

Country Report: Serbia



Acknowledgements & Methodology

This report was written by Nikola Kovačević at the Belgrade Centre for Human Rights (BCHR), and was 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 2018, 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.



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Glossary & List of Abbreviations

Expression of intention to submit an asylum request	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, but implies taking of the individual's photo and fingerprints.
Afis	Automated fingerprint identification system
BCHR	Belgrade Centre for Human Rights
BPSB	Border Police Station Belgrade
CAT	United Nations Committee against Torture
CRM	Commissariat for Refugees and Migration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GAPA	General Administrative Procedure Act
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

Overview of statistical practice

The Asylum Office does not publish statistics on asylum applications and decisions. Basic figures are published by UNHCR 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: 2018

	Intentions to apply in 2018	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	8,436	327	:	11	13	20	25%	29.5%	45.5%

Breakdown by countries of origin of the total numbers

Afghanistan	2,627	27	:	5	0	5	50%	0%	50%
Pakistan	1,838	25	:	0	1	5	0%	16.7%	83.3%
Iran	1,621	190	:	5	0	3	62.5%	0%	37.5%
Iraq	803	18	:	0	0	1	0%	0%	100%
Syria	460	9	:	0	1	0	0%	100%	0%
Bangladesh	218	0	:	0	0	0	-	-	-
India	184	4	:	0	0	0	-	-	-
Libya	147	12	:	0	10	0	0%	100%	0%
Palestine	103	0	:	0	0	0	0%	0%	0%
Algeria	81	2	:	0	0	1	0%	0%	100%

Source: Asylum Office

Gender/age breakdown of the total number of persons intending to apply for asylum: 2018

	Number	Percentage
Total number of persons intending to apply	8,436	100%
Men	7,507	88%
Women	929	12%
Children	2,475	29%
Unaccompanied children	700	8%

Source: Asylum Office

Comparison between first instance and appeal decision rates: 2018

Statistics on appeals are not available.

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 and Temporary Protection, Official Gazette no. 24/2018	Zakon o azilu i privremenoj zaštiti / Закон о азилу и привременој заштити	Asylum Act	https://bit.ly/2KZnmGv (EN) https://bit.ly/2NigaSq (SR)
Law on Foreigners Official Gazette no. 24/2018	Zakon o strancima Republike Srbije / Закон о странцима	Foreigners Act	https://bit.ly/2SP2aa9 (EN) https://bit.ly/2PXF3h (SR)
Law on Migration Management 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, Official Gazette no. 18/2016	Zakon o opštem upravnom postupku Republike Srbije / Закон о општем управном поступку Републике Србије	GAPA	https://bit.ly/2lpdyEP (SR)
Law on Administrative Disputes, Official Gazette no. 111/2009	Zakon o upravnom sporu / Закон о управним стварима	Administrative Disputes Act	https://bit.ly/2SbzJxS (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, no.	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)
Rulebook on the Procedure of Registration, Design and Content of the Certificate on Registration of a Foreigner Who Expressed Intention to Seek Asylum Official Gazette, no. 42/2018	Pravilnikom o načinu i postupku registracije i izgledu i sadržini potvrde o registraciji stranca koji je izrazio nameru da podnese zahtev za azil	Rulebook on Registration	https://bit.ly/2U3A3AE (SR)
The Rulebook on the Form of the Decision on Refusal of Entry into the Republic of Serbia, the Form of the Decision on the Approval of Entry into the Republic of Serbia and the Manner of Entering Data on the Refusal of Entry into the Travel Document of the Foreigner Official Gazette, no. 50/2018	Pravilnik o izgledu obrasca o odbijanju ulaska u Republiku Srbiju, o izgledu obrasca o odobrenju ulaska u Republiku Srbiju i načinu unosa podatka o odbijanju ulaska u putnu ispravu stranca	Rulebook on the Refusal of Entry	https://bit.ly/2EkP1N9 (SR)

Overview of the main changes since the previous report update

The report was last published in **February 2018**.

- ❖ **Asylum reform:** The new Asylum Act came into force on 4 June 2018, introducing an entire set of novelties. Among those, the most important ones are related to the accelerated procedure and the border procedure, more precise provisions on the grounds for persecution, *sur place* refugees, acts of persecution, actors of persecution, actors of protection in the country of origin, the internal flight alternative, and grounds for exclusion. Additionally, the safe third country provision has been improved, the first country of asylum concept has been introduced and the rights between persons granted refugee status and subsidiary protection have been aligned. However, the real effects of all of the enlisted novelties are yet to be seen during the course of 2019, since the old Asylum Act continued to be applied in the vast majority of the ongoing proceedings.

Asylum procedure

- ❖ **Access to the territory:** Access to territory and the asylum procedure remains a serious problem, especially in the practice of police authorities in the border area with Bulgaria and North Macedonia, as well as at the Nikola Tesla Airport. The new Foreigners Act that came into force on 1 October 2018 also gives a lot of reasons for concern, taking in consideration that the newly introduced decision on the refusal of entry cannot be challenged with an appeal that has automatic suspensive effect. Coupled with the practice of push backs, the decision on refusal of entry will most likely become an additional obstacle for persons in need of international protection in accessing the territory and the asylum procedure respectively.
- ❖ **Safe third country:** The safe third country concept still remains the most common concept applied in the asylum procedure, even though the rate of its application has dropped to 65%, and more cases were examined on the merits in comparison to previous years. However, numerous decisions proclaiming Bulgaria, North Macedonia and even Turkey as 'safe' clearly lack any assessment as to the risks of *refoulement* in these countries, and are not followed by individualised guarantees that asylum seekers would be allowed to enter the territory and the asylum procedure there.
- ❖ **Unaccompanied children:** In 2018, the first decision granting asylum to an unaccompanied girl from Nigeria was issued, taking into consideration the best interests of the child. This decision should be welcomed, but also used as a good starting point in the treatment of unaccompanied children.
- ❖ **Appeal:** Overall, the practice of Asylum Commission and Administrative Court remained unchanged, lacking the corrective element in the work of the Asylum Office. Moreover, it is clear that the positive development of the practice was mainly detected in the work of the first instance body.

Reception conditions

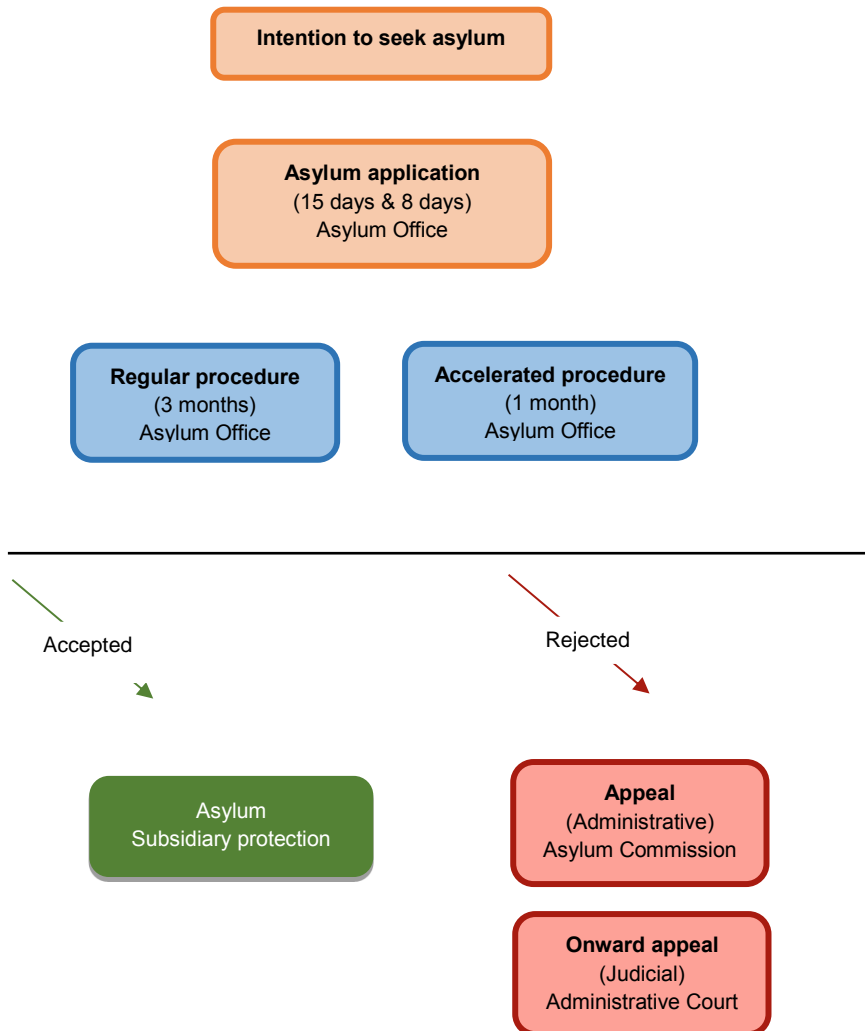
- ❖ **Conditions in reception facilities:** Reception conditions are mostly satisfactory in the Asylum Centres due to a significant drop in arrivals, as well as the drop of people who are genuinely interested in staying in Serbia. On the other hand, living conditions in the Reception Centres vary. The most disturbing situation has been detected in Adasevci, Šid and Principovci Reception Centres located close to the border with Croatia. In general, the conditions in the Reception Centres are not designed for long-term stays.

- ❖ **Detention at the airport:** The detention for the purpose of asylum procedure is still a rarity. However, the practice of BPSB at the Nikola Tesla Airport remains a serious concern since those people who are likely in need of international protection, but are assessed as persons who do not meet the requirements to enter Serbia, are arbitrarily deprived of liberty and informally sent back to the third country or a country of origin without any kind of assessment on the risks of *refoulement*. The practice of the Misdemeanour Courts has remained unchanged in 2018, and it is a frequent practice that persons in need of international protection are sentenced to short-term imprisonment in the court procedure where they are denied right to a fair trial.

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: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ¹ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ² | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Admissibility procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: ³ | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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 <ul style="list-style-type: none"> ❖ 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	23	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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.

Currently, there are a total of 23 staff, of which:

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.

Asylum Office staff: 2018	
Position	Number
Head of the Asylum Office	1
Deputy of the Head of the Asylum Office	1
Country of Origin Information Officers	3
Registration Officers (Krnjača and Banja Koviljača Asylum Centers)	2
Asylum Officers	12
Administrative Officers	4
Total	23

Thus, 15 asylum officers are in charge of the asylum procedure, a significant improvement in comparison to the previous years. The increase of the capacity of the first instance body has improved the effectiveness of asylum procedure in terms of more timely conduct of asylum interviews.

5. Short overview of the asylum procedure

The right to asylum is enshrined in Article 57(1) of the Constitution of Serbia.⁵ The asylum system and procedure *stricto sensu*, however, are mainly governed by the New Act on Asylum and Temporary Protection (“Asylum Act”) that came into force on 3 June 2018.⁶ Additionally, relevant are the Foreigners Act⁷ and the General Administrative Procedure Act,⁸ 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,⁹ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees.

The new Asylum Act introduced several legislative novelties such as accelerated and border procedures, as well as the “first country of asylum” concept. One of the most significant changes concerns the “safe third country” concept. The new 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. However, the effects of these new provisions are yet to be seen.

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 to facilitate the lodging of the asylum application and then issue him or her personal identity documents for asylum seekers. The Asylum Office is under the legal obligation to decide on the application within 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. This deadline could be extended to up to 9 months.

⁵ ‘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 Republic of Serbia,’ ‘Constitution of the Republic of Serbia’, Official Gazette of the Republic of Serbia, no. 83/06, Article 51(1).

⁶ Official Gazette no. 24/2018.

⁷ Official Gazette no. 24/2018.

⁸ Official Gazette no. 18/2016 and 95/2018.

⁹ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

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

1.1. Access to the territory in the green border zone

A number of issues concerning limited access to territory were reported and documented in 2018, predominately in border areas with North Macedonia and Bulgaria. The incidents mainly included denial of access to territory without examination of the individual circumstances of each person. Namely, the practice of push backs from previous years continued and refugees and asylum seekers who were arriving from said countries would be briefly deprived of their liberty, searched and denied access to the basic rights of persons deprived of their liberty.¹⁰ Soon after, with the threat of use of force, they would be ordered to go back to Bulgaria¹¹ or North Macedonia.¹² Thus, refugees and asylum seekers were forced back to neighbouring countries without an assessment of their special needs e.g. age, mental or medical state, risks of *refoulement*, but also the risks of chain *refoulement* further to Greece¹³ or Turkey, and the possibility to lodge a remedy with suspensive effect in order to challenge their forcible removal.¹⁴

According to the UNHCR and their partners in North Macedonia, several hundred persons were pushed back to North Macedonia in 2018.¹⁵ MYLA has reported that there were even cases in which people who entered Serbia from Bulgaria were expelled to North Macedonia.¹⁶

On 2 April 2018, the Government's decision on the establishment of joint army and police forces at the border was annulled.¹⁷ On the official website of the Serbian Army, it was published that joint forces "disabled illegal entry of more than 23,000 illegal migrants"¹⁸ with the assistance of police officers from the Czech Republic, Slovakia, Slovenia, France, Hungary and Austria. Thus, the narrative based on the praising of the actions of joint forces of the army and police, that has been based on systematic push backs, remained unchanged in 2018.¹⁹ The most notable examples of such praises were statements from the Minister of Defence, Aleksandar Vulin, who stated in July 2017 that more than 21,000 "illegal migrants" had been prevented from illegally crossing the border from Bulgaria and North Macedonia.²⁰ In June 2015,

¹⁰ Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

¹¹ M.Z.U., an Afghan minor, stated during his asylum hearing that in December 2016, after he had crossed from Bulgaria to Serbia, his group was captured by the Serbian Border Police, searched and ordered to go back to Bulgaria: Minutes from the hearing in Case No 26-2643/17, 19 October 2018; S.N.A., an Afghan national, stated during his asylum hearing that in August 2016 he had been pushed back by the Serbian Border Police three times: Minutes from the hearing in Case No 26-81/17, 15 March 2017.

¹² MYLA, *Human rights violations against refugees and migrants along the Western Balkan route*, 2017, available at: <https://bit.ly/2E7SYn8>, 6-8, 12.

¹³ *Ibid*, 3-4, 6-7, 8, 11-12.

¹⁴ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹⁵ Information provided by the UNHCR Office in North Macedonia, February 2019.

¹⁶ MYLA, *Human rights violations against refugees and migrants along the Western Balkan route*, 2017, 6.

¹⁷ In July 2016, the Serbian Government adopted a decision to form mixed patrols of the army and police to strengthen the border with North Macedonia and Bulgaria: AIDA, Country Report Serbia, 2017 Update, February 2018, 14.

¹⁸ Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EolHol>.

¹⁹ AIDA, Country Report Serbia, 2017 Update, 14-15.

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>.

Mr Vulin's acknowledgment was more accurate when he stated that "last night 400 migrants was returned to Macedonia".²¹ Said statements irresistibly correspond to the statements given by the highest Italian officials during the sea operations at the time when the *Hirsi Jamaa v. Italy* incident took place.²² In other words, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2018.

The above-described practice has been criticised by the Human Rights Committee which expressed its concerns related to "collective and violent" denial of access to territory.²³ These concerns have also been shared by the Committee against Torture (CAT)²⁴ and Amnesty International,²⁵ while UNHCR had reported this problem for the first time in 2012.²⁶ In 2015, CAT recommended to Serbia to establish "formalized border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organizations."²⁷

There are several cases of collective expulsions that were thoroughly documented and which BCHR has attempted to challenge before different national and international instances. The case of attempted collective expulsion from December 2016 is still in the criminal 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.²⁸ The fact that more than two years has passed, and that investigative authorities have failed to secure any evidence indicates that it cannot be expected from domestic authorities to address these kinds of practices. This standing also refers to the Serbian Ombudsman, who initially promised to examine this case *ex officio*, but has remained silent to this date.

Another important case which is currently pending before the European Court of Human Rights (ECtHR) occurred in February 2017.²⁹ A group of 25 refugees from Afghanistan (including 9 children) was 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.³⁰ 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

²¹ BLIC, 'Sinoć vraćeno 400 migranata u Makedoniju', 23 June 2015, available in Serbian at: <https://bit.ly/2tvKOLv>.

²² ECtHR, *Hirsi Jamaa and others v. Italy*, Application No 27765/09, Judgment of 23 February 2012, EDAL, available at: <https://bit.ly/2GVSYtm>, para 13.

²³ Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

²⁴ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

²⁵ Amnesty International, *Europe's Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary*, July 2015, available at: <https://bit.ly/1dLK66T>, 31-34.

²⁶ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

²⁷ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

²⁸ Osservatorio balcani e caucaso, 'Serbia needs to investigate asylum seekers push backs', 11 January 2017, available at: <http://bit.ly/2koHnsj>.

²⁹ ECtHR, *Hajatolah v. Serbia*, Application No 57185/17. The case is expected to be communicated to the Government in 2019.

³⁰ See more in BCHR, *Right to Asylum in the Republic of Serbia; Periodic report for January-March 2017*, 2017, 21-26.

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.³¹

An identical practice has been documented at exit points from Serbia to Bosnia and Herzegovina, Croatia, Hungary and Romania where refugees and asylum seekers are systematically denied access to the territory and the asylum procedure, and are very often subjected to various forms of ill-treatment, some of which might amount to torture.³² Thus, it is clear that the so-called Western Balkan route represents a region in which refugees and asylum seekers are systematically subjected to collective expulsions and ill-treatment by border authorities. Only in 2018, the UNHCR office in Serbia and its partners documented more than 1,000 push backs from Croatia, Bosnia, Hungary and Romania. These 1,000 incidents concerned around 10,000 people. Accordingly, every day at least 30 persons (approximately 3 denials per day) were pushed back to Serbia from one of said countries. The vast majority of pushbacks have been done by the Croatian border police (62%), then Bosnia (18%), Hungary (9%) and Romania (7%). Out of approximately 10,000 persons, 45% were from Afghanistan, 31% from Pakistan, 8% from Iran, 5% from Iraq and 3% from Bangladesh.³³

1.2. Access to the territory at the Nikola Tesla Airport in Belgrade

The contentious work of the Border Police Station Belgrade (BPSB) at the Nikola Tesla Airport has remained unchanged,³⁴ even though the number of persons who were issued with certificates of intention to seek asylum there was the highest ever in 2018 (324). The reason for that was the visa-free entry for Iranian passport holders introduced in August 2017, which was cancelled in October 2018 following pressure from the EU.³⁵

First of all, those foreigners who, according to the assessment of BPSB, do not meet the requirements to enter Serbia are deprived of liberty in the transit zone in a manner that can only be described as arbitrary. They remain in that status for as long as the air carrier with which they travelled does not secure a place for their flight back to the departing destination; country of origin or a third country.³⁶ Their detention can last from several hours to up to several weeks.³⁷ However, BPSB does not consider them as persons deprived of their liberty and thus denies them all the rights they are entitled to, such as: right to a lawyer, right to inform third a person of their whereabouts, the right to an independent medical examination, the right to be served with the decision on deprivation of liberty and the right to lodge a remedy against a decision on deprivation of liberty. Moreover, police officers do not have at their disposal interpreters for the languages which foreigners who might be in need of international protection usually understand, which means that they cannot properly inform them on said rights, including the right to apply for asylum.³⁸

The final consequence of this flawed practice is that people who might be in need of international protection could be denied access to territory and sent back to third countries or countries of origin where they could face persecution or torture and other cruel, inhumane or degrading treatment or punishment. In other words, they are denied access to the territory and the asylum procedure in an arbitrary manner and without examining the risks of *refoulement*. More precisely, foreigners are simply boarded on the

³¹ *Ibid.*

³² See more in BCHR and International Aid Network (IAN), *Documenting ill-treatment and collective expulsions of refugees and migrants*, January 2019, available at: <https://bit.ly/2T8kEI5>.

³³ The entire statistical data has been provided by UNHCR office in Serbia.

³⁴ AIDA, Country Report Serbia, 2017 Update, February 2018, 14-15.

³⁵ Schengen Visa Info, 'EU forces Serbia to return visa regime for Iranian passport holders', 11 October 2018, available at: <https://bit.ly/2SQqR0R>.

³⁶ Article 13(2) Foreigners Act.

³⁷ For example, in one of BCHR's cases which is currently pending before the Constitutional Court, a refugee from Iran, H.D., was detained in the transit zone for 30 days in November 2016: BCHR, *Right to asylum in the Republic of Serbia 2016, 2017*, available at: <https://bit.ly/2VfZ1wP>, 32.

