RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2017

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AI – Amnesty International

AC – Asylum Centre

AL – Asylum Law

BCHR – Belgrade Centre for Human Rights

BCM – Balkan Centre for Migrations

BPS – Border Police Station

CAT/Committee against Torture – UN Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

CCPR/HRC – UN Human Rights Committee

Commission – Asylum Commission

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

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

CRS – Catholic Relief Service

CSO – Civil society organisation

DRC – Danish Refugee Council

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

ECtHR/European Court – European Court of Human Rights

EU – European Union

FL – Foreigners Law

GAPL – General Administrative Procedure Law

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HRW – Human Rights Watch

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IOM – International Organization for Migration

LAD – Law on Administrative Disputes

LGAP – Law on General Administrative Procedure

LIACM – Law on International Legal Assistance in Criminal Matters

MML – Migration Management Law

MOI – Ministry of the Interior

NGO – Non-government organisation

NPM – National Preventive Mechanism

OKS – Specific Category of Foreigners

PA – Police Administration

PS – Police Station

RBPC – Regional Border Police Centre

RC – Reception Centre

Refugee Convention – 1951 UN Convention relating to the Status of Refugees

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RS – Republic of Serbia

Rulebook – Rulebook on Social Assistance to Asylum Seekers and Persons Granted Asylum

SBPL – State Border Protection Law

Shelter – Shelter for Foreigners

Special Rapporteur – UN Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment

UASC – Unaccompanied and Separated Children

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations International Children's Emergency Fund

WBR – Western Balkan Route

INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) in 2017 continued to implement the project "*Support to Refugees and Asylum-Seekers in Serbia*" with the support of the United Nations High Commissioner for Refugees (UNHCR). The BCHR project team provided free legal assistance and representation in the asylum procedure to the foreigners who perceived Serbia as a country of asylum, and monitored the treatment of the persons in need of international protection by the competent authorities of the Republic of Serbia. The BCHR also sought to ensure support to the persons granted asylum in Serbia with a view to their integration into the Serbian society. The report before you represents an analysis of practices of the competent authorities and developments in the area of refugee rights in Serbia in 2017 based on the information that the BCHR team collected in the field and while representing the asylum-seekers, as well as the data received from all the relevant institutions and international organisations.

The Republic of Serbia continued to provide accommodation and care of a large number of migrants on humanitarian grounds, not establishing in each concrete case whether these persons were in need of international protection and their individual status. The migrants, whose number ranged between 6,000 and 12,000 were accommodated in 18 facilities (asylum centres and reception centres), with some of them remaining completely outside the system at one point.

The migration and asylum laws underwent a revision in the course of 2017. The new draft Law on Asylum and Temporary Protection entered the Parliamentary procedure on 12 September 2017,[1] and the new draft Law on Foreigners entered the Parliamentary procedure on 2 December 2017. However, none of these two laws was adopted last year. Also, 2017 was marked by an evident positive change with regard to social inclusion of migrants and refugees, primarily by the inclusion of migrant children into the mainstream education system, regardless of their legal status.

Most refugees still do not perceive Serbia as a country of asylum, mainly because the countries with more developped asylum systems offer them better conditions for integration and dignified life. This notwithstanding, it should not preclude the competent authorities from investing efforts to establish a fair and efficient asylum procedure and a system of integration.

1 Draft Law on Asylum and Temporary Protection. Available on the website of the Parliament: http://www.parlament.gov.rs.

Leaving the territory of Serbia became ever more difficult for migrants in March when Hungary introduced more restrictive laws and decreased the daily number of entries into its territory. In late March 2017, the changes of the Hungarian asylum law entered into force introducing a mandatory restriction of the freedom of movement of asylum-seekers including children over 14, for the entire duration of the asylum procedure. The beginning of the year was marked by grotesque images of downtown Belgrade where between 1,200 and 1,300 migrants stayed mostly in barracks in the vicinity of the main bus station. All of them were transferred to the reception and asylum centres several months later.

In all, 6,199 persons expressed intention to seek asylum in Serbia in 2017. This figure indicates the continuing trend of drastic reduction in the numbers of registered asylum-seekers that started in 2016, which is not surprising given the practices of border authorities of the countries on the so called "Western Balkans Route". Since the conclusion of an Agreement between the European Union and Turkey and closure of the WBR, collective expulsions and inhumane treatment of refugees and other migrants became a daily reality at European border crossings.

With repect to the first instance asylum procedure conducted by the Asylum Office, 244 persons were registered of whom 236 submitted asylum applications and 106 were interviewed in 2017. In all, 14 asylum applications were upheld, 50 applications for 56 persons were dismissed and 11 cases were rejected. Of the 14 applications that were upheld in 2017, three decisions were made to grant asylum. Subsidiary protection was awarded in 11 cases.

The Government of the Republic of Serbia appointed new members to the second instance authority in the asylum procedure – Asylum Commission in March 2017. The previous mandate of the members of this body had expired in September 2016, so no second instance asylum authority was in place until March 2017. The decisions passed in 2017 represented persistence of the practice of this body to apply the safe third country concept even when the first instance body decided on the cases on the merits.

In 2017, the asylum system in Serbia was primarily based on automatic application of the safe third country concept which was assessed as problematic also by the international bodies including the UN Human Rights Committee, the UN Commitee for the Rights of the Child and the UN Committee for Elimination of Racial Discrimination.

Moreover, 2017 was marked by an unprecedented case of extradition of Cevdet Ayaz, a Kurd, Turkish national, who was in the asylum procedure not yet completed and at risk of persecution in Turkey for political opinion as well as a 15-year prison sentence based in the judgement passed on his confession extorted under torture. The authorities of the Republic of Serbia had acted in this way

despite all the statements presented by the BCHR legal counsel and the decision of the UN Committtee Against Torture, which issued an interim measure calling on the Serbian authorities to refrain from extradition of Ayaz to Turkey for realistic risk of him being subjected to torture or other cruel, inhumane or degrading treatment in Turkey. Thus, the Republic of Serbia did not present itself as a legal state but quite the contrary – as the state which openly contradicts the decisions of a UN body it allegedly respects.

The beginning of implementation of a Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia in 2017 was certainly the most important step toward the establishment of an integration system. The Commissariat for Refugees and Migration, in cooperation with the BCHR, sought to develop individualised integration plans for the persons granted asylum in Serbia.

However, there is no practice of the State that pertains to the procedures for naturalisation, permanent residence and family reunification, as well as for issuance of travel documents as yet. This means that the development of an integration system in Serbia for the persons awarded international protection is still at its early stages.

In the domain of social inclusion of asylum-seekers and persons granted asylum, positive and important changes took place in the area of education i.e. inclusion of refugee and migrant children, regardless of their legal status, into the formal education system of the Republic of Serbia.

Although no major incidents with the elements of xenophobia and racism happened in Serbia since the beginning of the refugee crisis, work in the local communities housing asylum and reception centres should continue in order for the population to be informed of the new reality. The process of integration calls for a two-way approach wherein the two communities living at each other's side learn about each other in order to genuinely cohabitate instead of living in segregation based on ethnic or racial affiliation.

This report was prepared by Nikola Kovačević, Bogdan Krasić, Nikolina Milić, Lena Petrović, Anja Stefanović, Ana Trifunović, Ana Trkulja, Senka Škero and Marko Štambuk.

1. RELEVANT ASYLUM AUTHORITIES – SUMMARY

Ministry of the Interior

Asylum Office – The first-instance asylum procedure is implemented by the Asylum Office, established on 14 January 2015 under the Rulebook Amending the Ministry of Interior Organisation and Staffing Rulebook.[2] Office staff are vested with police powers but do not wear uniforms during asylum procedure.

Department for Foreigners – Under the Asylum Law, foreigners may either orally or in writing express the intention to seek asylum to authorised police officers at Serbia's borders or within its territory.[3] Therefore, they may express the intention to seek asylum at the border and in all police administrations in Serbia, before an officer of the MOI Border Police Administration Department for Foreigners. The authorised Department officers register the foreigners' intentions and issue them certificates thereof.

Asylum Commission

Appeals of Office Decisions are ruled on by the Asylum Commission, comprising nine members appointed to four-year terms in office by the Government.[4] The appellants may also complain of "silence of the administration" in the event the Office fails to issue a ruling on their asylum application within two months from the day the procedure was initiated.

Administrative Court

Final Commission decisions or its failure to rule on appeals within the legal deadline may be challenged in administrative disputes before the Administrative Court.[5] There is no particular chamber or department of the Administrative Court that specialises in asylum matters. The Administrative Court has never ruled on an asylum dispute in full jurisdiction or held an oral hearing on an asylum case.

2 Rulebook 01 Ref. 9681/14-8 of 14 January 2016.

3 Article 22, AL.

4 Articles 20 and 3, AL.

5 Article 15, ADL.

Commissariat for Refugees and Migration

Pending the completion of the procedure, the accommodation and basic living conditions for asylum seekers shall be provided in Asylum Centres, operating under the Commissariat for Refugees and Migration (CRM),[6] which shall keep records of persons accommodated in the Asylum Centres[7] (in Banja Koviljača, Bogovađa, Sjenica, Tutin and Krnjača). The CRM is also in charge of the accommodation and integration of persons granted asylum or subsidiary protection[8] and proposing integration plans to the Serbian Government. The CRM provided short-term accommodation in Reception Centres to refugees, who were merely transiting through Serbia and had no intention of seeking asylum in it.

Social Work Centres

In their capacity of guardianship authorities, Social Work Centres (SWC) appoint guardians to unaccompanied minors and persons fully or partially deprived of legal capacity without legal representatives before they apply for asylum. Under the AL, the guardians must attend their wards' interviews with the Asylum Office officers.[9]

6 Article 21 AL.

7 Article 64 AL.

8 Article 15 and 16, Migration Management Law (hereinafter: MML)

9 Article 16, AL.

2. STATISTICS[10]

Statistics on the number of registered asylum-seekers

In the period 1 January – 31 December 2017, 6,199 persons expressed intention to seek asylum and were registered as asylum-seekers in the Republic of Serbia[11]. This represents a further decrease relative to 2016 when 12,821 asylum-seekers were registered.[12]

Of the number of persons who expressed intention to seek asylum in Serbia in 2017, 5,140 were men, and 1,059 were women. According to the age structure, 2,630 were children of whom 156 unaccompanied or separated children. The majority of unaccompanied children arrived from Afghanistan (110), Pakistan (31) and Iraq (4).

Throughout the year, the number of registered asylum-seekers was consistent by month, and so 584 persons applied for asylum in January, 502 in February, 707 in March, 552 in April, 577 in May, 329 in June, 297 in July, 282 in August, 589 in September, 734 in October, 549 in November and 497 in December.

Location of registration of intention to seek asylum in 2017

Regional Police Stations	5,711
Border Crossings	205
Reception Centre in Preševo	156
Airport Belgrade	84
Reception Centre for Foreigners	26

10 All statistical information obtained from UNHCR office in Belgrade.

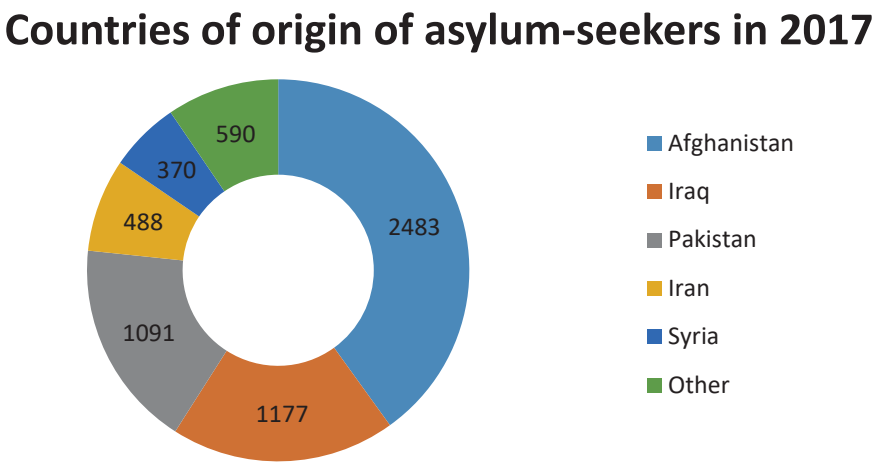
11 Authorised staff of the Ministry of Interior registering foreigners who express intention to seek asylum in Serbia (Arts. 22 and 23 of the Law on Asylum).

12 For information about causes, see chapter 3.

Number of expressed intentions since the beginning of implementation of the Law on Asylum

2008	**77**
2009	**275**
2010	**522**
2011.	**3,132**
2012	**2,723**
2013	**5,066**
2014	**16,490**
2015	**577,995**
2016	**12,821**
2017	**6,199**

Structure of asylum-seekers per country of origin

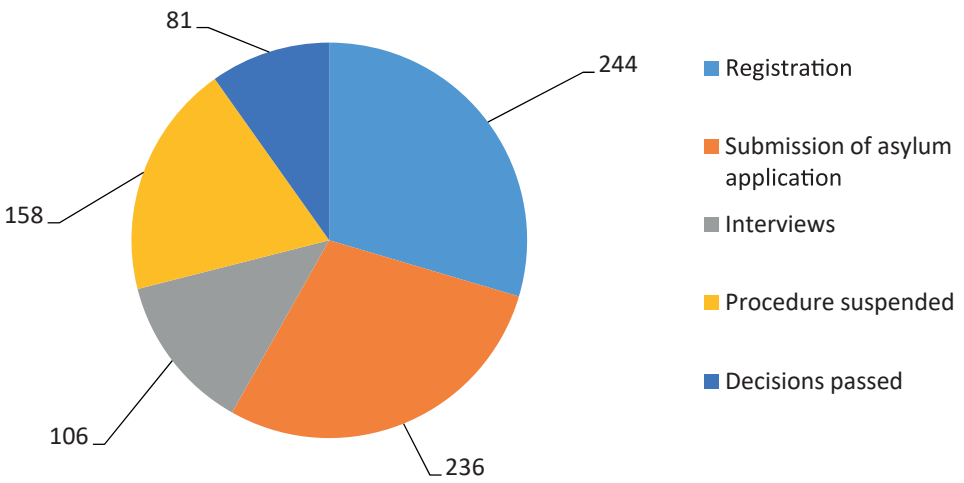


Most of the persons who expressed intention to seek asylum in Serbia in 2017 were nationals of Afghanistan (2,483) followed by Iraq (1,177), Pakistan (1,091), Iran (488) and Syria (370). In addition to these, the countries of origin of asylum-seekers were also Algiers (83), Bangladesh (58), Libya (51), India (48), Morocco (43), Somalia (41), Palestine (39), Sri Lanka (30), Cuba (24), Egypt (21), Ghana, Nigeria and Russian Federation (14 from each), Turkey (10), Lebanon (9), China (8), FYRO Macedonia (7), Cameroon, Comoros, Eritrea and Nepal (six from each), Bulgaria and Ukraine (five from each), Azerbaijan and Tunisia (four from each), Democratic Republic of Congo, South African Republic and Sierra Leon (three from each), Albania, Vietnam, Western Sahara and Yemen (two from each) and one asylum–seeker each from Belgium, Bosnia and Herzegovina, Czech Republic, Ethiopia, Greece, Guinea, SAR Hong Kong, Armenia, Jordan, Kazakhstan, Mali, Moldavia, Mongolia, Romania, Sudan, Tajikistan and the United States of America. With respect to the applications for asylum submitted, the majority were national of Pakistan (49), Afghanistan (48), Cuba and Iraq (30) and Syria (16).

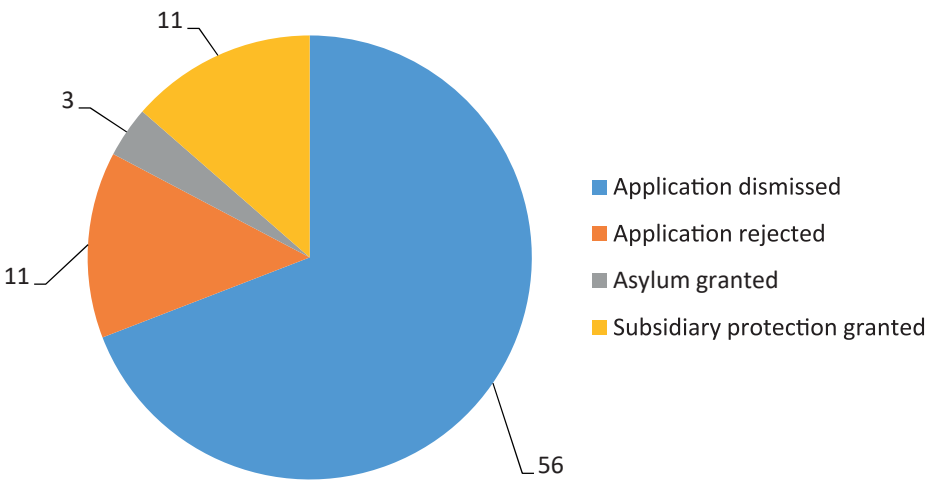
Statistics on actions taken in the asylum procedure

The Asylum Office registered 244 persons in 2017; 236 of them applied for asylum and 106 were interviewed. In all, 14 asylum applications were upheld, 50 applications for 56 persons were dismissed on merits, while 11 cases were rejected. The procedures were suspended in 112 cases (for 158 persons), most often because the asylum-seekers had left Serbia or the place of residence including the asylum centres, in the meantime. Of the 14 applications upheld in 2017, asylum was granted in three cases, and subsidiary protection was granted in 11 cases. Asylum was granted to nationals of Afghanistan, Burundi and Syria. Subsidiary protection was granted to the nationals of Libya (9), Nigeria (1) and Ukraine (1). Most of the dismissed applications had been lodged by the nationals of Afghanistan (16) and Iraq (9), while the majority of applications rejected had been filed by the nationals of Somalia (3).

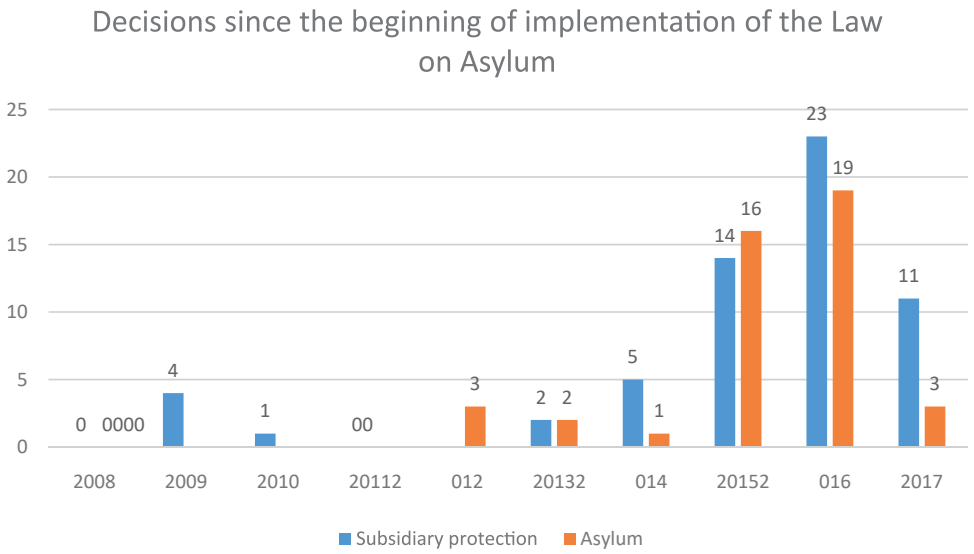
Procedures conducted in 2017 (number of persons)



Decisions passed in 2017 (number of persons)



Since the beginning of implementation of the Law on Asylum in 2008, the Asylum Office granted asylum to 44 persons, and subsidiary protection to 60 persons.



3. ACCESS TO ASYLUM PROCEDURE AND COMPLIANCE WITH THE *NON-REFOULEMENT* PRINCIPLE

3.1. General

Exercise of the right to access to the territory and the asylum procedure is of key importance for compliance with the principle of *non-refoulement*,[13] both from the aspect of assessment of the risk from persecution[14] and treatment contrary to prohibition of ill-treatment[15] in the country of origin, as well as from the aspect of examination of the risk of ill-treatment in the neighbouring third countries[16] (that would take place in case of expulsion[17] or refusal of entry at the border).[18] Therefore, by allowing foreigners to access the territory and the asylum procedure, the competent authorities of Serbia enable them to present – in a procedure prescribed by the law[19] – all the relevant facts on threats they would be exposed to if they were to be returned to the country of origin or a third country they transited on their way to Serbia.[20] For this reason the MOI and the other authorities[21] must be aware that derivation of access to the territory and the asylum procedure may result in irreparable consequences that may some-

13 In the international human rights law, the principle of *non-refoulement* represents the absolute norm of international common law and includes prohibition of return of an individual to the territory of the country where he would be at risk of torture, inhuman or degrading treatment or punishment.

14 Pursuant to Article 1 of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol that provides for persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

15 Pursuant to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which prohibit forced removal of an individual to the territory of the country where he would be at risk of torture, inhuman or degrading treatment or punishment.

16 Like FYROM and Bulgaria, subjects of numerous reports indicating ill-treatment of refugees and asylum-seekers and which the asylum authorities assess to be safe very often.

17 For instance, by readmission, enforcement of a decision on cancellation of stay and the final decision on dismissal of an asylum application.

18 *Push-backs* are contrary to Article 4 of the Protocol No. 4 with the European Convention prohibiting collective expulsions.

19 Asylum procedure governed by the Law on Asylum (AL), *Sl. glasnik RS*, 109/07.

20 *N. v. Finland*, App.No. 38885/02, para. 167.

21 Such as officers of the Ministry of Defence who have been securing the borders of Serbia with Bulgaria and FYROM since July 2016, as joint military and police forces.

times constitute also violation of imperative norms of international *jus cogens*,[22] and a violation of the right to an efficient and effective legal remedy.[23]

Exactly for the gravity of these consequences, special attention must be paid to those foreigners on the basis of whose origin it may be concluded that they are in need of international protection.[24] Equally, the requests for international protection of foreigners arriving from the refugee producing countries must not be ignored. Article 4 of the Law on Asylum envisages that each *foreigner on the territory of the Republic of Serbia has a right to submit a request for asylum in the Republic of Serbia*.

Articles 22 and 23 of the Law on Asylum provide that foreigners may express intention to seek asylum to authorised MOI police officers at Serbia's borders or within its territory either verbally or in writing (Art. 22(1)), whereafter they are issued certificates on the expressed intention to seek asylum (Art. 23(1)) and instructed to report to the Asylum Centres designated in their certificates within 72 hours (Art. 22(2)). Also, Article 5 of the Rulebook on Design and Conent of Asylum Applications and Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection[25] envisages that a certificate be issued in three copies: one copy for the police administration in which foreigners expressed intention to seek asylum, one copy to be forwarded to the Asylum Office and one copy to be given to the foreigner.

It is important to note that, although not envisaged by the Asylum Law, when issuing certificates authorised police officers also take personal and biometric data as well as the foreigners' photograph and enter them into two MOI electronic databases – OKS[26] i *Afis*.[27] This practice was introduced several years

22 Article 53, Vienna Convention on the Law of International Treaties.

23 *Jabari v. Turkey*, App. No. 40035/98, para. 49.

24 As is the case of foreigners arriving from Syria, Iraq, Afghanistan, Somalia, Sudan, Eritrea, Libya, Yemen and other countries where general insecurity prevails and were human rights violations and persecution are widespread.

25 *Sl. glasnik RS*, 53/08.

26 OKS stands for Specific Category of Foreigners and denotes a database of foreigners in Serbia, in which all legal actions the MOI has undertaken with respect to them are entered. These legal actions include residence permits and grounds on which they were granted, rulings ordering them to leave the country (Art. 35, LF); decisions on unlawful stay (Art. 43, LF); motions to launch misdemeanour proceedings against them; misdemeanour penalties imposed against them; rulings on their accommodation in the Shelter for Foreigners (Art. 49, LF), et al.

27 *Afis* is an MOI database into which data on perpetrators of crimes and misdemeanours in the territory of the Republic of Serbia are entered, and which the MOI uses also to register asylum-seekers for the simple reason that the checking of their personal data in this database is much more reliable than checking them in the OKS. Apart from the foreigners' personal data, their photographs and biometric data, which cannot be forged are also entered into the *Afis*. In other words, a foreigner whose data are checked in the OKS database only, will not

ago because many foreigners who arrive in Serbia do not have travel or other personal documents, wherefore the photographs and fingerprints entered into the *Afis* database are the only data that cannot not be forged i.e. the only reliable way to check them.

Key to proper understanding of the intention of the legislator with respect to provisions of Articles 22 and 23 of the AL is that it did not give the "authorised police officer"[28] a discretionary authorisation to decide on whether or not he wants to issue a certificate to the foreigner. In other words, when a foreigner expresses intention to seek asylum, police officers must issue a certificate even in case of obvious abuse of the right to asylum.[29] Only the authorities designated in the AL may examine whether the expressed intention is well founded.[30] Nevertheless, if such doubt exists, police officers may only inform the Asylum Office of the potential abuse in which case the latter may issue a decision on deprivation of liberty of the asylum-seeker in the Shelter for Foreigners in Padinska Skela.[31]

In 2017, 6,199 foreigners expressed intention to seek asylum in Serbia. This figure indicates the continuation of the trend of drastic decrease of registered asylum-seekers noted during the previous year,[32] which is not surprising taking into account the practices of border authorities of the countries on the so called "Western-Balkans Route" (WBR). Since the conclusion of the Agreement between the European Union and Turkey[33] and closure of the WBR,[34] collective expulsions and abuse of refugees and other migrants became a daily routine at the border crossings in Europe.[35] Refugees staying in Turkey, Lebanon, Jordan

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appear as registered in case he gives different personal data (e.g. different date of birth) or in case the officer misspells his name while searching the database.

