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Asylum Information Database

Country Report: Serbia

2017 Update

Beogradski centar za ljudska prava

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European Council on Refugees and Exiles

Acknowledgements & Methodology

This report was written by Pavle Kilibarda and Nikola Kovačević at the Belgrade Centre for Human Rights (BCHR), and was edited by ECRE. The 2016 and 2017 updates were written by Nikola Kovačević at BCHR, and edited by ECRE.

This report draws on the BCHR's experience in representing asylum seekers and refugees in Serbia, engaging the asylum authorities and monitoring the respect for the right to asylum in the country.

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.

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Glossary & List of Abbreviations

Expression of intention	Request certifying a person's intention to apply for asylum. This does not constitute a formal application for asylum.
Recording	Act of acknowledging the expression of a person's intention to seek asylum. This does not amount to registration of the asylum claim.

Afis	Automated fingerprint identification system
BCHR	Belgrade Centre for Human Rights
BPSB	Border Police Station Belgrade
CAT	United Nations Committee against Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FYROM	Former Yugoslav Republic of Macedonia
IDP	Internally displaced person
MYLA	Macedonian Young Lawyers' Association
OKS	Specific Category of Foreigners | Određena kategorija stranaca
UAE	United Arab Emirates
UNHCR	United Nations High Commissioner for Refugees

Statistics

The Asylum Office does not publish statistics on asylum applications and decisions. Basic figures are published by UNHCR, though not regularly. Positive and negative decision rates are weighed against the total number of decisions in the same timeframe.

Applications and granting of protection status at first instance: 2017

	Intentions to apply in 2017	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	6,199	236	:	3	11	11	12%	44%	44%

Breakdown by countries of origin of the total numbers

Afghanistan	2,483	48	:	1	0	2	33.3%	0%	66.7%
Iraq	1,177	30	:	0	0	1	0%	0%	100%
Pakistan	1,091	49	:	0	0	0	0%	0%	0%
Iran	488	13	:	0	0	0	0%	0%	0%
Syria	370	16	:	1	0	0	100%	0%	0%
Algeria	83	4	:	0	0	0	0%	0%	0%
Bangladesh	58	1	:	0	0	0	0%	0%	0%
Libya	51	6	:	0	9	0	0%	100%	0%
India	48	0	:	0	0	0	0%	0%	0%
Morocco	43	5	:	0	0	0	0%	0%	0%

Source: Asylum Office

Gender/age breakdown of the total number of persons who expressed the intention to seek asylum: 2017

	Number	Percentage
Total number of applicants	6,199	-
Men	5,140	82.9%
Women	1,059	17.1%
Children	2,630	42.4%
Unaccompanied children	156	2.5%

Source: Asylum Office

Comparison between first instance and appeal decision rates: 2017

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	**25**	**-**	97	-
Positive decisions	14	56%	41	42.2
• *Refugee status*	3	12%	-	-
• *Subsidiary protection*	11	44%	-	-
Negative decisions	11	44%	56	57.8%

Source: Asylum Office; Asylum Commission. Positive decisions at Asylum Commission level are annulments.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (SR)	Abbreviation	Web Link
Law on Asylum of the Republic of Serbia Official Gazette no. 109/2007	Zakon o azilu Republike Srbije / Закон о азилу Републике Србије	Asylum Act	http://bit.ly/20df38u (EN)
Law on Foreigners of the Republic of Serbia Official Gazette no. 97/2008	Zakon o strancima Republike Srbije / Закон о странцима Републике Србије	Foreigners Act	http://bit.ly/2nYLtqi (SR)
Law on Migration Management of the Republic of Serbia Official Gazette no. 107/2012	Zakon o upravljanju migracijama Republike Srbije / Закон о управљању миграцијама Републике Србије	Migration Management Act	http://bit.ly/1Qo7kPK (SR)
Constitution of the Republic of Serbia Official Gazette no. 83/06	Ustav Republike Srbije / Устав Републике Србије	Constitution	http://bit.ly/1Rd2D98 (EN)
General Administrative Procedure Act of the Republic of Serbia Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/2001 and the Official Gazette of the Republic of Serbia, no. 30/2010	Zakon o opštem upravnom postupku Republike Srbije / Закон о општем управном поступку Републике Србије	General Administrative Procedure Act	http://bit.ly/2sov3gB (SR)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (SR)	Abbreviation	Web Link
Action Plan for Chapter 24 of the EU Accession Talks	Akcioni plan za poglavlje 24 pristupnih pregovora sa Evropskom unijom / Акциони план за поглавље 24 приступних преговора са Европском унијом	Action Plan	http://bit.ly/2gWYeCp_ (EN)
Decision Determining the List of Safe Countries of Origin and Safe Third Countries Official Gazette, no. 67/2009	Odluka o utvrđivanju liste sigurnih država porekla i sigurnih trećih država / Одлука о утврђивању листе сигурних држава порекла и сигурних трећих држава	Safe Countries Decision	http://bit.ly/2G6XUYw (SR)
Decree on the Manner of Involving Persons Recognised as Refugees in Social, Cultural and Economic Life Official Gazette, no. 101/2016	Uredba o načinu uključivanja u društveni, kulturni i privredni život lica kojima je priznato pravo na utočište / Уредба о начину укључивања у друштвени, културни и привредни живот лица којима је признато право на уточиште	Integration Decree	http://bit.ly/2nTy0B2 (SR)

Overview of the main changes since the previous report update

The report was last published in **February 2017**.

- **Asylum reform:** Legislative work on the new Asylum Act was initially foreseen for 2016 but has since been delayed as a result of parliamentary elections and other issues which took priority in Parliament. The draft was delivered to the Parliament in October 2017, and it is reasonable to assume that it will be adopted in 2018.

Asylum procedure

- **Access to the territory:** Push backs at the border have continued in 2017. he Ministry of Defence reported in July 2017 that more than 21,000 persons had been prevented from illegally crossing the border from Bulgaria and FYROM.

- **Safe third country:** The Asylum Office has continued the automatic application of the "safe third country" concept to dismiss asylum applications. 56 dismissal decisions were delivered in 2017. This practice was also enforced by the Asylum Commission, which delivered 56 decisions upholding the "safe third country" concept. Only in one case relating to an Afghan national did the Asylum Office enlist the reasons why Bulgaria could not be considered a safe third country, leading to a positive decision.

Content of international protection

- **Travel documents:** The impossibility of receiving a travel document for asylum beneficiaries still remains a problem at the time of writing. The BCHR submitted the application to ECtHR claiming that persons who do not possess refugee travel documents are deprived of right to freedom of movement. The case is yet to be communicated.

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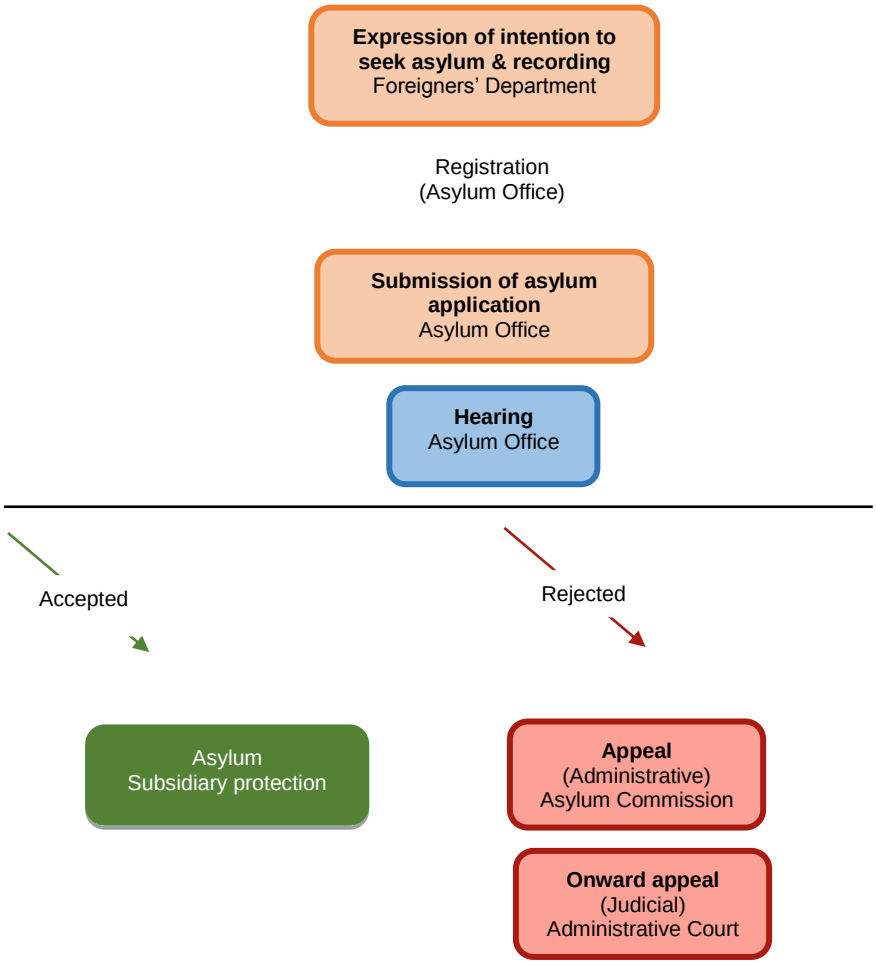
Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[1]	☐ Yes	☒ No
▪ Fast-track processing:[2]	☐ Yes	☒ No
❖ Dublin procedure:	☐ Yes	☒ No
❖ Admissibility procedure:	☐ Yes	☒ No
❖ Border procedure:	☐ Yes	☒ No
❖ Accelerated procedure:[3]	☐ Yes	☒ No
❖ Other:		

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (SR)
Decision on entry[4]	Foreigners' Department	Odeljenje za strance / Одељење за странце
Application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Refugee status determination	Asylum Office	Kancelarija za azil / Канцеларија за азил
Appeal procedure ❖ First appeal ❖ Onward appeal	 Asylum Commission Administrative Court	 Komisija za azil / Комисија за азил Upravni sud / Управни суд
Subsequent application	Asylum Office	Kancelarija za azil / Канцеларија за азил

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Asylum Office	16	Ministry of Interior	☐ Yes ☒ No

In line with the Rulebook on the internal organisation and systematisation of positions in the Ministry of Interior, which established the Asylum Office on 14 January 2015, there should be 29 positions within the Asylum Office. Out of 17 staff members hired by the end of 2015,[5] three have left but two more asylum officers were hired in 2017. Regardless of the total number of employees in the Asylum Office, only 8 of them were in charge of carrying out asylum proceedings during 2017.

5. Short overview of the asylum procedure

The right to asylum is enshrined in Article 57(1) of the Constitution of Serbia.[6] The asylum system and procedure *stricto sensu,* however, are mainly governed by the 2008 Asylum Act.[7] Additionally, relevant

1 For applications likely to be well-founded or made by vulnerable applicants.
2 Accelerating the processing of specific caseloads as part of the regular procedure.
3 Labelled as "accelerated procedure" in national law.
4 Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.
5 Information received from the Ministry of the Interior in their reply 03/10-06-1418/15 to request for access to information of public importance, of 2 November 2015.
6 'Any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the

are the Foreigners Act[8] and the General Administrative Procedure Act,[9] both of which act as *legi generali* with regards to the Asylum Act in their respective subject matter, as well as the Migration Management Act,[10] which regulates certain issues relevant to the housing and integration of asylum seekers and refugees.

Overall, it may be said that Serbian asylum legislation is generally in line with international standards for the protection of persons in need of international protection, with deficiencies in the system and procedure generally stemming from poor implementation of the existing legislation and inadequate application on relevant international standards Regardless, Serbia is expected to further harmonise its legislation with European *acquis,* and the national Action Plan for Chapter 24 of the EU Accession Talks foresees the enactment of a new Asylum Act in early 2016.[11] However, as a result of early parliamentary elections held in April 2016, all legislative activities were postponed. The draft of the new Asylum Act has been shared with civil society representatives, who have been given the opportunity of providing comments and suggestions to the authorities. It is also important to point out that the draft was positively received by the European Commission. As it was already mentioned, the draft of the new Asylum Act was delivered to the National Parliament in October 2017, but to this date it has not been adopted. It is evident that reforms in the asylum and migration field are not the priority of the current Government.

In spite of the fact that the new Asylum Act has yet to be adopted, several legislative novelties may be discerned from available draft documents. The new law will introduce both accelerated and border procedures. Bearing in mind that the Asylum Office is understaffed even in light of the single existing procedure, it is reasonable to assume that additional personnel will be required to implement the additional proceedings. It is otherwise difficult to envision adequate implementation of the new law in reality.

One of the most significant changes concerns the “safe third country” concept. The draft Asylum Act foresees that Serbian asylum authorities are obliged to obtain guarantees that an asylum seeker, whose claim might be rejected for having passed through a safe third country prior to entering Serbia, will be allowed to access the territory and asylum procedure of that country. Otherwise, their claim must be examined on the merits.

The existing Asylum Act envisions a single asylum procedure, which is the same for all asylum seekers regardless of their country of origin or location (i.e. there are no separate accelerated or border procedures).

The procedure for seeking asylum in Serbia is as follows: a foreigner may “express the intention to seek asylum in Serbia” within Serbian territory or at border crossings (including the Nikola Tesla Airport in Belgrade), following which he or she is recorded by the officials of the Ministry of the Interior before whom he or she has expressed the intention and given a certificate of having done so. The asylum seeker is then expected to go to his or her designated asylum centre, or to notify the Asylum Office should he or she wish to stay at private accommodation.

Upon arrival at the centre or private accommodation, the asylum seeker waits for Asylum Office staff to register him or her, issue him or her personal identity documents for asylum seekers and take his or her asylum application. The Asylum Office is under the legal obligation to decide on the application within 2

Republic of Serbia,’ ‘Constitution of the Republic of Serbia’, Official Gazette of the Republic of Serbia, no. 83/06, Article 51(1).

7 Law on Asylum of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 109/2007.

8 Law on Foreigners of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 97/2008.

9 General Administrative Procedure Act of the Republic of Serbia, Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/2001 and the Official Gazette of the Republic of Serbia, no. 30/2010.

10 Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

11 Action Plan for Chapter 24 of the EU Accession Talks, available at: http://bit.ly/2gWYeCp, point 2.1.4.3.

months of its submission, during which time one or more hearings must be held in order to establish all of the facts and circumstances relevant to rendering a decision.