³⁸ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

plane, without an expulsion decision rendered in a procedure where they could have used services of a lawyer and an interpreter, and where they could lodge an appeal with the suspensive effect.³⁹

The Ministry of Interior has stopped delivering data on the number of returns from the airport in the above-described manner. Despite numerous information requests from BCHR, the Ministry has remained silent to the time of writing. However, it is reasonable to assume that there are still numerous returns of persons in need of international protection to countries such as Turkey, Lebanon, United Arab Emirates and Greece as was the case in previous years.⁴⁰

During 2018, BCHR lawyers were allowed access to those people in the transit zone who had explicitly asked for Centre's support. Accordingly, since April 2018, the Ministry of Interior has started issuing temporary entry cards for the transit zone to BCHR lawyers who were addressed via email or cell-phone by foreigners detained at the airport. The main condition for access to transit zone was that lawyers had to know the exact name of the person detained. Otherwise, the Ministry would not allow unimpeded access to a person who claimed to be in need of international protection but who could not directly contact BCHR. Thus, this practice still does not mean that all the persons who are denied access to the territory at the airport are provided with legal counselling since not all of them speak English, nor do they all have access to phones or internet. Accordingly, very often, the people who would receive counsel from BCHR lawyer at the airport would state that there are dozens of others who are detained and would wish to apply for asylum or receive additional information on their legal possibilities in Serbia.

Without trying to dispute an obvious improvement in the practice of BPSB (which is embodied through the issuance of temporary entry cards) the only way to secure the respect for human rights of all the foreigners who arrive at Nikola Tesla Airport and who claim to be in need of international protection would be to grant BCHR lawyers unhindered access to the entire transit zone, including the detention premises. Additionally, BPSB should start providing information leaflets which should contain the list of rights and obligations that foreigners have in Serbia. These leaflets should also contain the short description of the procedures that could be possibly applied to them, including the expulsion procedure. By combining these two, BPSB would guarantee the respect for the principle of *non-refoulement*, maintain control of entry and stay on Serbian soil,⁴¹ and would form a partnership with the qualified lawyers who could assist them in making the right decision in every individual case.

To conclude, it is clear that there is an obvious need to establish a border monitoring mechanism at the airport which should be done jointly by UNHCR, NGOs and representatives of the Ministry of Interior.⁴²

The Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer, highlighted in his preliminary observations the following:

"During my visit, I noted that the considerations based on which the Border Police had decided to refuse a person's entry and to return them to the airport of departure were not documented with sufficient precision in individual case files, and that the deportation decision did not appear to be subject to a legal remedy involving an evaluation of the risk of *refoulement* to a situation where the person in question might be subjected to torture or other cruel, inhuman or degrading treatment or punishment. All seven persons held at in the transit zone at the time of my visit, two Turkish, two Iranian and three Indian nationals, claimed that their rights had not been explained to them.

³⁹ See by analogy ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, para. 83-84, see also CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

⁴⁰ BCHR, *Right to Asylum in the Republic of Serbia* 2016, 31-33.

⁴¹ ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

⁴² CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

While fully recognizing the sovereign right of Serbia to control immigration, I am seriously concerned that refusals of entry and, more importantly, deportation decisions based on the personal perception of individual border guards, if not properly documented and subjected to independent judicial review, bears a great risk of arbitrariness and, in certain cases, may well result in *refoulement* to situations or places where persons may be exposed to the risk of torture or other ill-treatment.”⁴³

1.3. Refusal of entry under the Foreigners Act

On 3 October 2018, the new Foreigners Act came into force, introducing a novelty regarding the competences of border authorities. Namely, Article 15 envisages that the Border Police shall refuse entry into the Republic of Serbia to a foreigner if that person:

- Does not have a valid travel document or visa, if required;
- Does not have sufficient means of subsistence during his stay in the Republic of Serbia, for return to his country of origin or transit to another country, or is not in other ways provided with subsistence during his stay in Serbia;
- Is in transit, but does not meet the criteria for entry into the next country of transit or country of final destination;
- Has been issued a protective measure of removal, security measure of expulsion, or a ban on entry into the Republic of Serbia, which is in effect;
- Does not have a certificate of inoculation or other proof of good health, if coming from areas affected by an epidemic of infectious diseases;
- Does not have travel medical insurance for the intended period of stay in Serbia.

Entry shall be refused by issuing a decision on refusal of entry on a prescribed form,⁴⁴ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant an entry, or if the international commitments of the Republic of Serbia indicate otherwise.⁴⁵ The foreigner can lodge an appeal to the border authority against the decision,⁴⁶ but the appeal does not have suspensive effect.⁴⁷ This basically means that the foreigner will have to wait for the decision on his or her appeal in the country in which he or she is expelled, which clearly indicates that this remedy is theoretical and illusory.⁴⁸

The Foreigners Act contains the entire set of principles which aim to guarantee the respect of *non-refoulement* in all forcible removal procedures, including the one regarding the decision on refusal of entry. In Article 75, it is stated that the competent authority shall take into consideration the specific situation of vulnerable persons, family and health status of the person being returned, as well as the best interests of a child,⁴⁹ specific position of people with disabilities,⁵⁰ family unity,⁵¹ etc. If necessary, during the return procedure, an interpreter shall be provided for a language that the foreigner understands, or is reasonably assumed to understand.⁵² Additionally, the competent authority shall, at the foreigner's request, provide written translation of the provision of the decision on return, translation of the ban on entry if issued, and translation of the legal remedy into a language that the foreigner understands or may be reasonably assumed to understand.⁵³ Furthermore, Article 83 envisages that a foreigner may not be forcibly removed to a territory where he would be under threat of persecution on the grounds of his race, sex, sexual

⁴³ 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* – 13 to 24 November 2017*, 27 November 2017, available at: <http://bit.ly/2DBrBnT>, para 5(a).

⁴⁴ Article 15(2) Foreigners Act.

⁴⁵ Article 15(3) Foreigners Act.

⁴⁶ Article 15(6) Foreigners Act.

⁴⁷ Annex 1 Regulation on the Refusal of Entry.

⁴⁸ ECtHR, *Conka v. Belgium*, Application No 51564/99, Judgment of 5 February 2002, EDAL, available at: <https://bit.ly/2STSScH>; *Muminov v. Russia*, Application No 42502/06, Judgment of 11 December 2008, para 10.

⁴⁹ Article 75(1) Foreigners Act.

⁵⁰ Article 75(2) Foreigners Act.

⁵¹ Article 75(3) Foreigners Act.

⁵² Article 75(5) Foreigners Act.

⁵³ Article 75(6) Foreigners Act.

orientation or gender identity, religion, nationality, citizenship, membership of a particular social group or his political views, unless he or she represent a threat for national security or public order.⁵⁴ Regardless of the existence of such exceptions, Article 83(3) strictly prohibits foreigners' removal to a territory in which they would be under risk of death penalty or torture, inhuman or degrading treatment or punishment.

While noting the all the prescribed guarantees against *refoulement* represent an encouraging sign, the introduction of the concept of refusal of entry into the new Foreigners Act still gives a lot of reasons for concern. This concern is derived from the current practice of the Ministry of Interior in the border areas with Bulgaria and North Macedonia which is based on regular push backs which are being praised by the highest state officials. Thus, it is reasonable to assume that the flawed practice of denial of access to territory would merely take a different shape which will be equally harmful to the one that existed so far. Only now, denial of access to territory will probably be based on a decision that cannot be effectively challenged before the competent judicial authority since the appeal does not have automatic suspensive effect.⁵⁵ Also, the guarantees against *refoulement* that are introduced in the Foreigners Act had existed in the Serbian legal framework before this Act came into force.⁵⁶ However, they were not applied properly, and there are plenty of documented cases where *prima facie* refugees were denied access to territory regardless of the risks in the receiving states (most notably in Bulgaria and North Macedonia).

In order for the new Foreigners Act to be applied fully in line with the principle of *non-refoulement*, it is necessary to conduct a thorough training of all the border officials who will be entitled to render a decision on refusal of entry. Additionally, all the Regional Border Centres should have in their ranks interpreters for Arabic, Farsi, Urdu, Pashtu, Turkish, Kurdish and other languages that foreigners that are in need of international protection understand. Also, a person that is about to be denied access to territory should be afforded with adequate and free of charge legal assistance. And finally, the first stage of the implementation of the Foreigners Act should be made transparent and border monitoring activities, which were recommended by CAT, would dispel any existing doubts on the flawed practices of border authorities.

It is also worth mentioning that in light of the latest ECtHR judgment in *M.A. v. Lithuania*, the Foreigners Act should be amended and automatic suspensive effect of the appeal against the decision on refusing the entry should be introduced.

BCHR will request the data on the current practice and the number of decisions on refusal of entry in the first quarter of 2019 in order to assess to which extent these concerns are valid.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?
☒ Yes ☐ No
2. If so, what is the time limit for lodging an application? 15 days and 8 days

2.1. Expression of intention to seek asylum and registration

The new Asylum Act envisages that foreigners within the territory of Serbia have the right to express the intention to seek asylum and submit an asylum application.⁵⁷ Foreigners may express intention to seek asylum to the competent police officers at the border or within territory either verbally or in writing,⁵⁸ including places such as prisons, the Detention Centre for Foreigners in **Padinska Skela**, airport transit zones or during court proceedings e.g. misdemeanour proceedings.⁵⁹

⁵⁴ Article 83(2) Foreigners Act.

⁵⁵ ECtHR, *M.A. v. Lithuania*, para 83-84.

⁵⁶ See e.g. the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

⁵⁷ Article 4(1) Asylum Act.

⁵⁸ Article 35(1) Asylum Act.

⁵⁹ Article 35(2) Asylum Act.

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

An authorised police officer shall photograph and fingerprint the person,⁶⁰ who will thereafter be issued a certificate on registration of a foreigner who has expressed intention to seek asylum.⁶¹ The manner and the procedure of registration, as well as the content of the registration certificate are defined in the Rulebook on Registration. This Rulebook introduces several novelties, *inter alia*, the design and content of certificates for foreigners who expressed the intention to seek asylum. The novelties introduced by the new Rulebook mainly relate to the fact that new Asylum Act provided for integration of the process of recording of the intention to seek asylum and the act of registration of foreigners into one procedural step. In line with that and under the new Rulebook, a certificate on registration of a foreigner who expressed intention to seek asylum ("registration certificate") is issued to a foreigner who has expressed the intention and registered. In the past, having expressed intention to seek asylum, a foreigner was issued the certificate on the expressed intention to seek asylum, while registration represented a separate action conducted prior to submission of the asylum application.⁶²

Pursuant to the Rulebook, registration certificates shall be issued in two copies, one of which is handed to the foreigner and the second one to be archived in the Ministry of Interior organisational unit where the officer who issued the registration certificate is employed.⁶³ Under the previous Rulebook, the certificates of expressed intention to seek asylum were issued in three copies, one of which was delivered to the Asylum Office. Registration certificates issued to foreigners who expressed intention are in Serbian and in Cyrillic alphabet. Given that the majority of asylum seekers do not understand Serbian and do not use the Cyrillic alphabet, as well as the fact that interpreters are seldom present at issuance of the certificate, the possibility of the certificates being issued in English, Arabic, Farsi or some other languages should be considered in order to avoid potential dilemmas related to understanding of the rights specified therein.

Over the course of 2018, the Ministry of Interior issued a total of 8,436 registration certificates.

The registration certificate 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, however, a precondition for submission of the asylum application.

After the foreigner is registered, he or she is referred to an Asylum Centre or other facility designated for accommodation of asylum seekers. The asylum seeker is obliged to report to such facility within 72 hours from the moment of issuance of the registration certificate.⁶⁴ If a foreigner fails to report to the Asylum Centre or other facility designated for the accommodation of the applicants within 72 hours of registration without a justified reason, the regulations on the legal status of foreigners shall apply.⁶⁵ Thus, this person will be considered as an irregular migrant, which cannot be the case for people who are in need of international protection or who, on the basis of their origin, have a *prima facie* claim.

In a letter sent to the BCHR, the Ministry of Interior stated that, when issuing registration certificates and referring persons to one of the Asylum Centres or transit / Reception Centres, the police officers advise the persons who express the intention to seek asylum about their right to submit an asylum application and about the other rights and obligations, in line with Article 56 of the Asylum Act. The letter also indicates that a brochure on asylum seekers' rights and obligations is being drafted and that it will be made available in all the organisational units of the Ministry of Interior which issue registration certificates, and to the facilities for accommodation of asylum seekers and migrants.⁶⁶ Consequently, if said brochures in languages that asylum seekers understand have not been distributed yet, it remains unclear how the

⁶⁰ Article 35(5) Asylum Act

⁶¹ Article 35(12) Asylum Act.

⁶² See more in BCHR, *Right to Asylum in the Republic of Serbia 2017*, 41.

⁶³ Article 8 Rulebook on Registration.

⁶⁴ Article 35(3) Asylum Act.

⁶⁵ Article 35(13) Asylum Act.

⁶⁶ Information provided by the Border Police, 6 December 2018.

foreigners are advised about their rights and obligations given the language barrier between them and the police officers, and the fact that interpreters are rarely present in these cases.

Concerns in practice

It is possible for the same person to be issued with a copy of the registration certificate in case of it has expired or has been stolen or lost. This possibility exists as long as asylum application has not been rejected, in which case asylum seeker may lodge a [Subsequent Application](#).⁶⁷ This approach was taken by the Asylum Office in all the scenarios except in those in which foreigners are issued with the decision on cancellation of residency⁶⁸ or decision on illegal stay on Serbian soil.⁶⁹ In these kinds of situations, it is still not clear whether or not Asylum Office considers that these people still have right to apply for asylum.

As it has been the case in previous years, the total of 8,436 certificates issued in 2018 does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia. Registration certificates are mainly issued for the purpose of securing a place in one of the Asylum Centres or Reception Centres, where asylum seekers may enjoy basic rights such as accommodation, food, health care, psycho-social support (see [Types of Accommodation](#)). Under the circumstances, the Ministry of Interior does not adequately assess an individual's aspirations, i.e. whether or not they genuinely want to remain in Serbia.

Conversely, it is common practice that genuine asylum seekers are referred to Reception Centres instead of Asylum Centres, thereby prolonging their entry into the asylum procedure. Consequently, NGOs providing legal assistance have to advocate for their transfer to one of the five Asylum Centres. This process can sometimes last for more than several weeks, which further delays access to the asylum procedure, and can cause frustration or discouragement to the applicants. BCHR has been suggesting for years that all genuine asylum seekers should be placed in the Asylum Centre in **Krnjača** which has the capacity to accommodate on an annual basis all persons who are genuinely interested in staying in Serbia. The Asylum Office shares these views, however, the Commissariat for Refugees and Migration (CRM) has been declining this without providing any reasonable explanation.

By placing all genuine asylum seekers in Krnjača, an entire set of improvements would be achieved:

- The length between the issuance of registration certificate and the first instance decision would be significantly shortened since the applicants would not be forced to wait for weeks to be transferred from Reception Centres to an Asylum Centre;
- The Asylum Office, which is based in **Belgrade**, would focus the majority of its resources on the Asylum Centre which is based in Belgrade, and thus would conduct the asylum procedure in a more effective manner, scheduling lodging of asylum applications and interviews faster and more often than it is the case now, especially in distant Asylum Centres such as **Sjenica** and **Tutin**;
- Genuine asylum seekers would have access to more effective legal counselling since the NGOs providing free legal assistance are based in **Belgrade** and can be present more often in the centre;⁷⁰
- The resources which are necessary to facilitate the asylum procedure in distant camps, such as travel and accommodation costs of asylum officers and interpreters, would be saved.

It is important to reiterate that refugees expelled / returned from Hungary are still facing difficulties in accessing the asylum procedure. It is not clear what the official stance of Serbian authorities vis-à-vis such cases is, but BCHR has intervened on many occasions in order to secure their access to the asylum procedure.⁷¹ Even though there have not been major problems in 2018, it was still necessary for BCHR to intervene directly with the Asylum Office in order to secure individuals access to the procedure.

⁶⁷ Article 46 Asylum Act.

⁶⁸ Article 39 Foreigners Act.

⁶⁹ Article 74 Foreigners Act.

⁷⁰ This does not mean that BCHR would stop providing legal counselling in all the Asylum Centres and Reception Centres with an aim to track down more people who wish to stay.

⁷¹ See more in AIDA, Country Report Serbia, 2016 Update.

However, the question that remains open is what happens with those people who do not enjoy legal support. Thus, regardless of the positive approach of the Asylum Office, it is necessary that this body pass a clear message to all police departments that every person who expresses the intention to apply for asylum should be issued with a registration certificate.

In October 2017, BCHR was forced to submit a request for interim measures to the ECtHR in order to prevent the execution of a decision of cancellation of residence issued to an unaccompanied child from Afghanistan who was expelled from Hungary and denied access to the asylum procedure. The request was granted on 17 October 2017. A similar case occurred in 2015, when a refugee from Syria, returned under the readmission agreement from Hungary, was denied access and detained in the Detention Centre **Padinska Skela** for the purpose of forcible removal to Montenegro.⁷² In the latter case, the applicant was allowed to access the asylum procedure, while the Afghan minor was denied this possibility and remained in legal limbo.

The above-described cases indicate the existence of a very serious problem regarding access to the asylum procedure. Namely, people who were issued with the decision on cancellation of residency, or were penalised for misdemeanour of illegal entry⁷³ are often denied access to the asylum procedure. This kind of practice could have severe implications on those people who have a *prima facie* refugee claim since they could be forcibly removed to a third country (in the vast majority of cases to Bulgaria and North Macedonia) or even the country of origin in which they could be subjected to ill-treatment. Thus, it is very important to outline that the current practice of the most police departments in Serbia regarding the issuance of decisions on cancellation must be improved so it contains the procedural safeguards against *refoulement*. Accordingly, this procedure should be conducted in a manner which implies that the foreigner is allowed to contest his or her removal to a third country of country of origin with the assistance of a lawyer and interpreter, with the possibility to lodge a remedy for the judicial review of the negative first instance decision.⁷⁴ This remedy must have an automatic suspensive effect. None of these safeguards are currently in place. Moreover, the entire procedure is based on the simple delivery of the decision to a foreigner drafted in a standard template which only contains different personal data.

In one of the cases mentioned above, BCHR submitted the request for urgent interim measures to ECtHR in order to prevent expulsion of an unaccompanied minor from Serbia to Bulgaria. M.W. was issued with the decision on cancellation of residency without presence of a legal guardian, legal representative, while the Ministry of Interior failed to conduct any kind of assessment on the risks of *refoulement* in Bulgaria. ECtHR granted the Rule 39 request and the case will most probably be communicated in 2019.⁷⁵ The reasoning behind the contentious decision, which was also confirmed by the second instance and third instance body, is that M.W. abused the asylum procedure when he failed to lodge an asylum application on the basis of the first registration certificate. There were dozens of other cases in which the decision on cancellation of residency was a reason for the denial of access to the asylum procedure, but these people had decided to abscond from Serbia before the deadline for voluntarily departure had expired. The latest case of denial of access to the procedure occurred in February 2019, when a couple from Iran who were pushed back from Romania were automatically delivered with the decision on cancellation of residency and later on denied access to RSDP.

Problems regarding access to the procedure at **Nikola Tesla Airport** are identical (see [Access to the Territory](#)). Thus, those people who are denied access to territory are simultaneously denied access to RSDP.

No major problems of access to the procedure were recorded in 2018 regarding the Detention Centre for Foreigners in **Padinska Skela** where BCHR lawyers have unhindered access.

⁷² ECtHR, *Othman v. Serbia*, Application No 27468/15.

⁷³ BCHR, *Right to Asylum in the Republic of Serbia 2018*, available at: <https://bit.ly/2Vg3lqr>, 29-30.

⁷⁴ Article 1 Protocol 7 ECHR.

⁷⁵ ECtHR, *M.W. v. Serbia*, Application No 70923/17.

