RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2016

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Kneza Miloša Str. 4, Belgrade,
Tel/fax. (011) 308 5328, 344 7121
e-mail: bgcentar@bgcentar.org.rs
www.bgcentar.org.rs
www.azil.rs

For the publisher
dr Vesna Petrović

Editor
Lena Petrović

Translation
Duška Tomanović

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AC – Asylum Centre

ADL – Administrative Disputes Law

AL – Asylum Law

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

CAT – Committee against Torture

CCPR – 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

CRPC – Crisis Response and Policy Centre

CSO – Civil society organisation

DRC – Danish Refugee Council

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

ECOSOC – United Nations Economic and Social Council

ECtHR – European Court of Human Rights

EU – European Union

FL – Foreigners Law

GAPL – General Administrative Procedure Law

General Comment No. 6 – UN Committee on the Rights of the Child General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin

HHC – Hungarian Helsinki Committee

Info Centre – Asylum Info Centre

Integration Decree – Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia

IOM – International Organization for Migration

ML – Misdemeanour Law

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

PL – Police Law

PS – Police Station

RBPC – Regional Border Police Centre

RC – Reception Centre

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

RS – Republic of Serbia

SBPL – State Border Protection Law

Shelter – Shelter for Foreigners

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

WBR – Western Balkan Route

INTRODUCTION

With UNHCR's support, the Belgrade Centre for Human Rights (BCHR) in 2016 continued implementing the *Support to Asylum Seekers in Serbia* project, primarily aimed at extending legal aid to foreigners in need of international protection. The project also involved monitoring the situation in the field of refugee law in the Republic of Serbia and a number of activities aimed at improving the status of asylum seekers and foreigners granted international protection. BCHR focused its efforts in the reporting period on comprehensively analysing the numerous challenges faced both by persons in need of international protection and the state authorities and offering solutions and responses to various issues arising from the frequent changes of circumstances at the national and regional levels.

The majority of the refugee and migrant population in Serbia at the end of 2016 came from refugee producing countries, including persons with specific needs among them, such as unaccompanied and separated children (UASC).[1] The status of asylum seekers and persons granted asylum or subsidiary protection did not improve much in 2016 although the number of people granted asylum was the highest (42) since the Asylum Law came into force. The valid legal framework failed to respond to many issues arising in practice, wherefore a large share of the activities the state authorities conducted with respect to the migrants involved *ad hoc* steps primarily aimed at extending them humanitarian aid and accommodation.

The state's treatment of migrants in 2016 was primarily influenced by the policies of the neighbouring countries and decisions taken at the EU level. The March 2016 agreement between EU and Turkey, the so-called EU-Turkey Statement[2], was aimed at reducing the influx of refugees and migrants to the EU and consequently led to stepped-up control of the EU's external borders and the "closure" of the Western Balkan Route (WBR). The effects of this predominantly political agreement were reflected in the drastic fall of the number of migrants entering Serbia, measured in thousands before the agreement was signed. Although Serbia introduced more restrictive measures at its borders, the number of migrants that entered Serbia nevertheless grew from March to December 2016

1 "Regional Refugee and Migrant Response Plan for Europe January – October 2017," UNHCR, December 2016, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/RRMRP%20Europe%20-%202017.pdf.

2 See "EU – Turkey Statement: Questions and Answers", Brussels, 19 March 2016, available at http://europa.eu/rapid/press-release_MEMO-16–963_en.htm.

(there were 2,000 migrants in Serbia in March and 7,000 in December). A total of 12,821 foreigners expressed the intention to seek asylum in Serbia in 2016, but only 574 of them actually applied for asylum. Although a negligible number of migrants, who spent more or less time in Serbia in 2016, genuinely wanted to seek asylum in it, the relevant authorities endeavoured to extend humanitarian protection (temporary accommodation, food and health care) to all foreigners, whether or not they planned to seek or had sought asylum.

Under the amendments to the Hungarian State Border and Asylum Laws, which came into force on 5 July 2016, the Hungarian police are entitled to automatically push back all persons apprehended without valid documents and visas within eight kilometres of its borders with Serbia and Croatia, without providing them with the possibility of seeking asylum in that state. As of September, Hungary gradually limited the number of foreigners in the so-called transit zones on the border with Serbia, who could access its asylum procedure every day.[3] The two transit zones established near the Horgoš and Kelebija border crossings were the only places at which refugees and migrants could lawfully enter Hungarian territory and access its asylum procedure. In order to introduce order in the vicinity of the transit zones and prevent the plight of hundreds of people in the makeshift camps while they waited to enter Hungary, the refugees and migrants in Serbia started drawing up waiting lists of persons, who wished to enter Hungary, and forwarding them to the Hungarian border police in April 2016. This informal system of compiling and exchanging lists functioned in the ensuing months in the following manner: the refugees and migrants put their names on the lists when they arrived at Asylum or Reception Camps and forwarded these lists to their representatives at the border with Hungary. The Hungarian border police drew up new lists on the basis of these lists, making sure that vulnerable groups, primarily families with children and unaccompanied children, were given priority.

At its session on 17 July 2016, the Serbian Government adopted a Decision on the Establishment of Joint Police-Army Forces[4] to combat illegal migration and human trafficking along the border with FYROM and Bulgaria. These Government measures aimed at suppressing human smuggling and protecting the state border, although positive, did not, however, prove very effective in preventing illegal entry into Serbia and may have facilitated informal push-backs of migrants to the neighbouring countries.

3 Hungary cut the number of people it allowed into a transit zone from the initial 100, to 50, to a mere 30 people in mid-2016.

4 "Serbian Government Adopts Decision on Forming Border Control Teams," *Novosti online,* 17 July 2016, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:615622-Vlada-Srbije-usvojila-odluku-o-formiranju-timova-za-kontrolu-granice.

In September 2016, the Serbian Government Working Group on Mixed Migration Flows[5] adopted the Response Plan in Case of Increased Inflow of Migrants to the Republic of Serbia in the October 2016 – March 2017 Period, the implementation of which primarily relied on foreign donations. The Plan envisaged the expansion of the accommodation capacities for migrants in Serbia, extension of health care and provision of access to the asylum procedure to foreigners who wanted to apply for asylum. The Plan was based on several presumptions: that the uncontrolled transit of refugees and migrants via Western Balkan countries had been halted, that the number of migrants illegally entering Serbia would drop considerably, that the number of refugees and migrants entering and leaving Serbia on a daily basis would not exceed 30, and that most refugees and migrants would not perceive Serbia as a country of asylum. The authors of the Response Plan, however, neglected the following fact: that many more migrants were entering Serbia than leaving it in 2016 (UNHCR reports showed that the average daily influx of refugees and migrants stood at 200 in July and August and 300 in September). The Plan did not specify the legal status of foreigners illegally present in Serbia, not wishing to seek asylum but in need of international protection because they came from countries in which their liberty and security were at risk.

Most refugees still do not perceive Serbia as a country of asylum, but rather as a country of transit to states with functional asylum systems, including social, economic and cultural integration programmes. This fact affected Serbia's policy on the migrants as well. A very small number of people came to Serbia intending to seek asylum in it since the Asylum Law entered into force, while some asylum seekers were already in Serbia on other grounds at the time the risk of persecution in their countries of origin appeared (*sur place* refugees).[6] On the other hand, most asylum seekers had not planned on seeking international protection in Serbia when they were fleeing their countries of origin.[7] The major changes in the neighbouring countries' policies on migrants in late 2015 and early 2016 prompted more and more people to decide to seek asylum in Serbia because they were unable to leave Serbia[8] or would put themselves at great risk if

5 The Working Group was established in 2015 and comprises the Minister of Labour, Employment and Veteran and Social Affairs, the Minister of Internal Affairs, the Minister of Health, the Minister of Defence, the Minister without Portfolio charged with EU Accession and the Refugee Commissioner. The Decision on the Establishment of the Working Group is available in Serbian at: http://slg.bazapropisa.net/54–20–05–2015/29541-odluka-o-obrazovanju-radne-grupe-za-resavanje-problema-mesovitih-migracionih-tokova.html.

6 For instance, a number of Libyan nationals, had already been working, studying and//or had formed a family in Serbia.

7 But in Germany, Austria, the Scandinavian and Benelux countries, et al.

8 In its August 2016 Report No. 281–60/16 on the Visit to Informal Venues in Belgrade at which Refugees and Migrants Have Been Rallying, the NPM quoted allegations by a group of

they did[9]. Foreigners, who did seek asylum, usually filed their applications after having spent a few weeks or few months in Serbia.[10] Furthermore, the Serbian asylum procedure still cannot be described as efficient, although the largest number of people – 42 – were granted international protection in Serbia in 2016 since the Asylum Law entered into force in 2008. Many asylum applications were still dismissed by the first-instance authority (the Asylum Office) merely because the applicants had passed through countries qualified as safe in the Serbian Government 2009 Decision on Safe Countries of Origin and Safe Third Countries. Administrative and judicial appeals filed with the second-instance authority (the Asylum Commission) and the Administrative Court still cannot be described as effective legal remedies. On 26 December 2016, the Serbian Government at long last adopted the Decree on the Integration of Persons Granted Asylum in Social, Cultural and Economic Life, the enforcement of which was due to begin in 2017.

The EU accession process has been Serbia's strategic priority since 2000. Talks on Chapter 24 – Liberty, security and justice, which includes migration and asylum, were opened in July 2016 within Serbia's efforts to align its law with the EU *acquis*. Under the Chapter 24 Action Plan, Serbia is to adopt new laws on asylum and foreigners, which are to comply as much as possible with the *acquis* considering Serbia is a candidate country.

The Ministry of the Interior (MOI) and the Commissariat for Refugees and Migration (CRM) in 2016 intensively worked on the draft law on asylum and temporary protection within an EU-funded twinning project "Support to National Asylum System of the Republic of Serbia". The Preliminary Draft of this law, which is to ensure compliance of the Serbian legal framework with EU regulations in this field, was prepared and presented at public debates held through-

refugees from Afghanistan and Pakistan (including children) who had tried to enter Hungary illegally. They claimed that as soon as they went through the fence, the Hungarian border police apprehended them and applied force against them, resorting to rubber truncheons, tear gas and service dogs to push them back to Serbia. The Report is available at: http://www.npm.lls.rs/attachments/article/195/Report%20Belgrade%20Park.pdf. The NPM published the same allegations regarding the practice of the Hungarian border authorities in its Report on the Visit to the Subotica Reception Centre, the Horgoš and Kelebija Border Crossings and the Home for Children with Disabilities Kolevka – Subotica, No. 281–62/16, 13 September 2016. Available at: http://www.npm.lls.rs/attachments/article/193/Report%20Subotica%20Horgos%20Kelebija%20Kolevka.pdf.

9 E.g. with the help of organised crime groups involved in smuggling or by attempting to circumvent the procedures at the Hungarian border. More in "Hungary Steps up Control, Pushes Migrants back behind the Fence," *N1 info*, 6 July 2016, available in Serbian at: http://rs.n1info.com/a174583/Svet/Region/Madjarska-pojacala-kontrolu-vraca-migrante-iza-ograde.html.

10 Like the hundreds of people who spent up to several months on Belgrade streets, in abandoned barracks, or the border area with Hungary. More in the report "Migrants to be Covered by Asylum System, Question is How," *N1 info*, 23 November 2016, available in Serbian at: http://rs.n1info.com/a209990/Vesti/Vesti/Migrante-ukljuciti-u-azilantski-sistem.html.

out Serbia. The MOI also prepared a Preliminary Draft of a new law on foreigners.[11] The BCHR forwarded its comments to both Preliminary Drafts to the MOI, which upheld some of them. Neither law was adopted by the end of the reporting period.

This fifth BCHR Annual Asylum Report includes an overview and analysis of the laws and practices in the field of refugee protection in Serbia in 2016. Its authors used the information they obtained whilst extending legal aid to asylum seekers and monitoring the practices of the relevant authorities. All the statistical data in the Report were obtained from the UNHCR and in response to BCHR's requests for access to information of public importance.

The masculine pronoun is used in the Report to refer to an antecedent that designates a person of either gender unless the Report specifically refers to a female. Both the authors of the Report and the BCHR advocate gender equality and in principle support gender neutral language.

This Report was prepared by Nikola Kovačević, Bogdan Krasić, Nikolina Milić, Lena Petrović, Anja Stefanović, Bojan Stojanović, Sonja Tošković and Ana Trifunović.

11 The working versions of the Asylum and Temporary Protection Law and the Foreigners Law are available in Serbian at: www.mup.gov.rs.

1. RELEVANT ASYLUM AUTHORITIES – SUMMARY

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.[12] Under this Rulebook, the Asylum Office is to have 29 members of staff, but not all the jobs were filled by the end of 2016.[13] Office staff are vested with police powers but do not wear uniforms or leave the impression that they are police officers in their dealings with the asylum seekers. However, many of the Office's procedural decisions are signed by the Head of the Border Police Administration, within which the Office operates, which may be indication that the Office does not enjoy autonomy in its work.

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.[14] 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. In some cases registered by BCHR's lawyers, the foreigners had difficulty obtaining certificates of intent to seek asylum and, thus, accessing the asylum procedure.

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.[15] The appellants may also complain of "silence of the

12 Rulebook 01 Ref. No. 9681/14–8 of 14 January 2016.

13 According to information obtained from the Asylum Office and the MOI's reply to BCHR's request for access to information of public importance Ref. No. 03/10–06–1418/15 of 2 November 2015. In its reply, the MOI said that under the staffing provisions, the Asylum Office was to be staffed by the Head and Deputy Head of Office (the latter vacancy was not filled), 11 officers charged with ruling on asylum applications (one job remained vacant), two officers charged with collecting and documenting information on countries of origin, six officers charged with registering asylum seekers at Asylum Centres (five of these jobs were vacant), four interpreters (none of the vacancies were filled), and two senior and two junior officers tasked with keeping special and operational records (one senior officer job remained vacant).

14 Article 22, AL.

15 Articles 20 and 3, AL.

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. In 2016, the Commission commendably rendered good decisions serving as a corrective to the work of the Office. For the first time since the Asylum Law entered into force, the Commission in 2016 ruled on the merits of the matter and itself granted subsidiary protection to asylum seekers. Appeals to this authority cannot be considered an effective legal remedy in light of all the decisions it rendered (in cases in which the appellants were represented by BCHR's lawyers). The Government did not appoint new members of the Commission by the end of the year, although the former members' terms in office expired in September 2016.

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.[16] 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. Its practice did not improve substantially in the reporting period.

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),[17] which shall keep records of persons accommodated in the Asylum Centres[18] (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[19] and proposing integration plans to the Serbian Government. The Government adopted the Integration Decree in December 2016. In 2016, the CRM provided short-term accommodation in Reception Centres to migrants, who were merely transiting through Serbia and had no intention of seeking asylum in it.

The Working Group on Mixed Migration Flows, formed under a Government Decision[20] in 2015, comprises the Minister of Labour, Employment and Veteran and Social Affairs (who chairs the Commission), the Minister of Interior, the Minister of Health, the Minister of Defence, the Minister without Portfo-

16 Article 15, ADL.

17 Article 21 AL.

18 Article 64 AL.

19 Article15 and 16, Migration Management Law (hereinafter: MML).

20 The Decision on the Establishment of the Working Group 05 Ref. No. 02–6733/2015 of 18 June 2015 is available in Serbian at: http://slg.bazapropisa.net/54–20–05–2015/29541-odluka-o-obrazovanju-radne-grupe-za-resavanje-problema-mesovitih-migracionih-tokova.html.

lio Charged with EU Accession, and the Refugee Commissioner. The Working Group is tasked with monitoring, analysing and reviewing mixed migration flow issues in Serbia, with particular focus on problems in this area, and with aligning the views of the competent state authorities and institutions dealing with mixed migration issues. The Working Group's administrative tasks are performed by the Ministry of Labour, Employment and Veteran and Social Affairs. The Working Group proposed several response plans in case of greater influx of migrants (in 2015 and 2016), which mostly relied on foreign donations. In September 2016, the Serbian Government adopted the Response Plan in Case of Increased Inflow of Migrants to the Republic of Serbia in the October 2016 – March 2017 Period, envisaging inter-sectoral cooperation of various institutions and resource planning to accommodate 6,000 migrants in the state Reception Centres during the winter period. Nevertheless, the general impression is that the cooperation among the relevant asylum authorities needs to be improved and that the relevant regulations need to be adopted.

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.[21] The SWCs were more actively engaged in the protection of unaccompanied children in 2016, in view of the increase in their number.

Misdemeanour Courts – As provided for in the Refugee Convention, the AL guarantees that asylum seekers shall not be held liable for illegally entering or staying in the Republic of Serbia provided they promptly apply for asylum and give a valid explanation for their illegal entry or stay;[22] this provision ensures their unimpeded access to the asylum procedure. Misdemeanour Courts may discontinue proceedings against foreigners charged with illegally crossing the state border[23] or illegally staying in Serbia[24] if they establish that the defendants want to seek asylum in Serbia. The Misdemeanour Courts continued penalising potential asylum seekers for illegally entering or staying in Serbia in 2016, but the number of cases in which they applied the principle of impunity of asylum seekers and refugees grew as well.

21 Article 16, AL.

22 Article 8, AL.

23 Article 65(1), SBPL.

24 Article 85, FL.

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

Access to the asylum procedure is governed by Articles 22 and 23 of the Asylum Law, under which 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 (Art. 22(1)), on which occasion they shall be issued certificates of intent to seek asylum (Art. 23(1))[25] instructing them to report to the Asylum Centre designated in their certificates within the following 72 hours (Art. 22(2)). Authorised police officers[26] also take the foreigners' personal and biometric data and enter them into two MIA electronic databases – OKS[27] and *Afis*.[28] This practice, although not envisaged by the Asylum Law, was introduced because many foreigners do not have travel or other personal documents, wherefore the photographs and fingerprints entered into *Afis* database are the only reliable way of establishing and checking their identity.

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25 Under Article 5 of the Rulebook on the Design and Content of Asylum Applications and Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection, three copies of the certificate shall be issued; one copy shall be retained by the police administration in which the foreigner expressed the intention to seek asylum, one copy shall be forwarded to the Asylum Office and one copy shall be given to the foreigner.

26 In most cases, police officers working in the police administration departments dealing with the status-related issues of foreigners in Serbia.

27 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 (under Art. 35 of the Foreigners Law), motions to launch misdemeanour proceedings against them, misdemeanour penalties imposed against them, rulings on their accommodation in the Foreigners Shelter (under Article 49 of the Foreigners Law), et al.

28 *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*, whereas only the personal data of the foreigners, such as their first and last names, dates of birth, et al, are entered into the OKS. In other words, a foreigner, whose data are checked only in the OKS database, will not appear as registered in case he gives different personal data (e.g. a different date of birth) or in case the officer misspells his name while searching the database.

The above provisions lead to the conclusion that authorised police officers, to whom foreigners express the intention to seek asylum, are not entitled to decide whether or not to issue certificates thereof to the foreigners i.e. that they are under the obligation to do so. In other words, authorised police officers may not go into whether or not the expressed intentions to seek asylum are well-founded. Whether the intention to seek asylum is genuine or expressed in order to abuse the asylum procedure is ascertained during the asylum procedure by the relevant authorities – the Asylum Office (under Article 19 of the AL), the Asylum Commission (under Article 20 of the AL) and/or the Administrative Court (under Article 14 of the ADL). Pursuant to Article 22(3) of the AL, police officers, who suspect that foreigners are abusing the asylum procedure,[29] are entitled to bring them before the Asylum Office or take them to an Asylum Centre. The Office is entitled to issue rulings restricting the foreigners' movement pending the completion of the asylum procedure (Art. 51 AL). Police officers may take such steps also when they are unable to establish the identity of the foreigners or when such steps are warranted to protect national security or public order (Art. 51(1(1 and 3)) of the AL). The foreigners' movement may be restricted either by ordering their confinement in the Shelter for Foreigners[30] or restricting their movement to one of the (minimum security) Asylum Centres (Art. 52(1) of the AL).[31] This measure is rarely applied in practice.

The number of certificates of intent to seek asylum issued by the MOI in 2016 does not reflect the number of foreigners genuinely intending to seek international protection in Serbia, but the absence of legal regulations that would enable foreigners, who are potential refugees (given the situation in the countries they are coming from) but do not want to seek asylum in Serbia, to legalise their stay in Serbia for a specific period of time and enjoy elementary rights, such as the right to accommodation, nutrition, health care and psycho-social support.[32] Foreigners need to have these certificates to be accommodated in

29 For example, to avoid forced removal or liability for entering or staying in Serbia illegally.

30 Pursuant to Articles 49–53 of the FL, the Shelter for Foreigners in Padinska Skela is an MOI establishment to which foreigners are referred to in the event they do not fulfil the requirements to legally stay in Serbia pending their forced removal, in the event their identity needs to be established, as well as in other cases prescribed by law.

31 The expression "restriction of movement" is not formulated precisely enough, because the character of both confinement in the Shelter and the prohibition of leaving an Asylum Centre amount to deprivation of liberty (see, e.g. *H. L. v. the United Kingdom*, App. No. 45508/99, para. 73, decision of 5 October 2004; *H. M. v. Switzerland*, App. No. 39187/98, para. 45, decision of 26 February 2002; *Guzzardi v. Italy*, App. No. 7367/76, para. 95, decision of 6 November 1980, as well as the *Guide on Article 5 of the Convention – Right to liberty and security*, Council of Europe, 2014, pp. 5 and 6).

32 The Serbian Government tried to deal with this problem by adopting the Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants

one of the Asylum Centres[33] or Reception Centres, providing them with the existential minimum.[34] Given the circumstances in Serbia, characterised by a large influx of refugees and migrants, most of whom have no intention of staying in Serbia and are endeavouring to travel on to their desired countries of destination, and the fact that certificates of intent to seek asylum are issued without adequate profiling, the police officers have not been conducting assessments of the foreigners' real intentions – whether or not they wanted to remain in Serbia. Nor does the law lay down grounds for such profiling. Thus, the police officers in 2016 frequently issued to migrants, who did want to stay in Serbia, certificates referring them to Reception Centres rather than to Asylum Centres, which impinged on their access to the asylum procedure. In 2016, the Office performed its official activities only in Asylum Centres, wherefore refugees and migrants referred to e.g. the Preševo Reception Centre did not have the opportunity to apply for asylum in that Centre and thus did not have access to the asylum procedure in it.

Another problem arising due to this practice was that foreigners did not go to the ACs they were referred to in the certificates, fearing they would be deprived of liberty or deported,[35] in which case they would no longer have grounds

Coming from Countries Where Their Lives are in Danger in December 2015. However, due to the fact that the so-called transit certificates issued pursuant to this Decision were valid only three days, just like the certificates of intent to seek asylum, the problem of the unregulated status of people, who were refugees but did not want to seek international protection in Serbia, persisted throughout 2016, as three days did not give them enough time to leave Serbia. Furthermore, the enforcement of the Decision was halted in March 2016, wherefore the practice of issuing certificates of intent to seek asylum even to people who did not want to seek protection in Serbia continued throughout 2016.

33 Under Article 22(2) of the Asylum Law, foreigners shall be accommodated in the designated Asylum Centre provided they report to it within 72 hours.

34 In 2016, foreigners lacking certificates of intent to seek asylum were allowed to stay at Asylum and Reception Centres in periods of greater influx of refugees and migrants although they did not really intend to stay in Serbia. The Centres' managements, however, frequently required of them to express the intention to seek asylum before admitting them. Around 1,500 foreigners without certificates of intent were living in Belgrade streets in mid-December. More in "Migrants Provided Transportation to Reception Centres," *N1 info*, 5 January 2017, available in Serbian at: http://rs.n1info.com/a219147/Vesti/Vesti/Obezbedjen-prevoz-migrantima-do-prihvatnih-centara.html.

35 As of mid-2016, many foreigners were issued certificates referring them to the Preševo RC, which operates under a higher security regime. Furthermore, BCHR lawyers and staff of other NGOs extending humanitarian aid to refugees, such as Praxis and CRPC, received scores of complaints about illegal pushbacks of refugees and migrants that had stayed in the Preševo PC to FYROM. FYROM NGO MYLA registered hundreds of such cases. These reports were confirmed also by UNHCR, see "Balkan countries illegally push back migrants: UNHCR", *Ahramonline*, 26 December 2016, available at: http://english.ahram.org.

to stay legally in Serbia and benefit from humanitarian protection upon the expiry of the 72-hour validity of their certificates. The re-introduction of these people in the asylum system is extremely difficult, precisely due to the misinterpretation of Articles 22 and 23 of the AL by the police officers and the absence of a legal mechanism allowing the re-issuance of certificates of intent to seek asylum to them.

2.1. Statistical Data on Foreigners Who Expressed the Intention to Seek Asylum and Applied for Asylum in 2016

As already noted, 12,821 foreigners expressed the intention to seek asylum and/or were registered as asylum seekers in Serbia from 1 January to 31 December 2016,[36] i.e. much less than in 2015, when as many as 577,995 foreigners expressed the intention to seek asylum, or in 2014, when such an intention was expressed by 16,940 foreigners. The Serbian authorities also issued 94,756 certificates of entry into the Republic of Serbia (the so-called transit certificates) to migrants in the first three months of the year,[37] before they halted this form of registration in March 2016.

Of the 12,821 foreigners who expressed the intention to seek asylum in 2016, 9,128 were men and 3,693 were women; 5,390 of them were children, 177 of whom unaccompanied. Most of the unaccompanied children were nationals of Afghanistan (119), Syria (24) and Pakistan (16).

The number of registered foreigners, who expressed the intention to seek asylum in 2016, was somewhat lower at the beginning of the year and started growing in June (475 in January, 712 in February, 699 in March, 598 in April, and 861 in May, 1,206 in June, 1,532 in July, 1,920 in August, 951 in September, 1,247 in October, 1,503 in November and 1,117 in December).

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eg/NewsContent/2/9/253913/World/International/Balkan-countries-illegally-push-back-migrants-UNHC.aspx. All this led the refugees to fear referral to the Preševo RC and opt to stay at informal venues, More in the *N1* report "Refugees Living in Inhuman Conditions outside of Camps", 23 November 2016, available in Serbian at:http://rs.n1info.com/a210016/Video/Info/Izbeglice-zive-u-nehumanim-uslovima-van-kampova.html.

36 Foreigners who express the intention to seek asylum in Serbia shall be registered by the authorised MOI officers (Articles 22 and 23, AL).