It should likewise be added that, Serbia being neither a member of the European Union nor a party to the Dublin Regulation, there is nothing equivalent to a Dublin procedure in the country.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

A number of issues concerning limited access to the asylum procedure were reported in 2017. These include push backs from Serbia to the Former Yugoslav Republic of Macedonia (FYROM) and Bulgaria, arbitrary returns to third countries or countries of origin from Belgrade **Nikola Tesla Airport**, returns to Bulgaria under the Readmission Agreement with the European Community (without careful examinations of every individual case), refusals to issue the certificate of having expressed the intention to seek asylum to persons whose certificate expired or was stolen, denial of access to the asylum procedure to asylum seekers returned from Hungary, etc.[12] These issues could, to a significant extent, be ascribed to a general lack of knowledge of international refugee law and international human rights law by national officials, including those engaging directly with refugees and migrants, but also to a state policy at the border with FYROM and Bulgaria that is openly based on push-backs.

Thus, these kind of practices can lead to situations where the principle of *non-refoulement* might be undermined, especially when foreigners are summarily, without examination of individual circumstances, returned back to countries such as FYROM[13] and Bulgaria[14] where they face a real risk of ill-treatment or of *chain refoulement* to Greece.[15]

In July 2016, the Serbian Government adopted a decision to form mixed patrols of the army and police to strengthen the border with FYROM and Bulgaria.[16] The decision came in response to refugees and migrants' facing increasing difficulties in leaving Serbia to Croatia or Hungary.[17] This decision is still in force, and mixed patrols are systematically denying access to territory and asylum procedure to persons likely in need of international protection who are attempting to enter Serbia. By the end of 2017, more than 4,000 people were residing in Serbia, the vast majority of whom were accommodated in camps along the border where they were waiting for their turn to be admitted into Hungary.[18] The remainder stayed in the streets of **Belgrade** and border areas with Hungary and Croatia.[19]

The introduction of mixed patrols gives reasons for concern, especially if we take into consideration the fact that state officials frequently make public statements that "migrants" or "illegal migrants" are successfully being repelled from the borders of Serbia. The Ministry of Defence reported in July 2017

12 BCHR, *Right to Asylum in the Republic of Serbia* 2017, forthcoming.

13 UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*, August 2015, para. 47.

14 Oxfam, BCHR and MYLA, *A Dangerous 'Game' - The pushback of migrants, including refugees, at Europe's borders*, April 2017, available at: http://bit.ly/2p8pqMQ.

15 ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, Judgment of 14 March 2017, paras 118-125.

16 N1, 'The police and army together against illegal migrations', 16 July 2016, available in Serbian at: http://bit.ly/2keIszH.

17 After the closure of the Western Balkan route, Hungary introduced a practice limiting the admittance of refugees to 30 persons a day to its territory (15 persons at the Kelebija border crossing and 15 persons at the one in Horgoš). This number was reduced to 20 by the end of November 2016 and is still valid.

18 UNHCR, *Serbia update: 11 December – 24 December 2017*.

19 N1, 'Migranti u "džungli" čekaju priliku za prelazak granice', 4 December 2017, available in Serbian at http://bit.ly/2ArQnoR

that more than 21,000 “illegal migrants” had been prevented from illegally crossing the border from Bulgaria and FYROM.[20] Without trying to dispute Serbia’s right to control the entry, residence or expulsion of aliens on its soil,[21] it is very important to conduct it in line with its domestic laws and with the principle of *non-refoulement,*[22] as well as the prohibition of collective expulsions.[23] It is hard to assume that 21,000 people were prevented from crossing the border in a manner that was in line with Council of Europe standards i.e. that each of these persons was served with a decision that is rendered in a procedure where individual circumstances of each person were examined; with the assistance of a lawyer and a translator for the language he or she understands; and with the possibility to lodge an appeal with suspensive effect. This kind of practice was condemned by the UN Human Rights Committee,[24] as well as the Special Representative of the Secretary General on migration and refugees.[25] Furthermore, the Macedonian Young Lawyers’ Association (MYLA) has been publishing monthly reports that contain statistical data on push backs from Serbia. According to these reports, several hundred foreigners have been pushed back from Serbia every month.[26]

In February 2017, a group of 25 refugees from Afghanistan (including 9 children) were collectively expelled to Bulgaria in a manner that can only be described as perfidious. After they were deprived of liberty close to the border crossing with Bulgaria, they were forcibly served with the policy custody measure and were placed in the holding premises of Border Police Station Gradina (BPS Gradina) in conditions that can only be described as inhumane and degrading.[27] The following day, they were charged with the misdemeanour of illegal border crossing and were brought before the Misdemeanour Court in Pirot. However, the judge on call assessed that the accused were likely in need of international protection, were potential victims of human trafficking and had been exposed to ill-treatment in Bulgaria, and thus should be allowed to access the asylum procedure in Serbia. The Court dropped the charges and instructed police officers from BPS Gradina to issue them with certificates of the intention to seek asylum, and to take them to Reception Centre **Divljana**. After they had been served with the certificates, the asylum seekers were loaded in the back of the police van, and instead of being taken to Reception Centre Divljana, they were left in the green border zone with Bulgaria, and violently ordered to go back.[28]

The case of attempted collective expulsion from December 2016 is still in the pre-investigative phase. The Public Prosecutor’s Office in Vladičin Han is still trying to determine the identity of soldiers and police officers who were on call on the night when a family of seven, coming from Syria, was intercepted along the way to the reception centre in **Bosilegrad**. They were duly registered and issued certificates of having expressed the intention to seek asylum, then referred to Bosilegrad. Twenty kilometres from Bosilegrad, they were forced off the bus and taken deep into the woods close to the Bulgarian border. They were abandoned there at temperatures dropping as low as -11°C.[29]

For all of the above-mentioned, it is necessary to introduce a border-monitoring mechanism which will include representatives of civil society, as was, *inter alia*, recommended by the UN Committee against Torture in its latest concluding observations on the second periodic report of Serbia.[30]

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20 Alo, ‘Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!’, 22 July 2017, available in Serbian at: http://bit.ly/2DGDgRx.

21 ECtHR, *Chahal v. UK*, Application No 22414/93, Judgment of 15 November 1996, para 73.

22 Article 3 ECHR.

23 Article 4 Protocol No 4 ECHR.

24 UN Human Rights Committee, *Concluding observations on the third periodic report of Serbia*, CCPR/C/SRB/CO/3, 10 April 2017, paras 32-33.

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

26 MYLA, *Field reports*, available at http://bit.ly/2F5U15J.

27 See more in BCHR, *Right to Asylum in the Republic of Serbia; Periodic report for January-March 2017*, 2017, 21-26.

28 *Ibid*.

29 Osservatorio balcani e caucaso, ’Serbia needs to investigate asylum seekers push backs’, 11 January 2017, available at: http://bit.ly/2koHnsj.

30 UN Committee Against Torture, *Concluding observations on the second periodic report of the Republic of Serbia*, CAT/C/SR.1322 and CAT/C/SR.1323, para 15.

The practice of the Border Police Station Belgrade (BPSB) at **Nikola Tesla Airport** remained unchanged in 2017.[31] Foreigners who, according to the assessment of BPSB, did not meet the requirements to enter Serbia were detained in the transit zone of the airport. They remained in the transit zone as long as the company they had been traveling with did not provide them a seat on the return flight (to their country of origin or a third country). In other words, foreigners may be detained in the transit zone for periods ranging from a few days to several weeks.[32]

A related issue is the fact that the BPSB does not consider these people as being deprived of liberty. It does not therefore render a decision on deprivation of liberty, preventing these people from enjoying the rights of persons deprived of liberty (including the right to have a lawyer, to inform a third person of their whereabouts and to challenge the grounds of their detention); neither are these people informed (in a language they understand) about the returns procedure they face. Persons that are likely in need of international protection are not informed about the possibility of applying for asylum, nor does the BPSB examine the risk of *refoulement* in case of return.[33] The practice of BPS Belgrade was severely criticised by the UN Special Rapporteur who visited Serbia in November 2017.[34]

In first six months of 2017, BPS Belgrade assessed that 498 people did not meet the requirements to enter Serbia. Out of that number, 22 could be considered as likely to be in need of international protection since they were from Palestine (4), Syria (3), Libya (3), Iraq (3) and Afghanistan (2). These people were returned to third countries such as Greece, Lebanon, United Arab Emirates (UAE), and Turkey. Additionally, it should be noted that that out of 498 foreigners, 112 were from Turkey, which should raise concern due to the well-known political situation in that country. Since December 2013, the BCHR has intervened over two hundred times in order to prevent forced removal to countries where *prima facie* refugees could be at risk of torture or other forms of ill-treatment. Three requests that interim measures be indicated in line with Rule 39 of the Rules of Court have been submitted to the ECtHR in order to prevent *refoulement* to Greece,[35] Somalia[36] and Turkey.[37] The last case (expulsion to Turkey) is pending before the Constitutional Court, while the other two were struck off the list due to the applicant's abandonment of the asylum procedure.

31 BCHR, *Right to Asylum in the Republic of Serbia 2015*, 2016, available at: http://bit.ly/2jmYbhy, 45-47.

32 In one of the cases, an asylum seeker was detained in the transit zone for more than 30 days: ECtHR, *Arons v. Serbia,* Application No 65457/16.

33 UN Committee Against Torture, *Concluding observations on the second periodic report of the Republic of Serbia*, CAT/C/SR.1322 i CAT/C/SR.1323, para 15.

34 Special Rapporteur for Torture, *Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer* on the official visit to Serbia and Kosovo1 – 13 to 24 November 2017*, available at: http://bit.ly/2DBrBnT.

35 ECtHR, *P. S. v. Serbia*, Application No 90877/13.

36 ECtHR, *Ahmed Ismail (Shiine Culay) v. Serbia*, Application No 53622/14.

37 ECtHR, *Arons v. Serbia,* Application No 65457/16.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?
   - ❖ To express intention to apply ☐ Yes ☒ No
   - ❖ To submit an application after being registered ☒ Yes ☐ No

2. If so, what is the time limit for submitting an application? 15 days

2.1. Expression of intention to seek asylum and recording

Under the Asylum Act, a foreigner may express the intention to seek asylum in Serbia orally or in writing to competent officials of the Ministry of the Interior at a border checkpoint or within its territory,[38] including prisons, the Shelter for Foreigners[39] in **Padinska skela**, airport transit zones or during court proceedings. The foreigner shall be "recorded", following which he or she is obliged to report to authorised officials of the Asylum Office or to one of the asylum centres within the following 72 hours.[40] The police officer also collects personal and biometric data from the individual, takes their photo and enters them in electronic data bases: the Specific Category of Foreigners (OKS)[41] and Afis.[42]

"Recording" an asylum seeker – which, under Serbian law, is not the same as 'registering' them – entails issuing them with a certificate of the expressed intention to seek asylum,[43] the content of which is specified in 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.[44] The Rulebook foresees that three copies of the certificate be issued – one is given to the asylum seeker, another is forwarded to the Asylum Office and the last one is filed in the Ministry of the Interior unit that issued it.

The certificate of having expressed the intention to seek asylum in Serbia is not considered an asylum application; therefore, expressing the intention to seek asylum does not constitute the initiation of the asylum procedure.

It is possible for the same person to express the intention to seek asylum more than once, as long as his or her asylum application has not been rejected, in which case he or she may lodge a subsequent application. This includes people whose certificate has expired or has been stolen or lost, persons returned under a readmission agreement from neighbouring countries who had previously been recorded as asylum seekers, etc.[45]

Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.

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38 Article 22(1) Asylum Act.

39 The Foreigners Act defines the Shelter for Foreigners as 'a building for the accommodation of foreigners who are not allowed to enter the country or who are to be expelled or deported from the country but cannot be expelled and who, in conformity with the law, are determined to stay under enhanced police supervision.' Article 3(11) Foreigners Act.

40 Article 22(2) Asylum Act.

41 Specific Category of Foreigners (Određena kategorija stranaca): this is a database which records all legal measures undertaken with regard to a foreigner during his or her stay in Serbia, such as the approval and basis upon which the foreigner was approved temporary residency, any decisions cancelling temporary residence (Article 35 Foreigners Act), decisions regarding illegal residence (Article 43 Foreigners Act), requests for the initiation of misdemeanour proceedings and misdemeanour sanctions that were imposed, decisions on placement in the Shelter for Foreigners in Padinska Skela (Article 49 Foreigners Act), etc.

42 *Afis* is the Ministry of Interior's database containing information on criminal and misdemeanour offenders, but which is also used by the Ministry for refugees and asylum seekers since it includes rubrics for biometrical data and photography. *Afis* is more reliable for identity checks because OKS contains only data that can easily be forged, e.g. name, place and date of birth, etc.

43 Article 23(2) Asylum Act.

44 The certificate includes personal data such as the asylum-seeker's name, surname, place and date of birth and country of origin.

45 This is the Belgrade Centre's experience in working with Asylum Office staff when representing asylum seekers in the procedure.

Over the course of 2017, the Ministry of Interior issued a total of 6,199 certificates of having expressed the intention to seek asylum in Serbia. However, this data does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia. Certificates are mainly requested in order to be admitted to the asylum or reception centres, where asylum seekers may enjoy such basic rights as accommodation, food, healthcare, psycho-social support, etc.[46] Under the circumstances, the Ministry of Interior does not adequately assess an individual's aspirations – whether or not they genuinely want to remain in Serbia. Conversely, it is common practice that genuine asylum seekers are referred to reception centres such as **Preševo** instead of asylum centres, thereby preventing them from entering the asylum procedure, forcing NGOs providing legal assistance to asylum seekers to advocate for their transfer to an asylum centre. This process can sometimes last for more than several weeks, which further delays access to the asylum procedure.[47]

Particularly disturbing is the situation of asylum seekers who had been hoping to continue towards Western and Central Europe but became 'trapped' in Serbia as a result of neighbouring countries shutting down their borders.[48] As they have already spent weeks or even months in Serbia by the time they apply for asylum, they are often treated as simple irregular migrants and face action under the Foreigners Act, such as being issued with an order to leave the country or face forced return proceedings. If a foreigner had previously applied for asylum but then tried to leave the country, the Ministry of Interior considers it an abuse of the asylum procedure and often denies them the possibility of submitting an application. Under such circumstances, police officers tasked with issuing certificates of having expressed the intention to seek asylum will often refuse to do so, in spite of the fact that they are not entitled to make such a decision under the Asylum Act.

Apart from problems related to the interpretation of Articles 22 and 23 of the Asylum Act, the Belgrade Centre for Human Rights and other NGOs continued to receive complaints of unprofessional and abusive behaviour of police officers in Belgrade's **Savski Venac** Police Station. This included shouting, threats of deportation to FYROM or Turkey, and imprisonment.