2.2. Lodging an application

The asylum procedure is initiated by lodging (“submitting”) an application to an authorised asylum officer, on a prescribed form within 15 days of the date of registration.⁷⁶ If the authorised asylum officer does not enable the person to lodge the application within that deadline, he or she may him or herself fill in the asylum application form within 8 days after the expiry of the 15-day time limit.⁷⁷ The asylum procedure shall be considered initiated after the lodging of the asylum application form to the Asylum Office.⁷⁸

If strictly interpreted, the deadline of 15 plus 8 days could create serious problems regarding access to asylum procedure because the reality in Serbia is that the vast majority of persons in need of international protection do not consider Serbia as a country of destination. However, they are predominantly and automatically issued with registration certificates and are thus susceptible to said deadline. In case the foreigner fails to meet the deadline, Article 35(13) of the Asylum Act envisages that he or she will be treated in line with the Foreigners Act, which further means that he or she could face expulsion to a third country or even the country of origin in case of the direct arrival to Serbia.

This solution is contestable on many levels. The main reason is the short period left from the moment of registration until the expiry of the 15 plus 8 days deadline for the lodging of the asylum application. There are several relevant observations to support this:

1. The capacities of the Asylum Office are still insufficient to cover thousands of cases in which the registration certificate is automatically issued;
2. The capacities of NGOs which providing free legal assistance are also insufficient to effectively cover all the Reception Centres and Asylum Centres within the set deadline and at the same time provide thorough legal counselling and preparation for asylum interviews;
3. If strictly interpreted, hundreds of people who enjoy the status of asylum seeker would be forced to submit an asylum application and then abscond from the procedure, which further means that the Asylum Office will have to render hundreds of decisions on discontinuation of the asylum procedure. This would strongly affect its regular work with the applicants who genuinely want to stay in Serbia. In other words, the time it will take for genuine asylum seekers to have an interview and receive a first instance decision would be significantly extended;
4. Those people who miss the deadline but have a *prima facie* refugee claim would be considered to be irregular migrants and would be treated in line with the Foreigners Act. Accordingly, they would be exposed to the risk of *refoulement* to one of the neighbouring countries such as Bulgaria and North Macedonia.

For that reason, it is encouraging that the Head of the Asylum Office stated that this body will not interpret Article 36 strictly and literally, and that the possibility to lodge an asylum application will be provided for all people regardless of the deadline. The arguments for this approach could be derived from the jurisprudence of the ECtHR and the case *Jabari v. Turkey* in which the Court stated that “the automatic and mechanical application” of a short time limit (for submitting an asylum application) “must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.”⁷⁹ However, it is clear that as long as this kind of provision exists in the Asylum Act, the risk of its strict interpretations will continue to exist, especially if the current policy which implies more or less tolerate approach towards irregular stay of refugees, changes. Additionally, there are academics who are occasionally hired to conduct trainings for decision-makers in Administrative Law, and who are in favour of a strict interpretation of Article 36. This narrow and literal understanding of asylum law, which at the same time neglects the international and constitutional framework, can negatively influence asylum authorities, especially the decision makers within Asylum Commission and Administrative Court, who, by their own accolade, lack sufficient knowledge on the legally binding international standards.⁸⁰ For that

⁷⁶ Article 36(1) Asylum Act.

⁷⁷ Article 36(2) Asylum Act.

⁷⁸ Article 36(3) Asylum Act.

⁷⁹ ECtHR, *Jabari v. Turkey*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

⁸⁰ One of the professors of Administrative Law at the Faculty of Law, University of Belgrade had an adamant approach towards the strict interpretation of Article 36, stating that Foreigners Act framework should be applied

reason, an amendment of this provision would dispel any doubts on possible mass denial of access to the asylum procedure in the future.

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: 3 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 2018: Not available

The asylum procedure in Serbia is governed by the Asylum Act as *lex specialis* to the General Administrative Procedure Act (GAPA). The new Asylum Act came into force in June 2018. It is prescribed that the old Asylum Act will continue to apply for all ongoing procedures. However, it is also envisaged that the ongoing procedures will be qualified under the new Asylum Act if it is more favourable for the applicant.⁸¹

The new Asylum Act provides that a decision on asylum applications in the regular procedure must be taken within a maximum of 3 months from the date of the lodging of the asylum application or the admissible subsequent application.⁸²

It is possible to extend the time limit by 3 months in case the application includes complex factual or legal issues or in case of a large number of foreigners lodging asylum applications at the same time.⁸³ Exceptionally, beyond these reasons, the time limit for deciding on an asylum application may be extended by a further 3 months if necessary, to ensure a proper and complete assessment thereof.⁸⁴ The applicant shall be informed on the extension.⁸⁵

The Asylum Act also envisages a situation where a decision on asylum application cannot be made within 9 months due to temporary insecurity in the country of origin of the applicant which needs to be verified every 3 months.⁸⁶ Nevertheless, the decision must be taken no later than 12 months from the date of the application.⁸⁷ Thus, the Asylum Office has a discretionary power to decide on the extension of the time limit for the decision.

The first instance procedure before the Asylum Office may be completed by: (a) a decision to uphold the application and recognise refugee status or subsidiary protection;⁸⁸ (b) a decision to reject the asylum

to all persons, regardless of the fact that they are in need of international protection, in case they do not meet the 15 plus 8 days deadline. This standing was expressed at the roundtable that took place on 13 December 2018 under the auspices of the project "Novelties in the Asylum and Migration System in the Republic of Serbia and Challenges in their Application", implemented by the AIRE Centre, IOM and the British Embassy in Serbia.

⁸¹ Article 103 Asylum Act.

⁸² Article 39(1) Asylum Act.

⁸³ Article 39(2) Asylum Act.

⁸⁴ Article 39(3) Asylum Act.

⁸⁵ Article 39(4) Asylum Act.

⁸⁶ Article 39(5) Asylum Act.

⁸⁷ Article 39(6) Asylum Act.

⁸⁸ Article 34(1)(1)-(2) Asylum Act.

application;⁸⁹ (c) a decision to discontinue the procedure;⁹⁰ or a decision to dismiss the application as inadmissible.⁹¹

The new Asylum Act has introduced more detailed provisions regarding the grounds for persecution,⁹² *sur place* refugees,⁹³ acts of persecution,⁹⁴ actors of persecution,⁹⁵ actors of protection in the country of origin,⁹⁶ the internal flight alternative,⁹⁷ and grounds for exclusion.⁹⁸ This clearly indicates that the legislature was guided by the Common European Asylum System framework, namely the recast Qualification Directive.

Even though the new Asylum Act does not explicitly set out the burden of proof required for being granted asylum, Article 32 provides that the applicant is obliged to cooperate with the Asylum Office and deliver all available documentation and present true and accurate information regarding the reasons for lodging an asylum application. It is further prescribed that, in examining the substance of the asylum application, the Asylum Office shall collect and consider all the relevant facts and circumstances, particularly taking into consideration:

- “1. the relevant facts and evidence presented by the Applicant, including the information about whether he or she has been or could be exposed to persecution or a risk of suffering serious harm;
2. current reports about the situation in the Applicant’s country of origin or habitual residence, and, if necessary, the countries of transit, including the laws and regulations of these countries, and the manner in which they are applied – s contained in various sources provided by international organisations including UNHCR and the European Asylum Support Office (EASO), and other human rights organisations;
3. the position and personal circumstances of the Applicant, including his or her sex and age, in order to assess on those bases whether the procedures and acts to which he or she has been or could be exposed would amount to persecution or serious harm;
4. whether the Applicant’s activities since leaving the country of origin were engaged in for the sole purpose of creating the necessary conditions to be granted the right to asylum, so as to assess whether those activities would expose the Applicant to persecution or a risk of serious harm if returned to that country...”⁹⁹

Also, the benefit of the doubt principle has not been explicitly defined as such, but it is prescribed that the applicant’s statements shall be considered credible in the part where a certain fact or circumstance is not supported by evidence if:

- “1. the applicant has made a genuine effort to substantiate his or her statements with evidence;
2. all relevant elements at his or her disposal have been submitted, and a satisfactory explanation have been given regarding any lack of other relevant facts;
3. the applicant’s statements are found to be consistent and acceptable, and that they are not in contradiction with the specific and general information relevant to the decision on the asylum application;
4. the applicant has expressed intention to seek asylum at the earliest possible time, unless he or she can demonstrate good reason for not having done so;
5. the general credibility of the Applicant’s statement has been established.”

⁸⁹ Article 38(1)(3)-(5) Asylum Act.

⁹⁰ Article 47 Asylum Act.

⁹¹ Article 42 Asylum Act.

⁹² Article 26 Asylum Act.

⁹³ Article 27 Asylum Act.

⁹⁴ Article 28 Asylum Act.

⁹⁵ Article 29 Asylum Act.

⁹⁶ Article 30 Asylum Act.

⁹⁷ Article 31 Asylum Act.

⁹⁸ Articles 33 and 34 Asylum Act.

⁹⁹ Article 32 Asylum Act.

In 2016, 2017 and 2018, the Asylum Office rendered the following decisions:¹⁰⁰

First instance decisions by the Asylum Office: 2016-2018			
Type of decision	2016	2017	2018
Grant of asylum	42	14	24
Rejection on the merits	17	11	21
Dismissal as inadmissible	65	56	45
Discontinuation	268	158	178
Total	380	239	268

Protection was granted to citizens of the following countries in 2018:

Countries of origin of persons granted refugee status / subsidiary protection: 2018		
Country	Granted refugee status	Granted subsidiary protection
Libya	0	10
Afghanistan	5	0
Iran	5	0
Pakistan	0	1
Syria	0	1
Somalia	0	1
Nigeria	1	0
Total	11	13

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. 178 of the 268 decisions taken in 2018 were discontinuation decisions.

With respect to decisions that could be considered significant in 2018, it is worth mentioning that the Asylum Office granted subsidiary protection to the family A. whose case is still pending before the ECtHR.¹⁰¹ Namely, after the case had been communicated to the Government, the family A. was invited to submit a subsequent application. On 3 July 2018, the Asylum Office granted subsidiary protection to the applicants who no longer face *refoulement* to Libya.¹⁰²

Additionally, there were significant improvements regarding the practice of flawed application of the [Safe Third Country](#) concept. In 12 out of 16 positive decisions, there were grounds for the safe third country concept application since the applicant had arrived in Serbia from the North Macedonia or Bulgaria. However, the Asylum Office entered the merits of their claim and granted them international protection. Additionally, in 7 out of 20 decisions on rejection of asylum application, there were also grounds to apply the safe third country concept but the first instance body decided on the merits. Thus, 2018 can be considered as the first year in which the Asylum Office significantly shifted its attention from grounds for inadmissibility based on the fact that the applicants have entered Serbia from one of its neighbouring countries, to the actual assessment of the reasons for leaving the country of origin.

¹⁰⁰ The statistical data in the table reflect the number of people granted international protection, not the number of positive decisions. One decision can cover more than one person.

¹⁰¹ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

¹⁰² Asylum Office, Decision No 26-222/15, 3 July 2018.

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 interview in the regular procedure is regulated by Article 37 of the Asylum Act. The interview should take place at the earliest time possible. The applicant is interviewed about all the facts and circumstances relevant to deciding on his or her application and particularly to establish his or her identity, the grounds for his or her asylum application, his or her travel routes after leaving the country of origin or habitual residence, and whether the asylum seeker had previously sought asylum in any other country.¹⁰³

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.¹⁰⁴ In the case where a large number of asylum applications has been lodged to the extent that the authorised officers of the Asylum Office are not able to interview all the applicants in good time, the Asylum Act provides that the Government may, at the request of the competent authority, decide on temporary involvement in the interviewing process of officers from other departments of the competent authority or officers from other authorities.¹⁰⁵ However, although prescribed that they must undergo the necessary training before engaging in the process, it remains unclear whether this training can provide the officers from other departments of the competent authority or officers of other authorities with the sufficient level of knowledge as required for interviewing the applicants given the specific characteristics of the asylum procedure.

The Asylum Act also specifies three situations when interviewing of applicants may be omitted, where:¹⁰⁶

1. A decision may be adopted upholding the application and granting the right to asylum on the basis of the available evidence;
2. The applicant is unable to give a statement due to circumstances of non-temporary nature beyond his control. In this case it is possible for the applicant or a member of his or her family to adduce evidence and give statements relevant to deciding on his asylum application;¹⁰⁷
3. The admissibility of a [Subsequent Application](#) is being assessed.

The Asylum Office conducted 176 interviews in 2018. In practice, asylum seekers often wait from several weeks to a month following the lodging of their application for an interview to be scheduled.

Interpretation

An applicant who does not understand the official language of the asylum procedure shall be provided free interpretation services into his or her native language, or a language that he or she can understand, including the use of sign language and the availability of Braille materials.¹⁰⁸

¹⁰³ Article 37(1) Asylum Act.

¹⁰⁴ Article 37(2) Asylum Act.

¹⁰⁵ Article 37(12) Asylum Act.

¹⁰⁶ Article 37(10) Asylum Act.

¹⁰⁷ Article 37(11) Asylum Act.

¹⁰⁸ Article 13 Asylum Act.

The costs of interpretation are covered by UNHCR and the interpreters are hired from their list.

When it comes to the practice, there were several instances in which BCHR lawyers decided to halt the interview since it was clear that interpreters were incompetent and that they could not establish effective communication with the applicants. Afterwards, the BCHR requested their removal from the list.

Recording and report

At the end of the interview, the records are signed by the asylum seeker, their legal representative, the interpreters and the official leading the interview.¹⁰⁹ The asylum seekers' legal representatives are entitled to ask additional questions to ensure comprehensive establishment of the facts of the case.

1.4. Appeal

Indicators: Regular Procedure: Appeal

- | | | |
|-----------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------------------|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it | <input type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Average processing time for the appeal body to make a decision: | Not available | |

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.¹¹⁰ The Asylum Commission member must be a citizen of the Republic of Serbia, have a university degree in law, minimum five years of work experience, and must have an understanding of human rights law.¹¹¹ The last requirement gives a lot of reasons for concern, and as far as BCHR is concerned, only one of the members fulfils this criterion since she is a professor of International Human Rights Law at the Faculty of Law of the University of Belgrade. As for the other members, the Government failed to deliver their biographies to the BCHR. However, at several roundtables that took place in the second half of 2018,¹¹² several newly elected members manifested a disturbing lack of basic knowledge of international refugee and human rights law. Thus, it is not reasonable to expect that this body could positively influence the practice of the Asylum Office. During the course of 2018 the decisions that were rendered on BCHR appeals were either of procedural nature or confirmed the flawed application of the [Safe Third Country](#) concept.

An appeal to the Asylum Commission suspends the enforcement of the first instance decision and it must be submitted with 15 days from the delivery of the decision.¹¹³

The Asylum Act does not specify the duration of the second instance procedure. Under the Administrative Disputes Act, a claim against “administrative silence” 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.¹¹⁴ In other words, the time limit for the second instance decision and its delivery to the applicant is 2 months after the appeal was lodged. In practice, however, it takes at least 3 to 4 months for the Asylum Commission to render and deliver the second instance decision.

¹⁰⁹ Article 63 GAPA.

¹¹⁰ Article 21(1)-(2) Asylum Act.

¹¹¹ Article 21(3) Asylum Act.

¹¹² Roundtables were organised through the project “Novelties in the Asylum and Migration System in the Republic of Serbia and Challenges in their Application”, implemented by the AIRE Centre, IOM and the British Embassy in Serbia.

¹¹³ Article 95 Asylum Act.

¹¹⁴ Article 19 Administrative Disputes Act.

When the Asylum Commission 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.¹¹⁵ 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.¹¹⁶ In the event it does not reject the appeal,¹¹⁷ the Asylum Commission may itself decide on the administrative matter.¹¹⁸ 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.¹¹⁹ The last possibility is the usual scenario, and since the establishment of the Serbian asylum system, the second instance body has rendered only one decision granting asylum to a Libyan couple whose asylum claim was rejected on the merits by the Asylum Office.¹²⁰

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 Asylum Commission took 21 decisions relating to the asylum seekers represented by BCHR in 2018. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 15 cases. In six cases the appeals were upheld and the cases were remanded for further consideration. The vast majority of cases the second instance authority uphold decisions on dismissal of asylum applications based on the safe third country concept.

1.4.2. Onward appeal (“complaint”) 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.¹²¹

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. Moreover, only a few judges are tasked to decide upon asylum complaints. At several conferences and roundtables that took place in the second half of 2018, judges from the Administrative Court stated the problem of understaffing, lack of knowledge of international refugee law and international human right law (mainly the relevant jurisprudence of the ECtHR) and sought help from relevant national and international organisations (NGOs and UNHCR) to facilitate more trainings and workshops regarding asylum and migration law.¹²² For that reason, the entire set of trainings will be facilitated in 2019 by UNHCR and its partners with an aim to increase the capacity of the judges within the Administrative Court.

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.

¹¹⁵ Article 165 GAPA.

¹¹⁶ Article 165(2)-(3) GAPA.

¹¹⁷ Article 170 GAPA.

¹¹⁸ Article 171(5) GAPA.

¹¹⁹ Article 173(3) GAPA.

¹²⁰ Asylum Commission, Decision Až 06/16, 12 April 2016.

¹²¹ Article 15 Administrative Disputes Act.

¹²² Roundtables were organised through the project “Novelties in the Asylum and Migration System in the Republic of Serbia and Challenges in their Application”, implemented by the AIRE Centre, IOM and the British Embassy in Serbia.

According to the new Asylum Act, the initiation of an administrative dispute has an automatic suspensive effect.¹²³

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.

In 2018, the Administrative Court decided in a total of six complaints filed by the BCHR in administrative disputes. Three appeals were rejected and three were upheld and the cases were remanded for further consideration. The Administrative Court based all the three negative rulings on upholding decisions dismissing asylum applications due to the application of the safe third country concept.

The Administrative Court issued the first positive decision on the complaint of an unaccompanied child represented by BCHR in the asylum procedure.¹²⁴ This case is analysed thoroughly in [Legal Representation of Unaccompanied Children](#).

The second case is the decision on appeal of an asylum seeker from China by which the Administrative Court annulled the challenged Asylum Commission decision,¹²⁵ and remanded the case to that authority for further consideration. The judgment of the Administrative Court states that the Asylum Commission, when deciding on the appeal against the first instance decision of the Asylum Office dismissing the asylum application (as Turkey was assessed as a safe third country)¹²⁶ did not assess all the statements that referred to the personality of the applicant made in the claim, as it was bound to do, nor had it examined the risk of him being returned from Turkey to China and the potential risk to his life, safety or freedom in China.¹²⁷

Acting on the instruction of the Administrative Court, the Asylum Commission passed a new decision annulling the first instance decision of the Asylum Office which dismissed the asylum application and remanded the case to the first instance body for further consideration.¹²⁸ The Asylum Commission took the stand that, bearing in mind the view of the Administrative Court, the first instance body would remove the established deficiencies more efficiently and cost-effectively. It explained this decision by stating it did not have insight into most of the Asylum Office decisions on granting asylum or subsidiary protection and, therefore, it could not validly assess whether such a decision is in line with the earlier decisions of the Asylum Office, and whether the assessment of the situation in Turkey by first instance body had changed. The first instance body was also instructed to take into consideration claims that on his return to Turkey, the applicant would be exposed to the risk of being returned to China where his life, safety or freedom would be threatened. It was also ordered to explain deviation from its earlier stand that Turkey cannot be considered a safe third country. This decision represents an example of an extraordinary practice, and should be observed as a landmark for future administrative disputes.

¹²³ Article 96 Asylum Act.

¹²⁴ Administrative Court, Decision U 13309/17, 8 February 2018.

¹²⁵ Asylum Commission, Decision AŽ-44-1/17, 20 February 2018.

¹²⁶ Asylum Office, Decision No 26-2050/17, 4 December 2017.

¹²⁷ Administrative Court, Decision U-6310/18, 27 August 2018.

¹²⁸ Asylum Commission, Decision AŽ-44/17, 18 October 2018.

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.¹²⁹

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 before both national and international bodies.

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 following grounds apply:¹³⁰

1. The applicant comes from a [First Country of Asylum](#);
2. The applicant comes from a [Safe Third Country](#);
3. The applicant makes a [Subsequent Application](#) with no new elements.

Rules on interview, appeal and legal assistance are the same as in the [Regular Procedure](#), with the exception of appeals against the inadmissibility of a subsequent applications which must be lodged within 8 days before the Asylum Commission.¹³¹

In practice, the admissibility of an application is examined during the asylum interview.

