

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 2019, 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 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) 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

Recording of intention to lodge an asylum application

Request certifying a person's intention to apply for asylum. This does not constitute a formal application for asylum.

Afis	Automated fingerprint identification system
APC	Asylum Protection Centre
BCHR	Belgrade Centre for Human Rights
BIA	Security-Information Agency of Serbia
BID	Best Interest Determination
BPSB	Border Police Station Belgrade
CAT	United Nations Committee against Torture
Col	Country of Origin Information
CSO	Civil Society Organization
CRC	Committee on the Right of the Child
CRM	Commissariat for Refugees and Migration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GAPA	General Administrative Procedure Act
HRC	Human Rights Committee
IDP	Internally displaced person
MYLA	Macedonian Young Lawyers' Association
OKS	Specific Category of Foreigners Određena kategorija stranaca
PIN	Psychosocial Innovation Network
SWC	Social Welfare Centre
UAE	United Arab Emirates
USAC	Unaccompanied and Separated Children
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: 2019

	Intentions to apply in 2019	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	12,937	252	:	13	13	54	16.25%	16.25%	67.5%

Breakdown by countries of origin of the total numbers

Afghanistan	3,847	38	:	4	1	6	36%	9%	55%
Pakistan	2,766	8	:	0	2	3	0%	40%	60%
Syria	1,976	8	:	0	4	0	0%	100%	0%
Iraq	1,560	19	:	1	2	0	33%	67%	0%
Bangladesh	849	5	:	0	0	0	-	-	-
Iran	358	63	:	3	1	34	8%	3%	89%
Egypt	224	0	:	0	0	0	-	-	--
Palestine	205	4	:	0	0	1	0%	0%	100%
Algeria	191	0	:	0	0	1	-	-	-
Morocco	190	0	:	0	0	0	-	-	-

Source: Asylum Office

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of persons intending to apply¹	12,937	100%
Men	12,052	93%
Women	885	7%
Children	2,939	23%
Unaccompanied children	823	6%

Source: Asylum Office. The number on children are part of the total number of men and women, as statistics specifically on children are not available.

Comparison between first instance and appeal decision rates: 2019

Asylum Commission

Total number of decisions	Appeals dismissed		Appeals upheld		Decisions granting asylum	Decisions rejecting the reopening of the asylum procedure	Decision terminating asylum
	On the merits	On the basis of the safe third country concept	On the merits	For procedural reasons			
45	24	2	8	7	1	2	1

Administrative Court

Total number of decisions	Decisions rejecting a complaint and upholding the second instance decision	Decisions upholding a complaint and referring the case back to the Asylum Office	Decisions discontinuing the asylum procedure	Decisions granting asylum
17	12	4	1	0

¹ Figures on the numbers of applications lodged 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 and 31/2019	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 previously published in **March 2019**.

Covid 19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Serbia. Subsequently measures have been taken which impact the situation of asylum seekers and beneficiaries of international protection. While these measures have not been inserted throughout the AIDA report, this box aims to present some of the main measures applied as of 25 April 2020:²

Due to the spread of an infectious disease COVID-19 caused by the SARS-CoV-2 virus, and pursuant to Article 6, Paragraph 1 of the Law on the Protection of the Population from Infectious Diseases (LPPID),³ the Government adopted a Decision declaring the COVID-19 infectious disease by the SARS-CoV-2 virus (COVID decision).⁴ Article 1 of the Decision states that the coronavirus is an infectious disease whose prevention and control are of an interest to the Republic of Serbia.

On 15 March 2020, the President of the Republic of Serbia Aleksandar Vucic announced that he (as the President of the Republic of Serbia), the President of the National Assembly and the Prime Minister had made a Decision to declare a state of emergency,⁵ on the basis of Article 200, Paragraph 4 of the Constitution, as it was not possible to convene the National Assembly, which is primarily authorised to take a decision to declare a state of emergency.⁶

Pursuant to the Article 200 Paragraph 6 of the Constitution, the Government, with the President's signature, issued a Decree on Emergency Measures (the Decree),⁷ which foresees measures derogating from the constitutionally guaranteed human and minority rights during a state of emergency.⁸

Article 6, paragraph 1 of the LPPID provides that, in the event of a threat of an infectious disease such as coronavirus, which without any doubt significantly threatens the population of Serbia, the Government, at the proposal of the Minister of Health, may declare such disease infectious whose prevention and control is in the interest of Serbia. Based on that decision, it is possible to introduce "appropriate measures, conditions, manner of enforcement, executors and means of enforcement". Pursuant to the above stated provision, on 16 March 2020, the Government adopted a Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum Centres and Reception Centres in the Republic of Serbia.⁹ The Decision on Temporary Restriction of Movement as a whole reads as follows:

1. In order to avoid the spread of the virus on the territory of the Republic of Serbia, to prevent the uncontrolled movement of persons who may be carriers of viruses and to arbitrarily leave asylum centres and reception centres, the movement of asylum seekers and irregular migrants accommodated in asylum centres and reception centres in the Republic of Serbia is temporarily restricted and enhanced supervision and security of these facilities is established.

² Comprehensive and up-to-date information on Covid-19 related measures can be found on the Governmental website available at: <https://bit.ly/2Z7EfER>.

³ Official Gazette, no. 15/2016.

⁴ Official Gazette, nos. 23/2020, 24/2020, 27/2020, 28/2020, 30/2020, 32/2020, 35/2020, 37/2020, 38/2020, 39/2020, 43/2020, 45/2020, 48/2020 and 49/2020, 59/2020 and 60/2020.

⁵ Official Gazette, no. 29/2020.

⁶ Official Gazette, no. 98/2006.

⁷ Official Gazette, nos. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020 and 60/2020.

⁸ Article 1 of the Decree.

⁹ Official Gazette, no. 32/2020, hereinafter referred to as: Decision of Temporary Restriction of Movement.

2. Asylum seekers and irregular migrants, exceptionally and in duly justified cases (visiting a doctor or for other justified reasons), will be allowed to leave the facilities referred to in item 1 of this Decision, with the special permission of the Commissariat for Refugees and Migration of the Republic of Serbia, which will be limited for a time in line with the reason it is issued.
3. This Decision shall enter into force on the day of its publication in "The Official Gazette of the Republic of Serbia".

On 9 April 2019, the Decision on the Temporary Restriction of Movement entered into force and its provisions were transposed into the Decree in identical form. Thus, from the "regular legal regime",¹⁰ the ban on leaving asylum centres and reception centres was moved into an "extraordinary legal framework", which reshaped the above stated ban from limitation to a derogation measure.

- ❖ **Access to the territory:** Article 4 of the COVID decision introduced a total ban on entry to Serbia to all foreign citizens who had not had any form of residency prior to the COVID-19 outbreak. Since most NGOs helping refugees and asylum seekers have suspended their field work it cannot be claimed with certainty that the well-known practice of denial of access to the territory continued. However, Article 4b of the Decree introduced a total restriction on arrivals from Bulgaria and North Macedonia. Nevertheless, new arrivals to Serbia were recorded from Bosnia and Hercegovina (200), but also from Hungary where approximately 100 persons were pushed back even though they had never been in Serbia before.¹¹
- ❖ **Access to the procedure:** As of 24 March 2020, the Government has suspended all activities towards foreign citizens, including taking of biometric data and registration of asylum seekers.¹² The validity of asylum ID cards was automatically extended for the length of emergency situation.¹³ The last registration certificate was issued on 21 March 2020 in the southern city Vranje, close to the border with North Macedonia.
- ❖ **Examination of applications for international protection:** The refugee status determination procedure has been suspended on 24 March 2020 under the same conditions as registration. Not a single decision was rendered in April 2020.
- ❖ **Reception conditions:** All the reception facilities were turned into detention facilities since the Decision on the Temporary Restriction of Movement introduced a 24-hour ban on leaving asylum and reception centers and later the Decree. All migrants deprived of their liberty in the Detention Centre for Foreigners were transferred to one of the 20 reception facilities, as well as migrants residing in the urban areas. This has led to an extremely high overcrowding rate in almost all asylum and reception centers and to inhumane and degrading conditions in Preševo, Obrenovac, Morović, Adaševci, Sjenica, Sombor and Principovci.
- ❖ **Detention:** Refugees, Asylum Seekers and Migrants have been detained as of 16 March 2020 in reception centres. Initially, they were detained under the Decision on the Temporary Restriction on Movement. From 9 April 2020, their right to liberty and security was derogated on the basis of the Article 3 of the Decree.

Thus, in the period from 16 March to 9 April 2020, all refugees, asylum seekers and migrants who had been staying in asylum centers and reception centers before the state of emergency were unlawfully and arbitrary deprived of their liberty by virtue of a by-law, thus violating all international

¹⁰ Meaning that restrictions of the rights of refugees, migrants and asylum seekers were conducted on the basis of the legal framework applicable in regular circumstances.

¹¹ UNHCR, *Serbia Special Weekly Update*, 23-29 March 2020, available at: <https://bit.ly/3f8uhZj>.

¹² The Government's Decision on the Status of Foreign Citizens in the Republic of Serbia during the State of Emergency, Official Gazette, No. 41/2020, Article 3.

¹³ *Ibid*, Article 2.

instruments guaranteeing the right to liberty and security of person and the Constitution of the Republic of Serbia. Moreover, they were not provided information on the grounds for and length of detention and were further denied the right to access legal assistance and the right to an appropriate judicial body deciding on the lawfulness and grounds of deprivation of liberty in an emergency procedure, thereby depriving them of one of the basic principles on which civilization rests - the habeas corpus principle.¹⁴

The number of refugees, foreigners and migrants detained in Asylum and Reception Centres on 16 April 2020 was as follows:

Asylum centre	Capacity	Current situation	Overcrowding rate
Banja Koviljača	120	110	-
Bogovađa	200	261	131%
Tutin	200	209	105%
Sjenica	250	382	153%
Krnjača	1.000	829	-
Total	1.770	1.872	106%
Reception centre	Capacity	Current situation	Overcrowding rate
Preševo	900	1.488	166%
Vranje	220	230	105%
Bujanovac	220	265	121%
Sombor	120	522	435%
Principovac	150	648	432%
Obrenovac	900	1.049	117%
Adaševci	450	1.123	250%
Bela Palanka	280	284	102%
Dimitrovgrad	90	-	-
Bosilegrad	60	80	133%
Pirot	250	185	-
Kikinda	240	649	270%
Subotica	130	62	-
Šid	210	238	113%
Morović	-	105	-
Miratovac	-	94	-
Total	3.800	7,022	180%¹⁵

¹⁴ See more in Nikola Kovačević, *Deprivation of liberty of refugees, asylum seekers and migrants in the Republic of Serbia through measures of restriction and measures of derogation from human and minority rights made under the auspices of the state of emergency*, A11-Initiative for Economic and Social Right, Belgrade, March 2020, Chapter 3 and Chapter 4, available at: <https://bit.ly/2zAfK8w>.

¹⁵ The estimate does not include Morović and Miratovac.

Asylum procedure

- ❖ **Access to the territory and push-backs:** Access to territory remains a serious concern and the practice of pushbacks persisted in 2019. At least 16,000 persons likely to be in need of international protection were pushed back by Serbian border police authorities to Bulgaria and North Macedonia. The practice of the Border Police Station Belgrade (BPSB) at the airport implies that decisions on refusal of entry are also issued to persons who might be in need of international protection thus failing to provide procedural guarantees against *refoulement*. Also, it is still not clear if foreigners subject to various forms of expulsion decisions have access to the asylum procedure, especially when they return from one of the neighbouring countries (e.g. Hungary or Croatia) and decide to stay and apply for asylum in Serbia. Finally, the period that asylum seekers have to wait to lodge asylum application has a discouraging effect on them.
- ❖ **First instance procedure:** 2019 was a year in which significant progress was detected in the practice of the Asylum Office, which delivered 26 decisions granting asylum to 35 persons. The previous practice of automatically applying the 'safe third country concept' only concerned 10% of all of the decisions. This means that for the first time in the history of the Serbian asylum system, the vast majority of asylum applications were decided on the merits. The quality of the reasoning and the decision-making process was also improved. Nevertheless, the Asylum Office must continue to further harmonise its procedures. Inconsistencies in practice were detected in relation to asylum applications lodged by Afghan nationals, Iranians who converted from Islam to Christianity and unaccompanied asylum-seeking children (UASC). The procedure at first instance remains very lengthy and can last up to 6 and even 8 months.
- ❖ **Second instance procedure:** There was no improvement in the procedure at second instance as the Asylum Commission and Administrative Courts still fail to have a corrective influence over the work of the lower instance authorities. Thus, if a negative first instance decision is issued by the determining authority, it is very likely that the asylum claim will further be rejected at second instance. The second instance authorities continued to apply negative practices, e.g. with regard to the interpretation of the safe third country concept. One exception concerns a decision from the Asylum Commission in which it decided to grant subsidiary protection in one case.

Reception conditions

- ❖ **Conditions in reception centres:** Overall, the reception conditions in Asylum Centres can be considered as satisfactory, with the exception of the largest Asylum Centre located in Krnjača. However, living conditions in the Temporary Reception Centres continue to raise serious concerns as they are not adequate for hosting asylum seekers for long periods. The lack of security in many reception facilities is a serious concern, and the presence of organised crime groups involved in smuggling and potentially human trafficking is evident. This is particularly worrying for unaccompanied asylum-seeking children (UASC) who are at serious risk in almost all reception facilities. Important critics and concerns were expressed in particular regarding the conditions in Adaševci, Šid, Obrenovac and several other Reception Centres which should be improved without delay.

Detention of asylum seekers

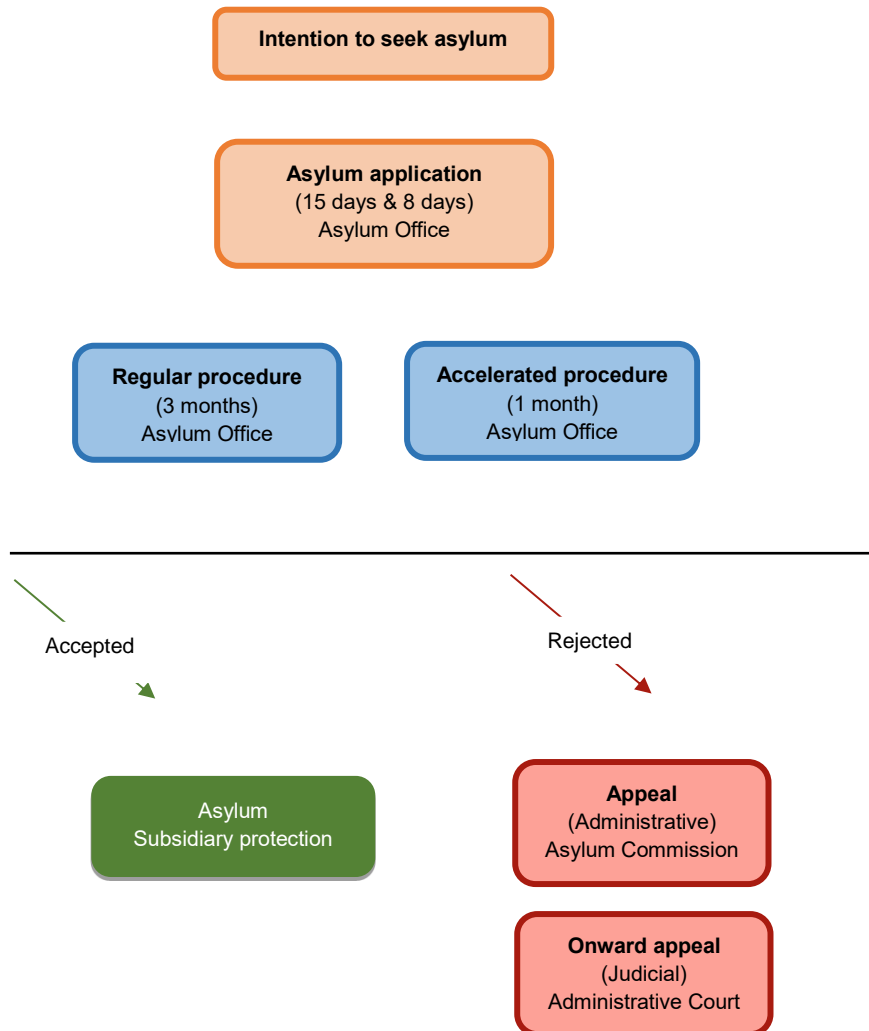
- ❖ **Detention at the border:** Detention for the purpose of the asylum procedure is still rarely used. However, the practice of unlawful and arbitrary deprivation of liberty at the transit zone of "Nikola Tesla" airport prevails. The Constitutional Court of Serbia does not consider that the placement in the transit zone premises for a period of 28 days - without a detention order nor the possibility to lodge an appeal - as a practice that undermines Article 27 of the Constitution (which corresponds to Article 5 of European Convention on Human Rights (ECHR)).