28 Most often police officers working in the organisational unit in charge of status issues of foreigners pursuant to the Law on Foreigners (LF), *Sl. glasnik RS*, 97/08.

29 For instance, in order to avoid forced removal or liability for unlawful entry or stay in the Republic of Serbia.

30 Asylum Office (Art. 19, LA), Asylum Commission (Art. 20, LA) and Administrative Court (Art. 14, Law on Administrative Disputes (LAD)), *Sl. glasnik RS*, 111/2009.

31 In line with Articles 49–53, LF, the Shelter for Foreigners in Padinska Skela is an MOI detention centre for placement of foreigners who do not fulfill requirements for lawful residence in Serbia and pending forced removal, as well as foreigners whose identity needs to be established, or for other reasons stipulated in other regulations such as Law on Asylum.

32 *Right to Asylum in the Republic of Serbia 2016*, Belgrade Centre for Human Rights, Belgrade, 2017, p. 22.

33 The agreement between EU and Turkey was concluded on 18 March 2016. See more at: http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.

34 See more in *Right to Asylum 2016*, pp. 9–10.

35 See e.g. "Dangerous Game", Belgrade Centre for Human Rights and Macedonian Young Loawyers' Association (MYLA), Oxfam, April 2017. Available at: http://azil.rs/zlostavljanje-izbeglica-i-migranata-u-opasnoj-igri-na-granicama-evrope/.

and Greece[36] are no longer willing to embark on a journey on which they would have to face organised criminal groups engaged in smuggling and human trafficking,[37] the local population in bordering areas of some countries who have organised the so called village patrols aiming to "hunt down" refugees,[38] cruel border police practices[39] and so on.

Importantly, more than 6,000 issued certificates on expressed intention to seek asylum do not reflect the actual number of persons who decided or at least genuinely considered staying in Serbia and applying for asylum. Rather, this figure is illustrative of the absence of a systemic solution in regulation of the legal status of foreigners who indeed are in need of international protection,[40] but do not wish to stay in Serbia which has not yet established an efficient asylum system.[41] The actual number of asylum-seekers in Serbia is considerably lower and could be more precisely ascertained relative to the number of persons who decided to apply for asylum – only 236 in 2017. So, in 2017 as in all the previous years (since the etablishment of the asylum system in 2008), MOI issued certificates on expressed intention to seek asylum to almost all of the persons who managed to enter into Serbia. As Serbia continues to be a transit country to a large extent, most of the migrants staying on its territory have the asylum-seeker status (have been issued certificates), but are at the same time on the lists for entry into Hungary[42] or try to leave the country in other ways (with the help of smugglers). In other words, certificates are used to legally regulate the status of all migrants because the normative framework of asylum and migration does not recognise other solutions related to differentiation of the migrants' status, irregular migrants in particular who do not express intention to seek asylum in Serbia, but are on our territory.

36 In the conditions which may often be described as inhuman and degrading and which certinly do not allow refugees to enjoy the rights stipulated in Articles 12– 34 of the 1951 Refugee Convention.

37 "Migrant Azad Ali: Bulgarian police 'helping smugglers", *SkyNews,* 13 February 2017. Available at: https://news.sky.com/story/migrant-azad-ali-bulgarian-police-helping-smugglers-10766940.

38 "Ruthless Bulgarian migrant hunter buys himself a HELICOPTER GUNSHIP to help round up refugees because 'they are all potential jihadists", *The Sun*, 20 March 2017. Available at: https://www.thesun.co.uk/news/3133668/bulgarian-migrant-hunter-buys-helicopter-gunship-refugees-jihadists/.

39 "Croatian police resorts to violence, refugees claim", *N1*, 2 June 2017. Available at: http://rs.n1info.com/a273381/Video/Info/Hrvatska-policija-koristi-nasilje-tvrde-izbeglice.html.

40 Because they come from e.g. Syria, Iraq or Afghanistan.

41 See more in *Right to Asylum 2016*, p. 20.

42 Lists for entry into Hungary are a consequence of the agreement between Serbia and Hungary made in 2016. See more in *Right to Asylum 2016*, p. 10.

A significant number of foreigners staying in the asylum and reception centres without certificates because they failed to register at the local police administrations should certainly not be neglected. There is no doubt that this practice makes them vulnerable as only the certificates (on expressed intention to seek asylum) can legally guarantee accommodation and access to basic services to them (health care, psycho-social support, etc.). All this indicates that the overall Serbian migration policy has not been clearly defined as yet, and therefore it potentially leads to arbitrary decisions and creation of legal uncertainty.

The reasons for existence of unregistered foreigners are multiple. We will mention but a few for the purposes of understanding the current situation. The most frequent reason is that at first the foreigners (at issuance of the first certificate) did not go the centres they were referred to in the certificates, or to any centre at all; or that they had left the centre after some time in order to try to cross the border irregularly (which they did not manage). In these cases, validity of their certificates expires after 72 hours and the re-issuance thereof is extremely complicated. Cases were also recorded when requests for initiation of measdemeanor procedures were automatically submitted against foreigners or when they were served with decisions on cancellation of stay, that would later automatically disqualify them for asylum-seeker status in police administrations because this information was entered into OKS and *Afis* databases.

Another persisting questionable practice is that the foreigners who did not wish to stay in Serbia were referred to asylum centres instead of to reception centres (established for temporary stay, for instance until entry into Hungary). And *vice versa*, many foreigners who wanted to stay in Serbia were referred to reception centres wherein the official activities of submission of asylum applications are not or are only seldom organised by the Asylum Office. In this way, the genuine asylum-seekers are deprived of access to the asylum procedure or their access to it is significantly impeded. Oftentimes, the legal representatives together with the Commissariat for Refugees and Migration and the Asylum Office spend several weeks attempting to organise transfer of these asylum-seekers into one of the asylum centres.[43]

3.2. Access to the Asylum Procedure in Police Administrations and Regional Border Police Centres

Numerous problems and deficiencies in the work of police administrations (PA) and regional border police centres (RBPC) were identified in 2017 as well. These adversely affected exercise of the foreigners' right of access to territory

43 *Right to Asylum 2016*, p. 21.

and the asylum procedures. One of the key problems issues results from the above described practice entailing issuance of certificates of expressed intention to seek asylum to all the foreigners without appropriate profiling i.e. without the assessment as to whether a certain foreigner is a genuine asylum-seeker in Serbia or not. And so it happens that the foreigners who do not wish to apply for asylum get reffered to asylum centres while those who genuinely intend to do so, or are at least considering staying, are issued certificates of intent with a referral for one of the reception centres rarely frequented by the Asylum Office.

The second problem persisting from previous years refers to foreigners who have decided to give up on the intention to leave Serbia and decided to genuinly apply for asylum. However, PAs refuse to issue new or duplicates of the old certificates to those foreigners who were automatically issued certificates of intent (which expired due to, for instance, failing to go to a centre), or whose stay had been cancelled.[44] This practice is particularly pronounced in the Belgrade Department for Foreigners.[45] In this way refugees are deprived of access to the asylum procedure and they are at risk of being treated like foreigners illegally staying the Republic of Serbia (in line with the Law on Foreigners) and of being removed to Macedonia or Bulgaria.[46] This practice is no doubt a consequence of the lack of understanding or misinterpretation of Articles 22 and 23 of the AL which were explained earlier and which essentially deprive the police officers of the possibility to refuse to issue certificates even in cases of evident abuse. An illustrative case happened on 28 July 2017 when Z.F. from Afghanistan was served with a decision on cancellation of stay[47] because the check in the OKS and *Afis* databases established that the certificate had been issued in February 2017. What the police officers of the Department for Foreigners did not know was that Z.F. had been collectively expelled (along with 24 persons) by the members of the joint police and army forces into Bulgaria after the certificate had been issued to her.[48]

The case of Z.F. is also illustrative of another problem prevailing in all the PAs and the RBPC – that of communication between police officers and foreigners. It is difficult to assume that foreigners are adequately advised on their rights,

44 See more in *Right to Asylum 2016*, p. 24.

45 *Right to Asylum in the Republic of Serbia – Periodic Report for July – October 2017,* Belgrade Centre for Human Rights, Belgrade 2017, pp. 8–9; *Right to Asylum in the Republic of Serbia – Report for April – June 2017*, Belgrade Centre for Human Rights, pp. 7–9.

46 These people are very often served with decisions on cancellation of stay which, in case of persons who fulfill the conditions set out in Article 1 of the 1951 Refugee Convention, gives rise to the risk of *refoulement* to one of the neighbouring countries that may not be considered safe for refugees.

47 Decision on Cancellation of Stay No. 26.2–2–493/17 of 28 July 2017.

48 *Right to Asylum in the Republic of Serbia – Report for January – March 2017*, Belgrade Centre for Human Rights, Belgrade 2017, pp. 21–26.

and especially so in situations when they are treated as illegal migrants,i.e. persons who have unlawfully entered into[49] or are unlawfully staying[50] on the territory of Serbia. In these situations, further to absolutely needing interpreters in order to be able to participate on equal grounds in the decisons concerning cancellation of their stay or requests to initiate misdemeanor procedures, they are also entitled to other rights pertaining to the persons deprived of liberty.[51] This primarily refers to the right to engage (as legally ignorant parties) legal representatives who would assist them in appealing decisions on cancellation of stay, rulings on confinement in the Shelter for Foreigners or even rulings on detention.[52] These are all the situations refugees and migrants often find themselves in, and are unable to enjoy the above-mentioned rights[53] due to the absence of interpreters for languages they understand.

> This year also BCHR intervened in a case whereby a foreigner, having been returned from Hungary, was prevented from accessing the asylum procedure.[54] In the concrete case it was an unaccompanied child from Afghanistan – M.W. whose stay was cancelled in a way (without interpreter and a legal representative of the centre for social welfare in his case) and for reasons described above (he was in Hungary and already had a certificate on intention to seek asylum automatically issued to him during his first stay Serbia). After the Department for Foreigners repeatedly refused to act in line with Articles 22 and 23 of the AL, the BCHR filed a request to ECtHR to indicate an interim measure in order to prevent deportation of M.W. into Bulgaria where he was at the risk of inhuman and degrading treatment. The interim measure was issued on 13 October 2017, but as at the moment of completion of this report, M.W. has still no access to the asylum procedure.[55]

This but one among numerous cases proving the claim that Serbia cannot be considered a safe country for refugees and that the Hungarian authorities

49 Article 65 (1,1) and Article 4, Law on Protection of State Border, *Sl. glasnik RS*, 97/08 and 20/15 – other law and Article 84 (1.1), LF.

50 Article 85, LF.

51 Excerpt from 2nd General Report [CPT/Inf (92) 3], para. 36 and Excerpt from 12th General Report, [CPT/Inf (2002) 15], para. 40, *CPT Standards – "Key" chapters of General Reports of the CPT*, CPT/Inf/E (2002) 1 – Rev. 2006, Strasbourg 2007.

52 Z.F. did not have access to any of the mentioned rights on 3 February 2017 when she was sent to police detention and when a request for initiation of a misdemeanors procedure was filed against her.

53 Concluding remarks on the 2nd periodic report of the Republic of Serbia, UN Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), CAT/C/SRB/CO/2*, 3 June 2015, para. 14.

54 On treatment of foreigners returned from Hungary see more in *Right to Asylum 2016*, pp. 25–26.

55 *M.H. v. Serbia*, App. No. 62410/17.

must refrain from expelling refugees into it. Refugees whom Hungary informally (without cooperation with the Serbian authorities) returns to Serbia are not guaranteed access to the asylum procedure and there is a well founded risk of them being treated like illegal migrants who should be thus expelled into countries such as FYROM and Bulgaria (risk of the so called *chain refoulement*).[56] A similar case happened in 2015 when the BCHR submitted a request for interim measure to the ECtHR on the account of deprivation of the right to access the asylum procedure on behalf of a Syrian refugee M.O. who was detained in the Shelter for Foreigners to be deported from Serbia.[57]

The unlawful practices of joint army and police forces established on the basis of a Government Decision in July 2016 persisted in 2017. It comes down to systemic violation of prohibition of collective expulsions which are no secret as reputable representatives of the Government are publicly boasting about the *results achieved*. Marking the first anniversary of establishment of the joint army and police forces, Aleksandar Vulin, Minister of Defence[58] stressed that almost 21,000 "migrants"had been prevented to enter into Serbia from Bulgaria and Macedonia[59] in that period. In February 2017, the BCHR documented collective expulsion of 25 Afghan refugees whom the joint army and police forces had deported after having issued certificates on the expressed intention to seek asylum to them.[60] This practice was denounced by the UN Human Rights Committee (HRC) in March 2017.[61] Also, the Macedonian non-governmental organisation MYLA publishes monthly reports about cases of collective expulsions from Serbia which amount to hundreds each month.[62] The same allegations are found in the report of Tomaš Boček, Special Rapporteur of the Secretary General of the Council of Europe for Refugees and Migrations.[63]

56 *Ilias and Ahmed v. Hungary*, App. No. 47287/15, para. 118.

57 *Othman v. Serbia*, App. No. 27468/15; *Right to Asylum in the Republic of Serbia 2015,* Belgrade Centre for Human Rights, Belgrade 2015, pp. 43–44.

58 Minister Vulin has already once publicly admitted that the border police collectively expelled 400 migrants to the territory of Macedonia back in 2015. See more in *Right to Asylum 2015*, p. 42.

59 "Were it not for army and the police – Vulin: There would now be 20,000 migrants in Serbia. Just imagine!", *Alo*, 22 July 2017. Available at: http://www.alo.rs/vulin-sad-bi-bilo-u-srbiji-20–000-migranata-zamislite-to/116084.

60 See more in *Right to Asylum January – March 2017*, pp. 21–26.

61 Concluding Observations on the Third Reriodic Report of Serbia, UN Human Rights Committee, CCPR/C/SRB/CO/3, 10 April 2017, paras. 32–33.

62 See eg.: "Field Report January 2017", "Field Report February 2017", "Field Report March 2017", "Field Report April 2017", and "Field Report May-June-July 2017," MYLA. Available at: http://myla.org.mk/en/publications/reports/.

63 Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on Migration and Refugees to Serbia and two transit zones in Hungary 12–16 June 2017, Council of Europe, SG/Inf(2017)33, 13 October 2017, p. 8.

3.3. Access to the Asylum Procedure at the Belgrade Airport "Nikola Tesla"

In 2017 also, the border police station Belgrade (Belgrade BPS) continued with the practice that directly contravenes the right to freedom and safety of persons[64] and the right of individuals to detailed assessment of the risks of treatment contrary to prohibition of abuse in the country of origin or a third country[65] prior to their deportation.[66] The foreigners who were assessed by Belgrade BPS as not to fulfill requirements for entry into Serbia are placed in separate transit area at the airport where they spend between several days and several weeks.[67] Belgrade BSP police officers still do not consider that they deprived these people of liberty, wherefore they do not issue decisions depriving them of liberty in the transit zone pending deportation.[68] Thus, there is no doubt that this category of foreigners is subjected to the practice that represents an unlawful and arbitrary deprivation of liberty.[69] Consequently, they are not entitled to notify a person of their choice that they were deprived of liberty, they do not have the right to engage a legal counsel, or the right to be familiarised with the procedure to be applied to them in a language they understand (their deportation to a third country or a country of origin they had flown in from).[70] Therefore, in case of foreigners in need of international protection, they are not even informed about the possibility to seek asylum. Simply put, foreigners who might be considered as *prima facie* refugees are simply put on the next available flight to their countries of origin or third countries at the expense of the airlines that flew them in.[71] This practice is risky from the aspect of compliance with the principle of *non-refoulement*.

All the above mentioned deficiencies were identified by the UN Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur) during his visit to Serbia and Belgrade BPS in November

64 Article 5–1-f European Convention.

65 Article 3 and Article 13 related to Article 3 of the European Convention imposing an obligation on States to assess with rigorous scrutiny the risks of torture, inhuman or degrading treatment or punishment; *J.K. and others v. Sweden*, App. No. 59166/12, para. 83 and *F.G. v. Sweden*, App. No. 43611/11, para. 115.

66 See more in *Right to Asylum* 2016, pp. 31–33.

67 *Ibid*, p. 32; *Arons v. Serbia*, App. No. 65457/16.

68 Such possibility does not even exist in the legal framework of Serbia.

69 *Amuur v. France*, App. No. 19776/92, paras. 48 and 49.

70 Excerpt from the 2nd General Report [CPT/Inf (92) 3], para. 36 and Excerpt from the 12th General Report, [CPT/Inf (2002) 15], para. 40, *Standards of the CPT – "Key" chapters of General Reports of the CPT,* CPT/Inf/E (2002) 1 – Rev. 2006, Strasbourg 2007.

71 Article 22, LF.

2017. The Special Rapporteur found the conditions in the areas occupied by foreigners who do not fulfil the requirements for entry into Serbia as inadequate because hygiene is very poor, and the toilets are ruined. He stressed there is no drinking water, heating, appropriate beds and fresh air inflow there. The authors of this report opine that all the listed deficiencies may be characterised as inhuman and degrading.[72] The Special Rapporteur also established that the existing practice of deportation was risky from the aspect of compliance with the principle of *non-refoulement*, the fact that only BCHR has been stressing for years,[73] although it does not have access to the transit zone unlike the Protector of Citizens and NPM. In his report for Serbia, the Special Rapporteur recommended improvement of the conditions in the premises where foreigners are kept arbitrarily deprived of liberty; that the foreigners deported to the countries of origin or third countries should be explained all their rights in languages they understand; and that they should be allowed to have the decision on deportation (which is not issued at all) reviewed by an independent judicial authority.[74]

Belgrade BPS assessed that a total of 498 foreigners did not fulfil the requirements to enter into Serbia in the first six months of 2017. Of them, nationalities with respect to which there exists a founded concern about the violation of the principle of *non-refoulement* were Iran (7), Palestine (4), Syria (3), Libya (3), Iraq (3) and Afghanistan (2). Similarly, one should not neglect the fact that the nationals of Turkey were the most numerous group (112) denied entry into Serbia this year again, which may be worrying in view of the state of human rights in this country following the failed military coup.

> The case of M.A, national of China who was unlawfully and arbitrarily deprived of liberty in the Airport transit zone from 30 September to 3 October 2017 is also interesting. M.A. claimed he had expressed intention to seek asylum to the Belgrade BPS police officers but that they refused to allow him access to the procedure. Of particular concern is the fact that during his confinement in the transit zone, the Belgrade BPS informed the Embassy of the National Republic of China in Serbia and invited them to visit M.A, though

72 Report on the visit to the Border Police Station at the Belgrade Airport "Nikola Tesla ", National Preventive Mechanism for Prevention of Torture – Protector of Citizens. Follow-up on procedures receommended by NPM, Reg.No. 37664 of 13 October 2017. Report available at: http://www.npm.rs/attachments/article/734/37664.pdf.

73 See also, Concluding Observations on the Second Periodic Report of Serbia, CAT/C/SRB/CO/2*, 3 June 2015, paras. 14–15.

74 Preliminary Observations and Recommendations of Mr Nils Melzer, the UN Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment regarding the official visit to Serbia and Kosovo from 13 to 24 November 2017, Special Rapporteur, Geneva, 27 November 2017. Available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22453&LangID=E.

> M.A. explicitely refused this. This act and the very informing and inviting the representatives of the embassy of the country of origin represents a violation of the principle of confidentiality of the foreigner seeking asylum (Art. 18, LA). Following numerous discussions of the BCHR representatives and Belgrade BPS police officers, M.A. was issued a certificate on expressed intention to seek asylum and he was transferred to the Shelter for Foreigners.[75]

In the course of 2017, the Belgrade BPS issued 84 certificates on expressed intention to seek asylum, which represent a significant progress relative to 2016 when only 19 certificates were issued. In the majority of cases, the BCHR intervened on the phone and there were no major problems requiring contacting the ECtHR with requests for an interim measure, as in the past when the BCHR lawyers prevented *refoulement* into Greece,[76] Somalia[77] and Turkey.[78] Still, the problems persist in that the BCHR lawyers do not have access to the transit zone, and that not all the foreigners have a possibility of obtaining free legal aid, but only those who contact BCHR directly.[79]

3.4. Access to the Asylum Procedure in the Shelter for Foreigners

Good cooperation with the Shelter for Foreigners continued in 2017. The BCHR lawyers enjoyed unimpeded access to all the foreigners confined there. Also, all the foreigners (who wished so) could access the asylum procedure easily.

Importantly, the general impression is that Serbia is a country which does not resort to deprivation of liberty of asylum-seekers in the true sense of the word for the duration of the procedure. In the course of 2017, the Asylum Office issued only 3 rulings on placement of foreigners into the Shelter in order to ensure unimpeded implementation of the asylum procedure. The total number of foreigners (whose origin indicated they may be in need of international protection) deported from the Shelter into the neighbouring Bulgaria was only eight (Afghanistan 2, Pakistan 4 and Iran 1).[80]

75 See also in *Right to Asylum, July – October 2017*, pp. 10–11.

76 *P. S. v. Serbia*, App. No. 90877/13.

77 *Ahmed Ismail (Shiine Culay) v. Serbia*, App.No. 53622/14.

78 *Arons v. Serbia*, App. No. 65457/16.

79 By telephone or electronic mail.

80 See more on deficiencies of the procedure of deportation from the Shelter in *Right to Asylum 2016*, p. 33.

3.5. Access to Asylum Procedure in the Extradition Proceedings

When no ratified international treaty is in place or when certain issues have not been regulated by it, the procedure of extending international legal assistance in criminal matters is governed by the Law on International Legal Assistance in Criminal Matters (LIACM).[81] International legal assistance includes extradition of a defendant or a convict, assumption and transfer of criminal prosecution, enforcement of criminal judgement, as well as other forms of international legal assistance.

The first instance proceedings for extradition of defendants and convicts are conducted by a higher court. Ruling in the second instance is within the mandate of the appellate court (extradition proceedings).[82] If the higher court finds all the requirements set forth in Articles 7 and 16 of LIACM to be fulfilled, it will establish so in a decision,[83] which may be appealed with the appellate court.[84] On the other hand, if the higher court establishes that the requirements set down in the above articles of LIACM have not been fulfilled, it will also forward this

81 *Sl. glasnik RS* 20/09.

82 Articles 23 and 24, Law on Organisation of Courts, *Sl. glasnik RS* 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law, 101/11, 101/13, 106/15, 40/15 – other law, 13/16, 108/16 i 113/17.

83 Article 7, LIACM stipulates that the court shall decide on fulfillment of the requirements in cases of provision of international legal assistance including: that the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia; that the proceedings on the same offence have not been fully completed before the national court, i.e. a criminal sanction has not been fully executed; that the criminal prosecution, i.e. the execution of a criminal sanction is not excluded due to the state of limitations, amnesty or an ordinary pardon. Article 16, LIACM sets down the requirements in cases of extradition: the person, in respect of whom extradition is requested, is not a national of the Republic of Serbia; the offence, in respect of which extradition is requested, was not committed in the territory of the Republic of Serbia, and not committed against it or against its citizen; the same person is not prosecuted in the Republic of Serbia for the offence in respect of which extradition is requested; in accordance with the national legislation conditions exist for reopening the criminal case for the criminal offence in respect of which extradition is requested; proper identity of the person in respect of whom extradition is requested is established; there is sufficient evidence to support the reasonable doubt, i.e. an enforceable court decision is in place demonstrating that the person in respect of whom extradition is requested has committed the offence in respect of which extradition is requested; the requesting party guarantees that in case of conviction *in absentio* the proceeding will be repeated in presence of the extradited person; the requesting party guarantees that the capital offence provided for the criminal offence in respect of which extradition is requested will not be imposed, i.e. executed.

84 An appeal on the decision on fulfillment of requirements for extradition cannot be filed only in cases of simplified extradition, i.e. when a person requested for extradition consents to be extradited in a simplified procedure (Art. 30, LIACM).

decision to the appellate court for review. The appellate court may uphold, annul or reverse the first instance decision.

When the competent court issues a decision on the case and establishes whether the requirements for extradition have been fulfilled, the minister of justice will pass a final decision on whether the extradition would be granted or refused.[85] The minister shall decide on whether the request for provision of international legal assistance refers to a political offence or an offence related to a political offence, i.e. criminal offence comprising solely a violation of military duties. The Minister shall also decide on whether the provision of international legal assistance would infringe sovereignty, security, public order or other interests of essential significance for the Republic of Serbia.[86] If the court finds that requirements for extradition have not been met, the final decision on refusal to extradite shall be transmitted to the ministry of justice which will inform the requesting state thereof.[87]

Detention in extradition proceedings may not last more than one year from the day when the person sought for extradition was detained, whereupon it must be discontinued and replaced, if necessary, by a more lenient measure to ensure presence of a person whose extradition is requested.[88] The provisions the Criminal Procedure Code and the laws governing organisation and jurisdiction of courts and public prosecutors' offices are applied accordingly in the proceedings on provision of international legal assistance.[89]

The Republic of Serbia has ratified the European Convention on Extradition[90] and the LIACM if fully aligned with it.

3.6. Practice of the Competent Authorities

In 2017, the BCHR lawyers represented three asylum-seekers who were at the same time subject of extradition proceedings. Extradition proceedings against two persons were finalized in 2017 and both were extradited to the requesting states. Final decisions in their asylum procedures, however, were never passed. The asylum and the extradition procedures for the third BCHR client began in 2017, but as none of them were decided on finally at the time of this report, this case will not be discussed in detail.

85 Article 31, LIACM.
86 Article 7, LIACM.
87 Article 28, LIACM.
88 Article 22, LIACM.
89 Article 12, LIACM.
90 *Sl. list SRJ (Međunarodni ugovori),* 10/01 and *Sl. glasnik RS (Međunarodni ugovori),* 12/10.

In all the three cases the asylum-seekers were in extradition detention throughout the duration of the proceedings and had full access to the asylum procedure. The BCHR lawyers had access to and unimpeded communication with them.

