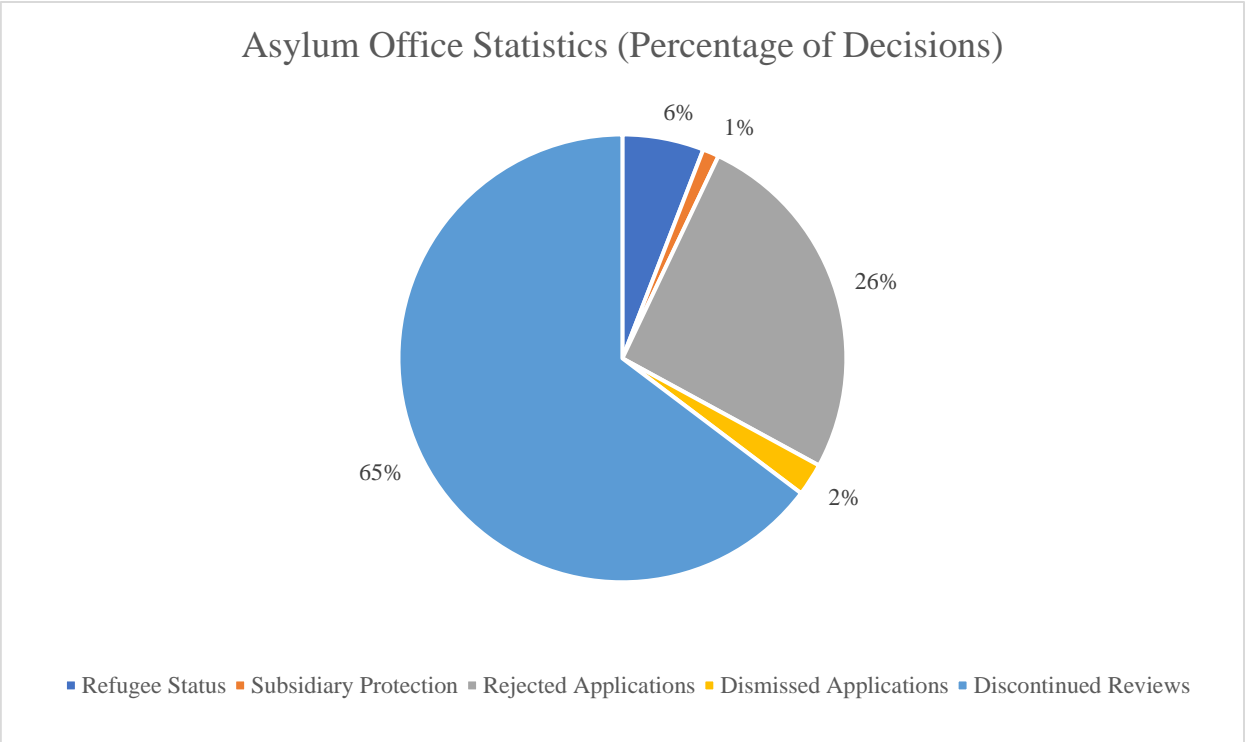
¹⁰ A substantial decrease over the same period in 2022, when a total of 1,981 persons were registered.

2011; 2,723 in 2012; 5,066 in 2013; 16,490 in 2014; 577,995 in 2015; 12,821 in 2016; 6,199 in 2017; 8,436 in 2018; 12,937 in 2019; 2,830 in 2020; 2,306 in 2021; 4,181 in 2022; and 705 foreigners from 1 January to 30 June 2023.



1.2. Work of the Asylum Office

A total of 128 asylum applications were submitted in the first half of 2023. In the same period, the Asylum Office held 37 oral hearings and granted subsidiary protection to one and refuge to five applicants. It rejected 22 applications concerning 22 individuals and dismissed two applications. It discontinued reviews of 55 claims filed by 55 applicants, mostly because they had left the RS in the meantime.



According to available data, the relevant RS authorities upheld the asylum claims of 244 people since 2008. They granted refugee status to 112 and subsidiary protection to 132 foreigners.

1.2.1. Temporary Protection

A total of 179 foreigners (62 male and 117 female, 24 of them children) applied for temporary protection in the first half of the year pursuant to the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine.¹¹ The RS authorities granted temporary protection to 198 foreigners (191 Ukrainian, four Russian and three Libyan nationals) in the same period.

¹¹ *Official Gazette of the RS*, Nos. 36/22 and 21/23.

2. Access to Asylum Procedure and Practice of the Asylum Authorities in the First Half of 2023

Pursuant to the *non-refoulement* principle set out in the Refugee Convention¹² and other international documents ratified by the RS,¹³ states must provide access to the asylum procedure to foreigners reasonably fearing persecution in their country of origin or at real risk of torture if they return to their country of origin (or a third country). Foreigners in RS territory are accordingly entitled to express the intention to apply for asylum in the RS before authorised MOI staff and to submit an asylum application¹⁴ before an authorised Asylum Office staff member or in writing.¹⁵

Under the Law on Asylum and Temporary Protection (LATP), the Asylum Office shall conduct the first-instance asylum procedure while the Asylum Commission shall review appeals of its decisions. Asylum Commission decisions may be contested before the Administrative Court.

The years-long practice of RS asylum authorities shows that not all foreigners in need of international protection have been provided with efficient access to the asylum procedure and that the vast majority of asylum applications are rejected. The analysis of the practice of the relevant authorities in this part of the Report is based on the BCHR team's work with foreigners who had asked it for free legal aid or whom it legally represented in the first half of 2023. The BCHR will provide a more detailed analysis of the work of the asylum authorities in 2023 in its next annual right to asylum report.

¹² Convention Relating to the Status of Refugees (*Official Journal of the FPRY – International Treaties and Other Agreements* 7/60).

¹³ Protocol Relating to the Status of Refugees (*Official Journal of the SFRY – International Treaties and Other Agreements* 15/67); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Official Journal of the FRY – International Treaties and Other Agreements* 9/91). The principle of *non-refoulement* also derives from Article 3 of the European Convention on Human Rights (*Official Journal of the FRY – International Treaties and Other Agreements* 9/03).

¹⁴ Art. 4(1), LATP.

¹⁵ Art. 36, LATP.

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

Data at the disposal of the BCHR team show that the authorised Border Police Station (BPS) officers at Nikola Tesla Airport issued 246 registration certificates to foreigners in the first half of 2023.¹⁶ The BCHR is unaware whether any foreigners expressed the intention to seek asylum at the Constantine the Great Airport in Niš or at the Morava Airport in Kraljevo in the same period; nor did any foreigners at these airports contact BCHR's lawyers and ask them for help.

During the reporting period, BCHR's lawyers extended direct legal aid¹⁷ to foreigners in need of international support by visiting the Belgrade Airport and calling up BPS officers to intervene on their behalf. 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.¹⁸ Some of them will be discussed in greater detail in the ensuing sections.

2.1.1. Interventions by the BCHR Legal Team

In the reporting period, BCHR's lawyers intervened in seven cases on behalf of 12 foreigners held in the transit zone of Belgrade Airport Nikola Tesla after BPS officers refused to let them enter the RS. Most of them were nationals of Syria, Cameroon, Cuba, Iran and Gambia and the majority of them wanted to seek asylum in the RS, which is why they contacted BCHR's lawyers and sought legal aid.

Most of the foreigners who got in touch with the BCHR had spent a number of days in the transit zone and claimed that BPS officers did not react to their oral and written requests to access the asylum procedure in the RS. Most of them were registered, issued registration certificates and allowed to enter the RS only after the BCHR lawyers intervened on their behalf.¹⁹

¹⁶ Data obtained from UNHCR Serbia cover the January-June 2023 period.

¹⁷ BCHR lawyers have been issued temporary passes to access the transit zone at Belgrade Airport Nikola Tesla, which they can use when foreigners in the transit zone ask them for assistance and information about the RS asylum procedure.

¹⁸ More in: Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2021*, Belgrade Centre for Human Rights (Belgrade, 2021, hereinafter: *Right to Asylum in the Republic of Serbia 2021*), available at: <https://bityl.co/KbhB> and Ana Trifunović (ed.), *Right to Asylum in the Republic of Serbia 2022*, Belgrade Centre for Human Rights (Belgrade, 2022, hereinafter: *Right to Asylum in the Republic of Serbia 2022*), available at: <https://bityl.co/KbhC>.

¹⁹ The BCHR does not know for certain whether some of the foreigners who had asked it for help were actually registered and provided access to the asylum procedure, since they did not contact it during and after its interventions.