- ❖ **Limits to integration:** From 2008 to 2019, only 156 persons were granted asylum in Serbia. At least 40% of them have left Serbia due to the poor prospects of integration. The obstacles in integration begin during the asylum procedure, as many applicants are placed in remote Asylum Centres (Sjenica, Tutin and Bogovađa) where access to labour market is extremely difficult or in some cases impossible. The inability to obtain a work permit in the first 9 months from the lodging of the asylum application discourages persons in need of international protection to consider Serbia as a country of destination. Also, the right to health care, employment and access to education largely depends on the assistance of CSOs, while the support from the State needs to be improved. Social allowances are insufficient for most of the refugees who do not have any other sources of income.

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: ¹⁶ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ¹⁷ | <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 type="checkbox"/> No |
| ❖ Accelerated procedure: ¹⁸ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | | |

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

The border procedure is yet to be applied in practice.

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 ¹⁹	Foreigners' Department	Odeljenje za strance / Одељење за странце
Application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Refugee status determination	Asylum Office	Kancelarija za azil / Канцеларија за азил
Appeal procedure		
❖ First appeal	Asylum Commission	Komisija za azil / Комисија за азил
❖ Onward appeal	Administrative Court	Upravni sud / Управни суд
Subsequent application	Asylum Office	Kancelarija za azil / Канцеларија за азил

In Serbia, the Security Information Service (BIA) is also allowed to conduct security checks, based on which an application for international protection can be rejected. This was applied in one case concerning a Libyan family who had their asylum applications rejected because they were on the list of individuals whose presence on Serbian territory posed a threat to national security. The family has complained before the European Court of Human Rights (ECtHR) that their expulsion to Libya would violate Articles 2 and 3 of the European Convention on Human Rights (ECHR) due to their political affiliation, and under Article 13 ECHR due to an alleged lack of effective remedy in Serbia.²⁰

¹⁶ For applications likely to be well-founded or made by vulnerable applicants.

¹⁷ Accelerating the processing of specific caseloads as part of the regular procedure.

¹⁸ Labelled as "accelerated procedure" in national law.

¹⁹ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

²⁰ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

4. Determining 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 determining authority?
Asylum Office	23	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The Asylum Office is responsible for examining applications for international protection and competent to take decisions at first instance. 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:

Asylum Office staff: 2019	
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 Centres)	2
Asylum Officers	13
Administrative Officers	3
Total	23

Thus, 15 asylum officers are in charge of the asylum procedure, a significant improvement in comparison to the previous years. Out of the 13 Asylum Officers responsible for deciding on applications for international protection, 9 have between 5 years and 10 years of experience. Their decisions must further be confirmed by the Head of the Asylum Office. The increase of the capacity of the first instance body has improved the effectiveness of asylum procedures 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.²¹ The asylum system and procedure *stricto sensu*, however, are mainly governed by the Act on Asylum and Temporary Protection ("Asylum Act") that came into force on 3 June 2018.²² Additionally, relevant are the Foreigners Act²³ and the General Administrative Procedure Act (GAPA),²⁴ 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,²⁵ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees.

The Asylum Act introduced in 2018 several legislative novelties such as accelerated and border procedures, as well as the "first country of asylum" concept. One of the most significant changes

²¹ '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).

²² Official Gazette no. 24/2018.

²³ Official Gazette no. 24/2018.

²⁴ Official Gazette no. 18/2016 and 95/2018.

²⁵ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

concerned the “safe third country” concept. The Asylum Act foresees that Serbian asylum authorities are obliged to obtain a certain type of 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 receives 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 the Asylum Office to facilitate the lodging of the asylum application and then to 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.

It should 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
2. Is there a border monitoring system in place? ☐ Yes ☒ No

1.1. Access to the territory in the green border zone

In 2019 the presence of civil society organisations at the border significantly dropped. The number of reports on pushbacks and collective expulsions committed by the hands of Serbian border authorities in the green area with **North Macedonia, Bulgaria and Montenegro** decreased, which does not mean that this practice ceased to exist. The best example for this is that for the first time, the BCHR’s annual report does not contain a dedicated chapter on access to territory.²⁶ Also, other implementing partners of UNHCR which are present on the daily basis at reception centres in border areas have not published a single report on border practices or testimonies collected by those who might have been informally expelled to one of the neighbouring states. The same can be said for CSOs in the neighbouring/receiving states who so far have not disclosed any findings or testimonies by refugees and asylum seekers on this issue, which was not the case in previous years.²⁷

In August and September 2019, UNHCR reported 187 pushbacks to North Macedonia.²⁸ The only CSO which published data on these practices was the Asylum Protection Centre (APC), who reported in April 2019 that in the first four months of 2019, a total of 75 refugees and migrants were either pushed back at

²⁶ BCHR, *Right to Asylum in the Republic of Serbia 2019*, BCHR, Belgrade 2020, available at: <http://bit.ly/2PYg1rd>.

²⁷ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 16.

²⁸ UNHCR, *Serbia-September 2019*, available at: <http://bit.ly/2TBDJvs>.

border or were collectively expelled from the mainland to North Macedonia or Bulgaria.²⁹ The most striking example of this practice goes as follows:

'According to Z.D. (27), an Afghan arriving in Serbia via Bulgaria, and I.J.M. (21), a Pakistani coming to Serbia through Macedonia, there was an incident in Vranje that resulted in a collective deportation of six Afghan refugees on January 31st. These refugees were approached by the camp manager and police and asked whether they intended to seek asylum in Serbia. They responded that their intention was to continue their path towards the European Union. They next morning (January 31, 2019 around 6am) the police entered the room where this group of Afghans slept and took six people from the group. The refugees were not told why or where they were being taken, and according to Z.D. and I.J.M., the camp was surrounded by police and there was no possibility of escape. All 6 refugees were put into police vehicles and taken away. When they were released they found themselves in the mountains, and when they got back in touch with their friends in Vranje, they revealed that they were taken to Bulgaria.'³⁰

APC's findings indicate that the denial of access to territory in the green border zone remains a serious issue in Serbia and that the practice of push backs and other forms of collective expulsions continued. Refugees and asylum seekers who were arriving from **North Macedonia, Bulgaria and Montenegro** were still subject to the practice which implies a short-term deprivation of their liberty, search and denial of access to the basic rights of persons deprived of their liberty.³¹ Next, they were removed/ 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 **Greece or Turkey**. They did not have the possibility to apply for a remedy with suspensive effect in order to challenge their forcible removal.³²

These allegations are further supported by the continuing praises of Serbian officials who continued to publicly present 'the results' of Serbian border authorities which imply that border police successfully combats 'illegal entries' from neighbouring states.³³ On 26 November 2019, the Head of the Border Police Administration, Mr. Miljan Stanojević, found that in 2019 border police prevented between 20 to 50 illegal entries to Serbia per day.³⁴ He further noted that, by the end of November 2019, around 15,000 persons were prevented from crossing the border.³⁵ In this light, it is reasonable to assume that around 16,000 foreigners have been exposed to the practice of arbitrary returns in 2019. Said statements irresistibly correspond to the statements given by the Italian officials during the sea operations at the time when the *Hirsi Jamaa v. Italy* incident took place.³⁶ In other words, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2019.

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.³⁷ These concerns have also been shared by the UN Committee against Torture (CAT)³⁸ and Amnesty International,³⁹ while UNHCR had reported this problem for the first time in 2012.⁴⁰ In 2015, CAT recommended that Serbia establish

²⁹ APC, *Forced refugee push backs to Macedonia from January to April 2019*, available at: <http://bit.ly/2TkF1LP>.
³⁰ *Ibid.*

³¹ Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

³² ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

³³ AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 16-18.

³⁴ BETA, 'MUP: Na dnevnom nivou spreči se ilegalni ulazak 20 do 50 ilegalnih migranata', 26 November 2019, available (in Serbian) at: <http://bit.ly/2TdLuYL>.

³⁵ *Ibid.*

³⁶ 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.

³⁷ Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

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

³⁹ 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.

⁴⁰ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

“formalized border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organizations.”⁴¹

There are several thoroughly documented cases of collective expulsions which BCHR sought 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,⁴² which indicates that it cannot be expected from domestic authorities to address these kinds of practices and that refugees and asylum seekers do not have an effective access to justice and domestic remedies at their disposal.

Another important case which addressed the practice of denial of access to territory and asylum procedure is *Hajatolah and Others v. Serbia*,⁴³ currently pending before the Constitutional Court⁴⁴ and ECtHR.⁴⁵

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.⁴⁶ 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 2019, the UNHCR office in Serbia and its partners documented 1,443 push backs from **Croatia, Bosnia, Hungary and Romania** encompassing 10,579 persons. Accordingly, every day at least 30 persons were pushed back to Serbia from one of said countries. The vast majority of pushbacks have been done by the **Croatian** border police (468 pushbacks involving 3,280 persons - 33%), then **Hungary** (435 pushbacks involving 2,852 persons – 30%), **Romania** (317 push backs involving 1,857 persons – 21%) and **Bosnia** (223 push backs involving 2,453 persons – 16%).

Out of the total number, 48% of victims were from Afghanistan, while the remaining ones were from Pakistan, Syria, Iraq and Bangladesh. A total number of 1,134 (11%) unaccompanied and separated children (USAC) were subject to this practice.⁴⁷

On 16 April 2020, 7 migrants drown after a boat carrying 16 migrants overturned on Danube River between the Serbian and Romanian border, near **Drobeta Turnu Severin**. The Romanian Border Police rescued 8 migrants and a Serbian, allegedly one of the smugglers. The boat carried 18 people, including 2 Serbian nationals (the smugglers).⁴⁸

In April 2019, Serbia and Austria signed an agreement which would allow **Austria** to send to Serbia refused asylum seekers who had entered from Serbia. Upon their return, they are to be placed in an “adequate” accommodation, for which Vienna will pay. As of April 2020, the agreement has not yet been put in practice and it triggers debates in both Austria,⁴⁹ and Serbia.⁵⁰

⁴¹ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

⁴² AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 17.

⁴³ ECtHR, *Hajatolah v. Serbia*, Application No 57185/17. The case is yet to be communicated to the Government.

⁴⁴ Constitutional appeal No. 1823/17 submitted on 3 March 2017.

⁴⁵ AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 17-18.

⁴⁶ 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>.

⁴⁷ The entire statistical data has been provided by UNHCR office in Serbia.

⁴⁸ Romanian Border Guard, *Barcă cu migranți răsturnată în Dunăre, nouă persoane salvate de la înec*, 17 April 2020, available (in Romanian) at: <https://bit.ly/2yQOW3B>.

⁴⁹ Taz, *Einfach weitergeschoben: Abgelehnte Geflüchtete will Österreich in serbischen Abschiebezentren unterbringen – und für sie zahlen*, 17 April 2020, available (in German) at: <https://bit.ly/2SY8U3c>; Der Standard, *Grüne lehnen Abschiebung abgelehnter Flüchtlinge nach Serbien ab*, 16 April 2020, available (in German) at: <https://bit.ly/2T0LzOv>.

⁵⁰ Belgrade Centre for Human Rights, *BCHR Calls on the Serbian Authorities to Immediately Respond to Claims about the Existence of an Alleged Serbia-Austria Agreement Migrants and Asylum Seekers*, 17 April, available at: <https://bit.ly/2T31tlh>.

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 in 2019.⁵¹ BPSB issued 68 certificates of registration of intention to submit asylum application ('registration certificate'), which represents a significant decrease in comparison to previous year when 324 registration certificates had been issued. Regardless of the number of persons who were recognised by airport border authorities as individuals who might be in need of international protection, the most burning issue remains unlawful and arbitrary deprivation of liberty and the manner in which decisions on refusal of entry are being issued.⁵²

Thus, 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 unlawful and 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.⁵³ Their detention can last from several hours up to several weeks.⁵⁴ However, BPSB does not consider them as persons deprived of their liberty and thus denies them all the rights they should be entitled to, such as: right to a lawyer, right to inform third 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 an appeal against such decision. 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.⁵⁵

In June 2019, the Constitutional Court of Serbia dismissed as manifestly unfounded BCHR's constitutional appeal submitted on behalf of Iranian refugee H.D.⁵⁶ In November 2016, Mr. H.D. was detained at the airport transit zone for 30 days, in a manner that is described in the paragraph above. The Constitutional Court's reasoning gives serious reason for concern and indicates the lack of capacity of this body to examine violations of Article 5 of ECHR⁵⁷ in line with the criteria established in the jurisprudence of the ECtHR.⁵⁸ Namely, the Court outlined that the legal framework that had been in force at the time of the applicant's stay at the airport did not envisage the procedure in which a foreigner can be deprived of liberty in the transit zone. For that reason, H.D.'s claims about unlawful and arbitrary detention could not have been considered as well founded. In other words, the Court failed to conduct an independent test on the existence of deprivation of liberty in the applicant's case,⁵⁹ using the subjective and objective criteria⁶⁰ such as the type, duration, effects and manner of implementation of the measure in question.⁶¹ It disregarded completely the fact that Mr. H.D. had been locked in premises at the airport transit zone for 30 days, with limited access to the outside world, without interpretation services and the possibility to hire a lawyer, inform his family on his whereabouts and understand the procedures that would have been applied at him. H.D. was also denied access to asylum procedure. The applicant faced *refoulement* to Turkey, and further [*chain-refoulement*] to Iran. Eventually, ECtHR granted the Rule 39 request, submitted by the BCHR.⁶²

⁵¹ AIDA, Country Report Serbia, 2018 Update, March 2019, 18-20.

⁵² Article 15 Foreigners Act.

⁵³ Article 13(2) Foreigners Act.

⁵⁴ 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.

⁵⁵ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15.

⁵⁶ Constitutional Court, Constitutional appeal no 9440/16, Decision of 13 June 2019.

⁵⁷ Article 27 Constitution.

⁵⁸ ECtHR, *Z.A. and others v. Russia* [GC], Application nos. 61411/15, 61420/15, 61427/15, 3028/16, Judgment of 21 November 2019, EDAL, [Chamber judgment] available at: <http://bit.ly/2R5G6Em>.

⁵⁹ ECtHR, *Nolan and K. v. Russia*, Application No. 2512/04, Judgment of 12 February 2009, EDAL, available at: <http://bit.ly/36NVSdx>, para. 96.

⁶⁰ ECtHR, *Guide on Article 5 of the European Convention on Human Rights – Right to liberty and Security*, 2019 Update, available at: <http://bit.ly/2FHSLbl>, paras. 9-10.

⁶¹ ECtHR, *Amuur v. France*, Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>, para. 42.

⁶² ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

In order to strategically tackle the above-described practice, the BCHR lodged an application to the ECtHR in December 2019, claiming violations of Article 5-1-f, 5-2, 5-4 and 5-5 of the ECHR.