37 The certificates were issued pursuant to the Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger (*Sl. glasnik RS*, 81/2015), available in Serbian at http://www.slglasnik.info/sr/81–24–09–2015a/30724-odluka-o-izdavanju-potvrde-o-ulasku-na-teritoriju-republike-srbije-za-migrante-koji-dolaze-iz-zemalja-u-kojima-su-njihovi-zivoti-u-opasnosti.html.

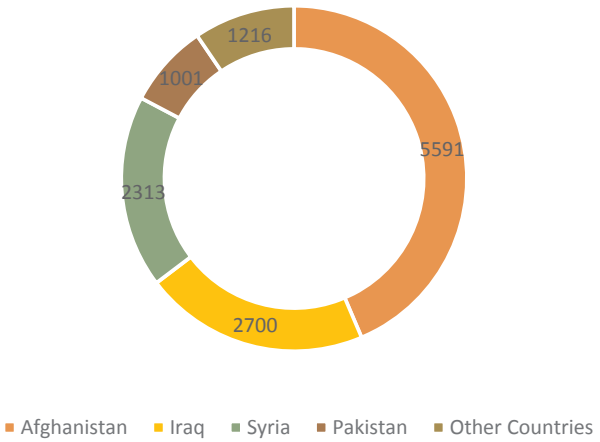
Where Foreigners Expressed the Intention to Seek Asylum in 2016

Police Stations	10.506
Preševo Reception Centre	1.210
Border Crossings	602
Asylum Office	440
Shelter for Foreigners	43
Airport "Nikola Tesla"	19

Number of Foreigners Who Expressed the Intention to Seek Asylum by Year

2008	77
2009	275
2010	522
2011	3.132
2012	2.723
2013	5.066
2014	16.490
2015	577.995
2016	12.821

Foreigners Who Expressed the Intention to Seek Asylum by Country of Origin



Most of the foreigners, who expressed the intention to seek asylum in Serbia in 2016, were nationals of Afghanistan (5,591), Iraq (2,700), Syria (2,313) and Pakistan (1,001). The intention to seek asylum in Serbia was also expressed by the nationals of Iran (278), Algeria (173), Somalia (162), Morocco (141), Cuba (92), Bangladesh (46), Libya (44), Palestine (37), Sri Lanka (31), Eritrea (29), Democratic Republic of Congo (21), India (16), Egypt (12), Ghana (10), Cameroon (10), Tunisia (9). Nigeria (9), Western Sahara (7), Ethiopia (6), United States of America (5), Nepal (5), Lebanon (5), Croatia (5), Uzbekistan (4), Turkey (4), Sudan (4), Russia (4), Guinea (4) and Bosnia and Herzegovina (4), Yemen (2), Tajikistan (2), Mali (2), Liberia (2), Slovenia (2), Saudi Arabia (2), Rwanda (2), Greece (2), FYROM, (2) Bulgaria (2), and Ukraine (1), Romania (1), Poland (1), Montenegro (1), Moldova (1), Mexico (1), Mauritius (1), Central African Republic (1), Ivory Coast (1), Republic of Congo (1), Burundi (1) and Three foreigners came from unkonwn countries and from Oceanian countries.

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

Numerous problems were identified in the PAs' and RBPCs' practice of issuing certificates of intent to seek asylum in 2016, primarily to foreigners who had been staying in Serbia for a longer period of time before they decided to seek international protection. Many foreigners came into contact with the MOI, which took specific measures under the AL and FL: issued rulings on their illegal stay in Serbia (under Art. 43 of the FL) or ordering them to leave Serbia (under Art. 35 of the FL),[38] filed misdemeanour reports against them for illegally entering or staying in Serbia (under Art. 65 of the SBPL and Arts. 84(1) and 85 of the FL), automatically issued them certificates of intent to seek asylum although they had not expressed such an intention (Arts. 22 and 23 AL), issued them transit certificates[39], et al. All measures taken with respect to foreigners are entered into OKS and *Afis*. In the view of the police, the fact that a foreigner had not been issued a certificate of intent to seek asylum during his initial contact with the police, but had been subjected to another measure, constitutes grounds for denying him access to the asylum procedure, i.e. for not issuing him a certificate of intent to

38 E.g. the PS in Raška, which automatically issued rulings ordering all foreigners found in the territory under its jurisdiction to leave the country, without ascertaining all the relevant circumstances (for instance, whether or not they wished to seek asylum in Serbia), all this in the absence of interpreters for the languages the foreigners understood.

39 Article 1 of the Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger.

seek asylum; the police officers have been interpreting such situations as abuses of the asylum system.

Admittedly, the police officers' assessments that the foreigners are abusing the asylum system are in many cases justified, but such treatment is nevertheless incompatible with Articles 22 and 23 of the Asylum Law, which do not provide the police officers with any discretionary powers to decide whether or not to issue certificates of the intention to seek asylum.[40] In other words, mere refusal to issue a certificate to an individual amounts to arbitrary treatment. No-one disputes that the police officers are to prevent abuses of the asylum system, but they must do so in a lawful manner. As noted, the AL lays down that authorised police officers may notify the Office of their suspicions that foreigners are abusing the asylum procedure and the Office may take the relevant measures, e.g. confine them in the Shelter or prohibit them from leaving the AC. In the first nine months of 2016, 105 irregularities resulting in denial of access to the asylum procedure were registered in the Belgrade Department for Foreigners alone.[41]

The described practice is not the rule, but there have been cases in which it prevailed over the procedures prescribed by law. Namely, there have been instances of police officers simply issuing certificates to foreigners already issued certificates or found guilty of misdemeanours.[42] Conversely, some police stations automatically issued rulings ordering the foreigners to leave Serbia without having performed adequate assessments of their situation.[43]

Apart from problems arising from misinterpretations of Articles 22 and 23 of the AL, the BCHR registered several cases of inadequate treatment of refugees and migrants by individual police officers of the Belgrade Department for Foreigners (the Savski venac PS). These migrants complained to BCHR's associates that the police officers had yelled at them, threatened to throw them in jail, deport them to FYROM and Turkey, etc. BCHR, Praxis and CRPC staff themselves witnessed such incidents on several occasions.

40 Such a practice is lethal also from the humanitarian perspective, given that foreigners without certificates cannot be accommodated in the RCs or ACs, which will not admit them if they do not have certificates. This is why these people have been forced to live in the streets of Belgrade and other cities.

41 Data obtained during the field work of BCHR lawyers and other NGOs, such as CRPC and Praxis.

42 The BCHR registered a number of cases in which the officers of the Belgrade Department for Foreigners working in the morning shift refused to issue certificates to foreigners, but their colleagues in the afternoon shift issued them without any problems the same day.

43 The Raška PS, for instance, issued dozens of rulings ordering foreigners to leave the country in November and December 2016; it transpired during their legal consultations with BCHR's lawyers that they genuinely wanted to stay in Serbia.

> For instance, during his interview concerning his asylum application, *A. W.*, a national of Syria, said that he had been insulted on religious grounds and told to go back to Turkey the first time he had gone to the police to express his intention to seek asylum.[44] Such treatment may have a chilling effect on refugees genuinely wanting to seek asylum in Serbia.

Nevertheless, the BCHR lawyers' cooperation with many Savski venac PS inspectors charged with foreigners has for the most part been extremely professional and can serve as an example to all police officers, whose jobs bring them into contact with this extremely vulnerable category of people – asylum seekers.

Denials of access to the asylum procedure to foreigners returned from Hungary were registered again in 2016.[45] In one case, three Syrian refugees (returned to Serbia after denied asylum in an accelerated asylum procedure in the Roszke Detention Centre)[46] were unable to access the asylum procedure in the Belgrade police Department for Foreigners for ten days. The fact that they had all the documents issued during the asylum procedure in Hungary was quoted as the reason for denying them access to the asylum procedure. They were repeatedly threatened they would be jailed and sent back to Turkey and ordered to leave the offices of this Department. They were finally issued certificates and allowed to access the asylum procedure when they went back with BCHR's lawyers. In the meantime, they were staying in Serbia illegally, at risk of being deprived of liberty and returned to FYROM (from which they entered Serbia).

The relevant authorities' views on whether or not foreigners returned from one of the neighbouring countries to Serbia are entitled to seek asylum in Serbia remain unclear. In BCHR's experience, the MIA is informally of the view (which is not supported by Articles 22 and 23 of the AL) that people returned from Hungary are not entitled to seek asylum in Serbia unless their legal representatives *wheedle* that right for them out of police inspectors charged with foreigners and the Asylum Office.

Both the Asylum Centres and the Reception Centres were overcrowded in the latter half of 2016. The MOI and CRM thus agreed that their managements report to the MOI on available accommodation capacities of their establishments on a daily basis. Based on these data, the regional PAs issued certificates referring foreigners to the Centres that had room to take them in. This practice, however, impinged on foreigners who genuinely wanted to stay in Serbia and to whom the PAs issued certificates referring them to Reception Centres, in which the Asylum Office did not conduct the asylum procedure, rather than to Asylum

44 Minutes on the asylum procedure interview Ref. No. 26–1395/16.

45 More in the *2015 Asylum Report*, pp. 43 and 44.

46 See the *Insajder* documentary with testimonies of treatment by the Hungarian police in the Roszke Detention Centre at: https://insajder.net/sr/sajt/tema/1879/.

Centres, where it did. Simply put, these people were *de facto* deprived of the opportunity to apply for asylum. On several occasions, BCHR's lawyers had to *negotiate* with the competent institutions on the transfer of these people to one of the Asylum Centres. The easiest way to address this problem (in the absence of adequate systemic solutions) is to establish cooperation between NGOs extending legal aid to asylum seekers, on the one hand, and the MOI and CRM, on the other: after interviewing the refugees and migrants in detail, the NGOs would notify the MOI and CRM which of them intended to stay in Serbia. The PAs would then refer them to the Asylum Centres, where they could apply for asylum.[47] As the number of foreigners who wish to stay in Serbia is very small, the ideal solution would be to refer the genuine asylum seekers to the Krnjača AC, where the Asylum Office performed the official asylum activities the most regularly in 2016.

In July 2016, the Serbian Government adopted the Decision Establishing Joint Police and Army Forces,[48] under which the joint Ministry of Defence and MOI patrols are to *reinforce* Serbia's borders with Bulgaria and FYROM. Serbia's decision came in response to the serious difficulties people in need of international protection were increasingly facing in accessing developed EU countries via Hungary and Croatia, which resulted in the drastic rise in the number of refugees and migrants staying in Serbia but not intending to seek asylum in it. The number of people entering Serbia after the closure of the Western Balkan Route was mostly steady (ranging from several dozens to up to 150 a day), whereas the number of people leaving it was much lower.[49] Consequently, between six and seven thousand refugees and migrants were present in Serbia on a daily basis in the October-December 2016 period.[50] Twenty percent of them were living outside Asylum and Reception Centres, in inhuman conditions.[51]

47 Such cooperation was established on several occasions and proved extremely effective.

48 More in the *N1* report "Police and Army to Combat Illegal Migration Together," of 16 July 2016, available in Serbian at: http://rs.n1info.com/a177575/Vesti/Vesti/Policija-i-vojska-zajedno-protiv-ilegalnih-migracija.html.

49 Following the closure of the WBR, Hungary started admitting 30 people a day, 15 at the Horgoš and 15 at the Kelebija border crossings. It reduced the quota to 20 a day in late November 2016. In addition, it is reasonable to presume that a number of migrants managed to leave Serbia with the help of smugglers.

50 UNHCR, *Serbia update – 05–07 December 2016*.

51 Around 1,000 people spent their days in that period in abandoned barracks near the Belgrade Main Bus Station, while between several hundred (at one point more than a 1,000) in October to several dozens in December were living in inhuman conditions in the area between the Serbian-Hungarian border. More in the *Novosti* article "Smugglers of Migrants Lying Low, Looking for New Route 'Holes'," 26 July 2016, available in Serbian at: http://www.novosti.rs/vesti/naslovna/reportaze/aktuelno.293.html:616804-Krijumcari-migranata-se-primirili-traze-nove-rupe-za-rute.

The introduction of mixed patrols on the borders with Bulgaria and FYROM gave rise to concerns as many officials regularly publicly talked about the *successful* actions in which the army and police prevented *groups of migrants* or *illegal migrants* from crossing into Serbia. The Ministry of Defence said in December 2016 it had prevented 18,000 migrants from illegally crossing the border.[52] Serbia is indisputably entitled to regulate the entry, residence and departure of people from its territory,[53] but, like all other states that ratified the ECHR, it is under the obligation to do so by applying procedures prescribed by national law and in compliance with the principle of *non-refoulement*, as well as the principle based on the prohibition of collective expulsion.[54] It is difficult to believe that 18,000 people were prevented from crossing the border in compliance with CoE standards, i.e. that each of them underwent the procedure prescribed by law, with the assistance of a lawyer and an interpreter for the language he understands, and was served with an individual decision denying him entry into Serbia,[55] which he was entitled to challenge in an appeal with suspensive effect. Essentially, Serbia still lacks a legal framework governing this form of treatment,[56] wherefore sheer denial of entry into its territory, especially of foreigners coming from refugee producing countries, amounts to collective expulsion or so-called *push-back*. [57] Several incidents occurred in such situations:

> For instance, a seven-member Syrian family in December 2016 appealed to NGO Info Park for help, asking it to notify the MOI that they were in a forest near the border with Bulgaria, below freezing temperatures (-11^{c}).[58] The Syrian refugees said that mixed army-police patrols stopped the bus they were

52 "Migrants Dissatisfied with Living Conditions," *Danas*, 27 December 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=335391&title=Migranti+nezadovoljni+uslovima+%C5%BEivota.

53 "As the Court has observed in the past, Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of foreigners. Moreover, it must be noted that the right to political asylum is not contained in either the Convention or its Protocols." (*Chahal v. the United Kingdom*, App. No. 22414/93, para. 73, decision of 15 November 1996).

54 Article 4, Protocol No. 4 to the ECHR.

55 Article 1, Protocol No. 7 to the ECHR.

56 Article 15 of the Preliminary Draft of the Foreigners Law lays down the procedure dealing with decisions on denial of entry, which the foreigners at issue may challenge by filing an appeal (Art. 38), albeit without suspensive effect.

57 *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, paras. 185 and 186, decision of 23 February 2012.

58 "Paunović: Refugees Taken to Woods and Left There," *N1*, 18 December 2016, available in Serbian at: http://rs.n1info.com/a215445/Vesti/Vesti/Paunovic-Izbeglice-odvedene-u-sumu-i-tamo-ostavljene.html.

taking to the Bosilegrad PC (they had duly issued certificates of intent to seek asylum), took them out of the bus, and drove them to a remote forest, in the immediate vicinity of the border with Bulgaria. They said the army and police officers seized and destroyed their certificates and other items indicating they had been in Serbia and ordered them to return to Bulgaria on foot. The Surdulica PS responded to the SOS call, saved the Syrian refugees and accommodated them in the Preševo PC.[59] It was ascertained several days later that they had registered in the Department for Foreigners, and the Basic Public Prosecution Service in Vladičin Han launched the procedure for establishing the criminal liability of the officers on duty at the checkpoint 20 km away from Bosilegrad.[60] The Ministry of Defence[61] and some state officials[62] refuted the accusations, claiming the members of the mixed patrols had offered to assist the Syrian family, which refused and decided to continue its journey to the Bosilegrad PC on foot.[63] The Protector of Citizens also launched a check of the lawfulness of the work of the MOI and the Ministry of Defence.[64] The BCHR was given power of attorney to represent the family in the procedure on the potential violation of Article 3 of the ECHR (and Article 25 of the Serbian Constitution).[65]

59 More is available in the *N1* report of 19 December 2016 entitled "Army and Police Patrol Leaves Migrants in Woods to Die," available in Serbian at: http://rs.n1info.com/a215703/Vesti/Vesti/Patrola-vojske-i-policije-ostavila-migrante-da-umru-u-sumi.html.

60 More is available in the *Insajder* report of 26 December 2016 entitled "Prosecutors Checking Information about Refugees Left in Woods at –11°," available in Serbian at: https://insajder.net/sr/sajt/vazno/2523/Tu%C5%BEila%C5%A1tvo-proverava-informacije-o-izbeglicama-ostavljenim-na--11-u-%C5%A1umi.htm.

61 More in the *Insajder* report "Đorđević and Diković in Response to Insajder's Questions: Army did not leave Refugees in Woods," of 23 December 2016, available in Serbian at: https://insajder.net/sr/sajt/ tema/2502/%C4%90or%C4%91evi%C4%87-i-Dikovi%C4%87-na-pitanja-Insajdera-Vojska-nije-ostavila-izbeglice-u-%C5%A1umi.htm.

62 More in the *Insajder* report "Vulin: No Forced Deportation of Migrants from Serbia," of 27 December 2016, available in Serbian at: https://insajder.net/sr/sajt/vazno/2534/Vulin-Nema-nasilne-deportacije-migranata-iz-Srbije.htm.

63 The Minister of Labour, Employment and Veteran and Social Affairs denied Serbia was illegally deporting migrants, see the *Beta* report of 27 December 2016, "Vulin: No Forced Deportation of Migrants," available in Serbian at http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:641915-Vulin-Nema-nasilne-deportacije-migranata.

No other than Vulin said in June 2015 that 400 migrants were pushed back to FYROM overnight. See the *Blic* report of 23 June 2015 entitled "Vulin: 400 Migrants Returned to Macedonia Last Night," available in Serbian at: http://www.blic.rs/vesti/politika/vulin-sinoc-vraceno-400-migranata-u-makedoniju/3k5gvrm.

64 More in the *Insajder* report of 20 December 2016 entitled "Protector of Citizens Launches Oversight in Case of Illegal Deportation of Refugees," available in Serbian at: https://insajder.net/sr/sajt/tema/2458/.

65 More in the *Insajder* report of 22 December 2016 entitled "State Doesn't Care Who Left Migrant Family in Woods," available in Serbian at: http://rs.n1info.com/a216466/Vesti/Vesti/Ko-je-ostavio-migrante-u-sumi.html.

Another incident indicating that the relevant Serbian authorities resorted to collective expulsion occurred in October 2016. Lawyers working for the FYROM NGO MYLA encountered several hundred people in the Tabanovci Reception Centre in the 13–19 October period, who claimed that the Serbian police bussed them from the Preševo RC back to FYROM. Several of them had documents issued by the relevant Serbian authorities; one Pakistani national, who had an asylum seeker ID, claimed the police had arrested him in Belgrade and returned him to FYROM.[66] The UNHCR also noted the widespread collective expulsion practice; it said over 1,000 cases of collective expulsion along the Western Balkan Route were registered in November 2016.[67]

Actions of officers controlling the border need to be subjected to border monitoring[68] in order to prevent violations of the migrants' rights. Such monitoring existed in the countries in the region when they were establishing their asylum systems, i.e. in the stage Serbia is currently in.[69] Joint border monitoring by the MOI, UNHCR and NGOs would raise the professional capacity of the border authorities and lessen risks of them violating the fundamental human rights of both the refugees and other categories of migrants. In its "Concluding observations on the second periodic report of the Republic of Serbia", the CaT recommended that Serbia *also establish formalized border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organizations*.[70]

It may thus be generally concluded that there is no clearly-established system that is uniformly and consistently applied across the country and that the police often resort to *ad hoc* and unforeseeable solutions not based on the law. A number of these problems could be overcome and the foreigners' needs adequately assessed if the PAs and RBPCs had at their disposal interpreters for languages spoken by most refugees and migrants passing through Serbia.[71] The discrepancies in the treatment of refugees and migrants by police officers (who

66 Data obtained from MYLA's internal reports.

67 More in "Balkan countries illegally push back migrants: UNHCR", *Ahramonline*, 26 December 2016, available at: http://english.ahram.org.eg/NewsContent/2/9/253913/World/International/Balkan-countries-illegally-push-back-migrants-UNHC.aspx.

68 Border monitoring denotes the cooperation between the MOI, UNHCR and NGOs under a tripartite agreement, more in: Peace Institute, "Border Monitoring Methodologies – Stakeholders' Manual for Establishing a Border Monitoring Mechanism," November 2006, pp. 49 and 54. Available at: http://www.unhcr.org/4aa0d9839.pdf.

69 Serbia was preparing a new asylum law, an obligation it undertook when it opened the talks on Chapter 24. The new law is to be adopted in 2017.

70 "Concluding observations on the second periodic report of the Republic of Serbia," CAT, CAT/C/SR.1322 and CAT/C/SR.1323, para. 15.

71 More in the *2015 Asylum Report*, BCHR, Belgrade, 2016, p. 47.

do not review the risks of *refoulement*)[72] may ultimately result in the forced removal of the former to countries such as FYROM or Bulgaria, where they are at risk of treatment in contravention of Article 3 of the ECHR.

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

The treatment of asylum seekers and foreigners not fulfilling the requirements to enter the Republic of Serbia by the Belgrade BPS at "Nikola Tesla" Airport remained unchanged in 2016.[73] Foreigners who, in the view of the Belgrade BPS, do not fulfil the requirements to enter Serbia, are placed in an area in the transit zone, where they spend between several days and several weeks.[74] Belgrade BPS police officers still do not consider that they deprived these people of liberty, wherefore they do not issue rulings depriving them of liberty pending their deportation. Essentially, they consider that these people are under the jurisdiction of the public company Nikola Tesla Airport. Consequently, these people are not even entitled to notify a person of their choosing 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 the country they had flown in from). Therefore, the question arises whether these foreigners, who may be in need of international protection, are told they have the right to seek asylum. In a nutshell, foreigners who may be presumed to be in need of international protection on account of their origin 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.[75] This practice may lead to non-compliance with the principle of *non-refoulement*, especially in view of the fact that refugees from Syria, Iraq and

72 The assessment of the risk of treatment in violation of Article 3 must be conducted *ex nunc* and with rigorous scrutiny. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known by the Contracting State at the time of the expulsion (*J. K. and Others v. Sweden*, App. No. 59166/12, para. 83, decision of 23 August 2016, and *F. G. v. Sweden*, App. No. 43611/11, para. 115, decision of 23 March 2016). The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (*Salah Sheekh v. The Netherlands*, App. No. 1948/04, para. 136, decision of 23 May 2007).

73 More in the *2015 Asylum Report*, BCHR, Belgrade, 2016, pp. 45–48.

74 These premises are not, however, suitable for longer stay. The foreigners are not provided with even one meal a day or allowed to go outdoors. BCHR had the opportunity to visit foreigners placed in these premises in 2014.

75 Article 22, AL.

Afghanistan were in the past returned from the Belgrade Airport to countries such as Turkey, Greece, Lebanon and UAE.[76]

Nineteen foreigners expressed the intention to seek asylum to Belgrade BPS officers in 2016. On the other hand, in the first six months of the year, the Belgrade BPS held that 600 foreigners did not fulfil the requirements to enter the Republic of Serbia.[77] Fourteen of them were nationals of refugee producing countries: Afghanistan (5), Libya (3), Syria (3), Iran (1) and Somalia (1). All of them were flown back to the countries they had come from,[78] without having underwent the adequate procedure.[79]

> One 2016 case BCHR's lawyers were engaged in warrants particular attention and reflects the treatment of *prima facie* refugees by the Belgrade BPS. An Iranian refugee, H. D., who had left his country of origin in fear of persecution on account of his religion (he had converted from Islam to Christianity), was detained in the transit zone from 31 October to 27 November 2016, although the police had not issued any decision depriving him of liberty. He repeatedly tried to explain to the police officers that he feared persecution in his country of origin and did not wish to be returned to Turkey because he could not seek international protection there. He was not, however, provided with an interpreter for Farsi or another language he understood. H. D. was provided with the opportunity to access Serbian territory and the asylum procedure only after the ECtHR upheld the request to indicate an interim measure to prevent his forced removal to Turkey (which cannot be considered a safe third country for refugees).[80] Furthermore, BCHR's lawyers were not allowed to enter the transit zone for over two weeks to provide H. D. with legal advice, i.e. they were let in only after the ECtHR indicated that H. D. be provided with legal counsel and access to the asylum procedure, as the only procedure in which the risk of *refoulement* can be examined.

In the first six months of the year, the Belgrade BPS assessed that 298 Turkish nationals did not fulfil the requirements to enter Serbia and had them return to their country of origin. Due to the political instabilities in the wake of the attempted military coup in July 2016,[81] the Turkish Government introduced a state of emergency, during which numerous human rights of people believed to

76 More in the *2015 Asylum Report*, BCHR, Belgrade, 2016, p. 48.

77 MOI reply to BCHR's request for access to information of public importance Ref. No. 26–714/16–3 of 15 September 2016.

78 The Belgrade BPS refused to specify which countries the foreigners were sent back to, as opposed to 2015, when it said that dozens of *prima facie* refugees were returned to countries such as Turkey, Greece or Lebanon.

79 In which individual circumstances are assessed and individual decision is made.

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

81 "Situation in Turkey Calmer, Rallies in Support of Erdogan," *N1 info*, 16 July 2016, available in Serbian at: http://rs.n1info.com/a177417/Svet/Svet/Pokusaj-drzavnog-udara-u-Turskoj.html.

have been linked to the putsch were suspended.[82] The Belgrade BPS should take into account why Turkish nationals left their country of origin and assess whether they are at risk of treatment in violation of Article 3 of the ECHR.

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Regardless of whether these foreigners are *prima facie* refugees, the status of foreigners confined at Belgrade Airport is in contravention of the views of the ECtHR[83] and the CPT[84], which clearly qualify confinement in the transit zones pending deportation as deprivation of liberty. This view is clearly legally binding on Serbia as well. Although some foreigners were provided with access to the asylum procedure at the airport, many potential refugees were not alerted (in a language they understood) to their right to seek asylum or provided with access to the asylum procedure; they were simply returned to the countries, from which they flew into Serbia, without having undergone the adequate procedure.

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

In the first six months of 2016, 43 foreigners detained in the Shelter expressed the intention to seek asylum. In the same period, the Asylum Office issued 12 rulings restricting the movement of foreigners to the Shelter in order to ensure the unimpeded implementation of the asylum procedure (Art. 51, AL).[85]

Foreigners were again referred to the Shelter in 2016 to ensure they testify at criminal trials against human smugglers (under Art. 350 of the CC). More precisely, migrants apprehended during human smuggling operations were referred to the Shelter until the relevant prosecutors heard their testimonies. No one disputes the necessity of criminally prosecuting human smugglers, but there are no national regulations providing for depriving witnesses in criminal cases of their liberty; they are detained pursuant to an informal agreement between the MOI and the prosecutors. In other words, detention of foreigners in the Shelter on these grounds amounts to unlawful and arbitrary deprivation of liberty.