The BCHR recalls the risks the relevant RS authorities may put foreigners in need of international support at by denying them access to the asylum procedure. Such denials are particularly dangerous in case of *prima facie* refugees, such as, e.g., Syrian nationals, whose return to their war-torn country or another country where they are at risk of persecution would be in violation of the *non-refoulement* principle. BPS officers are breaking the law if they ignore foreigners who express to them the intention to seek asylum.

Border police have to keep abreast of the situation in war-torn countries and countries with where human rights are violated. Border police officers should always interview the foreigners about the reasons why they left their country of origin with the assistance of interpreters²⁰ and in consultation with Asylum Office staff, before denying them entry in the RS to make sure that they recognise *prima facie* refugees.

Furthermore, foreigners denied entry into the RS are often held in the airport transit zone for days, which amounts to their *de facto* deprivation of liberty. The BCHR has been alerting to this issue, as well as to the inhuman conditions in the transit zone premises for years in its reports. The following section discusses the epilogue of the procedure it had initiated before the Protector of Citizens in the autumn of 2022.

2.1.2. Epilogue of the Procedure the BCHR Initiated before the Protector of Citizens

A number of Tunisian nationals denied entry into the RS and held in the Belgrade Airport transit zone asked BCHR's lawyers for assistance in October 2022. They sent the BCHR photographs and video recordings²¹ clearly demonstrating that the conditions in these premises were inhuman. Furthermore, the BCHR received reports that the police had used force against some of the apprehended foreigners who refused to sign the decisions denying them entry into the RS. Prompted by reasonable fears that such treatment may recur and, in light of the inhuman accommodation conditions, BCHR's lawyers contacted the RS Protector of Citizens.²² The Protector's National Preventive Mechanism (NPM) team²³ conducted an unnotified visit to

²⁰ Given that the border police may find it complicated to secure an interpreter in each individual case, the MOI should give thought to the possibility of making interpretation services available to the Belgrade BPS with the support of UNHCR and other organisations.

²¹ The photographs and video recordings were e-mailed directly to BCHR's lawyers.

²² BCHR's letter of 31 October 2022 and its follow-up letter of 8 November 2022.

²³ Established in accordance with the Law Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Belgrade Airport on 22 November 2022²⁴ and published its report on the visit on its website on 15 March 2023.²⁵

In its report, the NPM team noted that the BPS had faced a substantial increase in the number of INAD passengers - foreigners it deemed did not fulfil the requirements to enter the RS, whilst it lacked adequate support from the Nikola Tesla Airport operator, in particular in terms of accommodation capacity and adequate material conditions. The NPM said that the conditions in the transit zone premises were “at the threshold of degrading or inhuman treatment”²⁶ and recommended that the Airport take measures to improve the conditions in the premises without delay and to provide sufficient capacity for the accommodation of foreigners denied entry into the country in coordination with the border police, to preclude situations like these from recurring in the future. The NPM also reported that some of the foreigners had complained of rough treatment by police officers who insisted they sign the decisions denying them entry into the RS.

Furthermore, the NPM team reported that the operator, Belgrade Airport Ltd. Company, said in its response that it and the Belgrade BPS have agreed to improve their cooperation and communication in order to identify and promptly address any challenges in the future. The NPM was told that the dormitories and toilets have been fixed and painted, that new bed linen has been bought for all the beds and that it was now regularly changed and washed, that the ventilation and air-conditioning system in the premises have been repaired and now work, that the ceiling has been repaired and painted, that hot water supply problems have been eliminated and that the foreigners in the transit zone are provided with personal hygiene products on a daily basis. They now also have access to Wi-Fi and the premises are regularly cleaned. The operator said that the mattresses would also be cleaned and that the schedule of their replacement would be drawn up. The operator also said that they were at the moment encountering difficulties in providing the foreigners with the opportunity to spend some time in fresh air due to the ongoing large-scale construction works at the airport.

²⁴ More in *Right to Asylum in the Republic of Serbia 2022*, pp. 34–35.

²⁵ The press release and Report are available in Serbian on the NPM webpage: <https://bityl.co/KYYJ>.

²⁶ The NPM said the following in its report: “The material conditions in the premises are extremely poor. Although the rooms are new, the walls are dirty with scribbles and drawings, including an unsuitable drawing of a Nazi symbol. There are mattresses, pillows and blankets, which are dirty, on the beds, but no bed linen. The ventilation and air-conditioning are out of order; they broke down during the ongoing construction works at the airport, wherefore it is cold in the premises. The windows have been kept open to let in fresh air, but this has merely further lowered the temperature in the rooms at this time of the year. The toilet in the larger room is extremely dirty; it apparently has not been cleaned for a long time. The shower cabin is clogged and covered with water and excrement. An extremely unpleasant odour is pervading the premises despite the open windows. Part of the ceiling has fallen through in one part of the room.”

Based on the BPS' response, the Protector of Citizens commended the operator for its efforts to fulfil the NPM's recommendations to improve substantially the accommodation conditions. It encouraged the operator to continue taking positive measures to improve the conditions of accommodation of passengers in the airport premises.

The BCHR commends the Protector of Citizens for the steps the NPM team took in response to its request to check the operations of the BPS and the conditions in the transit zone premises in which foreigners denied entry into the RS are being held. It remains to be seen whether the BPS and the Belgrade Airport Ltd company will continue complying with the recommendations they have been issued to prevent recurrence of mistreatment of foreigners who want to seek asylum and who are held unjustifiably long in the airport transit zone when they are denied entry into the RS.

2.2. Decisions of Asylum Authorities in Cases of BCHR Clients

2.2.1. Asylum Office

The Asylum Office issued a total of 16 decisions on asylum applications filed by foreigners represented by the BCHR in the first half of 2023; it rejected nine applications and issued seven decisions discontinuing the asylum procedure. The first-instance authority did not grant refuge or subsidiary protection to any of BCHR's clients during the reporting period.

The Asylum Office issued 100 rulings granting temporary protection to BCHR's clients from Ukraine in the reporting period. Most of these rulings extended the temporary protection they had been granted clients by another year, until March 2024, in accordance with the RS Government Decision of March 2023.

Nationals of Burundi accounted for most of BCHR's clients, whose asylum applications were rejected by the Asylum Office in the reporting period. For instance, in the case of asylum seeker D.A., the Asylum Office noted that he had not described the circumstances indicating the existence of reasonable fear that he would be persecuted because of his political opinion. Namely, D.A. said that he had been targeted by the Imbonerakure because of his ties with opposition activists in Burundi. The Asylum Office, however, stated in its ruling²⁷ that the applicant "had not been charged or convicted in his country of origin for such ties, which could be considered persecution". Therefore, the Asylum Office downplayed D.A.'s claims that he had been targeted

²⁷ Asylum Office Ruling No. 26-1564/22 of 14 December 2022.

by the Imbonerakure because of his activities that contained political elements. The reasoning of the ruling has led the BCHR to conclude that the first-instance authority based its decision on erroneous findings of fact because it failed to adequately review all the relevant facts and to thoroughly examine the security and human rights situation in Burundi.

The Asylum Office rejected an asylum application by a five-member Burundian family on similar grounds during the reporting period.²⁸ Namely, the applicant, J.N., and her husband and three children left their country of origin fleeing the persecution she had been subjected to because of her involvement in activities of the Burundian regime's political opposition. The Asylum Office disregarded J.N.'s claims about the numerous problems the Imbonerakure and other government representatives had caused her and her family. Furthermore, the Asylum Office failed to adequately review the evidence J.N. had submitted to prove that she had been subjected to sexual and gender-based violence.

In its decision rejecting the asylum application filed by Tunisian journalist and human rights activist G.,²⁹ the Asylum Office concluded that "the absence of a causal relationship between his different political opinion and the measures he had suffered or feared indicates that he had not been exposed to persecution in his country of origin". Namely, during the Office's review of the merits of his application, G. described the problems he had faced in his country of origin and presented proof of his activities. However, the Asylum Office did not consider these allegations credible and it decided to reject G.'s asylum application as ill-founded based on that assessment and the conclusions it drew from its research of the human rights situation in Tunisia.

In the above cases, the Asylum Office drew blanket and unacceptable conclusions about the incredibility of the applicants' statements. It may be concluded that it has continued adopting decisions on asylum applications lacking any foundation in law, without providing an adequate reasoning for them and without examining the key findings in individual cases. The BCHR appealed all the Asylum Office decisions rejecting its clients' asylum applications during the reporting period with the Asylum Commission.

2.2.2. Asylum Commission and Administrative Court Decisions

During the reporting period, the Asylum Commission issued two decisions rejecting two appeals filed by BCHR lawyers, i.e. upholding the Asylum Office's decisions dismissing the

²⁸ Asylum Office Ruling No. 26-1632/22 of 13 April 2023.