The common denominator in the first two cases of asylum-seekers is the fact that the competent authorities of the Republic of Serbia extradited them to the requesting states: Russia and Turkey, before final decisions were passed on their applications in the Republic of Serbia. Moreover, both asylum applications were dismissed because the countries they arrived from – Turkey and Montenegro – were on the list of safe third countries. This means that the administrative bodies in the asylum procedure did not even examine the merits of their requests for international protection.

On the other hand, the authorities in charge of ruling in extradition proceedings solely established whether the requirements set down in Articles 7 and 16 of LIACM had been fulfilled. Following the issuance of final rulings on fulfilment of the requirements, the Minister of Justice permitted their extradition and they were extradited to the requesting states in absence of final decisions on their asylum applications.

Problems in practice appear because the extradition proceedings and the asylum procedure are conducted simultaneously, albeit independently from one another. The competent authorities in extradition proceedings apply the provisions of LIACM, the European Convention on Extradition and bilateral treaties exclusively, ignoring other relevant international treaties ratified by Serbia. With respect to conducting extradition proceedings against persons seeking asylum in the Republic of Serbia, it is important to draw attention to the Articles 16 and 18 of the Constitution of the Republic of Serbia which, *inter alia*, stipulate that the ratified international treaties represent an integral part of the legal system in the Republic of Serbia and are to be applied directly, as are the human and minority rights guaranteed in the generally accepted rules of international law and the ratified international treaties.

In none of the two cases had the court and the Minister of Justice considered the potential risk from returning asylum-seekers into the countries of origin, though they were under the obligation to apply the provisions of the ratified international treaties directly. UN Convention against Torture (Art. 3) ratified by Serbia, prohibits extradition of a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. Articles 7 and 10 of the International Pact on Civic and Political Rights and Art. 3 of the European Convention for Protection of Human Rights and Fundamental Freedoms contain an equal prohibition. Further to the above provisions, Article 33 of the Refugee Convention is also relevant as it proclaims prohibition

of expulsion and return (*refoulement*) of persons to the territories where they would be at risk of torture, inhuman or degrading treatment or punishment. The Republic of Serbia even disregarded an interim measure of the UN Committee against Torture[91] in one of these cases. This will be discussed in detail below. [92]

A specific problem is automatic application of the safe third country concept by the administrative bodies in the asylum procedure. They dismissed the asylum applications of almost all the persons who entered Serbia from one of the countries on the list of safe third countries, and declined jurisdiction.[93] On the other hand, the bodies ruling in extradition proceedings extradited the asylum-seekers without a final decision on their asylum applications and without examining potential risks of persecution in the countries of origin, rigorously abiding by the provisions of LIACM inly.

The competent authorities in both the asylum procedure and the extradition proceedings did not examine the risks of persecution in the countries of origin (the very grounds these persons had requested international protection from the Republic of Serbia on) but extradited the persons in question to these countries precisely. In one case the Asylum Office established the jurisdiction of Montenegro in examining the asylum application,[94] and the authorities in charge of extradition proceedings extradited the person to Turkey. In the other, they established the jurisdiction of Turkey in the asylum procedure [95]and extradited the person to Russia.

3.7. The case of Cevdet Ayaz

The extradition of a Turkish national Cevdet Ayaz in December 2017 attracted enormous attention and triggered reactions in Serbia and abroad. Cevdet Ayaz applied for asylum in the Republic of Serbia. In parallel with the asylum procedure, proceedings against him were taking place before the Higher Court in Šabac for extradition to the judicial authorities of the Republic of Turkey. The BCHR legal team represented Ayaz in both procedures. [96]

Cevdet Ayaz is a Kurdish political activist, official of the Kurdistan Freedom Party, sentenced to 15 years of prison in Turkey for destruction of constitutional

91 Motion of the Committee against Torture no. 857/2017 of 11 December 2017.

92 See more: *Case of Cevdet Ayaz*.

93 See more in chapter 5.

94 Decision of Asylum Office no. 26–257/17 of 22 September 2017.

95 Decision of Asylum Office no. 26–1414/16 of 26 January 2017.

96 All documents related to this case available in archives of the Belgrade Centre for Human Rights.

order. In 2001, Ayaz was arrested by the members of Turkish security forces and spent nine days in police detention. The then effective law of Turkey allowed for the suspects of terrorist acts to be detained for several dozens of days, without the possibility to inform a person of their choice and engage a lawyer. Since these regulations contravene the spirit of the European Convention, the European Court of Human Rights ruled in the case *Ayaz and others v. Turkey*[97] that Turkey had thus violated the right of Mr Ayaz and other applicants to freedom and security guaranteed by Article 5 of the Convention.

However, notwithstanding the 2006 ECtHR judgment and unequivocal indications that the judgment of the Turkish court (the enforcement of which this country requested his extradition for) was based exclusively on admission extorted during his nine-day detention, he was not granted protection, i.e. refugee status in the Republic of Serbia. Starting from the fact that Ayaz entered Serbia from Montenegro, the Asylum Office applied the safe third country concept and declined jurisdiction for ruling on his asylum application.[98] The Asylum Office upheld this decision.[99]

However, no final decision was ever made in the asylum procedure of Cevdet Ayaz in the Republic of Serbia. He was extradited to the Republic of Turkey before the Administrative Court ruled in this administrative matter. Namely, in keeping with the provisions of the Law on General Administrative Procedure, having received the first instance decision of the Asylum Office, the asylum-seekers are entitled to 15 days timeframe to submit a complaint with suspensive effect.[100] The complaint is adjudicated by the Asylum Commission which passes the final ruling in the asylum procedure. This final ruling of the Asylum Commission may be contested in an appeal filed with the Administrative Court within 30 days.[101] As a rule, the appeal does not stay enforcement of the ruling of the Asylum Office. But if the plaintiff so requests, the court may stay enforcement of the final administratrive act on adjudication of the administrative matter on the merits, until the court ruling, if such enforcement would cause the plaintiff harm which would be difficult to correct and if such stay is not contrary to the public interest, nor would it give rise to a greater irreparable harm to the opposing client, i.e. the interested person.[102] The rulings passed in administrative proceedings are binding and final and regular legal remedies cannot be filed against them. [103] In the BCHR practice, Administrative Court rescinded the rulings of

97 *Ayaz and others v. Turkey*, App. No. 11804/02.

98 Decision of Asylum Office no. 26–257/17 of 22 September 2017.

99 Decision of Asylum Office no. Až –37–1/17 of 22 November 2017.

100 Article 153, Law on General Administrative Procedure.

101 Article 18, Administrative Disputes Law.

102 Article 23, Administrative Disputes Law.

103 Article 7, Administrative Disputes Law.

the Asylum Commission several times stating that the safe third country concept cannot be applied automatically and that the circumstances of each case should be considered.[104]

On the other hand, in extradition proceedings initiated on the basis of an arrest warrant issued by the Turkish authorities, human rights violations and persecution in the state requesting extradition were not considered at all. Furthermore, during the extradition proceedings that lasted for over a year, the competent authorities violated a number of Cevdet Ayaz's fundamental rights guaranteed by the laws and the Constitution of the Republic of Serbia as well as by the ratified international treaties. Having spent a year in the detention in the Šabac prison – a maximum duration of detention in extradition proceedings, he was transferred to the Shelter for Foreigners in Padinska Skela under police escort during the night between 30 November and 1 December. There, he was arbitrarily and unlawfully deprived of liberty for 25 days with no decision he would have had the right to appeal with the competent court. The Appellate Court in Novi Sad rescinded the rulings of the Higher Court in Šabac allowing his extradition three times on the grounds that *inter alia* the relevant documents had not been translated from Turkish into Serbian properly. However, the decisive fourth time in adjudicated on the defense's complaint that the deputy appellate public prosecutor in Novi Sad also agreed with, the Appellate Court in Novi Sad upheld the first instance decision and established that requirements for extradition had been met, even though the documents were not properly translated once again.

Bearing in mind the BCHR experience in representation of asylum-seekers subject to extradition procedures to date, and even more so the fact that several clients from different countries have been returned to their countries of origin without due consideration of risks they would be exposed to there, the legal team of BCHR contacted the UN Committee against Torture on 7 December requesting it to instruct Serbia to refrain from returning Ayaz before the procedure before CAT is completed. UNCAT endorsed this request on 11 December, and instructed the Republic of Serbia to refrain from returning Ayaz to Turkey until final decision in the procedure before this body was passed. [105]

However, despite the existence of the above interim measure, the Appellate Court in Novi Sad established on 14 December that the requirements for extradition had been met. Only a day later – on 15 December, the last instance in extradition proceedings – the Minister of Justice – signed a decision authorising extradition of Cevdet Ayaz to the Republic of Turkey. Cevdet Ayaz was extradited to Turkey on 25 December 2017 – ten days after the Minister authorised his extradition.

104 See more in chapter 5.

105 Motion of the Committee against torture no. 857/2017 of 11 December 2017.

All the authorities competent for adjudicating and enforcement of the extradition proceedings – the Appellate Court in Novi Sad, the Higher Court in Šabac, the Ministry of Justice and the Ministry of Interior were cognizant of the UNCAT recommendation in good time. Still, not a single of the above authorities cared about the international obligations assumed by the Republic of Serbia. The Ministry of Justice gave contradictory information to the Serbian public several times –that Ayaz had been returned to Turkey earlier; that the decision on extradition had been signed before the UNCAT recommendation was received, etc. In this way, the authorities of the Republic of Serbia decided to contradict openly the motion of one of the most expert and most important UN bodies in the domain of protection of human rights and fundamental freedoms.

Having acted in this way, Serbia committed a violation of Art.3 of the UN Convention against Torture prohibiting extradition of any person into a country where he is at risk of torture, Articles 7 and 10 of the International Pact on Civic and Political Rights, as well as the Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which contain equal prohibition. After Ayaz's extradition, Jens Modvig, the UNCAT Chairman stated this act of Serbia was extremely worrying as the case in point concerned a person who had requested UNCAT protection and that the state of Serbia had ignored these safeguards. According to Modvig, Serbia thus committed a violation of the United Nations Convention against Torture.[106]

106 Available at: https://www.slobodnaevropa.org/a/intervju-jens-modvig/28944192.html.

4. ASYLUM PROCEDURE

4.1. First Instance Procedure

The asylum procedure is governed by the Law on Asylum, which is applied as *lex specialis* that prevails over the Law on General Administrative Procedure (LGAP).[107] The asylum procedure shall be initiated by the submission of an asylum application to an authorised police officer on a standard form prescribed by the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to the Asylum-Seekers or the People Granted Asylum or Temporary Protection (Art. 25, AL). Therefore, asylum applications are submitted directly to the Asylum Office officers and cannot be filled in and submitted in writing. The submission of asylum applications is preceded by registration (Art. 24, AL) which includes: establishment of the applicant's identity, their photographing, fingerprinting and temporary seizure of all their personal documents that may be of relevance to the asylum procedure. Registration essentially boils down to the same measures taken during the entry of foreigners in the records, i.e. issuance of certivicates on intent to seek asylum and the taking of their personal and biometric data, photographing and entry into *Afis* database.[108]

Under the Asylum Law, foreigners shall be issued asylum-seeker IDs after they register. However, the Asylum Office usually issues IDs to asylum-seekers only after they submit their asylum applications, which is in contravention of Article 24(4) of the Law on Asylum. The Asylum Office justifies this practice by its endeavor to prevent abuse of asylum-seeker IDs by foreigners who do not genuinely intend to stay in Serbia.

Under Article 25 of the AL, foreigners shall submit their asylum applications within 15 days from the day they are registered. The first instance procedure also involves interviews of the applicants about their applications (Art. 26, AL). The Asylum Office shall provide the asylum-seekers with interpreters for the languages they understand. The interpretation services are funded by UNHCR.

The asylum procedure may be completed by the adoption of a decision upholding the asylum application (Art. 28, AL), rejecting it on the merits (Arts.

107 *Sl. glasnik RS*, 18/16.

108 In other words, the registration conducted in practice on the day of application for asylum represents an unnecessary loss of time and MOI resources as, rather than subjecting asylum-seekers to verification in the *Afis* again, the MOI could simply forward a copy from this database to the Asylum Office on the day the foreigners submit their application.

29 and 30, AL), dismissing it (Art. 33, AL) or suspending the asylum procedure (Art. 34, AL).

The Asylum Office registered 244 foreigners and issued 217 asylum-seeker IDs, 236 foreigners applied for asylum, and 106 were interviewed in 2017. Most of the foreigners who actually applied for asylum were nationals of Pakistan – 49, Afghanistan – 48, Iraq – 30, Cuba – 30 and Syria – 16. The Office upheld 14 (6 decisions)[109] and rejected 11 applications on the merits, dismissing another 56 applications. Procedures were suspended for 158 applicants, because the asylum-seekers had in the meantime left Serbia or their temporary places of residence including the asylum centres without informing the Office about it. The Asylum Office granted asylum to 3 applicants and subsidiary protection to 11 applicants of the 14 applications it upheld in 2017. Asylum was granted to the nationals of Afghanistan, Syria and Burundi. Subsidiary protection was awarded to the nationals of Libya (9), Ukraine (1) and Nigeria. Most of the dismissed applications had been filed by the nationals of Afghanistan (16), Iraq (9) and Russia (4). The applications rejected on the merits were filed by the citizens of Afghanistan (2), Somalia (3), Iraq (1), Ghana (1), Cameroon (1), Ukraine (1), Bulgaria (1) and BiH (1). The Asylum Office granted asylum to 43 persons and subsidiary protection to 58 persons since the Asylum Law came into force in 2008 and until the end of 2017.[110]

These data lead to the conclusion that most of the foreigners (158) absconded from the procedure before the Asylum Office had ruled on their application. On the other hand, in 69% of the cases (56 persons), the Office dismissed the applications because it held that the procedural requirements for reviewing them on the merits were not fulfilled.[111] In 31% of the cases (25 persons), the Office decided to review the asylum applications on the merits. Out of these 25 cases, the Office upheld 56% (14) (deciding to grant asylum),[112] and rejected 44% (11) applications. The analysis of the data on nationality of the applicants whose ap-

109 A nine-member Libyan family was granted subsidiary protection in October 2017, Decision of Asylum Office No. 26–5489/15 of 20 October 2017.

110 In the official records of the Asylum Office, 104 persons who were granted asylum. However, the Asylum Commission annulled three decisions on subsidiary protection and remanded them to the Office.

111 Almost 90% of asylum applications were dismissed on the basis of Article 33 (1.6) providing that an asylum application would be dismissed if the asylum-seeker had transited a safe third country, i.e. country that the Office assessed as being safe for him, before arriving in Serbia. Several aplications were dismissed because the Office found that the foreigners had arrived from the safe country of origin (1), or that they could have found protection in some other region of the country of origin (2).

112 Amounts to three decisions only as one decision referred to nine members of a Libyan family.

plications were rejected on the merits shows that in 6 cases the applicants may be considered *prima facie* refugees[113] (2 from Afghanistan, 3 from Somalia and 1 from Iraq), while this cannot be asserted for the other 5 (from Ghana, Cameroon, Ukraine, Bulgaria and BiH). Given the fact that the BCHR lawyers represented only the nationals of Iraq and Ghana, the quality of the decisions made in other cases cannot be assessed. In any case, it is evident that the number of cases reviewed on the merits in the first instance procedure is still low, [114] i.e. that Serbia continues to apply the safe third country concept almost automatically, and asylum-seekers stand more than 50% of chance to be recognised as persons in need of international protection when their cases are reviewed on the meritum.

Pursuant to Article 145(3) of GAPL, the Asylum Office is under the obligation to interview the applicant, render a first instance decision and serve it on the applicant within two months from the day of submission of the application. Otherwise, the applicant is entitled to file an appeal with the Commission quoting *silence of the administration*.[115] As the Asylum Office lacks human resources, the applicants wait for first instance decisions much longer that two months as a rule. In fact, from the aspect of Office's deciding on the applications, 2017 could be considered as the year when the practice of this body retrogressed relative to the previous years.

> Thus, in the case of M.K. who expressed intention to seek asylum on 6 December 2016, submitted an application on 24 January 2017, the decision was made only on 1 August 2017 and served on his counsel on 7 August 2017. In the case of Y.K, the certificate on expressed intent to seek asylum was issued on 6 December 2016, the application was submitted on 24 January 2017, and positive decision has been made in January 2018.[116] . M.O.M. applied on 13 September 2016, the first instance decision was passed on 15 June 2017 and served on his counsel on 20 June 2017.

With respect to an appeal on the silence of administration as a legal remedy obliging the Asylum Office to speed up the process, the general impression is that of ineffectiveness of this legal remedy. In almost a decade since its establishment, the Asylum Commission decided an application on the merits only once.[117] In other words, appealing for silence of administration would only prolong the first-instance procedure by several months. Therefore, the BCHR law-

113 Because they are nationals of Afghanistan (2), Somalia and Iraq.

114 The application of the asylum-seeker from Ghana was considered on the merits because he had flown in to Serbia from Turkey. Decision of Asylum Office no. 26–218/17 of 15 August 2017.

115 Article 151 (3), Law on General Administrative Procedure.

116 Decision number: 26–78/17, from 10. January 2018.

117 *Right to Asylum*, pp. 46–47.

yers held that it is in the best interest of their clients to wait for the first instance decision of the Office.

On 1 August 2017, the Asylum Office passed a decision no. 26–77/17 awarding asylum to the Afghan national H.M.K. due to persecution that he had been subjected to by the Taliban in his country of origin for having worked as an interpreter for the occupation forces of the United States of America. This decision represents the best practice example because the first instance body considered all the relevant reports indicating the vulnerability of this social group (interpreters). The part of the decision where the Office established that Bulgaria may not be considered a safe third country in the case of H.M.K. for ill-treatment he was subjected to by the Bulgarian police and the local population is even more significant.

The Asylum Office passed the second important decision on 20 September 2017. godine[118] when R.G.E, national of Burundi, was recognised as a refugee *sur place*. The asylum-seeker had lived in Serbia since 2011, and the risk of persecution arose subsequently. The Asylum Office established correctly that the person in question was from a mixed marriage and that this could constitute the grounds for discrimination and persecution in case of his return. It also established the risk of persecution for political activity of his family who opposes the regime of the President Pierre Nkurunziza.[119]

On 20 October 2017, the Asylum Office passed a decision upholding the asylum application of a nine-member family A. from Libya and granting them subsidiary protection.[120] Thus a full stop was put on the procedure that had been returned to the Asylum Commission several times over a two-year period which persistently pointed to the Office that UNHCR Positions on Returns to Libya of 2014[121] and 2015[122] must be taken into account as well as the report of the UN Support Mission to Libya on the human rights situation in Libya.[123] This case is of paramount importance because by granting subsidiary protection to the family A. The competent authorities of Serbia accepted that there still prevails a situation of general insecurity in the war-torn Libya.

118 Decision of Asylum Office no. 26–2434/16.

119 *Right to Asylum, July – October 2017*, pp. 15–16.

120 Decision of Asylum Office no. 26–5489/15.

121 UNHCR Position on Returns to Libya, UNHCR, November 2014. Available at: http://www.refworld.org/pdfid/54646a494.pdf.

122 UNHCR Position on Returns to Libya – Update I, UNHCR, October 2015. Available at: http://www.refworld.org/docid/561cd8804.html.

123 Report on the Human Rights Ssituation in Libya, OHCHR – United Nations Support Mission in Libya, 16 November 2015. Available at: http://www.ohchr.org/Documents/Countries/LY/UNSMIL_OHCHRJointly_report_Libya_16.11.15.pdf.

Probably the most interesting decision of the Asylum Office in 2017 was that of 15 June 2017[124] whereby an asylum application of an Iraqi national M.O.M. was rejected because it found there are reasons for exclusion from refugee protection. Namely, in its decision the Office invoked Article 31(1) of the AL[125] providing that *the right to asylum shall not be recognised to a person with respect to whom there are serious reasons to believe that he/she has committed a crime against peace, a war crime, or a crime against humanity, according to the provisions of international conventions adopted with a view to preventing such crimes*. More accurately put, the first instance body took the stand that the applicant had abused the convicts while working as a security officer in one of the prisons in Iraq.

The above decision implies that the first instance body established M.O.M. fulfilled the requirements set down in Article 1 of the Refguee Convention and that he had been exposed to persecution by radical Islamic groups who fought on the side of ISIL in the country of origin. It also excluded Bulgaria as a safe third country because M.O.M. had been pushed back from Bulgaria into Turkey several times and thereafter ill-treated by the Bulgarian police. However, due to the fact that one of the spectators, in one of the video recordings the asylum-seeker submitted as proof (indicating he was publicly marked by the radical Islamists in one of the TV shows), said he had been tortured by M.O.M. in prison, the first instance body decided to trust that statement and exclude him from refugee protection. The highest quality part of this decision is the one where the Asylum Office, guided by the absolute nature of the principle of *non-refoulement*, left out its standard order on leaving the territory of Serbia upon final decision for the very risk of ill-treatment in Bulgaria and Iraq.

What BCHR deems questionable is that one statement that was not, and could not have been, checked sufficed for the M.O.M. to be excluded from refugee protection while numerous publicly available sources and M.O.M's certificates from the human rights domain[126] and positive reports of Amnesty International (AI) on the prison he had worked in had been neglected in assessment of proof. BCHR believes that the Asylum Office must have been aware that application of Article 1(F) of the Refugee Convention[127] has grave implications and that therefore this clause must be applied extremely restrictively.[128] When interpreting this provision, UNHCR guidelines and standards lead to a conclusion

124 Decision of Asylum Office no. 26–2303/17.

125 Article 1(F)(a), 1951 Convention Relating to the Status of Refugees.

126 Certificates issued by UNDP and governments of USA, UK and Germany.

127 Refugee Status Determination – Identification of Refugees – Self-Study Module 2, UNHCR, Belgrade, August 2008, p. 76.

128 *Ibid.*

that "serious reasons must exist to consider" that the applicant had committed or taken part in commission of crimes ennumerated in Article 1(F). "Serious reasons" are understood as clear and credible information supporting the decision to exclude a person who fulfills the requirements of Article 1 of the Refugee Convention.[129] Consequently, just as in the case of establishment of refugee status, establishment of reasons for exclusion from refugee protection does not require the standard "beyond reasonable doubt", but existence of "serious reasons". The burden of proof for application of this clause lies on the decision maker. In exceptional cases, however, a reversal of the burden of proof may be justified. In the BCHR opinion, the above conditions were not fulfilled in the case of M.O.M, so it filed an appeal with the Asylum Commission.

A conclusion that may be drawn with respect to the quality of work of the Asylum Office in 2017, and with a view to deciding on the merits is that some of the decisions included truly high quality reasonings and that these decision represent best practice examples. Still, it must be noted that it was only in 32.3% of the cases that the Office decided to examine them on the merits (concerning 21 person), and in 13 decisions only. Taking in consideration the fact that the case of family A. from Libya, and the case of a Syrian national who was granted asylum as a refugee *sur place*,[130] date back to 2015, it is clear that the Asylum Office decided to examine the cases on the merits in only 11 procedures concerning 11 asylum-seekers in the whole of 2017. This information indicates a continuing tendency of this body to apply the safe third country concept which will be discussed in more detail in a separate part of this report.

4.2. Second Instance Procedure

Second instance procedures are conducted by the Asylum Commission composed of nine members appointed by the Government of the Republic of Serbia. The Commission includes a chairperson and eight members. The Law on Asylum does not set down adequate criteria for their appointment that would ensure professionalism and independence of this body.[131] The decisions passed in 2017 represented a continuation of an erroneous practice of this body based on the application of the safe third country concept event when the first instance body assessed cases on the meritum.

129 *Ibid*, p. 77.

130 The BCHR lawyers are not conversant about the details of this case as they were not acting as counsel in the asylum procedure.

131 A person may be appointed the Chairman or a member of the Asylum Commission if he/she is a citizen of the Republic of Serbia, has a university degree in law and a minimum of five years of working experience as a practicing lawyer, and is familiar with regulations in the field of human rights (Art. 20(3), LA).

The appeals procedure is governed by the Law on General Administrative Procedure. Appeals may be filed within 15 days from the day first instance decisions are served on the asylum seekers or their legal counsel. These appeals have suspensive effect.[132] Appeals may be filed when a first instance decision was not passed within the two monts from submission of asylum application (due to silence of the administration).[133] In those cases the Asylum Commission shall require the Asylum Office to specify the reasons for the delay.[134] If the second instance body finds that a decision was not passed within the deadline for justified reasons or through the fault of the asylum-seeker, it will set another deadline, not exceeding one month, by which time the first instance body is to adopt a ruling. In the event the Asylum Commission finds that the reasons for the delay were not justified, it will request that the Asylum Office forward its case files. If the second instance body is able to resolve the administrative matter based on the finding of facts in the case files, it shall rule on the matter. If it cannot do that, it will review the case and resolve the administrative matter. If the Asylum Commission finds that the Asylum Ofice will review the matter more rapidly and cost-effectively, it will instruct it to do so and forward the collected information whereafter it will itself rule on the asylum application.[135]

In practice, however, the Asylum Commission has never reviewed or ruled on the merits in cases of appeals on silence of the administration and has only set the Asylum Office an additional deadline to render the first instance decision. In other words, the first instance decisions will be rendered more quickly if the asylum-seekers wait for the first instance body to rule on their applications because appeals complaining about silence of the administration practically protract the first instance procedure and do not constitute an effective legal remedy that can help improve the operation of the Asylum Office.