As had been the case in previous years, refugees expelled / returned from Hungary are still facing difficulties in accessing the asylum procedure in 2017. It is not clear what the official stance of Serbian authorities vis-à-vis such cases is, but in light of several incidents wherein the Belgrade Centre's intervention was required, asylum seekers who possessed case files from accelerated asylum proceedings conducted in the **Tompa** or **Röszke** transit zones in Hungary, or who had been readmitted to Serbia, were denied the possibility of expressing the intention to seek asylum. In a case involving three Syrian refugees whose asylum applications had been dismissed in Hungary, persistent advocacy on the part of the Belgrade Centre's lawyers was required before the Serbian authorities agreed to allow them into the asylum procedure. In October 2017, BCHR was forced to submit a request for interim measures to the ECtHR in order to prevent the execution of the decision of cancellation of residence issued to an unaccompanied child from Afghanistan who was expelled from Hungary and denied access

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46 The Government of Serbia attempted to resolve this issue by adopting the Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger. However, due to the fact that the so-called 'transit certificate' (that had been issued in line with the Decision) was valid for the same amount of time as the certificate for asylum (72 hours), the problem of unregulated status of people who are in need of international protection, but do not perceive Serbia as a country of destination, continued to exist in 2016, since 72 hours was not long enough for an individual to leave Serbia. Besides, the implementation of the aforementioned decision was halted in the first half of 2016, and the authorities continued with the practice of issuing certificates of having expressed the intention to seek asylum to people who did not want to seek protection in Serbia.

47 BCHR, *Right to Asylum in the Republic of Serbia 2017*, forthcoming.

48 In September 2015, Hungary established a fence along its border with Serbia, criminalised damaging it, introduced an accelerated asylum procedure in the detention centres Tompa and Röszke which is based on the automatic application of a safe third country concept in relation to Serbia, etc. Nonetheless, the Belgrade Centre and other NGOs operating in the border areas with Croatia and Hungary received dozens of complaints related to pushback and ill-treatment that had preceded it at the hands of Hungarian and Croatian border police. See more at: AIDA Country Report Hungary: 2016 Update, February 2017, available at: http://bit.ly/2k3zGE9.

to the asylum procedure. The request was granted on 17 October 2017 and is currently pending before the ECtHR.[49]

2.2. Registration of the asylum seeker and submission of application

Foreigners who are issued with certificates of having expressed the intention to seek asylum in Serbia are obliged to report to their assigned asylum centre within 72 hours of receiving the certificate; alternatively, they may contact the Asylum Office to ask for consent to reside at a private place of residence.[50]

The Asylum Office registers asylum seekers once they are admitted to an asylum centre or receive approval to reside at a private address. Registration entails establishing the asylum seeker's identity, taking his or her photo and fingerprints and seizing all relevant personal identity documents; the foreigners are issued receipts for the seized documents, which are held for the duration of the asylum procedure and are to be returned regardless of its outcome.[51] Asylum seekers possessing such documents are obliged to relinquish them by the time of their hearing at the latest.[52] Although there is no specific deadline for an asylum seeker to be registered, it should be done as soon as possible, in line with the principles of legal certainty and efficiency.[53]

In 2017, the Asylum Office only registered 240 asylum seekers.

Registered asylum seekers are issued a personal identity document confirming their status, which is valid for 6 months and is to be extended until the end of the asylum procedure.[54] Although the Asylum Act does not specify the deadline by which the asylum seekers are to be issued these documents, the wording of the relevant provision of this law leads to the conclusion that they are to be issued immediately upon registration. In practice, however, asylum seekers are forced to wait a long time in order to receive them. This is problematic given the fact that, in spite of having the right to freedom of movement, they are at risk of getting into trouble with the authorities should they be required to provide proof of their identity.[55] The Asylum Office issued a mere 217 personal identity documents in 2017, which indicates that many registered asylum seekers were not provided with one.

The General Administrative Procedure Act, which acts as *lex generalis* to the Asylum Act, states that an administrative procedure may be initiated *ex officio* or at the motion of a party.[56] The Asylum Act foresees that the asylum procedure shall be initiated by submitting an asylum application to an authorised officer of the Asylum Office on a prescribed form, within 15 days of registration.[57]

It should be noted that, in spite of the fact that the Asylum Act foresees the above-mentioned deadline for submitting an asylum application, doing so in practice depends entirely on Asylum Office staff, considering the fact that the application must be submitted in their presence, meaning that the asylum procedure is *de facto* initiated *ex officio*.

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49 ECtHR, *M.H. v. Serbia,* Application No 62410/17.
50 Articles 22 and 39 Asylum Act.
51 Article 24(2) Asylum Act.
52 Article 24(3) Asylum Act.
53 Starting in September 2014, the Asylum Unit (the predecessor of the Asylum Office) introduced the practice of registering asylum seekers at the time they submit their asylum applications, which is not in line with the spirit of the law or the Ombudsman's recommendation that they be registered upon being admitted to a centre.
54 Article 7 Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection, Official Gazette of the Republic of Serbia, no. 53/2008.
55 Information obtained by providing legal aid to asylum seekers in Serbia.
56 Article 113 General Administrative Procedure Act.
57 Article 25 Asylum Act.

The submission of the asylum application involves the Asylum Office representative asking the asylum seeker questions related to their country of origin, the grounds for seeking asylum, the manner in which they reached Serbia, and others, as foreseen by the application form.

The Asylum Office received only 236 asylum applications in 2017.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2017: Not available

Following the hearing of an asylum seeker, the Asylum Office shall render a decision on the asylum application, either upholding the application and recognising the asylum seeker's right to refuge or subsidiary protection or rejecting the application in the event it finds that the application is ill-founded or that there are reasons for denying the right to asylum.[58] The Asylum Office is also entitled to dismiss an asylum application without ruling on its merits.[59]

The Asylum Act does not specify the deadline within which the Asylum Office is to rule on an asylum application, but Article 208(2) of the General Administrative Procedure Act sets a general 60-day deadline for decisions on administrative matters. This is apparently insufficient for ruling on asylum applications because it often takes the Asylum Office far longer to issue a ruling concerning an asylum application.[60] No official data exists concerning the average length of the asylum procedure in practice. However, the extreme lack of capacity of the Asylum Office in 2017 has led to a situation where the first-instance procedure lasts between 6 months and 1 year on average.[61]

The Asylum Act does not specify the burden of proof required for being granted asylum, nor does it foresee that the Asylum Office should render a decision in favour of the asylum seeker in case of doubt, provided that their account is coherent and plausible.[62]

The Asylum Office shall reject asylum applications based on false grounds or data, as well as forged identity papers or other documents, unless the asylum seeker presents justified reasons for having provided them. The Asylum Office shall also reject asylum applications in the event that the asylum seeker's allegations are incoherent or in contravention of other evidence presented during the procedure; in the event that it is established during the procedure that the asylum applications were

58 Articles 28-29 Asylum Act.
59 Article 33 Asylum Act.
60 The Asylum Office clearly lacks human resources. During 2016, 11 asylum officers were conducting the asylum procedure. However, in the second part of 2016, two asylum officers left the Asylum Office; two of them went on maternity leave, while in October 2016 four asylum officers were sent to two months of police training. In other words, during November and December 2016, only three asylum officers were conducting official activities.
61 For example, the asylum seeker in Case 26-77/17 expressed an intention to seek asylum on 6 December 2016, submitted an asylum application 24 January 2017 while the decision to grant him refugee status was delivered on 7 August 2017; the asylum seeker in Case 26-78/17 expressed an intention to seek asylum on 6 December 2016, submitted an asylum application on 24 January 2017, while the decision to grant him refugee status was delivered on 12 January 2018.
62 As advised by UNHCR, *International standards relating to refugee law: Checklist to review draft legislation*, March 2009, 19.

submitted merely to postpone deportation; or in the event that the asylum seekers came to Serbia for purely economic reasons.[63]

In 2016 and 2017, the Asylum Office rendered the following decisions:

First instance decisions by the Asylum Office: 2016-2017		
Type of decision	2016	2017
Grant of asylum	42	14
Rejection on the merits	17	11
Dismissal as inadmissible	65	56
Discontinuation	268	158
Total	**380**	**239**

Protection was granted to citizens of the following countries in 2017:

Countries of origin of those granted refugee status/subsidiary protection in 2017		
Country	Number of citizens granted **refugee status**	Number of citizens granted **subsidiary protection**
Afghanistan	1	0
Burundi	1	0
Syria	1	0
Libya	0	9
Ukraine	0	1
Nigeria	0	1

Source: Asylum Office

It can be concluded from the above that the vast majority of asylum seekers abandon the asylum procedure before a first-instance decision is rendered (158). On the other hand, if we analyse procedures where the Asylum Office has actually issued a decision on the asylum application, we can conclude that 69% of all cases (56 persons) involve the Asylum Office dismissing the application because it had found that procedural requirements for ruling on the merits of a claim had not been met.[64]

In 31% of the cases (25 persons and 17 decisions), the Asylum Office did decide on the merits. Of those cases, 56% ended in a positive decision (6 decisions/14 persons), while the application was rejected in 44% of cases. If we analyse nationalities of the asylum seekers whose asylum applications had been rejected, it can be concluded that in 7 cases we could suggest that persons possibly presented protection needs (3 Somalia, 2 Afghanistan, Ukraine 1 and 1 Iraq).

With respect to decisions that could be considered significant in 2017, it is worth mentioning that the Asylum Office granted subsidiary protection to a 9-member Libyan family, even though their asylum request was rejected on several occasions.[65] On the other hand, the ECtHR case of *A. and others v. Serbia* has been communicated to the Serbian Government in December 2017 and is expected to be decided in 2018.[66] The request for an interim measure that was granted in July 2016 is still in force.

63 Article 30 Asylum Act.

64 In 95% of cases, the asylum application was dismised on the basis of Article 33(1)(6) Asylum Act – safe third country concept in relation to FYROM and Bulgaria. See Safe Third Country.

65 Asylum Office, Decision no. 26-5489/15.

66 ECtHR, *A. and others v. Serbia*, Application No 37478/16.

1.2. Prioritised examination and fast-track processing

No caseloads are prioritised as a matter of law or practice.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The Asylum Office is obliged to schedule a hearing of the asylum seeker *in casu* following the submission of an application and within the two-month deadline. The hearing is to be held in the presence of the asylum-seeker's legal representatives (unless they choose otherwise) and an interpreter for a language they understand; a UNHCR representative may also be present.

The Asylum Act requires the official conducting the hearing to establish all of the relevant facts necessary for ruling on an asylum application, in particular: the identity of the asylum seeker; the grounds on which their asylum application is based; their movement after leaving the country of origin; and whether they have previously sought asylum in any other country.[67]

At the end of the hearing, the records are signed by the asylum seeker, their legal representative, the interpreters and the official leading the interview. The asylum seekers' legal representatives are entitled to ask additional questions to ensure comprehensive establishment of the facts of the case.

More than one hearing may be held concerning an individual asylum seeker, but this happens rarely in practice due to the general desire of the Asylum Office to establish all of the relevant facts in a single interview. This usually leads to hearings lasting for many hours without a single break.

The Asylum Office conducted 106 interviews in 2017. In practice, asylum seekers often wait from several weeks to up to a month following the submission of their application for a hearing to be scheduled.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☐ Judicial ☒ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
2. Average processing time for the appeal body to make a decision: 2-4 months

1.4.1. Appeal before the Asylum Commission

Appeals against Asylum Office decisions are reviewed by the Asylum Commission, a body comprising nine members appointed to four-year terms in office by the Government.[68] The Asylum Act does not lay

67 Article 26(4) Asylum Act.
68 Article 20 Asylum Act.

down precise criteria for the appointment of the Commission members and only requires that they are versed in human rights regulations.[69]

Should the Asylum Office fail to rule on an application within two months of its submission, the asylum seeker may appeal against administrative silence to the Asylum Commission.[70] The appeal, however, is not an entirely effective legal remedy given that the Asylum Commission merely orders the Asylum Office to render its ruling within an additional 30-day deadline.

The Asylum Act does not regulate the appeals procedure and the General Administrative Procedure Act applies in a subsidiary manner to the second-instance procedure. Appeals of first-instance decisions are submitted to the Asylum Commission within 15 days of the day of serving of the first-instance decision to the parties or their legal representatives.[71] The Commission renders its decisions by a majority of votes.

Under Article 221(1) of the General Administrative Procedure Act, appeals against administrative decisions shall be of a suspensive nature. Appeals are submitted to the first-instance authority, which examines whether the procedural prerequisites for their review by the second-instance authority have been fulfilled. When the first-instance authority receives the appeal, it may render a different decision on the matter and substitute the impugned ruling with a new one, should it find the appeal well-founded and that it is unnecessary to conduct the procedure again. Should the Asylum Office find that the procedure it had implemented was incomplete, it may perform the requisite supplementary actions and render a new decision, which is also subject to appeals by the asylum applicant. In the event it does not reject the appeal, the Asylum Commission may itself decide on the administrative matter. It may also set aside the impugned ruling and order the first-instance authority to re-examine the matter, when it finds that the shortcomings of the first-instance procedure will be eliminated more rapidly and economically by the Asylum Office.[72]

The Asylum Act does not specify the duration of the second-instance procedure. Under the Administrative Disputes Act, a claim may be filed with the Administrative Court in the event the Asylum Commission fails to render a decision on the appeal within 60 days of the day of its receipt, upon the expiry of 8 days from the day a reminder was sent to the second-instance authority.[73] In other words, the time limit for the second-instance decision is 2 months after the appeal was lodged. In practice, however, it takes at least 3 months for the Asylum Commission to render and deliver the second-instance decision, although, in the case that the Asylum Commission fails to decide on the appeal within 2 months, it is possible to lodge an appeal against administrative silence with the Administrative Court.

Since the establishment of the Asylum Commission in 2008, this body has decided on the merits in just a single case. For this reason, an appeal to the Commission only prolongs the asylum procedure since, in the vast majority of cases, the first-instance decision is annulled and returned to the Asylum Office. The same practice is present in case of an appeal lodged against administrative silence, when the Asylum Commission, after adopting the appeal, orders the first-instance body to render the decision within the time limit of one month, which further prolongs the procedure.

In September 2016, the mandate of Asylum Commission members expired, and it took more than 7 months for new members to be elected. BCHR requested that the Government deliver biographies of newly elected members. However, to this date the response has not been delivered.

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69 Such lax provisions have led, for example, to the appointment of the Director of the General Affairs Department of the telecommunications company *Telekom* to the Commission, in spite of the fact that he had never previously worked in the human rights field.