²⁹ Asylum Commission Ruling No. Až-26-1552/22 of 26 January 2023.

asylum applications. In addition, the Administrative Court delivered three judgments dismissing claims filed on behalf of three BCHR clients in the first six months of the year. The main points of these decisions are presented in the ensuing paragraphs.

In February 2023, the BCHR received the Asylum Commission's decision³⁰ rejecting as ill-founded the appeal it had filed on behalf of its client, Burundian asylum seeker D.A. The Asylum Commission explained that, during its examination of the merits of the case, the Asylum Office had "thoroughly, correctly and fully reviewed all the facts and circumstances of relevance to the adoption of a lawful decision, as it explained in the reasoning of the impugned ruling." The Asylum Commission, inter alia, dismissed as ill-founded the claims in the appeal about the erroneous finding of fact during the first-instance procedure and qualified D.A.'s statement about the key facts as inconsistent, unacceptable and contrary to information relevant to a decision on the application. In addition, the argument the Asylum Commission gave to counter D.A.'s claims of persecution in his country of origin - that "a legal order exists in Burundi" - is not only extremely superficial, but also demonstrates that the Commission does not understand the position of political opponents of the Burundian regime and the general conditions and widespread human rights violations in the country. Dissatisfied with the Asylum Commission's decision, D.A. filed a claim with the Administrative Court via his legal representatives.

During the reporting period, the Administrative Court ruled on a claim filed by Burundian journalist B., who had fled his country of origin because of his assumed political affiliation and ethnicity. The BCHR analysed the Asylum Office and Commission rulings on B.'s asylum application in its prior reports.³¹ Namely, the Court delivered a judgment³² rejecting B.'s claim against the Asylum Commission, in which it only enumerated the claimant's allegations, without specifying whether they were well-founded and to what extent. In its reasoning, the Court merely noted that the law had not been violated to the detriment of the claimant. It, however, failed to thoroughly analyse his representatives' claims that the Asylum Commission had drawn blanket conclusions about the findings of fact and selectively assessed the evidence. Moreover, the Court

³⁰ Asylum Commission Ruling No. Až-30/22 od 20 January 2023.

³¹ B. was the victim of persecution by state agents (police and intelligence officers) who suspected him of associating with other Burundian journalists who had fled to Rwanda during the 2015 demonstrations and whom they considered enemies of the regime. B. had been taken into custody by the police on a number of occasions on suspicion that he had been going to Rwanda to communicate information of the journalists who continued reporting on the situation in Burundi from that country. B. was ill-treated and abused during arrest and detention. The police issued an arrest warrant against B. after he stopped responding to their summons. Furthermore, B. is a member of the Tutsi ethnic community and he lived in the part of the city known as the opposition stronghold. More in: *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2021*, Belgrade Centre for Human Rights (Belgrade, 2021), p. 19., available at: <https://bityl.co/KcTF>.

³² Administrative Court judgment No. 9U 17425/21 of 1 March 2023.

stated, inter alia, that the Asylum Commission had “clearly set out the findings of fact in the reasoning of the impugned ruling and assessed all of the claimant’s allegations, linking them to other evidence presented during the procedure...” The Administrative Court also concluded that the Asylum Commission provided “clear and sufficient reasons in the reasoning of the impugned ruling, all of which this Court agrees with.”

After filing the claim, B.’s legal representative also filed additional submissions³³ to the Administrative Court. These submissions include excerpts from reports of relevant international organisations corroborating B.’s claims of the great risks journalists face in Burundi (one of whom B. had been in direct contact with) and the fact that the general situation in the country remains unchanged. However, the Court merely noted in its judgment the receipt of the additional submissions, but did not go into a thorough examination of their content.

BCHR’s lawyers are of the view that the Court’s failure to identify the Asylum Commission’s manifest errors undermines the lawfulness of the asylum procedure. In addition, the Court’s put B. at direct risk of *refoulement*, given that its decisions are final and ordinary legal remedies cannot be filed against them. Like in other asylum cases, the Court did not deem it necessary to itself rule on B.’s case. Its reasonings, if any, are extremely brief. Such actions do not correspond to the Administrative Court’s role, which should primarily be supervisory and corrective, aimed at rectifying the errors of the lower authorities, the same role the Asylum Commission should play vis-à-vis the Asylum Office. However, the failure of these bodies to fulfil their role and to review the circumstances of the asylum cases adequately and comprehensively has resulted in the adoption of decisions to the applicants’ detriment, violations of their rights and the persistent inefficiency of the RS asylum system.

³³ Namely, in the first submission (of 19 November 2021) it subsequently filed with the Administrative Court, the BCHR, inter alia, presented the data of the UN Commission of Inquiry on Burundi on the threats against journalists and the fact that the situation in the country remained unchanged after the election of the new president. The second submission (of 14 February 2023) includes Human Rights Watch report on the sentencing of a Burundian journalist to 10 years’ imprisonment and a fine because she, inter alia, interviewed exiled journalist Bob Rugurika, who criticised the Burundian regime. Bob Rugurika is no other than the journalist the Burundian authorities associated B. with, the main reason why B. had been persecuted and fled his country of origin.

3. Accommodation of Asylum Seekers and Migrants – Identified Changes and Challenges

The LATP affords asylum seekers, inter alia, with the right to material reception conditions, which include housing accommodation, food, clothes and a cash allowance for personal needs.³⁴ The provision of material reception conditions is entrusted to the CRM, which manages ACs and RTCs in the RS, established under a Government decision.³⁵

According to CRM's data of June 2023, 2,614 asylum seekers and migrants were living in ACs and RTCs in the RS. Most of them were nationals of Afghanistan, Syria, Morocco, Pakistan and Burundi.³⁶

Pursuant to an informal CRM decision, several ACs and RTCs were closed and the structure of asylum seekers and migrants living in such centres changed in the reporting period.³⁷ The Bogovađa AC was closed in mid-2023 and its residents were moved to the AC in Sjenica. The RTC in Divljana was closed at the same time. The Tutin AC was temporarily closed on 1 April because of the smaller inflow of incoming migrants and asylum seekers; its residents were moved to the Sjenica AC.³⁸

The ACs in Krnjača, Obrenovac, Sjenica and Vranje operated as usual. Families with children, women travelling by themselves, and foreigners with disabilities and health problems were referred to the Krnjača AC. Part of this centre was adapted to accommodate nationals of the Russian Federation during the reporting period. Nationals of Ukraine and other temporary protection beneficiaries continued to be referred to the Vranje AC, while single asylum seekers were referred to the ACs in Obrenovac and Sjenica.³⁹

³⁴ LATP, Art. 50.

³⁵ LATP, Art. 51.

³⁶ "Commissariat: 35,714 refugees and migrants registered in Serbia since the beginning of 2023," *Beta*, 20 June 2023, available in Serbian at: <https://bitly.co/KLpc>.

³⁷ Compare with the structure of asylum seekers and migrants living in ACs and RTCs in 2022, described in *Right to Asylum in the Republic of Serbia 2022*, pp. 68-72.

³⁸ The CRM sent a letter to the BCHR notifying it of all the changes.

³⁹ Information obtained from the CRM during BCHR's monthly visits to ACs.

The BCHR legal team visited all the ACs and, where necessary, some of the RTCs⁴⁰ during the reporting period in order to extend legal aid to foreigners who expressed the intention to seek asylum in the RS and to provide them with the requisite information on the asylum procedure.

The Asylum Office does not visit or conduct official activities (receive asylum applications and hold oral hearings) in the RTCs, since these facilities are not designated for the longer accommodation of people who want to seek asylum. The Asylum Office, however, is not present even in all the ACs in the RS, thus prolonging the asylum procedure, a years-long problem the BCHR team has been regularly alerting to.⁴¹

The Asylum Office conducted official activities concerning BCHR's clients only in the Krnjača AC during the reporting period. In most cases, these activities comprised oral hearings, since most of the asylum seekers in the RS apply for asylum in writing,⁴² in the ACs and RTCs they are living in.

3.1. Unaccompanied and Separated Children in CRM-Run Facilities

In late December 2022, the CRM decided to start referring all unaccompanied and separated children to the RTC in Šid, which is designated for the accommodation of this category of migrants and asylum seekers, instead of to the AC in Bogovađa. However, in addition to unaccompanied and separated children, the Šid RTC also accommodated families with children and several migrants travelling alone for a while during the first half of the year. The migrants travelling alone were in the meantime moved to other CRM-run facilities adapted for this category, while the families were moved to the Krnjača AC.⁴³

In addition to the Šid RTC, unaccompanied and separated asylum-seeking and migrant children were referred to residential care institutions in particular cases. However, the substantial changes in the financing of the residential institutions in early 2023 resulted in the suspension of

⁴⁰ The BCHR visited the RTCs in Šid, Preševo, Bujanovac and Bosilegrad in the first half of 2023.