Rulings on appeals must be issued and served on the parties as soon as possible and no later than two months from the day of submission. The Asylum Commission exceeded the deadline in nearly all the cases in which the asylum-seekers were represented by the BCHR lawyers. Not even in one case had the Asylum Commission held oral hearings to additionally clarify the facts. In the event that the second instance body finds that the facts were incorrectly or incompletely established, that the procedure was not in compliance with the rules of procedure relevant to the resolution of the matter or that the wording of the contested ruling is unclear or in contravention of the reasoning, it shall

132 Article 153, Law on General Administrative Procedure.

133 Article 151(3).

134 Article 173, Law on General Administrative Procedure.

135 *Ibid*.

supplement the procedure and eliminate the deficiencies itself or require the first instance body to do so. If the event that the second instance body finds that the administrative matter should have been resolved differently than it was resolved in the first instance decision on the basis of the facts established in the supplementary procedure, it shall adopt a decision annulling the first instance ruling and itself rule on the administrative matter.[136]

The Ministry of Interior performs administrative duties for the Asylum Commission. The mandate of the former Asylum Commission expired on 16 September 2016 and since then and up to 23 March 2017 there was no second instance body in place.[137] This further impacted duration of the asylum procedure and gave rise to frustration and dissatisfaction among many BCHR clients.

From 23 March until 23 July, the Asylum Office reviewed 57 appeals submitted in the period until the new members were appointed. The Commission did not rule on the meritum even one of the above complaints thus continuing an almost-decade long practice of this body. Of the total number of appeals, 29 appeals were upheld and the cases were remanded to first instance body, and 28 appeals were dismissed. So the practice of the Commission in 2017 had no corrective influence on the work of the Asylum Office nor did it rule itself on the merits of asylum applications, but rather validated the practice of automatic application of the safe third country concept in the majority of cases. Therefore, the appeal to the Commission cannot as yet be considered an efficient and effective legal remedy.

This report will analyse only one decision of the Asylum Commission considered good. Inadequate practice of this body related to automatic application of the safe third country concept will be analysed in a separate chapter hereof.

> On 24 May 2017, the Asylum Commission passed a Ruling Až-15–1/16 remanding for the third time to the Asylum Office the Decision No. 26–5489/15 rejecting the asylum application of the family A. From Libya[138] with an explanation that they are not risk of persecution and general violence in Libya. The Commission pointed to the Office that, in ruling, it should have taken into account UNHCR 2014 Position on Returns to Libya[139] and the 2015 update,[140] as well as the UN Special Mission report on the situation of human rights in

136 Article 171(2), Law on General Administrative Procedure.

137 The new members of the Asylum Commission were appointed by a Government Decision 24 No. 119–2520/17, *Sl. glasnik RS*, 29/17.

138 Case analysed in more detail in chapter related to first instance procedure.

139 UNHCR Position on Returns to Libya, UNHCR, November 2014. Available at: http://www.refworld.org/pdfid/54646a494.pdf.

140 UNHCR Position on Returns to Libya – Update I, UNHCR, October 2015. Available at: http://www.refworld.org/docid/561cd8804.html.

Libya.[141] Thanks to this ruling, the Asylum Office passed a decision upholding the application for asylum of a nine-member family A. from Libya and granting them subsidiary protection in view of the general insecurity in Libya.

4.3. Proceedings before the Administrative Court

Asylum-seekers may file claims with the Administrative Court challenging final decisions on their applications of authorities' failure to rule on them within the legal deadline. The procedure before the Administrative Court is governed by the Law on Administrative Disputes. Judgements delivered in administrative disputes shall be final and binding, i.e. ordinary legal remedies may not be filed against them.[142] There is no chamber or department in the Administrative Court that specialises in asylum cases, and the content of the decisions clearly shows that the level of knowledge about the international law of human rights and international refugee law is unsatisfactory.

The Administrative Court has not held any oral hearings on asylum cases to date, although it is under the obligation to do so under Article 33 of the Law on Administrative Disputes.[143] In most of its judgements, it specified that the requirements were fulfilled for it to rule on the lawfulness of the challenged ruling without holding an oral hearing, in view of the fact that the case manifestly did not require hearing the parties in person to establish the facts, because the claims in the suit and the reasoning of the challenged ruling and submitted case files demonstrated that the facts had been properly and fully established, wherefore it was called upon only to review the lawfullness of the challenged ruling with respect to the disputed legal issues.[144] In other words, in almost 10 years since the asylum system in Serbia was put in place, not even once has the Administrative Court interviewed asylum-seekers, which in itself asserts that the entire asylum system is not yet efficient and effective.

The filing of a claim with this Court does not automatically stay the enforcement of the challenged ruling. The parties may seek suspension of enforcement only pursuant to Article 23 of the Law on Administrative Disputes. On the mo-

141 Report on the Human Rights Ssituation in Libya, OHCHR – United Nations Support Mission in Libya, 16 November 2015. Available at: http://www.ohchr.org/Documents/Countries/LY/UNSMIL_OHCHRJointly_report_Libya_16.11.15.pdf.

142 Article 7, Law on Administrative Disputes.

143 According to the above article, the court shall establish the facts in an oral hearing. Therefore, oral hearing is a rule that may not be digressed from in the case when the matter of the dispute is such that it clearly does not call for direct hearing of the parties and separate establishment of the facts or if the parties give their explicit consent (Art. 33 (2)). The court is under the obligation to provide an explanation for failing to hold an oral hearing.

144 See also *Right to Asylum 2016*, p. 52.

tion of the plaintiff, the Court may stay the enforcement of a final administrative enactment ruling on the merits of an administrative subject matter pending its decision, in the event its enforcment would incur the plaintiff harm difficult to remedy and if the suspension is not in contravention of public interest or would not incur major irreparable harm to the opposing or interested party. Exceptionally, the parties to the administrative proceedings may ask the court to suspend the enforcement of administrative enactments before they file their claims, in case of emergencies or in the event the reviews of their (non-suspensive) appeals of the first instance decisions are still pending. The court must rule on the motions to stay enforcement within five days of receipt.[145]

The problem arising from the fact that claims filed with the Administrative Court do not have automatic suspensive effect has been addressed in practice in the following manner: the Asylum Office specifies in its decisions the deadline by which the decisions are to be enforced (usually five to 15 days). This means that the decisions may be enforced only after the completion of the dispute before the Administrative Court or in the event the claim was not filed within the deadline.

However, when the unsuccessful asylum-seekers are at risk of ill-treatment (mostly in cases of *refoulement*), the legal remedies at their disposal must have suspensive effect *ex lege* and cannot depend on the practice of the authorities ruling on them as there is a risk of the latter acting arbitrarily. In several of its judgements, the EctHR elaborated on the effectiveness of legal remedies in cases of complaints concerning allegations that the applicants' rights under Article 3 of the ECHR would be violated.[146]

Since in 2017 the Administrative Court did not rule on claims submitted by the BCHR on the cases reviewed on the merits, the annual report can only assert that this authority primarily upheld the decisions dismissing asylum applications through application of the safe third country concept. This problem will be further discussed in a separate chapter. Nevertheless, it may be important to note that on 12 December 2017 the EctHR requested the Government of Serbia to comment on the case *A. and others v. Serbia*[147] which was discussed in detail in the previous report[148] and where the ECtHR passed an interim measure in order to prevent deportation of an asylum-seeker to Libya. This is an example of bad practice in which all the authorities in the asylum procedure dismissed an asylum application to the Libyan family on the merits and under the influence of

145 Article 23 LAD.

146 See also *Right to Asylum 2016*, p. 53.

147 App. No. 37478/16.

148 *Right to Asylum 2016*, pp. 53–55.

other organisational units of the Ministry of Interior who declared them a risk to national security without stating the risks and the facts supporting that claim.[149]

In the first six months of 2017, three claims were filed against the Asylum Commission's ruling, and two claims for silence of the administration. In the same period, two cases were solved on appeals submitted in 2017: the first, based on silence the administration, was dismissed and the second claim concerning an asylum application was rejected. In 2016, the Administrative court passed nine decisions on claims filed: one claim was upheld, seven were rejected and one procedure was suspended.[150] Not even once did the Court rule in dispute of full jurisdiction i.e. did not decide on an administrative matter on the merits. Also, the Administrative Court did not hold oral hearings in the proceedings concerning the right to asylum, maintaining that the nature of disputes was such that it did not require hearing the parties in person.

149 See also *Right to Asylum 2016*, pp. 55–56.

150 Response of the Administrative Court to the request for access to information of public importance Su II-17a 87/17 of 4 July 2017.

5. APPLICATION OF THE SAFE THIRD COUNTRY CONCEPT

The practice of the Serbian asylum authorities of automatically applying the safe third country concept[151] resulted in them granting some form of international protection to only eight persons in the first five years of implementation of the Law on Asylum. All these persons had entered Serbia lawfully and directly from their countries of origin where they had been at risk of persecution or from the countries that have not ratified the 1951 Refugee Convention, or had been staying in Serbia on some other basis when the risk of persecution emerged (*refugees sur place*). The asylum authorities dismissed nearly all other asylum applications without reviewing them on merits. UNHCR data show that all asylum-seekers who had not entered Serbia lawfully in the period 2008–2010, were denied asylum pursuant to Article 33(1.6), i.e. because the authorities applied the safe third country concept.[152] In 2011, apart from two asylum applications dismissed on the merits, all other asylum applications (53 applications concerning 83 asylum-seekers) were dismissed without entering into the merits of the case.[153] In 2012, the Asylum Office did not grant asylum to anyone. It dismissed 64 applications by applying the safe third country concept.[154] In 2013, the Asylum Office cited the safe third country concept as the reason for dismissing eight asylum applications.[155] In 2014, the Asylum Office dismissed twelve asylum applications based on application of the safe third country concept.[156]

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151 The term "automatic application" means that the competent authorities neglect the practice of treatment of asylum-seekers in countries designated in a 2009 Government Decision as safe, as well as UNHCR's documents recommending to the states not to return asylum-seekers into certain countries as these cannot be safe due to certain deficiencies of the asylum system.

152 *Serbia as a Country of Asylum*, UNHCR, August 2012, p. 36.

153 *Ibid.,* p. 43.

154 In 2012, the Asylum Office examined only three asylum applications on the merits, and with respect to those persons who had entered Serbia lawfully and directly from the country of origin. See more in: *Right to Asylum 2012*, p. 17 and *Serbia as a Country of Asylum*, UNHCR, August 2012, p. 43.

155 Nine applications were decided on the merits – four positive and five negative decisions were passed. See more in *Right to Asylum 2013*, p. 24 and pp. 41–43.

156 Four asylum applications were decided on the merits. One person was granted asylum and three were granted subsidiary protection.

In 2015 the Asylum Office maintained the practice of application of the safe third country concept dismissing 25 asylum applications submitted by the nationals of Russia (8), Ukraine (5), Syria (4), Sudan (3), Somalia (2), Cameroon (1), Ghana (1) and Morocco (1).[157]

This practice persisted in 2016 also, and most of the asylum applications of persons who entered Serbia from FYROM and Bulgaria were dismissed on the basis of Article 33(1. 6) of the Law on Asylum. In 2016, the Asylum Office dismissed 53 asylum applications concerning 65 asylum-seekers. In other words, the Asylum Office dismissed applications in 54% of the procedures it ruled on in 2016. These applications had been filed by nationals of Pakistan (14), Iraq (10), Russia (9), Syria (7), Libya (5), Afghanistan (5), Bangladesh (3), FYROM (3), Sudan (2), Cuba (2), Somalia (1), Bosnia and Herzegovina (1), Bulgaria (1), Algiers and one stateless person. The safe third country concept was applied in more than 95% of the cases. In most of them, the Asylum Office referred to the 2009 Decision of the Government of Serbia on establishment of the list of safe countries of origin and safe third countries.[158]

In 2017 again, the asylum applications were most often dismissed (excluding the decisions on suspension of the asylum procedure) on the basis of Art. 33 (1.6).[159] The Office dismissed asylum applications in 69% of the cases (concerning 56 persons), finding that procedural requirements for review of the merits had not been fulfilled.[160] These applications had been filed by nationals of Afghanistan (16), Iraq (9), Russia (4), Pakistan (4), Cuba (3), Iran (2), Syria (2), FYROM (2), one by the nationals of each: the USA, China, Bulgaria, Mexico, Turkey, Guinea, Ghana, Cameroon, Nigeria, Croatia, and two stateless persons.

Actually, the authors of this report can ascertain that 71 of 101 persons (71%) who were granted some form of international protection since the Law on Asylum came into effect (1 April 2008) arrived in Serbia directly from the country of origin or a third country that did not ratify the 1951 Refugee Convention. This category includes the refugees who arrived in Serbia from Turkey

157 Three asylum applications were rejected referring two Cuban nationals and one national of South Africa who arrived in Serbia directly from the country of origin.

158 *Sl. glasnik RS*, 67/09.

159 Article 33(1.6) sets down that the Asylum office shall reject an asylum application without examining the eligibility of an asylum-seeker for the recognition of asylum if it has established that the asylum-seeker has come from a safe third country, unless he/she can prove that it is not safe for him/her.

160 Asylum applications were dismissed in almost 99% of the cases based on Article 33(1.6) providing that an asylum application will be dismissed if the asylum-seeker arrived in Serbia via a safe third country, i.e. the country that the Asylum Office assesses as having been safe for him/her. Still, two decisions were passed dismissing applications due to the fact that the Asylum Office found that the asylum-seeker could have found protection in another region of the country of origin, and one is based on Russia being assessed as a safe country of origin.

that the Asylum Office[161] has not considered a safe third country in most cases since 2015.[162]

Some of the remaining 30 asylum-seekers (30%), have certainly arrived in Serbia from FYROM and Bulgaria, although one cannot exclude the possibility that some of them arrived in Serbia directly from the country of origin or a third country that did not ratify the 1951 Refugee Convention, or that they are *refugees sur place*. So, it is possible that the number of persons to whom the safe third country concept could not be applied exceeds 71.

Five Syrian nationals were awarded subsidiary protection in 2013 and 2014. Since the BCHR lawyers were not their legal representatives, we cannot be sure as to how these persons entered Serbia. The same is true of three nationals of Syria (1 refugee status and 2 subsidiary protection statuses granted) and one was an Iraqi national (refugee status) who were granted asylum in 2015. However, in 2015 one Sudanese national was granted asylum although he had entered from FYROM because allegedly he had borded a smugglers' truck in Greece and disembarked only in Serbia, not having had an opportunity to apply for asylum with the Macedonian authorities. The following year four more of his compatriots were granted refugee protection in the same way.

In 2016, refugee status was granted to two citizens of Somalia and Syria each; the BCHR lawyers do not know which country they had entered Serbia from. One Afghan national who was granted asylum is known to have arrived from Bulgaria, but the BCHR has no information as to the way in which he disputed it as a safe third country.[163] That same year, one national of Iraq was awarded subsidiary protection due to a series of traumatic experiences he had lived through in Bulgaria which resulted in severe psychological consequences that probably had a decisive impact on the Asylum Office official, although this has not been stated in the decision.[164] In the same way, without stating clear criteria and reasons as to why FYROM is not a safe third country, one national of Iran[165] and another of Syria[166] were granted asylum. Finally, in 2016 a five-member family from Afghanistan was awarded subsidiary protection without application of the safe third country concept because the asylum-seekers could not explain which

161 See also in *Right to Asylum 2015*, p. 54. One refugee from Syria and two refugees from Iraq.

162 In 2009– 3 nationals of Ethiopia and 1 national of Iraq; 2010 – 1 national of Somalia (*sur place*); in 2012 – 2 nationals of Libya and 1 national of Egypt; in 2013 – 2 nationals of Turkey; in 2014 – 1 national of Tunisia; in 2015 – 9 nationals of Ukraine, 8 nationals of Libya, 3 nationals of Iraq (2 arrived from Turkey and one *sur place*), 2 nationals of Syria (1 arrived from Turkey, the other *sur place*), 1 national of South Sudan and 1 national of Lebanon; in 2016 – 13 nationals of Libya, 5 nationals of Ukraine, 4 nationals of Cuba, 2 nationals of Cameroon and 1 national of Kazahstan; 2017 – 9 nationals of Libya, 1 national of Syria (*sur place*) and 1 national of Burundi (*sur place*).

163 The Belgrade Centre for Human Rights was not his legal representative.

164 Ruling of Asylum Commission no. 26–2149/16 of 26 December 2016.

165 Ruling of Asylum Commission no. 26–1051/16 of 13 September 2016.

166 Ruling of Asylum Commission no. 26–5413/14 of 2 March 2016.

country they had entered Serbia from.[167] So, the reasons for reviewing numerous cases on the merits were not really clear until 2017, and from the decisions made by the Asylum Office it is not evident that it had assessed deficiencies in the asylum systems and the risks from ill-treatment in FYROM and Bulgaria. Rather, it had taken facts such as "boarding a truck in Greece and disembarking in Serbia" or the fact that the asylum-seekers did not know which country they entered Serbia from as reasons for examining the merits of the case. This reasoning is not fair in respect of other asylum-seekers who know which country they had entered Serbia from and who stated risks of abuse and mistrust of the asylum procedure as reasons for their not applying for asylum.

With respect to 2017, records show a drastic drop of the number of persons who managed to get some form of international protection even though they entered to Serbia from neighbouring countries. Actually, only two persons (from Afghanistan and Nigeria) were granted asylum (one refugee status and one subsidiary protection), although they had entered into Serbia from Bulgaria and FYROM. The decision represents an exceptional best practice example as it was the first time that the Asylum Office reasoned the criteria based on which it disqualified Bulgaria as a safe third country.[168] The first instance body stressed that Bulgaria cannot be considered a safe third country due to the fact that the asylum-seeker had been repeatedly physically abused and looted there as well as unlawfully expelled to Turkey therefrom. Excellent reasoning was also given in the case of M.O.M. whose asylum application was rejected because the first instance body found that requirements for exclusion from international protection had been fulfilled, but it was evident from the decision that the Office had disqualified Bulgaria as a safe third country because the asylum-seeker had been ill-treated and looted there several times.[169] This practice should continue in the future also.

Consequently, with the exception of the two mentioned decisions, no other best practice examples in the proceedings where the BCHR provided legal counsel were noted in 2017 with respect to application of the safe third country concept which continues to be automatically applied in the majority or cases. The practice persists of the Asylum Office officials not examining in detail the circumstances of asylum-seekers' stay in the neighbouring countries at the hearings. The same is true of the practice whereby the competent authorities in the asylum proceedings ignore well-known facts of the relevant reports issued by the national and international, governmental and non-governmental organisations.[170] Here we primarily refer to FYROM in respect of which there is a UNHCR Position Paper.[171]

167 See also *Right to Asylum* 2016, pp. 58–59.

168 Decision of Asylum Office no. 26–77/17 of 1 August 2017.

169 Decision of Asylum Office no. 26–2303/17 of 15 June 2017.

170 See also *Right to Asylum 2016*, p. 59.

171 FYROM as a Country of Asylum, UNHCR, 2015.

Article 2(1.11) of the Law on Asylum sets out cumulative conditions that countries must fulfill in order to qualify as safe. These include:

- That it is on the list established by the Government;
- That it observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees;
- That it is a country where an asylum-seeker had resided, or passed through immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application;
- That it is a country where an asylum-seeker would not be subjected to persecution, torture, inhumane or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened.

The ECtHR long ago established the standard that states had to be aware of the deficiencies of the asylum procedures in other countries and could not simply presume that they would treat asylum-seekers in acordance with the Refugee Convention standards and that they had to ascertain how the authorities of particular states enforced asylum regulations in practice.[172] However, the Serbian asylum authorities do not take this standard into consideration at all. Furthermore, if the Asylum Office and the Asylum Commission qualify a country as a safe third country, they must obtain strong assurances from it that its authorities would let the asylum-seeker enter its territory and access the asylum procedure, and that the asylum-seeker would be accommodated in a facility ensuring his dignity of person.[173] To date, not once did the Asylum Office, Commission or the Administrative Court obtain such guarantees before they decided to dismiss an asylum application.[174] Actually, the Asylum Office is of the view that the Law on Asylum does not stipulate such an obligation of the asylum authorities.[175]

In most of their decisions, the Asylum Office and the Commission merely noted that the countries the asylum-seekers had transited on their way to Serbia were safe because they were listed in the 2009 Government Decision, thus practically failing to examine whether these countries fulifled other criteria laid down

172 *M. S. S. v. Belgium and Greece*, App. No. 30696/09.

173 *Tarakhel v. Switzerland*, App. No. 29217/12.

174 Based on the ECtHR practice, the failure of the state party to obtain genuine guarantees that the rights of the petitioner would be respected in the receiving country may result in violation of Article 3 (*Tarakhel v. Switzerland*, App. No. 29217/12, pp. 120–122, Ruling of 4 November 2014; *Bader and Kanbor v. Sweden*, App. No. 13284/04, para. 45, Ruling of 8 February 2006).

175 Response of the Asylum Office to the request for access to information of public interest no. 06– 342/16 of 17 October 2016.

in the Law on Asylum.[176] As a rule, they also failed to peruse the other relevant sources indicating problems in treatment of refugees in specific countries. These sources include numerous reports by UN treaty bodies (CAT, CCPR, ECOSOC), as well as reports by reputable international human rights organisations such as Amnesty International and Human Rights Watch (HRW).[177] There is no record that the asylum authorities (in their decisions to dismiss asylum applications) had taken the above sources into consideration and offered an explanation as to the reasons they are relevant or not for a concrete case.

The practice of the Administrative Court remained more or less unchanged, coming down to upholding the practice of automatic application of the safe third country concept. Yet, two decisions deserve to be mentioned.[178] Both rulings concerned Cuban nationals who had left the country of origin for fear of persecution on the basis of their sexual orientation. In its ruling, the Administrative Court rescinded the decision to dismiss the applications passed by the Asylum Commission and remanded the case. However, in both cases the Administrative Court failed to hold oral hearings considering them unnecessary. Furthermore, the Administrative Court failed to resolve the disputes on the merits, in the dispute of full jurisdiction – the possibility provided for in Art. 43 (1) of the Law on Administrative Disputes. Notwithstanding, in the reasoning of the ruling annulling the decision of the second instance body to dismiss the asylum applications, it stated that in execution of the ruling the administrative bodies must *ex oficio* establish all the circumstances and facts in line with the stated view of the Court, and with respect to membership of the plaintiffs to a certain social group and decide again on their asylum applications. In their capacity of legal counsels, the BCHR lawyers presented evidence in the asylum procedure supporting the facts on the statements on the situation in Cuba and in the appeals proceedings and in the claim, statements and evidence on why Montenegro could not be considered a safe third country (since the asylum-seekers stayed in its territory prior to arriving in Serbia), which the Administrative Court confirmed in its

176 Pursuant to Article 3 of ECHR, the assessment of risk of *refoulement* – including the cases of deportation to the countries considered safe – must be conducted in line with the standards of ECtHR jurisprudence. The personal circumstances of the individual in question must be examined during such assessment and the automatic reliance on the list of safe third countries, without taking into consideration personal circumstances, is in contravention of the obligations resulting from the Convention. ECtHR jurisprudence on assesment of risk of treatment contrary to Art. 3 in cases of deportation into certain countries has evolved significantly over the past decades. The fundamental principles thereof are best summarised in the most recent rulings of the European Court: *J. K. and others v.Sweden*, App. No. 59166/12, para. 77–105, ruling of 23 August 2016 and *F. G. v. Sweden* App. No. 43611/11, paras. 110–127, decision of 23 March 2016.

177 See also *Right to Asylum 2016*, pp. 61–64.

178 Rulings of the Constitutional Court of the Republic of Serbia: 3 U.11867/17 of 7 September 2017 and 3 U 11868/17 of 7 September 2017.

ruling. Thus the Administrative Court established that the Decision on the List of Safe Third Countries may not be applied automatically and that reports of UNHCR Office on treatment of that state in line with the Refugee Convention and reports of non-governmental organisations on protection of the rights of refugees in that country must be used instead. Applying this line of reasoning, the Administrative Court pointed to the lower instance bodies that the reports of non-governmental organisations must also be taken into account. It follows that the safe third country concept cannot be applied automatically but that all the facts relevant to deciding on a legal matter must be established in order to create a realistic picture of the situation in these countries as well as the situation of the persons seeking international protection. However, it remains unclear why had the Administrative Court not taken this stand earlier, in cases of asylum-seekers who entered Serbia from e.g. FYROM whose asylum system is completely dysfunctional and where a whole set of documents point to risks from ill-treatment of asylum-seekers.

The case of H.M. from Syria whose asylum application was dismissed in 2017 is the best example of the practice of automatic application of the safe third country concept, and it also confirms the findings of ECtHR in the case of *Ilias and Ahmed v. Hungary* on the risks from *refoulement* into Serbia and chain *refoulement* to FYROM and to Greece. The application was dismissed because both the Asylum Commission and the Administrative Court took the view that FYROM may be considered a safe country of asylum in the above described way, i.e. ignoring a whole set of reports of the UN treaty bodies, UNHCR, Amnesty International and Human Rights Watch.

> H.M. left the country of origin in January 2016 fearing forced conscription, persecution because of religious affiliation (he is a Sufis), and the general insecurity. Therefore, it is totally evident that the person in question is a *prima facie* refugee.
>
> On his journey to Serbia, H.M. passed through Turkey, Greece and FYROM. At the time H.M. left Syria, the so called Western Balkans Route was officially open and refugees were enabled to travel towards EU member states unimpededly. For this reason, neither he nor thousands of others on the basis of whose origin one could assume to be in need of international protection, did not consider Greece, FYROM, Serbia, Croatia or another country along the WBR as a country of final destination.
>
> In late April 2016, H.M. managed to enter Hungary where he was subject to an asylum procedure assessed by ECtHR in the case *Ilias and Ahmed v Hungary* (Application No. 42787/15) as a violation of Article 5, Article 3 and Article 13 in conjuction with Article 3 of the European Convention. Namely, in the above case, ECtHR pronounced Hungary responsible because it had applied a safe thid country concept to Serbia and for returning two nationals of Bangladesh to Serbia thus exposing them to the risk of *chain refoulement* into FYROM and then

to Greece. The case of H.M. confirmed the findings of the ECtHR since, after he was returned to Serbia (contrary to UNHCR position on returns to Serbia) and having managed to access the asylum procedure in it 10 days later, Serbia applied the safe third country concept with respect to FYROM (again contrary to UNHCR Position on returns to FYROM). Consequently, he was exposed to the very risk due to which ECtHR established that Hungary had violated Article 3 when it returned Ilias and Ahmed to Serbia as a "safe third country".