Seventy-eight foreign nationals, including one Iranian and 49 Afghan nationals, who may be presumed to be in need of international protection, were deported from the Shelter in the first half of 2016. Some foreigners were returned

82 "Erdogan Declares State of Emergency in Turkey," *B92*, 20 July 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=07&dd=20&nav_category=78&nav_id=1157371.

83 *Amuur v. France*, App. No. 19776/92, paras. 48 and 49, decision of 25 June 1996.

84 CPT, Excerpt from the CPT's *7th General Report [CPT/Inf (97) 10]*, para. 25.

85 MOI reply to BCHR's request for access to information of public importance Ref. No. 26–714/16–3 of 15 September 2016.

to Bulgaria under the Readmission Agreement.[86] Given that this Agreement is technical in character and does not include any procedural safeguards, it may be assumed that these 50 people were returned although their circumstances and risk of *refoulement* were not reviewed on a case to case basis. It nevertheless needs to be noted that all foreigners, who were to be returned under the Readmission Agreement and who expressed the intention to seek asylum after consulting with BCHR's lawyers, were provided with access to the asylum procedure and their deportation was suspended.

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The work of the Shelter for Foreigners in 2016 is a good practice example of facilitating access to the asylum procedure. BCHR's lawyers had unimpeded access to all foreigners, whose origin indicated they were in need of international protection.

2.5. Access to the Asylum Procedure during Misdemeanour Proceedings and Compliance with the Principle of Impunity

The Serbian authorities continued the practice of penalising *prima facie* refugees for illegally entering[87] or staying in Serbia[88] although the Asylum Law lays down the principle of impunity of asylum seekers for such transgressions.[89] The substantial decline in the number of foreigners found guilty of misdemeanours in 2016 over 2015 (when 10,250 were found guilty of illegally entering or staying in Serbia in the first six months of the year) can also be ascribed to the fact that a much greater number of migrants entered Serbia while the so-called Western Balkan Route was open. A total of 2,221 foreigners were found guilty of illegal entry into Serbia– 1,950 under Art. 65(1(1)) of the State Border Protection Law and 271 under (Art. 84(1(1)) of the Foreigners Law, during the first ten months of 2016 – 1,062 foreigners found guilty of illegal entry into Serbia of relevance to this Report had come from the following refugee producing countries: Afghanistan (335), Iraq (162), Syria (140), Somalia (52), Iran (50), Libya (40), Palestine (15), Eritrea (4) and Yemen (1).[90] Their number may, however, have been higher given the likelihood that nationals of Pakistan (258), Sri Lanka (35),

86 *Ibid.*

87 Article 65, SBPL and Article 84(1), FL.

88 Article 85, FL.

89 Under Article 8 of the Asylum Law, asylum seekers shall not be held liable for illegally entering or staying in the Republic of Serbia, provided they apply for asylum without delay and give a reasonable explanation why they entered or stayed in Serbia illegally.

90 The Pirot Misdemeanour Court said it had found 263 foreigners guilty of these misdemeanours, but did not specify their nationality.

Bangladesh (25), Nigeria (6) and Cameroon (2) found guilty of illegal entry may also have been in need of international protection. Nationals of the following countries were found guilty of illegal residence in Serbia under Art. 85(1) of the Foreigners Law in the first ten months of 2016: Afghanistan (123), Syria (20), Iraq (19), Libya (11), Sudan (5), Iran (6), Somalia (5) and Palestine (3). Another 63 foreigners found guilty of this misdemeanour, who may have been in need of international protection, were nationals of Pakistan (60), Nigeria (7), Bangladesh (3) and Uganda (1). In sum, a total of 1,254 *prima facie* refugees and another 389 foreigners, who may have been in need of international protection, were found guilty of illegally entering or staying in Serbia in that period.

Most of the foreigners (who may have been in need of international protection) were found guilty by the Misdemeanour Courts in Sremska Mitrovica (440), Subotica (350), Senta (340) and Kikinda (64). These Courts' replies to BCHR's requests for access to information of public importance did not indicate whether all of the defendants were assisted by interpreters for the languages they speak.

A total of 90 protective measures ordering the foreigners to leave Serbia were issued in the first ten months of the year. The Misdemeanour Courts' replies, however, indicate that only seven measures regarded foreigners, who may be presumed to have been in need of international protection (nationals of Afghanistan). Fifty-one appeals by foreigners found guilty of illegally entering Serbia under the State Border Protection Law or the Foreigners Law were filed with the Misdemeanour Appeals Court. This Court upheld 38 of the judgments, overturned 11 judgments and modified one judgment.[91] In the same period, the Misdemeanour Appeals Court also ruled on 13 appeals filed by foreigners found guilty of illegally staying in Serbia. It applied the principle of impunity for illegal entry or residence in Serbia in cases of foreigners, whose legal representatives referred to that principle in the appeals.

Fifty-one foreigners expressed the intention to seek asylum during the misdemeanour proceedings, notably before the Misdemeanour Courts in Negotin (33), Pirot (10) and Subotica (8). The Misdemeanour Courts in these cities terminated the proceedings without imposing any penalties against the foreigners. The Negotin Misdemeanour Court's recognition of the intention of 33 foreigners to seek asylum may be attributed to the fact that this Court engaged interpreters for the following languages Pashtu (in 21 cases), Farsi (in 6 cases), Kurdish (in 4 cases), Urdu (in 4 cases) and Arabic (in 2 cases). More precisely, this Court did not find any foreigners, who may have been in need of international protection, guilty of a misdemeanour in the first 10 months of the year and it recognised the

91 One case was still pending on appeal when the Misdemeanour Appeals Court replied to BCHR's request for access to information of public importance.

foreigners' intention to seek asylum in 33 cases. The work of the Negotin Misdemeanour Court can serve as a good practice example to other courts coming into touch with potential refugees.

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The Misdemeanour Courts' case law on impunity of foreigners who entered or stayed in Serbia illegally is not uniform and brings into question also the right to a fair trial in numerous misdemeanour proceedings. Some Misdemeanour Courts ordered the foreigners from refugee producing countries to leave Serbia.

3. ASYLUM PROCEDURE

3.1. First-Instance Procedure

The asylum procedure is governed by the Asylum Law, which applies as a *lex specialis* that prevails over the General Administrative Procedure Law. 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 Asylum Seekers or People Granted Asylum or Temporary Protection (Art. 25, AL). Therefore, asylum applications are submitted directly to Asylum Office officers and cannot be filled and sent by mail to this authority. The submission of asylum applications is preceded by registration (Art. 24, AL), which includes: establishment of the applicants' identity, their photographing, fingerprinting and temporary seizure of all their personal and other documents that may be of relevance to the asylum procedure. Registration essentially boils down to the same measures taken during the entry of the foreigners in the records, i.e. issuance of certificates of intent to seek asylum and the taking of their personal and biometric data, photographing and entry into the *Afis*.[92]

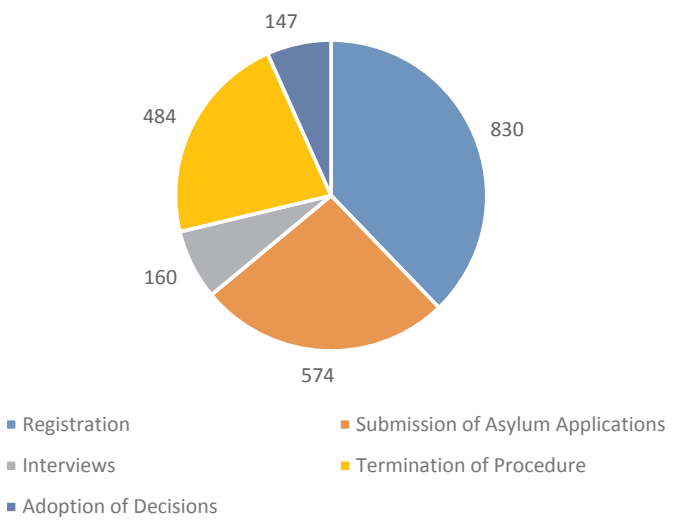
Under the Asylum Law, foreigners shall be issued asylum seeker IDs after they register. However, the Asylum Office ordinarily issues IDs to asylum seekers only after the foreigners submit their asylum applications, which is in contravention of Art. 24(4) of the AL. The Asylum Office justified its practice by its endeavour to prevent abuse of asylum seeker IDs by foreigners not genuinely intending 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 shall be funded by the UNHCR.

92 In other words, the Asylum Office in practice performs the registration of the foreigners on the day they apply for asylum, which is both time and resource consuming. Rather than performing another check of the foreigners' data in the *Afis*, the MOI can simply forward a copy of the *Afis* data to the Asylum Office on the day the foreigners submit their applications.

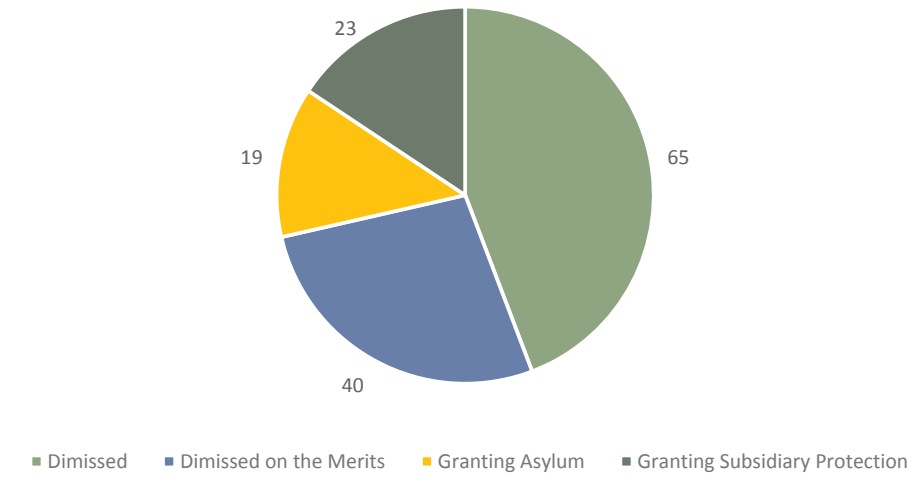
The asylum procedure may be completed by the adoption of a decision upholding the asylum application (Art. 28 AL), dismissing it on the merits (Arts. 29 and 30 AL), dismissing it (Art. 33 AL) and discontinuing the asylum procedure (Art. 34 AL).

The Asylum Office registered 830 foreigners and issued 177 asylum seeker IDs in 2016; 574 of these people applied for asylum and 160 were interviewed. Most of the foreigners who actually applied for asylum were nationals of Afghanistan (187), Iraq (147), Syria (100) and Pakistan (60). The Office upheld 42 and dismissed 40 applications on the merits, and dismissed another 53 applications regarding 65 foreigners. It discontinued the review of 268 applications (regarding 484 applicants), because the asylum seekers had in the meantime left Serbia or their temporary places of residence, including Asylum Centres. The Asylum Office granted asylum to the applicants of 19 applications and subsidiary protection to the applicants of 23 of the 42 applications it upheld in 2016. Asylum was granted to nationals of Libya (5), Cuba (4), Tunisia (4), Cameroon (2), Afghanistan (1), Syria (1), Kazakhstan (1) and Iran (1). Subsidiary protection was granted to nationals of Libya (8), Ukraine (5), Afghanistan (5), Syria (2), Somalia (2) and Iraq (1). Most of the dismissed applications had been filed by nationals of Pakistan (14), Iraq (10) and Russia (9). The greatest number of applications dismissed on the merits had been filed by nationals of Libya (25). Overall, the Asylum Office granted asylum to 41 people and subsidiary protection to 49 people from 2008, when the Asylum Law came into force, to the end of 2016.

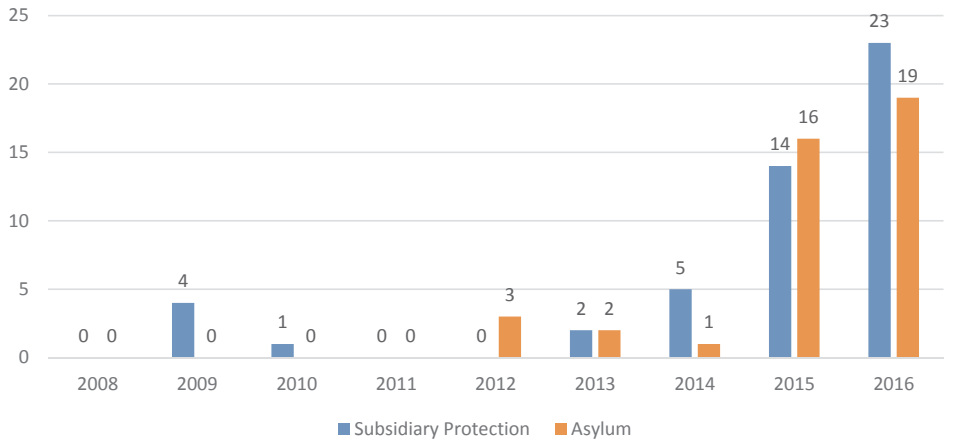
Asylum Office Activities in 2016



Decisions Adopted in 2016



No of Decisions Granting Asylum or Subsidiary Protection in the 2008–2016 Period



These data lead to the conclusion that most foreigners (484) abandoned the asylum procedure before the Asylum Office ruled on their applications. On the other hand, in 54% of the cases (53 decisions), the Office dismissed the applications because it held that the procedural requirements for reviewing them on the merits were not fulfilled.[93] In 46% of the cases (45 decisions), the

93 In over 95% of the cases, the Office dismissed the asylum applications pursuant to Art. 33(1(6)) AL, under which asylum applications shall be dismissed if the asylum seekers had

Office decided to review the asylum applications on the merits. Out of these 45 cases, the Office upheld 62% (28) and dismissed 38% (17) applications. The analysis of the data on the nationality of the applicants, whose applications were dismissed on the merits, shows that a substantial of the applicants cannot be considered *prima facie* refugees as they came from: Russia (4), FYROM (3), Pakistan (3), Senegal (1), Montenegro (1), Congo (1), South African Republic (1) and Ghana (1). This conclusion should, of course, be taken with a grain of salt given that BCHR's lawyers did not legally represent all of these applicants. The Asylum Office, however, in 2016 dismissed the applications filed by 16 Libyan asylum seekers on the merits[94], claiming they would not be at risk of persecution or treatment in contravention of Article 3 of the ECHR on return to their country of origin.[95]

Pursuant to Art. 208 of the 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.* As the Asylum Office lacks human resources,[96] the applicants as a rule wait for first-instance decisions much longer than two months.[97]

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passed through safe third countries before they entered Serbia, i.e. countries the Asylum Office considers safe for them.

94 According to official statistics, the asylum applications of 25 nationals of Libya were dismissed on the merits in 2016. However, the Asylum Office statistics communicated to UNHCR also include the decisions rendered by the Asylum Commission. The application by a nine-member Libyan family, legally represented by BCHR, was dismissed on the merits both by the Asylum Office and the Asylum Commission wherefore the nine applicants appear twice in the statistics.

95 An application by a Somali national was dismissed on the merits. The BCHR cannot, however, comment the quality of the Asylum Office's decision because it did not legally represent the applicant during the procedure.

96 Ten Asylum Office members of staff were receiving asylum applications and interviewing the applicants in the first half of 2016. However, in mid-2016, one officer left the Asylum Office, two went on maternity leave, and, in late October 2016, another four officers were absent from the Office and attending two-month police training. In other words, in the latter half of 2016, the Asylum Office was at one point staffed by only three active police inspectors conducting the official asylum actions, which impinged on their timely scheduling and implementation.

97 It usually takes the Office between four and six months, sometimes longer, to render a decision. For instance, in case 26–93/16, the applicant applied for asylum on 22 January 2016 and was served with the decision dismissing the application on 12 August 2016; in case 26–286/17, the applicant applied for asylum on 22 January and was served with the decision dismissing the application on the merits on 31 October 2016; in case 26–11/16, the asylum seeker applied for asylum on 3 March 2016 and the decision granting him asylum was served on him on 9 August 2016; in case 26–1414/16, the asylum seeker applied for asylum on 20

One good practice example is the case of a Libyan family, to which the Asylum Office granted asylum, because they were at risk of persecution on account of their membership of a particular social group. During its review, the Asylum Office took into account a number of relevant reports indicating both the state of general insecurity in Libya[98] and the status of people not following traditional Moslem customs, Berbers, as well as of women and feminists lobbying for emancipation. In other words, the Asylum Office's reasoning of its decision demonstrates it adequately and thoroughly examined all the risks of persecution and treatment in contravention of Article 3 of the ECHR and took into account all the relevant international human rights organisations.[99]

In September 2016, the Asylum Office granted asylum to Iranian national Y. G. H., who had been subjected to persecution in his country of origin because he had converted from Islam to Christianity. This case is also a good practice example, because the Office's reasoning of its decision demonstrates that it had thoroughly examined the risks of persecution and of treatment in contravention of Art. 3 of the ECHR and referred to the relevant reports describing treatment of converts as that of a particular social group in Iran. Furthermore, Y. G. H. had entered Serbia from FYROM and the fact that the Asylum Office decided to review his application on the merits indicates that the officer ruling on the application held (albeit did not explain) that FYROM could not be considered a safe third country in the applicant's case.[100]

On 15 December 2015, the Asylum Office issued a ruling dismissing the asylum application filed by the Libyan family B. R. on the merits. At their interview, the applicants claimed they would be subjected to persecution if they returned to Libya because they were members of the diplomatic corps posted in Serbia by the former Gaddafi regime.[101]

> They also said the female members of the family were at risk of abduction and rape,[102] and described the crumbling health system in Libya which could

June 2016, but a decision on his application was neither rendered nor served on him by the end of the reporting period.

98 E.g. *UNHCR Position on Returns to Libya – Update I*, UNHCR, October 2015; "Report on the Human Rights Situation in Libya," *UNSMIL*, November 2015, et al.

99 Asylum Office Ruling No. 26–812/16 of 29 September 2016.

100 Asylum Office Ruling No. 26–1051/16 of 29 September 2016.

101 Category of people, who, in the view of the UNHCR, should be recognised as particularly vulnerable and who should be considered as fulfilling the criteria under Article 1of the Refugee Convention, see "UNHCR Position on Returns to Libya – Update I," 2015, pp. 13 and 14, para. 26.

102 This allegation is corroborated by numerous reports and newspaper articles clearly describing the status of women in post-conflict Libya.

not provide health care to A.O.B.R;[103] the general insecurity reflected both in the armed conflicts and activities of the paramilitary formations the Libyan authorities could not be responsible for or control.[104] In its reasoning, the Asylum Office held that the family had applied for asylum to avoid deportation i.e. forced removal to be implemented pursuant to an MOI ruling ordering them to leave the country issued in accordance with Art. 35 in conjunction with Art. 11(1(6) FL, under which a foreigner shall be ordered to leave the country in order to protect the public order or the security of the Republic of Serbia and its citizens.[105]

In the reasoning of its decision, the Asylum Office noted that *it is undisputable that Libya is ravaged by conflicts and that it is a war-torn area*. It remains unclear why it did not find the general state of insecurity sufficient grounds to grant the applicants at least subsidiary protection[106] and why it held that the B. R. family applied for asylum to avoid deportation. More precisely, the B. R. family sought asylum at the moment the risk of *refoulement* arose, because the MOI ordered them to leave Serbia and return to Libya. Until that moment, they had no reason to seek international protection in Serbia because they were allowed to reside in it on other grounds and there was no danger of them retuning to war-torn Libya.

The Asylum Office held that the state of general insecurity reigned in Libya in its decisions on asylum applications by Libyan nationals, since it granted subsidiary protection to 16 and asylum to seven Libyan nationals. Presumably, it could not have reached a different decision in case of the B. R. family. Furthermore, the Asylum Office rendered its decision in case No. 26–4099/15 on 7 August 2015,[107] i.e. before it ruled on the B. R. family's application on 10 December 2015.

On 27 July 2016, the Asylum Office rendered a decision[108] dismissing the application by a Libyan family A. for almost identical reasons as the one it cited

103 *D. v. the United Kingdom*, App. No. 30240/96, paras. 52 and 53, decision of 2 May 1997.

104 *H. R. L. v. France*, App. No. 24573/94, para. 30, decision of 29 April 1997, and *N. v. Finland*, App. No. 38885/02, paras. 161–167, decision of 30 November 2005.

105 None of the five rulings ordering the B. R. family to leave Serbia specified why they were considered a threat to national security in Serbia.

106 As the Asylum Office did in its decision 26–4099/15 of 7 August 2015, by which it granted subsidiary protection to a six-member Libyan family due to the state of general insecurity in their country of origin, or as it did in several other decisions granting international protection (subsidiary protection or asylum) to other Libyan nationals. As of December 2016, the Asylum Office and Commission issued decisions granting subsidiary protection or asylum to 23 Libyan nationals altogether.

107 By which one Libyan family was granted subsidiary protection 3 months before the B. R. family was dismissed asylum application on the merits.

108 Asylum Office Ruling No. 26–5489/15 of 27 July 2016.

in its decision dismissing the B. R. family's application (that they had applied for asylum to avoid deportation), thus again acting in contravention of its views in other decisions, in which it clearly demonstrated in its reasonings that it recognised the state of general insecurity in Libya.

> Members of the A. family belong to the category of people that may be considered close to the former Gaddafi regime in Libya (one of its members was a member of the Committee for the Defence of the Revolution). Another factor that led the Asylum Office to dismiss family A.'s application was that several of its members had gone back to Libya several times before they applied for asylum. The Office, however, failed to take into consideration UNHCR's recommendation to States Parties to refrain from forcibly removing Libyans to that country until the security situation in it improved considerably. The case files and the hitherto practice of the Asylum Office[109] demonstrate that the asylum seekers proved that they were at risk of persecution in Libya and the state of general insecurity there.

As per the application by Cameroon national K. N. L. and her daughter, the Asylum Office issued a decision to grant them asylum in December 2016.[110]

> K. N. L. had left Cameroon to avoid a forced marriage, in which she was at risk of abuse, rape and even death. Furthermore, K. N. L. feared persecution because of her political views, expressed in her refusal to comply with tribal customs and enter into a forced marriage. The Asylum Office cited the relevant international documents qualifying forced marriages as being in breach of human rights and prohibiting status akin to slavery, and issued a decision to uphold the application, recognising that "women" in Cameroon were a particular social group subjected to persecution.

This was the first case in which the BCHR extended legal aid and in which the Asylum Office upheld an application on grounds of gender-based violence, which is definitely a good practice example. In its decision, the Office referred to numerous reports by UN treaty bodies corroborating the asylum seeker's claims.

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The Asylum Office in 2016 issued the greatest number of positive decisions on asylum applications since the Asylum Law came into force in 2008. It substantiated many of its decisions by referring to the reports of the relevant international organisations and information about the applicants' countries of origin in its reasonings, wherefore it may be concluded that the quality of the first-instance decisions improved in the reporting period. There were, however, cases in which the Asylum Office did not pay much attention to information about the

109 Which clearly recognised the state of general insecurity in Libya in many of its decisions.

110 Asylum Office Ruling No. 26–536/16 of 30 December 2016.

situation in the applicants' countries of origin or the UNHCR's views. Furthermore, it continued dismissing asylum applications because the applicants had, on their way to Serbia, passed through countries designated as safe third countries in the 2009 Government Decision, disregarding the way in which those countries enforced their regulations in the field of refugee law.

3.2. Second-Instance Procedure

Appeals of Asylum Office decisions are reviewed by the nine-member Asylum Commission appointed by the Serbian Government. The Asylum Law does not lay down adequate criteria for their appointment, ensuring the professionalism and independence of this body.[111] Although the Asylum Law sets out that the Commission shall be independent and adopt its decisions by a majority of votes, the Government in 2012 appointed the Deputy Head of the Border Police Administration (within which the first-instance authority, the Asylum Office, operates) the Chairman of the Commission, giving rise to doubts about its independence. The General Administrative Procedure Law explicitly prescribes that appeals of first-instance decisions by an administrative body may not be ruled on by a body formed within the same authority.[112]

As per the effectiveness of legal remedies in immigration law cases that may result in the expulsion of foreigners, States must make available to the individual concerned the effective possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality.[113]

In their comments of the Preliminary Draft of the Asylum and Temporary Protection Law during the public debates in 2016, the BCHR and UNHCR insisted that the appeals of first-instance decisions be reviewed by the Administrative Court or that clearer criteria for the appointment of Asylum Commission members be laid down, to ensure the full independence and professionalism of this authority and, thus, the greater effectiveness of appeals in the asylum procedure. The final draft of this law, however, introduces absolutely no changes with

111 The following may be appointed Commission chairperson or member: nationals of Serbia with a law degree and at least five years of relevant experience, who are familiar with human rights regulations (Art. 20(3) AL).

112 Art. 216, GAPL.

113 *M and Others v. Bulgaria*, App. No. 41416/08, decision of 26 October 2011, paras. 122–132 and *mutatis mutandis Al-Nashif v. Bulgaria*, App. No. 50963/99, decision of 20 June 2002, para. 133.

regard to the second-instance authority and the criteria for the appointment of its members.

Appeals of Asylum Office decisions may be filed within 15 days from the day the latter are served on the asylum seekers or their legal counsel; these appeals shall have suspensive effect.[114] The appeals procedure is regulated by the General Administrative Procedure Law. The asylum seekers may also file appeals in the event the Asylum Office fails to render a decision on their applications within two months from the day they submitted them (due to silence of the administration).[115] In those cases, the Asylum Commission shall require of the Asylum Office to specify the reasons for the delay. In the event the Commission finds that a ruling was not adopted 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 the Office is to adopt a ruling. In the event the Commission finds that the reasons for the delay are unjustified, it will require of the Office to forward it the case files. The Commission shall itself review and rule on the matter in the event it finds it can do so on the basis of the finding of facts in the case files, it. In the event the Commission finds that the Office will review the matter more rapidly and economically, it shall instruct it to do so and forward it the collected information and itself rule on the asylum application.[116] However, the Asylum Commission has never reviewed or ruled on the merits of applications in cases appealing the silence of the administration and has always set the Office an additional deadline to render the first-instance decisions. In other words, the first-instance decisions will be rendered more quickly if the asylum seekers wait for the Office to rule on their applications, because appeals complaining of the silence of the administration practically protract the procedure and do not constitute an effective legal remedy that can help improve the efficiency of the Asylum Office.

Rulings on appeals must be issued and served on the parties as soon as possible, within a maximum of 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. Nor did it hold oral hearings to clarify the facts. In the event the second-instance authority finds that the facts were incompletely or incorrectly established in the first-instance procedure, that the procedure was not in compliance with the rules of procedure of relevance to the resolution of the matter, or that the wording of the contested ruling is unclear or in contravention of the reasoning, it shall supplement the procedure and eliminate the deficiencies itself or require of the first-instance authority to do so.