⁴¹ See BCHR's annual asylum reports, available at: www.azil.rs.

⁴² Under Art. 36(2) of the LATP, in the event the authorised officer of the Asylum Office does not enable a foreigner who has been issued a registration certificate to submit their asylum application within the legally prescribed 15-day time limit, the foreigner may do so by filling the asylum application form within the following eight days.

⁴³ The last family was moved from Šid in mid-June 2023, after the children completed the school-year in the local primary school.

numerous services and activities for an indefinite period of time.⁴⁴ The situation impinged on the migrant children's access to their rights and envisaged services.

The reduction of funding led to a drastic cut in the number of professionals looking after unaccompanied and separated children⁴⁵ and put an end to their accommodation in the Belgrade Home for Children and Youths⁴⁶ and the Belgrade orphanage Jovan Jovanović Zmaj. The unaccompanied children (and their counsellors) were notified only a few days in advance that they had to move out of these institutions. Some of the children were moved to the Jesuit-run Pedro Arrupe House, while several of them were moved to the Vasa Stajić orphanage; one child was moved to the Zvezda Centre for Social Integration of Children and Youths. These unaccompanied and separated children were forced to move to another home and say good-bye to their counsellors and, in some cases, to their guardians without any preparation, which in all likelihood additionally traumatised them and impinged on their development.

During the reporting period, the BCHR heard that the team of the Ministry of Labour, Employment and Veteran and Social Issues resumed its activities after a short break, albeit at a much smaller scale. The team has been operating only in the territory of Preševo, Bujanovac, Šid and Krnjača where it has one social field worker at each location, two case managers in Belgrade (the Voždovac and Palilula municipalities) and two regional coordinators.⁴⁷ Their engagement was scheduled to end on 1 August 2023. Unless it is extended, all organisations working with unaccompanied and separated children will be under the obligation to directly contact the Social Work Centres (SWCs) with jurisdiction over the territory where the unaccompanied and separated children are identified, whereupon the SWCs shall assume guardianship over the children and manage their cases.

This practice has not proved efficient given that SWCs in the RS are generally staggering under huge caseloads and many of their staff still lack experience in working with migrant and asylum-seeking children, as corroborated by the following case of an unaccompanied Iranian child, a case in which the BCHR team intervened.

⁴⁴ The Ministry of Labour, Employment and Veteran and Social Issues stopped implementing activities for unaccompanied children on 1 February 2023 due to lack of EU funding. Information the BCHR obtained at a meeting with the UNHCR and partner organisations in the first half of 2023.

⁴⁵ The Ministry's additional team of 60 professionals (guardians, case managers, field workers, counsellors, etc.) who had worked with the migrant-refugee population was disbanded.

⁴⁶ A unit of the Centre for the Accommodation of Foreign Unaccompanied Children is located in Vodovodska Street in Belgrade.

⁴⁷ The Ministry's activities were supported by the Swiss Development and Cooperation Office (SDC).

3.1.1. SWC's Delayed Response in the Case of an Unaccompanied Child

An unaccompanied child from Iran contacted the BCHR in early May 2023. He told a BCHR lawyer that he had been kidnapped by his smugglers and that they subjected him to violence for two weeks until he managed to run away. After spending two days in the woods, he asked the organisation Info Park for help and the latter referred him to the BCHR. The child asked the BCHR lawyer about accommodation; he was visibly scared and insisted that he did not want to be living together with adult migrants and asylum-seekers.

The BCHR team immediately contacted the three relevant Belgrade SWC municipal departments⁴⁸ and requested that they designate a guardian who would establish contact with the child, take him to a police station to register, and accommodate him in an institution tailored to his needs. However, all three SWC departments replied that their staff were not under the obligation to work in the field and/or have not worked with migrants to date.

The CRM management in an AC suggested to the BCHR to take the child to the RTC in Šid, which is designated for the accommodation of unaccompanied and separated children. However, given the sensitivity of the case, the BCHR team held that it would be best to accommodate the child urgently in one of the residential institutions designated for unaccompanied migrant and asylum-seeking children. Although unaccompanied children are ordinarily accommodated in such institutions only after they are appointed temporary guardians and registered, the Jesuit Refugee Service (JRC) responded to the BCHR's request and accommodated the child in its Pedro Arrupe Integration House in Belgrade.

When it visited the Integration House in late May 2023, the BCHR was told that the Iranian child was still waiting for the SWC to appoint him a temporary guardian. The BCHR will continue monitoring the developments in this case together with the JRC and the UNHCR and any steps the SWC takes in the future, to encourage it to respond adequately and promptly in cases of unaccompanied children, in accordance with the law⁴⁹ and the best interests of the child.⁵⁰

⁴⁸ The BCHR also contacted the Centre for the Protection of Victims of Human Trafficking because of its suspicions that the child had been a victim of human trafficking. The Centre, however, said it could not extend assistance to the child before the SWC was engaged.

⁴⁹ Under Art. 132 of the Family Law, all unaccompanied children in the RS, including foreign and stateless children, are entitled to a guardian (*Official Gazette of the RS*, Nos. 18/05, 72/11 and 6/15).

⁵⁰ Art. 10, LATP.

4. Integration

Integration of refugees can be perceived as a dynamic and two-way process. It will be successful if both the refugees and the host society adapt to each other and if both the local community and the state are willing to accept refugees.

The main aspects of integration are legal, economic, social and cultural. The LATP guarantees a set of rights to foreigners granted asylum in the RS, including, inter alia: the right to residence, accommodation, property, healthcare, education, work, legal and social aid, family reunification, freedom of religion, freedom of movement, and assistance in integration.⁵¹

This chapter provides an overview of statistical data illustrating the work of the BCHR integration team in the first half of 2023, the structure of its clients and the degree of their integration in the RS. It also describes the results of a situation testing of a youth cooperative in Belgrade, concerning discrimination against refugees in the RS; the testing was initiated in late 2022 before the Commissioner for the Protection of Equality.

This chapter also includes accounts of the integration of three BCHR clients, their first steps in accessing their economic, social and cultural rights, as well as the personal struggles they have faced in their countries of origin. The aim is to familiarise Serbia's citizens and the public at large with the situation of refugees, their integration process, as well as to illustrate the problems they have faced in adapting to the new community, with a view to providing a forum for the discussion of the issue from a different perspective.

4.1. Statistics Concerning BCHR Clients in the Integration Process

All the statistical data were collected by the BCHR integration team during its work with refugees and asylum seekers and, as well as with foreigners arriving from Ukraine who are granted temporary protection in the RS. The statistics cover the 1 January – 30 June 2023 period and concern solely BCHR's clients.

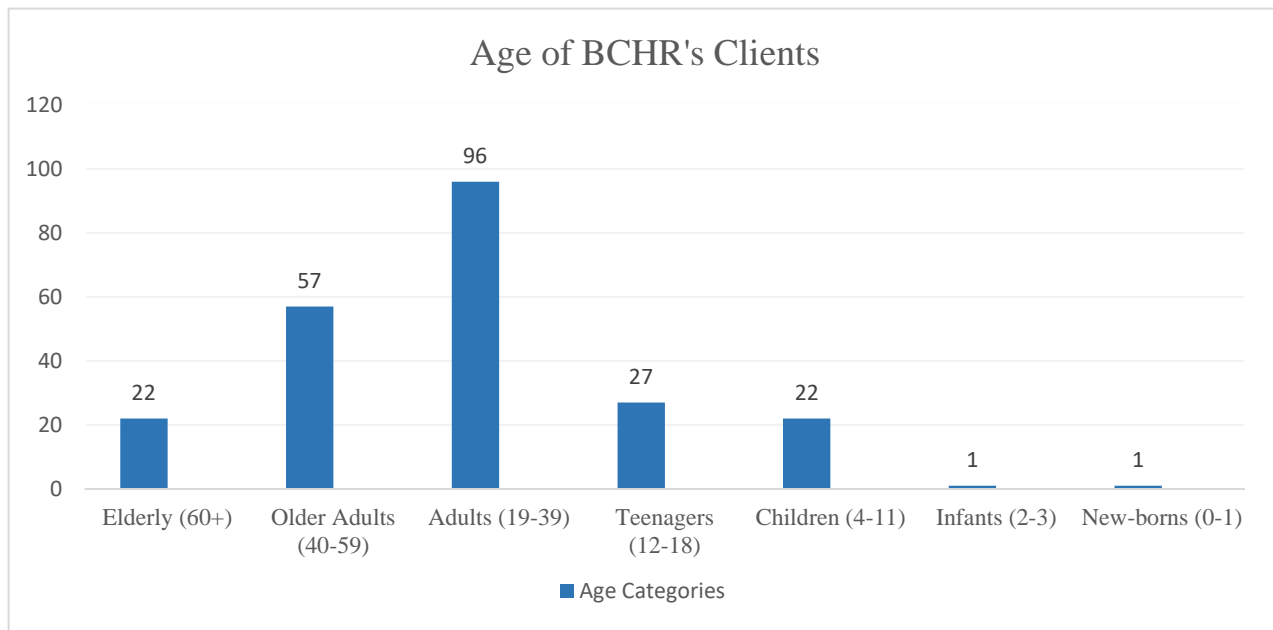
⁵¹ Art. 59, LATP.