Having managed to access the asylum procedure, H.M. finally applied for asylum in the Asylum Centre Krnjača on 1 June 2016, and an oral hearing was held on 27 July 2016. On 8 September 2016, the Asylum Office issued a ruling no. 26–1394/16 dismissing the application of the asylum-seeker on the basis of Article 33(1.6) of the AL setting down that asylum applications shall be dismissed if the persons seeking asylum arrived from a safe third country except if they prove it is not safe for them. This concretely means that his asylum application had been dismissed because, in the view of the Asylum Office, he had had the possiblity of accessing the asylum procedure in FYRO Macedonia which is on the list of safe third countries established in the Decision of the Government on Establishing the List of Safe Countries of Origin and Safe Third Countries. Hence, the only argument stated by the first instance body was the Government Decision and the fact that FYROM was on it. The Office did not obtain guarantees from FYROM that H.M. would be accepted into the asylum procedure after forced removal from its territory nor that he would be accommodated in the conditions respecting his physical and psychological integrity.

On 20 September 2016, the legal counsel filed an appeal to the Asylum Commission presenting an entire set of evidence, facts and reports that the first instance body had to take into consideration *ex-officio* prior to declaring FYROM a safe third country. All the sources indicated and continue to indicate that there is a risk of violation of absolute prohibition of ill-treatment and that the Macedonian asylum system is dysfunctional in general, from the aspect of ECtHR jurisprudence.

On 21 September 2016, the mandate of the Asylum Commission members expired, and for the next seven months there was practically no second instance body. On 29 November 2016, BCHR submitted a rush note to the non-existing Commission pursuant to Art. 19 of the Law on Administrative Disputes, and a complaint for silence of the administration on 6 December 2016.

Since the Administrative Court did not want to rule on the complaint for silence of the administration for months, new Commission members were appointed and the complaint of M.H. was rejected as unfounded on 12 July 2017. In its decision, the Commission ignored all the arguments presented by the counsel and the findings of UNHCR, UN treaty bodies and the reputable international human rights organisations such as AI and HRW. The Commission only upheld the first instance decision and invoked the Government Decision. Appropriate guarantees on ensuring access to asylum procedure following deportation to FYROM were not obtained. On 18 July 2017, the BCHR submitted a new claim with the Administrative Court invoking the statements of

the complaint for silence of the administration and the facts to be taken into account *ex-officio*.

On 29 September 2017, the Administrative Court finally passed a ruling[179] regretfully perpetrating the unlawful and erroneous practice of the Office and the Commission and rejecting the complaint as unfounded. The Administrative Court trusted the reply of the Commission to the complaint which selectively quoted parts of UNHCR's report "Macedonia as a Country of Asylum" praising the improvements and the progress achieved in certain domains.[180] Nevertheless, it remains unclear why neither the Commission nor the Administrative Court failed to reflect on the essence of UNHCR's report on risks in FYROM because of which this UN agency stressed that refugees and asylum-seekers must not be returned to this country until the situation improves significantly. It also remains unclear why the Administrative Court had failed to review each proof H.M. presented in both appeals providing explanations as to why these were not relevant and valid in his case, i.e. why they were indicative of the risk of *refouement* and *chain refoulement*. Both the Asylum Office and the Asylum Commission as well as the Administrative Court applied the safe third country concept automatically without obtaining guarantees from FYROM that the asylum-seeker would have access to the asylum system upon forced removal and that he would enjoy adequate treatment being a member of an extremely vulnerable category (of refugees, i.e. asylum-seekers). BCHR was served with the ruling on 17 October 2017, the lawyers filed for an interim measure before the ECtHR that same day. On 24 October 2017, the ECtHR suspended execution of the final ruling of the Asylum Office and thereby deportation of H.M. to FYROM until completion of the procedure before this body.[181]

Consequently, the asylum system in Serbia in 2017 was primarily based on the automatic application of the safe third country concept, which was assessed as problematic also by international bodies such as UN Human Rights Committee[182], UN Committee for the Rights of the Child[183], UN Committee for Elimination of Racial Discrimination,[184] and Human Rights Council in Universal Periodic Review.

179 Ruling of the Administrative Court of the Republic of Serbia U 11055/17.

180 See also *Right to Asylum 2016*, pp. 65–67.

181 *M.H. v Serbia*, App. No. 62410/17.

182 Final Observations on the Third Periodic Report of the Republic of Serbia, Human Rights Committee, CCPR/C/SRB/CO/3, 10 April 2017, paras. 32 and 33.

183 Final observations on the second and Third periodic report of the republic of Serbia CRC/C/SRB/CO/2-3, 3. February 2017.

184 Final observations on the combined second to fifth periodic reports of Serbia, Committee for Elimination of Racial Discrimination, CERD/C/SRB/CO/2–5, 8 December 2017, paras. 26–27.

6. STATUS OF UNACCOMPANIED AND SEPARATED CHILDREN

The Law on Asylum[185] defines an unaccompanied child or an unaccompanied minor as "a foreigners under 18 years of age who was unaccompanied by parents or guardians on his/her arrival in the Republic of Serbia, or who became unaccompanied by parents or guardians after arriving in the Republic of Serbia". The asylum procedure safeguards imply that the competent authorities shall take into account "the specific situation of persons with special needs who seek asylum, such as (...) children separated from parents or guardians" and that these children shall be appointed a guardian before the submission of an asylum application as well as that the guardians will be present during all the actions taken in the asylum procedure.[186] In practice, due to an unclear provision about the principle of special care of vulnerable groups, the guardians are appointed with a delay, they are replaced up to several times, and the decision-making on asylum applications submitted by unaccompanied and separated children (UASC) lasts unreasonably long. These issues were pointed out by the UN Committee on the Rights of the Child in February 2017 during the review of Serbia's compliance with the Convention on the Rights of the Child.[187] The absence of coordination of actions by the Government institutions involved in the system of refugee protection was evident in 2017 as well. Bearing in mind that inter-sectoral cooperation is key to the efficiency of the system of child protection, all the authorities and institutions in it must agree on the principles and criteria for assessment as well as on the procedures to be observed in concrete situations involving UASC. Also, in order to ensure adequate system of protection of UASC, more efforts should be invested in formalisation of cooperation between the state authorities, non-governmental and international organisations in the future. With respect to this, it must be noted that CRM adopted in late November 2017 "Manual for Service Providers Dealing with Unaccompanied Minor Asylum-Seekers in the

185 *Sl. glasnik RS*, 109/07.

186 Articles 15 and 16, AL.

187 Concluding remarks of the Committee on the Rights of the Child on combined second and third periodic report of the Republic of Serbia, CRC/C/SRB/CO/2–3 February 2017. Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_za_prava_deteta_srb.doc.

Republic of Serbia",[188] which is to be used by civil servants and which builds on the "Manual on Asylum Procedure in the Republic of Serbia."

Of 2,630 children who expressed intention to seek asylum in Serbia in 2017, 156 children were in the country without parents or guardians, and seven of them were girls. The most frequent countries of origin of unaccompanied and separated children in Serbia were Afghanistan (70.5%)and Pakistan (19.8%). A smaller number of them came from Algeria, Ghana, Libya, Iraq, Democratic Republic of Congo, Syria and India. Bearing in mind the situation in the field and the fact that the majority of UASC do not even express intention to seek asylum in Serbia, their actual number in the country may be much higher, but their status is not regulated and they remain outside the protection system.[189]

The children who had lived in the deserted warehouses near the Belgrade Main Bus Station for months were transferred to the Reception Centre in Obrenovac and the Asylum Centre in Krnjača in May 2017. Staying in the asylum and reception centres that are not social protection institutions, without adequate supervision and outside the social protection system, the UASC were exposed to risks from different forms of violence and exploitation. They were also in danger of ending up in smugglers' and traffickers' networks while in search of a better life. With the improvement of weather, many children left reception centres intending to try to cross the border with the help of smugglers. For instance, in May alone, 148 unaccompanied children left the Reception Centre in Preševo, and 18 left the Reception Centre in Bujanovac.[190] Many of these stories ended in multiple attempts at risky border crossings with Hungary and Croatia and their forcible expulsion by border police of these states back into Serbia. *Médecins Sans Frontières* (MSF) stated that 92% of the children assisted in their mobile clinics in the first six months of 2017 experienced physical violence by Hungarian, Croatian and Bulgarian border police.[191] Some 57% of children had visible wounds including scars from knives and razorblades, injuries from battering and malnutrition, with the youngest of them aged only 12.[192]

188 This document was developed as part of a twinning project "Support to National Asylum System in the Republic of Serbia", implemented at CRM and MOI, with the support of two experts of the Swedish Migration Agency: Sandra Janson and Sana Bajmani.

189 CRM data speak in support of this claim as the number of unaccompanied and separated children in reception and asylum centres ranged from 112 in September to 738 in May 2017. The information that various organisations including UNHCR reported are similar. For instance, UNHCR identified 68 newly arrived UASC in the field in November. Only 10 of them expressed intention to seek asylum that month.

190 *Interagency Operational Update May 2017*, UNHCR, June 2017. Available at: https://data2.unhcr.org/en/documents/download/58266.

191 Press release available at: http://www.msf.org/en/article/balkans-children-repeatedly-abused-border-authorities.

192 *Games of Violence: Unaccompanied Children and Young People Repeatedly Abused by EU Member State Border Authorities*, MSF, October 2017 Available at: http://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf.

In order to gain insight into the extent of this problem, the BCHR contacted the Ministry of Labour, Employment, Veteran and Social Affairs in November 2017 with a request to access information of public importance relevant to the number of unaccompanied and separated children put under guardianship in 2017, and the number of persons who performed guardianship duties during the same period. However, the Ministry refused this request as unfounded, claiming *inter alia* that the BCHR was abusing access to information of public importance seeking too much information.[193] Absence of adequate access to such vital information makes the full analysis of the system of protection of UASC in Serbia as well as the recommendations for systemic improvements impossible.

6.1. Initial Assessment and Guardian Protection

Though certain headway may be noted relative to the previous years, the UASC continue to face great obstacles in enjoyment of their basic rights, regardless of their legal status in Serbia. On arrival on the territory of Serbia and expressing intention to seek asylum, these children are subjected to arbitrary assessment of age by police officers. Due to the absence of any formal procedures whatsoever for establishment of the age of children at expressing intention to seek asylum in Serbia, the way in which the police officers conduct this assessment when registering asylum-seekers pursuant to Article 23 of the Law on Asylum, remains unclear. In practice, it often happened that older children are registered as of age and thus deprived of the rights they are entitled to. At registration by police officers, the UASC are frequently issued certificates on expressed intention which read that the child is under the guardianship of an older person registered at the same moment or whom the child met somewhere along the road to Serbia. However, their suitability for that function is not questioned nor is an opinion of the competent social welfare centre sought. Erroneous registration by police officers results in problems during the asylum procedure, because the children are often left to their own devices, with no adequate support of the system and tend to make decisions without prior knowledge of all relevant facts.

In cases when the police officers identify an UASC and inform the competent centre for social welfare, it appoints the same guardian for several dozens of children, although the "Minimum Standards for Child Protection of Children in Humanitarian Action"[194] stipulate that one person cannot be a guardian to more than 25 children. The consequence is that, notwithstanding their best intentions to make their work with children meaningful, the social workers are not able

193 Decision of the Ministry of Labour, Employment, Veteran and Social Affairs no. 07–00–0131/2017–15 of 5 December 2017

194 *Minimum Standards for Child Protection in Humanitarian Action*, Global Protection Cluster (GPC), 2012. Available at: http://ideje.rs/CPMS.pdf.

to maintain regular contacts with the children under their guardianship and to truly take care of them observing the best interest principle. In one case, an unaccompanied girl from Iraq was appointed a guardian by the Centre for Social Welfare in Dimitrovgrad – a man who was in the same group of migrants and allegedly her uncle's friend. However, suitability of this person and his influence on the child were not additionally questioned, nor had the employee of the Centre ever visited the child in order to make sure the guardian was not abusing his role.[195] For this reason, the Protector of Citizens sent a recommendation to the above centre for social welfare to ensure presence of their experts in the Reception Centre in Dimitrovgrad with a view to protection of children and other vulnerable groups of migrants. However, according to the information of the BCHR this has not happened until the end of 2017.

The assessment of the best interest of the child must represent the first step in all the activities concerning children.[196] Children must be fully involved in this process and they must be given all the facts that may help them decide on the issues related to them, in a language they understand. Pursuant to the instruction of the Ministry of Labour, Employment, Veteran and Social Affairs on the practice of social welfare centres and social protection institutions for accommodation of beneficiaries when providing protection and accommodation of UASC, the social welfare centres (being the guardianship authority) must ensure guardianship protection by appointing temporary guardians and accommodation in social welfare institutions with separate organisational unit for temporary accommodation and care of unaccompanied migrant children immediately upon notification of BPA or CRM on UASC identified on the territory of their actual or local jurisdiction. In 2017, the centres for social welfare Serbia-wide maintained their inconsistent practices concerning the best interest assessment procedure and timely appointment of guardians to the UASC identified on the territory under their jurisdiction, irrespective of the expert instruction of the Ministry of Labour, Employment, Veteran and Social Affairs.[197] On arrival of an unaccompanied minor to the asylum centres in Banja Koviljača, Krnjača and Bogovađa, CRM staff informed the competent centres for social welfare that appointed one temporary guardian per child or a group of children. On the other hand, social workers were rarely present in the Asylum Centre in Sjenica and not a single case of appointment of a guardian to an unaccompanied child in that

195 Report on the visit to RC Dimitrovgrad, The National Preventive Mechanism – Protector of Citizens, February 2017, pp. 8. Available at: http://npm.rs/attachments/article/704/PC%20Dimitrovgrad.pdf.

196 Article 3, para. 1, Convention on the Rights of the Child.

197 Instruction no. 110–00–00469/2015–14 of 10 July 2015 on procedures of centres for social welfare and social protection institutions for accommodation of beneficiaries in providing protection and care of unaccompanied children.

centre was recorded in 2017.[198] Progress has been made in some centres. With UNHCR's support, the Obrenovac Centre for Social Welfare started conducting systematic assessments of the best interest of all the unaccompanied children in the Reception Centre in that municipality. Best interest assessments of all unaccompanied children were conducted also in the centres in Adaševci, Banja Koviljača, Bogovađa, Bujanovac, Divljana, Kikinda, Krnjača, Preševo, Principovac, Sombor, Subotica and Vranje. The assessments were not conducted for all the children in Pirot and Sjenica, while information about it is lacking for centres in Bosilegrad, Dimitrovgrad and Tutin.[199] However, notwithstanding formal fulfilment of the requirements prescribed in the legal framework of Serbia, meaningful work with unaccompanied children as provided for in the Convention on the Rights of the Child did not take place in the majority of cases. Due to shortage of professional social workers and interpreters, in practice it often happened that children who were appointed guardians could not establish even basic communication.

In August 2017, UNHCR, the Ministry of Labour, Employment, Veteran and Social Affairs and the Belgrade City Centre for Social Welfare initiated a pilot project "Improvement of Guardianship Protection and Introduction of Cultural Mediators" with a view to improving the system of guardianship protection through selection, training, introduction, monitoring and supervision of professional guardians in the system of social protection of the Republic of Serbia and introduction of cultural mediators as assistance in activities related to protection of person, rights and interests of unaccompanied refugee children. All the professional guardians engaged on this project underwent eligibility assessment of the City Centre for Social Welfare in Belgrade, which then appointed them as guardians to the unaccompanied refugee children. The project engaged 19 professional guardians on the territory of the city of Belgrade. In order to maximize the contribution of the project, CRM transferred most of the unaccompanied children to the territory of the city of Belgrade: the asylum centre Krnjača and the reception centre Obrenovac from the centres in other parts of Serbia.

The National Preventive Mechanism has, in many reception centres, identified the practice of appointment of professional guardians but who neither have contact with the children nor have even seen nor spoken to them. Instead, the CRM and of civil society organisations' field staff are in charge of daily contact with the children.[200] Centres for social welfare do not engage interpreters direct-

198 Data collected in the field on the basis of provision of legal assistance in the centres in Sjenica and Tutin in 2017.

199 *Centre Profiling – Serbia,* UNHCR. Available at: https://data2.unhcr.org/en/documents/downloas/55034.

200 Report on the visit to RC Bujanovac, The National Preventive Mechanist – Protector of Citizens, November 2017, p. 10. Available at: http://www.ombudsman.rs/attachments/article/5589/Izvestaj%20o%20poseti%20PC%20Bujanovac%20u%20novembru.pdf.

ly. The guardians communicate with children with the assistance of interpreters whose services are funded by NGOs involved in refugee protection. Bearing in mind the above described practice, one may hardly expect children to develop some meaningful relationship and trust with the guardians. Also, in absence of effective guardianship, it is impossible to identify the specific vulnerabilities of children and to provide timely response to risks of various forms of violence, sexual abuse and exploitation.

6.2. Children in the Asylum Procedure in Serbia

With respect to the asylum procedure, the asylum applications in Serbia are most often dismissed[201] by automatic application of the concept of a safe third country, without examining the merits of the cases.[202] This practice of the decision-making authorities in the asylum procedure does not differ even when the applicants are unaccompanied children. The decisions are made solely on the basis of the 2009 bylaw of the Government of Serbia which includes a list of countries that Serbia considers to be safe,[203] neglecting the fact that a certain application was lodged by a child and not taking into consideration the ensuing obligations. The decisions concerning unaccompanied children – asylum-seekers that BCHR had insight into did not take into account relevant safeguards of international conventions referring to children, and also failed to respect the principle of special care prescribed in Article 15 of the Law on Asylum. Furthermore, there was no a reasoning as to why was the decision ordering a child to leave the territory of Serbia is in his/her best interest. The decisions on dismissal of asylum applications did not include best interest assessment of competent centres for social welfare, nor were the implications of such decisions on welfare, social development or personal safety in case of return to a "safe third country" taken into account. The decisions depriving children of the right to asylum should be passed in observance of the principle of *non-refoulment* and the best interest of the child and should be passed taking into consideration individual circumstances of each case, in a fair and efficient procedure which guarantees all the rights of the child.

The draft new Law on Asylum and Temporary Protection improves, to a certain extent, the vague provisions on protection of UASC by introducing the principle of protection of best interest of minors as a starting point for implementation of other provisions of the law. The procedures related to unaccom-

201 Article 33, LA.

202 See more in chapter 5.

203 Decision on Establishment of a List of Safe Countries of Origin and Safe Third Countries, *Sl. glasnik RS,* 67/09.

panied children are also additionally clarified.[204] According to the draft law, the best interest assessment will be conducted with a view to welfare, social development and origin of children, and taking into consideration their opinion.[205] This treatment is in line with the Article 3(1) of the Convention on the Rights of the Child, providing that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration", and bearing in mind that the final objective of actions involving UASC is finding a durable solution in accordance to the child's needs.

In situations when negative decisions are made on asylum applications certain provisions of the Law on Foreigners are also relevant.[206] Article 13(2) provides that the police shall temporarily prohibit foreigners to exit the Republic of Serbia who do not have valid travel documents or visas required for entry into another state. Also, Article 52 of this law provides that minor foreigners shall not be returned to the country of origin or a third country willing to accept them until adequate reception is not ensured. When passing decisions the competent authorities did not consider the fact that unaccompanied children had no travel documents nor did they try to ensure reception in countries of origin or third countries.

In October 2017, the BCHR submitted request to the European Court of Human Rights to indicate an interim measure in the case of a 17-year old M.W from Afghanistan so as to prevent his deportation to Bulgaria. His case is illustrative of the practice of competent authorities and services. M.W. arrived in Serbia from Bulgaria for the first time in 2016. He expressed intention to seek asylum that same day, was issued a certificate and referred to the Asylum Centre in Krnjača which is under the jurisdiction of SCRM and is not specialized in providing protection to unaccompanied children. Some ten days later, he was appointed a legal guardian by the competent centre for social welfare. M.W. lived in the Asylum Centre in Krnjača five months, but the Asylum Office did not organise the formal submission of an asylum application, though it was under the obligation to do so (Article 25 of the Law on Asylum) within 15 days from the registration – which was not conducted either. In the five months he spent in Serbia, M.W. was not provided professional legal counseling; his needs for psychological support and rehabilitation were not assessed and he was not provided access to other rights. Five months of neglect and failure of the competent authorities to take the necessary measures and actions resulted in M.W. leaving the Asylum

204 Draft Law on Asylum and Temporary Protection. Available at: www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2445–17.pdf.

205 Article 10, Draft Law on Asylum and Temporary Protection.

206 *Sl. glasnik RS*, 97/08.

Centre in Krnjača on his own and heading towards the Hungarian border where he applied for asylum. Having received a negative decision from the Hungarian authorities, M.W. returned to Serbia and again attempted to express intention to seek asylum in the presence of a previously appointed guardian. This time however, his temporary residence was cancelled in line with the Law on Aliens.[207] The reasons for this treatment as stated in the decision on cancellation of temporary residence are lack of a valid travel document, lack of sufficient means for subsistence and presence of a "reasonable doubt as to the objective of residence". The first instance authority did not take into consideration the possible negative effects of returning an unaccompanied child originating from a country torn by internal armed conflict, who does not have a valid travel document, sufficient means for subsistence, the country he entered Serbia from –Bulgaria in this case, which numerous reports of the contracting bodies and civil society organisations consider unsafe for persons in need of international protection[208] and which did not offer any guarantees for reception. This treatment is in contravention of the Convention on the Rights of the Child and of the recommendations of the Committee for the Rights of the Child sent to Serbia in February 2017 with respect to the obligation to ensure full respect of the principle of *non-refoulement* and facilitate access to asylum system to children in need of international protection in line with Articles 6, 22 and 37 of the Convention. The UN Committee for Human Rights sent similar recommendations to Serbia, drawing attention to the obligation to conduct an objective assessment of the conditions for exercise of protection prior to returning foreigners to "safe third countries".[209]

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207 Decision of the Police Administration for the City of Belgrade, Department for Foreigners, 03/16/5/2 no. 26.2–2–396/17 of 22 June 2017.

208 See: Concluding observations on the sixth periodic report of Bulgaria, CAT/C/BGR/CO/6, November 2017. Available at: http://www.refworld.org/docid/5a291a654.html; UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, UN Committee on the Elimination of Racial Discrimination, CERD/C/BGR/CO/20–22, May 2017. Available at: http://www.refworld.org/docid/597b0cb24.html. See also: *Observations on the current asylum system in Bulgaria,* UNHCR, 2014. Available at: http://www.refworld.org/docid/534cd85b4.html. See also: *Out of Sight, Exploited and Alone – A Joint Brief on the Situation for Unaccompanied and Separated Children in Bulgaria, the Former Yugoslav Republic of Macedonia, Serbia and Croatia*, International Rescue Committee, March 2017. Available at: http://azil.rs/azil_novi/wp-content/uploads/2017/04/Sa%C5%BEetak-Izvan-Vidokruga-Eksploatisani-i-Sami-WEB.pdf; *Safe Passage*, Oxfam Italia, 2014. Available at: http://azil.rs/azil_novi/wp-content/uploads/2017/02/Safe-Passage1.pdf.

209 Concluding observations of the UN Committee for Human Rights on the Third Periodic Report submitted by Serbia on implementation of the International Covenant on Civic and Political Rights, CCPR/C/SRB/3, March 2017 Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitetaccpr_c_srb_co_3_27019_e_srp.pdf.

6.3. Accommodation of Unaccompanied and Separated Children

Due to general commitment of Serbia to humanitarian care and accommodation of all migrants, all UASC (regardless of their legal status) had access to accommodation in one of the asylum or reception centres. With respect to accommodation, no differentiation was made between unaccompanied children in the asylum system and those who were not in it. To date Serbia does not have separate, specialised social institutions in which this particularly vulnerable category of children can live and receive special attention as stipulated in the positive regulations of the Republic of Serbia. In line with the Instruction of the line ministry, UASC should be accommodated in one of the three social institutions: Institute for Education of Children and Youth in Belgrade ("Vasa Stajić"), Institute for Education of Youth in Niš, and Home for Children and Youth with Developmental Problems "Kolevka" in Subotica, which assigned one organisational unit aside for these purposes.[210] The total capacity of the above institutions is 31 places only, whereby the facility built within the "Kolevka" complex in Subotica is not operational yet for absence of work and exploitation permits, and professional staff who could take care of unaccompanied refugee children.[211] The primary function of these institutions is resocialisation of underage delinquents and care of children with cognitive disabilities and thus they cannot be considered appropriate for providing comprehensive protection and support to unaccompanied refugee children. Bearing that in mind, a separate centre should be established that would ensure effective protection and care of unaccompanied children observing the principle of the best interest of the child as recommended to Serbia by the UN Committee for Human Rights in March 2017.

According to the Instruction of the Ministry of Labour, Employment, Veteran and Social Affairs, the stay of children in the above institutions terminates when a child expresses intention to seek asylum.[212] Thereafter, the child is referred to one of the asylum centres under the jurisdiction of CRM, although these lack professional staff trained for working with vulnerable categories. Even though asylum and reception centres seek to provide accommodation of unaccompanied children in separate facilities, in 2017 – as in the previous years – UASC were sometimes accommodated in the same facilities with adults whom they did not know. In 2017, the majority of unaccompanied and separated chil-

210 Regulation on the Network of Institutions of Social Welfare, *Sl. glasnik RS,* 16/12 and 12/13.

211 Response of the Home for Children and Youth with Developmental Problems "Kolevka" to the request for access to information of public importance sent to the BCHR, 7 December 2017.