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*.⁶³ More precisely, since the new Foreigners Act came into force in October 2018, foreigners are served with a decision on refusal of entry (see section on [Procedures](#))⁶⁴ in the procedure that lacks any guarantees against *refoulement*, without the possibility to use services of a lawyer and an interpreter, and lodge an appeal with the suspensive effect.⁶⁵

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 the conclusion of this report.

However, according to the information obtained from Government's Office for Human Rights,⁶⁶ BPSB rendered 1,909 decisions on refusal of entry in the period 1 January to 1 October 2019. Out of the total number, the nationalities which could be of interest for this report (due to their origin) are the following: Turkey (317), Burundi (29), Cuba (14), Iran (10), Iraq (8), Syria (8), Palestine (1) and Afghanistan (1). As for the receiving states from which persons in need of international protection are usually arriving,⁶⁷ from the principle of *non-refoulement* perspective, these are the most contentions one: Turkey (693 returns), UAE (35), Qatar (29), Greece (20), Iran (2) and Lebanon (2). In the past, BCHR lawyers prevented several airport expulsions of *prima facie* refugees to Turkey,⁶⁸ UAE⁶⁹ and Greece.⁷⁰

During 2019, BCHR lawyers continued to have 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 and other lawyers unhindered access to the entire transit zone, including the detention premises. Additionally, BPSB should start providing information leaflets containing the list of rights and obligations that foreigners have in Serbia. These leaflets should also include a 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

⁶³ ECtHR - Gebremedhin (Gaberamadhien) v France, Application No. 25389/05, Judgment of 26 April 2007, EDAL, available at: <http://bit.ly/2RwU82a>, para. 66-67.

⁶⁴ Article 15 Foreigners Act.

⁶⁵ 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.

⁶⁶ Information was obtained in November 2019 by the Author of this Report.

⁶⁷ BCHR, *Right to Asylum in the Republic of Serbia 2016*, 31-33.

⁶⁸ ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

⁶⁹ ECtHR, *Ahmed Ismail (Shiine Culay) v. Serbia*, Application No. 53622/14, Decision on Interim Measures.

⁷⁰ ECtHR, *P. v. Serbia*, Application No. 90877/13, Decision on Interim Measures of 23 December 2013.

stay on Serbian soil,⁷¹ and establish 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.⁷² The Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer, highlighted in his preliminary observations on his 2017 visit the following:⁷³

“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.

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.”⁷⁴

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 should 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 should be refused by issuing a decision on refusal of entry on a prescribed form,⁷⁵ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant an entry, or

⁷¹ ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

⁷² CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15.

⁷³ It is important to highlight that Mr. Melzer visited Serbia before the new Foreigners Act came into force, and when foreigners were simply boarded on the plane, without an expulsion decision rendered in a procedure where they could have used services of a lawyer and an interpreter, and without the possibility to an appeal with the suspensive effect.

⁷⁴ 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).

⁷⁵ Article 15(2) Foreigners Act.

if the international commitments of the Republic of Serbia indicate otherwise.⁷⁶ The foreigner can lodge an appeal to the border authority against the decision,⁷⁷ but the appeal does not have suspensive effect.⁷⁸ 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.⁷⁹

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. Article 75 provides that the competent authority should 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,⁸⁰ specific position of people with disabilities,⁸¹ family unity,⁸² etc. If necessary, during the return procedure, an interpreter should be provided for a language that the foreigner understands, or is reasonably assumed to understand.⁸³ Additionally, the competent authority should, 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.⁸⁴ 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 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.⁸⁵ 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 that 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 at the airport transit zone, and in the border areas with **Bulgaria, North Macedonia** and **Montenegro** which is based on regular push backs which are being praised by the highest state officials. Thus, after the new Foreigners Act came into force, the practice of denial of access to territory partially took a different shape which is equally harmful as the one that has existed before. In other words, denial of access to territory is now based on pushbacks, but also on decisions that cannot be effectively challenged before the competent judicial authority since the appeal does not have automatic suspensive effect.⁸⁶ 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.⁸⁷ 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).

According to the statistical data obtained by the Government's Human Rights Office,⁸⁸ in the period from 1 October 2018 to 1 October 2019, the Regional Border Centre at the border with Bulgaria refused entry to 32 Syrians, 12 Iraqis, 2 Afghanis, 3 Libyans and 1 Somalian, Palestinian and Iranian. Not a single appeal was submitted against such decision, nor did these people enjoy legal assistance.⁸⁹

⁷⁶ Article 15(3) Foreigners Act.

⁷⁷ Article 15(6) Foreigners Act.

⁷⁸ Annex 1 Regulation on the Refusal of Entry.

⁷⁹ 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.

⁸⁰ Article 75(1) Foreigners Act.

⁸¹ Article 75(2) Foreigners Act.

⁸² Article 75(3) Foreigners Act.

⁸³ Article 75(5) Foreigners Act.

⁸⁴ Article 75(6) Foreigners Act.

⁸⁵ Article 83(2) Foreigners Act.

⁸⁶ ECtHR, *M.A. v. Lithuania*, para 83-84.

⁸⁷ See e.g. the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

⁸⁸ Information was obtained in November 2019.

⁸⁹ *Ibid.*

On 10 February 2019, a Burundi citizen M.F. addressed the BCHR stating that he had been detained at the airport transit zone for 4 days. He stated that he wanted to apply for asylum but was denied that possibility by the police. Eventually, he was issued the decision on refusal of entry and was sent back to Qatar, after which the contact was lost.⁹⁰ This case gives serious reasons for concern, taking in consideration that Qatari authorities have been criticized in the latest CAT's findings for detaining irregular migrants in inhumane and degrading conditions and for the purpose of forced return without adequate assessment of the risks of *refoulement*.⁹¹

On 21 February 2019, a high-profile political refugee from Turkey was automatically served a decision on refusal of entry and was about to be returned to Qatar and [possibly] further to Turkey. Only after BCHR's intervention he was received a registration certificate and allowed access to territory and asylum procedure.⁹²

In order for the 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 might be in need of international protection understand. Also, a person who is about to be denied access to territory should be afforded adequate and free of charge legal assistance. And finally, 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 recent 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.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☒ Yes ☐ No
❖ If so, what is the time limit for lodging an application? 15 days and 8 days
3. Are registration and lodging distinct stages in the law or in practice? ☒ Yes ☐ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No

2.1. Expression of intention to seek asylum and registration

The 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.⁹³ Foreigners may express intention to seek asylum to the competent police officers at the border or within territory either verbally or in writing,⁹⁴ including places such as prisons, the Detention Centre for Foreigners in **Padinska Skela**, airport transit zones or during court proceedings e.g. misdemeanour proceedings.⁹⁵

⁹⁰ BCHR's email correspondence from 10 to 12 February 2019.

⁹¹ CAT, *Concluding observations on the third periodic report of Qatar*, 4 June 2018, CAT/C/QAT/CO/3, para. 37-38 and 41-42.

⁹² Registration Certificate No. 21/2019/2019 issued by BPSB on 21 February 2019.

⁹³ Article 4(1) Asylum Act.

⁹⁴ Article 35(1) Asylum Act.

⁹⁵ Article 35(2) Asylum Act.

Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.⁹⁶

An authorised police officer shall photograph and fingerprint the person,⁹⁷ who will thereafter be issued a certificate on registration of a foreigner who has expressed intention to seek asylum.⁹⁸ 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 prescribes the design and content of certificates for foreigners who expressed the intention to seek asylum. In line with the 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.

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.⁹⁹ 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 when the certificate is issued, 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.¹⁰⁰

Over the course of 2019, the Ministry of Interior issued a total of 12,937 registration certificates, which is a significant increase in comparison to 2018 (8,436).

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.¹⁰¹ Transportation costs to reach that facility are not covered. If a foreigner fails, without a justified reason, to report to the Asylum Centre or other facility designated for the accommodation of the applicants within 72 hours of registration, the regulations on the legal status of foreigners shall apply. Thus this person will be considered as irregular migrant, which should not 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. One of the possible consequences of misunderstanding of the content of the certificate is the failure of an asylum seeker to appear in the Asylum Centre within 72 hours. In that case, he or she would lose the status of an asylum seeker and will be treated in line with the provisions of the Foreigners Act as an irregular migrant.¹⁰² He or she then risks being penalized in the misdemeanour proceeding¹⁰³ and served with one of the expulsion decisions (decision on cancellation of residency¹⁰⁴ or return decision¹⁰⁵).

According to a Ministry's of Interior letter sent to the BCHR, 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.¹⁰⁶ The letter also

⁹⁶ Article 11 Asylum Act.

⁹⁷ Article 35(5) Asylum Act

⁹⁸ Article 35(12) Asylum Act.

⁹⁹ Article 8 Rulebook on Registration.

¹⁰⁰ See also BCHR, Right to Asylum in the Republic of Serbia 2019, 22-24.

¹⁰¹ Article 35(3) Asylum Act.

¹⁰² Article 35 (13) Asylum Act.

¹⁰³ Article 71 of the Border Control Act and Article 121 and 122 of the Foreigners Act.

¹⁰⁴ Article 39 (3) Foreigners Act.

¹⁰⁵ Article 77 (1) Foreigners Act.

¹⁰⁶ The letter from the MoI-Police Directorate-Border Police Administration No. 26-1991/18.

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.¹⁰⁷ Consequently, if said brochures in languages that asylum seekers understand have not been distributed yet, it remains unclear how the 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. According to the testimonies collected from the BCHR's clients, this information has never been provided to any of them so far.

Concerns in practice

It is possible for the same person to be issued with a copy of the registration certificate in case when 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](#).¹⁰⁸ This approach was taken by the Asylum Office in all the scenarios except in those in which foreigners receive the decision on cancellation of residency¹⁰⁹ or return decision.¹¹⁰ In these kinds of situations, it is still not entirely clear whether or not Asylum Office and Ministry of Interior consider that these people still have right to apply for asylum.

As it has been the case in previous years, the total of 12,937 certificates issued in 2019 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 or Reception Centres, where asylum seekers may enjoy basic rights such as accommodation, food, health care, psycho-social support from CSOs (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 Centres¹¹¹ instead of Asylum Centres (see section on [Housing](#)), 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 longer than several weeks, of even months, which further delays access to the asylum procedure, and can cause frustration or discouragement to the applicants. Also, in 2019, several cases of informal transfers of genuine asylum seekers from Asylum to Reception Centres by the Commissariat were recorded, which created further complications for the concerned individuals and prolonged their asylum application submission.¹¹² 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, provided that the reception conditions in the centre are significantly improved. 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 period of time between the issuance of registration certificate and the first instance decision would be significantly shortened since the applicants would not be compelled 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 limited 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

¹⁰⁷ Information provided by the Border Police, 6 December 2018.

¹⁰⁸ Article 46 Asylum Act.

¹⁰⁹ Article 39 Foreigners Act.

¹¹⁰ Articles 74 and 77 (1) Foreigners Act.

¹¹¹ The Reception Centres were opened during the 2015/2016 mass influx of refugees and are mainly designated for accommodation of foreigners who are not willing to remain in Serbia.

¹¹² BCHR, Right to Asylum in the Republic of Serbia 2019, 31-32.

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;¹¹³
- 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 and Croatia informally or in line with the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation,¹¹⁴ 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.¹¹⁵ Even though there have not been major problems in 2019, it was still necessary for BCHR to intervene directly with the Asylum Office in order to secure individuals access to the procedure. 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 passes 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 obliged 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 2017.¹¹⁶ 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.¹¹⁷ 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 as of April 2020.

Also, the denial of access to asylum procedure is a common practice applicable to persons who are likely in need of international protection and who attempted to irregularly cross to Croatia hidden in the back of the truck or van at the official border crossing. After they are discovered by the Croatian border police and informally surrendered back to Serbian police, they are automatically taken to the misdemeanour court in **Šid** or **Bačka Palanka** where they are penalised for a misdemeanour of illegal stay or entry and subsequently served with the decision on cancellation of residency or a decision on return.¹¹⁸ Both of these decisions have a nature of an expulsion order. Therefore, if they decide to apply for asylum, they will most likely be denied that possibility and will be further treated as irregular migrants¹¹⁹ but can be also pushed to an informal system, outside reception centres. That was the case with the late Afghani USAC X. who was eventually killed by the smugglers in front of the Asylum Centre in Krnjača.¹²⁰

The above-described cases indicate the existence of a very serious problem regarding access to the asylum procedure, but also other risks. Namely, people who were issued with the decision on cancellation of residency, return decision or were penalised for misdemeanour of illegal entry¹²¹ 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

¹¹³ 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.

¹¹⁴ Available at: <https://bit.ly/2ScFtKK>.

¹¹⁵ See more in AIDA, Country Report Serbia, 2016 Update.

¹¹⁶ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

¹¹⁷ ECtHR, *Othman v. Serbia*, Application No 27468/15.

¹¹⁸ Misdemeanor Judgment No. P 65/19 from 14 January 2019.

¹¹⁹ This kind of practice was determined during the Author's 10 day field mission in Serbian border town with Croatia in September 2019. The field mission report will be published in late February 2020.

¹²⁰ N1, 'Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda', 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

¹²¹ BCHR, *Right to Asylum in the Republic of Serbia 2018*, available at: <https://bit.ly/2Vg3lqr>, 29-30.

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. 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, but no rigorous scrutiny of risks of *refoulement* is applied.¹²²

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 of the risks of *refoulement* in Bulgaria. ECtHR granted the Rule 39 request and the case was communicated to the Government on 26 March 2019.¹²³ 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 expulsion decisions were 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 conclusion that can be drawn from the above described practices is that refugees and asylum seekers should not be returned to Serbia without a prior assessment of the facts related to individual's previous legal status. Moreover, the request for individual assurances¹²⁴ should be designed in line with possible obstacles which are mainly related to access to asylum procedure. However, taking in consideration a very high dysfunctionality of the child-protection system, USAC should not be returned back to Serbia as long as the situation significantly improves.¹²⁵

To summarise, before returning asylum seekers back to Serbia, Croatian and Hungarian, but also Bosnian authorities must determine the following facts and ensure such individual guarantees:

- what kind of status has the individual enjoyed in Serbia (asylum seeker, irregular migrant or other);
- taking in consideration the determined status, the assurances should contain strong guarantees that individual will not be referred to the misdemeanour proceeding and will not be issued with any form of the expulsion order;
- returnee will be issued with the registration certificate or its duplicate;
- returnees will be afforded legal representation by either BCHR or APC, or other lawyer who has proven qualifications in asylum and migration law;
- interpretation will be secured from the first contact with the immigration officers.

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

No major problems of access to the procedure were recorded in 2019 regarding the Detention Centre for Foreigners in **Padinska Skela** where BCHR lawyers have unhindered access.

¹²² ECtHR, *Chahal v the United Kingdom*, Application no. 22414/93, Judgment of 15 November 1996, EDAL, available at: <http://bit.ly/2TGX4vU>, para. 96.

¹²³ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

¹²⁴ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>, para. 121-122.

¹²⁵ The cases of M.W. and USAC X. are the most striking examples of this practice.

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.¹²⁶ 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.¹²⁷ The asylum procedure shall be considered initiated after the lodging of the asylum application form to the Asylum Office.¹²⁸

If strictly interpreted, the deadline of 15 plus 8 days could create serious problems regarding access to the 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 subject to this 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-day 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 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.”¹²⁹ 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 flexible 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 themselves acknowledged to lack sufficient knowledge of the legally binding international standards.¹³⁰

¹²⁶ Article 36(1) Asylum Act.

¹²⁷ Article 36(2) Asylum Act.

¹²⁸ Article 36(3) Asylum Act.