The total number of BCHR's clients in the integration process since 1 January 2023 stood at 228 – 116 of them were female and 112 of them were male. The number of active clients stood at 203 in June 2023.

Most of BCHR's clients in the reporting period were nationals of Ukraine (111), Iran (19), Burundi (18) and Libya (15). A mild increase in the number of BCHR clients from Russia over 2022 was registered – 10 of its Russian clients were in the integration process at the end of the reporting period.

The breakdown of BCHR's clients by sex shows that women accounted for most of BCHR's clients from Ukraine (76 v. 31), while, on the other hand, 13 out of 19 Iranian clients and 12 out of 18 Burundian clients were men. The numbers of male and female clients from other countries were more even.

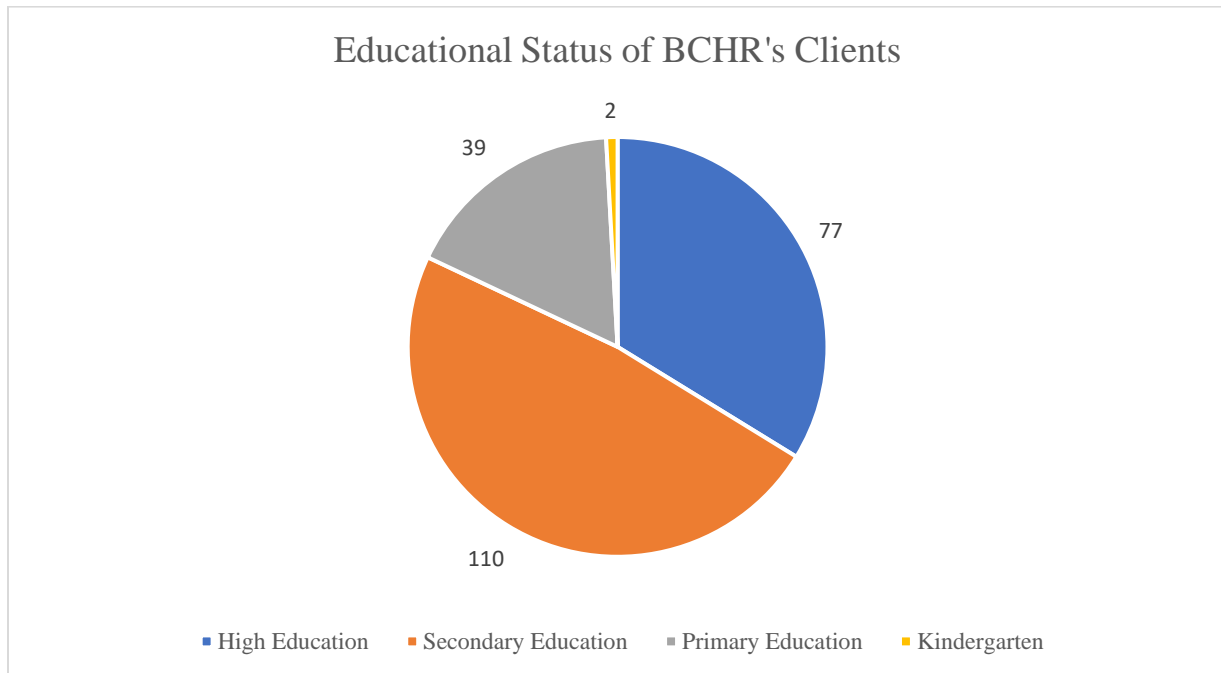
Fifty-one of BCHR's 228 clients were underage at the end of the reporting period. More than two-thirds (153) of BCHR's adult clients were between 19 and 59 years old.



These data shed a lot of light on the integration-related needs of BCHR's clients. Most of them have already acquired a specific level of education and their priority is to join the labour market in the RS. In addition to exercising the right to work, i.e. obtaining a personal work permit

and finding an adequate job, one of the most frequent needs of BCHR clients that have to be fulfilled concerns the validation of their diplomas.

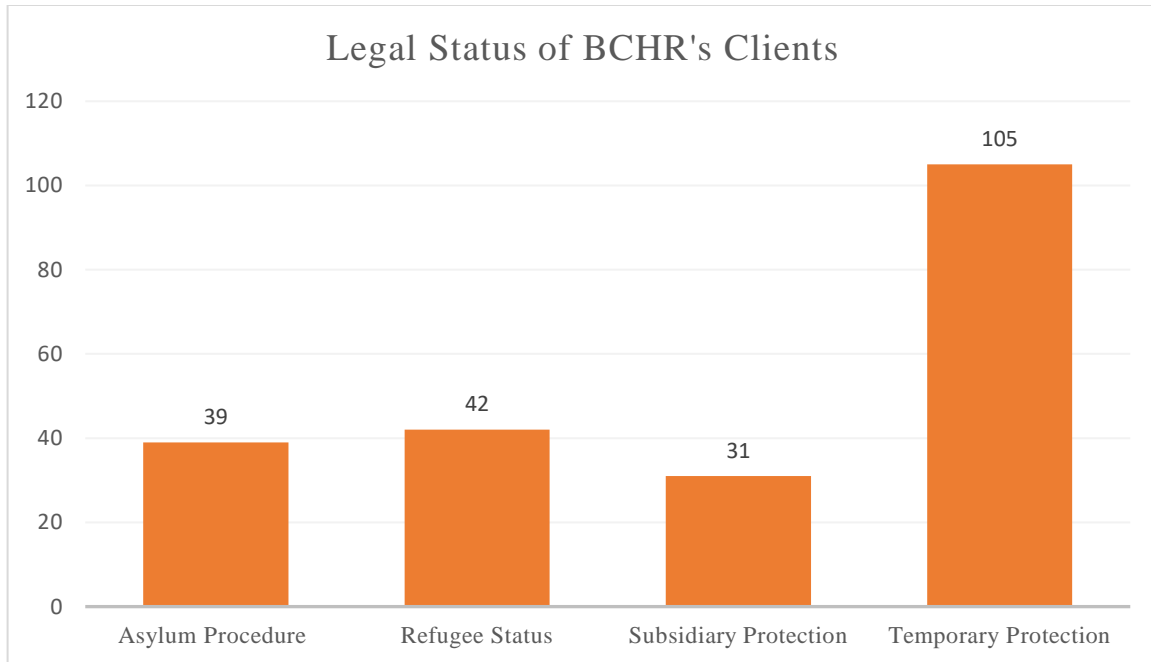
The largest share of BCHR clients - 110 of them - have secondary education or are currently attending secondary school. Most of them - 56 - are nationals of Ukraine. A total of 77 clients have high education – 35 of them are nationals of Ukraine, 11 are nationals of Iran and 10 are nationals of Burundi.



Over 75% of BCHR’s clients – 178 individuals – enjoy some form of protection in the RS: 42 of them have been granted refuge and 31 of them subsidiary protection. Most of BCHR’s clients the RS has granted refugee status i.e. asylum to are nationals of Iran (11), Libya (6) and Burundi (5), while most of its clients granted subsidiary protection are nationals of Libya (9) and Syria (9).

In March 2023, the RS Government extended by a year the validity of its Decision on the Provision of Temporary Protection to Persons Displaced from Ukraine, which it adopted in March 2022. A total of 105 BCHR clients enjoyed temporary protection in the RS at the end of the reporting period.