212 Chapter III(1), Instruction of the Ministry of Labour, Employment, Veteran and Social Affairs on procedures of the centres for social welfare and social protection institutions for accommodation of beneficiaries in provision of protection and accommodation of unaccompanied minor migrants no. 110–00–00469/2015–14 of 10 July 2015.

dren lived in the Reception Centre in Obrenovac, in which there are neither separate facilities nor premises for them and in which they are accommodated with adults.[213] During the visit to the Reception Centre in Šid in May 2017, NPM noticed the practice that several adult men are intentionally put up in a room with unaccompanied and separated children based on the "assessment of staff that they may exert a positive influence on the minors, maintain order and preempt potential interpersonal conflicts".[214] In some centres, Reception Centre in Kikinda for instance, the UASC were accommodated in tents and completely neglected by the competent centre for social welfare although their staff were informed of it by CRM.[215] The situation was particularly worrisome in view of the fact that children spent up to several months in these conditions.

As opposed to previous years, the children who lived in the Institute "Vasa Stajić" in 2017 were not automatically transferred to asylum centres upon expressing intention to seek asylum. Rather, this was done only at a child's request, when they became of age or for security reasons – due to physical conflict with the minor delinquents living in the Institute.[216] Since the beginning of 2017 and until end of October, 33 children (four of them girls) were accommodated in the Institute for Accommodation of Foreign Minors Unaccompanied by Parents or Guardians – significantly fewer than during the previous year when 100 children were accommodated there. In 2017, 16 children left the Institute voluntarily, while seven UASC were transferred to the reception centres in Subotica and Obrenovac. With respect to the Institute for Education of Youth in Niš, 30 unaccompanied and separated children lived there from the early 2017 and until 31 October. The majority was from Afghanistan (86%), and one of them was a girl.[217] The majority of children lived in asylum and reception centres. In December 2017 alone, 139 UASC (11.8%) were accommodated in one of the 18 asylum or reception centres in Serbia.[218]

213 For more information see: Report on the visit to RC Bujanovac, The National Preventive Mechanism – Protector of Citizens, February 2017. Available at: http://npm.rs/attachments/article/689/Izvestaj%20Obrenovac.pdf.

214 Report of the visit to RC Šid, The National Preventive Mechanism – Protector of Citizens, May 2017, pp. 6. Available at: http://npm.rs/attachments/article/697/Izvestaj%20o%20poseti%2016.05..pdf.

215 Report on the visit to RC Kikinda, The National Preventive Mechanism – Protector of Citizens, May 2017, pp. 11. Available at: http://npm.rs/attachments/article/722/Izvestaj.pdf.

216 Response of the Institute for Education of Children and Youth "Vasa Stajić" to the request to access information of public importance. No. 01–1504 of 4 December 2017.

217 Response of the Institute for Education of Youth to the request to access information of public importance, no. 01–1524 of 4 December 2017.

218 *Ibid.*

6.4. Durable solutions for Unaccompanied and Separated Children

Finding family members and identifying possibilities for reunification is certainly of paramount importance for unaccompanied and separated children. Until then, the child must live in the least possible restrictive environment. Pioneer steps in development of a specialised, urgent foster care system for UASC as an alternative form of care were taken in 2016[219] and this process continued throughout 2017. Centre for Foster Care and Adoption in Belgrade in cooperation with the International Rescue Committee and the organisation *Save the Children*, and with the support of the Ministry of Labour, Employment, Veteran and Social Affairs, began implementing a project entitled "*Adequate Care and Protection of Unaccompanied Children in Migration Situations: Building Capacity for Quality Foster Care*", aiming to train 90 foster parents in Belgrade, Novi Sad and Niš in caring for unaccompanied refugee children. Twelve families from Vojvodina[220] and 14 individual foster parents from the territory of the City of Belgrade[221] were trained in caring for unaccompanied refugee children. Not a single family from the territory of municipalities within the mandate of the Centre for Family Accommodation and Adoption Niš has completed the training.[222] As at mid-June 2017, 38 families were fully trained and ready to provide foster care to unaccompanied migrant children, and 21 children have been placed in foster families to date.[223] Since the beginning of the year and until 31 October 2017, three unaccompanied children from Pakistan and Afghanistan (two boys and one girl) benefitted the services of foster accommodation, all on the territory of Belgrade. Placing lasted from two to six months and the children were aged one, five and 10.[224]

Bearing in mind the positive aspects of foster accommodation of unaccompanied children and the commitment of our State to deinstitutionalisation, this form of alternative care will hopefully be used more in the future. Continued

219 Urgent foster care is a specific form of foster care which, in line with the Rulebook on Foster Care, is applied in urgent situations when a child was abandoned by parents, in cases of gross neglect or abuse of a child or when the parents are prevented from taking care of the child.

220 Response of the Centre for Foster Care and Adoption Novi Sad to the request to access information of public importance, no. 1758–550–26/2017–1 of 7 December 2017.

221 Response of the Centre for Foster Care and Adoption Belgrade to the request to access information of public importance, no. 2823–560/19–2/17 of 30 November 2017.

222 Response of the Centre for Foster Care and Adoption Niš to the request to access information of public importance, of 28 November 2017.

223 "More than 2,500 refugee and migrant children in Serbia", *RTS*, 14 June 2017, available at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2769330/u-srbiji-vise-od-2500-dece-izbeglica-i-migranata.html.

224 See more footnote 221.

targeted campaigns for promotion of foster care would be useful, while at the same time supporting the existing foster parents in taking care for this vulnerable category of children. Development of modalities of supportive housing for unaccompanied children over 16 to help them become fully independent and integrate into the society should also be considered. When deciding on the model of alternative care, attention must be paid to age and the characteristics of each individual child as well as their opinion. The process of development and advocacy for alternative forms of child care calls for establishment of specialised centres for accommodation and reception of unaccompanied and separated children manned with sufficient numbers of trained staff and permanently employed interpreters.

In addition to local integration, one of the durable solutions available to UASC is resettlement. This option is considered in cases when an unaccompanied or separated child can neither return to the country of origin for fear of persecution nor can a durable solution for him/her be found in the country of current residence.[225] In the past, resettlement was implemented by UNHCR office in Serbia pursuant to internal procedures. In 2017 for instance, two children from the Centre for Accommodation of Unaccompanied Minors, Institute in Belgrade were resettled to third countries. Other durable solutions were also identified for the UASC in this centre: two children were transferred to the Integration House, one boy was transferred to a private address with UNHCR assistance, and one child was placed in a foster family.

6.5. Exercise of the Right to Education

Institutional and systemic integration of children into the Serbian school system began in December 2016 in line with the Law on the Basics of Education,[226] and continued throughout 2017. In May 2017, the Ministry of Education, Science and Technological Development adopted a "Professional Guidance for Inclusion of Pupils/Asylum-Seekers into the Education System".[227] These

225 General Comment no. 6: Treatment of Unaccompanied and Separated Children outside their Country of Origin, 1 September 2005, Committee on the Rights of the Child, CRC/GC/2005/6 para. 92.

226 Article 6 of the Law on Foundations of Educational System stipulates that each person without discrimination has an equal right to education, and the Article 100 provides that the children who "not familiar with the language in which instruction is delivered or certain program content of significance to the continuation of education, the school shall organize, language learning classes, preparation for instruction or additional instruction classes, according to special instructions prescribed by the minister".

227 Professional Guidance for Inclusion of Pupils/Asylum-Seekers into the Education System, 5 May 2017, no. 601-00-00042/201718

were used as basis for preparation of school administrations on the territories of which the asylum and receptions centres were located. The schools received instructions for development of individual plans of support, and a Task Force for Monitoring the Implementation of the Professional Guidance was established.[228] In the period August – September, some 400 teachers from nine school administrations with jurisdiction over schools in the vicinity of asylum and reception centres were trained.[229]

Thanks to these efforts, more than 85% of refugee children from asylum and reception centres were enrolled into schools in academic 2017/2018. The significance of enrolling all children into schools, regardless of their status, was stressed by numerous international bodies including the UN Committee on the Elimination of Racial Discrimination which noted it was necessary "to ensure that all children including migrant children be enrolled into primary schools and to implement integration programmes in schools so that migrant children get linguistic and other forms of support they need"[230] in their Final Remarks on the Report for Serbia of 8 December 2017. An exceptionally good practice with respect to inclusion of unaccompanied migrant children is that of the secondary school Branko Pešić, which attained quality inclusion of children from the Asylum Centre in Krnjača into its programmes with no additional support of the Ministry of Education and additional instructions. The teachers worked with approximately 35 children, in Serbian, using visual devices and creatively designed lessons, and the children also attended other classes (math, geography, history, etc). Each month the children were issued certificates on the knowledge and skills acquired that they could use as proof in the country of destination of having acquired certain knowledge and skills in the country of transit.

The challenges identified in early academic year 2017/2018 mostly relate to regular attendance of classes and enrolment of children after the massive initiative at the beginning of the school year. Practice shows that interest of parents for their children to attend schools regularly is not often high. In case of UASC this is yet another task for the already overburdened foster parents. Enrolment of children who arrived in Serbia after the beginning of the school year was hampered for lack of coordination which resulted in long waiting times. This opens up the question of Serbia's capacity to enrol children in the future when the sup-

228 See more at: http://www.mpn.gov.rs/wp-content/uploads/2017/06/Obrazovanje-ucenika-izbeglica-trazilaca-azila-u– Srbiji.pdf.

229 *Ibid.*

230 Concluding observations on the combined second to fifth periodic report of Serbia on application of the International Convention on Elimination of All Forms of Racial Discrimination, CERD/C/SR.2604, of 8 December 2017, para 27(v). Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_cerd_srb_decembar_2017.doc.

port of UNICEF and other donors is not likely to be at the same level. Since secondary education is not mandatory in Serbia, all the above mentioned problems are further aggravated with respect to enrolment and attendance of classes by foreign secondary school pupils. Although the children have the opportunity to learn Serbian in schools, most of the centres do not organise any Serbian classes for their parents and so the children attending schools are not able to turn to parents for help with homework nor are the schools able to talk to parents about the issues that concern their children.

In the majority of centres, civil society organisations implemented informal education activities including lessons in Serbian and foreign languages, math, geography, various forms of vocational training, etc. In May, the humanitarian organisation ADRA started with vocational trainings in specific occupations for the unaccompanied and separated children staying at the Asylum Centre in Krnjača.[231] Depending on the occupation, the trainings lasted between one and three months, whereafter the participants were issued certificates they can apply for jobs with later. The trainings were also implemented within the so called Integration House managed by the Jesuit Refugee Service, where some 20 UASC under the guardianship of the Belgrade Centre for Social Welfare were placed.[232]

231 See more at: http://adra.org.rs/2017/03/07/adra-otvorila-drustveni-centar-za-izbeglice-lokalnu-zajednicu.

232 See more on the project activities at: http://jrsserbia.rs/projekti/integraciona-kuca-za-ugrozene-kategorije-izbeglica.

7. ACCOMMODATION OF ASYLUM SEEKERS AND MIGRANTS

In line with the Law on Asylum,[233] the Commissariat for Refugees and Migration is in charge of implementing asylum-related regulations related to accommodation of asylum-seekers in the asylum centres and ensuring the basic living conditions during the asylum procedure.

Before the migrant crisis began in mid-2015, there were five permanent asylum centres in the Republic of Serbia that could take in 810 persons (Krnjača, Bogovađa, Banja Koviljača, Sjenica, Tutin). In order to respond to the increased influx of migrants, the capacities in these centres were additionally extended to accommodate more than 1,800 persons. The total capacity of the five permanent and 14 reception centres are now 6,000 places. Fourteen reception centres were opened since the formal establishment of the Reception and Transit Centre Preševo on 8 July 2016. All of them are functional with the exception of a temporarily closed RC Šid Stanica.[234]

Although the decision of the Government of the Republic of Serbia to open new centres as a response to the increased influx of migrants is incontestable, in practice both the asylum-seekers with the certificates on expressed intention as well as the migrants who did not have the certificates, i.e. whose legal status in the country was not regulated, were placed in them in 2017. Bearing in mind the international human rights standards, the rights of irregular migrants in particular, the humanitarian approach of our State and the provision of accommodation and basic livelihood is definitely proper. On the other hand, this created certain problems related to implementation of the asylum procedure in the reception centres, since the Asylum Office failed to conduct the official asylum actions in next to none of these reception and transit centres.[235]

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233 Article 39, AL.

234 Information from the website of the Commissariat for Refugees and Migration. Available at: http://www.kirs.gov.rs/articles/azilcentri.php?type1=38&lang=SER&date=0

235 This problem was also identified by the state institutions, CRM and the Asylum Office. So, as far as the BCHR lawyers know, an agreement was made in August that the CRM would transfer all the persons who intended to apply for asylum in Serbia and were staying in RCs into one of the five asylum centres upon the formal submission of application. However, this did not resolve the problem once and for all, as by the end of the year not all the persons who had expressed intention to seek asylum were transferred to asylum centres, nor had all of them applied for asylum formally. They were not transferred to asylum centres, even if

Importantly, the Asylum Office conducted a profiling of asylum-seekers and migrants[236] in January and February 2017, in order to identify the persons genuinely interested in applying for asylum in the Republic of Serbia from among some 8,000 migrants accommodated in asylum and reception centres at the time. According to an officer of the first instance body, 130 persons who wanted to apply for asylum were identified and referred to the official asylum actions. The profiling criteria and methodology remain unclear. This raised the issue of access to the asylum procedure by the persons who did not state whether they wanted to seek asylum in Serbia. It also affected the decision on placement in the centres of the persons who wished to continue their journey towards one of the EU countries, and those who opted to apply for asylum in Serbia.

Certain challenges remain with respect to the conditions and standards of accommodation of migrants in Serbia, and these are also linked to access to the asylum procedure. As opposed to the asylum centres designated in the effective Law on Asylum for accommodation of asylum-seekers during the asylum procedure, the reception centres were set up during the refugee crisis as temporary centres for short-term stay. Even these new facilities, built exclusively for accommodation of migrants, have large dormitories with more than 30 beds that are inadequate for longer-term stay. With regard to that, the Protector of Citizens, through the National Preventive Mechanism (NPM), noted certain deficiencies in ensuring conditions for accommodation of migrants and asylum-seekers in Serbia in 2017.[237]

The report of the Council of Europe developed by Tomáš Boček, the Ambassador and Special Representative of the Secretary General on Migration and Refugees[238] was published in October 2017. It notes that the Serbian authorities had invested remarkable efforts to provide accommodation, food and medical assistance to each migrant and refugee. Still, despite this, and due to the large number of people, capacities of most of the accommodation facilities are far overstretched, affecting the standards of accommodation and services and potentially calls into question the respect of Article 3 of the European Convention on Human Rights[239].

Refugees and migrants consider Serbia as a transit country in their journeys to other European countries. Clearly, the Serbian authorities have made a

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they had done that. This attests to a still vague Serbian migration policy, unclear profiling of migrants and non-existent mechanisms to help resolve this situation.

236 The BCHR lawyers learned about the profiling from the Asylum Office officers.

237 See more on NPM conclusions in the annual report of NPM. Available at: http://npm.rs/index.php?option=com_content&view=category&layout=blog&id=112&Itemid=116.

238 The report available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2#_ftnref10.

239 *Ibid*., para. 3.1.

positive choice not to criminally prosecute and detain migrants and refugees. It should be noted that everyone is offered accommodation and food in receptions centres and there is no immediate plan to deport them. There are still very few voluntary returns to countries of origin, despite an increase in numbers compared to previous years. Most of the people we spoke to described their situation as "waiting to go to Hungary". Also, numerous migrants and refugees attempt to cross the border to Croatia, often facing pushbacks, including violent ones.

Overall, this situation presents very complex challenges for the Serbian authorities. While for the moment basic living conditions are secured in state-supported asylum and reception centres, the overwhelming majority of migrants and refugees are in a state of limbo with regard to their legal status and their prospects. They continue to live in Serbia's centres in a situation of uncertainty for extended periods of time, which often range from several months to over one year. The Serbian authorities explained to us that migrants and refugees who are in this situation are considered to have "tolerated status". This essentially means that they are permitted to stay in Serbia, notably in centres, and that they are free to travel to other countries.

Almost every migrant we have met in the asylum and reception centres that we visited in Serbia complained about the long waiting time, in most of the cases lasting for months, before his/her turn on "the list for Hungary" would come up.

Originally, the purpose of this list was to manage the admission of large numbers of migrants from Serbia into Hungary at the border crossing points in Röszke and Tompa. Despite the lack of any official status, the waiting list for admission into Hungary *de facto* determines the amount of time that migrants and refugees actually spend in asylum and reception centres in Serbia, which in most of the cases is several months. Indirectly, the waiting list deters migrants and refugees from making an application for international protection in Serbia and adds more uncertainty and confusion to an already unclear situation with regard to their legal and administrative status in Serbia. Being placed on the waiting list raises the hopes of migrants and refugees that, eventually, they will be admitted in Hungary. In effect this contributes to migrants and refugees being "left out" of the Serbian asylum system, which in many cases would have provided them with the only realistic possibility of obtaining international protection. Also, the level of informality and the lack of transparency with which this waiting list is compiled and handled create a lot of suspicion that corruption is involved. Many migrants and refugees prefer dealing with smugglers to waiting for long periods of time until their turn on the list comes up. Hence, the waiting list should be seen as one of the many aspects contributing to a favourable environment for smuggling migrants and refugees in both Serbia and Hungary.[240]

240 *Ibid*. Chapter 1.3, 3.1 and 3.2.

The standards of accommodation of migrants and asylum-seekers in the Republic of Serbia were considered by the different UN treaty bodies that Serbia submitted periodic reports to in the course of 2017.

In its Concluding Observations on the third periodic report for the Republic of Serbia[241] of 10 April 2017, the UN Human Rights Committee expressed concern about the inadequate living conditions in reception centres and the placement of unaccompanied minors with adults.[242] The access of unaccompanied minors to social workers, specialized for work with the migrants and the guardians appointed who should regularly monitor them and decide on their behalf in accordance with the best interest of the child principle is also problematic. Therefore, in its Concluding observations on the combined second and third periodic reports of Serbia,[243] of February 2017, the UN Committee on the Rights of the Child also assessed the situation of unaccompanied and separated children in the accommodation facilities in Serbia as worrying.[244]

The asylum-seekers under 16 live in overpopulated asylum centres for extended periods of time lacking effective support and protection. Therefore, one of the recommendations made to Serbia was to provide accommodation in foster families or other accommodation facilities adequate for their age, gender and needs in line with best interest assessments conducted on an individual basis and establish specialized services for children with emotional, psychiatric and behavioural problems.[245] In its Concluding observations on the combined second to fifth periodic reports of Serbia of 3 January 2018,[246] the Committee on the Elimination of Racial Discrimination also noted that the State should ensure that all non-citizens, including migrants and asylum seekers, enjoy their human rights and have access to adequate services including shelter.[247]

The draft new Law on Asylum and Temporary Protection is currently in the Parliamentary procedure[248] and its endorsement is expected in the first half of

241 Concluding observations on the third periodic report of Serbia, 10 April 2017, Refugees and asylum seekers, CCPR/C/SRB/CO/3, International Covenant on Civil and Political Rights, Human Rights Committee.

242 *Ibid*., para. 32.

243 Concluding observations on the combined second and third periodic reports of Serbia, 3 February 2017, Special protection measures, Refugee ad asylum-seeking children, CRC/C/SRB/CO/2–3, Committee on the Rights of the Child.

244 *Ibid.,* para. 56 (a-b).

245 *Ibid*., para. 57(b).

246 Concluding observations on the combined second to fifth periodic reports of Serbia, 3 January 2018, Asylum seekers, migrants and refugees, International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/SRB/CO/2–5.

247 *Ibid,*. paras. 26, 27.

248 The integral document available at the website of the Parliament of the Republic of Serbia: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2445–17.pdf.

2018. The new Law, aligned with the EU Directives, prescribes standards (some of which refer to accommodation) and minimum rights and obligations of asylum-seekers and persons granted some form of international protection. It stipulates the right of asylum-seekers to residence and accommodation in asylum centres or other facilities intended for accommodation of asylum-seekers.[249] The reception conditions include accommodation, food, clothing and proceeds to satisfy personal needs. Introduction of pocket money is an innovative solution, and the sum is to equal the amount received by adult, unemployed social welfare beneficiaries accommodated in social protection institutions.[250] At placement, attention is to be paid to gender and age as well as family unity. The Law designates the Commissariat for Refugees and Migration as manager of asylum centres and other accommodation facilities. Unaccompanied and separated children are also provided for in the new Law, so it stipulates that they would be transferred to social protection institutions, other providers of accommodation or other families in absence of the necessary conditions for accommodation. The same arrangement has been stipulated for persons with special mental or physical problems.[251]

7.1. Status of asylum seekres in Asylum Centers

7.1.1. Banja Koviljača Asylum Centre[252]

7.1.1.1. General

The Asylum Centre in Banja Koviljača, which can take in 120 persons, is the only centre designated as a permanent facility for accommodation of asylum-seekers. It was opened in 2008. between 100 and 120 people resided here in 2017.

7.1.1.2. Access to the Asylum Procedure

The Asylum Centre in Banja Koviljača is the only asylum centre in Serbia with an MOI officer on duty to register the asylum-seekers, issue identity cards and check their certificates on intentto seek asylum. However, the Asylum Office did not often come to this AC to perform its official asylum actions.[253]

249 *Ibid*., Article 49.

250 *Ibid*., Article 50.

251 *Ibid*., Article 52.

252 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

253 According to BCHR's findings, the Asylum Office staff visited the Banja Koviljača AC three times in 2017.

Lawyers have a separate room for counseling which was unimpeded throughout 2017. However, according to the Office's profiling conducted in early 2017, the Asylum Office did not regularly visit this AC to conduct its official procedures related to submission of asylum applications and interviews, as the majority of the asylum-seekers expressed the intention to resume their journey, and had registered on the Hungary list.[254]

7.1.1.3. Conditions of Accommodation

There are three floors with eleven rooms each. The residents had eight shower cabins and six toilets on each floor at their disposal. All the windows were replaced, the carpentry was refurbished, bathrooms were renovated and the roof was repaired in the first half of the year. Works were also done around the Centre, where the paths, fences and the gate were repaired. The Centre has a TV room and a kindergarten, where various workshops and activities are organised five days a week.[255]

None of the residents complained to the visiting BCHR team that they had been separated from their families on admission and placement. Attention is also paid to ethnic background, so the people of different nationalities are placed on different floors, or the placement is based on their language. UASC are placed in separate rooms whenever possible. The House Rules as well as the information on meals, bedding changes, Internet access and hot water are displayed on the bulletin board in English, Arabic and Farsi. The most frequently voiced complaints concerned the shortage of clothing and footwear.

7.1.1.4. Health Care Services

The Danish Refugee Council funded the adaptation of the auxiliary building in the Centre compound into a medical unit at the beginning of the year. The idea was for the Centre to always have a doctor at all times, so that the asylum-seekers could receive medical care on the spot rather than in the local health care centre in Banja Koviljača. When necessary, the hospital in Loznica, to which the residents are driven by the Centre staff, conducts specialised checkups. Regrettably, the constant doctor's presence in the medical unit was secured only since August, as the Ministry of Health's approved it only then, even though the DRC had secured the funds for this purpose. The doctor is present from 7 a.m. to 2 p.m. five days a week and from 7 a.m. to 12 a.m. on Saturdays. One of the major problems in the Centre is the lack of a Farsi interpreter, which makes the communication considerably more difficult, especially in the matters of medical assistance.

254 More on the migrant profiling in the first quarterly report of 2017. Available at: http://azil.rs/pravo-na-azil-u-republici-srbiji-periodicni-izvestaj-za-januar-mart-2017/.

255 The Childrens' Corner is organised by the Danish Refugee Council, funded by UNHCR.

7.1.1.5. Education and Informal Activities

Sewing workshops as well as Serbian and English language classes are held every work day. It is interesting that zumba classes were introduced every morning as of mid-year, and that women happily respond and exercise.

7.1.1.6. Accommodation of UASC

According to the AC's management, the competent social work centre is promptly notified of the stay of UASC, although the appointment of legal guardians is not always done swiftly. At the beginning of the school year, the children staying at the AC started attending classes in primary schools in Banja Koviljača, as is the case with the other Asylum Centres in Serbia.

7.1.2. Bogovađa Asylum Centre [256]

7.1.2.1. General

The Bogovađa AC was founded in May 2011 in the former Red Cross' children resort with the capacity of 200 places. It can currently take between 230 and 280 people. Throughout the year it hosted around 240 people on average.

7.1.2.2. Access to the Asylum Procedure

There was no police officer continuously on duty in the Bogovađa AC, hence the registration and issuance of IDs is not conducted there, but on arrival of the Asylum Office staff. In 2017, the Asylum Office paid more regular visits to this AC than to the centres in Banja Koviljača, Tutin and Sjenica. The foreigners without certificates on intent to seek asylum, who were admitted to this AC, were driven by the CRM staff deployed there to the police stations in Valjevo or Lajkovac to express their intention to seek asylum. According to the Centre management, the police station is notified of the foreigners' admission into the Centre as soon as possible, after which the police schedules a date when the foreigners are to come and register and be issued their certificates.

7.1.2.3. Conditions of Accommodation

Throughout the year, the main building and nine rooms were renovated, the kitchen roof was replaced and a storage facility was built. House Rules are displayed on the bulletin board in the main hall in English, Arabic and Persian languages. The Centre has central heating. The bathrooms are unisex (some 70 toilets and 35 showers), and according to the beneficiaries, there is always hot water.

256 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

According to what the asylum-seekers and migrants told the regularly visiting BCHR teams, all the families were placed together, in respect of the family unity principle. UASC are placed in the rooms specifically dedicated to such cases whenever possible. Similarly, the women who travel alone stay in all-female rooms.