¹²⁹ ECtHR, *Jabari v. Turkey*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

¹³⁰ 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

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

In 2019, a total of 252 asylum applications were submitted. Out of that, 78 applications were submitted in writing and sent to the Asylum Office, while 174 were lodged directly in front of asylum officer. However, it appears that asylum applications lodged in writing are not considered valid in practice, since Asylum Office facilitates asylum application submission for the same person again. Thus, the number of asylum applications is smaller than 252. In other words, lodging of a written asylum application does not function in practice.¹³¹ The conclusion that can be drawn is that capacities of the Asylum Office currently do not correspond to the number of persons that are genuinely interested in applying for asylum in Serbia. It is not reasonable to expect that 13 asylum officers in charge for conducting asylum procedure are sufficient for address all asylum applications in a timely manner. Thus, it is necessary to at least double the number of asylum officers in charge for taking asylum applications.

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 2019: 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.¹³² On 12 July 2019, the Asylum Commission rendered a decision Až 26/18 upholding applicant's appeal and referring the case back to the Asylum Office. In the said decision, the Commission was of the opinion that first instance authority failed to provide reasoning on why the old Asylum Act had been more favourable than the new one, *inter alia* regarding the provisions governing the safe third country concept. Based on the said decision, the Asylum Office issued another decision, but this time applying the new Asylum Act.¹³³ Thus, in July 2019, the application of the previous Asylum Act came to an end.

The 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.¹³⁴

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.

¹³¹ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 32-35.

¹³² Article 103 Asylum Act.

¹³³ Asylum Office, Decision No. 26-148/18, 27. December 2019.

¹³⁴ Article 39(1) Asylum Act.

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.¹³⁵ 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.¹³⁶ The applicant shall be informed on the extension.¹³⁷

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.¹³⁸ Nevertheless, the decision must be taken no later than 12 months from the date of the application.¹³⁹ Thus, the Asylum Office has a discretionary power to decide on the extension of the time limit for the decision.

The possibility to extend the deadline for delivering the first instance procedure was used only twice in 2019. Still, not a single decision was rendered within three months. The length of the first instance asylum procedure is still longer than three months, but this fact is not covered by an individualised and reasoned decisions extending this time limit. In other words, the first instance procedure still lasts unreasonably long (from 6 to 8 months, and even for more than a year in certain cases) which discourages asylum seekers from considering Serbia to be a country of destination.

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;¹⁴⁰ (b) a decision to reject the asylum application;¹⁴¹ (c) a decision to discontinue the procedure;¹⁴² or a decision to dismiss the application as inadmissible.¹⁴³

The Asylum Act contains detailed provisions regarding the grounds for persecution,¹⁴⁴ *sur place* refugees,¹⁴⁵ acts of persecution,¹⁴⁶ actors of persecution,¹⁴⁷ actors of protection in the country of origin,¹⁴⁸ the internal flight alternative,¹⁴⁹ and grounds for exclusion.¹⁵⁰ 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

¹³⁵ Article 39(2) Asylum Act.

¹³⁶ Article 39(3) Asylum Act.

¹³⁷ Article 39(4) Asylum Act.

¹³⁸ Article 39(5) Asylum Act.

¹³⁹ Article 39(6) Asylum Act.

¹⁴⁰ Article 34(1)(1)-(2) Asylum Act.

¹⁴¹ Article 38(1)(3)-(5) Asylum Act.

¹⁴² Article 47 Asylum Act.

¹⁴³ Article 42 Asylum Act.

¹⁴⁴ Article 26 Asylum Act.

¹⁴⁵ Article 27 Asylum Act.

¹⁴⁶ Article 28 Asylum Act.

¹⁴⁷ Article 29 Asylum Act.

¹⁴⁸ Article 30 Asylum Act.

¹⁴⁹ Article 31 Asylum Act.

¹⁵⁰ Articles 33 and 34 Asylum Act.

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..."¹⁵¹

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."

In 2017, 2018 and 2019 the Asylum Office rendered the following decisions:¹⁵²

First instance decisions by the Asylum Office: 2017-2019			
Type of decision	2017	2018	2019
Grant of asylum	6	17	26
Rejection on the merits	11	23	54
Dismissal as inadmissible	47	38	10
Discontinuation	112	128	133
Total	176	206	223

Protection was granted to citizens of the following countries in 2019:

Countries of origin of persons granted refugee status / subsidiary protection: 2019		
Country	Granted refugee status	Granted subsidiary protection
Syria	0	6
Iraq	1	5
Iran	5	1
Afghanistan	4	1
Cuba	3	0
Russia	3	0
Libya	0	3
Pakistan	0	2

¹⁵¹ Article 32 Asylum Act.

¹⁵² 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.

China	1	0
Total	17	18

Source: Asylum Office

Asylum Office practice in 2019

In 2019, the Asylum Office delivered 90 decisions regarding 122 asylum seekers in the first instance procedure (an additional 133 decisions on discontinuation were issued). Out of them, 54 asylum applications were rejected on the merits (60%);¹⁵³ 10 were dismissed on the basis of the safe third country concept (9%);¹⁵⁴ while 26 decisions granted asylum (29%),¹⁵⁵ 13 decisions granted subsidiary protection (14%)¹⁵⁶ and 13 decisions granted refugee statuses (14%).¹⁵⁷

It can be concluded from the above that the trend from previous years has continued, and that the vast majority of asylum seekers abandon the asylum procedure before a first instance decision is rendered. 133 of the 223 decisions taken in 2019 were discontinuation decisions. As for the positive decisions, it is important to note that 18 (70%) of them were rendered in the first 5 months, and that the recognition rate sharply dropped from June to December 2019 to only 8 decisions (30%). This trend has continued in January 2020 where only 1 decision granting refugee status was delivered.¹⁵⁸

However, it is fair to state that 2019 was a year in which the practice of the Asylum Office significantly improved. During 2019, the Asylum Office rendered the highest number of positive decisions (26) (concerning 35 persons)¹⁵⁹ since the establishment of asylum system in Serbia in 2008.¹⁶⁰ The most important improvements in practice are the following:

- The Asylum Office was, in the reasoning of its decisions, clearly taking into consideration the fact that legal representatives were submitting written submissions indicating individual and general risks of persecution or other serious harm in countries of origin or third countries. These submissions contained data on individual circumstances and facts, but also findings compiled in credible reports published by UNHCR, EASO, UN Treaty bodies, UN Special Procedures, Amnesty International and others;
- The reasoning of decisions contains the citations of credible reports taken into consideration by the Asylum Office *proprio motu* and occasional reliance on the general principles of the ECtHR;
- In several cases the Asylum Office adequately took into consideration the psychological assessment provided by CSO Psychosocial Innovation Network (PIN) when examining the credibility of applicant's statement;
- In several cases, the Asylum Office adequately took into consideration the best interest of a child assessment provided by the Social Welfare Centre (SWC) and rendered well-reasoned decisions containing child specific considerations;
- Significant decrease in the safe third country concept application was evident;

On 30 January 2019, the Asylum Office granted subsidiary protection to an Afghan national Z. who fled his country of origin in order to avoid forced recruitment by Taliban groups in Laghman Province. The reasoning of the decision indicates that Asylum Office applied rigorous scrutiny and assessed both individual and general circumstances, taking in consideration the written submission lodged by the legal representative and relevant country of origin information (EASO, HRW, *ReliefWeb* and OCHA). However, the most important achievement of the said decision is that Asylum Office acknowledged the fact that the

¹⁵³ Regarding 76 asylum seekers.

¹⁵⁴ Regarding 11 asylum seekers.

¹⁵⁵ Regarding 35 asylum seekers.

¹⁵⁶ Regarding 17 asylum seekers.

¹⁵⁷ Regarding 18 asylum seekers.

¹⁵⁸ Asylum Office, Decision No. 26-2467/17, 15 January 2020.

¹⁵⁹ 25 decisions were delivered in 2015.

¹⁶⁰ The second-best year was 2015, when Asylum Office rendered 25 positive decisions.

applicant is still an adolescent, who turned 18 one month before lodging his asylum application. By taking the age of the applicant into consideration, the Asylum Office invoked Guidelines for the Alternative Care of Children¹⁶¹ and the CoE's Committee on Migration, Refugees and Population report on unaccompanied children in Europe.¹⁶² The Office highlighted the notions of 'transitional period' and 'buffer age period' underlining the continuing existence of applicant's vulnerability regardless of him becoming an adult. The Office also took in consideration PIN's psychological assessment.

Another important decision was rendered in January 2019, when a Kurdish boy X. from Iraq was granted refugee status on the basis of the risk of forced recruitment by Peshmergas.¹⁶³ The Asylum Office took into consideration the Best Interest Determination (BID) as well as PIN's psychological assessment stating that the boy needs a safe and supporting environment to overcome issues arising from the family separation trauma. Apart from that, the Office applied the principle of *in dubio pro reo*, giving the credence to applicant's allegations, and supporting them with relevant Col. Also, in November 2019, the Asylum Office continued with the positive practice regarding underaged asylum seekers and granted the refugee status to an Afghan boy who fled persecution from Talibans.¹⁶⁴

It is important to note that Asylum Office rendered 4 decisions granting refugee status to 3 Chechnian¹⁶⁵ women and 1 Iranian¹⁶⁶ due to a persecution on the basis of their sexual orientation. They were recognised as the members of a particular vulnerable group. Also, one member of Uyghur ethnicity was granted refugee status,¹⁶⁷ as well as an Iranian family who converted from Islam to Christianity¹⁶⁸ and a Cuban family which fled political persecution in their home country.¹⁶⁹

Other important decisions refer to Syrian applicants who were granted subsidiary protection on the basis of the state of general violence in their country of origin.¹⁷⁰ This means that the practice of Serbian asylum authorities is stable when it comes to Syrians whose applications are decided on the merits. Almost the same can be said for three Libyan applicants who were granted subsidiary protection for the same reason.¹⁷¹

Regardless of the above stated improvements, there are still serious concerns in practice which indicate that the Serbian asylum procedure should not be considered as fair and efficient. The concerns are the following:

- the contradicting practice in similar or identical cases;
- reluctance to grant refugee status, even though from the reasoning of the decision it is clear that the first instance authority has acknowledged and accepted the facts which indicate the existence of one of the 5 grounds for persecution;
- extensive length of the first instance asylum procedure which has a discouraging effect on applicant's will to remain in Serbia;
- the quality of the decision-making process varies between different asylum officers;
- not all the facts and evidence submitted by the applicant and the legal representative are taken into consideration, and the substantiation of the decision lacks an explanation as why these arguments are not deemed as credible;

¹⁶¹ UNGA, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, para. 28.

¹⁶² Council of Europe, Parliamentary Assembly, *Unaccompanied children in Europe: issues of arrival, stay and return*, 21 March 2011, Doc. 12539, para. 94.

¹⁶³ Asylum Office, Decision No. 26-2348/17, 28 January 2019.

¹⁶⁴ Asylum Office, Decision No. 26-784/18, 20 November 2019.

¹⁶⁵ Asylum Office, Decision Nos. 26-1216/18, 26-1218/18 and 26-1219/18, 12 February 2019.

¹⁶⁶ Asylum Office, Decision No. 26-1605/18, 15 March 2019.

¹⁶⁷ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

¹⁶⁸ Asylum Office, Decision No. 26-1395/18, 5 February 2019.

¹⁶⁹ Asylum Office, Decision No. 26-1260/18, 13. March 2019.

¹⁷⁰ Asylum Office, Decisions Nos. 26-176/18, 15 March 2019; 26-1731/18, 8 May 2019, 26-3638/15, 16 September 2019 and two more decisions in which APC acted as legal representative.

¹⁷¹ Asylum Office, Decision Nos. 26-1351/18; 26-1352/17, 14 January 2019 and in the third case APC acted as legal representative.

In September 2019, the Asylum Office rejected the asylum application of a Libyan citizen M. who fled his country of origin due to well-known affiliation with the former Gadhafi regime, but also because of the state of general insecurity. However, the first instance authority stated that his affiliation with the former regime was not sufficiently substantiated, even though Mr. M. provided evidence on his friendship with the closest members of the Gadhafi family. Also, the Asylum Office has departed from a well-established practice¹⁷² based on UNHCR's recommendation that asylum seekers should not be sent to Libya until the general state of human rights significantly improves.¹⁷³ UNHCR stance was used as grounds for several decisions granting subsidiary protection in all of the cases concerning Libyans. This decision in many ways reminiscent of the case of family A. whose asylum application was rejected despite all other positive decisions regarding Libyan applicants.¹⁷⁴ The reason for this kind of outcome can be found in the fact that the Mol cancelled Mr. M's residency on the grounds of national security, which was also the case with the family A. The latter case was finally resolved after family A's application had been communicated to the ECtHR. Soon after, they were granted subsidiary protection.¹⁷⁵ However, in none of the two cases did the Asylum Office invoke security grounds as a reason to reject asylum applications,¹⁷⁶ even though it is clear that the decision making process was influenced by the Security Information Agency. This stance is supported by the Government's Written Observations submitted to the ECtHR in the case of family A.¹⁷⁷ Thus, it can be safely argued that the decision in Mr. M's case casts a shadow on the Asylum Office's independence.

The Asylum Office rendered several decisions granting subsidiary protection, even though from the reasoning of the said decisions it can be seen that allegations of persecutions on one of the five grounds from the Refugee Convention were accepted as credible. For instance, in one decision regarding Libyan applicant, the first instance authority granted subsidiary protection on the grounds of the state of general insecurity, even though it is clear that his affiliation and support for the Gadhafi regime was assessed as credible.¹⁷⁸ The Office cited UNHCR position paper which clearly states that so called 'Gaddafi loyalists' are frequent victims of persecution.¹⁷⁹ In three decisions, granting subsidiary protection to Libyan,¹⁸⁰ Afghan¹⁸¹ and Syrian¹⁸² nationals, the Asylum Office failed to apply the ground relating to membership in a particular social group and with regard to the notion of the able bodied man who declined to take part in an armed conflict. The Office did not dispute the applicants' allegations of risks of forced recruitment which would have been materialised if they had not fled their countries of origin. These decisions contradict the practice from the same year,¹⁸³ but also from previous years, where able-bodied man who avoided forced recruitment or military service were treated as members of the particular social group and were granted refugee status.¹⁸⁴

In November 2019, the Asylum Office rejected the asylum application of the transgender applicant K. from Iran, who faced discrimination in Iran (she was fired from the University and molested by police) and who faced persecution from her family.¹⁸⁵ The main reasoning behind such decision was the fact that the applicant was issued with the official ID which confirms that Iranian state authorities formally acknowledged her gender transition. However, the Asylum Office entirely disregarded the threats and

¹⁷² Asylum Office, Decision Nos. 26-2324/11, 19 December 2012; 26-2326/11, 20 December 2012; 26-5792/14, 26-5793/14, 26-5794/14, 3 August 2015; 26-4099/15, 7 August 2015; 26-4099/15, 7 October 2015; 26-4568/16, 12 July 2016; 26-812/16, 29 September 2016; 26-5618/15, 1 December 2016; 26-5489/15, 20 October 2017; 26-1695/17, 15 June 2018; 26-222/15, 3 July 2018; 26-1352/18, 14 January 2019; 26-1351/18, 14 January 2019 and the latest decision from August 2019 where APC acted as legal representative.

¹⁷³ UNHCR, *UNHCR Position on Returns to Libya - Update II*, September 2018, para. 37.

¹⁷⁴ AIDA, Country Report Serbia, 2017 Update, February 2018, p. 21

¹⁷⁵ *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

¹⁷⁶ Article 33 (2) Asylum Act.

¹⁷⁷ Government of Serbia, Written Observations (pursuant to Rule 38 of the Rules of the Court), *A. and Others v. Serbia*, Application No. 37478/16, April 2018, para. 50.

¹⁷⁸ Asylum Office, Decision No. 26-1352/17, 14 January 2019.