70 Article 236 General Administrative Procedure Act.

71 Article 35 Asylum Act.

72 Article 232 General Administrative Procedure Act.

73 Article 19 Administrative Disputes Act, Official Gazette of the Republic of Serbia, no. 111/2009.

In 2017, 96 appeals were lodged before the Asylum Commission. In the same period, the Asylum Commission rendered 97 decisions: 56 decisions rejecting the appeal and 41 decisions upholding it and returning the case to the first-instance body. The Asylum Commission did not decide on the merits, and it mainly enforced the practice of an automatic application of the safe third country concept. Thus, it can be concluded that appeal to the Asylum Commission cannot be considered as an efficient legal remedy and that success of asylum application is possible only in the first instance proceeding.

1.4.2. Onward appeal before the Administrative Court

Asylum seekers may initiate an administrative dispute before the Administrative Court in order to challenge the final decisions of the Asylum Commission, or in case it fails to render a decision on the appeal within the legal deadline.[74]

The Administrative Court does not have a department or panel specialised in reviewing asylum cases and it rules on the lawfulness of a final administrative act in three-member judicial panels.

The lawfulness of an administrative act may be challenged by a claim in an administrative dispute:

- In the event it was adopted by an authority lacking jurisdiction;
- At the authority's discretion, in the event the authority had exceeded its legal powers or the decision had not been adopted in accordance with the goal it had been granted specific powers;
- In the event the law or another general act had not been enforced properly;
- In the event the procedural rules have been violated during the procedure;
- In the event the facts were established in a manner that was incomplete or inaccurate, or an incorrect conclusion was drawn from the facts.

The initiation of an administrative dispute does not *ipso facto* suspend the enforcement of the impugned administrative act.[75] The Administrative Court may, however, stay the enforcement of a final administrative act on the motion of the claimant, until it rules on the administrative dispute in the event such enforcement would cause the claimant damage difficult to reverse and the stay is not in contravention of public interests and would not cause major or irreparable damage to the opposing party, i.e. interested party.[76] Exceptionally, the stayed enforcement of the enactment may be sought in an emergency, i.e. when an appeal without suspensive effect under the law has been lodged and the appeals procedure has not been completed. In such cases, the Administrative Court rules on the motions to stay enforcement within 5 days from the day they are filed.

In practice, the Administrative Court has not itself held any hearings on asylum claims to date. Its decisions so far have merely confirmed the lawfulness of the asylum authorities' practice of automatically applying the concept of safe third country in spite of the fact that it had not first been established that the third countries were actually safe for the asylum seekers *in casu*. Also, to this date, the Administrative Court has never decided on a complaint on the merits.

Usually, it takes approximately around three to four months for the Administrative Court to deliver its judgment.[77]

During 2017, a total of 30 complaints were lodged to the Administrative Court, while 11 more were pending from 2016. In the same period, this body decided on 41 complaints: 19 decisions rejecting the complaint, 2 decision dismissing it and 6 upholding it. A total of 14 proceedings are still pending.

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74 Article 15 General Administrative Procedure Act.
75 Article 23 Administrative Disputes Act.
76 Article 23 General Administrative Procedure Act.
77 For example, Case U 13012/17 lasted 3 months, U 9776/17 lasted 4 months and U 12432/17 lasted 4 months.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☐ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover ☐ Representation in courts
     ☐ Legal advice

The state does not provide free legal aid to asylum seekers in Serbia for the purposes of the asylum procedure. However, the right to free legal aid is guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.[78]

The Act further provides that an asylum seeker shall have access to free legal aid and representation by UNHCR and NGOs whose objectives and activities are aimed at providing free legal aid to refugees. In practice, the vast majority of persons who submit an asylum application in Serbia use the services of NGO lawyers.

2. Dublin

Serbia does not participate in the Dublin system.

3. Admissibility procedure

There is no admissibility procedure in Serbia. However, the Asylum Office may dismiss an application without examining the merits when the asylum seeker is deemed to come from a safe third country or a safe country of origin (see section on Safe Country Concepts).

4. Border procedure (border and transit zones)

There is no border procedure in Serbia.

5. Accelerated procedure

There is no accelerated procedure in Serbia.

78 Article 10 Asylum Act.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No
   - ❖ If for certain categories, specify which:

2. Does the law provide for an identification mechanism for unaccompanied children? ☐ Yes ☒ No

1.1. Screening of vulnerability

The Asylum Act does not envisage any specific identification mechanism to systematically identify asylum seekers who need specific procedural guarantees (except unaccompanied children) because of their vulnerability at the beginning of or during the asylum procedure.

1.2. Age assessment of unaccompanied children

Serbia considers as an unaccompanied minor "a foreigner who has not yet reached eighteen years of age and who, at the time of entry into the Republic of Serbia or upon having entered it, is not accompanied by their parents or guardians."[79]

The identification of unaccompanied minors is usually done on the spot by officials (most often police officers) establishing first contact with potential asylum seekers. There is no proper or developed method for ascertaining the asylum seekers' age, meaning that the asylum seeker's word and the official's personal observations are the only criteria for identifying minors in the greatest number of cases.

In spite of criticism levelled at national authorities by civil society throughout 2017, neither the age assessment mechanisms, nor the legal representation procedure for underage migrants have changed in Serbia. The identification of unaccompanied minors continues to be done on the spot by officials (most often police officers) establishing first contact with potential asylum seekers. There is no proper or developed method for ascertaining the asylum seekers' age, meaning that the asylum seeker's word and the official's personal observations are the only criteria for identifying minors in the greatest number of cases. An additional problem the authorities face in identifying unaccompanied minors lies in the fact that minors often travel in groups together with adults, making it difficult for the police to ascertain whether or not they are travelling together with their parents or legal guardians.

Over the course of 2017, the authorities of Serbia recognised a total of 156 asylum seekers as unaccompanied children out of a total of 2,630 underage asylum seekers. However, bearing in mind the above-mentioned challenges in identifying unaccompanied children, their real number is likely far greater. It is also crucial to bear in mind that the authorities only maintain, or have only made available, records of such unaccompanied child foreigners as have expressed the intention to seek asylum. The number of children regarded by the authorities as irregular migrants is therefore unknown.

79 Article 2 Asylum Act.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☐ Yes ☐ For certain categories ☒ No

Neither the Asylum Office nor the Asylum Commission officially have specialised subdivisions to deal with the asylum claims of vulnerable applicants. Informal divisions of labour to handle such cases may exist within the Asylum Office, but such information is not shared with civil society.

The Asylum Act foresees that care be taken during the asylum procedure of asylum seekers with specific needs, including minors, persons lacking or having limited legal capacity, children separated from their parents or guardians, persons with disabilities, the elderly, pregnant women, single parents with underage children and persons who had been subjected to torture, rape or other forms of grave psychological, physical or sexual violence.[80] However, this has rarely been adhered to in practice, with the authorities demonstrating little flexibility in prioritising or otherwise facilitating the asylum procedure of persons with special needs.[81]

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☐ Yes ☒ No

Medical reports may be used in order to substantiate asylum claims; this is prescribed by the General Administrative Procedure Act.[82]

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

All unaccompanied children must immediately be appointed a legal guardian by the local social welfare centre, and the guardian must be present during the hearing.[83] However, it is questionable whether this actually occurs in practice, considering that the legal guardian usually merely assumes care for the minor in a formal way, sometimes without ever even meeting the child. The child is then put in a minors' centre under provisional care.

For unaccompanied children recognised as persons wishing to express the intention to seek asylum, this must be done with the mediation of their legal guardian. Since the end of 2015, minors' centres have accepted to accommodate unaccompanied asylum-seeking children, thereby significantly improving their position considering how the group had previously been housed at asylum centres together with adults who had no relation to them.

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80 Article 15 Asylum Act.

81 A chillingly illustrative example of such failure to adapt on the part of national authorities is the case of an asylum seeker represented by the Belgrade Centre for Human Rights who was hospitalised after having sustained severe injuries in a car accident in February 2015 and was subsequently rendered permanently immobile and almost completely incapable of speech. As of February 2016, the Asylum Office still has not taken this person's asylum application, citing the necessity of engaging in 'official conduct' requiring verbal communication, thus leaving the asylum seeker in a state of permanent legal limbo.

82 Article 154 General Administrative Procedure Act. It should be borne in mind that, should the authorities doubt the veracity of such documents, expert witnesses may be summoned in order to examine said veracity.

83 Article 16 Asylum Act.

Particular challenges have been encountered in practice when the legal guardian does not fulfil his or her duties with an adequate sense of professional ethics and responsibility, which has at times led to irreparable harm to the interests of unaccompanied asylum-seeking children in Serbia.[84]

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☐ Yes ☒ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☒ Yes ☐ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☒ Yes ☐ No

The Asylum Act provides that a foreigner whose asylum application had previously been refused 'may file a new application if he or she provides evidence that the circumstances relevant for the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime.'[85]

However, the concept of subsequent application remains untested in practice so far.

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national legislation allow for the use of "safe country of origin" concept? ☒ Yes ☐ No
   - ❖ Is there a national list of safe countries of origin? ☒ Yes ☐ No
   - ❖ Is the safe country of origin concept used in practice? ☒ Yes ☐ No

2. Does national legislation allow for the use of "safe third country" concept? ☒ Yes ☐ No
   - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No

3. Does national legislation allow for the use of "first country of asylum" concept? ☐ Yes ☒ No

The concepts of safe country of origin and safe third country are foreseen by the Asylum Act. The application of either concept may lead to the asylum application being rejected by the Asylum Office, although the asylum seeker may be able to prove that the country in question is not safe in his or her individual case.[86] A list of safe countries of origin and safe third countries was established by Governmental Decree in 2009 and has not been revised since.[87]

1. Safe country of origin

Under Serbian law, a safe country of origin "shall be understood to mean a country from a list established by the Government whose national an asylum seeker is, and if the person concerned is stateless, a country where that person had previous habitual residence, which has ratified and applies international treaties on human rights and fundamental freedoms, where there is no danger of persecution for any reason which constitutes grounds for the recognition of the right to refuge or for

84 In a case from early 2016, an unaccompanied child from Bangladesh was not allowed to enter the asylum procedure and was readmitted to Bulgaria in spite of wishing to express the intention to seek asylum in Serbia, mainly as a result of the legal guardian's incompetence and unwillingness to enter into a 'conflict' with the police by asking for asylum in the name of his ward.

85 Article 32 Asylum Act.

86 Articles 33(1)(4) and (6) Asylum Act.

87 Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, no. 67/2009.

granting subsidiary protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights."[88]

The following are considered safe countries of origin by the decree: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Norway, Iceland, Liechtenstein, Switzerland, Monaco, Russia, Belarus, Australia, New Zealand, Japan, Canada, the United States of America, Argentina, Paraguay, Uruguay, Chile, Costa Rica, Mexico, the Seychelles, Mauritius, Kenya, Tunisia and Turkey.

2. Safe third country

2.1. Safety criteria

A safe third country "shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees... where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhumane or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened."[89]

Serbia considers the following as being safe third countries: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Norway, Iceland, Liechtenstein, Switzerland, Monaco, Australia, New Zealand, Japan, Canada, the United States of America and Turkey.

The often automatic application of the safe third country principle by the Asylum Office has been extremely problematic for the functioning of the asylum system of Serbia, especially due to the fact that all bordering countries are considered safe third countries, except for Albania. Countries such as Turkey, Greece and the FYROM are considered "safe" merely due to the fact that they are parties to the 1951 Geneva Convention (the fact that Turkey has opted to apply geographic limitations to its implementation of the Convention likewise is not taken into consideration) and the list has never been revised in light of well-known case law such as the ECtHR' judgment in *M.S.S. v. Belgium and Greece.* This has led to many asylum applications being dismissed over the years without the Asylum Office ever having entered into the merits of the claim.

The automatic application of the safe third country concept is as problematic in the Asylum Commission's practice as it is in that of the Asylum Office. The Asylum Commission is of the opinion that Turkey, Greece and FYROM are safe third countries in which asylum seekers can apply for asylum, disregarding entirely reports by UNHCR and other relevant international human rights organisations such as Human Rights Watch and Amnesty International, as well as the relevant practice of the ECtHR, the Committee against Torture, etc.[90]

The manner in which the safe third country concept has been applied in Serbia has been criticised by a number of local and international stakeholders, including UNHCR,[91] CAT,[92] the UN Human Rights

88 Article 2 Asylum Act.
89 Article 2 Asylum Act.
90 See, e.g. BCHR, *Right to Asylum in the Republic of Serbia 2014*, 2015, available at: http://bit.ly/2o1THxN 33-37; BCHR, *Right to Asylum in the Republic of Serbia 2016*, 2017, forthcoming.
91 UNHCR, *Serbia as a country of asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, 12.

Committee[93] and CERD.[94] Although the practice of the Asylum Office improved in this regard during 2015 and 2016, in 2017 the rate of decision on dismissal of asylum application on the basis of the safe third country concept increased again.

2.2. Connection criteria

Although neither the law itself, nor individual by-laws provide for a more precise interpretation of the manner in which the safe third country principle is to be applied by the authorities, the approach of asylum bodies has generally been to require no greater link between the applicant and a safe third country other than the fact that they had transited through it prior to arriving in Serbia.

The notion of "reasonableness" is neither a requirement set by national law nor has it ever been applied in practice. Asylum seekers whose applications have been deemed inadmissible on the basis of the safe third country concept are generally left to their own devices and rarely actually subjected to a formal forced returns procedure.

The practice of automatic application of the safe third country concept has resulted in a situation wherein only 8 persons were granted international protection in the first 5 years of the Serbian asylum system (2008 – 2012). All of these individuals had arrived in Serbia legally and directly from their country of origin, or from a country which has not ratified the 1951 Convention; or they were *sur place* refugees. According to UNHCR, from 2008 to 2010 all asylum requests were dismissed on the basis of Article 33(1)(6) of the Asylum Act.[95] This practice has continued in the following years:

Dismissal of asylum applications on inadmissibility grounds: 2010-2017								
	2010	2011	2012	2013	2014	2015	2016	2017
Dismissal decisions	47	53	64	8	12	25	53	56
Total decisions, excluding technical	48	55	67	17	18	58	98	81
Percentage	97.9%	96.3%	95.5%	47%	66.6%	43.1%	54.1%	69%

The situation deteriorated in The practice deteriorated in 2017, and the number of dismissed cases increased:

Applications dismissed under Article 33(1)(6) Asylum Act by nationality: 2017	
Country	2017
Afghanistan	16
Iraq	9
Russia	4
Pakistan	4
Cuba	3
Iran	2
Syria	2
FYROM	2
Stateless	2

92 UN Committee Against Torture, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para 15.

93 UN Human Rights Committee, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, paras 32-33.

94 CERD, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 3 January 2018, CERD/C/SRB/CO/2-5, paras 26-27.

95 UNHCR, *Serbia as Country of Asylum*, August 2012, para 36.

USA	1
China	1
Bulgaria	1
Croatia	1
Mexico	1
Turkey	1
Guinea	1
Ghana	1
Cameroon	1
Total	**56**

In fact, only two persons who had entered from so-called "safe third countries" (one Afghan and one Nigerian) were granted asylum; they entered from Bulgaria and FYROM. The decision relating to an Afghan national represents an example of good practice since this was the first decision of the Asylum Office where it enlisted the reasons why Bulgaria could not be considered a safe third country.[96] Regarding the other case, the determining factor for deciding the case on its merits was the highly vulnerable position of an asylum seeker who was paraplegic.