The Asylum Office dismissed 38 asylum applications as inadmissible in 2018. Of those, 35 were dismissed on the grounds of the safe third country concept.¹³²

4. Border procedure (border and transit zones)

The new Asylum Act has introduced a border procedure which is regulated by Article 41. This provision states that the asylum procedure can be conducted “at a border crossing, or in a transit zone of an airport or an inland port”, but only where the following conditions are met:¹³³

1. The applicant is provided with adequate accommodation and subsistence;

¹²⁹ Article 56(3)-(4) Asylum Act.

¹³⁰ Article 42(1) and (3) Asylum Act.

¹³¹ Article 42(4) Asylum Act.

¹³² Pursuant to Article 33(1)(6) of the old Asylum Act.

¹³³ Article 41(1) Asylum Act.

2. The application can be rejected as unfounded for the grounds set out in the [Accelerated Procedure](#);¹³⁴
3. The application is a [Subsequent Application](#).

The representatives of the organisations providing legal aid, as well as UNHCR, are guaranteed effective access to border crossings, or transit zones in airports or inland ports in accordance with the state border protection regulations.¹³⁵ However, for reasons of national security and public order, an attorney at law or a representative of an organisation providing legal aid could be temporarily restricted access to an asylum seeker.¹³⁶

The deadline for the Asylum Office to take a decision is 28 days from the lodging of the asylum application.¹³⁷ In case the deadline is not met, asylum seeker shall be allowed to enter the territory of Serbia in order for the regular procedure relating to be conducted.¹³⁸

The border procedure foresees different rules for appeals compared to the [Regular Procedure: Appeal](#). The deadline for the appeal to the Asylum Commission is 5 days from the notification of the decision.¹³⁹

The border procedure was not used in the course of 2018 and it is not reasonable to expect that this will change in coming period since there are no adequate facilities for that purpose within the transit zone of **Nikola Tesla Airport** or any other border-crossing point.

5. Accelerated procedure

The new Asylum Act has introduced an accelerated procedure, which can be conducted where the applicant:¹⁴⁰

1. Has presented only facts that are irrelevant to the merits of the application;
2. Has consciously misled the Asylum Office by presenting false information or forged documents, or by failing to present relevant information or by concealing documents that could have had a negative effect on the decision;
3. Has destroyed or concealed documents that establish his or her identity and/or nationality in bad faith so as to provide false information about his or her identity and/or nationality;
4. Has presented manifestly inconsistent, contradictory, inaccurate, or unconvincing statements, contrary to the verified information about the country of origin, rendering his or her application non-credible;
5. Has lodged a [Subsequent Application](#) that is admissible;
6. Has lodged an asylum application for the clear purpose of postponing or preventing the enforcement of a decision that would result in his or her removal from the Republic of Serbia;
7. Presents a threat to national security or public order;
8. Comes from a [Safe Country of Origin](#).

The decision on the asylum application in the accelerated procedure shall be made within 30 days from the date of the asylum application or the admissibility of the subsequent application.¹⁴¹ The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.¹⁴² This basically means that a decision to apply the accelerated procedure is made by the asylum officer during the course of the personal interview.

¹³⁴ *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

¹³⁵ Article 41(2) Asylum Act.

¹³⁶ Article 41(3) Asylum Act.

¹³⁷ Article 41(5) Asylum Act.

¹³⁸ Article 41(6) Asylum Act.

¹³⁹ Article 41(7) Asylum Act.

¹⁴⁰ Article 40(1) Asylum Act.

¹⁴¹ Article 40(2) Asylum Act.

¹⁴² Article 40(3) Asylum Act.

Rules on appeals differ from the [Regular Procedure: Appeal](#). The deadline for an appeal to the Asylum Commission is 8 days from the notification of the decision.¹⁴³

In 2018, the accelerated procedure was applied only in 2 cases. In one case in which BCHR lawyers acted as legal representatives, the Asylum Office applied the accelerated procedure to an applicant from Guinea who presented false information.¹⁴⁴

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

The new Asylum Act explicitly envisages that, during the course of the asylum procedure the specific circumstances the certain categories requiring special procedural or reception guarantees will be taken in consideration. These include minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking, severely ill persons, persons with mental disorders, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as women who were victims of female genital mutilation.¹⁴⁵

1.1. Screening of vulnerability

The procedure for identifying the personal circumstances of a person is carried out by the competent authorities on a continuous basis and at the earliest reasonable time after the initiation of the asylum procedure, or the expression of the intention to submit an asylum application at the border or in the transit zone.¹⁴⁶ It is not clear in which form will the Asylum Office determine that an asylum seeker is in need of special procedural or reception guarantees, i.e. whether this will be a separate decision, or this fact will be indicated during the asylum interview.

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.”¹⁴⁷

Although the new Asylum Act prescribes that minors for whom it can be determined reliably and unambiguously to be under 14 years of age shall not be fingerprinted at registration,¹⁴⁸ it is not prescribed how the age would be established, leaving it up to the competent authorities to arbitrarily ascertain the age of persons lacking personal documents from the country of origin.

¹⁴³ Article 40(5) Asylum Act.

¹⁴⁴ Asylum Office, Decision No 26-763/18, 17 August 2018.

¹⁴⁵ Article 17(1) and (2) Asylum Act.

¹⁴⁶ Article 17(3) Asylum Act.

¹⁴⁷ Article 2 Asylum Act.

¹⁴⁸ Article 35(6) Asylum Act.

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.

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 2018, the authorities of Serbia recognised a total of 700 asylum seekers as unaccompanied children out of a total of 2,475 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.

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.¹⁴⁹ However, in 2018 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.¹⁵⁰ However, in December 2018, the first decision granting asylum to an unaccompanied girl from Nigeria was issued, taking into consideration the best interests of the child and on the basis of the best interests assessment provided by the Social Welfare Centre.

Accelerated and border procedures cannot be applied to an unaccompanied child.¹⁵¹

¹⁴⁹ Article 15 Asylum Act.

¹⁵⁰ 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.

¹⁵¹ Articles 40(4) and 41(4) Asylum Act.

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.¹⁵² The practice of the Asylum Office from the end of 2018 and the beginning of 2019, as seen through two recent decisions, provides hope that medical and psychological reports will be taken in consideration for the purpose of determining the level of vulnerability of the applicant and the credibility of his or her asylum claim.¹⁵³ In said decisions, the fact that applicants were diagnosed with PTSD was stated in the reasoning as a fact that goes in favour of the applicants.

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

A significant number of children, unaccompanied and separated children in particular, was registered during the course of 2018, but at the same time the number of genuine asylum seekers in this population remains low.¹⁵⁴

The legal framework that aims to protect unaccompanied and separated children during the course of asylum procedure is largely in line with the international standards, however, it is clear that the authorities do not have the capacities to meet the established level of protection.¹⁵⁵

As opposed to the old Asylum Act which – within the principle of care of persons with specific needs – set down that attention in the asylum procedure should be paid to the specific situation of persons with special needs, including unaccompanied children, the new Asylum Act prescribes the principle of best interests of the child. When assessing the best interests of the child, the competent authorities must take into account well-being, social development and background, his or her views depending on his or her age and maturity, the principle of family unity and the need to provide assistance, particularly if suspected that the child might be a victim of human trafficking or a victim of family violence or other forms of gender-based violence.¹⁵⁶

The Asylum Office obtained a best interests assessment in two cases which were positively resolved in December 2018,¹⁵⁷ and January 2019.¹⁵⁸

The temporary guardianship for an unaccompanied child is governed by the Family Act that prescribes conditions and rules for placement of children without parental care under guardianship. The appointed guardians are persons with personal characteristics and abilities necessary to perform the duties of a

¹⁵² Article 154 GAPA. 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.

¹⁵³ Asylum Office, Decision No 26-2348/17, 28 January 2019; No 26-2348/17, 28 January 2019.

¹⁵⁴ Conclusion of a comparative analysis of the Asylum Office data based on reports submitted to UNHCR office and CRM data. The data were acquired upon request to access information of public importance.

¹⁵⁵ Committee on the Rights of the Child, *Concluding observations on the combined second and third reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2–3, para 12-13, 22-23, 54 (d), 56-57, 62 (a) and 68 (d); Human Rights Committee, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para. 32-33.

¹⁵⁶ Article 10(2) Asylum Act.

¹⁵⁷ Unaccompanied girl from Nigeria. The decision is yet to be delivered.

¹⁵⁸ Asylum Office, Decision No 26-2348/17, 28 January 2019.

guardian who have agreed to be guardians. In order to establish whether one fulfils the conditions to be a temporary guardian of a child, a procedure defined in the Family Act and the accompanying by-laws must be conducted. This decision may only be taken by a guardianship authority and it includes a guardianship plan.¹⁵⁹

A temporary guardian must be appointed immediately after it has been established that the child is unaccompanied / separated and no later than prior to the lodging of his or her asylum application.¹⁶⁰ The police cannot register an unaccompanied child who expressed the wish to seek asylum in absence of a temporary guardian,¹⁶¹ even though that was the practice in many instances during the course of 2018.¹⁶²

The temporary guardian must be present with the child in all the procedures before the state authorities and represent his or her interests. It is also prescribed that a temporary guardian must be a person with personal characteristics and abilities necessary to perform the duty of a guardian, and this assessment is made by a competent territorial guardian authority, under the provisions of the Family Act and accompanying by-laws. A guardian may not be, *inter alia*, a person whose interests are adverse to the interest of a child put into his or her guardianship, and a person who due to different reasons cannot be expected to properly perform the activities of a guardian.¹⁶³

One of the greatest challenges in the past practice has been the fact that the guardianship authorities lacked sufficient human resources to ensure effective support to each individual child.¹⁶⁴ For instances, it was a frequent situation that one guardian was appointed to dozens of unaccompanied children making it impossible for them to develop a meaningful and trusting relationship with the children notwithstanding their enormous efforts and motivation.¹⁶⁵ Communication with the child represents an additional problem. Namely, the guardianship authority does not directly provide interpreters for the languages of unaccompanied and separated children in Serbia. Rather, the guardians communicate with them with the assistance of interpreters whose services are paid for by NGOs engaged in protection of refugees and migrants. Since the presence of such NGOs in certain parts of Serbia is not sufficient or infrequent, temporary guardians in some municipalities could not establish even basic communication with the children.¹⁶⁶ For these reasons, UNHCR launched a project which is being conducted in cooperation with the Ministry of Labour, Employment, Veteran and Social Affairs and the NGO IDEAS envisages the capacity-building of guardianship authorities in **Belgrade**, primarily through funding the work of a certain number of professional guardians.

It is worth mentioning that a special instruction is issued by the Government which stipulates that field social workers inform the territorially competent guardianship authority immediately upon the information or direct knowledge about an unaccompanied child.¹⁶⁷ The next step is urgent appointment of a temporary guardian to the child.

When it comes to the asylum procedure, excluding the last quarter of 2018, BCHR did not notice any difference in the treatment of unaccompanied children in comparison to adult asylum seekers. There were instances in which the personal interview lasted for hours,¹⁶⁸ while the standards regarding the International Child Law were rarely taken in consideration during the asylum procedure. Thus, there were

¹⁵⁹ Articles 125 and 126 Family Act.

¹⁶⁰ Article 12 Asylum Act.

¹⁶¹ Article 11 Asylum Act.

¹⁶² See more in BCHR, *Right to Asylum in the Republic of Serbia 2018*, 55-56.

¹⁶³ Article 128 Asylum Act.

¹⁶⁴ Human Rights Committee, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para 32-33; Committee on the Rights of the Child, *Concluding observations on the combined second and third reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, para 56-57. See also BCHR, *Situation of Unaccompanied and Separated Children in Serbia*, 2017, 22 and 39.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ Instruction of the Ministry of Labour, Employment, Veteran and Social Affairs on procedures of centres for social welfare – guardianship authorities in accommodation of minor migrants /unaccompanied refugees, no. 019-00-19/2010-05 of 12 April 2018, Chapter II.

¹⁶⁸ For example, the minutes of the asylum interview in Decision No 26-2348/17 state that the interview lasted from 11:15 am. to 6:40 pm.

several decisions in which the practice of dismissing asylum applications on the basis of the safe third country concept were applied in 2018 without considering the following: guarantees of adequate level of protection corresponding to the specific needs of a child in question,¹⁶⁹ adequate conditions of accommodation,¹⁷⁰ as well as absence of practice of detention of children.¹⁷¹ For example, the asylum application of an unaccompanied child from Afghanistan was dismissed on the basis that Bulgaria is a safe third country and the decision was upheld by the Asylum Commission twice (for the second time after the Administrative Court remanded the case back to the second instance body).¹⁷²

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 envisages that a foreigner whose asylum application has been rejected on the merits “may submit a subsequent asylum application if he or she can provide evidence that the circumstances relevant to recognising his or her right to asylum have changed substantially or if he or she can provide any evidence that he or she did not present in the previous procedure due to justified reasons.”¹⁷³ The precondition for the subsequent application is that the initial application was rejected by a final decision as unfounded or discontinued due to applicant’s failure to appear for the asylum interview.¹⁷⁴ The applicant must provide all the above and bring forward evidence in a comprehensible manner.¹⁷⁵ The Asylum Office shall assess the admissibility of subsequent applications in line with the new facts and evidence, and in connection with the facts and evidence already presented in the previous asylum procedure.¹⁷⁶

If it has been established that the subsequent asylum application is admissible, the competent authority shall revoke the previous decision. On the contrary, the subsequent asylum application shall be rejected if it has been established that it is inadmissible due to a lack of new evidence. The decision on a subsequent application will be rendered within 15 days from the date of the application.¹⁷⁷

In the 2018, there was one case where the family A. from Libya was allowed to submit the subsequent application, but in line with the old Asylum Act. This was the consequence of the ECtHR communicating their case to the Government of Serbia.¹⁷⁸

The concept of subsequent application is yet to be applied in line with the new Asylum Act.

¹⁶⁹ ECtHR, *Rahimi v. Greece*, Application No 8684/08. Judgment of 5 July 2011, EDAL, available at: <https://bit.ly/2NR25gg>.

¹⁷⁰ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, EDAL, available at: <https://bit.ly/2H2CtLZ>, para. 121.

¹⁷¹ ECtHR, *Husein v. Greece*, Application No 71825/11, judgment of 24 October 2013, EDAL, available at: <https://bit.ly/2CeJECg> and *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No 13178/03, Judgment of 12 October 2006, EDAL, available at: <https://bit.ly/2TKk3Xn>.

¹⁷² Asylum Commission, Decision AŽ 1/17, 22 March 2018.

¹⁷³ Article 46(1) Asylum Act.

¹⁷⁴ *Ibid.*

¹⁷⁵ Article 46(2) Asylum Act.

¹⁷⁶ Article 46(3) Asylum Act.

¹⁷⁷ Article 46(4), (5) and (6) Asylum Act.

¹⁷⁸ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

The concepts of safe country of origin, first country of asylum and safe third country are set out in the Asylum Act.¹⁷⁹ The application of the safe third country and first country of asylum concept may lead to the asylum application being dismissed as inadmissible 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.¹⁸⁰ A list of safe countries of origin and safe third countries that used to exist according to the old Asylum Act is not valid anymore, and the fact that a certain country is safe or not is determined on the case by case basis. However, during 2018 the vast majority of decisions were taken pursuant to the old Asylum Act, thus the list of safe third countries is relevant for this reporting period.¹⁸¹

1. Safe country of origin

A country shall be considered as a safe country of origin where, on the basis of the legal situation, the application of the law, and the general political circumstances, it is clear that there are no acts of persecution in the sense of Article 1 of the Refugee Convention, nor there is a risk of treatment contrary to absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment.¹⁸² The assessment of safety is conducted in line with the following criteria:

1. The relevant laws and regulations of the country, and the manner in which they are applied;
2. Observance of the rights and freedoms guaranteed by the ECHR, particularly Article 15(2), the International Covenant for Civil and Political Rights, and the United Nations Convention against Torture;
3. Observance of the *non-refoulement* principle;
4. Application of effective legal remedies.¹⁸³

The new Asylum Act explicitly recognises that the safe country of origin assessment implies the use of information from the sources such as EASO, UNHCR, the Council of Europe, and other relevant international organisations. Also, the fulfilment of the conditions for the application of the safe country of origin concept shall be established on the case by case basis.¹⁸⁴

However, it is prescribed that the Government shall determine a List of Safe Countries of Origin, on the proposal of the Ministry of Foreign Affairs which can be revised as needed, taking into account the above enlisted criteria,¹⁸⁵ as well as “the views of the competent authorities specified by this Law.”¹⁸⁶

¹⁷⁹ Article 43-45 Asylum Act.

¹⁸⁰ Article 42(1)(1) and (2) Asylum Act.

¹⁸¹ Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, No 67/2009.

¹⁸² Article 44 Asylum Act.

¹⁸³ Article 44 (1) Asylum Act.

¹⁸⁴ Article 44 (2) and (5) Asylum Act.

¹⁸⁵ Article 44 (3) Asylum Act.

¹⁸⁶ Article 44 (4) Asylum Act.

A country included in the List of Safe Countries of Origin may be considered a safe country of origin in a specific case only if the applicant holds the nationality of that country or had habitual residence (in case of statelessness) and has failed to explain why the country in question cannot be considered safe in his or her case.¹⁸⁷

The safe country of origin concept is yet to be applied in practice of the Asylum Office.

2. Safe third country

The flawed and in a large number of cases automatic application of the safe third country concept has been a major problem of the Serbian asylum system since its very establishment. Throughout the years, asylum authorities automatically relied on the Safe Countries List denying *prima facie* refugees the possibility for their asylum claim to be decided in merits.¹⁸⁸ Moreover, this practice was equally damaging for the applicants who did not have *prima facie* claim regarding their country of origin, but had an arguable claim¹⁸⁹ regarding the risk of torture and other forms of ill-treatment in the third countries through which they had travelled before arriving in Serbia and which were proclaimed as “safe” in the asylum procedure.

In the light of two cases communicated by the ECtHR to the Government of Serbia at the very end of the 2018, and which are directly related to the practice of the safe third country concept,¹⁹⁰ this section provides an extensive analysis of the history of the application of this concept. The analysis aims to depict the manner in which this concept has been applied since the very beginning of the Serbian asylum system in 2008 and how it gradually developed. It would actually be fair towards the efforts of the Asylum Office to highlight certain improvements regarding the application of the concept that occurred in 2018. On the other hand, it is also significant to emphasize that the *A.K. v. Serbia* and *M.H. v. Serbia* communications played their part in the shift of attitude of the Office towards the safe third country notion. For the purpose of comprehensive analysis, BCHR has obtained almost all (more 90%) positive decisions rendered in the period 2008-2018.

2.1. Safe third country under the previous legal framework

First of all, it is important to highlight that, according to the old Asylum Act, a safe third country was defined as “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.”

According to the Safe Countries Decision, Serbia used to consider 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. Of particular relevance in this context are **Bulgaria, Greece, North Macedonia, Montenegro and Turkey**.

¹⁸⁷ Article 44 (6) Asylum Act.

¹⁸⁸ ECtHR, *El-Masri v. 'The Former Yugoslav Republic Of Macedonia'*, Application No 39630/09 Judgment of 13 December 2012, para 165; *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011, EDAL, available at: <https://bit.ly/2ErG9VZ>, para 296.

¹⁸⁹ Council of Europe Committee of Ministers, Recommendation on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights, 18 September 1998, Rec(98)13, Rec. 1.

¹⁹⁰ ECtHR, *A.K. v. Serbia*, Application No 57188/16, Communicated on 19 November 2018; *M.H. v. Serbia*, Application No 62410/17, Communicated on 26 October 2018.