¹⁷⁹ UNHCR, *UNHCR Position on Returns to Libya - Update II*, September 2018, para. 11.

¹⁸⁰ Asylum Office, Decision No. 26-1351/17, 14 January 2019.

¹⁸¹ Asylum Office, Decision No. 26-2643/17, 30 January 2019.

¹⁸² Asylum Office, Decision No. 26-1731/18, 8 May 2019.

¹⁸³ Asylum Office, Decision No. 26-2348/17, 28 January 2019.

¹⁸⁴ Asylum Office, Decision No 26-5413/14, 2 March 2016.

¹⁸⁵ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

attacks she received from her family, but also from members of Iranian society and her former employer. Moreover, Mrs. K was granted mandate status by the UNHCR, and is currently in the resettlement procedure. This decision entirely contradicts the Decision No. 26-1605/18 in which the first instance authority accepted that the applicant's family and the Iranian society were agents of persecution, and for the reasons of his sexual orientation. In this decision, the Asylum Office took into consideration numerous reports on the treatment of LGBTQI persons in Iran but failed to consult the same reports in Mrs. K's decision.

As it mentioned above, the Asylum Office has recognised in several decisions the conversion from Islam to Christianity as credible grounds for refugee protection.¹⁸⁶ However, in the Decision No. 26-2404/18, the Office rejected the asylum application of the family F. who also converted from Islam to Christianity. Two parts of the reasoning give serious reasons for concern. The first one is related to the stance that, since family F. applied for asylum 10 months after their arrival to Serbia and attempted to leave to the EU several times, diminishes the credibility of their asylum claims. The essence of the asylum procedure is to determine whether or not an individual faces persecution in his or her country of origin at the time of the decision-making process, not the applicant's aspirations to stay or leave the state where protection is being sought.¹⁸⁷ The second one refers to the part of the decision in which it was outlined that applicants had the possibility to secretly practice Christianity in Iran, and in that way avoid persecution. On the other hand, in the February 2019 Decision No. 26-1395/18, the Office has clearly recognised that religious freedoms in Iran are limited for those who do not practice Islam and who converted to Christianity.¹⁸⁸ In the said decision the first instance authority invoked numerous reports supporting that finding, which was not the case in the decision of the family F.

And finally, the Asylum Office delivered a lot of contradicting decisions regarding Afghan applicants. For instance, the Office rejected application of the Afghan national M. who fled Taliban persecution due to his brothers' affiliation with the Afghan Government, Tajik ethnicity but also due to the state of general insecurity in Kabul and his home province Badakhshan.¹⁸⁹ The Asylum Office was of the opinion that Mr. M. cannot be considered as a victim of persecution since he is not the one affiliated with the Government but his brother. This stance contradicts the Decision No. 26-77/17 from 1 August 2017, in which the Office granted refugee status to an Afghan interpreter whose two brothers were killed because of his affiliation with US forces and foreign companies. In other words, the Office acknowledged that victims of persecution could also be persons who are related to an individual who is a primary target. Also, Mr. M.'s decision lacks thorough consideration of credible reports which were submitted as evidence by his legal representative and which were consulted in other positive decisions, such as November 2019 decisions Nos. 26-784/18 and 26-1403/19. The same conclusion can be drawn in relation to Decision No. 26-932/19 of 30 September 2019 which rejected asylum application of an unaccompanied child from Kabul. It remains unclear what is the current position of the Asylum Office on the security situation in Afghanistan, and more narrowly in Kabul. On 29 May 2019, the Office granted refugee status to an Afghan national who fled Taliban persecution because of his status as an employee of the Government,¹⁹⁰ his ethnic origin (Tajik) and general state of violence in Kabul. Thus, it is clear that the practice is highly contradictory.

1.2. Prioritised examination and fast-track processing

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

¹⁸⁶ Asylum Office, Decision Nos. 26-1359/18, 5 February 2019; 26-1051/17, 13 September 2016; 26-1083/17, 30 January 2018 and 26-1081/17, 4 July 2017.

¹⁸⁷ ECtHR, *Thampibillai v. the Netherlands*, Application No 61350/00, Judgment of 7 February 2004, para. 61

¹⁸⁸ The findings of the UN Treaty bodies and Special Procedures, but also HRW, press clipping and others.

¹⁸⁹ Asylum Office, Decision No. 26-1278/17, 17 April 2019.

¹⁹⁰ Asylum Office, Decision No. 26-787/19, 29 May 2019.

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.¹⁹¹

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.¹⁹² 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.¹⁹³ 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:¹⁹⁴

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;¹⁹⁵
3. The admissibility of a [Subsequent Application](#) is being assessed.

Applicant is entitled to request that his interview is conducted by the person of specific gender. The same rule applies to interpreters.¹⁹⁶

The Asylum Office conducted 178 interviews in 2019. In practice, asylum seekers often wait from several weeks to a month following the lodging of their application for an interview to be scheduled.

1.3.1. 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.¹⁹⁷

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

¹⁹¹ Article 37(1) Asylum Act.

¹⁹² Article 37(2) Asylum Act.

¹⁹³ Article 37(12) Asylum Act.

¹⁹⁴ Article 37(10) Asylum Act.

¹⁹⁵ Article 37(11) Asylum Act.

¹⁹⁶ Article 16 (2) Asylum Act.

¹⁹⁷ Article 13 Asylum Act.

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.

1.3.2. 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.¹⁹⁸ 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?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds <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.¹⁹⁹ The Asylum Commission member must be a citizen of the Republic of Serbia, have a university degree in law, a minimum of five years of work experience, and must have an understanding of human rights law.²⁰⁰ The last requirement gives a lot of reasons for concern, since none of the members fulfil this criterion. The only person who met this criterion was a professor of International Human Rights Law at the Faculty of Law of the University of Belgrade who resigned in 2019. As for the other members, the Government has never delivered their biographies. However, at two roundtables that took place in the second half of 2018,²⁰¹ 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.

An appeal to the Asylum Commission suspends the enforcement of the first instance decision and it must be submitted within 15 days from the delivery of the decision.²⁰²

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.²⁰³ In other words, the time limit for the second instance decision and its delivery to the applicant is two months after the appeal was lodged. In practice, however, it takes at least three to four months for the Asylum Commission to render and deliver the second instance decision.

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

¹⁹⁸ Article 63 GAPA.

¹⁹⁹ Article 21(1)-(2) Asylum Act.

²⁰⁰ Article 21(3) Asylum Act.

²⁰¹ 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.

²⁰² Article 95 Asylum Act.

²⁰³ Article 19 Administrative Disputes Act.

unnecessary to conduct the procedure again.²⁰⁴ 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 appeal by the asylum applicant.²⁰⁵ In the event it does not reject the appeal,²⁰⁶ the Asylum Commission may itself decide on the administrative matter.²⁰⁷ 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.²⁰⁸ 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.²⁰⁹

Asylum Commission Practice in 2019

The Asylum Commission took 45 decisions in 2019. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 27 cases. In 14 cases the appeals were upheld, and the cases were referred back to the Asylum Office for further consideration. The Asylum Commission rendered 1 decision granting subsidiary protection to an Iranian citizen,²¹⁰ two decisions rejecting a request for the reopening of the asylum procedure and 1 decision terminating a decision granting asylum.²¹¹ One of the major concerns regarding the Asylum Commission's practice relates to the failure to individually and separately assess all allegations included in the applicant's appeal.²¹² In several analysed decisions, the Commission summarily rejected applicant's arguments, but also failed to examine the applicants' cases in line with the Asylum Office's positions which were taken in previous cases of identical or similar nature.²¹³ This means that the Commission has limited corrective influence on the Office.

Most decisions related to citizens of Iran – 20 decisions regarding 34 persons. Out of them, 7 decisions (9 persons) upheld an appeal and remanded the case back to the Asylum Office, 12 decisions (24 persons) rejected an appeal and 1 decision upheld an appeal and granted subsidiary protection. This further means that the rejection rate of Iranian asylum seekers reaches 60%, recognition rate 5% while decisions upholding an appeal (35%) can be divided into two groups. The first one refers to 3 decisions in which appeals were submitted against decisions on discontinuation of the asylum procedure due to alleged absconding of the applicants,²¹⁴ and 2 decisions regarding the same applicants in which the Commission indicated to the Asylum Office to examine the prospect of applying the new Asylum Act.²¹⁵ In other words, the Asylum Commission was not dealing with the substance of the applicants' claims. In the remaining 3 decisions, appeals were upheld in two cases due to poor evidentiary assessment of the individual and general circumstances by the Asylum Office.²¹⁶

Since its establishment in 2008, the Asylum Commission has decided on the merits in just three cases. The last one refers to an Iranian applicant who was granted subsidiary protection due to a risk of persecution on the basis of her political views expressed on Instagram and Twitter and regarding the

²⁰⁴ Article 165 GAPA.

²⁰⁵ Article 165(2)-(3) GAPA.

²⁰⁶ Article 170 GAPA.

²⁰⁷ Article 171(5) GAPA.

²⁰⁸ Article 173(3) GAPA.

²⁰⁹ Asylum Commission, Decision AŽ 06/16, 12 April 2016.

²¹⁰ Asylum Commission, Decision AŽ X, 2 September 2019.

²¹¹ This decision refers to the Lebanese applicant who was granted refugee status in 2015 and who successfully obtained permanent residency in Serbia on the basis of his marriage with Serbian citizen. Asylum Office, Decision No. 26-3886/15, 9 September 2015.

²¹² This statement mainly refers to the BCHR's clients since the author had an opportunity to examine the entire case files.

²¹³ Article 5 (3) GAPA.

²¹⁴ Asylum Commission, Decisions AŽ 10-18, 16 January 2019, AŽ 10-19, 3 June 2019 and AŽ 31-19, 17 October 2019.

²¹⁵ Asylum Commission, Decision AŽ 26-18, 31 May 2019 and AŽ 26-18, 12 July 2019.

²¹⁶ Asylum Commission, Decisions AŽ 11/19, 13 May 2019, AŽ 15-19, 2 July 2017 and AŽ 19-19, 26 August 2019.

status of women in Iran. However, it remains unclear why the applicant was not granted refugee status, taking into consideration that all of her allegations were determined to be credible.²¹⁷

The Asylum Commission rejected an appeal and upheld the first instance decision in a case of 4 Iranian applicants who converted from Islam to Christianity without *proprio motu* and *ex nunc* assessment of credible reports on the state of religious rights in Iran.²¹⁸ More precisely, the second instance decision did not contain a single reflection on reports of credible international organisations which were invoked and submitted by the legal representative. The Asylum Commission simply concluded that “international reports are not relevant in the concrete case”. Also, the Commission has failed to take into consideration the practice of the first instance authority in relation to Iranian converts who were granted international protection in the past, and in line with Article 5 of the GAPA.²¹⁹ The said article obliges administrative authorities to always take in consideration previous decisions which are related to identical or similar administrative issues. This approach was underlined by the Administrative Court in the Judgment No. 6310/18 from August 2018, where the Commission was ordered to provide reasoning for every decision that represents deviation from the previously established practice. Apparently, this judgment have not impacted ensuing practice.

A further confirmation that Asylum Commission has failed to establish the practice to rely on the previous conclusions in the identical administrative issues is the decision AŽ 47/18 from 2 July 2020.²²⁰ The second instance authority rejected the applicant’s appeal as unfounded and confirmed the first instance decision.²²¹ The Commission disregarded the applicant’s claims that his case is no different than several previous cases in which the Asylum Office granted Afghan applicants refugee status due to a persecution by Taliban groups arising from their affiliation or imputed affiliation with official authorities, but also because of their ethnic origin (Tajik) and accompanied with the state of general insecurity and arbitrary violence.²²² In its reasoning, the Commission simply stated that the previous practice cannot be applied to the applicant’s case, without providing further explanations.

One of the most problematic decisions regarding Afghan asylum seekers is the case of a boy W.²²³ His appeal was rejected by the Commission even though he fled Kabul as unaccompanied child fearing persecution by Talibans, but also due an increasing arbitrary violence. The Social Welfare Centre (SWC) issued the best interest of a child assessment, and PIN provided psychological report indicating the high level of W’s vulnerability and the need for the safe and supporting environment. His legal representatives provided up to date reports on increasing violence in Kabul, but also examples of previous and positive practice of the Asylum Office. The Commission disregarded previous practice, psychological report and the best interest of a child assessment and rejected the appeal.

The Commission rendered several decisions automatically applying the safe third country concept in relation to Greece,²²⁴ North Macedonia,²²⁵ and in one case referred the case back to the Asylum Office indicating the lack of reasoning as to why Bulgaria cannot be considered as a safe third country.

It is also important to note that the Asylum Commission clarified its position on asylum cases which had started in line with the old Asylum Act. In several decisions which were revolving around the safe third country concept, the Asylum Commission outlined that Asylum Office had to provide explanation as to why the old Asylum Act is more favourable then the new one.²²⁶ All of these cases were remanded to the first instance authority.

²¹⁷ Asylum Commission, Decision AŽ X, 2 September 2019.

²¹⁸ Asylum Commission, Decision AŽ 04/19, 1 March 2019.

²¹⁹ Asylum Office, Decision Nos. 26-1359/18, 5 February 2019; 26-1051/17, 13 September 2016; 26-1083/17, 30 January 2018 and 26-1081/17, 4 July 2017.

²²⁰ Article 5 (3) GAPA.

²²¹ Asylum Office, Decision No. 26-1278/17, 17 April 2019 (Mr. K.).

²²² Asylum Office, Decision No. 26-787/19, 29 May 2019.

²²³ Asylum Commission AŽ 38/19, 24 December 2019.

²²⁴ Asylum Commission, Decision AŽ 41/16, 21 March 2019.

²²⁵ Asylum Commission, Decision AŽ 28/18, 1 April 2019.

²²⁶ Asylum Commission, Decisions AŽ 04/18, 1 April 2019 and AŽ 26/18, 12 July 2019.

The Commission delivered several decisions upholding an appeal against the decisions on discontinuation of asylum procedure due to alleged absconding of the applicant. This practice has been quite consistent and represents an example of good practice in relation to those applicants who decided to leave Asylum or Reception centre, but then came back with a clear intent to continue their asylum procedure.²²⁷ This stance ensures that asylum seekers will have their application examined on the merits before being referred to the legal regime of the Foreigners Act.

In one of the decisions regarding a Turkish applicant, the Commission upheld the appeal and remanded the case to the Asylum Office due to a poor assessment of the risks of torture in Turkey.²²⁸

Also, the Commission rendered one decision repealing the decision on refugee status of a Lebanese citizen who had obtained the status in line with Foreigners Act.²²⁹ It also rejected two requests for reopening of the asylum procedure of one Sudanese²³⁰ and one Syrian²³¹ refugee who are victims of the flawed and automatic application of the safe third country concept, despite the fact that their applications are pending before ECtHR.²³² Namely, in the correspondence with the ECtHR, the State Agent of Serbia outlined that both of the applicants could apply for the reopening of their asylum procedures dismissing their argument which is based on the risk of their expulsion to North Macedonia. Consequently, the applicants decided to lodge the request for the reopening but with no avail.²³³

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.²³⁴

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.²³⁵ The first training was facilitated by the UNHCR in 2019, and one more was in plan for 2020.

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.

²²⁷ Asylum Commission, Decisions Nos. AŽ 10/18, 16 January 2019; AŽ 10/19, 3 June 2019;

²²⁸ Asylum Commission, Decision AŽ 05/19. 1 April 2019.

²²⁹ Asylum Commission, Decision No. AŽ 26-3886/15, 22 January 2019.

²³⁰ Asylum Commission, Decision AŽ 08-15, 6 May 2019.

²³¹ Asylum Commission, Decision AŽ 48/16, 17 June 2019.

²³² 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.