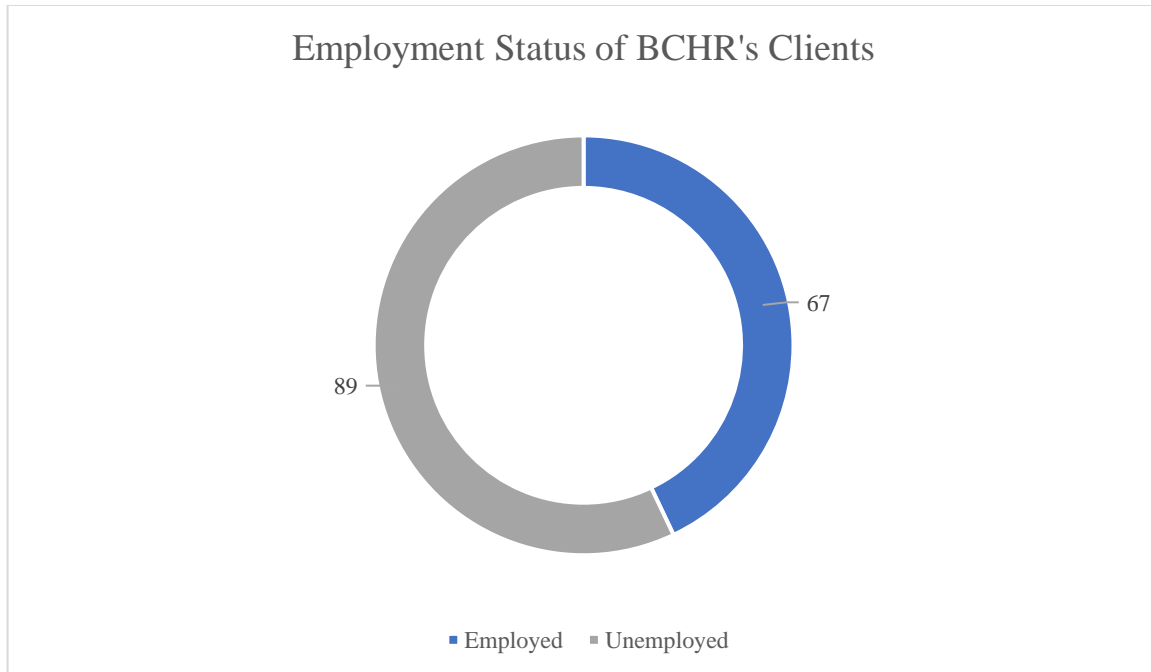
The asylum applications of 39 BCHR clients were still pending at the end of the reporting period. Most of them hailed from Burundi (11) and Iran (6).



Two-thirds (152) of BCHR’s clients were living in private lodgings. Of them, most were nationals of Ukraine (55), followed by nationals of Iran (19) and Libya (15).

As noted, most of BCHR’s clients are of working age. However, most of them (89) were unemployed.⁵² This category includes individuals who have retired or are unable to work or find an adequate job for other reasons, including, in particular, the language barrier. Furthermore, quite a few of BCHR’s clients from Ukraine are living in the AC in Vranje, a small city with fewer employment opportunities. In light of the fact that employment and economic empowerment are among the most important steps in the integration process, there is clearly a lot of room for improving and facilitating the asylum seekers’ and refugees’ access to the right to work in the RS.

⁵² A total of 67 BCHR clients were employed at the end of the reporting period.



4.2. Situation Testing - Youth Cooperatives

A number of BCHR's clients, who have been granted or applied for asylum, asked its integration team to help them join a youth cooperative. Most of them are young, are not fluent in English and have had trouble understanding the application process.

Adult nationals of the RS need only a valid ID and an open bank account to join a youth cooperative, while underage nationals need to be accompanied by their parents or legal guardians. Under Article 23 of the General Regulations on Youth and Student Cooperatives⁵³:

College students, pupils and unemployed individuals between 15 and 35 years of age may be members of cooperatives.

⁵³ *Official Gazette of the RS*, No. 47/10.

The Regulations do not have provisions governing the admission of foreign nationals, specifically asylum seekers and foreigners granted refuge or subsidiary or temporary protection.

In cooperation with A11 – Initiative for Economic and Social Rights, the BCHR team conducted in October 2022 situation testing focusing on the admission of refugees in youth cooperatives.⁵⁴ It engaged two individuals of the same age and status – they were both unemployed and were not enrolled in school or college. One was a national of RS and the other a national of Afghanistan, who has been granted subsidiary protection in the RS. The testing was conducted in the SAT Youth Cooperative. The Afghan tester was the first to enter the cooperative. Its staff, however, refused to admit him as a member because he was not a student, explaining they could not admit foreigners unless they were studying in the RS. The RS tester then went to the cooperative and his membership application was accepted without any problems.

The BCHR and A11 notified the Commissioner for the Protection of Equality of the SAT staff's actions. She issued an opinion and a recommendation finding that SAT had discriminated against the Afghan national, in contravention of the Anti-Discrimination Law.⁵⁵

The Equality Commissioner noted in her opinion that the SAT had not treated the two testers equally, and that it had rejected the membership application of the Afghani tester solely because of his status – an individual granted asylum in the RS. Interestingly, the cooperative admitted during the procedure that its staff, who had interviewed the tester, had rejected his application because it did not know what to do. The Commissioner recommended that the Youth Cooperative review all membership applications filed by persons granted refuge in Serbia on a case to case basis and on an equal footing and refrain from violating the prohibition of discrimination in the future.

The Equality Commissioner's opinion is extremely important given the significance of the right to work in the integration process because it directly affects the economic empowerment of asylees and asylum seekers. BCHR and A11 will continue diligently monitoring the implementation of the Commissioner's recommendation, hoping that such and similar acts of discrimination will not recur in the future.

The BCHR recalls that, in response to a complaint⁵⁶ filed by BCHR's integration team in 2022, the Equality Commissioner found Youth Cooperative Bulevar in violation of the Anti-

⁵⁴ See more in *Right to Asylum in the Republic of Serbia 2022*, p. 159.

⁵⁵ Art. 6 in conjunction with Art. 17 of the Anti-Discrimination Law (*Official Gazette of the RS*, Nos. 22/09 and 52/21).

⁵⁶ See more in *Right to Asylum in the Republic of Serbia 2022*, pp. 157-159.

Discrimination Law⁵⁷ because it refused to admit as its member an underage foreigner granted subsidiary protection in the RS. The Commissioner said in her opinion that the youth cooperative had automatically refused to review the boy's membership application solely because of his status of underage foreigner and had thus unjustifiably placed him at a disadvantage.

Youth cooperative SAT's treatment of the Afghan tester is obviously not an isolated case. Institutions extending services to refugees and asylum seekers apparently need to familiarise themselves with the law to a greater extent to avoid discriminating against them and to facilitate their exercise of the rights they are guaranteed under national law.

4.3. BCHR Clients' Accounts of Their Situation and Experiences in Serbia

4.3.1. Syrian Who Decided to Stay in Serbia

Young H.H. left Syria because of the security problems in his war-torn country of origin and to avoid military conscription. The house he had lived in with his family was destroyed during an air strike, H.H. was wounded by a shrapnel, while his brother was left disabled after he was wounded in the leg. In addition to conscription, H.H. feared he would be arrested for desertion and tortured or killed in a Syrian prison. This is how he describes his life in Syria:

One cannot daydream of a future, a family, one's life in such circumstances. Human life no longer has any meaning in my fatherland. Whether I'm alive or dead is irrelevant there.

All these circumstances prompted H.H. to seek international protection in a European country. After he arrived in the RS, he repeatedly tried to reach West Europe via Hungary, Romania or Croatia, albeit unsuccessfully. He finally gave up on that idea and decided to seek asylum in the RS. This is how he describes his experiences crossing the border:

I'd tried to cross into Hungary so many times that I started feeling I was coming home every time they pushed me back. I once actually crossed into Hungary. I was so thirsty and dehydrated I asked a family nearby for some water. They didn't give me any, they called the police instead. And I was returned to Serbia again.

⁵⁷ Art. 6 in conjunction with Art. 16 of the Anti-Discrimination Act.

During a brief visit to Novi Sad, H.H. met a girl, a national of the RS, and told her his story – they had no problems communicating openly because they both spoke Turkish. The girl offered to help H.H. She said she had a close contact in the police and knew which steps foreigners who wanted to seek asylum in the RS needed to take, starting with registration at the police station. So, H.H. registered in the Novi Sad police, where he was issued a registration certificate ordering him to report to the RTC in Preševo within 72 hours. This is how H.H. described to the BCHR the support he felt soon after he came to the RS and the impressions the people left on him:

The people, that's what I liked about Serbia the most and that changed my mind. I decided I wanted to stay here. Whenever I say I'm Syrian, people welcome me with open arms because they know I come from a friendly country. I've always enjoyed support and assistance here.