Taking into consideration the geographical position of Serbia, it is clear that the content of the list was extremely questionable, and this standing was confirmed as correct in practice that ensued after the old Asylum Act came into force in 2008. Thus, the often automatic application of the safe third country concept by the asylum authorities has been extremely problematic for the functioning of the asylum system, especially due to the fact that all bordering countries were considered safe third countries, except for Albania. States such as Turkey, Greece and North Macedonia were 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. The list had never been revised in light of well-known case law such as the ECtHR’ judgment in *M.S.S. v. Belgium and Greece* and relevant reports such as those which were published by UNHCR in relation to North Macedonia¹⁹¹ and Bulgaria.¹⁹²

Also, it is important to highlight that the vast majority of asylum seekers arrived in Serbia by using a travel route which included at least two of the following states: Turkey, Greece, North Macedonia, Bulgaria and Montenegro. Accordingly, all of these states used to be listed in the Safe Countries Decision and where used as a ground for the dismissal of asylum applications. The most frequent “safe” states in practice have been **North Macedonia** and **Bulgaria**, then Montenegro and at the very end Turkey and sometimes even Greece.¹⁹³

This section offers an overview of safe third country practice in line with the methodology that implies the analysis of the Asylum Office decisions regarding the applicants on which the safe third country concept could have been applied. Thus, the analysis will not reflect on asylum procedures in which there were no grounds to apply the concepts since the applicants: (a) arrived in Serbia directly from their country of origin; (b) arrived in Serbia legally with a visa;¹⁹⁴ (c) arrived in Serbia from the country which has not ratified the Refugee Convention or was not listed in the Safe Countries Decision; (d) were *sur place* refugees, and thus were already in Serbia when the reasons of persecution or risks of ill-treatment appeared in their home countries; (e) arrived in Serbia from Turkey taking into consideration its geographical limitation on the Refugee Convention, even though there were several decisions in which the safe third country concept was applied in relation to this state, especially in 2018;¹⁹⁵ (f) arrived in Serbia from Greece, taking into consideration the fact that asylum authorities usually reflect on the *M.S.S.* judgment, even though there are decisions in which the safe third country concept was applied in relation to this state.¹⁹⁶

Bearing in mind all of the above-mentioned, the application of the safe third country concept in Serbia at its very beginning simply meant that the person in need of international protection entered Serbia from North Macedonia, Bulgaria, Montenegro, or had travelled through Greece and sometimes even Turkey. This fact would be decisive for the dismissal of his or her asylum application on the basis that these states were “safe” and in line with the Article 33(1)(6) of the old Asylum Act which stipulated that “an asylum application will be dismissed if an asylum-seeker has come from a safe third country, unless they are able to demonstrate that it should not be considered safe in their case.”

¹⁹¹ 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, available at: <https://bit.ly/2TgkdFx>.

¹⁹² UNHCR, *UNHCR observations on the current asylum system in Bulgaria*, April 2014, available at: <https://bit.ly/2Xn6Xht>.

¹⁹³ The latest example is a decision in which the Asylum Office dismissed the asylum application of a three-member Syrian family: Asylum Office, Decision No 26-176/18, 21 May 2018.

¹⁹⁴ Even though there were cases of nationals of Cuba whose asylum applications after they arrived legally in Serbia, transiting through Montenegro.

¹⁹⁵ The Asylum Office has established through its practice that **Turkey** cannot be considered to be a safe third country: BCHR, *Right to Asylum in the Republic of Serbia 2015*, 24 and 54. However, there were several decisions in 2018 where this standing was abandoned.

¹⁹⁶ Asylum Office, Decision No 26-176/18, 21 May 2018.

Safe third country in 2008-2014

According to UNHCR, in the period 2008 to 2012, the Asylum Office examined asylum applications on the merits only when the person would arrive to Serbia directly from the country of origin or a third country which was not listed in the Safe Countries Decision.¹⁹⁷ Thus, in all other cases, the Asylum Office invoked the safe third country concept.

This practice continued in 2012 when the Asylum Office took 52 decisions on dismissal of asylum application invoking safe third country.¹⁹⁸ Up until 2012, the Asylum Office applied the safe third country concept in all cases when there were grounds for doing so.

When it comes to positive decisions, in -2008 not a single person was granted asylum. In 2009, 3 Ethiopians¹⁹⁹ and 1 Iraqi²⁰⁰ were granted subsidiary protection. In 2010, only one national of Somalia²⁰¹ was granted subsidiary protection, while in 2011 the number of people who received international protection in Serbia was zero. In 2012, one national of Egypt²⁰² and two nationals of Libya²⁰³ were granted refugee status. All of them arrived in Serbia legally and directly from their country of origin, or were *sur place* in the case of the Somali asylum seeker.

In 2013 and 2014 the Asylum Office only managed to interview 18 and 19 asylum seekers respectively.²⁰⁴ In 2013 it rejected 5 cases – where there were no grounds to apply the safe third country concept – and dismissed 8 asylum applications applying the concept.²⁰⁵ In 2013, two Turkish citizens were granted refugee status,²⁰⁶ while two Syrians received subsidiary protection.²⁰⁷ One of the two Syrians was a *sur place* refugee, while for the other one it is unknown from which country he arrived in Serbia since the Asylum Office failed to deliver his decision to BCHR. Thus, we can reliably ascertain that the safe third country was applied in 13 out of 14 possible cases.

In 2014, 12 asylum applications were dismissed on that basis.²⁰⁸ In 2014, three Syrians were granted subsidiary protection,²⁰⁹ while one Tunisian was granted refugee status.²¹⁰ The Tunisian refugee arrived directly from his country of origin, while one of the Syrians arrived legally with a visa that was issued for family reasons. Thus, in 14 cases where the safe third country concept could have been applied, the Asylum Office decided to do so in 12. The remaining two decisions deserve a short analysis:

In Decision No 26-1762/13 the applicant entered Serbia from Montenegro. He was granted subsidiary protection on 23 May 2014, but from the reasoning of the decision it is not clear why the Asylum Office decided not to apply the safe third country concept as it had done in all of the remaining cases. In Decision No 26-304/13, the applicant claimed that he entered the back of the truck in Turkey and simply appeared in Serbia without knowing through which countries he had travelled. Most likely he entered from North Macedonia since the Bulgarian route became active during the 2015 and 2016 influx of refugees.

Thus, we can conclude that in the first 7 years of the Serbian asylum system, international protection was granted to 16 persons (15 decisions) regarding whom there were no grounds to apply the safe third country concept, except in two, possibly three cases.²¹¹ The only known criterion from that period which

¹⁹⁷ UNHCR, *Serbia as country of asylum*, August 2012, Chapter 3.1.5.

¹⁹⁸ BCHR, *Right to Asylum in the Republic of Serbia in 2012*, 15.

¹⁹⁹ Asylum Office, Decisions No 26-753/08, 26-754/08 and 26-755/08, 11 May 2009.

²⁰⁰ Asylum Office, Decision No 26-766/08, 4 February 2009.

²⁰¹ The decision is yet to be delivered by the Asylum Office.

²⁰² Asylum Office, Decision No 26-17/12, 6 December 2012.

²⁰³ Asylum Office, Decision No 26-2324/11, 19 December 2012; No 26-2326/11, 20 December 2012.

²⁰⁴ BCHR, *Right to Asylum in the Republic of Serbia 2013*, 23; *Right to Asylum in the Republic of Serbia 2014*, 15.

²⁰⁵ BCHR, *Right to Asylum in the Republic of Serbia in 2013*, 23.

²⁰⁶ Asylum Office, Decision No 26-1280/13, 25 December 2013.

²⁰⁷ Asylum Office, Decision No 26-1433/12, 13 June 2013. The other decision is yet to be delivered.

²⁰⁸ BCHR, *Right to Asylum in the Republic of Serbia 2014*, 15.

²⁰⁹ Asylum Office, Decisions No 26-1445/14, 4 August 2014; 26-1762/13 and 26-304/13, 23 May 2014.

²¹⁰ Asylum Office, Decision No 26-2429/14, 23 May 2014.

²¹¹ Which will be determined when the Asylum Office delivers the remaining decision from 2013.

was used not to apply the concept was the fact that the applicant entered on a truck in Turkey and could not explain how he ended up in Serbia. In all the remaining decisions the applications were dismissed on the basis that, primarily **North Macedonia**, but also **Montenegro** and **Bulgaria**, were proclaimed as “safe”. Not a single decision was followed by the guarantees that a country that is assessed as safe would allow applicants to access territory and asylum procedure which would be conducted in a fair and effective manner.²¹² Moreover, not a single decision from that period contains the assessment of the risk of *refoulement* in North Macedonia or Bulgaria, looking at living conditions in reception centres, arbitrary detention, possible ill-treatment committed by state and/or non-state actors, special guarantees for vulnerable individuals in terms of their medical or psychosocial needs, age, gender, etc., or chain *refoulement* further to Greece or Turkey.

Safe third country in 2015

According to the official statistics of the Asylum Office, in 2015 a total of 28 foreigners were granted asylum. Of those, subsidiary protection was granted to 8 Libyans (4 decisions),²¹³ 2 Syrians²¹⁴ and 1 Iraqi national.²¹⁵ Additionally, 17 persons were granted refugee status, of whom 6 Ukrainians,²¹⁶ 4 Syrians,²¹⁷ 3 Iraqis (2 decisions),²¹⁸ 1 Sudanese,²¹⁹ 1 South Sudanese,²²⁰ 1 Lebanese,²²¹ and 1 Kazakh.²²² Thus, a total 23 decisions granting asylum to 28 persons were taken.

All Ukrainians and Libyans, as well as one Kazakh, arrived directly from their country of origin or were *sur place* refugees (11 decisions). The South Sudanese national arrived in Serbia through Egypt (not included in the list), the Iraqi who received subsidiary protection was *sur place*, the Lebanese arrived from his country of origin, while one Iraqi couple and one Syrian arrived from **Turkey** which was not considered by the Asylum Office as safe in 2015; this has changed in the course of 2017 and 2018. Thus, in 16 procedures in which asylum was granted to 21 foreigners, the Asylum Office could not have applied the safe third country concept.

In the remaining 7 procedures (7 persons), we cannot ascertain from which countries these persons entered Serbia except in one case with an unknown reference number.²²³ In said case, the applicant arrived in Serbia by travelling through Turkey, Greece and North Macedonia. During his interview, he stated that he was detained in North Macedonia, denied the possibility to apply for asylum and then informally expelled to Greece. These circumstances were taken into consideration by the Asylum Office in the following two sentences:

“In Macedonia he was captured while trying to cross the border with Serbia and in prison he asked for asylum. Police officers told him that they do not give asylum and returned him back to the Greek-Macedonian border.”

²¹² ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, EDAL, available at: <https://bit.ly/2H2CtLZ>, paras 120-122; *Bader and Kanbor*, Application No 13284/04, Judgment of 8 November 2005, para 45.

²¹³ Asylum Office, Decision No 26-4099/15, 7 August 2015; No 26-5792/14, 3 August 2015; No 26-5793/14, 5 August 2015; No 26-5794/14, 3 August 2015.

²¹⁴ The decisions are yet to be delivered.

²¹⁵ Asylum Office, Decision No 26-3879/15, 15 September 2015.

²¹⁶ Asylum Office, Decision No 26-1296/14, 1 July 2015; No 26-3599/14, 7 July 2015; No 26-986/14, 6 July 2015; Decision of 6 July 2015 and two more decisions which are yet to be delivered.

²¹⁷ Asylum Office, Decision No 26-1342/14, 20 April 2015; No 26-3777/15, 9 July 2015; Decision of 15 July 2015 and one more decision that is yet to be delivered.

²¹⁸ Asylum Office, Decision No 26-5266/14, 25 March 2015 and one more decision that is yet to be delivered.

²¹⁹ Asylum Office, Decision of 31 July 2015.

²²⁰ Asylum Office, Decision of 7 July 2015.

²²¹ Asylum Office, Decision No 26-3886-15, 9 September 2015.

²²² Asylum Office, Decision No 26-4906/15, 9 December 2015.

²²³ For unexplained reasons, the Asylum Office anonymised the case file number.

The Asylum Office did not reflect *proprio motu* on numerous other reports regarding the treatment of asylum seekers and refugees in **North Macedonia**.²²⁴ At the same time, this reasoning speaks to the criteria that the Asylum Office resorted to at that time in order to assess whether or not a state from the list contained in Safe Countries Decision was safe or not. Basically, in order to dispute the safety of North Macedonia or another third country, the applicant had to experience detention, push back or ill-treatment. If the person would pass safely, his or her asylum claim would be dismissed. Thus, there was no assessment on the general state of the asylum system and its capacity to provide adequate protection.²²⁵

In 2015, the Asylum Office rejected the asylum application of three persons (2 from Cuba and 1 from South Africa) who arrived in Serbia legally. In the same period, it rendered 25 decisions on dismissal of asylum applications invoking the safe third country concept.

Thus, we can claim with certainty that in a maximum of 32 procedures the Asylum Office could have applied the concept. Out of 32 possibilities, it decided to do so in 25 cases (78%). This number could become higher if it turns out that in one or more of 6 positively resolved cases there were no grounds to apply the safe third country concept.²²⁶

Some of the most indicative examples from this period are two first instance decisions which were rendered in the case of Sudanese refugee A.K. whose case is now pending before the ECtHR. Namely, on 14 May 2015 the Asylum Office dismissed A.K.'s asylum application.²²⁷ In the reasoning of the decision, the Asylum Office outlined that, since there were no relevant reports published by UNHCR and the European Commission on the state of the asylum system in FYROM, the applicant did not manage to persuade the Office that FYROM could not be considered safe for him. The Office simply invoked the Safe Countries Decision. The decision also contained an expulsion order, or more precisely an order issued to the applicant to leave Serbia voluntarily within three days of the decision becoming final and enforceable. The applicant was not provided with a document containing the assurances from FYROM that he would be allowed to access territory and asylum procedure.

On 5 June 2015, the applicant lodged an appeal to the Asylum Commission where he stated that the Asylum Office had not endeavoured to conclude whether or not FYROM was truly a safe country for A.K. as a person in need of international protection, nor had it consulted reports of relevant international organisations. On 23 September 2015, the Commission upheld the appeal and remanded the case to the Asylum Office but for procedural reasons, not for the allegations made in the appeal by the applicant.²²⁸

The Asylum Office again conducted the first instance interview in order to clarify the facts that had led to the violation of the rules of procedure and once again, on 9 December 2015, rendered a decision dismissing A.K.'s asylum application on the basis that FYROM is a safe country. However, this time the Office only invoked the Safe Countries Decision but did not outline that there were no UNHCR or European Commission reports concerning the efficiency of FYROM's asylum procedure. The presumable reason could be the fact that, in the meantime, UNHCR had published the report *The Former Yugoslav Republic of Macedonia as a Country of Asylum*, where it recommended that other states should refrain from returning or sending asylum seekers back to FYROM.²²⁹ It remains unclear why the Asylum Office failed to take this report into consideration. The answer to this question lies in the systematic and automatic use of the safe third country concept which prevailed at that time.

Thus, from the available decisions we can conclude that the practice of asylum authorities slightly improved, but the manner in which the safe third country concept had been applied remained the same in terms of lack of rigorous scrutiny in assessing the risks of *refoulement* and chain *refoulement* in the "safe" neighbouring countries, lack of guarantees from these countries in terms of access to territory and

²²⁴ ECtHR *J.K. v. Sweden*, Application No 59166/12, Judgment of 23 August 2016, EDAL, available at: <https://bit.ly/2EsTNYR>, para 98.

²²⁵ ECtHR, *M.S.S. v. Belgium and Greece*, para 396.

²²⁶ This data will be included as soon as the Asylum Office delivers the remaining decisions.

²²⁷ Asylum Office, Decision No 26-5724/14.

²²⁸ Asylum Commission, Decision Az 08/15.

²²⁹ UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum*, August 2015, para 47.

asylum procedure, etc. Moreover, the Asylum Office was not of the view that the old Asylum Act imposed an obligation on asylum authorities to obtain guarantees.²³⁰

Safe third country in 2016

In 2016, the Asylum Office took 22 decisions granting asylum to 38 persons. Of those, 8 decisions referred to subsidiary protection (20 persons), while 14 decisions referred to refugee status (18 persons). In the following cases there was no grounds to apply the safe third country concept: 13 Libyans (4 decisions),²³¹ 5 Ukrainians (3 decisions),²³² 4 Cubans (4 decisions)²³³ and 2 Cameroonians (1 decision).²³⁴ Thus, in the remaining 10 decisions the Asylum Office could have dismissed asylum application since the applicants arrived in Serbia from one of the neighbouring countries, but decided not to do so.

In 5 out of the 10 decisions (1 Syrian²³⁵ and 4 Sundanese),²³⁶ the applicants claimed that they have entered Serbia in the truck that they boarded in Greece (most likely they transited through North Macedonia). In one case, the five-member family from Afghanistan did not know through which countries they had travelled before reaching Serbia (most likely Bulgaria). In a case of Iranian religious convert,²³⁷ the Asylum Office simply granted the applicant refugee status without any reasoning regarding the safety in North Macedonia. This was also the case with the Syrian²³⁸ and Afghan²³⁹ nationals where Asylum Office granted refugee status without any reference to the safety in North Macedonia and Bulgaria respectively.

The only decision rendered in 2016 in which it was clear from the reasoning why, in this particular case, **Bulgaria** was not safe for the applicant who was granted subsidiary protection was Decision No 26-2149/16.²⁴⁰ In the reasoning as to why the safe third country concept cannot be applied, the Asylum Office stated that the applicant was ill-treated, extorted and unlawfully detained by smugglers. Additionally, the Office took into consideration the evidence (reports, press-clipping and UNHCR position paper on Bulgaria) provided by the applicant's representatives, referring to organised criminal groups in Bulgaria involved in smuggling and human trafficking and their link with the state authorities such as police. Finally, the AO took into account the mental state of the applicant who was at that time treated by the psychiatrist due to severe trauma which was a consequence of the treatment that he was submitted to. It can be said that this positive decision was the first one in the history of the Serbian asylum system where traces of rigorous scrutiny can be found. Namely, the Asylum Office assessed the applicant's individual circumstances, but also the publicly available reports (which were provided by applicant's representatives) published by UNHCR for instance.²⁴¹ Even though the Asylum Office failed to take these reports in consideration *proprio motu*, this decision, which was rendered at the very end of 2016, represents the first example of satisfactory practice of this body.

In 2016 the Asylum Office rejected the asylum applications of 40 persons. For 33 of those BCHR is certain that there were no grounds to apply the safe third country concept (25 Libyans, 3 Macedonians, 3 Russians, 1 Montenegrin and 1 South African). For the remaining 7 decisions (3 Pakistan and 1 DRC, Senegal, Ghana and Somalia) this is yet to be determined. However, we should not exclude the possibility that there were grounds for application of the concept.

²³⁰ Information provided by the Asylum Office, No 06-342/16, 17 October 2016.

²³¹ Asylum Office, Decision No 26-5618/15, 1 December 2016, Decision Az 06/16, 12 April 2016; Decision No 26-812/16, 29 September 2016.

²³² Asylum Office, Decision No 26-4133/15, 22 March 2016 and two more decisions that are yet to be delivered by the Asylum Office.

²³³ Asylum Office, Decision No 26-423/16, 26-424/16 and 26-425/16, 4 July 2016; Decision No 26-11/16, 4 August 2016.

²³⁴ Asylum Office, Decision No 26-536/16, 16 December 2016.

²³⁵ Asylum Office, Decision No 26-4062/15, 8 January 2016.

²³⁶ Asylum Office, Decision No 26-5626/15, 1 March 2016; Decision No 26-5047/15, 11 April 2016, Decision No 26-5625/16, 14 March 2016; Decision No 26-5629/15, 8 March 2016.

²³⁷ Asylum Office, Decision No 26-1501/16, 13 September 2016.

²³⁸ Asylum Office, Decision No 26-5413/15, 2 March 2016.

²³⁹ Asylum Office, Decision No 26-233/16, 8 March 2016.

²⁴⁰ Asylum Office, Decision No 26-2149/16, 26 December 2016.

²⁴¹ ECtHR, *J.K. v. Sweden*, para 86.

In the same year the Asylum Office dismissed 53 asylum applications regarding 65 persons. Of those, for the citizens of the Russian Federation (9), North Macedonia (3), Bulgaria (1) and Bosnia and Herzegovina (1) there were no grounds to apply the safe third country concept, but the Asylum Office invoked the internal flight alternative or the possibility to obtain protection from the country of origin, of Article 33(1) of the old Asylum Act as grounds for dismissal. As for the remaining 51, it is reasonable to assume that in the more than 95% of the cases the Asylum Office applied the safe third country concept: Pakistan (14), Iraq (10), Syria (7), Afghanistan (5), Libya (5), Bangladesh (3), Cuba (2), Sudan (2), Somalia (1), Algeria (1) and Stateless (1).