Actually, out of 101 people who gave been granted international protection in Serbia since 1 April 2008, 71 (69.3% %) of them arrived in Serbia directly from their country of origin or a third country which had not ratified the 1951 Convention on Status of Refugees, or they arrived from Turkey[97] which is not considered as safe by Asylum Office. As for the remaining 30 (31%), 8 arrived from FYROM,[98] 3 from Bulgaria,[99] whereas 5 refugees from Afghanistan did not know which country they had entered Serbia from, so the Asylum Office decided on the merits of their application. Regarding the remaining 14 refugees,[100] as the Belgrade Centre did not represent them in the procedure, the country from which they had entered Serbia is not known.

In October 2016, the Belgrade Centre submitted a request for interim measures to be indicated in line with Rule 39 of the Rules of Court of the ECtHR in order to prevent the expulsion to FYROM of a Sudanese national whose asylum application had been rejected.[101] The same scenario occurred in October 2017 when the ECtHR granted a request for an interim measure in order to prevent the expulsion to FYROM of a Syrian national.[102] Both cases are still pending before the ECtHR.

The outlined practices of the Asylum Office and Commission corroborate that UNHCR's conclusion in its 2012 'Serbia as a Country of Asylum' report still remains valid. The UNHCR report describes Serbia as a country which is not safe for asylum seekers, *inter alia,* due to the automatic application of the safe third country concept. In particular, UNHCR recommended that Serbia put in place appropriate mechanisms for the designation and review of safe third countries and apply the safe third country concept only when adequate safeguards were in place for every individual, such as ensuring that they would be readmitted to the territory of the safe third country and have their asylum claim examined in a fair and efficient procedure. In the Belgrade Centre's opinion, these UNHCR recommendations have not yet been fulfilled.[103]

96 Asylum Office, Decision no. 26-77/17, 1 August 2017.
97 The Asylum Office has established through its practice that Turkey cannot be considered to be a safe third country, see Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2015*, 2016, 24 and 54.
98 5 Sudanese, 1 Syrian, 1 Nigerian and 1 Iranian.
99 2 Afghan and 1 Iraqi.
100 10 Syrians, 2 Iraqis and 2 Somalis.
101 ECtHR, *Kandafru v. Serbia*, Application No 57188/16.
102 ECtHR, *M.H. v Serbia*, Application No 62410/17.
103 See the Belgrade Centre for Human Rights, *Right to asylum in the Republic of Serbia – periodic report for July – September 2016*, October 2016, available at: http://bit.ly/2jtTtw8, 15-20.

3. First country of asylum

Article 31(1)(2) of the Asylum Act foresees that the asylum seeker's application will be deemed inadmissible should they already have been granted asylum in another country. No additional criteria are laid out by national law, nor have any ever been applied in practice by the authorities.

G. Relocation

Serbia does not participate in the relocation scheme.

H. Information for asylum seekers and access to NGOs and UNHCR

Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No
   - ❖ Is tailored information provided to unaccompanied children? ☒ Yes ☐ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
4. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

The right to free legal aid is guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.[104]

As a matter of practice, authorities generally fail to provide adequate information concerning the nature of the asylum procedure and the rights and obligations of asylum seekers present either in asylum centres or elsewhere. Interpreters are only occasionally available in asylum centres, making meaningful communication between asylum seekers and centre staff difficult.

Interpretation is regularly available for persons submitting an asylum application or present in a hearing, with no known problems concerning specific languages. However, it should be borne in mind that interpretation services are paid for by UNHCR, with individual interpreters available from a list compiled by the agency.

Legal information is provided by NGOs providing free legal aid to asylum seekers in Serbia. Such NGOs generally have access to interpreters, with leaflets provided in several languages usually spoken by asylum seekers.

[104] Article 10 Asylum Act.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:

2. Are applications from specific nationalities considered manifestly unfounded?[105] ☒ Yes ☐ No
   - ❖ If yes, specify which: EEA countries, USA, Australia, New Zealand, Canada, Japan, Bosnia-Herzegovina, FYROM, Montenegro, Russia, Belarus, Argentina, Paraguay, Uruguay, Mexico, Costa Rica, Chile, Mauritius, Seychelles, Kenya, Tunisia, Turkey

There is no *a priori* difference in the treatment of asylum seekers based on their nationality in terms of the asylum procedure, nor does Serbia have an accelerated asylum procedure in order to differentiate the processing of claims in such a manner. Since the entry into force of the Asylum Act in 2008, 101 persons were granted asylum: Libya (32), Syria (17), Ukraine (15), Iraq (6), Afghanistan (7), Sudan (5), Cuba (4), Somalia (3), Ethiopia (3), Cameroon (2), Turkey (2), Lebanon (1), Egypt (1), South Sudan (1), Tunisia (1), Kazakhstan (1), Iran (1), Burundi (1), Nigeria (1). This data is indicating that the Asylum Office was more likely to recognise as persons fulfilling the criteria for receiving asylum in Serbia asylum seekers from **Syria**, **Libya** and **Ukraine** than other nationalities, as well as to recognise them as refugees rather than beneficiaries of subsidiary protection.

[105] Whether under the "safe country of origin" concept or otherwise.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☒ Yes	☐ Reduced material conditions	☐ No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

❖ Accommodation	☐ Yes	☒ No
❖ Social assistance and emergency aid	☒ Yes	☐ No

The Commissariat for Refugees and Migrations of Serbia is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.[106]

Persons seeking asylum in Serbia have a right to accommodation at an asylum centre.[107]

Asylum seekers have the right to stay at a private residence if they can afford to do so. However, they are obliged to notify the Asylum Office and obtain permission beforehand or they will be considered to have absconded from the asylum procedure. Persons issued a certificate of having expressed the intention to seek asylum in Serbia are expected to present themselves at the centre indicated via a central mechanism between the Ministry of the Interior and the Commissariat for Refugees and Migrations so as to be registered and submit an asylum application, but consistent practice so far has shown that persons interested in finding their own accommodation need only notify the Asylum Office of their address within the 72-hour deadline foreseen by the certificate in order for this requirement to have been fulfilled. Should this be the case, the Asylum Office will usually schedule the registration, submission of an asylum application and hearing in that individual's case in the local police station.

In late 2016, the Ministry of Interior requested that civil society representatives working with asylum seekers and refugees direct persons likely in need of international protection to express the intention to seek asylum and be accommodated in asylum centres. This request was issued as a consequence of more than 1,000 asylum seekers staying on the streets of Belgrade in degrading conditions. However, since the number of asylum seekers significantly decreased in 2017, more than 90% were accommodated in asylum or reception centres, while only those who have been trying to cross to Croatia and Hungary irregularly were staying in improvised shelters in the border areas.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2017 (in original currency and in €): 8,168 RSD / 69 €

Persons seeking asylum and housed at an asylum centre do not have the right to access social welfare. This remains a possibility for persons staying at private accommodation, however the monthly amount received from social welfare is very limited and generally insufficient in order to maintain a dignified existence.[108]

106 Article 21 Asylum Act; Chapters II and III Migration Management Act.
107 Article 21 Asylum Act.
108 This amounts to a gross monthly amount of 8,168 RSD / 69 € per household member: information on social welfare is available at the website of the Ministry of Labour, Employment, Veteran and Social Issues at: http://bit.ly/214v6TV.

Asylum seekers residing at asylum centres receive accommodation, food and free health care. Other benefits are generally not provided. However, seeing as how asylum seekers are generally equal in accessing national health care as Serbian nationals, persons with special medical requirements may be accommodated at other institutions such as hospitals or spas free of charge.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? ☐ Yes ☒ No
2. Does the legislation provide for the possibility to withdraw material reception conditions? ☐ Yes ☒ No

The Asylum Act guarantees unconditionally the right to accommodation at an asylum centre, with the only requirement that the asylum seeker support his or her own residence at such facilities, provided that he or she possesses sufficient financial capacity.[109] In practice, however, this is never required.

'Withdrawal' of reception conditions may only come to pass concerning asylum seekers placed under detention at the Shelter for Foreigners,[110] should the conditions foreseen by Article 51 of the Asylum Act arise. However, care for persons thus deprived of liberty is likewise fully an obligation of the state.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

When opening asylum centres, the Commissariat for Refugees and Migrations must act in line with the principles of prohibition of artificial changing of the national composition of local demographics,[111] and equal and planned economic development by managing migration,[112] both foreseen by the Migration Management Act. This is also the case for providing accommodation for persons granted asylum in Serbia.

However, the asylum centres of Serbia are open and resident asylum seekers are free to come and go as they please but are expected to be present for the daily rollcall. Otherwise, they risk losing the right to stay at an asylum centre and may even be considered as having absconded from the asylum procedure.

Article 52 of the Asylum Act foresees the possibility of imposing measures restricting freedom of movement in such a manner that the asylum seeker may not leave the centre. However, as far as civil society is aware, this has never been done in practice. Freedom of movement may be lawfully restricted for up to 3 months, with the possibility of extension for another 3 months if the detention is imposed as a result of the necessity of ensuring the asylum seeker's presence for the asylum procedure or for ensuring the security of the state and public order.[113]

109 Article 39 Asylum Act.
110 Article 52 Asylum Act.
111 Article 4 Migration Management Act.
112 Article 5 Migration Management Act.
113 Article 51 Asylum Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of asylum centres:[114] 5
2. Total number of places in the asylum centres: 1,700
3. Total number of places in private accommodation: Not available

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Persons entering the asylum procedure in Serbia are usually accommodated at one of the 5 asylum centres spread out across the country, but those asylum seekers who can afford to stay at a private residence may do so, should they so desire. These "asylum centres" should not be confused with the temporary reception centres that had been set up by the Government throughout 2015 in response to the mass influx of refugees and migrants transiting through Serbia, seeing as how these are not foreseen for the housing of persons seeking asylum in Serbia.

The major issue in 2017 was a lack of profiling and differentiation between those persons with a genuine interest in applying for asylum in Serbia, and those who simply want to be accommodated in one of the centres and apply for the list to enter Hungary. In fact, asylum seekers have been referred to camps based on available capacity, and not on the basis of the assessment of their genuine wish to remain in Serbia. This practice has caused a situation in which genuine asylum seekers have been referred to reception centres where asylum procedure is rarely or (in some reception centres) never conducted, and *vice versa*.

1.1. Asylum centres

There were 5 active asylum centres in Serbia in 2017:

Asylum centre	Capacity
Banja Koviljača	120
Bogovađa	280
Tutin	150
Sjenica	400
Krnjača	750
Total	**1,700**

Only the asylum centre in **Banja Koviljača** is formally speaking a permanent centre; the other centres are 'temporary' locations for the housing of asylum seekers. The overall reception capacity at the asylum centres according to the Commissariat is 1,700. However, the capacity of asylum centres is estimated only by the number of available beds, rather than their overall facilities, including toilets, bathrooms and kitchens. All of the enumerated asylum centres are overcrowded, with a lack of privacy and poor hygienic conditions.

Asylum centres are open and accommodated asylum seekers have the right to leave the centre, although the obligation remains to be present for the daily roll call every evening in order for the centre's authorities to ascertain that the person in question is still present. However, considering how asylum seekers are required to surrender all personal identity documents to the police by the time of the hearing at the latest,[115] a potential issue remains in that, bearing in mind that the Asylum Office usually does not issue identity cards for asylum seekers in a timely fashion, they may have trouble with the

114 Both permanent and for first arrivals.
115 Article 24 Asylum Act.

authorities should they be found outside of the asylum centre without any documents. The same may befall those staying at private accommodation.

1.2. Temporary reception centres

Concerning the temporary reception centres, a number of these were opened by the Government of Serbia in the second half of 2015 in order to provide emergency reception conditions for persons who were entering Serbia in an irregular manner and are transiting towards their preferred destination countries in the European Union. The first centre was set up in early summer 2015 in **Preševo**, labelled a 'one-stop centre', where refugees and migrants could be registered and provided humanitarian assistance upon entering Serbia from FYROM. At the beginning of 2018, a total of 13 reception centres were operating on the territory of Serbia: **Preševo, Vranje, Bujanovac, ombor, Principovac, Obrenovac, Adaševci, Subotica, Bela Palanka, Dimitrovgrad, Bosilegrad, Pirot** and **Kikinda**. .

The respective capacity of the temporary reception centres is as follows:

Temporary reception centre	Border location	Capacity
Preševo	FYROM	1,500
Vranje	FYROM	220
Bujanovac	FYROM	220
Sombor	Croatia	120
Principovac	Croatia	250
Obrenovac	Belgrade / Central Serbia	900
Adaševci	Croatia	450
Subotica	Hungary	130
Bela Palanka	Bulgaria	300
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	50
Pirot	Bulgaria	250
Kikinda	Romania	240
Total		**4,720**

Overcrowding, lack of privacy and poor hygiene are just some of the reported issues. In addition, these deficiencies were also stated in the report of the Special Representative of the Secretary General on migration and refugees who highlighted that standards of accommodation in both reception and asylum centres could potentially raise issues under Article 3 ECHR.[116]

[116] Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June 2017*, available at http://bit.ly/2DwCnI2.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities		
1.	Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?	☐ Yes ☒ No
2.	What is the average length of stay of asylum seekers in the reception centres?	Not available
3.	Are unaccompanied children ever accommodated with adults in practice?	☒ Yes ☐ No

2.1. Conditions in asylum centres

The conditions in the asylum centres vary from one to the other, with those in the centres in **Banja Koviljača** and **Bogovađa** being arguably of the highest quality. However, at the moment all asylum centres are overcrowded, with a lack of privacy and poor hygienic conditions.[117]

The centre in Banja Koviljača was established in 2008 as the first asylum centre in Serbia. With a capacity for accommodating 120 persons, the overall conditions in the centre are satisfactory. The Centre operates an open regime and the living conditions in it are satisfactory; families with children and persons with special needs are prioritised in terms of accommodation, with single women residing in separate rooms from single men. During 2016, at times of increased arrivals to the centre, the common room was converted into a provisional dormitory, however the centre's overall capacity generally seems to meet existing needs. Asylum seekers accommodated there usually do not have many negative remarks concerning the reception conditions, apart from those levelled at a chronic lack of footwear and clothing.