BCHR's legal team met H.H. while he was living in the RTC in Preševo. He was helping out in the RTC kitchen at the time. All CRM staff knew the young Syrian asylum-seeker and had only words of praise for him. After legally consulting with the BCHR and filing his asylum application in writing in the RTC, H.H. was moved to the AC in Krnjača. Several months later, an Asylum Office staff member held an oral hearing at which she interviewed H.H. about his asylum application. Only three weeks later, in late 2022, the Asylum Office issued a ruling granting H.H. subsidiary protection in the RS.⁵⁸ As opposed to most other asylum cases, the review of H.H.'s application was completed extremely quickly. This is how he describes the asylum procedure and the other accompanying challenges in the RS:

Many more people would want to stay in Serbia if the asylum procedure didn't take so long. People are often discouraged from staying also because refugees here can't get a passport and travel.

The BCHR team has continuously been extending H.H. assistance in integrating in Serbian society. H.H. is diligently studying Serbian and working as a barista in a well-known restaurant in Zemun. He wants to get a driver's licence and find a job involving a lot of driving. In Belgrade, he loves spending time in Kalemegdan Park, the main square and the Hippodrome, where he watches horse races whenever he can.

Serbia is not a rich country but its people are good and peaceful and that supersedes all the riches in the world!

⁵⁸ Asylum Office Ruling No. 26-2135/22 of 13 December 2022.

4.3.2. Life of an LGBTI Asylum Seeker in Serbia⁵⁹

F. is a member of the LGBTI population and an atheist. He faced problems in his hometown in Bangladesh on a daily basis, he was raped by a family member, and he lost his job because of his relationship with another man. Additionally, F's family forced him to marry a woman against his will. His partner, who was also forced into an arranged marriage, committed suicide.

Due to his sexual orientation, F. had been targeted by an extremist student organisation in his country of origin, whose members abused him verbally and physically and he had to abandon his college studies. Namely, extremist organisations in Bangladesh have been targeting gay men, atheists and promoters of secularism. F. was known for his LGBTI activism in his country of origin, but he abandoned it after the director of the organisation he was working for was killed and due to large-scale persecution of LGBTI activists. His life and the lives of his family members were gravely threatened – his family blamed him for the position they were put in and started perceiving him as a burden, wherefore he decided to leave his country of origin.

F. applied to several universities in Europe in order to pursue his studies, desperately trying to get a student visa to leave his country since his family promised to support his studies abroad, as long as he was not around them anymore. He was eventually admitted to a university in Serbia, where he arrived in early 2020, after spending some time in a neighbouring country until he was issued a student visa – that was the first time he left his country of origin.

However, shortly after he settled in Serbia, F. realised that his family had deceived him – it in addition to leaving him without any financial aid for his studies, his family cut off all communication with him. F. was forced to move out of the apartment he was renting and ended up in the street. That was when he found out about the asylum procedure – shortly after police registration. F. went to the AC he was referred to, where he met with the BCHR lawyer who provided him with free legal counselling and explained that the plight he had experienced in his country of origin could be grounds for asylum in Serbia.

During their review of F.'s case, the asylum authorities in Serbia downplayed the fact that same-sex relationships are incriminated in his country of origin, ignoring the state's practice of

⁵⁹ The case study was created within a project implemented with GIZ's support from November 2022 to May 2023. The project, which aimed to improve the situation of LGBTI refugees, asylum seekers and people on the move, was implemented by the BCHR in cooperation with 15 other CSOs. They founded the Rainbow Migration Network, which applies a continuous, comprehensive and multidisciplinary approach to supporting LGBTI asylum seekers, refugees and people on the move, lobbies for the improvement of their status and fulfilment of their needs, and full respect of their human rights.

punishing LGBTI persons. They also made superficial assessments about the problems F. had with his family, disregarding the fact that they had forced him into an arranged marriage and that a close family member had sexually abused him. They drew wrong and blanket conclusions based on erroneous findings of fact and failed to properly examine the other claims he made. Consequently, they concluded that F. did not face the risk of persecution in case he returned to his country of origin. His asylum application was rejected by the Asylum Office and his appeal by the Asylum Commission. His claim before the Administrative Court was pending at the time this report was completed.

F. was in need of comprehensive support and tailored services given the problems and violence he had experienced in his country of origin, his family's decision to cut off all communication with him upon his arrival in Serbia, as well as the rejection of his asylum application by the relevant national authorities. He was thus provided with free legal aid by a sensitised lawyer, experienced in refugee law and familiar with LGBTI rights. F. was subsequently extended continuous psychological support by a sensitised psychologist experienced in working with LGBTI asylum seekers, a factor that greatly helped him build trust towards the psychologist and discuss the traumas he had experienced in his country of origin, providing the psychologist with all the information necessary for the asylum procedure. Additionally, with the help of his lawyer, F. visited the Pride Info Centre in Belgrade, where he had a chance to meet people from the local LGBTI community and find out how he could involve himself in local LGBTI related activities and events. After he obtained a work permit with the help of his BCHR integration officer, F. received additional support in finding a job which, consequently, enabled him to rent an apartment and leave the AC. F. was assisted in this respect by the cultural mediators experienced in working with vulnerable groups such as LGBTI persons.

Despite the uncertainties surrounding his asylum application and his future, F. has been making major strides in integrating in Serbian society, primarily thanks to the comprehensive support he has been extended by CSOs capable of providing services tailored to his needs. Additionally, he was surrounded by a group of sensitised professionals experienced in working with LGBTI+ persons, who created a safe and sustainable environment, in which he has been able to fulfil his needs and deal adequately with his traumas. F. can live a normal life in Serbia, without fearing persecution because of his sexual orientation.

4.3.3. LGBTI Couple that Sought Asylum in Serbia⁶⁰

S. and his partner left their country of origin, where they were repeatedly subjected to violence because of their sexual orientation, which the relevant authorities could (and would) not protect them from. Their neighbours attacked them several times for being gay and once even beat them with hockey sticks. His partner used to be harassed when he rode the city bus – the other passengers insulted and cursed him because of his assumed sexual orientation and sometimes even kicked him. This is how S.’s partner described their experiences in their country of origin to the BCHR:

The police react negatively to reports of violence made by LGBTI persons. Once, when I tried to report the violence, they openly threatened to arrest me and put me in custody together with “drug addicts and HIV+ people” who would rape and abuse me.

The police often raided the venues at which LGBTI persons gathered, harassed them and seized their personal documents in order to blackmail them, wherefore these venues became unsafe. S. believes that he lost his job because of his sexual orientation; landlords did not want to rent an apartment to him and his partner because they assumed they were a gay couple, even though they were forced to hide their sexual orientation. As S. told the BCHR, there are laws in his country of origin precluding LGBTI+ people from leading a normal and safe life. In addition, S. also reasonably feared that he would be drafted and deployed to wage the war his country of origin has been involved in. All these reasons prompted the couple to start contemplating moving to a Western European country, but they had no entry visa or any other means to make it to a place where they felt safe. This is why they headed towards Serbia.

S. and his partner felt extremely apprehensive when they arrived in the RS in late 2022, fearing it was not LGBTI-friendly. Despite their initial intention to apply for asylum, they feared they might encounter additional homophobia, wherefore they did not immediately seek legal and other forms of assistance. However, they changed their minds when they befriended a local woman, who decided to help them and found them free legal counselling. During their conversation with the BCHR legal officer, S. and his partner both displayed high levels of re-traumatisation, as well as a degree of mistrust as they recounted the reasons for leaving their country of origin. However, as they said later, everything changed because of the way the lawyer treated them; the BCHR’s advocacy of LGBTI rights assured them that they were welcome and

⁶⁰ Ibid.

accepted – they found such treatment “incredible”, given that such activities in their country of origin are strictly forbidden and punishable by law.

After they started trusting the BCHR lawyer, they felt free to highlight other issues they were dealing with, including their strong need for psychological support. The BCHR immediately referred them to a sensitised psychologist, experienced in working with LGBTI+ asylum seekers. At the same time, they managed to establish a level of trust with two interpreters, who helped them overcome the language barrier and properly explain the reasons for leaving their country of origin, as well as their current needs. With the help of sensitised cultural mediators, S. and his partner were provided with support in the registration process since they had developed fear of the police due to the ill-treatment they had experienced in their country of origin. The cultural mediators subsequently helped them move to private lodgings, since S. and his partner were reluctant to stay in the AC, fearing homophobia on the part of their many compatriots living there and consequent retraumatisation.