Since we do not have the exact data on how many decisions was rendered in these cases,²⁴² we should assume that the number of safe third country decisions is not below 40.²⁴³ In that case, there were minimum 57 proceedings in which the Asylum Office could have applied the concept (7 rejected cases, 10 positive decisions and minimum 40 decisions on dismissal). In that case, the Asylum Office dismissed 40, which is minimum 70% of all the cases where safe third country concept could have been applied.²⁴⁴

Safe third country in 2017

In 2017, the Asylum Office rendered 7 decisions granting asylum to 15 foreigners. Of those, subsidiary protection was granted to 9 Libyans (1 decision)²⁴⁵ 1 Ukrainian,²⁴⁶ 1 Nigerian²⁴⁷ and 1 Bangladeshi,²⁴⁸ while refugee status was granted to 1 Afghan,²⁴⁹ 1 Syrian²⁵⁰ and 1 Burundian.²⁵¹ Out of these 7 decisions, in 3 (Nigeria, Bangladesh and Afghanistan) there were grounds for the safe third country concept application, while in the remaining 4 that was not the case. Nigerian and Bangladeshi nationals were granted subsidiary protection under the exceptional circumstances since the first one is paraplegic while the second one is quadriplegic. Both of them were injured in a heavy high-way accident in 2015. The Afghan national is an example of good practice since the Asylum Office took in consideration numerous incidents which implied ill-treatment of the applicant (extortion, and beatings in the hands of the Bulgarian police).

In 2017, the Asylum Office rendered 11 decisions on rejection of asylum applications (11 persons): 3 Somalis, 2 Afghan and 1 Iraqi, 1 Ghanaian, 1 Cameroonian, 1 Ukrainian, 1 Bosnian and 1 Bulgarian. In 6 of these decisions, there were grounds to apply the safe third country concept (Somalia, Afghanistan and Iraq).

The Asylum Office dismissed asylum applications of 43 individuals applying the safe third country concept (40 decisions): 15 Afghanistan, 7 Iraq, 4 Pakistan, 3 Cuba, 2 Iran, 2 Syria, 2 Cameroon, 2 Stateless, 2 Turkey, 1 China, 1 Nigeria, 1 Ghana, 1 Guinea.

In the following cases, there were no grounds to apply the concept, but points 1 and 4 of the Art. 33(1) were applied: 4 Russian Federation, 2 Macedonia, 1 Croatia, 1 Bulgaria, 1 USA and 1 Mexico.

Thus, in 2017, the Asylum Office had the opportunity to apply the safe third country concept in 49 procedures, and it decided to so in 40. In the two positive decisions, extreme individual circumstances were taken into consideration, while in the decision granting refugee status to an Afghan national, the entire set of incidents that he undergone in Bulgaria were decisive for the decision on the merits.

²⁴² Because one decision can include two or more people.

²⁴³ It is reasonable to assume that it is higher than 40.

²⁴⁴ This part of the report will be amended as soon as BCHR receives the exact data from the Asylum Office.

²⁴⁵ Asylum Office, Decision No 26-5489/15, 20 October 2017.

²⁴⁶ Asylum Office, Decision No 26-331/15, 21 September 2017.

²⁴⁷ Asylum Office, Decision No 26-4730/15, 27 December 2017.

²⁴⁸ Asylum Office, Decision No 26-5044/15, 29 December 2017.

²⁴⁹ Asylum Office, Decision No 26-77/17, 1 August 2017.

²⁵⁰ Asylum Office, Decision No 26-926/16, 21 July 2017.

²⁵¹ Asylum Office, Decision No 26-2434/16, 20 September 2017.

Safe third country in 2018

In 2018, the Asylum Office rendered 38 decisions dismissing asylum applications regarding 45 persons. Out of that, in 35 decisions the safe third country concept was applied. At the same time, the Asylum Office rejected 20 asylum applications regarding 22 people. In 7 out of 20 cases there were grounds to apply the safe third country concept, but the Asylum Office decided to examine them on the merits.

In 2018, the Asylum Office rendered 16 decisions granting asylum to 24 persons. Subsidiary protection was granted to 10 citizens of Libya,²⁵² 1 of Somalia,²⁵³ 1 of Syria,²⁵⁴ and 1 of Pakistan, while refugee status was granted to 5 citizens of Afghanistan,²⁵⁵ 5 of Iran,²⁵⁶ and 1 of Nigeria.²⁵⁷ The safe third country concept could have been applied in 12 decisions.

Thus, there were total of 54 proceedings in which the Asylum Office could have applied the safe third country concept. It decided to do so in 35. If we reflect on the reasoning, we can conclude that there were two cases where the fact that the applicants were in the back of the truck which they boarded in Greece (and then transited through North Macedonia) was taken as a reason not to apply the safe third country concept.²⁵⁸

In Decision No 26-2489/17 the applicant was not able to apply for asylum since he was not allowed to leave the group in **North Macedonia** guided by smugglers towards Serbia,²⁵⁹ but there was no *proprio motu* reflection on the UNHCR position paper on North Macedonia. Similar circumstances were taken into consideration in Decisions Nos 26-1239/17 and 26-1083/17, where the applicants were detained and ill-treated by the smuggling group in **Bulgaria**. In Decisions No 26-681/17 and 26-81/17, the Asylum Office determined that the applicants were ill-treated, detained and robbed by the Bulgarian authorities, that they resided in poor living conditions in different Bulgarian Reception Centres, etc. In Decisions No 26-1081/17 and 26-78/17, the combination of ill-treatment by state and non-state actors was the reason why the safe third country notion was not applied. And finally, the decision which is yet to be delivered to BCHR and which is related to an unaccompanied girl from Nigeria is the most progressive decision rendered in 2018 since the Asylum Office applied the best interests of a child assessment conducted by the Social Welfare Centre.

However, during the 2018 the safe third country concept was applied many times in relation to neighbouring countries:

Applications dismissed under Article 33(1)(6) old Asylum Act: 2018	
Country	2018
North Macedonia	14
Turkey	9
Bulgaria	5
Montenegro	5
Greece	2
Total	35

Source: Asylum Office, 25 January 2019.

²⁵² Asylum Office, Decision No 26-222/15, 3 July 2018, while the other decision is yet to be delivered.

²⁵³ Asylum Office, Decision No 26-4568/15, 11 February 2018.

²⁵⁴ Asylum Office, Decision No 26-2489/17, 1 June 2018.

²⁵⁵ Asylum Office, Decision No 26-2152/17, 16 April 2018; No 26-681/17, 10 April 2018; No 26-1239/17, 10 January 2018; No 26-81/17, 16 April 2018; No 26-78/17, 10 January 2018.

²⁵⁶ Asylum Office, Decision No 26-2554/17, 19 July 2018; No 26-187/18 from 1 November 2018; No 26-1083/17, 26 January 2018; No 26-1081/17, 4 July 2018. The last decision is yet to be delivered.

²⁵⁷ The decision is yet to be delivered.

²⁵⁸ Asylum Office, Decision No 26-2152/17, 16 April 2018; No 26-4568/15, 11 February 2018.

²⁵⁹ Which was not taken in consideration in A.K.'s case.

This is particularly concerning regarding Turkey which was not considered as safe in 2015 and 2016 in the cases which were litigated by the BCHR lawyers. The same can be said for North Macedonia since UNHCR has urged states to refrain from sending asylum seekers back to this country.²⁶⁰ The poor treatment of refugees and asylum seekers in Bulgaria should not be neglected either.²⁶¹

The conclusion that can be drawn is that the 2018 was a year in which the Asylum Office significantly shifted its orientation towards the merits of the claims and at the expense of the safe third country concept. Moreover, all safe third country decisions were rendered in line with old Asylum Act, and the fact that not a single decision was dismissed on these grounds in December 2018 and January 2019 is an encouraging sign. It remains to be seen in 2019 if the new Asylum Act will bring positive effects regarding the concept.

In conclusion, in the period 2008-2018 the Asylum Office rendered 83 decisions granting asylum to 121 persons. In 34 (40%) decisions regarding 38 persons the Asylum Office could have but decided not to apply the safe third country concept in line with the Safe Countries Decision. This number is extremely low, especially if we take in consideration that it can be even lower when BCHR receives the remaining positive decisions which were counted as if the safe third country concept was not applied in them.

Applicants who avoided the application of the safe third country concept in 2008-2018 entered through the following countries

Neighbouring country	Number
North Macedonia	15
Bulgaria	12
Montenegro	1
Unknown	6
Total	34

When it comes to the criteria that have been used in order to dispute safety, these can be divided into several categories:

Reasons not to apply the safe third country concept	Number
The applicant passed North Macedonia or Bulgaria in the back of a truck or a trunk of a car, or could not explain how did he or she arrived in Serbia	9
No reasons were stated	6
State agent violence (police and camp employees)	5
Non-state agent violence (smugglers)	3
Health reasons	3
Child-specific considerations	1
Yet to be determined	7
Total	34

If we closely look at the reasons not to apply the safe third country concept, we can see that the fact that applicant entered the back of the truck or the trunk of the car, or was not able to explain how he or she travelled through Bulgaria or North Macedonia, was the most frequent reason not to apply the concept. This kind of reasoning indicates that the Asylum Office focused more on the connection criterion, i.e.

²⁶⁰ UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum*, August 2015, para 3-4, 46-47.

²⁶¹ AIDA, Country Report Bulgaria, 2018 Update, January 2019, available at: <https://bit.ly/2T8eBxU>; UNHCR, 'Bulgaria: UNHCR concerned about calls for expulsions following tensions at overcrowded and substandard reception centre for asylum-seekers', 29 November 2016.

ascertaining transit through neighbouring countries, rather than the capacities of neighbouring states to conduct fair and efficient asylum procedure where claims would be examined on the merits.

On the other hand, in 8 decisions the fact that applicants were subjected to ill-treatment in the hands of state or non-state actors in Bulgaria or North Macedonia is was justified reason not to apply the safe third country concept. However, not a single reasoning of said decisions contains the assessment of the existing conditions in the receiving country that “were known or ought to have been known” by the Asylum Office at the time of the decision,²⁶² nor is there a reflection on “domestic materials as well on materials originating from other reliable and objective sources such as, for instance, other Contracting or third states, agencies of the United Nations and reputable non-governmental organizations.”²⁶³ It appears that the applicant needs to have undergone a certain type of ill-treatment in order to dispute the safety in one of the neighbouring states, even though the risk of *refoulement* could arise from a general situation of violence [or the dysfunctionality of asylum system],²⁶⁴ the personal situation of the applicant, or a combination of the two.²⁶⁵ UNHCR reports on the state of asylum in North Macedonia and Bulgaria have never been taken into account in any of these decisions, except in one.²⁶⁶ It is a well-established standard in the jurisprudence of the ECtHR that UNHCR reports are always consulted in the expulsion cases brought before this body.²⁶⁷ The same deficiencies exist in the 6 positive decisions where there was no reasoning at all on why the neighbouring states from which the applicants have entered are not considered as safe.

The 4 decisions that were positive due to medical and child-specific circumstances could only be praised, especially if we take in consideration that asylum claims of the Nigerian and Bangladeshi nationals were not particularly well-founded in terms of their reasons of leaving their countries of origin.

Finally, a common feature of all the decisions on the dismissal of asylum applications on the basis of the safe third country concept is that not a single guarantee was obtained from the country proclaimed as ‘safe’ which would imply that the applicant will have access to the territory and the asylum procedure.

2.2. Relevant pronouncements on safe third country practice in Serbia

In August 2012, UNHCR published “Serbia as Country of Asylum”,²⁶⁸ where it found that “Serbia lacks the resources and performance necessary to provide sufficient protection against *refoulement*, as it does not provide asylum-seekers an adequate opportunity to have their claims considered in a fair and efficient procedure. It further stated that Serbia should not be considered a safe third country, and in this respect, it urged States not to return asylum-seekers to Serbia on this basis”²⁶⁹ It is also stated that “most of the denials are made on the basis that the applicant comes from a designated safe third country, with no evaluation of the merits of the claim.”²⁷⁰

In May 2015, CAT published its Concluding observations on the second periodic report of the Republic of Serbia stating: “Noting the Supreme Court’s decision that expulsion to a “safe third country” should be contingent on the asylum officer’s obligation to assess the situation on a case-by-case basis, the Committee is concerned at reports that, in practice, the safe third country rule is almost automatically applied.”²⁷¹

In July 2015, Amnesty International outlined:

²⁶² ECtHR, *F.G. v. Sweden*, Application No 43611/11, Judgment of 23 March 2016, EDAL, available at: <https://bit.ly/2SYi9mf>, para 115.

²⁶³ ECtHR, *El-Masri v. “the Former Yugoslav Republic of Macedonia”*, para 218.

²⁶⁴ ECtHR, *M.S.S. v. Belgium and Greece*, para 352.

²⁶⁵ ECtHR, *J.K. v. Sweden*, para 86.

²⁶⁶ Asylum Office, Decision No 26-2149/16, 26 December 2016.

²⁶⁷ ECtHR, *Sufi and Elmi v. United Kingdom*, Applications No. 8319/07 and 11449/07, Judgment of 28 November 2011, EDAL, available at: <https://bit.ly/2EsMZu9>, paras 133-139, 191, 192, 245 and 288.

²⁶⁸ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>.

²⁶⁹ *Ibid*, paras 4 and 79-81.

²⁷⁰ *Ibid*, para 13.

²⁷¹ CAT/C/SR.1322 and CAT/C/SR.1323, para 15.

“Article 33(6) of the Law on Asylum provides that an asylum application shall be dismissed in the event that “the asylum-seeker has come from a safe third country, unless he/she can prove that it is not safe for him/her”. Given the absence of an effective asylum process in Macedonia, and the human rights violations to which many migrants and refugees are subjected, including refoulement through push-backs to Greece, Amnesty International considers that Macedonia should not be regarded as a safe third country and that the continued application of the safe country concept would deny refugee status to the majority of asylum-seekers.”²⁷²

On 14 March 2017, the ECtHR rendered a judgment in the case *Ilias and Ahmed v. Hungary*,²⁷³ where it found a violation of Article 3 ECHR due to the Hungarian authorities’ failure to carry out an assessment of the risk of *refoulement* in Serbia and chain *refoulement* to North Macedonia and further to Greece, taking into consideration available reports such as UNHCR reports on Serbia and North Macedonia or the AIDA report on Serbia). The Court stated that automatic reliance on the Government Decree listing Serbia as a safe third country deprived the applicants of ‘effective guarantees which would have protected them from exposure to a real risk of being subjected to inhuman or degrading treatment in breach of Article 3 ECHR.’²⁷⁴

On 10 April 2017 Human Rights Committee published its Concluding observations on the third periodic report of Serbia where it stated:

“While acknowledging the current challenges regarding refugees and appreciating the basic legal protections in place, the Committee is concerned about: ... the misapplication of the ‘safe third country’ principle, despite concerns regarding conditions in some of those countries;

“The State party should strictly respect its national and international obligations by ensuring an objective assessment of the level of protection when expelling aliens to ‘safe third countries...’”²⁷⁵

On 3 January 2018, the Committee for the Elimination of Racial Discrimination (CERD) expressed concerns regarding the reports “that most asylum claims filed in the past two years have not been decided upon and that the safe third country principle was applied to the vast majority of asylum claims” and recommended to Serbia to “take urgent measures to ensure timely and fair processing of asylum claims... and to ensure consistent respect for the principle of *non-refoulement*.”²⁷⁶

2.3. The new legal framework

Article 42 of the new Asylum Act prescribes that an asylum application may be dismissed without examination on the merits if the concept of a safe third country can be applied. Although the new law significantly improves the framework of the safe third country concept, there are still ambiguities that may obstruct its adequate application. Namely, according to the Article 45 of the Asylum Act, a “safe third country” is a country where the applicant is safe from persecution, as well as from the risk of suffering serious harm. Additionally, the safe third country must ensure that the applicant enjoys the guarantees from refoulement, which includes access to an efficient asylum procedure.²⁷⁷

Interpreting the Asylum Act on the whole, it follows from Article 32 that the Asylum Office collects and considers all the relevant facts, evidence and circumstances when deciding on the merits of the asylum application as well as on the assessment of a certain third country as “safe”. Under “facts, evidence and

²⁷² Amnesty International, *Europe’s Borderlands - Violations against Refugees and Migrants in Macedonia, Serbia and Hungary*, July 2015, available at: <https://bit.ly/1dLK66T>, 40-42.

²⁷³ ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, Judgment of 14 March 2017, EDAL, available at: <https://bit.ly/2XQfmuj>.

²⁷⁴ *Ibid*, para 125.

²⁷⁵ CCPR/C/SRB/CO/3, paras 32 and 33.

²⁷⁶ 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.

²⁷⁷ Article 45(1) Asylum Act.

circumstances” it considers “current reports about the situation in... countries of transit [of the applicant], including the laws and regulations of these countries and the manner in which they are applied – as contained in various sources provided by international organizations including UNHCR and the European Asylum Support Office... and other human rights organisations.”

Additional provisions binding on asylum authorities with respect to the procedure of application of the safe third country concept have been provided in the Article 17 of the Asylum Act which refers to specific personal circumstances that must be taken into account in decision-making and relative to which individuals must be granted special procedural and reception guarantees. Specific circumstances are present if the applicant is a minor, unaccompanied minor, person with disabilities, elderly person, single parent with underage children, victim of human trafficking, severely ill person, a person with mental disorder and persons subjected to torture and other forms of abuse (“psychological, physical or sexual violence”). By analogy and the logical interpretation of the above provision, it is evident that a person falling into one of the above categories must be ensured equal reception guarantees in the receiving country if subject to application of the safe third country concept. Moreover, the competent authorities must consider *proprio motu* the extent to which these special guarantees could be enjoyed in the receiving country.

In establishing conditions for application of the safe third country, each asylum application is assessed individually, examining whether the country meets the conditions set by Article 45(1), and whether there is a connection between that country and the applicant on the basis of which it could be reasonably expected that he or she could seek asylum in that country.²⁷⁸ This new Asylum Act solution is encouraging as it implies individual consideration of each case and not the application of the Safe Countries Decision or any other regulation proclaiming a country “safe” without transparent criteria.

Article 45(3) states that the applicant will be informed in good time about the application of the safe third country concept so as to allow him or her the possibility to challenge it. It may be reasonable to assume that the information i.e., challenging of the safe third country concept would take place during the interview.

This assumption is founded in the provision of Article 37 setting out that an officer of the Asylum Office authorised for interviewing, shall establish facts related to the travel routes of the applicant after leaving his or her country of origin or habitual residence, and whether he/she had previously sought asylum in any other country. If this is not the case, the future application of this provision by the Asylum Office remains to be seen.

The issue that remains unclear in the provisions regarding the safe third country concept is the certificate that the Asylum Office issues to the applicant, having ruled on dismissing his or her application due to application of the concept. Namely, the new Asylum Act only states that the certificate shall include an information for the authorities of a third state that the Republic of Serbia has not examined the asylum application in merits.

Consequently, it is not clear whether the applicant him or herself will have to go to the border crossing and present said certificate to the authorities of the “safe third country” or if the authorities of the safe third country be officially informed that the application of a certain individual had been dismissed as it was appraised that it could and should have been examined on the merits in that country.

Practical ambiguities of this provision aside, the issue of major concern is the absence of clear and accurate provisions on individual guarantees, being the key institute relating to every forcible removal procedure. The issues that remain open after the beginning of implementation of the Asylum Act are the manner in which the said guarantees would be obtained from the states assessed to be safe, what exactly would these guarantees include, and to what extent would they be personalised relative to each individual.

²⁷⁸ Article 45(2) Asylum Act.

Based on above, however, it follows that, before the final evaluation, it is necessary to wait for the first decisions of the Asylum Office that will apply the safe third country concept in line with the Asylum Act.

Finally, the Asylum Act provides that the Republic of Serbia would examine a foreigner's application on the merits if a third country proclaimed safe refuses to admit him or her.

Hence, the consistent application of the new Asylum Act could hopefully resolve the problem of inadequate application of the safe third country concept, at least relative to North Macedonia, Bulgaria, Turkey and Greece. However, since the new Asylum Act is yet to be applied in this regard, it remains to be seen in 2019 how will the concept be applied in practice.

3. First country of asylum

The Asylum Act stipulates that the first country of asylum is the country in which the applicant has been granted refugee status and he or she is still able to avail him or herself of that protection, or in which the applicant enjoys effective protection, including the guarantees arising from the *non-refoulement* principle.²⁷⁹

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to his or her specific circumstances.²⁸⁰

The first country of asylum is yet to be applied in practice.

G. 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.²⁸¹ A foreigner who has expressed his or her intention to seek asylum in Serbia, as well as the person who lodged his or her asylum application shall have the right to be informed about his or her rights and obligations throughout the asylum procedure.²⁸²

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.

²⁷⁹ Article 43(1) Asylum Act.

²⁸⁰ Article 43(2) Asylum Act.