The asylum centre in Banja Koviljača is the only centre to have a Ministry of Interior official present at all times for recording incoming asylum seekers. However, the Asylum Office conducts the asylum procedure there exceedingly rarely (several times a year).

The asylum centre in Bogovađa is a Red Cross facility that has been used for the accommodation of asylum seekers since 2011. Following extensions in 2016, the centre has an overall capacity for the accommodation of up to 280 persons. Limited recreational facilities exist and the reception conditions may be described as satisfactory. Additional renovations on the main building were finished in 2017, further improving the quality of life at the centre.

The principle of family unity in the provision of accommodation is generally respected in the centre, and there is a "children's corner" where trained staff engage with underage residents.

In early 2017, a number of residents were diagnosed with lice, leading to quarantine measures temporarily being imposed in part of the facility. Public health officials continue to visit the centre every week in order to disinfect the facilities and prevent a new outbreak. In addition, a team of medical workers is present every day at the centre in order to provide health care to camp residents. The medical team seems to enjoy the residents' trust and has an average of 30-40 visits every day. For more advanced treatment, asylum seekers may be transported to hospitals and clinics in Bogovađa, Lajkovac or Valjevo, as necessary.

The asylum centre in **Tutin** used to be a sponge plant before becoming a provisional centre for the accommodation of asylum seekers. Reception capacity varies from approximately 80 persons in winter to up to 150 in summer. Persons accommodated at Tutin live in large rooms with 10-14 beds, with some smaller rooms with 6 to 8 beds. In addition to the above, there is a large dining room and living room, although the latter is inadequate for a centre at full capacity, with most residents spending their time in

[117] Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June 2017*, available at http://bit.ly/2DwCnI2.

the halls or in their rooms. All in all, the reception conditions in Tutin could not be described as satisfactory, with dormitories and bathrooms in very poor condition, and the situation is made even more grave by the fact that the Asylum Office visits the centre exceedingly rarely, coming only once during the whole of 2017. However, the availability of interpreters for Arabic and Farsi has increased, leading to some improvements in the residents' quality of life.

The asylum centre in **Sjenica** is likewise provisional, having been set up in a leased hotel that can hold up to 200 persons. However, asylum seekers do not reside in the hotel rooms, but rather in an improvised dormitory in the hotel lobby, which is at the same time the restaurant. The dormitory is divided into two parts by a screen, with residents sleeping on bunk beds in one part, and the other half being the dining room. Women and children are occasionally accommodated in one of the guest rooms, which however remain at the disposal of regular guests. Two medical workers have been hired to work at the centre, however current needs greatly exceed their capacity (the asylum centre housed as many as 400 residents several times in early 2017). The conditions in this asylum centre are deplorable.

In March 2017, an additional facility was granted to the asylum centre for housing asylum seekers in a former textile factory. It may accommodate up to 250 residents in 27 rooms and possesses 17 toilets and 11 showers, with a doctor present on working days (the residents may otherwise use the local hospital). As part of the residents of the main facility were moved into the new premises once they were opened, this led to a general improvement in reception conditions in Sjenica, however problems remain, including rare visits from Asylum Office staff and social workers, as well as a lack of adequate clothing and footwear for asylum seekers.

It should be added that both Sjenica and Tutin lie in some of the coldest regions of Serbia, which makes the situation of asylum seekers accommodated there especially difficult during winter.

The asylum centre in **Krnjača**, opened in mid-2014 as a provisional centre, lies just outside of Belgrade, in a complex of barracks used to house a number of refugees from Croatia and Bosnia and Herzegovina, as well as internally displaced persons from Kosovo; some of these people have been living there since 1993. Following extensions, the centre has a capacity for accommodating up to 750 persons, although it may temporarily house as many as 1000 asylum seekers should the need arise. Because of its proximity to Belgrade, this asylum centre remains the most populated, with a daily average of 700-800 residents. For humanitarian reasons, the decision to open facilities to refugees and migrants whether or not they have expressed the intention to seek asylum remains in force.

A medical team is present at the asylum centre's premises every day except for Sunday, and asylum seekers may be taken to one of the hospitals in Belgrade if necessary.

Partial renovations and refurbishment of the asylum centre were finished in summer 2017, with the old barracks, patios and the old canal all having been renovated. A "children's corner" was also opened and operates every day from 8 to 18h. A number of recreational activities have also been made available, including football and cricket, creative and educational workshops. The NGO ADRA opened a community centre in Borča which is also available to the residents of the asylum centre in Krnjača. Ergo, overall conditions of life in this asylum centre were improved in 2017, however a part of the facilities have not yet undergone renovations and reception conditions there remain inadequate, and communication with Farsi-speaking asylum seekers remains poor due to a lack of interpreters.

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia generally decreased throughout 2017. The authorities started opening temporary reception facilities in 2015 in order to provide basic accommodation and humanitarian support to persons who are likely in need of international protection, but are not interested in seeking asylum in Serbia. These are not asylum centres and are not meant for long-term stay.

The reception ('one-stop') centre in **Preševo** (1,500 places), close to the border with FYROM, was opened during the summer of 2015. Emergency support was initially provided by Red Cross Serbia and the local municipality, but the Government soon decided to have a local tobacco factory adapted and turned into a registration and accommodation facility. The centre has a reception capacity for several hundred persons at any given moment. There are numerous international and local organisations present in Preševo in order to provide relief to refugees, including UNHCR. Preševo is the only reception centre in Serbia that allows for the recording of asylum seekers and the expression of the intent to seek asylum on its premises. The facilities were expanded in 2016, allowing for almost triple the maximum reception capacity the centre had previously possessed. Limited renovations on parts of the facility started in 2017.

It is important to note that the reception centre in Preševo does not allow full freedom of movement to its tenants, who have to apply for daily leave of a maximum of three hours from the reception centre.[118] In 2017, a new policy was established, allowing residents to leave the centre for up to 3 days if they receive prior permission from the management.

In January and February 2017, the centre had an average of 820 residents every day; this number decreased gradually in the following months, with an average of 430 residents in June and as few as 200-300 at the end of the year.

A reception centre was opened in **Bujanovac** (220 places) in Southern Serbia in October 2016. The centre was opened in a former automotive battery factory lying along the Belgrade-Skopje highway. Bearing in mind that the facilities have only recently been renovated and that the centre is intended only for short-term stay, the reception conditions may be described as acceptable, although there is no staff recording asylum seekers in the centre, meaning that persons who arrive in Bujanovac cannot get a certificate of having expressed the intention to seek asylum unless they already have one. A problem that occasionally occurs in Bujanovac involves the placement of unaccompanied minors together with adults when the number of residents exceeds 130 persons. In May 2017, an additional reception centre was opened in **Vranje** (220 places); it is located in a motel at the entrance into the town. The conditions in Vranje may be described as satisfactory bearing in mind their provisional nature.

The reception centre in **Sombor** (120 places) was opened in 2015 in the warehouse of a military complex close to the border with Croatia; the Sombor centre's capacity may be increased to 160 in the future. Efforts are currently underway to provide a greater range of recreational and educational activities to residents, although refugees generally do not spend a very long time in Sombor (usually up to one month) as they mainly reside there while awaiting their turn to be admitted into Hungary. The centre mainly accommodates families, with meals provided by the Red Cross of Serbia. Additional centres function in **Principovac** (250 places) and **Adaševci** (450 places), in the Šid municipality, close to the Croatian border. During 2017, the centre in Adaševci was often overpopulated, with the number of residents occasionally almost twice its capacity. The centre in Principovac operates in a former children's hospital and remains inadequate for any prolonged stay.

Another reception centre for the accommodation of a larger number of migrants was opened in a military barracks in **Obrenovac** (900 places) in January 2017. The idea behind the opening of the centre was to provide accommodation for persons in need of international protection who used to stay in unhygienic and unsafe conditions in Belgrade. The centre is adapted to the needs of unaccompanied minors and its overall conditions may be described as acceptable. However, at the outset of its work, it started to suffer from overcrowding, which led to a number of violent incidents among its population. In spite of the regular police presence in the centre, many residents feel insecure staying there, and hygienic conditions are poor due to the large number of residents.

The reception centre in **Subotica** (130 places) was opened in 2015 at the height of the refugee and migrant movement into Hungary. The centre remains open in 2017, with a number of NGOs providing recreational and educational activities for refugees and migrants. Like the other reception centres, it is

118 Such was the practice at the reception centre at the time of the BCHR's visit in December 2016.

inadequate for long-term residence. In April 2017, an additional centre was opened in **Kikinda** (240), close to the Romanian border, in refurbished agricultural facilities.

In mid-2016, the authorities of Serbia opened an additional three centres in **Dimitrovgrad** (90), **Bosilegrad** (50) and **Pirot** (250) to handle the increasing number of arrivals from Bulgaria. Another reception centre was opened in **Bela Palanka** (300) on 30 December 2016 and continues to function at the beginning of 2018. All of these centres offer very basic, aging facilities and are inadequate for anything other than very short-term stay: for example, the centre in Dimitrovgrad only offers collective dormitories, and there are no separate male and female toilets. Plans for the reconstruction of these four reception centres in the future were made in 2017 and it remains to be seen how reception conditions could improve in the future.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers?	☒ Yes ☐ No
❖ If yes, when do asylum seekers have access the labour market?	9 months
2. Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☒ No
❖ If yes, specify which sectors:	
4. Does the law limit asylum seekers' employment to a maximum working time?	☐ Yes ☒ No
❖ If yes, specify the number of days per year	
5. Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market. However, persons who seek asylum while possessing a work permit on other grounds may continue working on the basis of that permit. Furthermore, asylum seekers whose asylum applications have not been decided upon through no fault of their own within 9 months of being submitted likewise have the right to be issued a work permit valid for 6 months with the possibility of extension for as long as they remain in the asylum procedure.[119]

2. Access to education

Indicators: Access to Education	
1. Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2. Are children able to access education in practice?	☒ Yes ☐ No

The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,[120] with relevant issues also regulated by the Primary School Act,[121] the Secondary School Act[122] and the High Education Act.[123] These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas.

119 Article 13 Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

120 Law on the Basis of the Education System of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 72/2009 and 52/2011.

121 Primary School Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 50/92,53/93,67/93,48/94,66/94 – Constitutional Court decision, 22/2002, 62/2009 – other law, 101/2005 – other law and 72/2009 – other law.

122 Secondary School Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 50/92, 53/93, 67/93, 48/94, 24/96, 23/2002, 25/2002 – cor. 62/2003 – other law, 64/2003 – corr. of other law, 101/2005 – other law, 72/2009 – other law and 55/2013 – other law.

The Act on the Basis of the Education System foresees that foreign nationals and stateless persons shall enrol in primary and secondary schools and exercise the right to education under the same conditions and in the same manner as Serbian nationals. Schools are obliged to organise language, preparatory and additional classes for foreign pupils, including stateless persons and refugees, who do not speak the language used in the schools or are in need of specific instructions in order to continue their education.[124] In addition, the Asylum Act foresees that "an asylum seeker and a person who has been granted asylum shall have the right to free primary and secondary education."[125]

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
   ☐ Yes ☐ Limited ☒ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
   ☐ Yes ☐ Limited ☐ No

The Asylum Act foresees that "an asylum seeker and a person who has been granted asylum in the Republic of Serbia shall have equal rights to health care, in accordance with the regulations governing health care for aliens."[126] To that extent, the Ministry of Health published a Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres in 2008,[127] which governs the manner in which asylum seekers undergo an initial check-up at an asylum centre, establishes the local community health centre's jurisdiction and obliges asylum centre staff to observe resident asylum seekers' health so as to notify immediately medical staff of any relevant changes.

In practice, asylum seekers and persons granted asylum have relatively unimpeded access to the national health care system in an equal manner to Serbian nationals. The costs of health care for asylum seekers and persons granted asylum are always covered by the Ministry of Health; costs of medications are covered by UNHCR through their implementing partner, the Danish Refugee Council.

Problems may arise for persons who express the intention to seek asylum while hospitalised, which happened several times over the course of 2015. While 'irregular migrants' are only entitled to the Ministry of Health covering emergency medical costs, for persons who are hospitalised at the time of asking or asylum the situation is difficult seeing as how national institutions only regard those persons issued a certificate of having expressed the intention to seek asylum as being, in fact, asylum seekers. As this would normally entail the person *in casu* presenting themselves at the local police station in order to formally express the intention to seek asylum, the police have shown little flexibility in visiting hospitals in order to record persons who cannot, as a result of their medical condition, come on their own.[128] No such cases were recorded in 2017.

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123 High Education Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 76/2005, 100/2007 – authentic interpretation, 97/2008 and 44/2010, 93/2012 and 89/2013.

124 Article 100 Law on the Basis of the Education System of the Republic of Serbia.

125 Article 41 Asylum Act.

126 Article 40 Asylum Act.

127 Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres, Official Gazette of the Republic of Serbia, no. 93/2008.

128 It should be added that, in spite of the fact that Article 22 of the Asylum Act foresees the possibility of expressing the intention to seek asylum in writing, officials of the Ministry of the Interior have always interpreted this provision as requiring a Ministry official to be present regardless, thereby making redundant an article that would have been very appropriate for hospitalised persons who wish to seek asylum in Serbia.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
☐ Yes ☒ No

The Asylum Act foresees that care be taken during the asylum procedure of asylum seekers with specific needs, including minors, persons lacking or having limited legal capacity, children separated from their parents or guardians, persons with disabilities, the elderly, pregnant women, single parents with underage children and persons who had been subjected to torture, rape or other forms of grave psychological, physical or sexual violence.[129] However, this does not refer to reception conditions, although persons with special needs might receive slightly better accommodation compared to other residents of asylum centres. Very often even these 'improved' reception conditions are inadequate for such persons.

Minor asylum seekers are housed together with their parents or legal guardians. Since the end of 2015, unaccompanied children have been accommodated in institutions in **Belgrade**, **Niš** and **Subotica**.[130] These facilities are also used to accommodate nationals of Serbia – primarily underage offenders, and are therefore neither specifically-tailored to the needs of migrants, nor particularly suitable for their housing. Regardless, unaccompanied minor asylum seekers in these facilities are kept separately from other groups, and overall reception conditions are considerably better than otherwise available at asylum centres, although a chronic lack of interpreters for various languages spoken by migrants continues to present a considerable challenge to ensuring their proper development and integration.