7.1.2.4. Health Care Services

The right to health care is ensured by the presence of a medical team every work day with 30 to 40 daily interventions on average. When interventions surpass the capabilities of the medical team in the AC, the refugees and asylum-seekers are transported to the Out-Patient Clinic in Bogovađa, the Health Care Centre in Lajkovac or the hospital in Valjevo, depending on the nature of the intervention. All the residents undergo mandatory check-ups, usually performed several days after their arrival, depending on the workload of the competent Health Care Centre.

7.1.2.5. Hygiene

In the first half of the year there were many cases of lice infestation, so all the infected stayed in separate rooms designated for quarantine. The Public Health Institute staff visited the AC once a week to disinfect it and prevent epidemics among the beneficiaries and the local population. The AC is also regularly visited by the Sanitary Inspection staff.

7.1.2.6. Education and Informal Activities

The Children's Corner, established earlier with the assistance of Save the Children and Group 484 continued to function work in 2017.[257] Various women's workshops, such as knitting and jewelry making are also held regularly. Psycho-social assistance is available in the AC at all times. The children started primary school in September, and secondary school not long afterwards.

7.1.2.7. Accommodation of UASC

UASC are assigned guardians from the Social Work Centre in Loznica, but their presence in the Asylum Centre is not regular.

257 Open every day from 10 to 16h, with a short lunch break.

7.1.3. Krnjača Asylum Centre [258]

7.1.3.1. General

The Krnjača AC is situated in the Belgrade municipality of Palilula. Considering its geographic location and the fact that at current capacity, it can take in the greatest number of persons in need of international protection, the BCHR conducted the greatest number of visits to this very AC.[259] It can optimally take in 750 people and up to 1,000 persons in emergencies. Statistical data[260] indicate that most of the persons in need of international protection who stayed in the AC Krnjača in 2017 came from Afghanistan, followed by foreigners from Iraq, Pakistan, Iran and Syria.

7.1.3.2. Access to the Asylum Procedure

In 2017, the Asylum Office performed the highest number of official actions in this AC, so one may conclude that the access to the asylum procedure is the easiest for the people staying at this Centre. However, the official actions were not always regularly conducted, and on occasion there is no activity for several months. A police officer does not maintain a constant presence in the Centre, so the asylum-seekers are usually driven to police station in Krnjača to register. Registration is most often conducted just before the scheduled official submission of asylum application.

The Centre has a room specifically designated for legal counselling and in which the lawyers can have a confidential conversations with the asylum-seekers. In certain cases, the management allowed the BCHR lawyers to move freely around the AC. However, the CRM still demands BCHR to provide a list of names of refugees and migrants it would extend legal aid to during each visit and that on each pre-notification of a visit to the Asylum Centre.

7.1.3.3. Conditions of Accommodation

This AC housed the largest number of asylum-seekers throughout 2017. The capacity of the AC was overstrethed in the first quarter, and the situation stabilised in the second half of the year, so between 700 and 800 people on aver-

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258 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pd.

259 In collaboration with the UNHCR Belgrade Office, the Belgrade Human Rights Centre has in 2017 conducted business thrice a week at the Krnjača Asylum Centre, with the goal of providing legal aid and the information on the asylum procedure in Serbia to the persons in need of international protection.

260 The country of origin statistics available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

age stayed in the Centre. As in 2016, in 2017 the decision concerning who was permitted to say in the AC changed several times. As a result, at the start of the year, the CRM staff informally decided that all the migrants may stay in the AC on humanitarian grounds, regardless of whether they have expressed intent to seek asylum or not. The CRM personnel observed the principle of family unity at the admission of asylum-seekers. The AC employs three interpreters for Arabic, and one for Kurdish and Persian languages each. At the admission, the new arrivals were informed about the House Rules, which were displayed in several languages. Even so, the BCHR team received several complaints about the lack of interpreters for Persian, and the inability to communicate in important situations, such as a doctor's appointments in the AC.

Persons who do not have certificates on expressed intention to seek asylum and stay at the AC are not entitled to three daily meals which are intended and prepared for the asylum-seekers. The Red Cross of Serbia prepared and delivered food packages for those in urgent need of accommodation and each of them was entitled to two packages a day. Caritas has took this obligation over in March. In addition to food packages, Caritas has also started distributing soup and cooked meals.

The greatest number of complaints BCHR team received from the asylum-seekers and migrants during their visits to the AC, concerned poor accommodation in the old barracks, irregular distribution of hygiene products, clothing and footwear, insufficient amount of food, as well as the lack of privacy. Towards the end of July, the renovations of the old barracks were completed, the pathways were tidied and the water canal cleaned.

7.1.3.4. Health Care Services

Free health care in the Centre is equally available to the asylum-seekers and those who were urgently accommodated and who do not have certificates. A medical team is present in the AC every day except Sunday and it provides free health care in separate rooms adapted for provision of adequate medical services. The asylum-seekers are referred to one of the hospitals in Belgrade when specialised check-ups are required.

7.1.3.5. Education and Informal Activities

Various workshops for women are organised daily, an Internet cafe was opened and there are Serbian and English languages classes. The Children's Corner is open daily from 8 a.m. to 6 p.m. A number of sports competitions were organised in Summer (cricket, football). In October, NGO ADRA opened

a Community Centre in Borča where various activities are organised for women and children. Educational and creative workshops are organised daily, as well as sports, and doctor's and dentist's services are also available. Transport to this Centre is organised from the AC every day.

7.1.3.6. Accommodation of UASC

A large number of migrants, mainly UASC, were moved from the city centre, where they slept in barracks near the main bus station, to the Asylum Centre in Krnjača.[261] The CRM personnel notified the SWC when it admitted such children in the AC and the SWC appointed guardians to each of them. The positive practice was having the UASC stay in the separate barracks. However, their behaviour was often contrary to the House Rules, so the CRM staff reported problems. The barracks were being ruined, the hygiene was poor, and certain individuals have tried to set a fire twice. There was a mass fight in October[262].

7.1.4. Sjenica Asylum Centre [263]

7.1.4.1. General

The Sjenica Asylum Centre was set up in a former Hotel Berlin, renovated to accommodate up to 150 people. In mid-March, the building of the former textile factory "Vesna", which was handed over to the Asylum Centre management for use, was finally renovated and opened. This building can accommodate some 250 persons.

7.1.4.2. Access to the Asylum Procedure

The registration of the asylum-seekers is not possible in the Centre itself, but is conducted at the local police station where they may also express intent to seek asylum. The Asylum Office rarely performs its official asylum actions in this AC. In 2017, its staff came only twice to take the asylum applications once at the start and once at the end of the year,[264] which leads to the conclusion that the beneficiaries do not have an efficient access to the asylum procedure. The Sjenica Asylum Centre housed approximately 400 people on average during the year. Only 17 asylum-seekers represented by the BCHR submitted asylum applications were.

261 In the second half of 2017, the UASCs from the reception centres in Preševo, Dimitrovgrad, Bosilegrad, Pirot and Divljana were referred to the Krnjaca Asylum Centre.

262 Belgrade Human Rights Centre lawyers learned of this from a conversation with the management of AC Krnjača, in October 2017.

263 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

264 The Asylum Office's visits were conducted on 01 February 2017 and on 06 December 2017.

7.1.4.3. Conditions of Accommodation

In the first quarter of 2017, the Sjenica AC accommodated more than 400 people, which presented a problem, considering the Centre's capacity. Aside from a few rooms with bunk beds (accommodation capacity around 70 beds), the asylum-seekers were placed in makeshift dormitories in the lobby of the hotel, separated by screens and curtains, with almost no privacy, especially considering the fact that only the screen separates the family room and the all-male room. The asylum-seekers also slept in the dining room due to the lack of space. The Sjenica AC has only two bathrooms with six showers and eight toilets, which is a particularly low number even for the Centre's optimum number of residents – 150. These conditions were was below every prescribed minimum.

The newly-opened building of the former factory may take approximately 250 persons in, has 27 rooms with 17 toilets and 11 showers. The Centre has a medical unit, two common rooms, one of which is designated for women and the other for men, as well as a dining room which can take 80 people. In addition, there is a Childrens' Corner where various activities are organised five days a week. This is a significant improvement considering that the other Centre building does not have these. A number of beneficiaries was moved to the new building after its opening, which significantly improved the living conditions at this Centre.

The family unity principle is observed at admission, so the families are always placed in the same dormitory and attention is paid to accommodation of UASC. The House Rules are displayed on the bulletin board, in English, Farsi and Arabic. The Centre has interpreters for Arabic and Farsi language.

The majority of complaints of the beneficiaries concern hygiene and poor accommodation.

7.1.4.4. Health Care Services

Medical check-ups, which are mandatory for all the beneficiaries at the admission to the AC in order to check their state of health or whether they suffered from any infectious diseases, are conducted at the local Health Care Centre. A doctor's presence is ensured on work days, and the asylum seekers are taken to the hospitals in Novi Pazar or Užice for specialised tests and stationary treatment. Throughout the year, disinfecting of the entire space is conducted regularly.

7.1.4.5. Education and Informal Activities

There was a lack of various social, cultural and educational activities at the Sjenica AC until the second building was opened. There was no Children's Corner, and psycho-social aid was provided by the NGOs once a week. The situation has improved significantly in the new building, as there are now special rooms for the Children's Corner, as well as for various workshops.

7.1.4.6. Accommodation of UASC

In the first half of 2017, the infrequent presence of social workers represented a major problem, and no UASC had an appointed guardian. As mentioned above, the UN Committee on the Rights of the Child identified this problem and advised Serbia to place children in foster families or other institutions suited to their gender, age and other needs. The situation improved somewhat when UNICEF donated the funds for a social worker whose duty is specifically to care for the children staying at the Centre.

7.1.5. Tutin Asylum Centre [265]

7.1.5.1. General

The Tutin Asylum Centre was opened in 2014 in a former furniture factory, i.e. the barracks once used for temporary accommodation of workers. The AC can optimally take in around 80 people, but the capacity may be increased to 150 if needed.

The CRM has announced the construction of a new facility in Tutin for accommodation of the migrants, refugees and asylum-seekers. That facility will have 60 rooms, a medical unit, a playground and 12 additional rooms for the disabled persons. The construction was to be completed by the end of the year. However, it has not been completed yet, so the Centre is expected to open in the first half of 2018.[266]

7.1.5.2. Access to the Asylum Procedure

The MOI officers were not present in the AC at all times. The Asylum Office staff visited it only once in 2017.[267] On that occasion only two BCHR clients applied for asylum. Considering that the Asylum Office visited this Centre only twice during the last year and a half, it may be concluded that the foreigners

265 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

266 The article is available on the CRM's website: http://www.kirs.gov.rs/articles/navigate.php?-type1=3&lang=SER&id=3035&date=0.

267 The application was made on 5 December 2017, and previously on 10 July 2016.

staying in the Tutin AC have no efficient access to the asylum procedure, as they are unable to submit an application because it is done in person to an Asylum Office official. According to the data the BCHR gathered on its visits, the people who arrive at the Asylum Centre in Tutin without a certificate on expressed intention to seek asylum are referred or accompanied to the police station in Tutin, where the registration of the asylum-seekers is also conducted.

Exercising the rights and providing aid to the persons in need of international protection at the Centres is also facilitated by the NGO sector. The rights to free legal advice, psycho-social support and the assistance to victims of violence and human trafficking are exercised through regular NGO visits.

7.1.5.3. Conditions of Accommodation

The accommodation includes dormitoris (from 10 to 14 beds) and smaller rooms (from 6 to 8 beds). Male and female bathrooms are separate and they have six showers each, with four toilets for men and three for women. Despite the water heaters, the amount of 60 liters is often insufficient to provide hot water for all the beneficiaries and the heating in the bathroom itself is not possible. In addition to the workers' barracks, a group of Cuban migrants were still placed in the former factory hall with no heating, bathroom (the building has only a toilet) and with makeshift beds. They stayed in the AC until March, whereafter they left of their own volition. The factory hall has not since been used for accommodation of asylum-seekers, as the furniture production has started in it again.

At the start of the year approximately 120 persons were accommodated in the AC, and this number dropped to 25 by the end of the Summer. In September, the number of persons increased again, so the Centre accommodated approximately 80 asylum-seekers on average until the end of the year. The majority of the residents are families (5 to 8 members), coming from Afghanistan, Pakistan and Iraq. At admission, attention is paid to nationality as much as the accommodation capacity permits. The principle of family unity is observed, so the families always stay together. The security is present around the clock, and the Centre is locked at night.

The beneficiaries have made no complaints about the Centre employees, although the living conditions in the Tutin AC may be described as inadequate considering the state of the facility, the lack of heating and the insufficient accommodation capacity compared to the number of people who use them. As of 2017, interpreters for Arabic and Farsi languages work in the AC, which is an improvement compared to the previous year. However, there are still no interpreters for other languages. The majority of complaints of the beneficiaries concern hygiene and poor accommodation.

7.1.5.4. Health Care Services

Mandatory medical check-ups are conducted at the admission into the AC, though it has no regular doctor. A doctor comes to the Centre for the basic examinations when necessary and the asylum-seekers in need of specialised examinations are transported to a Health Care Centre in Tutin or to the hospital in Novi Pazar. In 2017, three women who stayed at the Tutin AC gave birth and the babies were registered in birth registries. The children are registered as citizens of their parents' country of origin, and the birth certificates are issued on request and on an international form. In July, the Centre hosted the Borderfree Association for Human Rights mobile dental clinic, which conducted free check-ups and interventions.

7.1.5.5. Education and Informal Activities

Since May, the NGO "Ana I Vlade Divac" has been holding children's workshops every work day from 10 a.m. to 2 p.m. Thrice a week the workshops are held for younger children, in the Childrens' Corner in the Centre itself. The remaining two times the workshops for older children are organised in their office. The workshops are creative and entertaining, and the older children also learn foreign languages.

7.1.5.6. Accommodation of UASC

In case of UASC staying at the Tutin AC, the management notifies the SWC, which appoints guardians to them, although the problems that arise here are similar to those in the other centres. The UASC are, if possible, placed separately. In 2017, only three UASC stayed at the Tutin Asylum Centre and they left it on their own after a while.

7.2. Reception Centers

7.2.1. Preševo Reception Centre[268]

7.2.1.1. General

The Preševo Centre for urgent reception, registration and the temporary accommodation of refugees was founded on the Government's decision in June 2015,[269] whereby the former tobacco factory was ceded to the CRM. It was of-

268 This report contains only the information on the Reception Centres visited by the BCHR project team and on which it has gathered the sufficient amount of information.

269 The decision of the Government of the Republic of Serbia 05 no. 464–7137/2015 on 27 June 2015.

ficially opened on 8 July 2015. The Centre can optimally take between 1,300 and 1,500 persons. The number of persons accommodated varied throughout the year. There were approximately 820 persons accommodated in January and February, and this number gradually declined in the following months, only to be at around 430 in June. In the second half of 2017, greater oscillations in the number of beneficiaries were registered, usually because the asylum-seekers and migrants from other centres were being moved to Preševo or were leaving the RC. So, the number of asylum-seekers in it ranged between 200 and 500 in this period. According to the CRM's data, the Preševo RC hosted around 300 people at the end of December.[270]

7.2.1.2. Access to the Asylum Procedure

The Preševo RC was established as an open centre. The asylum-seekers accommodated therein were initially allowed to leave for a few hours a day, usually three. By late 2017, they could leave the RC for up to three days, provided they obtained a permission to do so in advance. This practice that began in 2016 was not well received by the asylum-seekers, so they either refused to go to Preševo or to stay there longer.[271]

An administrative building is located to the right of the RC entrance and there the police officers admit and register the new arrivals.[272] With the exception of December, the police officers maintained a constant presence in the centre. This gave rise to numerous complaints made to the BCHR lawyer.[273] A special problem was that a considerable number of beneficiaries expressed the intention to apply for asylum, which was practically impossible as the Asylum Office officers rarely visited the centres in Southern Serbia.[274] From July to the beginning of December, 51 BCHR clients waited to formally apply for asylum in Preševo. BCHR lawyers[275] provided free legal assistance regularly, with a special

270 Information gathered by the BCHR lawyers on their regular visits throughout 2017.

271 On its regular visits and conversations with the asylum seekers in 2017, the BCHR has noted that the asylum seekers have made several complaints on the movement restrictions in Preševo.

272 The registration was usually conducted when a larger group of migrants gathered. The border police was contacted when beneficiaries wished to express the intention to seek asylum. Thereupon, they would photograph them again and issue the certificates which would then be taken by the CRM staff.

273 According to the information gathered in the field, the border police has not issued a single certificate since September 2017.

274 The Asylum Office has conducted official asylum-related activities at this RC only twice in 2017 – on 21 and 22 June. Twelve people applied for asylum on this occasion. In the meantime, five of them waited for an interview, while the others either fled or absconded from the asylum procedure.

275 The BCHR lawyer counselled 550 persons on the average.

pass[276] issued by the RC management. Throughout the year, three information sessions on the asylum procedure in Serbia were held and attended by 207 beneficiaries.[277]

The migrants were occasionally referred from Preševo to other centres upon filing a formal asylum application or under the special circumstances (health, security and other reasons, or when their turn to cross the border to Hungary came). However, many people were referred to Preševo as there was plenty of empty space, or as punishment for their inappropriate behaviour at the other centres.[278]

7.2.1.3. Conditions of Accommodation

The building of the former tobacco factory houses eight dormitories on the two floors. At the placement in the dormitories, families are separated from the people who travel alone, in observance of the family unity principle. However, as there are no smaller rooms at this RC, families are placed in the dormitories, and thus their privacy is disturbed. Placement of the UASC together with adults in these dormitories is particularly worrisome, as it puts them, as the vulnerable category of refugees, at the risk of abuse and violence.

The most common complaints received by the BCHR team concerned the lack of warm clothing and footwear.[279]

The construction of partition walls in one of the pavilions started in October, with a view to improving the living conditions for the families.[280] Caritas[281] and Čovekoljublje distributed breakfast, lunch (consisting of cooked meals), dinner and tea.

7.2.1.4. Health Care Services

The RC has a functioning medical unit. The medical team comes from the Health Care Centre in Preševo and issues referrals for specialised examinations outside the RC.[282] The foreigners most often sought medical assistance for the

276 As of September 2017, the international and non-governmental organisations are allowed to enter the RC only with a pass issued by the CRM.

277 The first information session was attended by 45 people, the second by 13, while there were 149 people in total in the third one.

278 The information received by the BCHR team on their regular visits to the Reception Centre.

279 The information was collected during regular BCHR legal team's regular visits.

280 Pavilion no. 1 was split into 5 rooms.

281 The representatives of Caritas were present at the RC Preševo five days a week.

282 The doctors are available at the Centre from 7 a.m. to 10 p.m. According to the information given to the BCHR lawyer, they were present 24 hours/day in the past. For specialised examinations, the asylum-seekers are referred to the hospitals in Preševo, Vranje or Niš.

respiratory diseases. The CRS also provides health care at the Centre. The Danish Refugee Council, funded by UNHCR, provides the required medications, while Borderfree Association for Human Rights offers dental services.

7.2.1.5. Education and Informal Activities

There are several Children's Corners in the RC compound. The DRC has set up a corner for infants, children up to two years old and their mothers, which provides baby food and various hygienic products and where the mothers can get all the relevant information on childcare. In addition to this, the SOS Dečija sela and Caritas organised playgroups and creative workshops for children of all ages. The adults may attend German, English and Serbian language classes, as well as art workshops.[283] NGO Atina organises activities for women with the aim of their empowerment, while sewing classes were organised by Čovekoljublje, with the assistance of the CRS. In October 2017, a carpentry course started. It was attended by the ten beneficiaries who expressed the desire to learn the basics of the craft. The course lasted until early 2018. At the completion of the course, the attendees will receive a certificate from the licensed institution for informal education National University from Vranje, which holds the course. The informal education at the Preševo Reception Centre is conducted thanks to CARE and its project partner NEXUS. As of December 2017, the Balkan Centre for Migrations (BCM) and the Catholic Relief Service (CRS) hold classes titled "Serbian Language and the Euro-Balkan Culture and Tradition" three times a week in both Preševo and Bujanovac RCs. The BCM also provides catch-up classes of Serbian to the children enrolled in one of the four primary schools in Preševo, Bujanovac and Vranje.

7.2.1.6. Accommodation of UASC

The Social Work Centre staff maintained a constant presence at the Preševo RC until 10 October 2017.[284] In November, the CRM decided that all UASC should be moved to the Obrenovac RC or the Krnjača AC, where they were subsequently referred to by the decision of the Border Police Administration upon expressing the intent to seek asylum.

283 These activities are organised by Borderfree Association for Human Rights.

284 Information the BHCR lawyer received on his visit to the Preševo RC.

7.2.2. Bujanovac[285] and Vranje[286] Reception Centres

7.2.2.1. General

The Bujanovac RC was opened in October 2016, in the former battery factory near the Belgrade-Skoplje highway. The RC is managed by the Ministry of Labour, Employment, Veteran and Social Affairs. The Bujanovac RC can accommodate 220 persons. When BCHR visited the RC in late December 2017, 191 refugees were accommodated there.

The Vranje RC is one of the new centres adapted for the accommodation of asylum-seekers. It was opened on 30 May 2017 in a renovated motel at the entrance to the city of Vranje. It was then that 135 refugees, the majority of whom nationals of Afghanistan, were moved there from the Preševo RC.[287] It can accommodate 220 persons, and it is under the supervision of the Government of the Republic of Serbia.

7.2.2.2. Access to the Asylum Procedure

The new arrivals are not registered in the Bujanovac RC, unless they have the certificate on the expressed intention to seek asylum.[288] The police officers do not maintain a constant presence in the RC. Instead, they come when called upon, in cases of more severe problems. The Asylum Office officers conducted not a single asylum-related activity at the RC in 2017.[289] An increase of asylum-seekers from Iran[290] who expressed the intention to seek asylum in Serbia was recorded in November. In June 2017, a group of asylum-seekers from Bangladesh complained about the lack of an interpreter for their native language, as they were planning to start the asylum procedure. On the other hand, the majority of the beneficiaries are on the list to cross into Hungary, and in August, several migrants complained about the long waiting period.

According to the information the BCHR collected, the asylum-seekers from Bujanovac and Vranje are very rarely referred to the other centres,[291] with the

285 Available at: http://www.kirs.gov.rs/docs/site-profiles/PC-SR-2017–12.pdf.

286 *Ibid*.

287 "A Reception Centre opened in Vranje, 135 migrants accommodated", *N1*, June 5. Available at: http://rs.n1info.com/a273893/Vesti/Vesti/U-Vranju-otvoren-prihvatni-centar-smesteno-135-migranata.html.

288 As in some of the other Centres, the Bujanovac Reception Centre also tolerated the stay of people without the police-issued certificate on the declared intention to seek asylum.

289 The refugees in Bujanovac who wanted to apply for asylum could do so at the Asylum Office's visits to the Preševo Reception Centre. It should be noted that its officers visited Preševo only twice in 2017.

290 Serbia introduced visa-free regime for the nationals of Iran in September 2017.

291 According to the information received by the BCHR lawyer in the field, only a few people were referred to the Bogovađa Asylum Centre in September 2017.

exception of the persons on the list for crossing the Hungarian border who move to Reception and Transit Centres in Kikinda or Subotica when their turn to cross comes.

7.2.2.3. Conditions of Accommodation

Accommodation at the Bujanovac RC is very good, compared to the other centres for accommodation of migrants – there are no dormitories in it. The refugees are accommodated in 18 m2-rooms with eight beds each. Only four rooms at the RC have 16 beds. The families are accommodated separately from the other refugees. The BCHR noted that the UASC are separated from the adults only if fewer than 130 people are accommodated at the Centre.

Accommodation at the Vranje RC is available only to the families and UASC. Each UASC was appointed a temporary guardian from the local Social Work Centre. However, as with most accommodation facilities, this Centre does not have separate rooms for the UASC. Notwithstanding, the living conditions in this RC are the best. The family unity principle is observed at all times, and all the families are placed in separate rooms with their own bathrooms.

Čovekoljublje, which also organises collective cooking twice a week, distributes cooked meals.

7.2.2.4. Health Care Services

Medical examinations are conducted at the refugees' admission to the Bujanovac RC, and doctors and dentists[292] are present every day and ready to provide the primary health care. Hot water is available twice a day for three hours. Bujanovac and Vranje RCs have one medical team each, whose work is supported through UNHCR and DRC partnership. Vranje currently has a "temporary out-patient unit", and there is a plan to convert one building into a small medical centre.

7.2.2.5. Education and Informal Activities

Numerous NGOs and international organizations organise various activities and workshops for children and adults at the Reception Centres in Bujanovac[293] and Vranje[294] with a view to providing adequate aid and support. In Vranje, the

292 Dental care is provided by Borderfree Association for Human Rights.

293 BCM – Serbian language classes, psycho-social assistance and transport; DRC – English language classes; Borderfree Association for Human Rights – English and German language classes; Čovekoljublje – film school (started in May 2017 and open from 10 a.m. to 12 a.m.); Pomoć deci – workshops for children of ages between 3 and 6; Indigo – work with the vulnerable categories; IOM – assisted voluntary return programs to the countries of origin.

294 Those were, aside from the UNHCR team, the representatives of the DRC, BCM, Indigo, and IOM. The RC was occasionally visited by Save the Children, Čovekoljublje and the Belgrade

SOS Dečija sela runs the "Super Bus" project, which includes recreational, educational and creative workshops for the youth. It implements the same activities at the local primary schools.

The BCM and the CRS have been holding classes[295] entitled "Serbian Language and the Euro-Balkan Culture and Tradition" at both RCs since December 2017.

7.2.2.6. Accommodation of UASC

The social workers from the Bujanovac SWC were appointed as temporary guardians for every UASC.

Centre for Human Rights.