²³³ Both applicants are represented by before the ECtHR by the Author of this Report.

²³⁴ Article 15 Administrative Disputes Act.

²³⁵ 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.²³⁶

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 safe third country concept despite 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. It can be concluded with certainty that corrective the role of the Administrative Court in relation to the first and second instance authorities is almost entirely lacking. The year 2019 was the year in which the Court has failed to deliver a judgment which could have positively affected the practice of lower instances.

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

Administrative Court Practice in 2019

In 2019, the Administrative Court delivered 17 judgments. Twelve complaints were rejected, 4 were upheld and referred back to the Commission while one judgment discontinued asylum procedure.

The practice of the Court in 2019 confirmed the flawed application of the safe third country concept in 7 judgments and in relation to Montenegro,²³⁷ Romania,²³⁸ Bulgaria and²³⁹ Turkey²⁴⁰. The Court delivered 4 judgments rejecting asylum application in relation to citizens of Cameron,²⁴¹ Iran,²⁴² Montenegro²⁴³ and Pakistan.²⁴⁴

The Administrative Court upheld the applicant's complaints and remanded the cases back to the Asylum Commission only in 4 cases. In the first one, the final outcome was the Asylum Office's decision granting a Syrian applicant of Kurdish origin subsidiary protection.²⁴⁵ The second one appears to be the case of a Syrian refugee who was granted subsidiary protection in 2013²⁴⁶ and which has been pending for more than 6 years.²⁴⁷ Namely, the applicant's legal representative has been challenging the decision on subsidiary protection multiple times, claiming that his client deserves refugee protection. The third one refers to a Somali applicant whose application was not assessed by the lower instances *ex nunc*, which was why the case was remanded back to the Commission.²⁴⁸ And finally, the Court remanded the case of an Afghan applicant back to the Commission for the procedural reasons²⁴⁹

The Administrative Court also delivered one judgment discontinuing asylum procedure,²⁵⁰ but also judgment applying the safe country of origin concept in relation to Montenegro.²⁵¹

²³⁶ Article 96 Asylum Act.

²³⁷ Administrative Court, Judgment U 16335/18, 11 January 2019

²³⁸ Administrative Court, Judgment U 13320/16, 18 January 2019.

²³⁹ Administrative Court, Judgments U 12951/18, 21 February 2019; U 8442/18, 8 March 2019; U 11906/18, 22 August 2019.

²⁴⁰ Administrative Court, Judgment U 1883/19, 29 March 2019; U 10053/19, 5 September 2019.

²⁴¹ Administrative Court, Judgment U 6118/18, 20 June 2019.

²⁴² Administrative Court, Judgment U 2774/19, 5 July 2019.

²⁴³ Administrative Court, Judgment U 5037/19, 12 June 2019.

²⁴⁴ Administrative Court, Judgment U 11314/19, 14 August 2019.

²⁴⁵ Administrative Court, Judgment U 13512/16, 31 January 2019.

²⁴⁶ Asylum Office, Decision No. 26-1443/12, 13 June 2013.

²⁴⁷ Administrative Court, Judgment U 6547/16, 6 September 2019.

²⁴⁸ Administrative Court, Judgment U 19901/18, 10 January 2019.

²⁴⁹ Administrative Court, Judgment U 18067/17, 5 December 2019.

²⁵⁰ Administrative Court, Judgment U 3938/18, 9 May 2019.

²⁵¹ Administrative Court, Judgment U 5037/10, 12 June 2019.

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

On 1 October 2019, the Free Legal Aid Act (FLA) came into force. The right to free legal aid is explicitly guaranteed to asylum seekers,²⁵² refugees and persons granted subsidiary protection.²⁵³ However, the Free Legal Aid Fee Schedule Regulation (FLA Regulation)²⁵⁴ envisages free legal aid only for administrative dispute procedures conducted before the Administrative Court. This means that asylum seekers could apply for free legal aid only if they reach the third instance authority. The right to free legal aid is also guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.²⁵⁵ The Asylum 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.

It is important to highlight that not all persons who wish to apply for asylum have the possibility to have effective legal representation. The first reason is that in 2019 only three civil society organisations (CSO) were providing legal aid in Serbia: APC, BCHR and Humanitarian Centre for Tolerance and Integration (HCIT). The latter has just recently started, while the first two have been present in the system since 2008 and 2012 respectively.

The second reason is the fact that many legal representatives from respective CSOs have between 1 to 3 years of experience, which is usually the period after which many of them decide to leave the field of asylum and migration. The total number of legal representatives that actively provide legal aid in asylum procedure is most likely around 10.²⁵⁶ Several additional lawyers occasionally provide legal aid but are also tasked with other responsibilities. Given that in 2019 an approximate number of persons who are likely in need of international protection was at least 50% of total migrant population who entered Serbia and received registration certificates (around 6,000), it is clear that current capacities are insufficient.

As a result, the capacity and quality of legal assistance provided by CSOs remains limited.²⁵⁷ While certain CSO lawyers are successful, the large majority of them representing applicants for international protection do not obtain positive outcomes. This is mainly due to their lack of experience and knowledge of the asylum field which raises serious concerns, in particular where it concerns push-backs and the risk of violation of the *non-refoulement* principle. Specific issues in relation to the provision of legal assistance include a lack of assessment of COI information and individual circumstances,²⁵⁸ lengthy preparations of clients to their personal interview and issues with recording. The poor quality of legal assistance by CSOs is particularly patent in the cases where access to territory and asylum procedure is at stake.

²⁵² Article 4 (2-6) FLA.

²⁵³ Article 4 (2-7) FLA.

²⁵⁴ Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), Official Gazette of the RS No. 74/2019.

²⁵⁵ Article 56(3)-(4) Asylum Act.

²⁵⁶ BCHR has 5 lawyers who are solely providing legal aid to asylum seekers, HCIT 2 while APC does not have more than 4.

²⁵⁷ The author of this Report was a legal coordinator at BCHR, but also acts as a strategic litigation officer at BCHR. He has been providing legal aid to asylum seekers since 2012.

²⁵⁸ This conclusion was drawn from the Analysis of dozens of case files from the period 2017-2019 originating from both BCHR and APC's legal practice. A more detailed analysis of the quality of work of legal representatives will be conducted during the course of 2020.

To conclude, it is necessary to secure a quality of the work of legal representatives employed in different CSOs. Furthermore, it is also important to facilitate trainings on CoE and UN standards regarding International Refugee and International Human Rights Law. The recruitment procedures should be designed, but also the volunteer and internship systems should be established. And finally, the system of free legal aid must be reformed so it allows attorneys at law to provide legal assistance from the first instance procedure. This would mean that FLA and FLA Regulation have to be amended, and that extensive trainings of attorney at law should be facilitated.

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 one of the following grounds applies:²⁵⁹

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.²⁶⁰

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

The Asylum Office dismissed 10 asylum applications as inadmissible in 2019. All of them were dismissed on the grounds of the safe third country concept.²⁶¹

4. Border procedure (border and transit zones)

The Asylum Act foresees 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 if the applicant is provided with adequate accommodation and subsistence and:

1. The application can be rejected as unfounded for the grounds set out in the [Accelerated Procedure](#);²⁶²
2. The application is a [Subsequent Application](#).²⁶³

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.²⁶⁴ 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.²⁶⁵

²⁵⁹ Article 42(1) and (3) Asylum Act.

²⁶⁰ Article 42(4) Asylum Act.

²⁶¹ Pursuant to Article 33(1)(6) of the old Asylum Act.

²⁶² *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

²⁶³ Article 41(1) Asylum Act.

²⁶⁴ Article 41(2) Asylum Act.

²⁶⁵ Article 41(3) Asylum Act.

The deadline for the Asylum Office to take a decision is 28 days from the lodging of the asylum application.²⁶⁶ 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.²⁶⁷

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.²⁶⁸

The border procedure was not used in the course of 2019 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 Asylum Act provides an accelerated procedure, which can be conducted where the applicant:²⁶⁹

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; or
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.²⁷⁰ The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.²⁷¹ This basically means that a decision to apply the accelerated procedure is made by the asylum officer during the course of the personal interview.

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.²⁷²

In 2019, the accelerated procedure was applied only in 3 cases in relation to citizens of Ghana, Pakistan and Palestine

²⁶⁶ Article 41(5) Asylum Act.

²⁶⁷ Article 41(6) Asylum Act.

²⁶⁸ Article 41(7) Asylum Act.

²⁶⁹ Article 40(1) Asylum Act.

²⁷⁰ Article 40(2) Asylum Act.

²⁷¹ Article 40(3) Asylum Act.

²⁷² Article 40(5) Asylum Act.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ For certain categories ☐ No
 - ❖ If for certain categories, specify which: unaccompanied and separated children and victims of human trafficking
2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

The Asylum Act explicitly envisages that, in the course of the asylum procedure the specific circumstances of certain categories requiring special procedural or reception guarantees will be taken into consideration. This category includes 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.²⁷³

1.1. Screening of vulnerability

Article 17 of the Asylum Act envisages that 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.²⁷⁴

However, it is still not clear in which form the Asylum Office, Asylum Commission or Administrative Court 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. Thus, in 2019, not a single decision or any other act from which it can be concluded that the above-mentioned authorities have flagged a vulnerability of the certain individual was recorded.

However, it is reasonable to assume that certain types of vulnerabilities should be identified by other state institutions, while asylum authorities should take these in consideration during the decision-making process. For instance, the best interest determination assessment is conducted by the Social Welfare Centres (SWCs), mental health assessment by psychiatric clinics, human trafficking assessment by the Government's Centre for Human Trafficking Victims' Protection (CHTV), etc.

Regardless of the type of vulnerability, the common feature of all kind of screening mechanisms is that they largely depend on the work of different CSOs. Thus, the State support system can be described as ineffective and dependant to limited resources of CSOs who assist USAC, victims of trafficking in human beings, persons with health and mental issues, torture victims, etc. It should be also born in mind that the capacities of CSOs are very limited and not always of the highest quality. For that reason, it is safe to say that only small number of vulnerable persons that might be in need of international protection receive the comprehensive support.

In practice, UASC who have a genuine desire to apply for asylum in Serbia undergo a detailed vulnerability and needs assessment, which in the best-case scenario is concluded with the best interest determination assessment (BID).²⁷⁵ It is not clear how many USAC resided on Serbian territory in 2019, but according

²⁷³ Article 17(1) and (2) Asylum Act.

²⁷⁴ Article 17(3) Asylum Act.

²⁷⁵ Only 20 in 2019, and for the purpose of asylum procedure.

to UNHCR the number exceeded 3,000.²⁷⁶ On the other hand, the Centre for Research and Social Development (IDEAS) indicated that temporary legal guardians worked with 1,358 children who received urgent assistance.²⁷⁷ Out of that number, 416 received a more detailed support, while only 130 underwent best interest assessments (BIA).²⁷⁸ Thus, substantial support was provided to around 5% of totally recorded USAC.

The screening of USAC vulnerability is conducted by the temporary legal guardians of IDEAS - an implementing partner of UNHCR. However, this is not done in line with Article 17 of the Asylum Act, but in line with the Family Act and social care professional standards. The Asylum Office submitted the request for BID 20 times in 2019.²⁷⁹

Also, CHTV can be considered as an authority that can contribute to the effective implementation of Article 17 of the Asylum Act. Namely, CHTV identified 15 children as potential victims of trafficking in human beings. Also, two boys from Afghanistan obtained the status of a victim of trafficking in human beings. Still, in the vast majority of cases, CSOs are those who report alleged cases of human trafficking. According to Astra, CSO specialized in providing assistance to the victims, Serbia does not have an official procedure for the victim's identification.²⁸⁰

The psychological assessment is conducted by the Psychosocial Innovation Network (PIN), also implementing partner of UNHCR. In the period 2017-2019, PIN's psychologists performed 45 psychological assessments for the purpose of asylum procedure (21 in 2019). Out of them, only 4 had been explicitly requested by the Asylum Office, while the rest were conducted upon request from legal representatives. Several asylum seekers were examined by the psychiatrist. The reports were then submitted to the Asylum Office with the aim to indicate vulnerabilities.²⁸¹

Accordingly, CSOs who provide legal and other assistance to asylum seekers are the ones who usually provide care to vulnerable applicants in terms of accommodation, medical care, psychological or other needs. Also, the fact that asylum authorities have recognised asylum seeker's vulnerability (age, state of health or other vulnerability) can only be found in positive decisions of the Asylum Office, while the decisions rejecting their asylum applications usually disregard the vulnerabilities of the minor applicants put forward by their legal representatives.

1.2. Identification and Age assessment of unaccompanied children

Serbia considers as an unaccompanied child "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."²⁸²

Although the Asylum Act prescribes that children for whom it can be determined reliably and unambiguously to be under 14 years of age shall not be fingerprinted at registration,²⁸³ 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.

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.²⁸⁴ On 4 April 2018, the Ministry of Labour, Employment, veteran and

²⁷⁶ UNHCR statistic are available at: <https://bit.ly/2LklrZY>.

²⁷⁷ Urgent assistance covers the most basic needs such as food, water, clothes

²⁷⁸ The difference between BIA and BID can be found in UNHCR, *Guidelines on Assessing and Determining the Best Interests of the Child*, November 2018, available at: <https://bit.ly/2WaByiA>, p. 30 and 44-45.

²⁷⁹ All the information was obtained from IDEAS.

²⁸⁰ Report on Trafficking in Persons: Serbia 2019, letter to US State Department, Astra (20 June 2019), available (in Serbian) at: <http://bit.ly/3bVYqJl>.

²⁸¹ All the information was obtained from PIN.

²⁸² Article 2 Asylum Act.

²⁸³ Article 35(6) Asylum Act.

²⁸⁴ There is no record that an age assessment procedure has ever been conducted in line with the Family Act.

Social Affairs adopted the Instruction on Procedures of Social Work Centres²⁸⁵ which envisages that the field social worker is in charge for identifying and coordinating support to USAC as long as the child is not put under the jurisdiction of professional social worker.²⁸⁶

Still, the identification of unaccompanied minors continues to be done on the spot by officials (most often police officers) and CSO employees, establishing first contact with potential asylum seekers. The SWC are understaffed and they usually react when the MoI or CSO inform them on a USAC's presence at the territory of Serbia. Thus, it is clear that a large number of children residing in Serbia have never been recorded and that the numbers published by different state authorities, but also non-state entities (CSOs, UNHCR, IOM) significantly differ.²⁸⁷ The Committee on the Rights of the Child²⁸⁸ and the Human Rights Committee²⁸⁹ underlined these problems as well.

An additional problem the authorities face in identifying USAC 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 2019, the asylum authorities of Serbia recognised a total of 823 asylum seekers as UASC out of a total of 2,939 underage asylum seekers. The rest of the children were travelling with their family members and relatives. However, bearing in mind the above-mentioned challenges in identifying unaccompanied children, their real number is without any doubt far greater.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☐ Yes

☐ For certain categories

☒ No

None of the bodies that are tasked with conducting the asylum procedure (Asylum Office, Asylum Commission and Administrative Court) have specialised subdivisions to deal with the asylum claims of vulnerable applicants. As it was already outlined, the Asylum Act foresees that care will 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.²⁹⁰

In 2019, there were several decisions in which members of particularly vulnerable groups were granted asylum. However, their asylum procedure did not differ from any other procedure.²⁹¹ Moreover, the length of the procedure can be described as extensive.²⁹² However, it is important to note that in these decisions the Asylum Office took into consideration the vulnerability of the applicant's in terms of their age, state of health, gender or psychological state.²⁹³

Accelerated and border procedures cannot be applied to an unaccompanied child.²⁹⁴

²⁸⁵ Instruction on Procedures of Social Work Centres – Guardianship Authorities for the Accommodation of Unaccompanied Migrant/Refugee Children, Ministry of Labour, Employment, Veteran and Social Affairs, No. 019-00-19/2018-05.