²⁸¹ Article 56 Asylum Act.

²⁸² Article 56(1) Asylum Act.

H. 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?²⁸³ ☒ Yes ☐ No
❖ If yes, specify which:

There is no *a priori* difference in the treatment of asylum seekers based on their nationality in terms of the asylum procedure.

Since the entry into force of the Asylum Act in 2008, 121 persons were granted asylum: Libya (42), Syria (15), Ukraine (12), Afghanistan (12), Iraq (6), Iran (6), Sudan (5), Cuba (4), , Ethiopia (3), Somalia (2), Cameroon (2), Nigeria (2) Turkey (2), Lebanon (1), Egypt (1), South Sudan (1), Bangladesh (1), Pakistan (1), Tunisia (1), Kazakhstan (1), , Burundi (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, Ukraine and Afghanistan** than other nationalities, as well as to recognise them as refugees rather than beneficiaries of subsidiary protection.

²⁸³ 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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

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

❖ Accommodation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Social assistance and emergency aid	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

The Commissariat for Refugees and Migration (CRM) is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.²⁸⁴

During the course of asylum procedure, asylum seekers are entitled to be accommodated in one of the 5 Asylum Centres or other designated facility established for that purpose.²⁸⁵ These other facilities are 14 Reception Centres (see [Types of Accommodation](#)).

Persons issued with a registration certificate are expected to present themselves at the centre indicated via a central mechanism between the Ministry of Interior and the CRM so as to be registered and lodge their asylum application. At the point of reception, the Commissariat shall confirm reception by indicating it in the registration certificate.²⁸⁶

The vast majority of foreigners accommodated in Asylum Centres and Reception Centres enjoy the status of asylum seeker. However, the vast majority of them are not genuinely interested in staying in Serbia and to apply for asylum. This fact is especially problematic in Asylum Centres where a significant number of persons are waiting on the list to enter Hungary. Thus, genuine asylum seekers are very often accommodated in Reception Centres where they have to wait for up to several weeks before they are transferred to one of the Asylum Centres where they would be allowed to lodge an asylum application (see [Registration](#)).

Also, there are several reception facilities in which there are persons who are not registered as asylum seekers, nor do they enjoy any other status in line with the Foreigners Act or other legislation. Thus, their stay is tolerated by the Commissariat. For instance, a lot of people who are staying in the Western camps (**Adaševci**, **Šid** and **Principovci**) are not registered, or their certificates have expired, but they are attempting to cross the border with Croatia, even on a daily basis.

In principle, every foreigner has the possibility to be accommodated in one of the reception facilities. Those who have clear aspirations to attempt to irregularly cross to Croatia, Hungary and Romania are usually allowed to reside in the Reception Centres close to the border with said countries. Also, those who are on the waiting list for Hungary are placed in different Reception Centres, and sometimes Asylum Centres. When their turn on the list comes, they are transferred to **Kikinda** or **Subotica** Reception

²⁸⁴ Article 21 Asylum Act; Chapters II and III Migration Management Act.

²⁸⁵ Article 51(1) Asylum Act.

²⁸⁶ Article 35(12) Asylum Act.

Centres which are close to the border. Those interested in seeking asylum in Serbia are accommodated in Asylum Centres, while unaccompanied children are all placed in **Sjenica** and **Krnjača** Asylum Centres. If the asylum seeker possesses his or her own financial assets, he or she may stay outside the reception facilities at his or her own cost, and exclusively with prior consent of the Asylum Office, which shall be given after the asylum application has been lodged. Exceptionally, consent may also be given before that, if that is required for reasons of security of a foreigner whose intention to seek asylum has been registered.²⁸⁷ Thus, in practice, the asylum seeker usually has to wait to lodge an asylum application and then submit the request to stay at a private address which will be included in his or her ID card as a place of his or her residence.

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 2018 (in original currency and in €): 8,283 RSD / 70 €

Asylum seekers staying in centres have the right to material reception conditions including: accommodation, food, clothing and a cash allowance.²⁸⁸ The new Asylum Act has introduced the possibility of cash allowance for personal needs.²⁸⁹ However, not a single cash allowance has been granted so far.

Persons seeking asylum and accommodated at an Asylum Centre do not have the right to access social welfare. This remains a possibility for persons staying in private accommodation.²⁹⁰ Social assistance in these cases shall take the form of a monthly cash allowance provided that the person is not accommodated in an Asylum Centre and that he or she and the members of his or her family have no other income, or that this income is below the legally prescribed threshold for establishment of the amount of social allowance. The Decision on Social Assistance sets down the following monthly amounts:²⁹¹

- Single adult: RSD 8,283
- Family member: RSD 4,142
- Minor child: RSD 2,485

The decision on the request to exercise the right to monthly allowance is made by the Social Welfare Centre in the municipality of residence of that person. The request is to be supplemented by an ID of an asylum seeker or a person granted asylum and other supporting evidence. The procedure itself is conducted in line with the GAPA provisions. The conditions for exercise of the right to monthly allowance are reviewed *ex officio* once a year. However, the monthly amount received from the Social Welfare Centre is very limited and generally insufficient in order to maintain a dignified existence.

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

Material reception conditions may be reduced or withdrawn if asylum seeker possesses his or her own financial assets or if he or she starts to receive income from employment sufficient to cover material reception conditions, as well as if he or she misuses the allowance received.²⁹²

²⁸⁷ Article 50(8) Asylum Act.

²⁸⁸ Article 50(1) Asylum Act.

²⁸⁹ Article 50(2) Asylum Act.

²⁹⁰ Article 53 Asylum Act.

²⁹¹ Decision on nominal amounts of social assistance, 27 April 2018.

²⁹² Article 50(4) Asylum Act.

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.²⁹³ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.²⁹⁴

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 CRM must act in line with the principles of prohibition of artificial changing of the national composition of local demographics,²⁹⁵ and equal and planned economic development by managing migration,²⁹⁶ both foreseen by the Migration Management Act. This is also the case for providing accommodation for persons granted asylum in Serbia.

Article 49 of Asylum Act provides that asylum seeker has the right to reside in the Republic of Serbia, and during that time enjoys freedom of movement throughout the country, unless there exist special grounds for the restriction of movement (see [Alternatives to Detention](#)).

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. The fact that ID cards are issued solely to foreigners who have lodged their asylum application, the rest of the people who enjoy the status of an asylum seeker may have trouble with the authorities should they be found outside of the Asylum Centre without any documents.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:²⁹⁷

❖ Asylum Centres	5
❖ Reception Centres	14
2. Total number of places in the reception centres:

❖ Asylum Centres	1,770
❖ Reception Centres	4,220
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
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Both Asylum Centres and Reception Centres are established by the Government's decision.²⁹⁸ The work of Asylum Centres and Reception Centres is managed by the Commissariat.²⁹⁹

²⁹³ Article 50(5) and (6) Asylum Act.

²⁹⁴ Article 50(7) Asylum Act.

²⁹⁵ Article 4 Migration Management Act.

²⁹⁶ Article 5 Migration Management Act.

²⁹⁷ Both permanent and for first arrivals.

²⁹⁸ Article 51(2) and (3) Asylum Act.

²⁹⁹ Article 51(4) Asylum Act.

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 2018 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 2018:

Asylum Centre	Capacity
Banja Koviljača	120
Bogovađa	200
Tutin	200
Sjenica	250
Krnjača	1,000
Total	1,770

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 of the Asylum Centres according to the Commissariat is 1,770. However, the capacity of the 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.

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.

Reception Centres established in Serbia are the following: Preševo, Bujanovac, Vranje, Pirot, Dimitrovgrad, Bosilegrad, Šid, Principovac, Adaševci, Sombor, Subotica, Kikinda and Bela Palnaka (‘Divljana’).

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

Temporary reception centre	Border location	Capacity
Preševo	North Macedonia	900
Vranje	North Macedonia	220
Bujanovac	North Macedonia	220
Sombor	Croatia	120

Principovac	Croatia	150
Obrenovac	Belgrade	900
Adaševci	Croatia	450
Subotica	Hungary	130
Bela Palanka	Bulgaria	280
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	60
Pirot	Bulgaria	250
Kikinda	Romania	240
Šid	Croatia	210
Total		4,220

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

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 Asylum and Reception Centres could potentially raise issues under Article 3 ECHR.³⁰⁰

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.³⁰¹

All the Asylum Centres are open, but for the “night quiet” when they are locked for security reasons and no activities outside the rooms are allowed in line with the House Rules. The centres in **Banja Koviljača** and **Krnjača** are the only centres to have a Ministry of Interior official present at all times for recording incoming asylum seekers.

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. 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. Some 90 persons on the average were accommodated in the centre at any given time during the 2018.

The centre in Banja Koviljača has three floors with eleven rooms each, and there are eight showers and eight toilets on each of the floors. The centre has a TV room and a children corner where various creative workshops and activities are organised every day. Care is taken of preservation of family unity and of

³⁰⁰ 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>.

³⁰¹ *Ibid.*

ethnic affiliation on reception and placement of persons. This means that members of different ethnic communities are placed on different floors or that selection is made on the basis of the language the beneficiaries speak.

An auxiliary building within the Asylum Centre was adapted for provision of Danish Refugee Council-funded medical services with a view to securing permanent presence of medical staff.

A room has been designated for legal counsel and associations providing legal counselling to asylum-seekers.

By 1 October 2018, one doctor and one medical technician were present four hours on each work day. Ever since, only a medical technician is present in the centre. The practice remained unchanged in as far as specialist examinations are concerned, meaning that asylum seekers in need of such examinations are referred to the hospital in town of Loznica in the company of the Asylum Centre staff.

Bogovađa is a Red Cross facility that has been used for the accommodation of asylum seekers since 2011 with an overall capacity of 200. The capacity can be extended up to maximum 280 beds. During 2018, around 130 persons on the average were residing in the centre. Families from Afghanistan and Iran represented the majority of residents in 2018, as well as the women travelling alone were accommodated in dormitories with other single women.

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.

The conditions in this Asylum Centre have substantially improved bearing in mind that the main building was renovated last year. The centre has central heating and an adequate number of bathrooms, though they are unisex – for men and women.

There was no police officer continuously on duty in Bogovađa to register foreigners who express the intention to seek asylum, issue registration certificates and identity cards for asylum seekers. When persons without registration certificates are admitted to the centre, the CRM staff provide transportation to the police stations in Valjevo or Lajkovac for them to register and receive registration certificates. Since Bogovađa obtained technical equipment for registration of persons who express the intention to seek asylum in 2018, it may be possible that the registration process will be conducted there in the future.

A medical team is present in the centre every working day. In case of interventions surpassing the capacities of the centre’s medical team, the asylum seekers are transported to the outpatient clinic in Bogovađa, Health Centre in Lajkovac or the hospital in Valjevo, depending on the specific case. Mandatory medical check-ups are most often conducted several days within arrival, and depend on the availability of places at the competent health care centre.

Tutin was opened in January 2014 in a former furniture factory Dalas. It was located there until March 2018 when a new facility for accommodation of asylum seekers was opened in Velje Polje, four kilometres away from downtown Tutin. The centre can accommodate 200 persons. The average number of persons in this centre was in the realm of 120 per day in 2018, with this number increasing to 150 during the last quarter. This being a newly erected building, the accommodation conditions in this centre have significantly improved compared to earlier years.

The centre has 60 rooms and an adequate number of toilets. There is central heating and a drinking water tank has been installed. On placement, care is taken about ethnic affiliation in as much as the accommodation capacities allow. The principle of family unity is respected and the families are always placed together into rooms with their own bathrooms. Security staff is present 24 hours a day and the centre is locked during the night in line with the House Rules. Interpreters for Arabic and Farsi are available.

The new building has an outpatient clinic with a doctor present every day, which is a significant improvement in comparison to 2017. In addition, a nurse and a Farsi interpreter are present in the outpatient clinic thus raising the level the medical services provided. The residents in need of specialised examinations are transported to the Health Care Centre in Tutin or to the hospital in Novi Pazar.

Sjenica was set up as a temporary centre in the former Hotel Berlin to accommodate an increased number of asylum-seekers in Serbia in August 2013. Later on, in March 2017, the former textile factory Vesna was added to the Asylum Centre. The old Hotel Berlin, with inadequate conditions and collective dormitories in the hall, was closed in July 2018. The centre in Sjenica is now located only in the former factory Vesna, downtown Sjenica, that can take up to 250 persons in 27 rooms. According to the management of the centre, the ongoing reconstruction works are to extend its capacity by an additional 160 places. An average of 150 persons per day stayed in this centre in the course of the first eleven months of 2018. According to the latest information of November 2018, children comprised 93% of the residents of the centre, the majority of them being unaccompanied. The principle of family unity is observed at placement, so the families are always accommodated together.

Mandatory examinations on admission into the AC for assessment of health status or identification of potential contagious diseases are conducted at the local Health Centre. A doctor is present in the AC from 8:30 a.m. to 4:30 p.m. on work days. The asylum-seekers in need of specialized examinations and stationary treatment are transported to the hospitals in Novi Pazar or Užice.

Krnjača was founded in the Belgrade municipality of Palilula in 2014 as a temporary centre for accommodation of asylum-seekers. The AC is located in the compound of workers' barracks used – since early 1990s – for accommodation of refugees from Croatia and Bosnia and Herzegovina as well as of IDPs from Kosovo. It can optimally take up to 750 persons, and up to 1,000 at times of urgency, making it – in addition to the reception/transit centre in Preševo – the biggest centre for accommodation of migrants and asylum-seekers on the territory of Serbia.

For its proximity to downtown Belgrade, this Asylum Centre housed the greatest number of persons 2018 i.e., an average of 550 persons per day. CRM staff observed the principle of family unity at placement.

The conditions in the centre were partially improved after the 2017 renovation of the older barracks. However, there is no video surveillance in it as yet and the number of security staff is inadequate. Further to these, the BCHR clients most often complained of poor hygiene and lack of privacy.

As opposed to 2017, when the persons accommodated in the centre without certificates on expressed intention to seek asylum received dry food packages twice a day, all the residents regardless of their legal status were entitled to three cooked meals a day in 2018. Furthermore, the humanitarian organisation Caritas continued distributing additional food packages.

Free health care is equally available to all the persons residing in Krnjača, irrespective of their legal status. A medical team is present until 8 p.m. every day except Sunday in a designated area adapted for adequate provision of this type of services. Asylum-seekers and others in need of specialised examinations are referred to one of the hospitals in Belgrade, and are assisted by the interpreters and CRM representatives.

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia generally decreased throughout 2018. 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. Asylum seekers were placed in the majority of these centres throughout the year, while the centres in **Preševo**, **Bela Palanka – Divljana** and **Dimitrovgrad** were put on a temporary stand-by because of the drop in the number of refugees and migrants, and with a view to cost-optimisation before the impending heating season and the winter. According to the CRM, these centres will become operational

within a matter of several hours should the number of refugees and migrants rise. The centre in **Šid**, which was temporarily closed in May 2017, was reopened in early December 2018.

The reception ('one-stop') centre in **Preševo** (900 places), close to the border with North Macedonia, 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.

Bujanovac (220 places) in Southern Serbia was opened 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.

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. The centre mainly accommodates families and individuals who are about to be admitted in Hungary. Additional centres function in **Principovac** (150 places) and **Adaševci** (450 places), in the Šid municipality, close to the Croatian border.. According to the November data available on the website of the Serbian Commissariat for Refugees and Migration, the reception/transit centres in Adaševci and Principovac were overcrowded (operating at 126% and 134% capacity respectively).

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. 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 2018. Like the other reception centres, it is 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. The vast majority of persons accommodated in Kikinda and Subotica are on the waiting list for Hungary.

In mid-2016, the authorities of Serbia opened an additional three centres in **Dimitrovgrad** (90), **Bosilegrad** (60) and **Pirot** (250) to handle the increasing number of arrivals from Bulgaria. Another reception centre was opened in **Bela Palanka** (280) on 30 December 2016. 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.

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.³⁰² However, persons who seek asylum while possessing a work permit on other grounds may continue working on the basis of that permit.

Asylum seekers whose asylum applications have not been decided upon through no fault of their own within 9 months of being lodged 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.³⁰³

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

Asylum seekers have the right to free primary and secondary education.³⁰⁴ The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,³⁰⁵ with relevant issues also regulated by the Primary School Act,³⁰⁶ the Secondary School Act³⁰⁷ and the High Education Act.³⁰⁸ These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas.

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.³⁰⁹

³⁰² Article 57 Asylum Act.

³⁰³ Article 13 Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

³⁰⁴ Article 55(1) Asylum Act.

³⁰⁵ Act 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.

³⁰⁶ 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.

³⁰⁷ 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.

³⁰⁸ 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.

³⁰⁹ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.³¹⁰

With joint efforts of the Ministry of Education, Science and Technological Development, UNICEF, CRM and other international and non-governmental organisations, all asylum-seeking children were included in mainstream education in the academic year 2017/2018 in line with the regulations governing mandatory attendance of primary schools for all the children irrespective of their status or the status of their parents. A big practical challenge proved to be regular school attendance by underage asylum seekers. Namely, the language barrier and limited number of interpreters for the languages spoken among the refugees resulted in lack of interest among the children to attend the classes they do not understand. An additional challenge is lack of interest of many parents in educational activities, as they are certain their stay in Serbia is only temporary.

D. Health care

Indicators: Health Care

- | | | | |
|----|--------------------------------------------------------------------------------------------------------|-----------------------------------------|-------------------------------------------------------------------------|
| 1. | Is access to emergency healthcare for asylum seekers guaranteed in national legislation? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. | Do asylum seekers have adequate access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| 3. | Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? | <input type="checkbox"/> Yes | <input type="checkbox"/> Limited <input checked="" type="checkbox"/> No |
| 4. | If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? | <input type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |

The Asylum Act foresees that asylum seeker shall have equal rights to health care, in accordance with the regulations governing health care for aliens.³¹¹ In exercising the right to health care, adequate health care shall be provided as a priority to severely ill asylum seekers, applicants who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence, or applicants with mental disorders.³¹²

Upon their arrival to the reception facility, asylum seekers are obliged to undergone mandatory medical examination which is conducted in line with the Rulebook on medical examinations of asylum seekers on admission in asylum centres or other facilities designated for accommodation of asylum seekers. The Rulebook on medical examinations envisages that examination shall be conducted by medical doctors at the health care centres.³¹³ The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations.³¹⁴

Asylum seekers originating from countries with cholera, malaria or other diseases that may pose a threat to public health shall be placed in quarantine or under medical supervision up to the period of maximum incubation for the suspected disease.³¹⁵

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.

³¹⁰ Article 55(2) Asylum Act.

³¹¹ Article 54 Asylum Act.

³¹² Article 54(3) Asylum Act.

³¹³ Article 2 Rulebook on medical examinations.

³¹⁴ Article 3 Rulebook on medical examinations.

³¹⁵ Article 4 Rulebook on medical examinations.

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

Due attention shall be given to applicants' sex and age, status of a person requiring special procedural and/or reception guarantees, as well as family unity upon placement in a reception facility.³¹⁶

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.³¹⁷ 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.

The Asylum Act envisages that material conditions of reception of unaccompanied children are provided in Asylum Centres or other facilities designated for accommodation of asylum seekers until passing of the final decision on the asylum application.³¹⁸ However, it is clear that the vast majority of reception facilities do not meet adequate standards. Nevertheless, the Commissariat decided to designate one part of the Asylum Centre in **Krnjača** consisting of six separate buildings with 60 to 70 beds as unaccompanied children's accommodation.³¹⁹ This decision should be observed positively since the vast majority of NGOs who provide different services for unaccompanied children are based in Belgrade.

Alternative accommodation for children can be provided in social welfare institutions such as the Institute for Education of Children and Youth in Belgrade and the Institute for Education of Youth in Niš, and Children Home "Jovan Jovanović Zmaj" at the Institute for Protection of Infants, Children and Youth in Belgrade, while specialised foster care is also an option.³²⁰ Since the end of 2015, unaccompanied children have been accommodated in institutions in **Belgrade, Niš** and **Subotica**.³²¹ 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.

³¹⁶ Article 50(3) Asylum Act.

³¹⁷ Article 17 Asylum Act.

³¹⁸ Article 53 Asylum Act.

³¹⁹ Information provided by the CRM, 6 November 2018.

³²⁰ See more in BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 61-66.