This LGBTI couple was familiarised with the local LGBTI community activities and events. With the assistance of their lawyer, psychologist and cultural mediator, S. and his partner were able to overcome their fear and attend an LGBTI asylum seekers’ and refugees’ event organised in a safe space for LGBTI persons. Thanks to the comprehensive support and tailored services they were provided with, S. and his partner overcame their fears of living in the new community and were able to deal with the traumas they had experienced in their country of origin. They were eventually able to build trust towards service providers, which is especially important for the asylum procedure they initiated, since they now feel more empowered to discuss the reasons they have based their claims on. All the described assistance will facilitate the couple’s integration in Serbian society.

4.4. Supplement - One Year of Application of Temporary Protection in the Republic of Serbia

Temporary protection⁶¹ is a legal mechanism providing protection to people who may prima facie qualify as refugees, but whose conditions of arrival mean that they cannot proceed

⁶¹ 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*.” See more at: International Commission of Jurists (ICJ), *Migration and International Human Rights Law, Practitioners Guide No. 6*, Updated Edition 2014, p. 88.

immediately through an ordinary asylum procedure.⁶² In 2001, the EU Council adopted the Directive 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.⁶³ On 4 March 2022, the EU Council adopted the implementing decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.⁶⁴ The decision, which entered into force the same day, was adopted to extend immediate protection to persons displaced from Ukraine after 24 February 2022.⁶⁵

At the national level, the LATP⁶⁶ lays down that temporary protection shall be 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. Under the LATP, temporary protection may also be granted to persons who were residing lawfully in the Republic of Serbia at the time of adoption of the decision on temporary protection and 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 implementing decision recognise this category of individuals, merely leaving it to the Member States to extend the personal scope of temporary protection to other individuals.⁶⁷

⁶² *International Commission of Jurists (ICJ), Migration and International Human Rights Law*, p. 89.

⁶³ 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://bityl.co/KcTc>.

⁶⁴ More on temporary protection activated at the EU level and in the RS in BCHR's *Right to Asylum in the Republic of Serbia 2022*, pp. 161-163 and its special report: Jelena Ilić (ed.) *One Year of Application of Temporary Protection in the Republic of Serbia: Comparative Analysis and Recommendations*, Belgrade Centre for Human Rights (Belgrade, 2023, hereinafter: *One Year of Application of Temporary Protection in the Republic of Serbia: Comparative Analysis and Recommendations*), available at: <https://bityl.co/KcTr>.

⁶⁵ 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://bityl.co/KcTf>.

⁶⁶ Art. 74 of the LATP defines displaced persons as foreigners who have been forced to leave the area or country of their origin or habitual residence, or who have been 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: persons who have left the area of armed conflict or localised violence and persons who face a serious threat of mass violations of human rights or who have been victims of such violations.

⁶⁷ Art. 74, LATP.

Following the example of the EU, the RS activated the temporary protection mechanism for the first time in 2022, by the Government Decision⁶⁸ that entered into force on 19 March (2022 Decision).⁶⁹ In March 2023, the RS extended the validity of temporary protection, by its Decision Amending the Decision on the Provision of Temporary Protection in the Republic of Serbia to Persons Displaced from Ukraine of 17 March 2022 (2023 Decision).⁷⁰ The 2023 Decision extends temporary protection by one year, until 18 March 2024, because the reasons for it persist.

The LATP and the 2022 Decision activating the temporary protection mechanism guarantee individuals granted temporary protection access to all the rights enumerated in Article 76 of the LATP, notably the right to: legally reside in the RS during the validity of temporary protection; a personal document confirming their status and right of residence; healthcare in accordance with the law on healthcare of foreigners; access the labour market in accordance with regulations on the employment of foreigners; free primary and secondary education in state schools, in accordance with the relevant regulations; free legal aid extended to asylum seekers; freedom of religion on the same terms as the nationals of RS; live in collective accommodation in designated facilities; adequate accommodation for persons requiring special procedural and/or reception guarantees (particularly vulnerable categories).⁷¹

The BCHR has legally represented persons from Ukraine who wanted to apply for temporary protection in the RS since March 2022 and has extended them assistance in accessing their economic, social and cultural rights. The BCHR team has legally represented both individuals living in private lodgings and those living in the Vranje AC, providing it with the opportunity to monitor the application of the temporary protection mechanism in practice. The insights it gained are presented in the ensuing sections.

4.4.1. Access to Individual Rights by Temporary Protection Beneficiaries in the RS

The BCHR conducted a survey among temporary protection beneficiaries in the RS in February and March 2023 in order to gain insight in the process of application of this legal mechanism and the extent to which individuals from Ukraine can exercise their rights. The survey

⁶⁸ 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. 36/22.

⁶⁹ More on the RS Government Decision in BCHR's reports *Right to Asylum in the Republic of Serbia 2022* and *One Year of Application of Temporary Protection in the Republic of Serbia: Comparative Analysis and Recommendations*.

⁷⁰ 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.

⁷¹ Art. 76, LATP.

was conducted among temporary protection beneficiaries living in the Vranje AC and those living in private lodgings across the RS and its findings shed substantial light on how the respondents perceive the rights conferred upon them as temporary protection beneficiaries.

First of all, the findings show that the authorities have 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 198 rulings granting temporary protection in the January-June 2023 period. A total of 179 individuals (155 adults and 24 children) applied for temporary protection during the reporting period. The Asylum Office issued 730 rulings extending the validity of temporary protection in the same period. None of the temporary protection beneficiaries were unaccompanied children. The beneficiaries included nationals of third countries who had resided in Ukraine (most of whom were nationals of Russia (24), followed by nationals of Armenia (4), Libya (3), Georgia (1) and Lithuania (1)).

Another **good practice introduced by the Asylum Office** has 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 designated 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. In the March 2022-March 2023 period, persons displaced from Ukraine granted temporary protection in the RS had no difficulty entering or leaving the RS. 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 RS.

Under the LATP, 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. The content and format of the ID is one of the main challenges temporary protection beneficiaries have been facing in accessing their rights. Namely, the content and format of the ID are laid down in a Rulebook,⁷² which includes the template of the ID. The paper

⁷² 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.

form is filled manually and the holder's colour photograph and Asylum Office seal are affixed to it. These IDs are incomplete, as they do not include the Foreigners Registration Number (FRN).

Under the LAMP, **access to the labour market** shall be exercised in accordance with regulations governing the employment of foreigners. The Law on the Employment of Foreigners⁷³ 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.⁷⁴

As opposed to asylum seekers, persons displaced from Ukraine are entitled to access the labour market as soon as they are issued rulings 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. Given the particular vulnerabilities of this category of foreigners, the National Employment Service (NES) has been reducing the initial fee in accordance with the Law on Republican Administrative Fees⁷⁵, 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 AC. 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.

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 look after 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.

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

⁷³ *Official Gazette of the RS*, Nos. 128/14, 113/17, 50/2018 and 31/19.

⁷⁴ Arts. 12 and 13, Law on the Employment of Foreigners.

⁷⁵ 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.

Decision. 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.

The BCHR integration team over the last year 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. 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 engaged to perform 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.

A good practice example in this area is the employment of a Ukrainian doctor granted temporary protection. She was hired as a general practitioner in the Vranje AC 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.

The BCHR integration team also noted shortcomings in the temporary protection beneficiaries' access to their **right to healthcare**. Under the LATP, individuals granted temporary protection shall be entitled to healthcare in accordance with regulations governing the healthcare of foreigners, which enumerate migrants, refugees and asylum seekers, but not temporary protection beneficiaries, among foreigners entitled to healthcare in the RS.

As per the **right to education**, RS law 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. 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, in contravention of the Education Ministry's Professional Guidance⁷⁶ instructing schools to admit asylum-seeking and refugee children even if they lack all the documents and proof of prior schooling. The school agreed to

⁷⁶ 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>.

enrol the child from Ukraine without evidence of her prior schooling in her country of origin only after the Ministry intervened.

The BCHR team continued cooperating well with the Serbian Qualification Agency ENIC/NARIC Centre in the March 2022-March 2023 period. The Centre validated a secondary school diploma of one BCHR's Ukrainian client and foreign college diplomas of two other temporary protection beneficiaries. 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.

Having analysed the legislative framework of the temporary protection mechanism and its application, the BCHR has come to the conclusion that the access of temporary protection beneficiaries in the RS to their rights has been generally efficient. Persons displaced from Ukraine, however, faced specific difficulties in some areas, such as in accessing healthcare and the labour market.

Another issue that remains open concerns regulation of the beneficiaries' status when the 2023 Decision expires in March 2024 given that the maximum duration of temporary protection in the RS is limited to two years. The BCHR will continue monitoring the beneficiaries' access to their rights in the RS and the application of this legal mechanism in practice.