114 Art. 35, AL and Art. 221, GAPL.

115 Article 236, GAPL.

116 *Ibid.*

In the event the second-instance authority finds that, on the basis of the facts established in the supplementary procedure, the administrative matter should have been resolved differently than it was resolved in the first-instance decision, the second-instance authority shall adopt a decision repealing the first-instance ruling and itself rule on the administrative matter.[117]

The MOI performs the administrative duties for the Commission. The terms in office of the Asylum Commission members expired on 16 September 2016, but the Serbian Government failed to appoint the new members by the end of the year. Thus, the second-instance asylum authority was not operational until the end of the year and appeals of Asylum Office decisions had merely suspensive effect (the enforcement of the first-instance decisions was suspended).

Forty-nine appeals concerning 93 asylum seekers were filed with the Asylum Commission in 2016. The Commission dismissed 20 appeals concerning 26 asylum seekers and repealed ten Asylum Office rulings concerning 32 asylum seekers. The Commission ruled on the merits of one case and rendered a decision granting subsidiary protection in the reporting period. Although the Asylum Commission in one case set aside the Asylum Office's ruling dismissing an asylum application and instead granted subsidiary protection to the applicants (for the first time since the Asylum Law entered into force), the general impression is that appeals to this body are not an effective legal remedy, because the Commission continued applying the safe third country concept in the absence of guarantees of the countries at issue that they would let the asylum seekers back into their territory and although UNHCR reports indicate that the countries asylum seekers pass through on their way to Serbia (Turkey, Greece, FYROM and Bulgaria) cannot be safe for them. Furthermore, the Asylum Commission was reluctant to itself rule on asylum cases where, in the view of the BCHR, it had sufficient grounds to rule on the merits.

The text below analyses some of the Asylum Commission decisions of relevance to assessing its work and the effectiveness of appeals in the asylum procedure. These decisions were adopted in cases in which the appellants were represented by the BCHR.

For the first time since the Asylum Law entered into force in 2008, the Asylum Commission upheld an appeal by Libyan asylum seekers and itself ruled on the merits of the administrative matter, awarding the applicants subsidiary protection.[118]

> The Asylum Office dismissed as ill-founded the asylum applications of a Libyan couple A. S. I. and A.M.S. A.S.I. came to Serbia on a Libyan government

117 Article 232, GAPL.

118 Asylum Commission Ruling No. Až 06/16 of 12 April 2016.

scholarship back in 2010. The situation in Libya deteriorated significantly in the meantime, and A. S. I. could no longer return to his country of origin safely. A. M. S. joined her husband in Serbia in 2013. In its decision, the Asylum Office qualified their application as ill-founded, because they returned to Libya to visit their home town between 2010 and 2013 (i.e. the period they lived in Serbia), up until the time they applied for asylum, holding that this fact was in collision with their allegations that their lives and safety would be in jeopardy if they returned to Libya, due to the precarious security situation and armed conflicts there. The Asylum Office thus concluded that it could not grant them subsidiary protection and that they had applied for asylum to extend their legal residence in Serbia.

The Asylum Commission upheld the appeal, in which the applicants claimed that the first-instance authority had erred when it found that they did not qualify for subsidiary protection. The Commission underlined that the Asylum Office had been under the duty to take into account UNHCR's Position on Returns to Libya of October 2015, updating its Position of 2014, in which it said that the current situation in Libya was characterised by a continued lack of rule of law and order, ongoing fighting between rival armed groups in many parts of the country and daily assassinations, bombings and kidnappings. The situation in Libya particularly deteriorated since 2014, wherefore UNHCR urged states to allow Libyan civilians access to their territory and to review the dismissed asylum claims in light of the new circumstances. UNHCR particularly called on states to suspend forcible returns to Libya until the security and human rights situation has improved considerably until such time to permit a safe and dignified return. The Asylum Commission also referred to the ECtHR judgment in the case of *Sufi and Elmi v. the United Kingdom*,[119] in which this Court held that the applicant did not need to adduce evidence of real risk to his life and integrity when the general situation in his country of origin was extremely grave.

The Asylum Commission also qualified as irrelevant the asylum seekers' visits to Libya before the UNHCR published its Positions, because that did not lessen the risk to their lives and safety if they were returned to Libya, in view of the fact that the security situation had deteriorated since the last time they had been in their country of origin. It also found that their last stay in Libya, described during the public hearing, indicated that the security situation in that country was poor. The Asylum Commission qualified as particularly problematic the Asylum Office's view that the asylum seekers had applied for asylum to extend their legal residence in Serbia, because it had not taken into account the reports of large-scale human rights violations in Libya and that their safety and freedom would be jeopardised due to generalised violence.

119 Applications No. 8139/07 and 11449/07, decision of 28 November 2011.

BCHR welcomes the Asylum Commission's decision, because this body considered the status of the asylum seekers in a comprehensive manner and referred to the relevant UNHCR reports and ECtHR case law. In this case, the Asylum Commission's decision ensured not only an effective legal remedy in the asylum procedure, but a safe life for the asylum seekers and protection of their human rights as well. The Asylum Office challenged the Commission's decision before the Administrative Court, which dismissed its claim, because the Office is not entitled to file claims with this Court.[120]

However, the Asylum Commission's case law on *sur place* refugees from Libya is not uniform. In another case, also filed by a Libyan national, A. M. A, his wife S.K.A.M. and their seven children, which is nearly identical to the above case, the Asylum Commission merely rescinded the first-instance ruling dismissing the asylum application on the merits and referred the case back to the Asylum Office for review.[121]

> The latter had initially dismissed the application as ill-founded because it held that the asylum seekers had applied for asylum in order to extend their legal residence in Serbia, because they had gone back to Libya several times since the fighting broke out, thus demonstrating that Libya was actually safe for them. Although the Asylum Commission underlined in its decision that the first-instance authority was under the obligation to review the facts in Libya and consult sources on the general situation in the country of origin, especially the above-mentioned UNHCR Positions, the Commission went beyond the claims in the appeal and itself identified specific ambiguities and contradictions in the first-instance decision and overturned it.
>
> Namely, the appeal only specified that the Asylum Office had made an error of fact because it did not consider the relevant reports on Libya and thus erroneously concluded that there were no grounds to grant the applicants asylum. The applicant asked the Asylum Commission to rescind the Asylum Office's first-instance ruling and itself rule on the merits of the asylum application. The Asylum Commission, however, went beyond the claims in the appeal and itself identified specific ambiguities and contradictions in the first-instance ruling, which were not specified in the appeal. Due to these contradictions, the Asylum Commission decided against ruling on the merits of the application itself and referred the case back to the Office. In this case, the Commission correctly alerted the Asylum Office to its obligation to consult specific sources on the human rights situation in the country of origin when it ruled on an asylum application. Nevertheless, the Asylum Commission could have itself heard the asylum seekers (who are living in Belgrade), clarified the ambiguities and ruled on the merits of the application. It would have thus greatly contributed

120 Administrative Court Ruling No. 26 U 8287/16 of 23 June 2016.

121 Asylum Commission Ruling No Až 15/16 of 24 May 2016.

to the realisation of the principle of efficiency of the administrative procedure (Article 6, GAPL).

The Asylum Office again interviewed the asylum seekers and again reached the decision to dismiss their applications on the merits. The Asylum Commission did not render a decision on the merits when it reviewed the appeal of the Office decision, but merely overturned it, specifying that the Office was to have considered UNHCR's 2015 Position on returns to Libya, take a view on it and explain it. The Commission also reminded the Office it was under the duty to cite the reports on countries of origin on which it based its decisions. It instructed the Office to ascertain the precise date when J. A. M. arrived in Serbia and examine whether it was of relevance to its decision on the asylum application.[122] During its third review of the case, the Office, however, failed to consider the UNHCR reports the Commission referred it to and yet again rendered the decision to dismiss the asylum seekers' applications, holding that they did not fulfil the requirements to be granted asylum or subsidiary protection.[123] The asylum seekers' legal counsel again filed an appeal with the Asylum Commission and a claim with the Administrative Court, in view of the fact that the Commission's term in office expired in September 2016.

The Asylum Commission's failure to itself rule on the merits of the case and take a view on the relevant reports on Libya amounts to a violation of the principle of efficiency of the administrative procedure. The proceedings had been pending for over a year at the end of the reporting period, since the asylum applications were filed in December 2015. In the third case, regarding the asylum application filed by the Libyan family B. R., which had been posted in the Libyan Embassy in Serbia, the Asylum Commission on 11 February 2016 issued a ruling[124] dismissing the family's appeal filed on 22 December 2015 and upholding the Office's decision not to grant them asylum.[125]

In this case, the asylum seekers had been ordered to leave the country on unspecified national security grounds before they applied for asylum. The Asylum Office dismissed the application holding that the asylum seekers could safely return to Libya, as they had done on several occasions before applying for asylum and that they had applied for asylum to avoid deportation. After the Commission rendered its decision, it became clear that the review of the B. R, family's application was under the strong influence of other MOI units, which had ordered them to leave the country on national security grounds, as corroborated by the part of the Asylum Commission ruling in which it analysed the provisions governing the orders to leave the country for reasons of

122 Asylum Commission Ruling No. Až 15/16 of 15 August 2016

123 Asylum Office Ruling No. 26–5489/15 of 26 August 2016

124 Asylum Commission Ruling No. AŽ-23/15 of 11 February 2016

125 Article 35 AL in conjunction with Art. 11(1(6)) FL

national security. As these grounds were not specified either in the Office ruling dismissing the asylum application, or in the appeal of that ruling, it remains unclear why the Commission dealt with this issue in its review of the appeal. If such grounds existed, the Asylum Office would have been under the obligation to dismiss the asylum application pursuant to Art. 31 of the AL. The same goes for the Asylum Commission, which also reviewed the merits of the application. Another argument corroborating the existence of external influence is that the Commission subsequently (after dismissing the B. R. family's appeal) rendered decisions granting subsidiary protection [126] to other Libyans due to the state of general insecurity and referred to the relevant ECtHR case law and UNHCR's Position on returns to Libya[127], or instructed the Asylum Office to take a view on the UNHCR document. The ECtHR's judgment in the case of *Ahmed v. Austria*[128] is relevant to the case of the B. R., family. In that case, the applicant was initially granted refugee status, which was revoked after he committed a crime. The ECtHR found that his return to his country of origin (Somalia) would amount to a violation of Article 3 of the ECHR.

The discrepancies in the Asylum Commission's case law on the status of Libyan nationals remain unclear. In its decisions preceding the one in the B. R. family appeal, the Commission clearly took the view that the situation in Libya constituted grounds for granting subsidiary protection.[129] Hence the question about

126 The text of the Commission's Ruling No. AŽ – 06/16 of 12 April 2016 clearly demonstrates that this body recognised the existence of the state of general insecurity in Libya. Herewith an excerpt of the ruling

"The Asylum Commission agrees with the claim that the Asylum Office had erroneously concluded that the asylum seekers did not qualify for subsidiary protection because their frequent visits to Libya proved they would not be subjected to torture, inhuman or degrading treatment and that their lives, security or liberty would not be jeopardised by generalised violence in that country. The Asylum Office was under the duty to take into consideration the findings of facts on the basis of all available sources of information about the general situation in the country of origin, especially the UNHCR Position on Returns to Libya of October 2015, updating its 2014 Position."

In this legal matter, the Asylum Office was under the duty to take into account the UNCHR report of October 2015, which clearly indicates large-scale human rights violations in Libya and the precarious security situation in that country. The Constitutional Court of Serbia emphasised the obligation to consult UNHCR reports, with a view to contributing to the proper enforcement of the Asylum Law by the competent authorities (Decisions Už. 1286/12 of 29 March 2012 and Už. 5331/12 of 24 December 2012; Decision Už. 3458/13 of 19 November 2013). The cited Position indicates that the situation in Libya is grave and the fact that there are several factions in the country and that the authorities are unable to ensure peace and security in most of the territory.

127 "UNHCR Position on Returns to Libya – Update I," UNHCR, October 2015

128 *Ahmed v. Austria*, App. No. 25964/94, decision of 17 December 1996

129 The Commission rendered its decision in the case of AŽ – 06/16 on 12 April 2016 and its decision on by the B. R. family's appeal on 11 February 2016.

its contradictory interpretations of the general situation in Libya, the reports by UNHCR and other relevant organisations and the relevant ECtHR case law.

In the fourth case, regarding an asylum application by Russian national K. O. and his underage son K. I., the Asylum Commission overturned the Office ruling dismissing their asylum application on appeal and referred the case back to the Office to review it again.[130] K. O. applied for asylum in Serbia because of his mistrust of the Russian Federation's judicial system, i.e. fear of persecution on account of his political opinions and the police threats against him.

> In its ruling on the appeal, the Commission again agreed with the appellant that the Office had not taken into consideration all the evidence and had based its decision exclusively on the interview of the asylum seekers, which is in contravention of Articles 10 and 149 of the General Administrative Procedure Law. The Asylum Office had not taken into account the information about the country of origin the appellant's legal counsel referred to; nor had it explained which information led it to believe the asylum seekers did not have any serious problems with the authorities or cited the relevant sources of such information. The Asylum Commission instructed the Office to review the application again and examine all the facts it was alerted to before it rendered its decision.

This Asylum Commission decision improves the work of the Asylum Office because it alerts to its obligation to reason its rulings, cite the relevant sources, and assess all the evidence. It, however, remains unclear why the Asylum Commission did not itself examine the submitted evidence, i.e. why it did not rule on this administrative matter on the merits. The Asylum Office, however, did not act as instructed by the Asylum Commission the next time it reviewed the asylum application, which it dismissed without specifying which reports on the country of origin led it to "indisputably" conclude that the asylum seekers had no problems in the Russian Federation that would qualify them for refugee or subsidiary protection.[131] The Asylum Office's re-examinations of the cases referred back to it by the Commission thus indicate it has been disregarding the Commission's instructions, which is why it would be useful if, whenever possible, the Commission itself ruled on the administrative matter and on the basis of the established facts.

The Asylum Commission had an unusual view on the burden of proof regarding the dismissal of asylum applications because the applicants had passed through safe third countries (Art. 33(1(6)), AL). In several cases, it held that "the competent authorities cannot review during the asylum procedure whether a specific state is indeed a safe third country for the asylum seekers since, under

130 Asylum Commission Ruling No. Až 08/16 of 24 May 2016.

131 Asylum Commission Ruling No. 26–4316/15 of 2 August 2016.

Art. 33(1(6)) of the Asylum Law, such reviews are envisaged only in the context of ascertaining whether they had come from safe third countries, with the burden of proof resting on the asylum seekers."[132] According to the general rules on evidence, the burden of proof should rest on both parties, which are to prove the facts they are adducing. Furthermore, refugee law recognises the rule of the *benefit of doubt*, i.e. that a decision should be rendered in favour of the asylum seeker in case he made all reasonable efforts to substantiate his application with evidence.[133] This rule, however, is not applied in case all other evidence has already been exhausted and reviewed and the credibility of the application is satisfactory.[134] The Asylum Commission has not examined the credibility of the asylum applications at all; nor has it thoroughly explained why it did not recognise specific facts as proven.

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The general conclusion is that appeals to the Asylum Commission are not am effective legal remedy because the Commission supports the automatic application of the safe third country concept, given that it is reluctant to rule on the merits of the cases and often goes beyond the claims in the appeals in its decisions.

3.3. Proceedings before the Administrative Court

Asylum seekers may file claims with the Administrative Court challenging final decisions on their applications or the authorities' failure to rule on them within the legal deadline. The procedure before the Administrative Court is governed by the Administrative Disputes Law. Judgments delivered in administrative disputes shall be final and binding, i.e. ordinary legal remedies may not be filed against them.[135] There is no chamber or department in the Administrative Court that specialises in asylum cases.

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 Administrative Disputes Law.[136] In most of its judgments, it specified that the

132 Asylum Commission Ruling Nos. Až 22/16 and Až 35/16 of 15 August 2016.

133 "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status," UNHCR, Geneva, 2011, paras. 203–204, available at http://www.unhcr.org/3d58e13b4.html.

134 More in "The Benefit of the Doubt in Asylum Law", H. Storey, RefLaw, available at http://www.reflaw.org/the-benefit-of-the-doubt-in-asylum-law/.

135 Article 7, ADL.

136 Under this Article, the court shall establish the facts on the basis of oral hearings. Therefore, oral hearings are a rule the court may diverge from in the event the subject matter of the dis-

requirements were fulfilled for it to rule on the lawfulness of the impugned 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 impugned ruling and submitted files demonstrated that the facts had been properly and fully established, wherefore it was called upon only to review the lawfulness of the impugned ruling with respect to the disputed legal issues.[137]

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. On the motion 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 enforcement would incur the plaintiff harm difficult to remedy and 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.[138]

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 Commission specifies in its decisions the deadline by which the decisions are to be enforced (usually five days from the day they become final). 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 (i.e. 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, otherwise there is the risk of the latter acting arbitrarily. In several of its judgments, 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. For instance, in its judgments

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pute obviously does not require the questioning of the parties in person or a separate finding of facts or with the parties' explicit consent (Art. 33(2)). The court is under the obligation to explain why it did not hold an oral hearing.

137 Administrative Court judgments 16 U 6304/16 of 26 May 2016, 17 U 8414/16 of 2 September 2016, and 21 U 8539/16 of 7 October 2016.

138 Article 23, ADL.

in the cases of *De Souza Ribeiro v. France* (para. 82–83)[139] and *Shamayev and Others v. Georgia and Russia* (para. 448),[140] the Court held that where a complaint concerns allegations that the person's expulsion would expose him to a real risk of suffering treatment contrary to Article 3 of the Convention, in view of the importance the Court attaches to that provision and given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised, the effectiveness of the remedy for the purposes of Article 13 requires imperatively the **independent and rigorous scrutiny** of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 (*Jabari v. Turkey*,[141] para. 50), and **reasonable promptness** (*Batı and Others v. Turkey*,[142] para. 136). In such a case, effectiveness also requires that the person concerned should have access to a remedy with **automatic suspensive effect** (*Gebremedhin / Gaberamedhien v. France*,[143] para. 66, *Hirsi Jamaa and Others v. Italy*,[144] para. 200).

In some cases, in which they represented the asylum seekers, the BCHR submitted precautionary motions to suspend the enforcement of the final rulings together with the claims. The Administrative Court, however, required of the BCHR to submit the motions separately and to elaborate them, although the reasonings of the claims clearly indicated the harm the asylum seekers would suffer in case the decisions were enforced (i.e. if they were denied international protection and returned to their countries of origin).

> In a case regarding asylum seekers from Libya, a country regarding which the UNHCR advised states not to return asylum seekers to until the security situation improved significantly,[145] the Administrative Court dismissed the motion to suspend the enforcement of the ruling, specifying the plaintiffs had not submitted evidence that they would suffer harm if returned to Libya although the claim included a thorough description of the situation in that country and listed the relevant reports.[146]

Twenty-two administrative disputes challenging Asylum Commission rulings and two claims concerning the silence of the administration were initiated before the Administrative Court in 2016. The Court ruled on seven cases:

139 App. No. 22689/07, Grand Chamber decision of 13 December 2012.

140 App. No. 36378/02, decision of 12 April 2005.

141 App. No. 40035/98, decision of 11 July 2000.

142 App. Nos. 33097/96 and 57834/00, decision of 3 September 2004.

143 App. No. 25389/05, decision of 26 April 2007.

144 App. No. 27768/09, decision of 23 February 2012.

145 "UNHCR Position on Returns to Libya – Update I," UNHCR, October 2015, para. 12, available at http://www.refworld.org/docid/561cd8804.html.

146 Administrative Court Ruling 16 U 6304/16 of 25 April 2016.

it dismissed five claims on the merits, upheld one claim and dismissed one claim.[147]

The Administrative Court's only positive decision concerned a claim in which it found an error in the text of the first-instance ruling, indicating that the first-instance ruling had been issued before the asylum application was filed.[148] In that case, the legal counsel also challenged the grounds for dismissing the asylum application, because the asylum seekers had passed through a safe third country, claiming they would be at risk of treatment in violation of Article 3 of the ECHR in case they were returned to their country of origin and that Montenegro could not be considered a safe third country.[149] The Court, however, focused only on the wrong date in the first-instance ruling and did not consider these arguments at all.

The Administrative Court dismissed four claims on the merits, upholding the lawfulness of the application of the safe third country concept in those cases.[150] The Administrative Court has held that reports by international organisations on human rights in countries defined as safe third countries in the 2009 Government Decision could not per se constitute evidence that these countries were not safe for the asylum seekers, i.e. that these countries did not comply with the Refugee Convention although they had ratified it.[151] Furthermore, the Administrative Court held that the asylum authorities were not under the obligation to ascertain whether specific states were safe; in its view, the authorities are under the duty to acknowledge them as such due to the fact that they are on the list of safe countries in the 2009 Government Decision.[152]

The Administrative Court dismissed one claim because it was filed by the Asylum Office, which challenged the Asylum Commission's ruling overturning its decision to dismiss an asylum application and granting subsidiary protection to a married couple from Libya. Under Article 11 of the Administrative Disputes Law, claims may be filed by natural or legal persons claiming an administrative enactment has violated their rights or legally vested interests, wherefore the Ad-

147 Administrative Court's reply to a request for access to information of public importance Ref. No. SU III 18 140/16 of 11 January 2017.

148 Administrative Court judgment 16 U 5572/16 of 14 July 2016.

149 The first and last names and the country of origin of the asylum seeker were not disclosed in the judgment forwarded by the Administrative Court in response to BCHR's request for access to information of public importance due to the rule on the anonymisation of judgments. (The asylum seeker was represented by an attorney, not BCHR). It may be presumed that the asylum seeker is a national of the Russian Federation.

150 More in the section of this report "Application of the Safe Third Country Concept by the Asylum Authorities".

151 Administrative Court judgment 17 U 8414/16 of 2 September 2016.

152 Administrative Court judgment 21 U 8539/16 of 7 October 2016.

ministrative Court held that the Asylum Office was not entitled to file claims with this Court.[153]

In one case, regarding an asylum application by a Libyan family, B. R. (*sur place* refugees), which was dismissed because they had been ordered to leave Serbia on (unspecified) national security grounds before they applied for asylum, the Administrative Court noted that the decision to dismiss their application was lawful because they had applied for asylum to avoid deportation, which was listed as grounds for dismissing an asylum application in Art. 30(1(2)) of the Asylum Law.[154]

> Namely, the national security reasons that led to ordering the asylum seekers to leave Serbia were not clarified at all. Furthermore, all the asylum authorities totally ignored the UNHCR reports. The Asylum Commission disputed the risk of persecution and cited ECtHR's decision in the case of *Daoudi v. France,*[155] specifying that the ECtHR held that, where the complaint regarded deportation for national security reasons, the complainant had to demonstrate that he personally was at risk of persecution in case he were returned to his country of origin. The Administrative Court concurred, noting that the asylum seekers had gone back to Libya several times before they applied for asylum, which indicated that they were not at risk of persecution in that country and that they had applied for asylum with the sole aim of avoiding deportation. The Administrative Court, however, totally disregarded the plaintiffs' claims about the disappearance and killing of their close friends by the rebel armed groups, as well as the numerous reports by international organisations alerting to the precarious security situation and well-founded risk of persecution of people once close to the Gaddafi regime – the asylum seeker had been Libya's Consul in Belgrade. The Administrative Court gave no explanation of its failure to review the arguments presented by the B. R. family in their claim. Nor did it hold an oral hearing on the case. The UNHCR intervened in this case; it called on the Administrative Court to take into account its Position on returns to Libya, which explicitly called on the States Parties to the Refugee Convention to suspend all decisions on returning people to Libya until the security situation there improved,[156] but the Administrative Court paid no heed to its intervention.

In this case, the Administrative Court obviously did not comply with the principle required by the ECtHR in cases where there is a risk of a violation of Article 3 of the ECHR, i.e. it did not closely scrutinise all the facts and evidence, but merely gave a blanket assessment that the Asylum Commission's decision was lawful.

153 Ruling 26 U 8287/16 of 23 June 2016.

154 Administrative Court judgment 16 U 6304/16 of 26 May 2016.

155 App. No. 19576/08, decision of 3 December 2009.

156 *UNHCR Position on Returns to Libya – Update I*, UNHCR, October 2015, para. 28.

Since the B. R. family's asylum application was dismissed at all levels, giving rise to the direct risk of the violation of the principle of *non-refoulement*, the BCHR on 30 June 2016 asked the ECtHR to indicate interim measures to prevent their forcible removal to Libya and thus the irreparable consequences of *refoulement*, involving the violation of the absolute prohibition of ill-treatment (under Art. 3 of the ECHR). On 1 July 2016, the ECtHR upheld the request and indicated an interim measure suspending the family's return to Libya pending the completion of the proceedings before this body.[157]

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The practice of the Administrative Court did not improve substantially in 2016. Nor can claims filed with that Court be qualified as an effective legal remedy, mostly because, in most cases, the Administrative Court upheld the decisions denying asylum because the asylum seekers had passed through safe third countries before they arrived in Serbia,[158] without reviewing all the claims in the suits or the reports on the countries of origin, or holding oral hearings on the cases.

157 *Ben Rfad v. Serbia*, App. No. 37478/16.

158 More in the following section of this report "Application of the Safe Third Country Concept".

4. APPLICATION OF THE SAFE THIRD COUNTRY CONCEPT

The Serbian asylum authorities' practice of automatically applying the safe third country concept[159] resulted in them granting some form of international protection to only eight people in the first five years the Asylum Law was implemented. All of those people had entered Serbia lawfully and directly from their countries of origin or from countries that have not ratified the Refugee Convention, or were *sur place* refugees (i.e. had already been in Serbia when risks of persecution occurred in their countries of origin). The asylum authorities dismissed nearly all other asylum applications without reviewing them on the merits. UNHCR data show that all asylum seekers, who had entered Serbia lawfully in the 2008–2010 period, were denied asylum pursuant to Art. 33(1(6)) of the Asylum Act, i.e. because the authorities applied the safe third country concept.[160] In 2011, apart from two asylum applications dismissed on the merits, all other (53) applications (concerning 83 asylum seekers) were dismissed without a review of their merits.[161] In 2012, the Asylum Office did not grant asylum to anyone; it dismissed 64 applications by applying the safe third country concept.[162] In 2013, the Office cited the safe third country concept as the reason for dismissing eight applications.[163] In 2014, all twelve Asylum Office decisions to dismiss asylum applications were based on the safe third country concept.[164] In 2015, the Asylum Office dismissed 25 asylum applications by applying the safe third country concept. These applications had been filed by nationals of Russia

159 The expression "automatic application" means that the relevant authorities do not review the treatment of asylum seekers in the countries designated as safe in the 2009 Government Decision, or the UNHCR documents advising countries not to return asylum seekers to specific countries because they cannot be considered safe due to specific deficiencies.