Persons with special medical needs may generally be placed in hospitals or other facilities. However, the identification of other groups of extremely vulnerable individuals, including unaccompanied minors, victims of torture and other cruel, inhuman or degrading treatment, sexual and gender-based violence or human trafficking is quite rudimentary and, even when such cases have been identified, the authorities do not adopt a special approach to the needs of these persons.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

See the section on Asylum Procedure: Information to Asylum Seekers. The House Rules of Asylum and Reception centres are translated in languages asylum seekers understand.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☒ Yes ☐ With limitations ☐ No

The Commissariat for Refugees and Migrations has jurisdiction over access to reception facilities. In spite of the fact that these are open and that asylum seekers are not deprived of their liberty, third parties wishing to visit the centres are required to request admission from the Commissariat at least 2 days beforehand by e-mail, as well as submit scans of their identity documents.

UNHCR has unrestricted access to all reception facilities in Serbia, including both asylum centres and provisional reception centres. National authorities are obliged to cooperate with UNHCR in line with its

[129] Article 15 Asylum Act.

[130] The facilities in Belgrade, Niš and Subotica may, respectively, accommodate up to 12, 10 and 20 unaccompanied minors at any given time, although it should be borne in mind that the first two only receive children above the age of 10.

mandate.[131] Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.[132] However, planned UNHCR visits should be announced in a timely fashion.

Access to civil society organisations is also relatively unimpeded, although not at the same level as UNHCR. While access to legal representatives during various phases of the asylum procedure has never been brought into question and need not be specifically announced, there have been cases of civil society organisations being denied access even if the authorities had been notified more than a week earlier.[133]

G. Differential treatment of specific nationalities in reception

There have been no reports of differential treatment in reception based on asylum seekers' nationality.

131 Article 5 Asylum Act.
132 Article 12 Asylum Act.
133 As observed by members of BCHR present in the field at the time the decision was implemented.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1.	Total number of asylum seekers detained in 2017:[134]	4
2.	Number of asylum seekers in detention at the end of 2017:	1
3.	Number of detention centres:	1
4.	Total capacity of detention centres:	80

The possibility of placing asylum seekers under detention in Serbia is prescribed by the Asylum Act. However, in 2017 the Asylum Office has exceedingly rarely resorted to such measures, and only issued 4 decisions to place asylum seekers in detention in order to ensure their presence in the asylum procedure. The total number of persons subjected to forced return from the Shelter for Foreigners in the first six months of 2017 was 7 (2 persons from Afghanistan, 4 from Pakistan and 1 from Iran), all of whom were removed to Bulgaria. At the beginning of 2018, one person – a national of the People's Republic of China – is undergoing asylum proceedings while held in detention in **Padinska Skela**.

However, each year, thousands of persons that are likely in need of international protection are detained in Serbia on various grounds. This may occur as a result of a conviction for illegal entry or stay in Serbia without having invoked the benefits of Article 8 of the Asylum Act, being detained in the Shelter for Foreigners under the Foreigners Act,[135] or being held in the airport transit zone.

The only official institution established for the purpose of detaining foreigners staying unlawfully is the Shelter for Foreigners, located in Belgrade, Padinska skela, with a capacity of up to 80 detainees.

Good cooperation with the Shelter for Foreigners continued in 2017. The BCHR's lawyers had full access to all foreigners detained there, and universal access to the asylum procedure was ensured for those interested in seeking asylum.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border:[136] ☐ Yes ☒ No

2. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☒ Rarely ☐ Never

1.1. Detention of asylum seekers

Asylum seekers can be detained by a decision of the Asylum Office, when it is necessary for the purposes of:

1. Establishing their identity;
2. Ensuring the presence of a foreigner in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was filed with a view to avoiding

134 Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

135 Article 49 Foreigners Act.

136 Accommodation in airport transit zone with very restricted freedom of movement.

deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the foreigners in question; or

3. Protecting national security and public order in accordance with the law.[137]

In practice, the Asylum Office has had asylum seekers placed under detention extremely rarely. Only 4 detention orders were issued in 2017 on those grounds.

1.2. Other grounds for the detention of foreign nationals who may be in need of protection

In spite of the fact that the Asylum Office rarely enacts decisions putting asylum seekers under detention, persons in need of international protection may regardless be subjected to detention in a number of situations.

Foreigners who are likely in need of international protection may be detained in the Shelter for Foreigners in Padinska skela when they cannot be immediately forcibly expelled, or for the purpose of their identification, or when they do not possess valid travel documents, as well as in other cases prescribed by the law.[138] However, this concerns those persons who do not express the intention to seek asylum in Serbia, as persons who have done so come under the regime foreseen by the Asylum Act explained above.

Regional police directorates may decide to have foreigners placed under detention at the Shelter for Foreigners provided they are granted consent by the Foreigners Department of the Border Police Directorate.[139] The most frequent reason for referring foreigners of relevance to this report to the Shelter for Foreigners is to ensure their presence as witnesses in criminal proceedings against people suspected of committing the crimes of illegal crossing of the state border and human smuggling[140] and human trafficking.[141] Given that neither the Foreigners Act, nor the Criminal Procedure Code[142] envisage testimony in criminal proceedings as grounds for referral to the Shelter for Foreigners, such action is taken under Article 49 of the Foreigners Act, under which a foreigner whose identity has not been established or who does not have a travel document may be referred to the Shelter.

Without disputing the importance of the criminal prosecution and punishment of human smugglers and traffickers, referral of aliens to the Shelter to ensure they testify in criminal proceedings is not specified as grounds in Serbia's regulations. It should also be borne in mind that Serbia lacks an adequate procedure for forcibly removing foreigners found to have illegally entered or stayed in its territory. In other words, the existing procedure does not provide procedural guarantees against *refoulement*.[143]

Additionally problematic is the widespread practice of convicting persons coming from refugee-producing countries for illegal entry or stay; the greater part of this practice is likely not in line with the principle of non-penalisation for illegal entry or stay foreseen by Article 31 of the 1951 Convention. However, although the majority of misdemeanour proceedings end with the person *in casu* paying a fine before being issued an order to leave Serbia within a certain time limit, it is not uncommon for potential refugees to be sentenced to a short term in prison as a result of their illegal entry or stay. Bearing in mind that access to an interpreter for languages most refugees speak is extremely limited, it is doubtful to which extent these persons are made aware of their rights and understand the proceedings, including the right to seek asylum in Serbia.

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137 Article 51 Asylum Act.

138 Article 49 Foreigners Act.

139 *Ibid.*

140 Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 85/2005, 88/2005 – cor. 107/2005 – cor. 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014 (hereinafter: Criminal Code), Article 350.

141 Article 388 Criminal Code.

142 Criminal Procedure Code of the Republic of Serbia, Official Gazette of the republic of Serbia, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014 (hereinafter: Criminal Procedure Code).

143 See UN Committee Against Torture, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para 15.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
   - ☐ Reporting duties
   - ☐ Surrendering documents
   - ☐ Financial guarantee
   - ☒ Residence restrictions
   - ☐ Other
2. Are alternatives to detention used in practice? ☐ Yes ☒ No

The Asylum Act foresees the possibility of limiting asylum seekers' freedom of movement to the asylum centre as such, instead of placing them under detention in the Shelter for Foreigners.[144] Such measures, however, have never been taken in practice as of the end of 2017.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
   ☐ Frequently ☐ Rarely ☒ Never
   - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☐ Rarely ☒ Never

The Asylum Act does not contain any provisions detailing specific treatment of vulnerable asylum applicants. In practice, none of the persons placed under detention in the Shelter for Foreigners by a decision of the Asylum Office were vulnerable applicants, and it is impossible to foresee how such applicants may be treated in possible future cases.

It is possible for unaccompanied children who have not yet expressed the intention to seek asylum in Serbia to be subjected to misdemeanour proceedings and sentenced to a short term in prison as adults as a result of faulty age assessment. Likewise, vulnerable persons who are potential asylum seekers have been detained at the airport without any preferential treatment.[145]

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): 6 months
2. In practice, how long in average are asylum seekers detained? Less than 6 months

The Asylum Act foresees that asylum seekers placed under detention may be subjected to such a state for up to 3 months; this deadline may be extended once for another 3-month period by a decision of the Asylum Office.[146]

144 Article 52 Asylum Act.
145 BCHR, *Right to Asylum in the Republic of Serbia 2014*.
146 Article 52 Asylum Act.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☒ Yes ☐ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☒ Yes ☐ No

Persons who seek asylum in Serbia may be placed under detention in the Shelter for Foreigners in **Padinska skela**, Belgrade, which can host up to 80 persons. Persons who are in need of international protection but do not seek asylum may be treated as irregular migrants by the authorities and may, therefore, likewise be placed under detention in the Shelter for Foreigners in line with the provisions of the Foreigners Act.

Foreigners who are sanctioned for misdemeanour of illegal border crossing or illegal stay on Serbian soil are detained in 27 different penitentiaries around Serbia. Persons who are detained at **Nikola Tesla Airport** (see Access to the Territory) are accommodated at premises located in the transit zone, at the far end of the gate corridor. It is not possible to assess the capacity of these premises, as they have never been designed as detention facilities.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? ☒ Yes ☐ No
   - ❖ If yes, is it limited to emergency health care? ☐ Yes ☒ No
2. Is access to detention centres allowed to
   - ❖ Lawyers: ☒ Yes ☐ Limited ☐ No
   - ❖ NGOs: ☒ Yes ☐ Limited ☐ No
   - ❖ UNHCR: ☒ Yes ☐ Limited ☐ No
   - ❖ Family members: ☒ Yes ☐ Limited ☐ No

2.1. Conditions in the Shelter for Foreigners

Persons held at the Shelter for Foreigners are accommodated in two separate parts, with the male part comprising 6 rooms, and the female one comprising 3 rooms. Each room has radiators and hygienic facilities that are in good condition and properly isolated. The rooms are well-lit, with ample access to sunlight as well as proper electric lighting, and the windows are large enough to allow for ventilation.

Both parts have a living room, bathroom and yard. Meals are also served in the living room. Detainees have the right to reside in the living room during the day and are entitled to a walk outside for 2 hours.

The issue that gives cause for most concern regarding life in the Shelter for Foreigners is the lack of meaningful activities and adequate communication between staff and detainees.

Foreigners may express the intention to seek asylum and to have access to legal aid, including NGOs and UNHCR.

2.2. Conditions in penitentiary facilities

Conditions in the penitentiaries where refugees are detained if convicted in the misdemeanour proceedings vary depending on the individual facility. The Serbian system for the implementation of criminal sanctions has suffered from overcrowding for many years, while conditions in certain facilities may amount to inhumane and degrading treatment as a result of poor living conditions, a lack of meaningful activities and the lack of communication with the staff and outside world.

The penitentiaries that are located in the border zones are the ones in which persons likely in need of international protection are usualy detaineed at, such as the County Prison in **Vranje** (Southern border zone) and the Correctional Facility in **Sremska Mitrovica** (Western border area).

2.3. Conditions in transit zones

The airport transit premises have a size of 80m^2 and are equipped with 25 sofas and some blankets. There are no adequate conditions for sleeping and the ventilation is unsatisfactory. The foreigners are locked up all day long. The toilet is located within the premises and is in an acceptable condition.

The Special Rapporteur for Torture described material conditions as inadequate for the purposes of detention. The main shortcomings are the absence of beds and heating, deplorable hygienic and sanitary conditions and constant artificial lighting. [147]

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

According to the Foreigners Act[148] and the Asylum Act,[149] detainees have the right to lodge an appeal to the Higher Court. The decision is drafted in the Serbian language, and if the foreigner does not attain legal counsel (which is quite often the case), there is no real possibility of challenging it.

Since the refugees detained in the transit zone of **Nikola Tesla Airport** are not considered persons deprived of liberty by the border police officials, they do not have the possibility of challenging their situation before the relevant authority. In other words, the placement of foreigners in the transit zone is not accompanied by a lawful decision depriving them of liberty, specifying the duration of the deprivation of liberty and the rights of the person deprived of liberty, such as the right to have access to a lawyer, the right to notify a third person of one's deprivation of liberty and the right to be examined by a doctor.

Foreigners who are sentenced for the misdemeanour of illegal border crossing or illegal stay in Serbia may lodge an appeal against the first-instance decision. However, since the majority of cases are processed in an accelerated manner, where the foreigners are deprived of the possibility of challenging the charges against them in a language they understand and with the help of an attorney, appeals in these procedures are quite rare.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention? ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice? ☒ Yes ☐ No

147 Special Rapporteur for Torture, 'Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer* on the official visit to Serbia and Kosovo[1] – 13 to 24 November 2017', available at: http://bit.ly/2DBrBnT.

148 Article 49 Foreigners Act.

149 Article 52(4) Asylum Act.

Given that there have not been many decisions placing asylum seekers under detention at the Shelter for Foreigners, and none of the persons subjected to such detention having thus far been interested in challenging said decisions, it is impossible to form a clear image of the current state of affairs in this field.

In a 2015 detention case of a person who had been prevented from accessing the asylum procedure, the individual subjected to detention by a decision of the Foreigners Department did seek judicial review of the decision. The foreigner in question was placed under detention pending readmission, in spite of the fact that he wished to seek asylum and that a misdemeanour court had dismissed the charges of illegal entry or stay in Serbia because he had asked for asylum. In the end, it was only when the European Court of Human Rights (ECtHR), at the request of the individual's legal representatives, indicated interim measures, in line with Rule 39 of the Rules of Court that no forced return take place pending a decision on an ECtHR application, that the authorities released the individual and allowed him to access the asylum procedure.[150]

E. Differential treatment of specific nationalities in detention

There have been no reports of differential treatment in detention on the basis of nationality, such as nationals of certain countries being susceptible to systematic or longer detention than others.

150 ECtHR, *Othman v. Serbia*, Application No 27468/15.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status: 5 years
   - ❖ Subsidiary protection: 1 year

Despite their entitlement to a right to permanent residence under the Asylum Act,[151] recognised refugees are not issued a separate document of residence, as they are considered *ipso facto* to be entitled to reside in the country.

Article 58(3) of the Asylum Act requires the Ministry of Interior to issue persons granted asylum with an identity card, but the modalities of such identity cards are to be spelt out by implementing legislation. The identity card has a validity of 5 years for refugees and 1 year for beneficiaries of subsidiary protection.[152]

Due to this interpretation, refugees hold no specific documentation that certifies their status so as to enjoy their rights.

2. Civil registration

Currently, there is no data on civil registration for beneficiaries of international protection in Serbia.

3. Long-term residence

The Long-Term Residence Directive is not applicable in Serbia.