²⁸⁶ Section II, para. 2 of the Instruction on Procedure of Social Work Centres.

²⁸⁷ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 97-98.

²⁸⁸ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, 56-57.

²⁸⁹ HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para. 32-33.

²⁹⁰ Article 15 Asylum Act.

²⁹¹ Asylum Office, Decisions Nos. 26-1216/18, 12 February 2019; 26-1217/19, 12 February 2019 and 26-1218/19, 12 February 2019.

²⁹² Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

²⁹³ The most important decisions regarding vulnerable applicants are analysed in the Chapter C.1. – Asylum Practice in 2019.

²⁹⁴ Articles 40(4) and 41(4) Asylum Act.

3. Use of medical and psychological 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 or psychological reports may be used in order to substantiate asylum claims; as is prescribed by the General Administrative Procedure Act.²⁹⁵ However, this is still very rare in practice, even though the practice from 2019 looks promising. In the vast majority of cases, the legal representatives are the one who are hiring forensic, psychiatric or psychological experts in order to support their client's claims. Still, in 2019, there were several instances in which the Asylum Office submitted the request to a specialized CSO Psychosocial Innovation Network (PIN)

So far, the Asylum Office has rendered several decisions in which medical and/or psychological reports were used with an aim to assess the vulnerability of the applicant but also the credibility of his or her statement. On the other hand, there were several cases in which Asylum Office, but also the second and the third instance authorities had failed to take into consideration medical or psychological state of the applicant.

The first time the Asylum Office took into consideration a medical report was in December 2016 in the case of an Iraqi applicant who was granted subsidiary protection. The report that was examined was issued by the psychiatrist at one of the Belgrade clinics. However, it was the legal representative who provided the Asylum Office with the report.²⁹⁶

The second time the Asylum Office directly took into consideration the state of health of the applicants was in December 2017, when one Nigerian²⁹⁷ and one Bangladesh²⁹⁸ national were granted subsidiary protection due to paraplegia and quadriplegia respectively. In both of the said decisions the Asylum Office took into consideration ECtHR principles established in *D. v. United Kingdom* which were invoked by their legal representative. The medical state of the applicant played an important role in the case of Libyan family A.²⁹⁹

Also, in December 2018, the Asylum Office explicitly cited Article 17 of the Asylum Act and took in consideration that unaccompanied girl from Nigeria was recognized as a victim of human trafficking.³⁰⁰ The same was done in the decision 26-1719/18 from 11 December 2019, when an asylum seeker from Iraq was granted subsidiary protection. In 2019, a psychological report was taken in consideration in several more decisions,³⁰¹ as well as the BID,³⁰² while the report of the psychiatrist was taken in consideration in the case of Uyghur applicant from China who is a torture victim.³⁰³

²⁹⁵ Article 128 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.

²⁹⁶ ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

²⁹⁷ Asylum Office, Decision No. 26-4370/15, 27 December 2017.

²⁹⁸ Asylum Office, Decision No. 26-5044/15, 25 December 2017.

²⁹⁹ Asylum Office, Decision No. 26-222/15, 3 July 2018.

³⁰⁰ Asylum Office, Decision No. 26-329/18, 28 December 2019.

³⁰¹ Asylum Office, Decisions Nos. 26-2348/17, 28 January 2019; 26-2643/17, 30 January 2019; 26-1605/18, 15 March 2019;

³⁰² Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

³⁰³ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

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 2019 but at the same time the number of genuine asylum seekers out of this population remains low. In total, 823 UASC were issued with the registration certificate.

The legal framework that aims to protect unaccompanied and separated children in the course of the 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.³⁰⁴

The old Asylum Act merely provided that attention in the asylum procedure should be paid to the specific situation of persons with special needs, including unaccompanied children. In contrast, the new Asylum Act explicitly prescribes the principle of the best interests of the child. Accordingly, when assessing the best interests of the child, the competent authorities must take into account the 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.³⁰⁵

The Asylum Office requested the SWC to carry out a best interest's assessment in two cases which were positively resolved in 2019.³⁰⁶

The 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 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.³⁰⁷

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.³⁰⁸ The police cannot register an unaccompanied child who expressed the wish to seek asylum in absence of a temporary guardian,³⁰⁹ even though that was the practice in many instances during the course of 2019.³¹⁰

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.³¹¹

³⁰⁴ 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.

³⁰⁵ Article 10(2) Asylum Act.

³⁰⁶ Asylum Office, Decision Nos 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

³⁰⁷ Articles 125 and 126 Family Act.

³⁰⁸ Article 12 Asylum Act.

³⁰⁹ Article 11 Asylum Act.

³¹⁰ See more in BCHR, *Right to Asylum in the Republic of Serbia 2018*, 55-56.

³¹¹ Article 128 Asylum Act.

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.³¹² For instance, 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.³¹³ 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 CSOs engaged in protection of refugees and migrants. Since the presence of such CSOs in certain parts of Serbia is not sufficient or infrequent, temporary guardians in some municipalities could not establish even basic communication with the children.³¹⁴ 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 CSO 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.³¹⁵ The next step is urgent appointment of a temporary guardian to the child.

In 2019, BCHR did not notice any difference in the treatment of unaccompanied children in comparison to adult asylum seekers in terms of the length of asylum procedure, interviews and behaviour of asylum officers. There were still situations in which the personal interview lasted for hours.³¹⁶ However, in several decision standards regarding the International Child Law (ICL) were thoroughly taken in consideration during the asylum procedure. On the other hand, there were instances in practice in which child-specific guarantees were entirely neglected in terms of the ICL standards and length of asylum interview.³¹⁷

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

³¹² 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.

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ 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.

³¹⁶ 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.

³¹⁷ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 105-112

any evidence that he or she did not present in the previous procedure due to justified reasons.”³¹⁸ 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.³¹⁹ The applicant must provide all the above and bring forward evidence in a comprehensible manner.³²⁰ 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.³²¹

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.³²²

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.³²³

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

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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input 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.³²⁴ 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.³²⁵ 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. During 2019, the new Asylum Act was predominantly applied. However, Asylum Office rendered 9 decisions invoking the safe third country concept in line with the old Asylum Act based on the list of safe third countries.³²⁶

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, when 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

³¹⁸ Article 46(1) Asylum Act.

³¹⁹ *Ibid.*

³²⁰ Article 46(2) Asylum Act.

³²¹ Article 46(3) Asylum Act.

³²² Article 46(4), (5) and (6) Asylum Act.

³²³ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

³²⁴ Article 43-45 Asylum Act.

³²⁵ Article 42(1)(1) and (2) Asylum Act.

³²⁶ Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, No 67/2009.

to absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment.³²⁷ 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.³²⁸

The 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.³²⁹

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,³³⁰ as well as “the views of the competent authorities specified by this Law.”³³¹

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.³³²

The safe country of origin concept was applied only once in practice so far and in relation to the citizen of Montenegro.³³³ This decision was confirmed during the course of 2019 both by the Asylum Commission³³⁴ and the Administrative Court.³³⁵

2. Safe third country

The flawed and 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.³³⁶ 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 claim³³⁷ 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.

However, in 2019, the Asylum Office basically ceased applying this concept, which has led to a significant improvement in practice and the sharp increase of the cases being decided on the merits. One of the main reasons of the shift of the Office’s attitude towards the safe third country notion is the fact that there

³²⁷ Article 44 Asylum Act.

³²⁸ Article 44 (1) Asylum Act.

³²⁹ Article 44 (2) and (5) Asylum Act.

³³⁰ Article 44 (3) Asylum Act.

³³¹ Article 44 (4) Asylum Act.

³³² Article 44 (6) Asylum Act.

³³³ Asylum Office, Decision No. 26-1720/18, 21 December 2018.

³³⁴ Asylum Commission, Decision AŽ 2/19, 1 March 2019.

³³⁵ Administrative Court, Judgment U 5037/19, 12 June 2019.

³³⁶ 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.

³³⁷ 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.

are currently two cases pending before ECtHR.³³⁸ Additionally, the provisions of the new Asylum Act have introduced certain types of boundaries against the automatic application of the safe third country concept. For that reason, the concept was applied in a total of 10 decisions in 2019 concerning 11 persons. Nine decisions were rendered in line with the old Asylum Act, while only 1 in line with the new one. Thus, the dismissal rate on the basis of the safe third country concept dropped from 64% in 2018 to 9% in 2019 which is a significant improvement. This being said, given that the old Asylum Act was applied in 95% of the decisions on the safe third country concept, it is important to reiterate the provisions of the previous legal framework below:

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**.

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 Macedonia³³⁹ and Bulgaria.³⁴⁰

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.³⁴¹

³³⁸ 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.

³³⁹ 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>.

³⁴⁰ UNHCR, *UNHCR observations on the current asylum system in Bulgaria*, April 2014, available at: <https://bit.ly/2Xn6Xht>.

³⁴¹ AIDA, Country Report Serbia, 2018 Update, March 2019, p. 42-52.

2.2. Relevant pronouncements on safe third country practice in Serbia

In August 2012, UNHCR published “Serbia as Country of Asylum”,³⁴² 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”³⁴³ 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.”³⁴⁴

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.”³⁴⁵

In July 2015, Amnesty International outlined:

“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.”³⁴⁶

On 21 November 2019, the ECtHR rendered a judgment in the case *Ilias and Ahmed v. Hungary*,³⁴⁷ 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.’³⁴⁸

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...”³⁴⁹

³⁴² UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>.

³⁴³ *Ibid*, paras 4 and 79-81.

³⁴⁴ *Ibid*, para 13.

³⁴⁵ CAT/C/SR.1322 and CAT/C/SR.1323, para 15.

³⁴⁶ 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.

³⁴⁷ ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, Judgment of 21 November 2019, EDAL, available at: <https://bit.ly/2yoNSDD>

³⁴⁸ *Ibid*, para 125.

³⁴⁹ CCPR/C/SRB/CO/3, paras 32 and 33.

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*.”³⁵⁰

On 2 August 2019, the Committee against Torture found violation of Article 3 of the UN CAT in relation to the Turkish citizen Cevdet Ayaz who was extradited to Turkey despite the Committee’s interim measure. In its decision, CAT outlined that the manner in which asylum authorities applied the STCC failed to examine risks of *refoulement* with rigorous scrutiny. The STCC was applied in relation to Montenegro, but Mr. Ayaz was returned to his country of origin. More precisely, due to a flawed application of the STCC, Serbian asylum authorities have entirely neglected to examine risks of *refoulement* in Turkey where the applicant was eventually extradited. Additionally, extradition authorities did not examine risks of *refoulement* in Turkey and the question that remains to be resolved in the future is the relationship between asylum and extradition procedure, especially when these two have different outcomes.³⁵¹

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 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 protection from *refoulement*, which includes access to an efficient asylum procedure.³⁵²

Interpreting the Asylum Act as a 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 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 regarding the application of the safe third country concept have been provided in 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 following a 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 fulfills 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.³⁵³ The new approach of the Asylum Act is encouraging

³⁵⁰ 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.

³⁵¹ CAT, *Ayaz v. Serbia*, Communication No 857/2019, Decision of 2 August 2019, para. 9.8.

³⁵² Article 45(1) Asylum Act.

³⁵³ Article 45(2) Asylum Act.

as it implies an 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 on the merits.

Consequently, it is not clear whether applicants will have to go to the border crossing points themselves and present the certificate on the “safe third country” to the authorities 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 concluded 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 issue 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 to each individual. Based on the 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 considered safe refuses to admit him or her.

In 2019, the Asylum Office applied the new Asylum Act only once. Since BCHR’s lawyers did not act as legal representatives in the said case and that the decision was probably challenged before the Asylum Commission, it remains to be seen how the country qualified as safe will admit the Cuban asylum applicant back to its territory and allow him to submit an asylum application.

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.³⁵⁴

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to his or her specific circumstances.³⁵⁵

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

³⁵⁴ Article 43(1) Asylum Act.

³⁵⁵ Article 43(2) Asylum Act.

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.³⁵⁶ 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.³⁵⁷

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.

It remains unclear if police departments around Serbia tasked with issuing the registration certificates are providing such information. According to the testimonies of BCHR clients, such information is not provided.

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?³⁵⁸ ☒ 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, Asylum Office rendered 110 and Asylum Commission 3 decisions granting asylum to 156 persons, including from Libya (45), Syria (22), Afghanistan (17), Iran (12), Iraq (12), Ukraine (11), Cuba (7), Sudan (5), Ethiopia (3), Russia (3), Pakistan (3), Somalia (2), Cameroon (2), Nigeria (2) Turkey (2), Lebanon (1), Egypt (1), South Sudan (1), Bangladesh (1), Tunisia (1), Kazakhstan (1), Burundi (1) and China (1). It cannot be claimed with certainty that specific nationalities are differently treated than others. However, it can be safely stated that there is a contradicting practice when it comes to Afghan asylum applicants, as well as Iranian applicants who converted from Islam to Christianity.

³⁵⁶ Article 56 Asylum Act.

³⁵⁷ Article 56(1) Asylum Act.

³⁵⁸ 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.³⁵⁹

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.³⁶⁰ 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.³⁶¹

The vast majority of foreigners accommodated in Asylum Centres and Reception Centres enjoy the status of asylum seeker. However, the most 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 on the waiting list to enter Hungary³⁶² or are trying to leave Serbia irregularly through other ways. 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. Their legal status is unregulated, and for that reason, they can be subject to different arbitrary practices such as denial of access to the reception centre during the night or denial of access to food or even medical care. Also, there is a significant number of persons which are residing in the informal settlements in Belgrade and border areas with Croatia, Hungary and Romania. Many of them are UASC.³⁶³

³⁵⁹ Article 23 Asylum Act; Chapters II and III Migration Management Act.

³⁶⁰ Article 51(1) Asylum Act.

³⁶¹ Article 35(12) Asylum Act.

³⁶² The vast majority of refugees residing in Serbia are on the waiting list to enter Hungary at Rozske and Tompa. Hungarian authorities were admitting several persons per week.

³⁶³ BCHR, Right to Asylum in the Republic of Serbia, 130-132.

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 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 beforehand, if that is required for reasons of security of a foreigner whose intention to seek asylum has been registered.³⁶⁴ 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. The living conditions in many Asylum and Reception centres are unsatisfactory.

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 2019 (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.³⁶⁵ The new Asylum Act has introduced in 2018 the possibility of cash allowance for personal needs.³⁶⁶ However, not a single cash allowance has been granted so far.

Persons seeking asylum and accommodated at an Asylum Centre or a reception centre do not have the right to access social welfare. This remains a possibility for persons staying in private accommodation.³⁶⁷ Social assistance in these cases shall take the form of a monthly cash allowance provided that the person is not accommodated in an Asylum or Reception 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:³⁶⁸

- 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.

³⁶⁴ Article 50(8) Asylum Act.

³⁶⁵ Article 50(1) Asylum Act.

³⁶⁶ Article 50(2) Asylum Act.

³⁶⁷ Article 53 Asylum Act.

³⁶⁸ Decision on nominal amounts of social assistance, 27 April 2018.

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 the 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.³⁶⁹

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.³⁷⁰ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.³⁷¹

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,³⁷² and equal and planned economic development by managing migration,³⁷³ 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. If they fail to report, in practice they could be removed from the list and treated as irregular migrants in the future. As ID cards are issued solely to foreigners who have lodged their asylum application, the rest of the people who do not 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.

³⁶⁹ Article 50(4) Asylum Act.

³⁷⁰ Article 50(5) and (6) Asylum Act.

³⁷¹ Article 50(7) Asylum Act.

³⁷² Article 4 Migration Management Act.