160 "Serbia as a Country of Asylum," UNHCR, August 2012, para. 36.

161 *Ibid.,* para. 43.

162 In 2012, the Asylum Office reviewed only three applications on the merits, those filed by foreigners who had entered Serbia lawfully and directly from their countries of origin, more in the *2013 Asylum Report*, p. 17, and "Serbia as a Country of Asylum," UNHCR, August 2012, para. 43.

163 The Office reviewed the applications on the merits, upholding four and dismissing five of them. More in the *2013 Asylum Report*, pp. 24 and 41–43.

164 The Office reviewed four applications on the merits, granting asylum in one and subsidiary protection in three cases.

(8), Ukraine (5), Syria (4), Sudan (3), Somalia (2), Cameroon (1), Ghana (1) and Morocco (1).[165]

The asylum authorities continued automatically applying the safe third country concept in 2016 as well, in cases of asylum seekers, who had entered Serbia from FYROM and Bulgaria. The Asylum Office dismissed 53 asylum applications (regarding 65 asylum seekers i.e. 54% of the applications it ruled on in the reporting period) by applying Art. 33 (1(6)), These applications were 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), Algeria (1) and one stateless person. It applied the safe third country concept in over 95% of the cases and, in most of them, referred to the 2009 Government Decision.

Actually, out of the 90 foreigners granted some form of international protection since the Asylum Law entered into force (on 1 April 2008), the authors of this Report can claim with a high degree of certainty that 56 (64%) of them had come to Serbia directly from their countries of origin or third countries that had not ratified the Refugee Convention.[166] Out of the other 32 (36%) asylum seekers, one, which was legally represented by the BCHR, had come legally from Turkey.[167] Seven of them may reasonably presumed to have come from FYROM[168] and two from Bulgaria[169]. It was impossible to ascertain from which country five Afghani asylum seekers, whose applications the Asylum Office decided to review on the merits, had come from. The authors of this Report were unable to verify from which third countries the remaining 17 asylum seekers had entered Serbia, because they were not represented by BCHR in the asylum procedure.[170]

It may be concluded that, ever since the asylum system was introduced in Serbia, the Asylum Office has insufficiently been focusing during its interviews of the asylum seekers on ascertaining how they had been treated in the coun-

165 Three applications (by one South African and two Cuban nationals) were dismissed on the merits.

166 2009 – three nationals of Ethiopia and one national of Iraq; 2010 – one national of Somalia (*sur place*); 2012 – two nationals of Libya and one national of Egypt; 2013 – two nationals of Turkey; 2014 – one Tunisian national; 2015 – nine nationals of Ukraine, eight nationals of Libya, one national of South Sudan, one national of Lebanon, one national of Iraq (*sur place*); 2016 – 13 nationals of Libya, five nationals of Ukraine, four nationals of Cuba, two nationals of Cameroon and one national of Kazakhstan.

167 In its case law, the Asylum Office confirmed that Turkey could not be considered a safe country for refugees, although it was listed in the 2009 Government list of safe countries of origin and safe third countries, more in the *2015 Asylum Report*, p. 54.

168 Five nationals of Sudan, one national of Syria and one national of Iran.

169 One national of Afghanistan and one national of Iran.

170 Twelve nationals of Syria, three nationals of Iraq and two nationals of Somalia.

tries they had passed through and why they had decided against seeking asylum in them. Even when the asylum seekers talked about the ill-treatment they had suffered in Bulgaria or FYROM, the Asylum Office and Commission did not consider their complaints sufficient grounds to conclude that those states could not be safe for them.

> For instance, both the Office and the Commission duly noted in their decisions the claims by one Iraqi asylum seeker that the Bulgarian police had seized all his belongings, 700 USD, his cell phone and backpack. His allegation, however, did not prompt them to review whether Bulgaria was really a safe country for that asylum seeker.[171] In another case, the relevant authorities ignored the asylum seeker's claims during the oral hearing that the treatment of asylum seekers by the Bulgarian authorities was horrible, i.e. they attached no significant to that statement in the procedure. Nor did the Asylum Office endeavour to establish what the asylum seeker meant by "horrible". In this case, the Commission concluded that the asylum seeker's assessment of the Bulgarian authorities' treatment could not be considered evidence that this country was not safe for him.[172]

In its decisions UŽ 1286/2012 of March 2012 and UŽ 5331/2012 of 24 December 2012, the Constitutional Court said that UNHCR's reports contributed to the proper enforcement of the Asylum Law by the competent authorities, i.e. the application of the safe third country concept in the event the safe third countries were applying the asylum procedure in violation of the Refugee Convention. Serbian asylum authorities, however, either do not take the UNHCR reports on FYROM and Bulgaria into account at all, or they selectively cite the positive assessments in these reports, whilst disregarding the very essence and message UNHCR is sending in its assessments of the efficiency of the asylum procedures in those countries.

Article 2(1(11)) of the Asylum Law sets out the cumulative conditions a country must fulfil to be qualified as safe: It must:

- Be on the Government list of safe countries of origin and safe third countries;
- Observe international principles pertaining to the protection of refugees in the 1951 Refugee Convention and 1967 Protocol thereto;
- The asylum seeker had resided or passed through it immediately before he arrived in the territory of the Republic of Serbia and he had an opportunity to apply for asylum in it;

171 Asylum Office Decision 26–5867/15 of 20 April 20016 and Asylum Commission Ruling AŽ 22/16 of 15 August 2016.

172 Asylum Office Decision 26–1224/16 of 21 July 20016 and Asylum Commission Ruling. AŽ 35/16.

- The asylum seeker would not be subject to persecution, torture, inhuman or degrading treatment in it or sent back to a country where his 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 accordance with Refugee Convention standards and that they had to ascertain how the authorities of particular states enforced asylum regulations in practice.[173] Serbian asylum authorities, however, do not take this well-established view into consideration at all. Furthermore, if the Asylum Office and Commission qualify a country as a safe third country, they must obtain strong assurances from it that its authorities will let the asylum seeker enter its territory and access the asylum procedure, and that the asylum seeker will be accommodated in a facility ensuring his dignity of person.[174] Not once did the Asylum Office, Asylum Commission or the Administrative Court obtain such guarantees before they decided to dismiss an asylum application.[175] Actually, the Asylum Office is of the view that the Asylum Law does not impose such an obligation on the asylum authorities.[176]

In most of their decisions, the Asylum Office and Commission merely noted that the countries the asylum seekers had passed through on their way to Serbia were safe because they were listed in the 2009 Government Decision, thus practically failing to examine whether they fulfilled the other criteria laid down in the Asylum Law.[177] As a rule, they also failed to peruse the other relevant sourc-

173 *M. S. S. v. Belgium and Greece*, App. No. 30696/09, decision of 21 January 2011.

174 *Tarakhel v. Switzerland*, App. No. 29217/12, decision of 4 November 2014.

175 Pursuant to ECtHR's case law, the Contracting States' failure to obtain genuine assurances that the applicants' rights in the receiving states will be guaranteed may result in a violation of Article 3 of the ECHR (*Tarakhel v. Switzerland*, App. No. 29217/12, paras. 120–122, decision of 4 November 2014; *Bader and Kanbor v. Sweden*, App. No. 13284/04, para. 45, decision of 8 February 2006).

176 As it specified in its reply to BCHR's request for access to information of public importance Ref. No. 06–342/16 of 17 October 2016.

177 An assessment of the risk of *refoulement* required under Art. 3 of the ECHR – including cases of forced removal to countries considered safe – must be conducted in accordance with the standards established in ECtHR case law. The personal circumstances of the individual at issue must be examined during such an assessment, and automatic reliance on a safe third country list, without consideration of the individual's personal circumstances, is in contravention of the obligations arising from the ECHR. The ECtHR's case law on assessments of risks of treatment in breach of Art. 3 in case of deportations to specific countries has developed significantly over the past few decades. The fundamental principles of such assessments are best summarised in the most recent ECtHR judgments, such as *J. K. and Others v. Sweden*, App. No. 59166/12, paras. 77–105, decision of 23 August 2016, and F. G. *v. Sweden* App. No. 43611/11, paras. 110–127, decision of 23 March 2016.

es indicating problems in the treatment of refugees in specific countries. These sources include numerous reports by UN treaty bodies (CAT, CCPR, ECOSOC), as well as reports by eminent international human rights organisations, such as Amnesty International and Human Rights Watch.

In its Observations on the Current Situation of Asylum in Bulgaria,[178] the UNHCR said Bulgaria could not be qualified as a safe third country because asylum-seekers in it faced a real risk of inhuman or degrading treatment, in breach of Article 3 of the ECHR. It concluded the following:

> UNHCR considers that asylum-seekers in Bulgaria face a real risk of inhuman or degrading treatment, due to systemic deficiencies in reception conditions and asylum procedures in the country. The primary basis for this conclusion is the deplorable reception conditions, which, in addition to amounting to inhuman or degrading treatment, are also at variance with the right to human dignity and respect for privacy. Moreover, asylum-seekers in Bulgaria are currently at risk of arbitrary detention, given the absence of a clear legal basis for detention in Bulgarian law, and given the delays which can mean that detention continues for uncertain and often lengthy periods. In addition, while according to UNHCR's information, asylum-seekers are not at this time returned forcibly in practice from within Bulgaria to other countries where they could be at risk of persecution or serious harm, they are denied access to a fair and effective asylum determination procedure, which is at variance with the right to asylum and to numerous provisions of the *acquis.* [...] . Return to these conditions could create a risk of *refoulement.*

Particularly concerning is the Asylum Commission's view – which it voiced in several cases[179] – that the relevant asylum authorities could not examine whether specific states were really safe third countries for the asylum seekers since Art. 33(1(6)) of the Asylum Law provided for such examinations only in the context of ascertaining whether they had come from safe third countries and only as long as the asylum seekers bore the burden of proof.[180] The BCHR is of

178 "Bulgaria as a Country of Asylum," UNHCR, 2 January 2014, available at: http://www.refworld.org/docid/52c598354.html.

179 Asylum Commission Rulings Až 22/16 and Až 35/16 of 15 August 2016.

180 It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR in the event the impugned decision is enforced (*N. v. Finland*, App. No. 38885/02, para. 167, decision of 30 November 2005). The Contracting State, however, is under the obligation to review not only the evidence adduced by the applicant, but other facts of relevance to the case under examination as well (*F. G. v. Sweden*, App. No. 43611/11, para. 115, decision of 23 March 2016). This is particularly important as far as the evaluation of the general situation in a specific country is concerned; the ECtHR has clearly held that the immigration authorities have to establish the general situation t *proprio motu* (*J. K. and Others v. Sweden*,

the view that the Asylum Commission's view is erroneous, as Art. 2(1(11)) lists the cumulative conditions states have to fulfil to be qualified as safe, the fulfilment of which must be verified by the asylum authorities during the procedure. To reiterate, only countries that allow the foreigners to return to their territory, provide them with access to the asylum procedure and agree to rule on the merits of their asylum applications can be considered safe third countries.[181]

The analysis of the cases in which the Asylum Office ruled on the merits of the applications although the asylum seekers had passed through FYROM or Bulgaria before they entered Serbia and of the cases, in which it dismissed the applications because they had passed through those countries (under Art. 33(1(6)), does not shed much light on the criteria it was guided by when it upheld the applications of some asylum seekers, but not those of other asylum seekers in nearly identical situations. The criteria that can be identified cannot, however, be considered justified or fair, because they are so exceptional that only a few asylum seekers can actually fulfil them.

> In 2015 and 2016, the Asylum Office granted asylum to five Sudanese asylum seekers, who had passed through FYROM on their way to Serbia. During their interview, they said they had entered Serbia in a truck trailer they had boarded in Greece and that had they made no stopovers in FYROM. On the other hand, the Office dismissed an asylum application by a Sudanese refugee, A. K. who had passed through FYROM on foot, because he could not prove that this country was not safe for him.[182] The Office's decision in his case is all the more unfair given that the reasons why he had left Sudan were identical to those of one of the five above-mentioned Sudanese refugees, I. W., who was granted asylum because he had been in a truck and made no stopovers in FYROM.[183] Another disputable criterion the Asylum Office apparently applies came to the fore in the case of a five-member Afghan family, which was unable to say which country it had passed through before it entered Serbia.[184] So, if

App. No. 59166/12, para. 98, decision of 23 August 2016). If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. (*ibid.*, para. 86). The ECtHR has always consulted UNHCR reports when it assessed risks of treatment in breach of Article 3 (*Sufi and Elmi v. the United Kingdom*, App. Nos. 8319/07 and 11449/07, paras. 133–39, 191, 192, 245, 288, decision of 28 November 2011; *M. S. S v. Belgium and Greece*, App. No. 30696/09, paras. 244–246, 255, 258, 281–282, 300, 302, 304, 318, 332, 348–349, decision of 21 January 2011).

181 "The safe third country policy in the light of the international obligations of countries vis-a-vis refugees and asylum seekers," UNHCR, London, July 1993, para. 4.2.14, and UNHCR Executive Committee Conclusion No. 85 of 1998, para. (aa).

182 Asylum Office Decision 26–5724/14 of 14 May 2015.

183 Asylum Office Decision 26–5626/15 of 1 March 2016.

184 Asylum Office Decision 26–652/16 of 17 June 2016.

> these criteria are perceived as credible, only refugees, who do not know from which countries they had entered Serbia or who had passed through FYROM or Bulgaria in car trunks, truck trailers, et al, are capable of proving these two countries are not safe for them.

In 2016, the Asylum Office rendered two decisions granting asylum to one Syrian and one Iranian national.[185] In both cases, it simply noted that they had passed through FYROM and that they fulfilled the criteria to be granted refugee protection.

On the other hand, the Asylum Office dismissed the asylum application of three Syrian nationals, who had also entered Serbia at the time the WBR was open, because it found they had not been able to prove that FYROM was not safe for them.[186]

> In the reasonings of its decisions, the Office said that the asylum seekers had practically not even tried to apply for asylum in FYROM and that they said during their interviews that they had not intended to stay in that country. The decisions also selectively cite excerpts from UNHCR's report "The former Yugoslav Republic of Macedonia as a Country of Asylum"[187] The Office quoted only UNHCR's positive observations on the headway made by the FYROM authorities in establishing the asylum system.

Selective quoting of excerpts of a report on progress in the asylum system is a concerning practice and, to an extent, renders senseless the message UNHCR wanted to convey to countries deciding on asylum applications filed by people who had passed through FYROM. Although UNHCR did, indeed, praise specific headway made in establishing the asylum system in FYROM, it published its report to alert the states that ratified the Refugee Convention and Protocol that this country still did not have an efficient system for protecting people in need of international protection:

> (..) UNHCR considers that the country does not as yet meet international standards for the protection of refugees, and does not qualify as a safe third country. Accordingly, UNHCR advises that other states should refrain from returning or sending asylum-seekers to the country, until further improvements to address these gaps have been made by the Government of the former Yugoslav Republic of Macedonia.[188]

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185 Asylum Office Decisions. 26–5413/14 of 2 March 2016 and 26–1051/16 of 13 September 2016.

186 Asylum Office Decision s 26–1394/16 of 8 September 2016, 26–1393/16 of 13 September 2016 and 26–1395/16 of 23 September 2016.

187 "The former Yugoslav Republic of Macedonia as a Country of Asylum," UNHCR, August 2015, available at: http://www.refworld.org/pdfid/55c9c70e4.pdf.

188 *Ibid.,* para. 47.

The above-mentioned three Syrian nationals were informally returned from Hungary to Serbia after their asylum applications were dismissed in an accelerated procedure in the Roszke Detention Centre under the explanation that Serbia was a safe third country. The Asylum Office's decisions in these cases clearly demonstrate risks of *refoulement* refugees returned by Hungary to Serbia are exposed to, and risks of their chain *refoulement*, because Serbia considers FYROM a safe third country.

Another case clearly demonstrating that the safe third country concept is applied almost automatically with respect to FYROM concerned Sudanese refugee A. K., whose asylum application was dismissed by the Asylum Office.[189]

> In its reasoning, the Office said that, since the UNHCR and the European Commission had not published reports indicating that the asylum system in FYROM was inefficient, A. K. failed to prove this country could not be considered safe for him. The Asylum Office again dismissed A. K.'s application for identical reasons[190] after the Asylum Commission quashed its initial decision for procedural reasons and required of the Office to re-examine it.[191]

In its latter decision, the Asylum Office merely referred to the 2009 Government Decision, but did not cite the arguments in its initial decision, that UNHCR and the European Commission had not published any reports indicating that the asylum system in FYROM was inefficient, probably due to the fact that the UNHCR in the meantime published a report on FYROM, advising states to refrain from returning refugees and asylum seekers to this country, which the Asylum Office totally ignored.[192]

Unfortunately, the Asylum Office did not change its view until the final decision on this case was rendered. The Asylum Commission dismissed A. K.'s appeal as ill-founded and upheld the first-instance decision.[193] In the reasoning of its decision, the Asylum Commission selectively quoted excerpts from the UNHCR report on FYROM, those that positively assessed headway this country made in specific segments of the asylum system. On the other hand, it absolutely disregarded the very essence of the report and the conclusion in paragraph 47 (in which UNHCR advised countries that ratified the Refugee Convention to refrain from returning refugees to FYROM). The Commission also clearly failed to

189 Asylum Office Decision 26–5724/14 of 14 May 2015.

190 Asylum Office Decision 26–5724/14 of 9 December 2015.

191 Asylum Commission Decision Až– 08/15 of 23 September 2015.

192 UNHCR reports are often the decisive factor in assessing risks of refoulement, especially in the context of assessments of the safety of specific third countries (*M. S. S. v. Belgium and Greece*, App. No. 30696/09, paras. 123–127, decision of 21 January 2011 and *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, paras. 130–131, decision of 23 February 2012).

193 Asylum Commission Decision Až– 08/15 of 12 April 2016.

examine with *rigorous scrutiny* all the potential risks A. K. might be subjected to if deported to FYROM,[194] which are clearly described in numerous credible reports by CAT,[195] CCPR,[196] ECOSOC,[197] the European Commission,[198] Amnesty International[199] et al, which it was under the duty to have taken into account.[200] In its decision, the Asylum Commission noted:

> Furthermore, the reports by international organisations referred to in the appeal are not proof *per se* that K. A., was unable to apply for asylum in FYROM or that FYROM is not a safe country for him. The cited cases can serve as an illustration of the state of human rights in FYROM and provide credibility to some of his allegations, but the personal circumstances of the applicant must indicate that he could not be afforded protection, which is not the case here.[201]

194 The assessment of the risk of treatment in violation of Article 3 must be conducted *ex nunc* and with rigorous scrutiny. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known by the Contracting State at the time of the expulsion (*J. K. and Others v. Sweden*, App. No. 59166/12, para. 83, decision of 23 August 2016, and *F. G. v. Sweden*, App. No. 43611/11, para. 115, decision of 23 March 2016). The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (*Salah Sheekh v. The Netherlands*, App. No. 1948/04, para. 136, decision of 23 May 2007

195 "Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia", CAT, CAT/C/MKD/CO/3, of 5 June 2015, para. 19. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/114/89/PDF/G1511489.pdf?OpenElement

196 *Ibid*., para. 17.

197 "Concluding observations on the combined second to fourth periodic reports of the former Yugoslav Republic of Macedonia", Economic and Social Council, doc. UN, E/C.12/MKD/CO/2–4, of 16 July 2016, para.21. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMKD%2fCO%2f2–4&Lang=en

198 "Commission Staff Working Document – the Former Yugoslav Republic of Macedonia," European Commission, SWD (2015) 212 final, of 19 November 2015, pp. 6 and 62. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf.

199 *Europe's Borderlands – Violations against Refugees and Migrants in Macedonia, Serbia and Hungary,* Amnesty International, pp. 26–29.

200 The ECtHR requires of the states deporting foreigners to conduct adequate and thorough investigations of any risks of *refoulement.* The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations, (*J. K. and Others v. Sweden*, App. No. 59166/12, para. 84, decision of 23 August 2016 or *F. G. v. Sweden*, App. No. 43611/11, para. 117, decision of 23 March 2016, *El–Masri v. the Former Yugoslav Republic of Macedonia* App. No. 39630/09, para. 218, decision of 13 December 2012).

201 Pursuant to ECtHR case law, where there are sufficient publicly available reports of systematic deficiencies in the asylum procedure, the applicants are not under the obligation to prove

In its decision, the Asylum Commission also highlighted the fact that FYROM had ratified all the relevant international human rights instruments and was aspiring to join the EU. ECtHR case law clearly indicates that these facts must be taken with a grain of salt, for the simple reason it had found violations of various human rights by states, in which the realisation and protection of human rights is at a much higher level than in Serbia or FYROM, in thousands of cases.[202]

Without holding an oral hearing, [203] the Administrative Court also dismissed A. K.'s claim as ill-founded and upheld the first-instance decision.[204] It limited itself to referring to the 2009 Government Decision, with respect to both FYROM, Greece and Turkey, and stating that A. K. had not had any problems in those countries.

> The Administrative Court incorrectly interpreted the minutes of the interview, clearly specifying the incidents preventing A. K. from accessing the asylum procedure in any of these countries. This Court added that the reports by international organisations adduced as evidence could not as such constitute proof that the individual states were not safe[205] and that A. K. had failed to prove that he had personally been subjected to any of the practices described in those reports, and that he had not referred to them in the procedure before the Asylum Office.[206] After the decision on A. K.'s application became final and, due to the fact that the risk of his *refoulement* to FYROM arose, the BCHR asked the ECtHR to indicate an interim measure. The European Court

that they personally would be affected by the situation. The States are under the obligation to take these reports into account (rather than require individual proof) and suspend returns to those countries (*M. S. S. v. Belgium and Greece*, App. No. 30696/09, para. 352, decision of 21 January 2016; *Hirsi Jamaa v. Italy*, App. No. 27765/09, paras. 128–133, decision of 23 February 2012).

202 In the case of *O. v. Italy* (App. No. 37257/06, decision of 14 September 2009), the ECtHR said that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention.

203 Arts. 33 and 34, FL.

204 Administrative Court judgment U 8414/16 of 2 September 2016.

205 The ECtHR has held that applicants should not be expected to bear the entire burden of proof in specific conditions (when the deficiencies in the asylum system of the receiving state were well-documented and known to the sending state). (*M. S. S. v. Belgium and Greece*, App. No. 30696/09, para. 352, decision of 21 January 2011).

206 The sending states' obligation to assess the potential risks under Article 3 does not depend on whether the applicant relied on the deficiencies of the asylum system in the third country (*Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, para. 133, decision of 23 February 2012). Therefore, this obligation rests with the sending states and their authorities.

indicated such a measure on 4 October 2016,[207] after which an application was filed with this Court claiming A. K.'s rights under Articles 3 and 13 in conjunction with Article 3 of the ECHR would be violated if he were returned to FYROM.

So, the Administrative Court took an even more rigorous view in 2016. As per the enforcement of the 2009 Government Decision, this Court said that the asylum authorities did not have jurisdiction to establish whether states were safe, that they were under the duty to acknowledge them as such due to the mere fact that they were on the Government's list of safe countries of origin and safe third countries.[208] Furthermore, the Administrative Court held that reports by international organisations did not constitute evidence per se that a specific country was not safe for an asylum seeker and that he had to have been personally subjected to persecution, inhuman or degrading treatment or the risk of being returned to a country where his life, liberty or security would be in danger.[209] Therefore, the Administrative Court does not consider as sufficient proof reports by relevant organisations of the real and objective risk that Article 3 of the ECHR will be violated if an asylum seeker is returned to a specific "safe" third country. It thus supports the automatic application of the safe third country concept, without regard to the way a specific country is enforcing its refugee law and whether the refugees in that country genuinely have the opportunity to obtain international protection and integrate in society.

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The described practices of the Serbian asylum authorities lead to the conclusion that UNHCR's 2012 view of Serbia as a country of asylum is still valid. In that document, the UNHCR said Serbia was not a safe country for asylum seekers because it, inter alia, automatically applied the safe third country concept. The UNHCR, in particular, advised the Serbian authorities to put in place appropriate mechanisms for the designation and review of safe third countries, such as "benchmarks" and criteria that would trigger and inform such a review, and to apply the safe third country concept only when adequate safeguards were in place for every individual, such as ensuring that he/she would be re-admitted to the territory of the safe third country and have the asylum claim examined in a fair and efficient procedure. These UNHCR recommendations have not been fulfilled yet.[210]

207 *Kandafru v. Serbia*, App. No. 57188/16.

208 Administrative Court Judgment 21 U 8539/16 of 7 October 2016.

209 Judgment 17 U 8414/16 of 2 September 2016.

210 "Serbia as a Country of Asylum," UNHCR, August 2012, available at: http://www.refworld.org/docid/50471f7e2.html

5. STATUS OF UNACCOMPANIED AND SEPARATED CHILDREN

Every state is under the duty to protect the rights of all children in its territory, regardless of their legal status, i.e. whether they are asylum seekers or are just staying in it for a short period of time. The UN Convention on the Rights of the Child, which Serbia also acceded to, applies to all persons under the age of 18. Under Article 2 of this treaty, States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind. These rights are further clarified with respect to refugee children in the UN Committee on the Rights of the Child General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin (hereinafter: General Comment No. 6).