³²¹ 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.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Asylum seekers have the right to be informed about their rights and obligations relating to material reception conditions, at the latest, within 15 days from the date of submission of asylum application,³²² as well as about NGOs providing free legal aid.³²³

See the section on [Information for Asylum Seekers](#). The House Rules of Asylum and Reception centres are translated in languages asylum seekers understand. The camp managers in Asylum Centres hold the info sessions with every person who arrives in the camp, while the House Rules are clearly displayed on the bulletin board in English, Farsi and Arabic. Interpreters are also available for Arabic and Farsi in **Banja Koviljača** (Farsi interpreter ensured by NGOs only during regular visits), **Sjenica** and **Krnjača**, the latter also providing interpreters for Pashtu and Urdu funded by the Crisis Response and Policy Centre (CRPC) and IOM.

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 CRM 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 mandate.³²⁴ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.³²⁵ However, planned UNHCR visits should be announced in a timely fashion.

G. Differential treatment of specific nationalities in reception

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

³²² Article 56(2) Asylum Act.

³²³ Article 56(3) and (4) Asylum Act.

³²⁴ Article 5 Asylum Act.

³²⁵ Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

- | | |
|--------------------------------------------------------------------|----|
| 1. Total number of asylum seekers detained in 2018: ³²⁶ | 3 |
| 2. Number of asylum seekers in detention at the end of 2018: | 3 |
| 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 2018 the Asylum Office has exceedingly rarely resorted to such measures, and only issued 3 decisions to place asylum seekers in detention in order to ensure their presence in the asylum procedure. On the other hand, persons that are likely in need of international protection might be deprived of liberty in the Detention Centre for Foreigners in **Padinska Skela** on other grounds which are set in the Foreigners Act, mainly for the purpose of forcible removal.³²⁷ However, the Ministry of Interior has failed to deliver data on the number and the nationality of persons detained on this ground and removed to one of the neighbouring countries or countries of origin, etc.

Each year, thousands of persons that are likely in need of international protection are detained in Serbia on various different 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, or being held in the airport transit zone in a completely arbitrary manner (see [Access to the Territory](#)).

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.³²⁸

Good cooperation with the Shelter for Foreigners continued in 2018. 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. In 2018, a total of 17 foreigners expressed an intention to seek asylum in the Detention Centre. No problems regarding an access to asylum procedure have been reported.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- | | | |
|-----------------------------------------------------------------------------|-------------------------------------|--------------------------------------------|
| 1. In practice, are most asylum seekers detained | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: ³²⁹ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
| | | <input type="checkbox"/> Never |
| 3. Are asylum seekers detained during an accelerated procedure in practice? | <input type="checkbox"/> Frequently | <input type="checkbox"/> Rarely |
| | | <input type="checkbox"/> Never |

³²⁶ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³²⁷ Articles 87 and 88 Foreigners Act.

³²⁸ Article 3(1)(28) Foreigners Act.

³²⁹ Accommodation in airport transit zone with very restricted freedom of movement.

1.1. Detention of asylum seekers

An asylum seeker can be detained by a decision of the Asylum Office, when it is necessary to:³³⁰

1. Establish his or her identity or nationality;
2. Establish material facts and circumstances underlying his or her asylum application, which cannot be established without the restriction of movement, particularly if there is a risk of absconding;³³¹
3. Ensure his or her presence in the course of the asylum procedure, if there are reasonable grounds to believe that his or her asylum application was submitted with a view to avoiding deportation;
4. Ensure the protection of security of the Republic of Serbia and public order in accordance with the law;
5. Decide, in the course of the procedure, whether he or she has a right to enter the territory of the Republic of Serbia.

Asylum seekers can be also detained in the case of non-compliance with the obligations envisaged in Article 58 of the Asylum Act which are related to the respect of the House Rules in Asylum and Reception Centres and inadequate cooperation with the Asylum Office during the asylum procedure.³³²

In practice, the Asylum Office has had asylum seekers placed under detention extremely rarely. Only 3 detention orders were issued in 2018 on those grounds.

The practice of arbitrary detention at the airport has already been described in [Access to the Territory](#). However, the new Asylum Act has introduced a [Border Procedure](#). Thus, the applicant could be detained under these circumstances in case that adequate accommodation and subsistence can be provided.³³³ However, since there are no adequate facilities located in border areas or in the transit zone, the border procedure is yet to be applied.

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 Detention Centre 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.³³⁴ 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.

Article 87 of the Foreigners Act provides that a foreigner who is in a return procedure can be detained for the purpose of preparing the return or executing forced removal, based on the decision of the competent authority or border police. The detention is ordered in the case of the risk that the foreigner will not be available to the competent authority for the execution of forcible removal or will attempt to avoid or interfere

³³⁰ Article 77(1) Asylum Act.

³³¹ Article 77(3) prescribes that the risk of absconding shall be assessed on the basis of all the facts, evidence, and circumstances in a specific case, particularly taking into account all the applicant's previous arbitrary attempts of leaving the Republic of Serbia, his or her failures to consent to identity checks or identity establishment procedures, or concealing information or providing false information about his or her identity and/or nationality.

³³² Article 58(1)(3) and (7) Asylum Act.

³³³ Article 44(1)(1) Asylum Act.

³³⁴ Articles 87 and 88 Foreigners Act.

with the preparations for return or removal.³³⁵ The valid reasons for this form of detention exist if a foreigner:

1. Does not have documents to establish his or her identity;
2. Does not cooperate in the return procedure and is interfering with his or her return;
3. Has not departed from the Republic of Serbia voluntarily;
4. Has not cooperated in the procedure of establishing identity or citizenship, or has given false or contradictory information;
5. Is using or has used false or forged documents;
6. Has attempted to enter or has already entered into the Republic of Serbia illegally;
7. Has not fulfilled his obligations derived from the order on mandatory stay in a particular place;
8. Does not have any relatives or social ties in the Republic of Serbia;
9. Does not have any means to provide accommodation or subsistence.

Without trying to dispute the importance of the abovementioned provisions, the fact that a person is in need of international protection must not be neglected during the course of forcible removal procedure. Thus, the individual in case should be allowed to enjoy procedural safeguards in the context of expulsion,³³⁶ which is not the case at the moment. The current practice implies stereotypical issuance of the decision on cancellation of residency,³³⁷ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.³³⁸ In these two procedures, foreigners do not enjoy legal assistance or services of interpretation, neither they are allowed to submit arguments against their expulsion or to effectively enjoy the right to a remedy which has a suspensive effect. Moreover, an appeal against the decision on cancellation of residency³³⁹ or the expulsion decision³⁴⁰ does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.³⁴¹ However, since the guarantees regarding the expulsion are not in place in practice, it remains unclear how will the competent border police authority assess the risk of *refoulement*. The current practice is simply based on the automatic issuance of the expulsion decision in a template where only personal data and circumstances of irregular entry are stated, while the reasoning does not contain any assessment on the risk of *refoulement*.

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.³⁴²

³³⁵ Article 87(4) Foreigners Act envisages that a foreigner is avoiding or interfering with the preparations for return and forced removal if his identity cannot be established, or if the foreigner does not have a travel document.

³³⁶ Article 1 Protocol 7 ECHR.

³³⁷ Article 39 Foreigners Act.

³³⁸ Article 74 Foreigners Act.

³³⁹ Article 39(7) Foreigners Act.

³⁴⁰ Article 80(3) Foreigners Act.

³⁴¹ Articles 80(3) and 83 Foreigners Act.

³⁴² BCHR, *Right to Asylum in Serbia 2018*, 29-30.

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 several alternatives to detention, which will be imposed based on an individual assessment prior to detention. Alternatives to detention are the following:

1. Prohibition on leaving the Asylum Centre, a particular address, or a designated area;³⁴³
2. Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;³⁴⁴
3. Temporary seizure of a travel document.³⁴⁵

The above-stated measures can last as long as there are **Grounds for Detention** under Article 77 of the Asylum Act but no longer than 3 months, and exceptionally could be extended for additional 3 months. An asylum seeker who has violated residence or reporting obligations can be detained in the Detention Centre for Foreigners.³⁴⁶

Such measures, however, have never been taken in practice as of the end of 2018.

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 envisages that the person with specific circumstances and needs, as prescribed in Article 17, can be detained exclusively if it has been established, based on an individual assessment, that such accommodation is appropriate, taking into account his or her personal circumstances and needs, and particularly his or her health condition.³⁴⁷

³⁴³ Article 78(1)(1) Asylum Act.

³⁴⁴ Article 78(1)(2) Asylum Act.

³⁴⁵ Article 78(1)(5) Asylum Act.

³⁴⁶ Article 79 Asylum Act.

³⁴⁷ Article 80 Asylum Act.

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? Not available

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.³⁴⁸

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 Detention Centre in **Padinska Skela**, Belgrade, which can host up to 80 persons.

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

2.1. Conditions in the Detention Centre

Persons held in Padinska Skela 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 centre 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.

³⁴⁸ Article 78(2) and (3) Asylum Act.

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 usually detained 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 80m² 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 described as follows:

“The material conditions in this room were inadequate for the purposes of detention, the main shortcomings being the absence of beds and heating, deplorable hygienic and sanitary conditions and constant artificial lighting. When tested, the tap water was not running, the premises visibly had not been cleaned for an extended period of time and all seven persons who were held there were obliged to spend the night sitting in armchairs. However, they had all received meals provided by the airport police.”³⁴⁹

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|-----------------------------------------|----------------------------------|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

UNHCR has unimpeded access to all persons under its mandate, including in detention.³⁵⁰ NGOs specialised in asylum and migration issues are also entitled to have access to all the persons who enjoy the status of asylum seeker.³⁵¹ Access to asylum seekers detained at the airport could be restricted, when that is necessary for protecting national security and ensuring public order in the Republic of Serbia.³⁵²

³⁴⁹ Special Rapporteur for Torture, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/40/59/Add.1, 25 January 2019, para 48.

³⁵⁰ Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

³⁵¹ Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

³⁵² Article 41(3) Asylum Act.

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?

The applicant can challenge his or her detention before the competent Higher Court within 8 days since the delivery of the decision.³⁵³ The appeal does not have suspensive effect.³⁵⁴

Since 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.³⁵⁵

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

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 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.³⁵⁶

³⁵³ Article 78(5) Asylum Act.

³⁵⁴ Article 78(6) Asylum Act.

³⁵⁵ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 14.

³⁵⁶ ECtHR, *Othman v. Serbia*, Application No 27468/15.

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.

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,³⁵⁷ recognised refugees are not issued a separate document of residence, as they are considered *ipso facto* to be entitled to reside in the country.

The right to reside in the Republic of Serbia shall be approved under a decision on granting refugee status or subsidiary protection, and shall be proved by an identity card for persons who have been granted the right to asylum.³⁵⁸

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 2018: | N/A |

Under the new Asylum Act, the Republic of Serbia shall ensure conditions for naturalisation of refugees, commensurate to its capacity.³⁵⁹ The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal of CRM.³⁶⁰

However, the relevant amendments to the Citizenship Act specifying the conditions for acquisition of citizenship have not been adopted yet. Thus, persons granted asylum cannot obtain citizenship.

³⁵⁷ Article 60 Asylum Act.

³⁵⁸ Article 90 Asylum Act.

³⁵⁹ Article 71(1) Asylum Act.

³⁶⁰ Article 71(2) Asylum Act.

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 |

Under Article 81 of the Asylum Act, **refugee status** shall cease where the person:

1. Has voluntarily re-availed him or herself of the protection of his or her country of origin;
2. Having lost his or her nationality, has re-acquired it;
3. Has acquired a new nationality, and thus enjoys the protection of the country of his or her new nationality;
4. Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing to fear of persecution or harassment;
5. Can no longer continue to refuse to avail him or herself of the protection of his or her country of origin or habitual residence, because the circumstances in connection with which he or she has been granted protection have ceased to exist;

In considering the change of circumstances ground, the Asylum Office must assess whether the change of circumstances is of such a significant and non-temporary nature that the fear of persecution can no longer be regarded as well-founded. The Asylum Office is obliged to inform the person about the grounds for cessation and allow him or her to make statement regarding the facts relevant for the cessation of protection. The beneficiary is entitled to invoke compelling reasons arising out of previous persecution or harassment for refusing to avail him or herself of the protection of the country of origin or the country of former habitual residence.³⁶¹

The Asylum Act also provides that the Asylum Office will pass a decision on cessation of **subsidiary protection** when the circumstances in connection with which it has been granted have ceased to exist or have changed to such a degree that the protection is no longer required, or the person no longer faces a risk of serious harm. The beneficiary is entitled to, after he or she was informed by the Asylum Office about the grounds for cessation, to invoke compelling reasons arising out of previous serious harm for refusing to avail him or herself of the protection of the country of origin or the country of former residence.³⁶²

After it has determined that there are reasons for the cessation of refugee status or subsidiary protection, the Asylum Office shall ex officio revoke a decision upholding the asylum application.³⁶³

To the knowledge of BCHR, however, the cessation provisions have never been applied in practice.

6. Withdrawal of protection status

To the knowledge of BCHR, withdrawal has never been applied in practice.

³⁶¹ Article 81(4), (5) and (6) Asylum Act.

³⁶² Article 82 Asylum Act.

³⁶³ Article 83 Asylum Act.

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

A beneficiary of international protection has the right to reunification with his or her family members.³⁶⁴ Family members are the spouse, provided that the marriage was contracted before the arrival to the Republic of Serbia, the common-law partner in accordance with the regulations of the Republic of Serbia, their minor children born in legal or in common-law marriage, minor adopted children, or minor step-children. Exceptionally, the status of family member may be granted also to other persons, taking into account particularly the fact that they had been supported by the person who has been granted asylum or subsidiary protection, their age and psychological dependence, including health, social, cultural, or other similar circumstances.³⁶⁵

A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.³⁶⁶

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

2. Status and rights of family members

The right to reside in the Republic of Serbia shall be enjoyed by the family members of a person who has been granted the right to asylum.

C. Movement and mobility

1. Freedom of movement

Refugees have equal rights to free movement as permanently residing foreigners in Serbia.³⁶⁷

2. Travel documents

The Asylum Act envisages that the Minister of Interior would adopt a bylaw on the content and design of travel documents for persons granted **refugee status** within 60 days from the date of entry into force of the Act.³⁶⁸ The bylaw was not passed by the time of this report was concluded.

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

³⁶⁴ Articles 70(1) and 9(2) Asylum Act.

³⁶⁵ Article 2(2) and (12) Asylum Act.

³⁶⁶ Article 70(4) Asylum Act.

³⁶⁷ Article 62 Asylum Act.

³⁶⁸ Article 101 Asylum Act.

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.³⁶⁹ This reasoning remains unclear since the consequences embodied throughout illegal and unjustified limitation of freedom of movement were reflected upon individuals. The impossibility of receiving a travel document for asylum beneficiaries still remains a problem at the time of writing.

BCHR has lodged an application to the ECtHR stating a violation of Article 2(2) Protocol 4 ECHR which provides that everyone shall be free to leave any country, and of Article 2(3) stating that no restrictions may be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, etc. The parties are currently in the phase of responding to the questions of the Court as to whether there is a restriction of the freedom of movement and whether the conditions prescribed in Article 2(3) Protocol 4 ECHR have been fulfilled.

The Asylum Act also envisages that, in the exceptional cases of a humanitarian nature, a travel document may also be issued to persons who have been granted **subsidiary protection** and who do not possess a national travel document, with a validity of maximum one year.³⁷⁰

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 2018 | Not available |

The right to temporary accommodation of persons who have been granted asylum is governed by the Decree on Criteria for Temporary Accommodation of Persons Granted Asylum or Subsidiary Protection and Conditions for Use of Temporary Housing.³⁷¹ 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 than 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.

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. There are people who have been living in Asylum Centres for years.

There are several problems identified in practice regarding the accommodation outside the reception facilities. Namely, in order for one to submit an application for this type of support, one must present a photocopy on an identity card of a foreigner granted asylum proving that he or she lives at a private address and not in one of the facilities designated for accommodation of asylum seekers. It takes at least two weeks to obtain an ID card for the person granted asylum. Secondly, a small number of persons granted asylum possess enough in resources to cover the costs of initial costs of accommodation, before they are granted with the financial support. Moreover, landlords usually require an advance payment of

³⁶⁹ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

³⁷⁰ Article 91(3) Asylum Act.

³⁷¹ Official Gazette no. 63/15.

the rent for several months. Having identified this problem, the CRM passed a decision in mid-2018, approving assistance also to the persons who have not yet moved out of Asylum Centres provided they do so within 30 days.³⁷²

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.³⁷³

E. Employment and education

1. Access to the labour market

The Asylum Act foresees that persons granted asylum in Serbia shall be equal to permanently-residing foreigners with respect to the right to work and rights arising from employment and entrepreneurship.³⁷⁴ The new Asylum Act has introduced equality in the rights and obligations of persons granted refugee status with those of persons granted subsidiary protection,³⁷⁵ even though the Employment of Foreigners Act explicitly states that persons who have been granted subsidiary protection are to be issued personal work permits for the duration of that status.³⁷⁶

Additionally, the new Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia", (Integration Decree), entered into force on 26 July 2018.³⁷⁷ The Integration Decree foresees assistance in accessing the labour market as an integral part of integration.

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.³⁷⁸

The problem that exists implies that beneficiaries have 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 CRM in this regard, meaning that refugees usually require financial aid from civil society organisations to pay these taxes.

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.

It is important to highlight that the new Asylum Act imposes upon beneficiaries an obligation to attend classes of the Serbian language and script. If the beneficiary fails to do so without a justified reason 15 days from the date of the effectiveness of the decision granting him or her the right to asylum or stops attending such courses, he or she shall lose the right to financial assistance for temporary accommodation, as well as the right to one-time financial assistance provided from the budget of the Republic of Serbia.³⁷⁹

³⁷² BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 90-91.

³⁷³ *Ibid.*

³⁷⁴ Article 65 Asylum Act.

³⁷⁵ Article 59 Asylum Act.

³⁷⁶ Article 13(6) Employment of Foreigners Act.

³⁷⁷ Official Gazette no. 101/16 and 56/18.

³⁷⁸ Article 7 Integration Decree.

³⁷⁹ Article 59 Asylum Act.

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. The campaign has continued in 2018.

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.³⁸⁰ 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

The right to education is a constitutional right in Serbia further governed by a number of laws, primarily the Law on Basics of the Education System.³⁸¹ Specific degrees of education are regulated by the Law on Primary Education,³⁸² the Law on Secondary Education,³⁸³ and the Law on Higher Education.³⁸⁴

Under the Law on Basics of the Education System, foreign nationals, stateless persons and persons applying for citizenship shall have the right to education on an equal footing and in the same manner as Serbian nationals.³⁸⁵ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.³⁸⁶ A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.³⁸⁷

The Integration Decree foresees assistance by the Commissariat for Refugees and Migrations to persons recognised as refugees in entering the educational system.³⁸⁸ 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.³⁸⁹

The alignment of rights to higher education represents a novelty because refugees could have access to higher education thus far only under the conditions applicable to all other foreign citizens, including the school fees. Though the issue of validation of foreign diplomas potentially concerns all the recognized refugees, still their validation is the most wanted in the sectors where employment is conditioned by possession of an adequate license such as medicine or law practice.³⁹⁰ However, the problem regarding the validation lies in the fact that refugees must cover the costs of this process by themselves. For not, the costs of validation are covered by NGOs.³⁹¹

The Integration 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.

³⁸⁰ National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

³⁸¹ Official Gazette, no. 88/17 and 27/18.

³⁸² Official Gazette, no. 55/13, 101/17 and 27/18.

³⁸³ Official Gazette, no. 55/13, 101/17 and 27/18.

³⁸⁴ Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

³⁸⁵ Article 3(5) Law on Basics of the Education System.

³⁸⁶ Articles 55 and 64 Asylum Act.

³⁸⁷ Article 64 Asylum Act.

³⁸⁸ Article 2(4) Integration Decree.

³⁸⁹ Article 6 Integration Decree.

³⁹⁰ BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 87-88.

³⁹¹ *Ibid.*

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.³⁹² 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.³⁹³

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.³⁹⁴ 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.³⁹⁵ 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 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.³⁹⁶

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 €. 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.

³⁹² Article 4 Integration Decree.

³⁹³ Article 5 Integration Decree.

³⁹⁴ Article 67 Asylum Act.

³⁹⁵ Social Welfare Act, Official Gazette no. 24/2011.

³⁹⁶ Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

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](#).³⁹⁷

³⁹⁷ Article 64 Asylum Act.