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship? N/A
2. Number of citizenship grants to beneficiaries in 2017: N/A

Beneficiaries of international protection are subject to the same framework applicable to all foreigners. However, there is no existing practice vis-à-vis naturalisation to allow for an assessment of the procedure.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? N/A
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? N/A
3. Do beneficiaries have access to free legal assistance at first instance in practice? N/A

151 Article 43 Asylum Act.
152 Article 61 Asylum Act.

Under Article 54 of the Asylum Act, refugee status ceases where the beneficiary:

- Has voluntarily re-availed him or herself of the protection of the country of origin;
- Voluntarily re-acquires his or her citizenship after having lost it;
- Acquires a new citizenship, and thus enjoys the protection of the country of his or her new citizenship;
- Has voluntarily returned to the country he or she left or outside which he or she has remained owing to fear of persecution or ill-treatment; or
- Can no longer, because the circumstances that led to his or her being granted protection have ceased to exist, continue to refuse to avail him or herself of the protection of his or her country of origin. This ground is subject to the possibility for the beneficiary to give compelling reasons arising out of past persecution to challenge cessation.

The Asylum Office is required to initiate cessation proceedings *ex officio* where one of the grounds for cessation apply.[153] To the knowledge of the Belgrade Centre for Human Rights, however, the cessation provisions have never been applied in practice.

6. Withdrawal of protection status

To the knowledge of the Belgrade Centre for Human Rights, withdrawal never been applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? ☐ Yes ☒ No
   - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? ☐ Yes ☒ No
   - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☐ Yes ☒ No

According to the Asylum Act, persons recognised as refugees in Serbia have the right to family reunification.[154] Family members of persons recognised as refugees have the right to be recognised as refugees based on the original decision to grant asylum. Serbian law provides no conditions for this procedure.

Unlike **refugees**, **beneficiaries of subsidiary protection** may likewise request family reunification, however their request is subject to general legislation concerning the family reunification of foreigners, and is therefore not absolute.[155]

Domestic legislation considers an underage child, adoptee and step-child, spouse (if the marriage is concluded prior to their arrival in Serbia), as well as parents and foster parents with a legal obligation of custody with regard to them, as "family members".[156]

In spite of the fact that the Foreigners Act does not generally apply to persons who have been granted asylum, its provisions remain relevant for the family reunification procedure. Persons granted asylum are formally equal as foreigners with a permanent residence regarding a number of rights for which the

153 Article 55 Asylum Act.
154 Article 48 Asylum Act.
155 Article 49 Asylum Act.
156 Article 2 Asylum Act.

Foreigners Act remains the *lex generalis*. At present, the Foreigners Act does not foresee the possibility of granting residence on the basis of a relationship with a person granted asylum in Serbia, however this is foreseen by the draft new Foreigners Act. The draft states that the family members of a foreigner who has been granted asylum do not need to prove they possess the necessary financial means, health insurance, grounds and that they have paid the administrative taxes necessary for short-term residence; the individual circumstances of the beneficiary of asylum and their family are also to be taken into consideration in this process. If the foreigner in question is underage, this right may also be enjoyed by their parents in the interest of maintaining family unity. When the family member does not possess a personal identity document, temporary residence is to be granted by means of an individual decision. This is of particular relevance for marriages concluded outside of the persons' countries of origin, as the Asylum Act only foresees the spouse in a marriage concluded before the asylum beneficiary's arrival in Serbia as being eligible for family reunification. The draft Foreigners Act was entered into parliamentary proceedings on 2 December 2017.

So far, no practice exists with regard to the family reunification procedure.

2. Status and rights of family members

Family members of persons recognised as **refugees** may *ipso facto* request to be recognised as refugees themselves and enjoy the same rights as all other such persons in Serbia.[157]

Family members of persons granted **subsidiary protection** do not enjoy such rights, and their application for family reunification is subject to general foreigners' legislation.[158] Due to a lack of practice in this regard, it is unclear if the authorities would offer them subsidiary protection as well or some other manner of residence permit.

C. Movement and mobility

1. Freedom of movement

Refugees have equal rights to free movement as permanently residing foreigners in Serbia.[159]

2. Travel documents

Although the Asylum Act provides that persons granted asylum shall be issued a travel document on a prescribed form,[160] which is also guaranteed by Article 48 of the Refugee Convention, the Ministry of Interior has not, since the entry into force of the Act, adopted a bylaw on the appearance and content of the travel document for refugees.

Due to this legal vacuum, refugees' freedom of movement is limited even though it is guaranteed by the Serbian Constitution and the ECHR. This means that refugees can leave Serbia only illegally unless they possess a valid travel document issued by their country of origin. In light of this situation, in which one Syrian refugee who was granted asylum in Serbia found himself, the BCHR filed a constitutional appeal with the Constitutional Court in 2015. A constitutional appeal was filed in 2014 as well for the same reasons for other BCHR clients.

The Constitutional Court dismissed the constitutional appeal on 20 June 2016, stating that the subject of constitutional appeal cannot be a failure to adopt general legal act, but only the individual act as it is prescribed by Article 170 of the Constitution.[161] This reasoning remains unclear since the consequences embodied throughout illegal and unjustified limitation of freedom of movement were reflected upon

157 Article 48 Asylum Act.
158 Article 49 Asylum Act.
159 Article 62 Asylum Act.
160 Article 43 Asylum Act.
161 Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

individuals. The impossibility of receiving a travel document for asylum beneficiaries still remains a problem at the time of writing.

The BCHR submitted the application to ECtHR claiming that persons who do not possess refugee travel documents are deprived of right to freedom of movement. The case is yet to be communicated.

D. Housing

Indicators: Housing		
1.	For how long are beneficiaries entitled to stay in reception centres?	1 year
2.	Number of beneficiaries staying in reception centres as of 31 December 2017	Not available

Persons granted asylum have the right to receive accommodation or financial support in order to live at a private residence for another year following the final decision in their asylum case.[162] In practice, persons granted asylum generally stay at an asylum centre; the temporal element of the relevant norm is not observed, i.e. these persons were not required to leave the asylum centre in question following the expiry of the one-year deadline.

In July 2015, the Serbian government adopted a Decree on the Criteria for the Assessment of Priorities for the Accommodation of Persons who have been Granted Asylum or Subsidiary Protection and the Conditions for Using Residential Space for Temporary Residence. The Decree defines the manner of granting accommodation to beneficiaries of asylum, including the conditions that need to be met in order to receive accommodation, the priorities to be respected when doing so, as well as the conditions of housing. Accommodation is granted to individual beneficiaries together with their families if they have a final decision granting asylum which is not older that one year at the time of the request and if they do not possess sufficient financial resources to find accommodation on their own. If there is sufficient accommodation available, it may also be provided to persons who do possess the means to find their own lodgings, taking into consideration their particular circumstances.

With respect to receiving accommodation in the manner prescribed by the Decree, a challenge identified in practice concerns the necessity of paying the tax for receiving a certificate that the person in question does not receive any income or only receives occasional income from working, a private enterprise, movable property or real estate or from other sources. Refugees also need to pay a tax in order to receive a work permit, which often represents a major expenditure for them. The Decree does not foresee assistance from the Commissariat for Refugees and Migrations in this regard, meaning that refugees usually require financial aid from civil society organizations to pay these taxes.

Another practical problem lies in the Commissariat for Refugees' inability to grant financial resources for accommodation under the Decree if the person is still present in one of the asylum centres. Individual beneficiaries of asylum face a number of difficulties ranging from lessors' unwillingness to rent apartments to foreigners, to the obligation of gathering enough money to pay for several months' worth of rent in a deposit. The process of moving from an asylum centre into individual accommodation may therefore take several months.

162 Article 44 Asylum Act.

E. Employment and education

1. Access to the labour market

The Asylum Act foresees that persons recognised as refugees in Serbia shall be equal to permanently-residing foreigners with respect to the right to work and rights arising from employment and entrepreneurship.[163] In spite of the fact that this article does not explicitly mention beneficiaries of subsidiary protection, their position has not been different in practice from that of recognised refugees. Furthermore, the legal gap present in the Asylum Act is covered by the Employment of Foreigners Act, which explicitly states that persons who have been granted subsidiary protection are to be issued personal work permits for the duration of that status.[164]

In December 2016, the authorities enacted a Decree on the Manner of Involving Persons Recognized as Refugees in Social, Cultural and Economic Life ("Integration Decree") which foresees assistance in accessing the labour market as an integral part of integration.[165] The assistance is to be provided by the Commissariat for Refugees and Migrations and is to form part of every individual beneficiary of refugee status' integration plan. The assistance includes assistance in gathering all of the necessary documents for registration with the National Employment Service, the recognition of foreign degrees, enrolling in additional education programmes and courses in line with labour market requirements and engaging in measures of active labour market policy.[166]

The implementation of the above decree started in 2017. In line with the provisions of the decree, the Commissariat for Refugees and Migrations organized Serbian language courses in summer, however the number of persons granted asylum attending the course was very small. It should be noted that, in spite of the fact that the decree's scope of application formally does not cover persons who were granted asylum before it had entered into force, these persons were also allowed to participate in the courses, indicating that the authorities have decided to extend the potential number of beneficiaries of integration-related activities.

In spite of the fact that, in terms of the law, persons granted asylum in Serbia should not face significant challenges in accessing the labour market, finding employment is difficult in practice, especially bearing in mind the language barrier that exists between most of these persons and the local community. In 2017, UNHCR, together with BCHR, started an awareness-raising campaign in the private sector in order to draw attention to the position of asylum seekers as a particularly vulnerable group and the persistent legal gaps and practical challenges preventing them from becoming fully integrated into the labour market.

It should also be added that the National Employment Strategy of the Republic of Serbia for 2011-2020 identifies a number of vulnerable groups, the improvement of whose status with regard to the labour market is to be prioritised in the relevant timeframe.[167] Unfortunately, refugees and asylum seekers are not specifically mentioned as a group whose increased access to employment is a national objective, which is striking bearing in mind the fact that the Strategy covers refugees from other former Yugoslav republics and internally displaced persons. However, a number of identified groups, including persons with disabilities, persons with a low level of education, the young and elderly, women and unemployed, still remain relevant for the current mixed-migration flow through Serbia.

2. Access to education

As of its entry into force in January 2017, the Integration Decree foresees assistance by the Commissariat for Refugees and Migrations to persons recognised as refugees in entering the

163 Article 43 Asylum Act.
164 Article 13(6) Employment of Foreigners Act.
165 Article 2(6) Decree on the Manner of Involving Persons Recognized as Refugees in Social, Cultural and Economic Life, Official Gazette, no. 101/2016 (hereafter "Integration Decree").
166 Article 7 Integration Decree.
167 National Employment Strategy of the Republic of Serbia for 2011-2020, "Official Gazette of the RS" 37/11.

educational system.[168] The Commissariat is to assist recognised refugees who are children and enrolled in pre-school, elementary and high-school education, as well as illiterate adults, who are to be enlisted in adult literacy programmes in cooperation with the Ministry of Education. The assistance provided to children includes provision of textbooks and education material, assistance in having foreign degrees recognised, learning support and financial support for engaging in extracurricular activities.[169]

In practice, asylum seekers and persons granted asylum are expected to enrol in primary and secondary schools on their own. It is unclear if and how the Decree will relate to this.

The December 2016 Decree also foresees Serbian language courses and courses of Serbian history, culture and constitutional order for persons recognized as refugees. Persons entitled to Serbian language courses are those who do not attend regular schools in Serbia, those who do, and persons older than 65. Persons not attending regular schools are entitled to 300 school periods of Serbian languages classes during a single school year, while those engaging in businesses requiring university education may be provided with another 100 periods in a school year. Persons attending school have the right to be provided an additional 140 school periods of Serbian language classes, whereas those above 65 are provided with 200 school periods of the Serbian language adapted to the needs of everyday communications. The courses may be provided at regular or foreign language schools, whereas the adapted Serbian language classes may likewise be provided by enterprises suggesting a suitable programme and capable of employing the required staff.[170] The classes are to be provided in the area where these persons reside, and if this is not possible, transport costs are to be covered by the Commissariat.

The Commissariat is to enlist the person in question in a Serbian language course within two months of the decision to grant asylum becoming final. If the person does not attend the courses without good cause, they lose the right to new or additional language classes.

Concerning the study of Serbian culture, history and constitutional order, persons recognised as refugees are provided lessons that may, in total, last up to 30 hours annually. Again, if the person does not attend the classes, the Commissariat is not obliged to provide for new or additional ones.[171]

In summer 2017, the Commissariat organised Serbian language lessons for beneficiaries of international protection. However, very few of them actually appeared for the courses.

The process of having a foreign degree recognized in Serbia is similarly quite challenging for refugees. In one case, an individual who was granted subsidiary protection in 2008 and decided to have their foreign university diploma recognized in 2015; the individual had to cover all of the expenses of the procedure on their own, and the decision on recognition was only granted in 2017.

F. Social welfare

The Asylum Act grants the right to receive welfare benefits to asylum seekers as well as persons who have been granted asylum; persons recognised as refugees and beneficiaries of subsidiary protection are equal in this regard. The Social Welfare Act defines social welfare as an organised social activity in the common interest whose purpose is to provide assistance and strengthen individuals and families for an independent and productive life in society, as well as prevent the causes of, and eliminate, social exclusion.[172] The Act also defines Serbian citizens as beneficiaries of social welfare, but states that foreigners and stateless persons may also receive social welfare in line with the law and international agreements. The regulations on social welfare for persons seeking asylum or who have been granted

168 Article 2(4) Integration Decree.
169 Article 6 Integration Decree.
170 Article 4 Integration Decree.
171 Article 5 Integration Decree.
172 Social Welfare Act, Official Gazette of the RS 24/2011.

asylum are within the jurisdiction of the Ministry of Labour, Employment, Veteran and Social Issues, which has enacted a Rulebook on Social Welfare for Persons Seeking or Granted Asylum.[173]

According to the Rulebook, persons seeking or granted asylum may receive monthly financial aid if they are not housed in an asylum centre and if they and their family members do not receive an income or that income is lower than the threshold required by the Rulebook. Therefore, this Rulebook only provides social welfare to persons residing in private accommodation, which is counterintuitive as persons staying in such accommodation usually do not require social welfare in the first place.

The request for social welfare is examined and decided upon by the social welfare centre with jurisdiction over the municipality in which the beneficiary of asylum resides. Once granted, the conditions for benefiting from social welfare are re-examined by the social welfare centre on an annual basis.

At the time of writing of this report, the highest possible amount of social welfare that may be paid on a monthly basis is around 20,000 RSD / 170 €. This was the amount granted in 2017 to a family of nine members who had been granted subsidiary protection. The amount is by no means sufficient to enable recipients to live even a modest existence in Serbia, but it is no less than may otherwise be provided to citizens of Serbia.

G. Health care

Access to health care for beneficiaries of international protection is the same as for asylum seekers, discussed in Reception Conditions: Health Care.

[173] Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette of the RS 44/2008.