Under paragraph 7 of General Comment No. 6, unaccompanied children (also called unaccompanied minors) are children, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. On the other hand, separated children, as defined in paragraph 8 of General Comment No. 6, are children, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. The Serbian Asylum Law does not distinguish between unaccompanied and separated children; it only defines unaccompanied minors as foreigners under the age of 18, who are not accompanied by their parents or guardians during or upon entry to the Republic of Serbia. The Asylum Law lays down the following principles aimed at extending protection: the principle of providing care to persons with special needs,[211] and the principle of representation of unaccompanied minors and persons deprived of legal capacity, stipulating that unaccompanied minors shall be appointed guardians by the guardianship authority before they apply for asylum and that their interviews must be attended by their guardians.[212]

A total of 17,653 unaccompanied children expressed the intention to seek asylum in Serbia over the past four years.[213] In the reporting period, 175 of the 4,850 children who expressed the intention to seek asylum were not accompanied by their parents or guardians. It may be concluded that the number of such

211 Article 15 AL.

212 Article 16 AL.

213 Information obtained from MOI via UNHCR.

children is much higher given the difficulties in identifying them,[214] and the fact that the MOI has been registering only foreigners who express the intention to seek asylum since the agreement between the EU and Turkey came into effect.[215]

Under the Instructions to Social Work Centres and Social Residential Institutions on the Protection and Accommodation of Unaccompanied Children, issued by the Ministry of Labour, Employment and Veteran and Social Affairs,[216] Social Work Centres (SWCs), in their capacity of guardianship authorities, are to appoint temporary guardians to unaccompanied children and accommodate the children in social residential institutions that have separate units for the temporary accommodation of and care for refugee/migrant children as soon the Border Police Administration or the Commissariat for Refugees and Migration notify them that they found such children in their jurisdiction. The Standard Operating Procedures – Protection of Refugee and Migrant Children,[217] developed under the auspices of the Ministry of Labour, Employment and Veteran and Social Affairs and presented in April 2016, set out clear guidelines for all actors in the field on how to discover and identify as soon as possible vulnerable unaccompanied children and refer them to the relevant institutions to ensure their protection and enjoyment of their rights.

Under Article 3(1) of the Convention on the Rights of the Child, "[I]n 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." In cases regarding unaccompanied children, the asylum authorities need to bear in mind that their ultimate goal is to identify permanent arrangements fulfilling the children's needs. The assessment of the best interests of the child is an organised process involving the collection of data, recognition and assessment of problems, needs, strengths and risks, the situation and involved stakeholders; this process shall

214 Serbia lacks adequate procedures for establishing the children's age and many older children have registered as adults in order to continue their journey as soon as possible. On the other hand, many children travelled in groups, wherefore it is difficult to ascertain with certainty whether they were travelling with their relatives or with people they met along the way and who may have jeopardised their safety.

215 From November 2015 to March 2016, when the application of the EU-Turkish agreement began, the MOI issued *Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger*, the so-called transit certificates, to all migrants in need of international protection . The certificates permitted them to lawfully stay in Serbia up to 72 hours, use bank, hotel and hostel services and receive emergency medical assistance.

216 Ref, No. 110–00–00469/2015–14 of 10 July 2015.

217 The document is available at: https://www.unicef.org/serbia/Standard_Operating_Procedures_Protection_of_Refugee_and_Migrant_Children.pdf.

develop gradually with a view to defining the objectives of work with the child[218] and be implemented by the SWC with territorial jurisdiction.

The children must be fully involved in assessments of their best interests. All the facts that can help them decide must be brought to their attention in a language they understand. Assessments of the best interests of the unaccompanied children in Serbia can have four final outcomes: the children's reunion with their families in third countries, their resettlement in third countries,[219] initiation of the asylum procedure and their return to their country of origin. In most cases in the reporting period, the assessments of the best interests of the children led to decisions to initiate the asylum procedure in Serbia; three children were resettled in third countries, two children were reunited with their families in Bulgaria, and one child was returned to its country of origin.[220] It needs to be noted that most of the unaccompanied children, who had expressed the intention to seek asylum and whom the BCHR team met in the field, had left Serbia before they applied for asylum, wherefore there were no cases of local integration as a lasting solution for unaccompanied children (which would have taken place simultaneously with the asylum procedure).

There are no specialised institutions extending comprehensive protection to unaccompanied children in Serbia. As of 2009, unaccompanied children who sought asylum have been referred to one of the two units for the accommodation of unaccompanied foreign minors, one within the Belgrade Establishment for Children and Youths Vasa Stajić and the other within the Niš Establishment for Youths,[221] as well as in the Subotica Home for Children and Youths with Disabilities *Kolevka*. The Niš and Belgrade establishments are mainly correctional institutions for children between 15 and 18 years of age and, as such, are not suitable for the accommodation of unaccompanied children. The Belgrade establishment has twelve beds for unaccompanied foreign children, while the Niš establishment can provisionally take in 10 such children. A new ward, where up to twenty children can be accommodated, was opened in *Kolevka* in November 2016. The Niš and Belgrade establishments take in only children over 10 years of age, while the younger ones used to be accommodated in the Belgrade Centre for the

218 Article 2 (1(8)), Rulebook on the Organisation and Norms and Standards of Operation of Social Work Centres (*Sl. glasnik RS*, 59/08, 37/10, 39/11 – other rulebook and 1/12 – other rulebook).

219 Resettlement to third countries was conducted with UNHCR's support.

220 Information obtained from Palilula SWC field social worker Miroslav Budimir on 16 January 2017.

221 A total of 143 boys, most of them from Afghanistan, and quite a few from Pakistan, Syria and Algeria, were accommodated in the Niš Youth Establishment in the first nine months of the year. Once these unaccompanied children expressed the intention to seek asylum, they were escorted by their guardians to the Krnjača Asylum Centre.

Protection of Infants, Children and Youths and are now accommodated in one of the three establishments. Neither the Niš and Belgrade establishments, nor *Kolevka*, had interpreters for languages the migrant children understand on staff; therefore, despite the staff's best of intentions, the protection they extended to the children was limited to satisfying their primary needs. Despite the difficulties in communication, the staff of the Niš establishment suspected that 42 of the 143 children they cared for in 2016 had been victims of human trafficking and alerted the Centre for the Protection of Human Trafficking Victims thereof.[222] The above-mentioned Instructions state that unaccompanied children shall be accommodated in residential institutions until they express the intention to seek asylum and shall thereafter be referred to one of the five Asylum Centres.[223] Most of these Centres, however, do not have separate units or facilities for unaccompanied children; some of them accommodate the older children in rooms with adult refugees or migrants not travelling with their families.

Unaccompanied children, who express the intention to seek asylum, are appointed three different temporary guardians: their first guardian is appointed by the SWC with jurisdiction over the territory in which they are found, the second by the SWC with jurisdiction over the territory in which the establishment they are referred to is located, and the third by the SWC with jurisdiction over the territory in which the Asylum Centre they are referred to is located (in practice, these temporary guardians are not appointed as soon as the children are admitted to the Centres). The SWCs do not engage interpreters themselves and the guardians communicate with the children with the help of interpreters, whose services are paid by NGOs involved in assisting refugees. The children and their guardians can thus hardly be expected to develop a meaningful relationship and mutual trust.

In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child.[224]

Unaccompanied children transiting through Serbia on their way to safe third countries need to be extended additional protection in view of their particular vulnerabilities and exposure to various forms of violence, exploitation and abuse.

The analysis of the Misdemeanour Courts' case law over the past few years showed that some proceedings against unaccompanied children had lacked the adequate procedural guarantees (e.g. the children's right to follow the proceedings in a language they understand) and that they had ended in the children's

222 Information obtained during BCHR's visit to the Niš establishment on 30 September 2016.

223 In Krnjača Bogovađa, Banja Koviljača, Tutin and Sjenica.

224 General Comment No. 6, para. 40.

convictions and penalties (fines, deportation[225] or sentences of imprisonment, albeit not in a juvenile correctional facility[226]). In 2016, these Courts continued penalising minors for misdemeanours; in most cases they issued reprimands against them. In some cases, the Courts applied the impunity principle and discontinued the proceedings, instructing the police to request of the public prosecutors to investigate the existence of the elements of the crime of human trafficking.[227]

Apart from general statistical data (on the number of children who expressed the intention to seek asylum and the number of children accommodated in the relevant institutions), Serbian authorities do not have other records of unaccompanied foreign children (their locations and caregivers, information about their parents and relatives, et al), which are prerequisite for monitoring Serbia's fulfilment of its obligation to extend adequate protection under the Convention on the Rights of the Child.

Finding the unaccompanied or separated children's family members and the possibility of reuniting them are without doubt of primary relevance to such children; until then, they should be accommodated in the least restrictive setting. The first steps towards developing specialised emergency foster care for unaccompanied children were made in 2016. Under the Rulebook on Foster Care, emergency foster care is a particular form of foster care, applied in case of children abandoned, grossly neglected or abused by their parents and of children, whose parents are prevented from caring for them. All five children placed into emergency foster care in 2016 were placed with families in the Šid municipality.[228]

The unaccompanied children's exercise of their right to education was practically impossible at the time the migrants traversed the WBR more easily and rapidly, as those children on average spent just a few days in Serbia. The situation changed already in April 2016, when the closure of the WBR led to an increase in the number of refugees and migrants presumably in need of international protection, who stayed in Serbia several months. CSOs conducted educational activities in the Asylum and Reception Centres, but the need arose to include (both accompanied and unaccompanied) children seeking asylum in the formal education system.

225 Prijepolje Misdemeanour Court Judgment 2-Pr.br. mal. 20/16 of 4 July 2016.

226 More in Enforcement of the Principle of Impunity of Refugees in Misdemeanour Proceedings, BCHR, Belgrade, 2016, available in Serbian at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2016/11/Primena-nacela-nekaznjavanja-izbeglica-u-prekrsajnom-postupku-sa-koricama.pdf.

227 Pirot Misdemeanour Court Judgments 1 PRM. 22/16 of 2 March 2016 and 2PRM 65/16 of 8 May 2016.

228 Information obtained from UNHCR social worker Biljana Kosanić on 16 January 2017.

Under Article 6 of the Education System Law, everyone is entitled to education on an equal footing and without discrimination. Article 100 of that law sets out that for children "who do not know the language of tuition or parts of the curricula of relevance to continuing their education, the schools shall organise language lessons, additional and catch-up classes pursuant to separate instructions enacted by the [Education] Minister". Primary and adult education, preschool education, and secondary education shall be organised free of charge in institutions founded by the Republic of Serbia, the autonomous province or local self-government units.[229] Thanks to the efforts of field social workers in Belgrade, 20 of the total of 65 unaccompanied children of high school age, who were living in the Krnjača Asylum Centre, were enrolled in a secondary agricultural school in that suburb in December 2016. The social workers planned on enrolling the other children in school in the near future as well.[230]

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Despite the existence of an international legal framework and domestic regulations that aim to ensure the protection of unaccompanied and separated children, the general impression is that there are still systemic deficiencies in their enforcement and coordination among the relevant institutions and that the state needs to invest further efforts in adequately responding to the needs of this extremely vulnerable group.

229 Article 91, Education System Law.

230 Information obtained from Palilula SWC field social worker Miroslav Budimir.

6. ACCOMMODATION OF ASYLUM SEEKERS AND MIGRANTS

Serbian Asylum Centres provided accommodation to 6,505 foreigners in 2016; 5,491of them left the Centres of their own accord. Only 66 asylum seekers lived in private accommodation during the asylum procedure.

The Serbian authorities allowed foreigners, who had not expressed the intention to seek asylum, to stay in Asylum Centres for humanitarian reasons in 2016 as well. Most of them stayed at the Krnjača AC. Both foreigners in need of international protection and those merely transiting through Serbia were accommodated also in Reception Centres during the reporting period.

According to UNHCR data, 5,839 foreigners were staying in the Serbian Asylum and Reception Centres. The number of migrants across Serbia on 30 December 2016 was estimated at around 7,000 migrants. Most refugees and migrants in open air were staying in the centre of Belgrade and on the border with Hungary.

6.1. Status of Asylum Seekers in Asylum Centres

BCHR teams regularly visited Asylum Centres and extended legal aid to asylum seekers, migrants and refugees during the reporting period. They visited the Krnjača AC three times a week, the Bogovađa and Banja Koviljača ACs once a week (as of October 2016) and the Tutin and Sjenica ACs once a month.

The number of refugees and asylum seekers accommodated in the ACs continuously grew after the WBR was closed, especially in the summer months, which resulted in major overcrowding. The quality of accommodation and enforcement of regulations in the ACs was not, however, uniform, above all, due to lack of coordination at the national level and the size of the ACs. The Rulebook on Accommodation and Basic Living Conditions in Asylum Centres and the Rulebook on Asylum Centre House Rules, which also deal with the residents' obligations and the facilities all ACs should have, is not enforced consistently by all the ACs. Nor did they familiarise the residents with the House Rules on admission as they should.

The Centres' admission policy changed during the year and, in periods of greater influx of migrants, they also took in foreigners without certificates of

intent to seek asylum although these Centres are primarily designated for the accommodation of asylum seekers. [231] The information BCHR obtained from the refugees and migrants in the ACs it interviewed indicated that the Centres complied with the family unity principle.[232]

The Asylum Centres are minimum security establishments and their residents do not need permission to leave them during the day (between 6 am and 10 pm in the winter period and between 6 am and 11 pm in the summer period), but they have to be present during the evening headcounts if they wish to keep their places in the ACs and pursue the asylum procedure in Serbia.[233] On admission to the ACs, the asylum seekers submit their certificates of intent to seek asylum in order to be registered in the database kept by the CRM. The AC managements then familiarise them with the rules of conduct, the House Rules and the character of the institutions they will be residing in.

With the exception of the Krnjača AC, the managements of the other ACs retain the certificates of intent to seek asylum once they register the asylum seekers in the CRM database, which is problematic given that these certificates are in most cases the only IDs their holders possess (before they are issued asylum seeker IDs), with which they can prove they are lawfully staying in Serbia. This is why, in the absence of other documents, the managements should return the certificates to the asylum seekers after registering them in the database or issue them certificates of admission to the ACs until their asylum seeker IDs are issued. The latter certificates are not, however, envisaged in any of the regulations.

Asylum seekers are provided legal aid and representation in the asylum procedure by NGOs. Apart from extending legal aid and representing the asylum seekers in the procedure, the BCHR teams' visits to the ACs were also undertaken to identify vulnerable categories of refugees and alert the relevant authorities and NGOs to their situation. The BCHR teams in particular monitored the treatment of vulnerable categories, such as families with children, women travelling alone, unaccompanied children, victims of violence and persons belonging to sexual minorities.

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231 More on the conditions in the Krnjača AC in 2016 in the Right to Asylum in the Republic of Serbia – April-June 2016 Periodic Report," BCHR, 2016, available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2016/07/ENG-FINAL.pdf.

232 The competent authorities shall take all the available measures to maintain the unity of the families during the asylum procedure and after they are granted asylum (Art. 9, AL).

233 The asylum procedure shall be discontinued in case of foreigners, who had left the Asylum Centre they had been admitted to and had not been granted permission by the Asylum Office to reside in private lodgings (Art. 34, AL)

6.1.1. Banja Koviljača Asylum Centre

The Banja Koviljača AC, which can take in 100 people, is the only Centre designated as a permanent facility for accommodating asylum seekers. Around 33 people lived in 11 rooms on each of the three floors. None of the residents complained to the visiting BCHR teams that they had been separated from their families on admission or of the living conditions. The residents had eight shower cabins and six toilets on each floor at their disposal. The TV room was converted into a dormitory in times of greater influx of asylum seekers.

This was the only AC with an MOI officer on duty at all times to register the new arrivals and check their certificates of intent to seek asylum. The Asylum Office, however, did not come to this AC often to perform its official asylum actions (its last visit in 2016 took place in late October).

The new arrivals were accommodated on different floors depending on the languages they spoke, which is a good practice. The Rulebook on House Rules and the information about the meals, bed linen changes, use of the Internet and hot water were clearly displayed in English on the bulletin board.

Although the AC management said the relevant SWC was always duly notified of any unaccompanied minors admitted to the AC, it said the SWC rarely appointed the children guardians and that only a few children living in the AC for longer periods of time were enrolled in school. One of BCHR's clients in this AC was enrolled in the local primary school. The children staying at this Centre could attend Serbian and English language lessons, held in the Children's Corner. The teacher also helped the children with their schoolwork. The Children's Corner was open four hours a day five days a week. Creative activities for children were also organised in it.[234]

The residents of this AC were extended healthcare by the Banja Koviljača Out-Patient Health Clinic, a ten-minute walk away from the AC, and the Loznica Hospital, to which they were driven by the Centre staff when necessary. Although the capacity of the health institutions was overstretched, the AC staff said that the time the asylum seekers had to wait to see the doctor was reasonable and that there was no discrimination against them vis-à-vis the local population. The auxiliary building within the Centre was adapted into a medical unit at the expense of the Danish Refugee Council. Talks were under way with the Banja Koviljača Out-Patient Health Clinic and the Health Ministry to designate a medical team to extend healthcare to the AC residents there every day.

The BCHR team extended legal aid to all asylum seekers in the Banja Koviljača Asylum Centre. It particularly focused on vulnerable groups, such as wom-

234 The Children's Corner was run by the Danish Refugee Council, thanks to UNHCR's financial support.

en, unaccompanied minors, the elderly and people with health problems. It interviewed a Syrian family from Al-Hasakah, whose baby was born in Belgrade; the mother assured the BCHR that she and her newborn had been extended adequate care both in hospital and on return to the Asylum Centre. Most of the complaints the BCHR repeatedly heard regarded the lack of clothes and footwear.

The Banja Koviljača AC boasts the best accommodation conditions of all the Centres and the asylum seekers encountered no difficulties in exercising their rights.

6.1.2. Bogovađa Asylum Centre

The living conditions in the Bogovađa AC were improved in the autumn of 2016, when the doors and windows were changed and a part of the Centre was renovated. It can now take in between 230 and 280 people. Mostly families with children were accommodated in this AC in 2016. The House Rules were visibly displayed on the bulletin board in English, Arabic and Persian.

The Centre has central heating. An auxiliary facility was converted to accommodate additional residents. It served as a quarantine for residents who contracted infectious diseases. The Public Health Institute staff visited the AC once a week to disinfect it and prevent epidemics among the residents and local population. The Centre has around 70 toilets and 35 showers, used by both men and women. The residents said they always had hot water. The Centre was, however, overcrowded, and when necessary, two families had to occupy rooms ordinarily suitable for one family.

According to the asylum seekers and migrants in this Centre the BCHR talked to during its regular visits, all families were accommodated together, except when their sick members were quarantined.

The opening of a Children's Corner, with the help of Save the Children and Group 484, improved the conditions for children, the largest vulnerable group in this AC. The Corner was open every day from 10 am to 4 pm, except for a short lunch break. Unaccompanied children were accommodated in rooms designated for such children whenever possible. Similarly, women travelling alone were accommodated in all-female rooms. The female residents, whose situation was monitored by the BCHR, had not experienced any discrimination on the part of the Centre staff.

A medical team was on duty in the AC every workday and performed between 30 and 40 interventions a day on average. The asylum seekers it could not help were transferred to the doctor's office in Bogovađa, the Out-Patient Health Clinic in Lajkovac or the Valjevo Hospital, depending on the type of medical

care they needed. All residents had to undergo check-ups, which were usually performed several days after they arrived, depending on the workloads of the Out-Patient Health Clinic doctors.

At times of greater influx of migrants in Serbia, the Bogovađa AC took in people in need of international protection, who did not have certificates of intent to seek asylum. Everyone was extended health care and received aid and food (three meals a day) regardless of their status.[235] Foreigners without the certificates, however, had difficulty accessing health care (examinations by specialists) in institutions outside the Centre.[236]

There were no police officers continuously on duty in the Bogovađa AC. The Centre was last visited by the Asylum Office staff in the summer of 2016. The foreigners without certificates of intent to seek asylum, who were admitted to the AC, were driven by the CRM officers deployed in the Centre to the police station in Valjevo or Loznica to express their intention to seek asylum. The AC management said they notified the police stations as soon as possible that they had admitted foreigners without certificates and the police stations scheduled the time when the foreigners were to come to register and be issued their certificates. BCHR's interviews with the residents indicated that this practice was not uniform and that some of them had to wait longer periods of time before they were driven to the police stations, but BCHR was unable to establish which institution was responsible for these delays.

6.1.3. Krnjača Asylum Centre

The Krnjača AC is located in the Belgrade municipality of Palilula. It can optimally take in 750 people and another 300 people in emergencies. This AC accommodated the greatest number of refugees and migrants in 2016, which is also why the BCHR team conducted most of its activities, in cooperation with the UNHCR, there.[237]

The number of foreigners staying at this AC varied during the reporting period. It ranged between 90 and 150 in the first three months of the year and substantially rose in May 2016. Namely, CRM's representatives made an informal decision to allow all migrants, whether or not they expressed the intention to seek asylum, to stay in the Centre for humanitarian reasons. The new practice, however, soon caused multiple problems. The rapid increase in the number

235 The Red Cross of Serbia distributed food and hygiene packages.

236 The BCHR identified these difficulties in August 2016, but they were resolved in the subsequent months thanks to the cooperation and coordination among the competent institutions.

237 In cooperation with the UNHCR Belgrade Office, the BCHR went to this AC three times a week to extend legal aid to and familiarise its residents with the asylum procedure in Serbia.

of residents created difficulties, mostly administrative in character, for the few CRM officers in the AC.[238] The accommodation of migrants and refugees without certificates of intent to seek asylum could not be adequately monitored since they were not registered, which resulted in chaotic situations in the Centre. The practice was abandoned in July and only refugees and migrants with certificates of intent referring them to this AC were admitted to it[239], as prescribed by the Asylum Law[240]. Due to the large numbers of refugees and migrants in Belgrade streets in August, the CRM, however, again allowed the Krnjača AC to take in anyone in urgent need of accommodation,[241] which led to the repetition of the June scenario. The number of people accommodated in the Krnjača AC stood at 700 and exceeded 1,000 on any given day in the last three months of the year. The severe overcrowding greatly exacerbated the living conditions and hygiene in the Centre.[242] In addition, the refugees taken in because they were in urgent need of accommodation, who did not express the intention to seek asylum and were thus not covered by the asylum system in Serbia, were not entitled to three meals a day like those that had expressed the intention to seek asylum. The Red Cross of Serbia distributed food packages to them; each of them was entitled to two packages a day.[243]

Health care was the only service extended to the urgently accommodated migrants without certificates of intent to seek asylum on an equal footing, particularly since there were twice as many migrants without certificates than migrants with certificates; many of the former were children. Two medical teams were on duty in the AC every day to extend free health care in the AC doctor's rooms. The decision to extend medical assistance also to migrants without certificates was taken during the year in response to the increase in the number of urgent interventions.[244] The number of interventions and check-ups did not exceed 40 a day.

238 BCHR noted that the AC was staffed by the manager and four CRM officers, who faced numerous administrative and coordination problems as the number of residents grew, until the end of the year, despite the presence of other assistants and logistics staff in the Centre.

239 Migrants without certificates of intent to seek asylum, who had initially been accommodated in the Krnjača AC in July, were driven by the CRM to one of the Reception Centres (e.g. in Šid, Adaševci, Principovac).

240 Art. 22(2), AL.

241 Because of their state of health, age, etc.

242 The renovation of several old barracks in the compound in 2016 to accommodate asylum seekers proved insufficient to respond adequately to the needs of the many refugees and migrants admitted to the Centre.

243 Foreigners without certificates of intent to seek asylum were given coupons every day, which they could trade in for food packages comprising bread, chocolate bars and canned food.

244 The two medical teams, one engaged by the CRM and the other by UNHCR/DRC, were at the disposal of the AC residents every day, from 7 am to 10 pm.

Most of the complaints the BCHR team heard during its visits to the Krnjača AC regarded the poor living conditions in the barracks, the overcrowded dormitories,[245] irregular distribution of hygiene products, clothes and footwear, lack of food, the AC management's arbitrariness in specific situations, and lack of privacy.

> For instance, the key to the room of a three-member family from Cuba was taken for them for no clear reason and under no explanation. They did not dare leave it for days, fearing they would be robbed, like other residents of this AC had been.

During its interviews with the migrants and refugees, the BCHR noted that the CRM staff did not make sure that they were accommodated in rooms with their compatriots or foreigners of the same religion, which led to a number of clashes among the residents.[246]

> BCHR's client, an Iranian national, was granted asylum in 2016 because he feared persecution on religious grounds after he converted to Christianity. He expressed fear for his safety from the moment he arrived at the Centre, if the people around him found out about his religious affiliation. His situation exacerbated when he was put in the same room with an asylum seeker from Afghanistan. The CRM officers disregarded his daily complaints and the BCHR's concern and requests for his transfer to another room, saying this was impossible to the huge inflow of foreigners to the Centre and lack of sleeping quarters.

Statistical data indicate that most refugees and migrants in the Krnjača AC in 2016 were Afghanis, followed by nationals of Iraq and Syria, Pakistan, Iran and Morocco (their number gradually fell during the year). Most were men, between 18 and 50 years of age. The number of women and children rose due to the sudden influx of foreigners in need of urgent accommodation. BCHR's teams noted that the CRM staff complied with the principle of family unity during the allocation of rooms to new arrivals.[247]

The BCHR team devoted special attention to unaccompanied minors during its visits to the Krnjača AC. The CRM staff notified the SWC when it admit-

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245 The renovation of the living quarters to increase the accommodation capacity by some 200 beds in 2016 was financially supported by Catholic Relief Services and the Ana and Vlade Divac Foundation. This, however, did not suffice to take in all the people in urgent need of accommodation. The situation further deteriorated with the arrival of autumn rains and extremely cold winter. More is available at: http://www.kirs.gov.rs/articles/navigate.php?-type1=3&lang=ENG&id=2783&date=0.

246 A number of refugees and migrants from Morocco were staying at the Krnjača AC in the first quarter of the year. They initiated the greatest number of fights and quarrels with refugees and migrants from other countries, mostly Pakistan and Afghanistan.

247 Article 9, AL.

ted such children in the AC and the SWC appointed guardians for each of them. However, as far as the BCHR noted, social workers and guardians of unaccompanied minors were extremely rarely present in the AC in the first half of the year. The cooperation between the SWC, the CRM and the NGOs caring for unaccompanied children improved in the second half of the year, but the problems all these stakeholders faced in looking after this particularly vulnerable category were not alleviated.[248]

The Asylum Office performed most of its official asylum actions in the Krnjača AC in 2016. However, its officers performed only several asylum actions there in the last quarter of the year. One room in the Centre was designated for the provision of legal advice to the refugees and migrants and their confidential conversations with the lawyers. BCHR's lawyers, however, encountered specific difficulties in extending legal aid during their visits to this AC. The AC management did not let either them or representatives of other NGOs visit the asylum seekers' rooms or move around the Centre freely to extend legal aid, reportedly to maintain the peace and privacy of the asylum seekers.[249] Furthermore, as of October 2016, whenever the BCHR called to pre-notify its visits, the CRM always required of it to provide it with the list of names of refugees and migrants it would extend legal aid to during its visit.[250] The BCHR's extension of legal aid was thus limited only to its clients and the people whose names it knew, which, by implication, meant that the other asylum seekers residing in this AC were unjustifiably denied free legal aid and information.[251] This decision in particular impeded access to a large number of vulnerable refugees and migrants, to whom the BCHR has been devoting particular attention and affording special treatment.[252]

Three Arabic, one Kurdish and one Persian interpreters were engaged in the Krnjača AC. The new arrivals were familiarised with the House Rules on admission.[253] Notwithstanding, several refugees and migrants complained to the

248 More in the section "Status of Unaccompanied and Separated Children".

249 This is why the BCHR conducted its activities until the end of the year in a room in one of the Centre barracks, often sharing it with other partner organisations, when their visits coincided.