295 Five times a week in Vranje, and three times a week in Bujanovac.

8. INTEGRATION OF PEOPLE GRANTED ASYLUM (BENEFICIARIES OF INTERNATIONAL PROTECTION)

8.1. Legal Framework for Exercise of Rights of Persons Granted International Protection

The rights of asylum seekers and beneficiaries of international protection are governed by Chapter VI of the Law on Asylum of the Republic of Serbia: the right to residence, accommodation, basic living conditions, health care, education, social welfare, and other rights equal to those of foreigners with permanent residence in the Republic of Serbia as well as the rights equal to those of Serbian nationals.[296]

Refugees in Serbia formally have the same rights as its nationals: to work, to acquire an education, to access social services and to be safe and secure in its territory. The rights of beneficiaries of international protection are enshrined in the 1951 Refugee Convention and the positive regulations of the Republic of Serbia.

Though in principle, the Law on Foreigners does not apply on foreigners who applied for asylum or are granted asylum in the Republic of Serbia, the provisions of this Law are applied to requirements for family reunification of persons granted asylum or subsidiary protection. Persons granted asylum in Serbia have formally the equal rights as foreigners with permanent residence with respect to the right to work and the related rights, entrepreneurship, right to take up permanent residence and freedom of movement, right to real estate and movable property, as well as the right of association and the Law on Foreigners applies to them in that domain.[297] The effective Law on Foreigners does not provide for kinship with a foreigner granted asylum as grounds for temporary residence. However, the new draft Law on Foreigners,[298] currently in the Parliament procedure, provides for this basis. Article 56 of the draft Law on Foreigners stipulates that members of close family of foreigners granted asylum need not prove that they possess funds for subsistence, health care and proof of justified grounds of application and payment of administrative fee. In those cases, spe-

296 Articles 22–27, AL.

297 Article 46, AL.

298 Draft Law on Foreigners of 2 December 2017. Available at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/3791–17%20-%20Lat..pdf.

cific and personal circumstances of the foreigners granted asylum and members of their families are taken into account. In cases of underage foreigners granted asylum, this right may be exercised by their parents with a view to preserving the unity of family. When family members do not hold travel documents, temporary residence is granted by a decision. This is particularly important for those who marry after leaving the countries of origin because the Law on Asylum provides that spouses are the only close family members who will be eligible for family reunification in case they enter into marriage prior to arrival into the Republic of Serbia.

Under the Migration Management Law (MML), the CRM is tasked with integration of foreigners granted asylum in Serbia.[299] This law specifies that the Commissariat shall be in charge of accommodation and integration of foreigners granted asylum or subsidiary protection. The Commissariat shall perform duties regarding: identification, proposal and implementation of measures for the integration of persons granted asylum pursuant to the Law on Asylum.[300] The model of integration, i.e. inclusion into the social, cultural and economic life of persons granted asylum shall be regulated by the Government, at the proposal of the Commissariat.[301]

Pursuant to Article 16 of the Migration Management Law and Article 46 of the Law on Asylum, the Serbian Government adopted the Decree in the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia (Integration Decree) on 24 December 2016, the enforcement of which began in 2017.[302] One of the legal consequences is the fact that national legislation recognizes the right to integration of foreigners granted asylum, i.e. refugee status but not of the foreigners granted subsidiary protection.[303] Article 59 of the draft Law on Asylum and Temporary Protection[304] provides for equal rights of persons granted asylum and subsidiary protection. Should this draft Law be adopted, the Integration Decree will need to amended to include also the persons granted subsidiary protection.

299 Article 10, MML.

300 Articles 10–16, MML.

301 Article 16, MML.

302 Action Plan for Chapter 24 of EU Accession Negotiations. Available at: http://www.bezbednost.org/upload/document/nacrt_trece_verzije_akcionog_plana_za_poglavlje_24.pdf, item 2.1.5.1.

303 The newly-adopted Integration Decree also envisages measures and programmes only for the persons granted asylum, but not for the persons granted subsidiary protection (Art. 1 of the Decree).

304 Draft Law on Asylum and Temporary Protection. Since 12 September 2017 available at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2445–17%20-%20lat.pdf.

Based on the Integration Decree, the Commissariat developed individual integration plans for foreigners granted asylum. Their assessment of the Commissariat referred to the integration-related needs of each individual (which has been a challenge thus far), basic information and an opportunity to attend Serbian language classes free of charge.

The institutional framework also includes other state authorities involved in Serbia's migration management system under the law and relevant enactments and strategies. They include various ministries in charge of realisation of specific rights such as the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Education, Science and Technological Development, the Ministry of Health, the Ministry of Interior, et al.

8.2. BCHR Practise Related to Integration of Refugees

The BCHR, in cooperation with UNHCR, continued to provide integration assistance to persons granted international protection and to the clients in the asylum procedure also in 2017. BCHR integration advisors provided individual support to the clients, support to systemic solutions and establishment of the system of integration. With respect to individual support, the advisors assisted in issuance of work permits, CV drafting, interviews with potential employers, advising about the Serbian labour market regulations and work ethics, employers' expectations, employee rights, issuance of personal documents (ID, drivers' license), vehicle registration, enrollment of children into schools, referral to psychological and medical assistance, registration of birth of children born in Serbia, access to social welfare, UNHCR financial aid, CRM's assistance in provision of accommodation, et al.

In cooperation with UNHCR, the BCHR actively engaged in advocacy and informing the Serbian business sector about this new vulnerable category of persons on the labour market, pointing to the absence of their identification by the employment-related strategies. Importantly, the latter was not an intentional omission of the authors, but a consequence of the fact that these documents were developed prior to the escalation of the current migrant crisis.

8.3. Right to Work

Pursuant to Article 43 of the Law on Asylum, the employment of asylum seekers and beneficiaries of international protection is governed by regulations on employment of foreigners and stateless persons.

The Law on Employment of Foreigners[305] passed in December 2014, substantially improved the status of persons seeking and granted international protection. It generally governs the work of foreigners in a much more modern manner and lays down the obligation to obtain work permits for a much broader range of foreigners. This law is the first to explicitly mention, in Article 2, paragraph 8 "refugees as foreigners granted the right to refuge pursuant to asylum-related regulations, with the exception of people from the territory of the former SFRY, recognized the status of refugees pursuant to the regulations on refugees, to whom this Law shall not apply", and in paragraph 9 "persons belonging to special categories of foreigners, such as persons seeking asylum, persons granted temporary protection, human trafficking victims and persons granted subsidiary protection in accordance with the law".

The Law also sets out that personal work permits shall be issued to special categories of foreigners, notably asylum-seekers, beneficiaries of temporary protection, victims of trafficking, beneficiaries of subsidiary protection, and refugees.[306] The validity of these permits depends on the duration of the holders' status. The situation on the labour market may be taken into account by the authority issuing the permits, unless a decision on a quota is adopted. The National Employment Service (NES) is tasked with issuing work permits and implementing various active employment policy measures.

Under the Integration Decree, the persons granted asylum shall be assisted in joining the labour market in: obtaining all the documents they need to register with the NES and employment agencies; initiating the foreign school diploma validation procedure; enrollment in additional education and training in accordance with the labour market needs and involvement in active employment policy measures.[307] Requalification and additional qualification trainings shall be extended by service providers implementing certified training programmes. All the above measures shall be secured in cooperation with the NES.[308]

The biggest obstacle to joining the labour market is the price of administrative fee for issuance of a personal work permit for foreigners. Thanks to various donors (above all UNHCR), the BCHR managed to cover the costs of issuance of work permits (RSD 13,320). One of the possible solutions is for the Commissariat for Refugees and Migration to cover these costs for the persons who cannot afford the administrative fees through support programmes provided in the Integration Decree. Further to the support in issuance of documents required for work permits and covering the related costs, we assisted the clients in prepara-

305 *Sl. glasnik RS,* 128/14.

306 Article 13, LF.

307 Article 7, Integration Decree.

308 Article 6, Integration Decree.

tions for the labour market including CV drafting, advising about regulations and work ethics in the Republic of Serbia, preparations for interviews with potential employers and administrative procedures at contracting employment. Given the insufficient level of the Serbian language, the majority of persons enjoying international protection or in the asylum procedure have found interpretation-related jobs for their mother tongue or other jobs in international and national NGOs. A significant number of asylum-seekers volunteer in NGOs working in the field and in the transit centres. Some 20 BCHR clients who contracted indefinite or temporary employment had no complaints related to treatment of employers or colleagues nor have they reported a single case of discrimination.

On the other hand, although issuance of personal work permits constitutes the first step, the language barrier is a major obstacle to entering the labour market. Most refugees do not speak Serbian which is a must if they want to work in Serbia.

The persons in the asylum procedure may apply for personal work permits nine months after applying for asylum. Since the process of formal submission of asylum applications tends to last several months, even more than six months in some cases, the period in which the asylum-seekers are unable to legally access the labour market is considerably longer. We believe there are no justified reasons for the period of waiting for work permits to be so long, since it exposes the asylum-seekers to risks of poverty and potential exploitation. It also deprives them of an opportunity to become self-sustainable and not to burden the already overstretched social protection system.

Currently there are no special vocational, internship and advanced programmes or job-seeking advisory services designated for beneficiaries of international protection in Serbia. Such services are provided by NES, but only to the nationals of Serbia, while this special category of foreigners remained unrecognized as a target group in need of support to enter the labour market. The Integration Decree, the CRM in cooperation with the NES will extend support and assistance to successful asylum-seekers in enrolling in additional education and training in accordance with labour market demands and assist them in accessing active employment policy measures.

8.4. Right to Education

The right to education is enshrined in the Serbian Constitution. Asylum-seekers and persons granted asylum are entitled to free primary and secondary education.[309] The right to education is governed by a number of laws in

309 Article 41, AL.

Serbia, primarily the Law on Basics of Education System, while specific degrees of education are regulated by the Primary, Secondary and Higher Education Laws. These laws also regulate the education of foreigners and stateless persons in the Republic of Serbia, and the validation of foreign school diplomas and certificates.[310] Under the Law on Basics of the Education System, foreign nationals and stateless persons shall enroll in primary and secondary schools and exercise the right to education on an equal footing and in the same manner as Serbian nationals.[311]

The schools organise language lessons, additional and catch-up classes pursuant to separate instructions enacted by the Minister of Education for pupils (foreign nationals, stateless persons, expellees and displaced persons) who do not know the language of tuition or parts of the curricula of relevance to continuing their education.[312] Serbia has a legal framework that sets down enrollment procedures and fulfillment of specific education-related needs of UAMs. Institutional access to education was ensured during the academic year 2017/2018 for the first time.[313] On the other hand, in addition to underage asylum-seekers, adults should also be included in secondary vocational education or language classes at the minimum during their stay in asylum centres. Although international agencies UNHCR, Danish Refugee Council, SOS Dečija sela and others organised Serbian language classes in some centres, the state authorities in charge of education have not taken part in these activities.[314]

Under the Article 4 of the Integration Decree, the CRM shall provide Serbian language lessons to persons granted asylum, those not included in mainstream education in Serbia, those attending mainstream schools and persons over 65 years of age. They shall be provided with 300 Serbian language classes per school year. Successful asylum-seekers who can perform jobs requiring university education may be provided with additional 100 Serbian language lessons per school year in foreign language teaching schools with certified Serbian language programmes. The Decree is positive also in that it provides for covering transportation costs of successful asylum-seekers who have to attend Serbian

310 "Migration Management in the Republic of Serbia", International Organization for Migration – Mission in Serbia, Belgrade, 2012, p. 62.

311 Asylum-seekers and persons granted asylum in Serbia are equated with the category of stateless persons, and, with respect to specific rights, with foreign nationals. This is also the case with education rights. The by-laws governing this field in more detail have not been adopted as yet.

312 Article 100, Law on Basics of Education System.

313 See more in chapter 6.

314 The language courses for children and adults are organised in asylum centres in Banja Koviljača, Bogovađa, Krnjača. These were funded by UNHCR Office in Begrade and the Danish Refugee Council.

language classes in other towns, because such classes cannot be organized in their places of residence.[315]

In line with the Integration Decree, the CRM organised Serbian language lessons for persons granted asylum during the summer 2017. However, the number of persons who regularly attended the course was not satisfactory due to low level of interest in them. The CRM also involved refugees not covered by the Decree into this programme, i.e. those who were granted asylum in the past. The agreement that the CRM made with a Belgrade-based language school also provides the obligation of the school to organise language classes for the interested persons outside the Belgrade city limits, which was made possible for one person represented by the BCHR. With respect to validation of diplomas acquired abroad, no procedure was conducted for refugees currently in Serbia, as they are unable supply the required documents due to the situation in their countries of origin.[316] No state support is currently provided to refugees who cannot afford the diploma-validation related taxes. No procedure is in place in case they cannot supply the requested documents for justified reasons. There is no testing of the previously acquired competencies, and this would be desirable as it would allow for acquisition of professional competencies and diplomas necessary for entry into the labour market.

The BCHR contacted Ministry of education ENIC/NARIC[317] centre with a view to validation of a diploma required for employment of N.J. – dentist, an asylum-seeker from Iraq. The Centre did not review her request explaining that her status had not been regulated in the Republic of Serbia. This being a specific profession that cannot be practiced without a validated diploma, in practice she has been unable to exercise her right to work nine months in absence of the final decision on her asylum application though she may obtain a work permit.

8.5. Right to Social Assistance

The Law on Asylum also guarantees the right to social assistance to asylum-seekers and persons granted asylum. The Law on Social Protection defines social protection as an organized social activity of public interest, which aims to extend assistance and empower individuals and families to lead independent and productive lives in society, and to prevent social exclusion and eliminate its effects (Art. 2). The Law also specifies that beneficiaries of social protection

315 Article 4, Integration Decree.

316 Based on BCHR's experience in extending legal aid to asylum-seekers and beneficiaries of international protrection.

317 Gateway for information on validation of academic and secondary school documents and employment-related validation.

shall include nationals of Serbia, as well as foreign nationals and stateless persons in accordance with the law and international treaties. Regulations on social assistance to asylum-seekers and persons granted asylum shall be enacted by the minister in charge of social affairs. The Rulebook on Social Assistance to Asylum Seekers and Persons Granted Asylum (Rulebook) was enacted in 2008.

Under the Rulebook, asylum-seekers and persons grated asylum shall receive monthly allowances provided they are not accommodated in an Asylum Centre and neither they nor their family members have an income or their income is below the threshold set in the Rulebook. This by-law guarantees the right to social assistance only to people living in private lodgings, but not to those living in asylum centres, which is contradictory *per se*, because the people who can afford private lodgings are definitely not destitute.

The applications for social welfare are submitted to and decided by the SWC in the municipality the applicant lives. SWCs perform *ex officio* reviews of whether the (successful) asylum-seekers still fulfill the requirements for the assistance every year, which means that they exercise their right to social welfare as long as they need to.

In 2017, the BCHR submitted seven applications for welfare to the competent SWCs. Following interviews, two applications were approved, one applicant withdrew from the procedure having been requested to provide additional documents, and the remaining four are still in the procedure. The monthly maximum allowance that SWCs may approve (approx. RSD 20,000) was granted to a nine-member family, beneficiaries of subsidiary protection in Serbia. Social assistance was approved for six members which is the maximum number of persons that this form of assistance may be granted to regardless of whether a family has more members (the same rules apply to nationals of Serbia).

8.6. Right to Accommodation

Once they are granted international protection, the foreigners should be provided with adequate accommodation that will facilitate their integration. This, above all, means that they be housed in apartments not isolated from the local communities, which fulfill the conditions for longer-term stay. Given the limited funds at the disposal of refugees, their lack of social contacts and unfamiliarity with the local communities, finding decent and affordable accommodation in large cities can be a real challenge.[318]

The persons granted asylum or subsidiary protection are entitled to accommodation commensurate with the capacities of the Republic of Serbia for up to a

318 James C. Hathaway, *The Rights of Refugees under International Law,* p. 818. According to: Lena Petrović and Sonja Tošković, *Institutional Mechanisms for Integration of Persons Granted Asylum*, BCHR and the Protector of Citizens, May 2016, p. 15.

year from the day the rulings on their status became final.[319] This entails providing them with specific housing or financial aid to rent housing.

In July 2015, the Government of the Republic of Serbia adopted a Decree on Criteria for Establishing Priority Accommodation of Persons Recognised the Right to Refuge or Granted Subsidiary Protection and the Conditions for the Use of Temporary Housing (Housing Decree).[320] The Decree regulates in detail the allocation of accommodation to persons granted asylum, including the eligibility requirements and the accommodation priorities and conditions.

As far as the procedure for exercising this right is concerned, the real challenge is to pay the fee for certifying the statement that the applicant does not have any regular or occasional income deriving from work, entrepreneurship, titles to real and movable property or other sources of income. The refugees also need to pay the administrative fees when they apply for their personal work permits in order to register with the NES, which is definitely a huge expense for the people not earning any income in Serbia. Furthermore, the Decree envisages no assistance of CRM in the realisation of this right. The technical and financial assistance to refugees to exercise their right to accommodation has therefore been extended by CSOs.

We identified yet another practical problem in 2017. In cases when persons who were previously accommodated in asylum centres had been granted refugee protection, CRM was unable to allocate funds for accommodation pursuant to the Housing Decree if they continued to stay in one of the asylum centres. The BCHR noticed that the persons trying to find private lodgings face numerous problems, ranging from fear of landlords to rent to foreigners to requiring payments for several months in advance. As these persons are most often in a dire financial situation, their move from asylum centres is consequently delayed by several months in practice. In 2017, CRM passed decisions on temporary accommodation for four persons – nationals of Libya, Iraq, Sudan and Syria.

8.7. Right to Family Reunification

The Law on Asylum recognizes the right to family reunification to persons granted asylum.[321] Persons granted subsidiary protection are entitled to family reunification in accordance with the regulations defining movement and stay of foreigners.[322] Family reunification is decided by the Asylum Office. In as far

319 Article 44, AL.

320 Decree on Criteria for Establishing Priority Accommodation of Persons Recognized the Right to Refuge or Granted Subsidiary Protection and Conditions for the Use of Temporary Housing, *Sl. glasnik RS*, 63/15.

321 *Ibid.*, Article 48.

322 *Ibid.*, Article 49.

as the authors of this report are informed, the family reunification procedure pursuant to the provisions of the Law on Asylum has never been implemented. Consequently, exercise of this right in practice cannot be assessed.

8.8. Right to Citizenship

Under the Article 43 of the Law on Asylum, persons granted asylum shall have the status of foreigners with permanent residence in Serbia. The competent authorities, however, do not regard refugees as permanent residence because they *de facto* do not fulfill the requirements for this category of residence under the Law on Foreigners, i.e. as residence lasting as long as their status.[323] Furthermore, Article 46 of the Law on Asylum sets out that the Republic of Serbia shall facilitate the naturalization of refugees commensurate with its capacities.

Refugees, who leave their countries of origin out of the well-founded fear of persecution are actually left without the protection of the state they are nationals of and are *de facto* stateless.[324] From the perspective of the legal relationship between the individual and the state, this means that, although the vast majority of them *de iure* hold the citizenship of a state, they are deprived of the protection afforded by its citizens when they leave it.

The provisions of the Law on Foreigners are relevant to a large extent to the rights and obligations of beneficiaries of international protection. Namely, the applicants for Serbian citizenship must have been continuously registered as permanent residents in the territory of the Republic of Serbia for at least three years.[325] Article 24 (1.3) of the Law on Foreigners lists permanent residence among the types of residence foreigners may be granted in Serbia. This Law also lays down the requirements they must fulfill to be granted permanent residence.[326] This Law, however, does not recognise persons granted asylum as foreigners granted temporary or permanent residence. For instance, in its reply to a request for a certificate of permanent residence by M.S.E, a Syrian national granted asylum in Serbia, the MOI stated that it could not issue him the certif-

323 See: Sonja Tošković (ed.), *Serbia From the Transit to the Destination Country – Refugee Integration Challenges and Practices of Selected States*, BCHR, Belgrade 2016, p. 25.

324 "Refugees are persons who for fear of persecution leave their countries of residence, in most cases countries whose citizenship they hold. Even when their state (country of origin) does not deprive them of citizenship, they are its nationals merely formally (they are *de facto* stateless) because they cannot expect protection from it; more precisely put, their government wishes to harm rather than help them. This is why their situation is even more difficult than that of stateless persons." V. Dimitrijevic, *Human Rights – Textbook*, BCHR, Belgrade 1997, p. 196.

325 Article 14 (1.3), Citizenship Law.

326 Article 37, Law on Foreigners.

icate because he had been granted asylum as a form of international protection and, as a refugee, was not granted permanent residence.[327]

Namely, under the Law on Foreigners, permanent residence shall be granted to foreigners who have held temporary residence permits and lived continuously in Serbia for over five years.[328] The Law does not state that the persons granted asylum are entitled to temporary residence permits, wherefore they can never acquire the right to permanent residence. However, the Law on Foreigners specifies that temporary residence may be granted to foreigners for other justified reasons under other laws or international treaties.[329] If interpreted systemically, in accordance with the Law on Asylum and the Refugee Convention, this provision may be grounds for issuing temporary residence permits to foreigners granted asylum.

As noted, if foreigners granted asylum cannot acquire the status of foreigners with permanent residence, they can never qualify for Serbian citizenship, which is in contravention of Article 34 of the 1951 Refugee Convention.

8.9. Right to Travel Documents

Persons granted asylum need to be able to leave the states they are residing in. Their travels to other countries for educational and employment purposes may be crucial for finding long-term solutions to their problems. As opposed to other foreigners, refugees do not enjoy the protection of the states whose citizenship they hold, and therefore they cannot use the travel documents issued by those states.

Under the Law on Asylum, at the request of successful asylum-seekers over 18, the Asylum Office shall issue travel documents on the prescribed form, which shall be valid for two years. In exceptional cases of a humanitarian nature, travel documents valid up to one year shall also be issued to persons enjoying subsidiary protection who do not possess national travel documents.[330]

The problem of inexistence of the MOI regulation (by-law) governing the content and design of the travel document for persons granted asylum or subsidiary protection remained unresolved in 2017. The Asylum Office did not issue a single travel document for this category of foreigners in 2017, although the Law on Asylum provides that the missing by-law was to be passed within 60 days from the date of entry of into force of the Law[331] adopted back in 2008.

327 Ministry of Interior – Police Directorate – Border Police Administration 03/8 broj: 26–1342/14 of 29 January 2016.

328 Article 31 (1.1), LF.

329 Article 26, LF.

330 Article 62, AL.

331 Article 67(1.1), AL.

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As in previous years, most of the refugees and migrants currently in the Republic of Serbia perceive it as a country of transit on their journey to the Western European states where they seek to rebuild their lives. However, given the restrictive policies of the neighbouring countries related to the access of the migrants and refugees to their territories and their *refoulement* to the Serbian territory, these persons spend ever longer periods of time in the collective centres Serbia-wide. Therefore, a rise in the number of persons seeking international protection, and staying in Serbia until finalization of the asylum procedure may be expected. Still, 13 persons were granted international protection (3 persons granted refugee status, and 10 subsidiary protection) in 2017. This means that a total of 103 persons were granted international protection on the territory of the Republic of Serbia since the enactment of the Law on Asylum (2008). Under the Law on Asylum, Serbia is obliged to ensure conditions for inclusion of refugees into social, cultural and economic life and allow for naturalisation of refugees, commensurate to its capacities.[332] The enactment of the Integration Decree was certainly the key step towards the establishment of the integration system in the Republic of Serbia in 2017. Still, its functioning in practice remains yet to be seen.

The continuing absence of a by-law preventing issuance of travel documents to persons granted asylum, high administrative fees for issuance of personal work permits and inability to acquire citizenship remain the biggest obstacles to full inclusion of persons granted international protection into the Serbian society.

The Foundation "Ana and Vlade Divac" conducted a public opinion survey within the framework of the project "Support for Local Response to" on a sample of 2,700 persons over 15 from Belgrade, Dimitrovgrad, Lajkovac, Preševo, Sjenica, Tutin, Subotica and Šid. The survey was conducted in May 2017, by the agency ProPozitiv.[333] The share of people harbouring a positive attitude to refugees decreased to 43% (from earlier 47%). On the other hand, one third of the respondents expressed a negative attitude which is a significant increase relative to 19% in the past. This is the result represent a shift among those who were neutral in the past. The vast majority of respondents believe Serbia received refugees better than the other, neighbouring countries. Most of the respondents (approximately 60%) stated they understood and sympathized with the problems of refugees. Also, the majority believe that refugees are young people who are

332 Article 46, AL.

333 Citizens' attitudes towards refugees – key findings of the third cycle of research. Avaliable at: http://www.crnps.org.rs/wp-content/uploads/STAVOVI-GRA_ANA-SRBIJE-PREMA-IZBEGLICAMA.pdf.

peaceful most of the time. Still, half of them fear that refugees might transfer diseases to Serbian citizens and one third feels insecure with respect to terrorist attacks. The number of respondents who were in direct contact with refugees has decreased though the survey was conducted in the towns most affected by the crisis. Of those who were in contact with refugees, ¾ reported positive contacts and this ratio is similar to the one from the two earlier surveys. This share is the highest in Sjenica, Tutin and Preševo – over 95%. A decrease in the number of persons thinking that refugee crisis will escalate has been recorded. The majority believe that refugees should be taken care of by the European Union, and only 1/3 that the Serbian Government should take care of them (a drop from the previous survey).

No major incidents involving xenophobia and racism occurred in Serbia since the beginning of the refugee crisis, but advocacy in the local communities housing asylum and reception centres must continue in order for the population to be informed of the new situation. The process of integration calls for a two-way approach wherein the two communities living at each other's side learn about each other in order to genuinely cohabitate instead of living in segregation bases on ethnic or racial affiliation. The Republic of Serbia, being in a difficult economic situation and with inadequate level of respect of human rights, must take into account the new reality of having this vulnerable group on the labour market and must identify it as such in its strategies.

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