250 The CRM decision applied to all the ACs in which the BCHR conducted its activities. Furthermore, it rejected several of its requests to visit the Bogovađa and Banja Koviljača ACs and the Preševo Reception Centre in October 2016.

251 The Krnjača AC Manager told BCHR that visits to the Centre would be limited to one organisation a day.

252 Unaccompanied minors, pregnant women, single mothers, and, in some cases, older people. The number of people belonging to vulnerable categories substantially increased due to the huge influx of foreigners in need of protection and urgent accommodation in the Krnjača AC in the latter half of the year.

253 To the best of BCHR's knowledge, there were no serious violations of the House Rules or indecent behaviour in the Krnjača AC, except for a few incidents at the beginning of the year, provoked by refugees and migrants from Morocco and Pakistan.

BCHR about the lack of a Persian interpreter and that they could not communicate on important issues, such as seeing a doctor in the Centre.

A Children's Corner, where workshops and other activities for children were organised on a daily basis, was opened with the support of the UNHCR, the Danish Refugee Council and the CRM.[254]

As far as activities for women in the Krnjača AC are concerned, the UNHCR team in 2016 recommended that the number of such activities be increased to relieve their stress and help them deal with their traumatic experiences. In October 2016, the Ana and Vlade Divac Foundation launched a creative workshop for women of all ages in the Centre, which includes a café club.

Many positive steps were made in 2016 to respond to the changing circumstances and the need to extend humanitarian assistance to a large number of migrants that stayed on in Serbia involuntarily. The Krnjača Asylum Centre was renovated and its accommodation capacity extended and adapted. Nevertheless, the above problems indicate that the overall living conditions are not satisfactory or suitable for long-term stay.

6.1.4. Sjenica Asylum Centre

The Sjenica Asylum Centre was set up in a former hotel, renovated to accommodate up to 200 asylum seekers. Apart from several rooms with bunk beds (in which 70 people can be accommodated), asylum seekers also slept in improvised dormitories in the hotel lobby, partitioned by screens and curtains providing them with very little privacy, especially since the section in which the families were accommodated was separated from the one for men only by a screen. The AC management took into account the family unity principle and ensured that the families were accommodated in the same dormitories. The Sjenica AC had only two bathrooms with five showers and seven toilets, which was insufficient even when this AC was occupied by the optimum member of residents – 150.

The AC management did not have a uniform practice of welcoming all the new arrivals and familiarising them with their rights and obligations, but the House Rules were displayed in Arabic and English on the bulletin board. The residents had at their disposal the TV room, which doubled as the cafeteria, two computers with Internet connections and the soccer field and basketball court.

On arrival to the AC, all residents had to undergo examinations at the local Out-Patient Health Clinic, where the doctors checked their state of health and whether they suffered from any infectious diseases. The time when they were taken to the Clinic, however, varied; some residents had spent months in the

254 The Children's Corner was open from 8 am to 4 pm on Mondays, Wednesdays and Fridays, and from 8 am to 6 pm the rest of the week.

AC before they underwent a check-up, usually because the Clinic did not have time to examine them. The NGO WAHA extended additional medical aid and increased the number of its health staff, albeit insufficiently, in November, due to the rise in the number of refugees and migrants in the AC, which doubled. In the first few months of the year, the doctors from the local Clinic were on duty in the AC on workdays. Asylum seekers, who needed to undergo specialist examinations or treatment in hospital, were taken to the Novi Pazar or Užice Hospital.

There were difficulties in providing special treatment to vulnerable groups at times when the AC was overcrowded. The staff said they notified the Sjenica SWC of the admission of unaccompanied minors by e-mail. The BCHR did not ascertain how many unaccompanied children were appointed guardians.

The asylum seekers BCHR interviewed complained about the dormitories, the hygiene and the lack of toilets and showers. They said they did not have hot water round the clock and lacked clothes and footwear. They had difficulty communicating with the Centre staff because the Centre did not have any interpreters on staff.

The Asylum Office came to this Centre very rarely to perform its official asylum actions (its staff came only once to take the asylum applications during the summer, three times altogether in 2016), which leads to the conclusion that its residents do not have access to the asylum procedure. They were extended legal aid and represented in the asylum seekers by NGOs, which also familiarised them with their rights and obligations.

6.1.5. Tutin Asylum Centre

The Tutin Asylum Centre was established within a former factory compound, i.e. the barracks once used as temporary accommodation by the workers. The AC can optimally take in around 80 people, but its capacity can be increased to 150 if necessary. The refugees and migrants slept in large dormitories (with 10–14 beds) and smaller rooms (with 6–8 beds). The men and women used separate bathrooms, each with six showers. The bathrooms were not heated and the water heaters did not have the capacity to provide enough hot water for the residents (including families with babies). A group of migrants also slept on makeshift beds in a former factory hall, which was not heated and had only a toilet (but no showers).

The residents underwent check-ups on admission and were extended basic health care. In case they needed to be examined by a specialist, they were driven to the Out-Patient Health Clinic in Tutin or the Novi Pazar Hospital.

The AC management complied with the family unity principle and always put the families in the same rooms. The staff explained that they tried to accom-

modate refugees and migrants who wanted to stay at this AC with their families although their certificates of intent to seek asylum referred them elsewhere, provided the AC had room and after consultations with the CRM and the Asylum Office.

The AC management notified the Tutin SWC of the admission of unaccompanied minors. BCHR failed to ascertain how many such children had been appointed guardians. However, in most cases, the unaccompanied minors left the ACs before they were appointed guardians.

The case of an Afghani woman, a resident of the Tutin Centre, who was provided with protection from domestic violence, is a good practice example of cooperation between the state and the NGO sector in helping vulnerable categories of refugees and migrants.

> This woman had been a victim of domestic violence in the Sjenica Asylum Centre; after the Centre and police intervened, she underwent a medical examination and was transferred to the Tutin Asylum Centre. Howver, given the geographic proximity of her abusive husband and the fact that her husband's family repeatedly came to the Tutin Centre and harassed her, after talking to her, the BCHR team concluded that it would be best both for her physical safety and psychological well-being if she were transferred to a safe location. With the support of the NGO Atina and the Tutin AC management, the woman was moved to an Atina safe house, where she was safe and provided with the adequate psychological help. She was represented in the asylum procedure by the BCHR.

The residents did not complain about the work of the staff. The living conditions in this Centre can, however, be qualified as inadequate, in view of the state the facilities are in, lack of heating and accommodation capacity. The Centre had no interpreters on staff, wherefore its officials communicated with the residents in English, or with the help of asylum seekers who spoke English.

MOI officers were not present in the AC at all times. The Asylum Office staff visited it extremely rarely to perform its official asylum actions.[255] It may thus be concluded that the foreigners accommodated in the Tutin AC did not have access to the asylum procedure because they could not submit asylum applications since, under Article 25 of the Asylum Law, they must submit them to Asylum Office staff in person. According to the information it obtained during its visits, the refugees and migrants who came to the Tutin AC without certificates of intent to seek asylum were referred or escorted to the Tutin police station to express the intention to seek asylum.

NGOs assisted residents of Asylum Centres in exercising their rights and extended them aid in the reporting period. They extended legal aid, psycholog-

255 The Asylum Office last visited this AC on 10 July 2016.

ical support and help to victims of violence and human trafficking during their regular visits to the Centres.

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The described differences in the living conditions in the Asylum Centres and in their compliance with procedures prescribed by the Asylum Law and the Rulebook on House Rules demonstrate that the asylum seekers' opportunities to exercise their rights differed drastically, depending on which Asylum Centre they were staying in. Furthermore, there does not seem to be a clear tendency to align the practices. The services available in the ACs greatly relied on donations and activities of domestic and international NGOs, which were not equally present in all the ACs.

The ACs lacked the capacity to take in all the refugees and migrants in need of accommodation, also due to the fact that, in 2016, they stayed several months rather than several days in the ACs. Limited capacity, coupled with referral of migrants not planning on seeking asylum in Serbia, led to overcrowding, which was the most evident in the Sjenica AC, where the hygiene was well below the threshold of dignity. The ACs in Banja Koviljača and Bogovađa were the best in terms of living conditions and respect for the rights of the asylum seekers and their obligations; they were also the most suitable for the accommodation of families.

6.2. Reception Centres

Apart from the five Asylum Centres[256], in which foreigners who express the intent to seek asylum are accommodated and where the official asylum procedure actions are to be conducted, the 2015/2016 refugee crisis led the Serbian authorities to successively open Reception Centres at the borders with Bulgaria, Croatia, FYROM and Hungary. The purpose of establishing these Centres, apart from providing the migrants with urgent humanitarian accommodation, cannot be clearly deduced from the available information and the practices of the competent authorities. Some of them were opened as "temporary registration centres", but the migrants were not registered in them, wherefore it remained unclear how they differed from the other Reception Centres. Furthermore, some of the RCs operate under the jurisdiction of the CRM and others under the jurisdiction of the Ministry of Labour, Employment and Veteran and Social Affairs. The BCHR sent a letter to the Ministry[257] asking it to specify which RCs were under its jurisdiction, what their legal status was, which law regulated their operations, their daily regime(s), and which enactments regulated the accom-

256 In Krnjača, Banja Koviljača, Bogovađa, Tutin and Sjenica.

257 The request was sent on 28 October 2016.

modation of the migrants in the RCs. In its reply,[258] the Ministry said it had referred the questions to the CRM to answer them. The BCHR, however, had not received the CRM's answers by the end of the reporting period.

At its meeting with the CRM, the BCHR was told that the RCs had been opened pursuant to a Government decision,[259] adopted at the proposal of the CRM, which is entitled to propose to the Government specific measures with a view to emanating the effects of legal migration and combatting illegal migration.[260]Reception Centres were opened in Preševo, Miratovac and Bujanovac, near the border with FYROM, in Bosilegrad[261], Dimitrovgrad and Pirot[262], near the border with Bulgaria, in Sombor,[263] in Šid, Principovac and Adaševci, at the border with Croatia, and in Subotica and Kanjiža, at the border with Hungary. The Miratovac and Kanjiža Reception Centres were closed by the end of 2016, as the refugees and migrants changed route, with more of them coming from Bulgaria. The Serbian authorities said they were planning on opening Reception Centres in Kikinda, Negotin and Zaječar. Eleven centres for the reception of migrants were operational at the end of 2016. According to the CRM, these centres can take in over 4,000 people altogether.

This Report includes information only about the RCs which the BCHR team visited and collected information about.

6.2.1. Preševo Reception Centre

The Preševo Centre for the Urgent Reception, Registration and Temporary Accommodation of Refugees and Migrants was established pursuant to a Government Conclusion of June 2015,[264] allowing the CRM to use the erstwhile to-

258 Ref. No. 117–00–03048/2016–16 of 23 November 2016.

259 The authors of this Report did not have the opportunity to peruse this decision.

260 Article 10, MML.

261 The first refugees were referred to the Bosilegrad Centre, under the jurisdiction of the CRM, in mid-December 2016, although the reconstruction of the old army barracks and hospital, where they were accommodated and registered, was completed in April 2016. This Reception Centre can take in up to 50 people.

262 The Reception Centre was opened on 18 December 2016 and comprises the main building and two auxiliary buildings, each with four smaller rooms. The main building houses the administrative offices, cafeteria and two large dormitories, which can accommodate up to 40 people, and two smaller dormitories, which can accommodate up to 12 people. A total of 180 people can be accommodated in the auxiliary buildings. Each building has a shared toilet/bathroom.

263 The new Reception Centre in Subotica, under the jurisdiction of the CRM, was opened on 5 November 2016 in the former army barracks. Its renovation had been funded by the German Ministry for Economic Cooperation and Development through the humanitarian organisation *Help*. Mostly families with children were accommodated in this Centre, which can take in up to 120 people.

264 Serbian Government Conclusion Ref. No. 464–7137/2015 of 27 June 2015.

bacco plant facility for that purpose. This Centre, managed by the Ministry of Labour, Employment and Veteran and Social Affairs, officially started working on 8 July 2015. Over 600,000 migrants registered and stayed in that RC in the ensuing year.[265] The number of people staying at the Centre in 2016 varied from one month to another, from several hundred refugees at the beginning of the year, to forty or so at the end of June, only to rise to 932 on 16 December.[266]

The Preševo RC initially operated under a minimum security regime, but, as of March 2016, the residents were allowed to leave it only if they were escorted by NGO representatives and at specific time of the day. Many refugees were thus reluctant to report to the Preševo RC although it was the only Centre that had available beds. On the day of the BCHR team's visit to the RC in December 2016, 20–25 people were allowed to leave the RC for three hours every day and they had to apply for a pass at the Centre gate.

The administrative building, where the new arrivals are admitted and registered, is located at the very entrance into the RC, on the right-hand side. The admission procedure comprised the refugees' registration[267] by the police officers and their medical examination. Refugees and migrants diagnosed with contagious diseases were quarantined.

The Asylum Office did not perform official asylum actions in the Preševo RC. According to the RC Manager, foreigners, who wanted to express the intention to seek asylum, were referred to the Krnjača AC and the RC management notified the Asylum Office of how many of its residents wished to remain in Serbia and pursue the asylum procedure. It, however, remained unknown how these notices reflected on the Asylum Office's performance of its official asylum actions.[268]

With a view to improving the reception, safety and living conditions in the Preševo RC, the Ministry of Labour, Employment, and Veteran and Social Affairs, the UNHCR and the Danish Refugee Council in 2016 completed the

265 "Preševo: Big Bucks from Smuggling People," *Al Jazeera Balkans*, 3 October 2016, available in Serbian at: http://balkans.aljazeera.net/video/presevo-velike-zarade-od-krijumcarenja-ljudima.

266 Information the BCHR legal team obtained during its visit on 16 December 2016.

267 For national security reasons, the MOI continued registering all foreigners in Serbian territory in the Preševo RC for some time in 2016. Registration involved establishing their identity and photographing and fingerprinting them. These activities were not, however, conducted by the authorised Asylum Office officers; nor did they constitute official asylum actions in terms of the Asylum Law. The foreigners registered at the Preševo RC were issued certificates of intent to seek asylum and referred to one of the Asylum Centres, where they could be registered in the meaning of Article 24 of the Asylum Law.

268 Migrants in other RCs and ACs were able to express the intention to seek asylum in the regional police administrations.

second and third stages of renovating the RC, increasing its accommodation capacity to 1,500. Half of the beds were located in the auxiliary, external units. The two-floor former tobacco plant building was converted into eight large dormitories, each of which can take in up to 120 people. These dormitories were partitioned by canvas and dividers. The dormitories were heated, clean and well-ventilated, but they were overcrowded and did not provide their residents with even minimum privacy.[269] The RC staff endeavoured to keep the refugee and migrant families apart from refugees and migrants traveling on their own. In terms of accommodation, unaccompanied children were treated as adults travelling alone and not accommodated in separate rooms. The RC staff also took the family unity principle into account, but, since there are no small separate rooms in the RC, the families were all referred to collective dormitories, where they had no privacy.

The migrants the BCHR team talked to complained that they frequently did not have enough hot water.[270] This was particularly concerning in view of the below freezing temperatures during the winter and the fact that children accounted for a quarter of the residents of the Preševo RC on the day of BCHR's visit in December 2016.

The residents' meals were provided by various NGOs and foundations in 2016. The RC Manager said that the same meals were served three times a day to all the migrants, except those prescribed particular diets by the doctors. At the meeting of a working group on refugees organised by the UNHCR in November 2016, the representatives of the Working Group on Mixed Migration Flows[271] said that there were no guarantees that food would be distributed in the Preševo RC in December. Although the CRM representatives claimed in December that there was enough food and that all the RC residents were provided with three meals a day, several groups of migrants the BCHR team talked to complained that they were getting only tea and soup at mealtime for some time, that they were exhausted and undernourished.[272] These allegations were corroborated a few days later by the Secretary of the Red Cross in Preševo.[273]

269 The auxiliary facilities, the so-called rub halls, were located between the administrative building and the building with the dormitories. Only one of the four rub halls was in use. The RC also includes several dozen smaller units, each of which can accommodate 5–6 people. The containers with the showers were in the immediate vicinity of these facilities.

270 Information the BCHR team obtained during its visit on 16 December 2016.

271 The Working Group on Mixed Migration Flows was formed under Government Decision 05 Ref. No. 02–6733/2015 of 18 June 2015.

272 The BCHR visited the Preševo RC on 16 December 2016.

273 "Red Cross: NO FOOD for Migrants in Preševo, Tea and Soup is All They Get; Commissariat: They Have Three Meals a Day," *Blic*, 19 December 2016, available in Serbian at: http://

Two general practitioners and two nurses worked in two shifts every day in the doctor's room that opened after the 2016 renovation.[274] The medical team was part of the Preševo Out-Patient Health Clinic and authorised to refer the patients for specialist examinations outside the RC. The doctor the BCHR spoke to said that they had between 35 and 80 interventions a day and that the residents mostly complained of respiratory problems. The organisation Humedica also extended health care to the refugees in the Preševo RC. It provided them with medications, vitamins and medical aids and had the equipment to perform the basic lab analyses in the RC. Medications for the migrants were also provided by the Danish Refugee Council, thanks to UNHCR's financial support.

Several Children's Corners were operating in this RC. The Danish Refugee Council opened a Children's Corner for infants under two and their mothers, where they were provided with baby food and hygiene items, and where the mothers could get all the information they needed about childcare. The organisation *SOS Dečija sela* opened two game rooms for children between 12 and 18 years of age. Workshops were also organised for younger children. Adults could attend German, English and Serbian language lessons on workdays. Creative workshops were held on Tuesdays and Thursdays.[275]

The RC Manager said that the Preševo SWC officers came to the RC every day. Although there is a database on unaccompanied children staying at this RC, the children were appointed guardians only when necessary to ensure they exercise their right to health care or other protection outside the RC.[276] In October 2016, the SWC initiated cooperation with all organisations involved in extending protection to unaccompanied children in the Preševo RC[277] and they have since been meeting on a weekly basis to discuss how to help individual vulnerable refugees, especially unaccompanied children, and coordinate amongst themselves to ensure that every child received adequate protection and support. There were 218 unaccompanied children in the RC on 16 December 2016. Most of them were 13–17 years old. Seventy-three percent of them were of Afghan origin; the others had come from Pakistan, Bangladesh, Iraq, Morocco, Egypt, Sri Lanka, Tunis and Algeria.

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www.blic.rs/vesti/drustvo/crveni-krst-za-migrante-u-presevu-vise-nema-hrane-dobijaju-samo-caj-i-supu/s4j03cz.

274 The Preševo Out-Patient Health Clinic gynaecologists come to the RC doctor's room three times a week to examine the female residents.

275 These activities were implemented by Borderfree, with the financial support of the Norwegian Ministry of Foreign Affairs.

276 The information the BCHR team obtained from the social worker on duty during its visit to the Preševo RC on 16 December 2016.

277 Including, inter alia, Indigo, *SOS Dečija sela*, the Danish Refugee Council, Kinderberg, Centre for Youth Integration, Save the Children and Group 484.

The migrants in the Preševo RC the BCHR teams talked to in 2016 were the most concerned about informal pushbacks to FYROM and Bulgaria, allegedly performed by MOI officers.[278]

6.2.2. Reception Centres in Adaševci, Šid and Principovac

The Reception Centre in Adaševci was opened in mid-2015 to provide short-term urgent accommodation to people in need of international protection. It is located in the building of a former hotel, in the immediate vicinity of the Beograd-Šid highway and operates under the jurisdiction of the CRM.

The RC comprises the main two-floor building and five rub halls, provided by *Médecins Sans Frontières*. There are 29 rooms, each with six beds, in the main building. There are six more rooms in the new part of the building. During the BCHR team's visit to this RC in October,[279] it accommodated 960 people,[280] nearly two-thirds of whom in the rub halls.[281]

The new arrivals underwent check-ups on admission to the RC. In 2016, health care was extended by the Šid Out-Patient Health Clinic doctors and NGOs.

The RC Manager said that the CRM notified the relevant SWC as soon as it identified unaccompanied children, who were provided with priority accommodation, albeit not in separate rooms. It was not, however, ascertained how many of them had been appointed guardians. The RC management accommodated extremely vulnerable refugees in separate rooms.

Many organisations extended various types of aid to refugees and migrants in the Adaševci RC in 2016.[282]

The Šid Reception Centre, located in the immediate vicinity of the railway station and border with Croatia, opened on 24 November 2015. It is managed by the CRM. The RC comprises three residential facilities, which can accommodate around 300 people, and two rub halls, with the capacity of up to 130 beds. There were 565 residents in need of international protection, most of them Afghan refugees, living in this RC on 10 October 2016, when the BCHR team visited it.

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278 More in the section of this Report "Access to the Asylum Procedure and Compliance with the *Non-Refoulement* Principle".

279 On 11 October 2016.

280 The Manager said the RC could take in 1,000 people at most.

281 There were around 106 beds in each of the five rub halls.

282 In cooperation with UNICEF, *SOS Dečija sela* organised a Children's Corner, in which the young mothers were provided with baby food and hygiene items and practical advice on childcare and help. With the support of CARE International Balkans, the Humanitarian Centre for Integration and Tolerance distributed hot meals to the refugees in Adaševci twice a week; the food was provided by other humanitarian organisations on the other days.

Two-member field teams of the Šid SWC were on duty in the RC every day. The Danish Refugee Council and UNICEF opened a Children's Corner, in which kindergarten teachers conducted creative and educational workshops and activities.

The Reception Centre in Principovac was opened on 16 September 2015 in the building of the former children's hospital, some 100 metres away from the border with Croatia. This RC, opened with the aim of accommodating and caring for people in need of international protection, is under the jurisdiction of the CRM. The migrants were registered on admission and their personal data were entered in the CRM's database. They also underwent check-ups and refugees diagnosed with contagious diseases were quarantined.

Over 200 people can be accommodated in the main building of the RC, while the rest are accommodated in the rub halls. On 11 October 2016, when the BCHR team visited this RC, there was one large rub hall in which 130 people were accommodated and 26 small ones, for 6–8 people. The RC complied with the family unity principle and accommodated families in the same rooms.

The migrants complained to the BCHR team that they were very cold at night, when the temperature fell to zero, and that they did not have enough blankets. Hygiene was satisfactory in the main building, but desultory in the rub halls. The RC had a sufficient number of separate men's and women's toilets in both the interior of the building and the containers in the yard, but they were not cleaned as often as they should be considering how many people were using them.

Primary health care was extended by the doctors of the Šid Out-Patient Health Clinic on duty in the RC. In addition, the Danish Refugee Council organised free gynaecological examinations in the Šid Out-Patient Health Clinic for the women accommodated in the Principovac RC.[283] CSOs provided food for the refugees in the RC.[284]

SOS Dečija sela organised a Children's Corner in the RC, in which recreational, educational and creative workshops were conducted. This organisation in August 2016 also opened a Children's Corner for infants and their mothers, in which nurses provided the mothers with information and support. A so-called family room was also opened, in which the children could spend time with their families during the day.

283 The medical team of the Initiative for Development and Cooperation (IDC) and *WAHA International* extended health care in the Principovac RC in 2016.

284 Breakfasts were provided by Caritas, lunches by the Serbian Orthodox Church charity *Čovekoljublje* and dinners by the Red Cross of Serbia.

MOI officers did not perform any official asylum-related activities in either of the three RCs, i.e. they did not issue them certificates of intent to seek asylum or register them. Foreigners who wanted to express the intention to seek asylum had to go to the nearby police stations. The Asylum Office did not perform any official activities in these Centres either, i.e. it did not receive the asylum applications or interview the asylum seekers.

6.2.3. Subotica Reception Centre

The Subotica Reception Centre, which opened in mid-November 2015, is under the jurisdiction of the CRM. Although it can take in 55 people,[285] it accommodated several hundred people at any one time since April 2016, particularly since June 2016, which resulted in the deterioration of the living conditions in it. Many people were forced to sleep in the tents in front of the RC. In addition, the Centre lacks the facilities for long-term stay, as it was opened as a temporary accommodation facility in which people in need of international protection were to stay only a few days.

The BCHR visited the Subotica RC in September 2016, when it was occupied by 300 migrants and refugee residents, mostly from Afghanistan (47%) and Pakistan (35%). Sixty of its residents were children. None of the foreigners BCHR talked to wanted to stay in Serbia; rather, they were resolved to continue their journey to one of the West European countries as soon as possible.

The CRM complied with the family unity principle and accommodated all members of the same family in the same unit on admission. The RC has separate bathrooms for men and women. The mobile toilets were used by the foreigners sleeping in the tents in front of the RC. The RC residents were provided with three meals comprising canned food every day.[286] They could also cook their own food. The doctors worked in two shifts during the day and the paramedics were called in cases of emergencies at night. Patients with graver injuries the doctors could not treat in the RC were driven to the Out-Patient Health Clinic in Subotica.

The CRM representatives told BCHR that the migrants stayed in the RC between two and three months on average. The MOI did not conduct any official asylum-related activities in this RC either. Nor did the Asylum Office conduct any official asylum actions in it.

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285 *Report on the Visit to the Subotica Reception Centre,* NPM, Belgrade, 8 April 2016, available at: http://www.npm.lls.rs/attachments/article/147/ENG%20Prihvatni%20centar%20Subotica%20-%20Izvestaj.pdf.

286 The meals were provided by the Red Cross of Serbia.

6.2.4. Temporary Registration Centre in Bujanovac and Reception-Transit Centre in Dimitrovgrad

The Temporary Registration Centre in Bujanovac was opened in the premises of the former car battery plant, in the immediate vicinity of the Belgrade-Skopje highway, in mid-October 2016. The Centre is under the jurisdiction of the Ministry of Labour, Employment and Social and Veteran Affairs and has the capacity to take in 250 people. There were 163 refugees, most of them vulnerable groups, families, women and children, in this Centre on 1 December 2016, when the BCHR visited it.

The living conditions in this Centre were much better than in the other centres. The facility was recently renovated and does not have large dormitories. The refugees are accommodated in rooms around 18m^2 in area, with eight beds. There are only four rooms with 16 beds each in the Centre.

The refugees underwent medical check-ups on admission. Primary healthcare was extended every day by the doctors on duty in the Centre. Field officers of the local SWC were also present at the Centre every day since 20 October 2016. They were tasked with identifying unaccompanied children, ensuring they were appointed guardians and protected. Forty unaccompanied children appointed guardians from among the social workers of the Bujanovac SWC were in the Centre on the day the BCHR visited it.

The gradual increase in the number of refugees and migrants entering Serbia from Bulgaria as of mid-2016 led to the need to open a reception centre near the border with that country. The construction of the Dimitrovgrad Reception Centre near the Gradina border crossing began in the summer of 2016 and the Centre was officially opened on 1 December 2016. This Centre can take in 66 people. In mid-December, it accommodated 90 migrants from Afghanistan, Iraq, Syria, Cuba and other countries.

The Reception Centre has four rooms with 26 beds each, separated by canvas.

With the financial support of the German Ministry of Foreign Affairs, *Arbeiter Samiter Bund* provided three hot meals a day for all the residents of this RC. Other organisations, including the BCHR, donated clothes, footwear and children's items. The Red Cross of Serbia provided the migrants with food and hygiene packages.

A doctor and a nurse worked in the Centre every day from 9 am to 5 pm. Their engagement was funded by the Initiative for Development and Cooperation (IDC Serbia).

Although the MOI – Border Police Administration officers have their own office in the RC, the police in it did not register the foreigners.[287] Nor did the

287 In terms of Article 22 of the AL, in order to issue them certificates of intent to seek asylum.

Asylum Office perform any official asylum actions in the RC. Most of the foreigners accommodated in this Centre had certificates of intent issued by the Belgrade Police Administration.

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Although the Reception Centres primarily accommodate migrants in need of international protection who do not wish to seek asylum in Serbia, the Centre regime and status of the accommodated foreigners ought to be based on positive national regulations. Furthermore, asylum procedure-related activities ought to be conducted in these Centres if the competent authorities continue referring asylum seekers to them. It may be generally concluded that the living conditions in the Reception Centres are not uniform and that the degrees in which the migrants' rights are respected vary from one Reception Centre to the other.

7. INTEGRATION OF PEOPLE GRANTED ASYLUM

Although only a few of the many refugees and migrants seeking international protection in Serbia decide to settle down in it, more and more foreigners in need of international protection will evidently wish to stay and work all across Serbia given the increasing difficulties they have accessing the territory of developed EU states. Forty-two people were granted international protection in Serbia in 2016, bringing the total to 90 since the Asylum Law came into force. The Asylum Law lays down the general obligation of the state to, commensurately with its capacities, create conditions for the inclusion of refugees in its social, cultural and economic life, and enable their naturalisation.[288]

In its strategies and policies[289], the Government of Serbia identified the following vulnerable groups of the population at greater risk of social exclusion and poverty: refugees and internally displaced persons, persons with disabilities, children, young people, women, older people, Roma, uneducated people, the unemployed and the rural population.

Refugees in the Republic of 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 Refugee Convention and Serbian law.

The following rights of asylum seekers and beneficiaries of international protection are governed by Chapter VI of the Asylum Law: the rights to residence, accommodation, basic living conditions, health care, education, welfare, and other rights equal to those of foreigners with permanent residence in the Republic of Serbia, as well as rights equal to those of Serbia's nationals.[290]

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288 Article 46 AL.

289 For example, the 2011–2020 National Employment Strategy (*Sl. glasnik RS*, 37/11) identifies the following as particularly vulnerable groups in the labour market: Roma, refugees from other ex-Yugoslav republics and internally displaced persons, persons with disabilities, the rural population, uneducated persons, human trafficking victims, et al. So do the National Education Strategy (*Sl. glasnik RS*, 107/12) and the 2013–2018 National Anti-Discrimination Strategy (*Sl. glasnik RS*, 60/2013). The latter Strategy is particularly concerned with the elimination of multiple discrimination and improving the status of women discriminated against on multiple grounds (Roma women, women with disabilities, rural women, HIV positive women, women belonging to national or sexual minorities, single mothers, victims of gender violence, internally displaced and refugee women, migrant women, poor women...).

290 Articles 22–27, AL.

Although the Foreigners Law does not generally apply to foreigners who applied for or were granted asylum in the Republic of Serbia, its provisions apply to the reunification of foreigners granted asylum or subsidiary protection with their families. Foreigners granted asylum in the Republic of Serbia formally have the same rights as foreigners with permanent residence in Serbia with respect to employment and work-related rights, entrepreneurship, the right to permanent residence and freedom of movement, right to movable and immovable property and the right to association, wherefore the Foreigners Law applies to them with regard to these rights.[291]

Under the Migration Management Law, the CRM is tasked with the integration of foreigners granted asylum in Serbia.[292] This law specifies that the Commissariat shall be charged with the accommodation and integration of foreigners granted asylum or subsidiary protection. The Commissariat shall perform duties regarding the identification, proposal and implementation of measures for the integration of persons granted asylum pursuant to the Asylum Law.[293] The manner of integration, i.e. involvement in Serbia's social, cultural and economic life of persons granted asylum shall be regulated by the Government, on the proposal of the Commissariat.[294]

Pursuant to Article 16 of the Migration Management Law and Article 46 of the Asylum Law, the Serbian Government at long last adopted the Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia (hereinafter: Integration Decree) on 24 December 2016, the enforcement of which will begin in 2017. The text of the Decree, however, indicates it will not apply retroactively, e.g. Serbian language lessons will be provided only if less than two months have passed since the decision granting asylum became final.[295]

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

291 Article. 46, AL.

292 Article 10, MML.

293 Articles 10–16, MML.

294 Article 16, MML.

295 The CRM shall refer people granted asylum to Serbian language lessons within two months from the day the rulings granting them asylum become final, whilst taking into account the dates the summer or winter semesters begin in mainstream or foreign language schools (Art. 4(7), Integration Decree).

Under the Chapter 24 Action Plan Serbia developed within its EU accession efforts, the CRM is to develop plans for the integration of beneficiaries of international protection.[296] The national law, however, recognises the right to integration only to people granted asylum i.e. refugee status, but not those granted subsidiary protection.[297] Alignment with the EU *acquis* in the area of social security, based primarily on the respect of human rights and reducing inequalities in society and falling under Chapters 2 and 19, will be particularly important in the accession process.

7.1. Right to Work

In the meaning of Article 43 of the Asylum Law, the employment of asylum seekers and beneficiaries of international protection is regulated by the law on the employment of foreigners and stateless persons.

One of the chief differences between the EU Member States' asylum systems and Serbia's was that the latter did not let asylum seekers work until December 2014. Only people granted asylum (i.e. refugee status) under the Asylum Law were allowed to work; this right did not extend to people granted other forms of international protection. The 2014 Employment of Foreigners Law (EFL) substantially improved the status of people 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, recognised the status of refugee pursuant to 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 or subsidiary protection, human rights victims and refugees.[298] The validity of these permits depends on the duration of the holders' status. The sit-

296 Chapter 24 Action Plan, available in Serbian at: http://www.bezbednost.org/upload/document/nacrt_trece_verzije_akcionog_plana_za_poglavlje_24.pdf, point 2.1.5.1.

297 The Integration Decree also envisages measures and programmes only for people granted asylum, but not for people granted subsidiary protection (Art. 1 of the Decree).

298 Article 13, EFL.

uation in 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 programmes.

The NES needs to provide for the foreigners special vocational, internship and advanced programmes and advisory services under the same conditions as Serbian nationals. The NES at present extends such services only to Serbia's nationals. This special category of foreigners is not recognised yet as a target group in need of support to join the labour market.

The 2011–2020 National Employment Strategy recognises that the Republic of Serbia is facing all types of migration: external and internal, voluntary and involuntary, legal and illegal, of highly qualified and unqualified workers, immigration and emigration.[299] Serbia's migration policy has over the past few decades been affected by the need to provide humanitarian aid to thousands of forced migrants. Under the Strategy, a network of migration service centres is to be formed and expanded within the NES to provide migrants and potential migrants with information, advice and instructions.[300]

Under the Integration Decree, persons granted asylum shall be provided with help in joining the labour market, in the form of assistance in: obtaining all the documents they need to register with the NES and employment agencies; initiating the foreign school diploma validation procedure: enrolment in additional education and training in accordance with the labour market needs and involvement in active employment policy measures.[301] Requalification and additional qualification training shall be extended by service providers implementing certified training programmes. All these measures shall be secured in cooperation with the NES.[302]

In 2016, the BCHR extended legal aid to all its clients, who had been granted asylum and wanted to enter the labour market, in collecting the documents they needed to register with the NES. The main obstacle arose in securing the funds to pay the 12,810 RSD administrative fee, which the refugees were unable to afford.

Thanks to various donors (above all the UNHCR and the Dutch Embassy in Belgrade), the BCHR managed to cover these costs. The question, however, arises how this issue will be systematically and institutionally addressed in the future, as more and more people aspire to obtain work permits and enter the Serbian labour market. Perhaps the CRM might cover these administrative costs

299 Page 18 of the National Employment Strategy, available in Serbian at http://www.gs.gov.rs/english/strategije-vs.html.

300 National Employment Strategy, p. 29.

301 Article 7, Integration Decree.

302 Article 6, Integration Decree.

on behalf of the refugees, who cannot afford to pay them, through the support programmes envisaged by the Integration Decree.

Once the foreigners obtain their work permits, they come upon a major obstacle to entering the labour market – the language barrier. Most refugees do not speak Serbian, which is a must if they want to work in Serbia. CSOs organised Serbian language lessons in both the Asylum and the Reception Centres in 2016. The state did not organise language courses in a systematic manner, as part of a programme offered refugees within their integration process.

Consequently, most refugees failed to find a job. Some were on welfare, some received short-term aid from UNHCR. Many were jobless, deprived of any state aid designated for vulnerable categories of the population.

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

7.2. Right to Education

The right to education is enshrined in the Serbian Constitution. Asylum seekers and people granted asylum are entitled to free primary and secondary education.[303] The right to education is governed by a number of laws in Serbia, primarily the Education System Law, 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.[304] Under the Education System Law, foreign nationals and stateless persons shall enrol in primary and secondary schools and exercise the right to education on an equal footing and in the same manner as Serbian nationals.[305]

303 Article 41, AL.

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

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

For children, who do not know the language of tuition or parts of the curricula of relevance to continuing their education, the schools shall organise language lessons, additional and catch-up classes pursuant to separate instructions enacted by the Education Minister.[306] Underage asylum seekers have not had efficient access to education in the Republic of Serbia despite the existence of the legal framework governing the enrolment procedures and the procedures for satisfying the specific educational needs of refugee children and underage asylum seekers.[307] Vocational secondary education, or, at the very least, Serbian language classes should have been organised both for underage and adult asylum seekers in the Asylum Centres since the Asylum Law came into force in 2008. The Serbian state authorities charged with education have not taken part in the activities launched by specific international organisations, such as the UNHCR, the Danish Refugee Council, *SOS Dečija Sela* and others, which have organised Serbian language lessons in some Centres.[308]

Under Article 4 of the Integration Decree, the CRM shall provide Serbian language lessons to people granted asylum, not covered by the mainstream education in Serbia, those attending mainstream schools and those 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 high education, may be provided with an additional 100 Serbian language classes per school year in foreign language schools with certified Serbian language programmes. The Decree commendably provides for covering the public transportation costs of successful asylum seekers, who have to attend Serbian language classes in other towns, because such classes cannot be organised in their places of residence.[309]

The CRM shall refer successful asylum seekers to Serbian language lessons within two months from the day the ruling granting them asylum becomes final, whilst taking into account the dates the summer or winter semesters begin in mainstream or foreign language schools.

Children enrolled in preschool, primary and secondary schools and illiterate adults granted asylum shall be provided with: textbooks and school supplies; assistance in initiating the foreign school diploma validation procedure; study support; and financial aid to attend extracurricular activities. Such assistance shall be provided in cooperation with the schools and associations. In cooper-

306 Article 100, Education System Law.

307 More in BCHR's prior periodic and annual Asylum Reports, available at: www.bgcentar.org.rs.

308 The language courses for children and adults organised in the Asylum Centres in Banja Koviljača, Bogovađa, and Krnjača were funded by the UNHCR Office in Belgrade and the Danish Refugee Council.

309 Article 4, Integration Decree.

ation with the Education Ministry, illiterate adults granted asylum shall be provided with assistance in enrolling in adult literacy programmes.[310]

The procedure for validating the foreign diplomas of refugees is the same as the one applying to Serbian nationals, which is unfortunate given that they are often unable to submit the required documents due to the situation in their countries of origin.[311] Furthermore, they have to bear the validation administrative fees themselves, since there are no provisions envisaging state support in that area. They cannot avail themselves of any other procedure if they are unable to submit all the required documents for justified reasons. The legislator should give some thought to introducing examinations checking their competences in such cases, to enable these people to prove they possess the requisite knowledge and obtain the diplomas they need to enter the labour market.

> Iraqi national S. E. A., one of the first to be granted subsidiary protection in Serbia in 2008, the year the Asylum Law entered into force, immediately faced several crucial obstacles to his integration in Serbia's social life. S. E. A., who was over sixty years old and had earned a degree from an Agriculture College in Iraq, was keen on integrating in Serbian society as soon as he was granted international protection. In the absence of any by-laws governing the integration procedures in detail, all his problems were dealt with *ad hoc* and with the help of CSOs. S. E. A. initially did not have an opportunity to attend any organised Serbian language courses and was unaware he could validate his diploma. He started learning the language on his own. He began working occasionally as a language teacher in an Asylum Centre five years later, in 2013 (thanks to a UNHCR and the Danish Refugee Council project) and earning a living from the lessons. In 2015, S. E. A. decided to apply for the validation of his college diploma; the procedure was still pending at the end of 2016. He paid all the administrative fees. This is also the only diploma validation case handled by BCHR to date.

Although numerous legal standards regarding refugee children have been enacted in law, their implementation in practice has proved to be a major challenge.

> For example, a Libyan family with three underage children entered Serbia legally in 2015, to reunite with their husband and father, K. A., who was completing his doctoral studies at the Belgrade University College of Philosophy. They were unable to return to war-torn Libya and decided to apply for asylum in Serbia. They were granted asylum in September 2016. K. A. and his family were renting private accommodation throughout the asylum procedure, and

310 Article 6, Integration Decree.

311 Based on BCHR's experience in extending legal aid to asylum seekers and beneficiaries of international protection.

> upon its completion, which benefited their integration in many ways, particularly since their children attended kindergarten and school. The NGOs had to help them enrol the children in school, because the school was unfamiliar with the procedure for enrolling asylum-seeking children. The situation did not improve drastically after the family was granted asylum; the children continued going to school and learning Serbian there, but they have not been provided with any additional help or catch-up classes to facilitate their schooling. They had bad grades and felt excluded and unadjusted to the school system. There is a risk that the oldest child will be unable to enrol in any secondary school in Serbia.

This case actually illustrates a whole set of issues and challenges faced both by the schools, the Education Ministry and the CRM, on the one hand, and the refugees who are to integrate in Serbia's society, on the other. The support the CRM will be extending the refugees by facilitating Serbian language classes will perhaps help allay this problem, but the relevant institutions have to find systematic and institutional ways for including all asylum seeking children and those granted international protection in the school system.

7.3. Right to Social Assistance

The Asylum Law also guarantees the right to social assistance to asylum seekers and people granted asylum. The Social Protection Law defines social protection as an organised 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 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 people granted asylum shall be enacted by the minister in charge of social affairs. The Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum (hereinafter: Rulebook) was enacted in 2008.

Under the Rulebook, asylum seekers and people granted 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 people who can afford private lodgings definitely are not destitute.

The applications for welfare are submitted to and decided by the SWC in the municipality the applicant lives in. SWCs perform *ex officio* reviews of wheth-

er the (successful) asylum seekers still fulfil the requirements for the assistance every year, which means that they exercise their right to social assistance as long as they need to.

In four asylum cases, in which the BCHR represented the asylum seekers in the 2012–2016 period, the asylum seekers applied for social assistance. They were all interviewed by the SWCs, and welfare was granted in one case. The SWCs required additional documentation from the asylum seekers in the other three cases and their decisions were pending at the end of the reporting period.

7.4. 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 fulfil the conditions for longer-term stay. Given the limited funds at the disposal of the 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.[312]

People granted asylum or subsidiary protection are entitled to accommodation commensurate with the capacities of the Republic of Serbia for up to a year from the day the rulings on their status become final.[313] 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 (hereinafter: Housing Decree).[314] The Decree regulates in detail the allocation of accommodation to persons granted asylum, including the eligibility requirements and the accommodation priorities and conditions. Accommodation shall be provided to persons recognised the right to refuge or granted subsidiary protection and their family members provided the rulings on their status were issued within the past 12 months and they lack the income to resolve their housing needs themselves.[315] Housing may also be provided to persons with income to resolve their housing needs, depending on their personal circumstances and the availability of housing.[316] Temporary

312 Lena Petrović and Sonja Tošković *Institutional Mechanisms for the Integration of People Granted Asylum,* BCHR and the Protector of Citizens, may 2016, p. 15.

313 Article 44, AL.

314 *Official Gazette of the RS*, 63/15.

315 *Ibid.*, Article 3.

316 *Ibid.*, Article 4.

housing shall be provided in facilities and parts of facilities owned by the Republic of Serbia and used by the CRM and designated for this purpose under a decision of the Commissioner or in facilities or parts of facilities owned by the Republic of Serbia or local self-governments pursuant to a decision of the relevant authority.[317] Each housing unit must comprise a kitchen, toilet, a bed and bed linen, have electricity and running water, heating and personal and household hygiene products.[318] If no housing facilities or temporary accommodation exist, the beneficiaries may be provided with financial aid to address their housing needs.[319] Under the Asylum Law and the Housing Decree, the beneficiaries will be provided with accommodation for a maximum of one year from the day the ruling recognising their right to refuge or granting them subsidiary protection becomes final.[320]

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 people not earning any income in Serbia. Furthermore, the Decree envisages the CRM's assistance in the realisation of this right. The technical and financial assistance to refugees to exercise their right to accommodation has mostly been extended by CSOs to date.

The CRM extended financial aid for the accommodation of two BCHR clients in 2016.

7.5. Right to Citizenship

Under Article 43 of the Asylum Law, people granted asylum shall have the status of foreigners with permanent residence in Serbia. The competent authorities, however, do not regard refugees as permanent residents because they *de facto* do not fulfil the requirements for this category of residence under the Foreigners Law, i.e. as residence lasting as long as their status.[321] Furthermore, Ar-

317 *Ibid.*, Article 5.

318 *Ibid.*, Article 6.

319 *Ibid.*, Article 9.

320 *Ibid.*, Article 16.

321 See: Tošković Sonja (ed.), *Serbia from transit to destination country – Refugee integration challenges and practices of selected states*, BCHR, Belgrade, 2016, p. 25, available at: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2016/06/Srbija-od-zemlje-tranzita-do-zemlje-destinacije-31.pdf.

ticle 46 of the Asylum Law sets out that the Republic of Serbia shall facilitate the naturalisation of refugees commensurate with its capacities.

Refugees, who leave their countries of origin out of well-founded fear of persecution, are actually left without the protection of the states they are nationals of and are *de facto* stateless.[322] 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 citizenship when they leave it.

The provisions of the Foreigners Law are relevant to a large extent to the rights and obligations of beneficiaries of international protection. Namely, 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.[323] Article 24(1(3)) of the Foreigners Law lists permanent residence among the types of residence foreigners may be granted in Serbia. This Law also lays down the requirements they must fulfil to be granted permanent residence.[324] The Foreigners Law, however, does not recognise people 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 certificate because he had been granted asylum as a form of international protection and, as a refugee, was not granted permanent residence.[325]

Namely, under the Foreigners Law, permanent residence shall be granted to foreigners, who have held temporary residence permits and lived continuously in Serbia for over five years.[326] The law does not state that people granted asylum are entitled to temporary residence permits, wherefore they can never acquire the right to permanent residence. However, the Foreigners Law specifies that temporary residence may be granted to foreigners for other justified reasons under other laws or international treaties.[327] If interpreted systemically, in accordance with the Asylum Law and the Refugee Convention, this provision

322 "Refugees are people who leave their countries of residence, in most cases the countries whose citizenship they hold, in fear of persecution. 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, their government wishes to harm rather than help them. This is why their situation is even more difficult than that of stateless persons." Dimitrijević V., "Human Rights – Textbook," BCHR, 1997, p. 196.

323 Article 14(1(3)), Citizenship Law.

324 Article 37, FL.

325 MOI – Police Directorate – Border Police Administration 03/8 Ref. No. 26–1342/14 of 29 January 2016.

326 Article 31(1(1)), FL.

327 Article 26, FL.

may be grounds for issuing temporary residence permits to foreigners granted asylum. However, as described in the case of M. S. E, the MOI is of the view that refugees have a type of *sui generis* residence.

The MOI drafted and organised public debates on the new law on foreigners in 2016.[328] The Preliminary Draft lays down the following requirements the foreigners must fulfil to be granted permanent residence: that they have sufficient subsistence funds, that they are registered at an address in Serbia, that they have health insurance, that they are not prohibited from entering Serbia, that they have not been convicted to an unconditional sentence of imprisonment exceeding six months for a crime prosecuted *ex officio* or that the legal effects of the conviction have ceased, and that no security or expulsion orders have been issued against them.

As opposed to the valid Foreigners Law, the new one should also regulate the residence of people granted asylum, particularly with respect to the provision in the Citizenship Law. The Preliminary Draft of the Foreigners Law introduces temporary residence permits for humanitarian reasons,[329] which foreigners granted asylum can qualify for in theory. It also lays down that permanent residence may be approved for humanitarian reasons, which should be interpreted as providing the refugees with the possibility of acquiring the right to permanent residence.[330] Practice will, however, show how the MOI will interpret these provisions of the new law once it is adopted.

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 Refugee Convention.

7.6. Right to a Travel Document

People 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 longer-term solutions to their problems. As opposed to other foreigners, refugees do not enjoy the protection of the states whose citizenship they hold, wherefore they cannot use the travel documents issued by those states.

Under the Asylum Law, at the request of successful asylum seekers over 18, the Asylum Office shall issue travel documents in the prescribed form, which

328 The Preliminary Draft of the Foreigners Law is available in Serbian at: http://www.paragraf.rs/nacrti_i_predlozi/181016-nacrt_zakona_o_strancima.html.

329 Article 61, Preliminary Draft of the Foreigners Law.

330 Articles 67 and 68, Preliminary Draft of the Foreigners Law.

will 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.[331]

The Asylum Office was still unable to issue travel documents to people granted asylum in 2016, because the MOI had not adopted a by-law governing the content and design of the travel document issued to this category of foreigners.[332] Under the Asylum Law,[333] the by-law was to have been enacted within 60 days from the day the Law entered into force – i.e. in 2008.

This legal lacuna, i.e. absence of a by-law on the form of the travel document issued to refugees and persons under subsidiary protection, led to restrictions of the freedom of movement of foreigners granted asylum in Serbia and prompted the BCHR to file several constitutional appeals. The Constitutional Court in 2016 dismissed the constitutional appeal in the case of Syrian refugee M. S. E., specifying in its ruling that, under Article 170 of the Constitution, only individual actions or enactments, but not the non-adoption of a general legal enactment, may be challenged in a constitutional appeal.[334] The BCHR then filed an application with the ECtHR, claiming a violation of Article 4 of Protocol No. 1 to the ECHR (freedom of movement) in conjunction with Article 1 of the ECHR (the obligation of the High Contracting Parties to secure everyone within their jurisdiction the rights and freedoms enshrined in the Convention).

The BCHR also alerted the Minister of the Interior to the fact that people granted asylum in Serbia could not be issued travel documents and asked him to enact the by-law facilitating the issuance of such document. The Minister failed to respond to the letter by the end of the reporting period.[335]

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It may be concluded that substantial headway was made in the field of integration in 2016 in terms of norms, but that the relevant institutions did not coordinate amongst themselves and that systemic regulation and coordination will be the key challenge in 2017.

Although the law entrusts the integration of refugees to the CRM, most of the specific integration-related support to beneficiaries of international protec-

331 Article 62, AL.

332 Asylum Section letter 03/10 Ref No. 26–1280/13 of 14 February 2014, Border Police Administration Notices 03/10 Ref No. 26–1342/14 of 11 June 2015 and 03/10 Ref No. 26–2429/13 of 23 September 2015.

333 Article 67(1(1)), AL.

334 Ruling UŽ 4197/2015 of 20 June 2016.

335 Letter to the Cabinet of the Minister of the Interior of 25 August 2015.

tion in Serbia in 2016 was extended by the CSOs, which have been actively extending both legal aid and other forms of support to refugees and migrants. [336]

The results of the public opinion survey "Attitudes towards the Impact of the Refugee and Migrant Crisis in Serbia's Municipalities," conducted on a sample of 1,004 respondents in March 2016[337], showed that Serbia's citizens empathised with the migrants, had nothing against them being in Serbia and supported the state's activities addressing their plight. Slightly over 73% of the respondents cited war, insecurity and fear of persecution as the main reasons why these people have been leaving their homes, a substantial increase over 2015, when 47.9% of Serbia's citizens were aware of the real reasons for their flight. Most of the respondents (67%) qualified these reasons as justified, while only a few percent thought the migrants should not have left their war-torn countries. In response to the question whether the migrants should stay in Serbia, 52% of the respondents said they would have nothing against it; most of those who said "no" said that Serbia was a vulnerable country as well and could not take them in. Slightly less than 60% of the respondents would have nothing against migrants moving to their neighbourhood, while 54% said they supported the activities the state was implementing vis-à-vis the refugees and migrants.

Although the Serbian asylum system, including the integration system, is underdeveloped, the involvement of refugees in the economic, social and cultural life of the country is a crucial prerequisite if they are to live a quality life of dignity in Serbian society. Delays in developing the integration system and in including the successful asylum seekers in the labour market can only undermine their long-term chances of integrating in the country's social, economic and cultural life, leaving them isolated and tottering at the brink of poverty.

336 Their support mostly comprised the organisation of Serbian language lessons and provision of administrative assistance to the refugees and migrants addressing the competent institutions, etc.

337 TNS Medium Gallup, survey commissioned by UNDP, March 2016, available at: http://www.rs.undp.org/content/serbia/sr/home/library/crisis_prevention_and_recovery/stavovi-prema-izbeglikoj-i-migrantskoj-krizi-u-srbiji.html.

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