³⁷³ Article 5 Migration Management Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ³⁷⁴	19
❖ Asylum Centres	5
❖ Reception Centres	14
2. Total number of places in the reception centres:	5,990
❖ 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:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

Both Asylum Centres and Reception Centres are established by the Government's decision.³⁷⁵ The work of Asylum Centres and Reception Centres is managed by the Commissariat.³⁷⁶

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, as they were not foreseen for the housing of persons seeking asylum in Serbia.

The major issue in 2019 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 by immigration officers from all police departments 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 2019

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

³⁷⁴ Both permanent and for first arrivals.

³⁷⁵ Article 51(2) and (3) Asylum Act.

³⁷⁶ Article 51(4) Asylum Act.

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 Palanka** ('Divljana'). Bela Palanka and Dimitrovgrad were not active during 2019, while Preševo became operational in November 2019, hosting around 600 persons per day.

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

- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
- What is the average length of stay of asylum seekers in the reception centres? Not available
- 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. These deficiencies were also highlighted in the 2017 report of the Council of Europe 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.³⁷⁷

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.³⁷⁸

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 and is located in an urban area in the vicinity of Loznica town. The closest public services, primary school and police are approximately 1 km away from the AC, which represents an example of good practice. With a capacity of 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.

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 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. Also, the AC has eight indoor cameras inside the facility, and eight outdoor cameras, and the AC gate is locked during the night. The AC has own heating system and it does not depend on the external heat supply. Asylum seekers are provided meals three times a day, and the meals are specially adjusted to their religious and health needs.

An auxiliary building within the Asylum Centre was adapted for provision 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.

One doctor and one medical technician are 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. The health-care assistance is supported by the International Organisation for Migration (IOM). Medical check-ups are available on all working days, and the GP can intervene in urgent cases 24/7 as she herself stays at the AC.

Bogovađa is a Red Cross facility that has been used for the accommodation of asylum seekers since 2011 with an overall capacity of 200. It is located 70 km from Belgrade, while the closest public services are 11 km away. The AC itself is not located in an urban area, i.e., it is located in a weekend village surrounded by forest. This makes it difficult for the asylum seekers to use all the services they need, with the exception of attending the primary school. The nearest shop is 2–3 kilometres away.

³⁷⁷ 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>.

³⁷⁸ *Ibid.*

The capacity can be extended up to maximum 280 beds. During 2018, around 110 persons on the average were residing in the centre. Families from Afghanistan and Iran represented the majority of residents in 2019, 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 in 2018. The centre has central heating and an adequate number of bathrooms, though they are unisex – for men and women. The meals at this AC are regular, three times a day, and are served in the common dining room. However, the BCHR clients have expressed concern about the lack of halal food standards.

The AC is not physically fenced off, it has video surveillance, and the security staff are present. Within the AC grounds, there are several separate buildings for different purposes, one of which is used by the AC management, doctors, the Asylum Office inspectors, and the Red Cross staff. The largest building is used for asylum seeker accommodation, and there is also a facility that is used by charity organisations, such as Caritas, to carry out their activities. There is a children’s playground in the courtyard.

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. Access to healthcare services outside the AC is impeded due to the lack of transportation means and drivers for that purpose. Another obstacle is a lack of interpreters, which causes difficulties for doctors when it comes to the communication with patients. Psychological counselling is provided by PIN.

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, and 295 km away from Belgrade. The centre can accommodate 200 persons. The average number of persons in this centre was around 120 per day in 2019, with this number increasing to 150 during the last quarter. As a newly building, the accommodation conditions in this centre have significantly improved compared to earlier years. However, the location of the town of Tutin is problematic, especially during the winter months when access by CSOs and Asylum Office is severely hindered due to unfavourable weather conditions. Namely, the AC in Tutin is located at Pešter weald where winter is long and harsh and snow frequently blocks the road, thereby preventing access to the camp for several weeks or even months.

The centre has 60 rooms and an adequate number of toilets which are shared. 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. Tutin AC has a common TV room, a dining room, and a children’s playground. Three meals per day are provided and are adapted to religious needs. The Commissariat facilitates different workshops

and activities within the children's corner, but also for the adults (sewing, hairdressing). However, one of the major problems is the lack of interpreters, which are mainly provided by CSOs.

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. It is approximately 250 km away from Belgrade and the underdeveloped road infrastructure pose particular difficulties for the NGOs and Asylum Office. According to the management of the centre, the ongoing reconstruction works are aimed to extend its capacity by an additional 160 places. An average of 150 persons per day stayed in this centre in the course of 2019. 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.

Within the AC, there is a children's area, a TV room, and a playground in front of the building. Meals are provided to asylum seekers three times a day and are specially adjusted to their religious and health needs. There is also a designated room for the social workers from the local SWC.

The AC in Sjenica was mostly used for USAC accommodation during the 2019. The living conditions could be described as inadequate in the old part of the factory, while significant improvements were made during the year when entrance, kitchen and a certain number of bedrooms were refurbished. Thus, the new part of the building provides more privacy and plenty of accommodation space. The children accommodated at the AC are satisfied with the organised activities.

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. All unaccompanied children interviewed by the BCHR were informed of the possibility of using medical services.

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 in 2019 i.e., an average of 600 persons per day. CRM staff observed the principle of family unity at placement. There is a direct bus line connection to downtown (20 minutes). Also, the proximity to Belgrade provides greater employment and integration opportunities for the asylum seekers, which has positive effects on their attitude to apply for asylum in Serbia.

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. Three meals per day are provided and are specially adjusted to asylum seekers' religious and health needs. AC has a hair salon and a tailor shop, and civil society organisations organise various courses in the common premises so that accommodated asylum seekers can improve specific crafts or languages.

The presence of organised criminal groups involved in smuggling and potentially human trafficking is evident and it is clear that security in Krnjača is highly problematic. The best example for this statement is the incident that took place in June 2019, when a boy from Afghanistan was brutally killed by the group of smugglers who apparently had unhindered access to the AC.³⁷⁹ For that reason, AC in Krnjača cannot be considered as adequate and safe for UASC.

As opposed to 2017, when the persons accommodated in the centre without certificates of expressed intention to seek asylum received dry food packages twice a day, all the residents regardless of their legal status were entitled to three warm meals a day in 2019. 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. The lack of interpreters can create problems in communication with doctors.

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia was generally stable throughout 2019.³⁸⁰ The authorities started opening temporary reception facilities in 2015 in order to provide basic accommodation and humanitarian support to persons who were likely in need of international protection, but were 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 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. However, in the second part of 2019, the number of persons accommodated in Bujanovac increased and the occupancy rate was around 150%. This has led to a deterioration in hygiene, privacy and to certain extent safety.

In May 2017, an additional reception centre was opened in **Vranje** (220 places), 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 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

³⁷⁹ N1, 'Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda', 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

³⁸⁰ An average number of refugees and migrants residing in Serbia was between 5,000 to 6,500 on a daily basis.

the Croatian border.

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 presence of organized criminal groups involved in smuggling is evident.

The reception centre in **Subotica** (130 places) was opened in 2015 at the height of the refugee and migrant movement into Hungary. The centre remained open as of 2019. 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 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.

In general, it can be safely argued that the vast majority of Reception Centres lack adequate living conditions due to their nature and purpose. Namely, the Reception Centres were established and designed during the 2015/2016 mass influx of refugees with an aim to provide a short-term stay (several days). However, when the border policies of neighbouring countries had changed, and the time of stay in Serbia increased from several days to at least 6 months, the living conditions in RCs deteriorated. For that reason, arguably the living conditions in majority of RCs are inadequate and the main features are the following: overcrowding, poor hygiene, lack of privacy and safety, poor sanitation and lack of basic psycho-social services.

For instance, Reception Centres in **Adaševci** and **Šid** are mainly made of huge tents in which several dozen persons are accommodated. They sleep on the bunk beds lined up next to each other, deprived of any personal space and privacy. The overcrowding rate in Adaševci RC is at least 200%, the hygiene is extremely problematic, as well as safety. A lot of USACs who are attempting to cross the border to Croatia are forced to stay in such conditions without adequate legal status. The cases of violence and theft were reported throughout the year and the presence of organised smuggling groups is evident. A similar conclusion can be drawn in relation to **Obrenovac** and **Bujanovac** Reception Centres.

Finally, it is also important to outline that not a single CSO in Serbia has paid a specific attention to the living conditions in Reception Centres and that all the data is collected through general observations made during the visits in which the legal counselling was provided. Thus, the thematic visits aimed at thorough documenting and reporting of the living conditions in the Reception Centres should be prioritized in the future. This is important for several reasons. First of all, the usual narrative is that Serbia can accommodate up to approximately 6,000 persons. However, this capacity is determined by the number of beds and not quality of the living conditions. This is also important for the future and potential cases of expulsions to Serbia, where sending states should bear in mind the quality of the reception conditions in respect to Article 3 of ECHR.³⁸¹ And finally, a more detailed data on the current state of affairs in asylum and reception centres could be used as an advocacy tool for improvement of the living conditions.

³⁸¹ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>.

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.³⁸² 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.³⁸³ That provision is highly disputable considering that asylum seekers wait for a long period of time to submit their asylum application. On average, from the registration of asylum seekers at a police station until the lodging of an asylum application it takes 130 days. For persons residing in Reception Centres this period is even longer since they have to be relocated to one of the Asylum Centres where the Asylum Office conducts the asylum procedure. This practice has discouraging effect on asylum seekers to genuinely consider Serbia as a destination country.

Also, one of the biggest concerns regarding access to the labour market is the fact that 3 out of 5 Asylum Centres are located in remote areas in Serbia, where the unemployment rate in general is quite high (**Tutuin, Sjenica** and **Bogovađa**) and where access to job opportunities is extremely limited. For that reason, and bearing in mind that genuine asylum seekers strive to integrate into society as quickly as possible, referring asylum seekers to remote asylum centres or in reception centres has an evident and discouraging effect on their aspiration to stay in Serbia.

The Rulebook on Work Permits³⁸⁴ governs the procedure for issuing and extending work permits, as well as the criteria that one must meet in order to receive the permit. In order to be issued a personal work permit asylum seeker need to fill in the application form, pay the administrative fee and submit a certified copy of the identity card and a certified copy of asylum application.

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

³⁸² Article 57 Asylum Act.

³⁸³ Article 13 Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

³⁸⁴ Official Gazette no. 63/18, 56/19.

Asylum seekers have the right to free primary and secondary education.³⁸⁵ The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,³⁸⁶ with relevant issues also regulated by the Primary School Act,³⁸⁷ the Secondary School Act³⁸⁸ and the High Education Act.³⁸⁹ 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.³⁹⁰ Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.³⁹¹

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.

Primary and secondary education is available to all the children residing in **Krnjača**, **Tutin** and **Banja Koviljača**. In Banja Koviljača, a number of children at the AC attend preschool institutions and the primary school, in the immediate vicinity of the AC. One child attends high school in **Loznica**, and the cost of public transportation to Loznica is covered by UNHCR. Primary school is also available for children in **Bogovađa** and **Sjenica**, but in the later children (mostly USAC) leave the AC before they adapt to school programme. Another problem for children residing in Sjenica are difficulties in communication. The conclusion that can be drawn is that majority of children do not attend schools regularly, due to problems in communication, but also frequent absence from asylum centres.

During the 2018/2019 school year, 383 migrant children, including 82 unaccompanied children, were enrolled in 40 primary schools, 10 secondary schools, and 10 pre-school institutions.³⁹²

³⁸⁵ Article 55(1) Asylum Act.

³⁸⁶ 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.

³⁸⁷ 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.

³⁸⁸ 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.

³⁸⁹ 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.

³⁹⁰ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

³⁹¹ Article 55(2) Asylum Act.

³⁹² EU Support to Serbia in Managing Migrations – MADAD 2, available (in Serbian) at: <https://bit.ly/2VuHljM>.

D. Health care

Indicators: Health Care

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

The Asylum Act foresees that asylum seeker shall have equal rights to health care, in accordance with the regulations governing health care for aliens.³⁹³ 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.³⁹⁴

Upon their arrival to the reception facility, asylum seekers are obliged to undergo 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.³⁹⁵ The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations.³⁹⁶

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.³⁹⁷

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.

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.³⁹⁸

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.³⁹⁹ 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.

³⁹³ Article 54 Asylum Act.

³⁹⁴ Article 54(3) Asylum Act.

³⁹⁵ Article 2 Rulebook on medical examinations.

³⁹⁶ Article 3 Rulebook on medical examinations.

³⁹⁷ Article 4 Rulebook on medical examinations.

³⁹⁸ Article 50(3) Asylum Act.

³⁹⁹ Article 17 Asylum Act.

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.⁴⁰⁰ 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.⁴⁰¹ 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.⁴⁰² Since the end of 2015, unaccompanied children have been accommodated in institutions in **Belgrade, Niš** and **Subotica**.⁴⁰³ These facilities are also used to accommodate nationals of Serbia – primarily underage offenders, and are therefore neither specifically-tailored to the needs of migrants, nor particularly suitable for their housing. Regardless, unaccompanied minor asylum seekers in these facilities are kept separately from other groups, and overall reception conditions are considerably better than otherwise available at asylum centres, although a chronic lack of interpreters for various languages spoken by migrants continues to present a considerable challenge to ensuring their proper development and integration.

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

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

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,⁴⁰⁴ as well as about NGOs providing free legal aid.⁴⁰⁵ (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 information 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.

⁴⁰⁰ Article 53 Asylum Act.

⁴⁰¹ Information provided by the CRM, 6 November 2018.

⁴⁰² See more in BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 61-66.

⁴⁰³ 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.

⁴⁰⁴ Article 56(2) Asylum Act.

⁴⁰⁵ Article 56(3) and (4) Asylum Act.

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 centres 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.⁴⁰⁶ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.⁴⁰⁷ 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.

⁴⁰⁶ Article 5 Asylum Act.

⁴⁰⁷ Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

- | | |
|--|---------------|
| 1. Total number of asylum seekers detained in 2019: ⁴⁰⁸ | 12 |
| 2. Number of asylum seekers in detention at the end of 2019: | Not available |
| 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. In 2019 the Asylum Office rarely resorted to such measures, and only issued 4 decisions to place asylum seekers in detention in order to ensure their presence in the asylum procedure. On the other hand, persons who 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.⁴⁰⁹ However, the Ministry of Interior has failed to deliver data on the number and the nationality of persons detained on this ground.

Each year, thousands of persons who are likely in need of international protection are detained in Serbia on various grounds. This may occur as a result of a conviction for illegal entry or stay in Serbia without having invoked the benefits of Article 8 of the Asylum Act, 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.⁴¹⁰ In 2019, the reconstruction and expansion of the Shelter's capacity were continued and intensified. The bedrooms, the kitchen, the dining room, and Detention Centre management offices were renovated.

Good cooperation between BCHR and the Shelter for Foreigners continued in 2019. 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 2019, a total of 8 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: ⁴¹¹ | <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 |

⁴⁰⁸ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

⁴⁰⁹ Articles 87 and 88 Foreigners Act.

⁴¹⁰ Article 3(1)(28) Foreigners Act.

⁴¹¹ 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:⁴¹²

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;⁴¹³
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.⁴¹⁴

In practice, the Asylum Office rarely order detention of asylum seekers. Only 4 detention orders were issued in 2019 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 if adequate accommodation and subsistence can be provided.⁴¹⁵ However, since there are no adequate facilities located in border areas or in the transit zone, the border procedure has not yet been 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 nevertheless be liable to detention in a number of situations.

Under the Foreigners Act, 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, for the purpose of their identification, when they do not possess valid travel documents, or “in other cases prescribed by the law”.⁴¹⁶ However, this concerns 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

⁴¹² Article 77(1) Asylum Act.

⁴¹³ 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.

⁴¹⁴ Article 58(1)(3) and (7) Asylum Act.

⁴¹⁵ Article 44(1)(1) Asylum Act.

⁴¹⁶ Articles 87 and 88 Foreigners Act.

with the preparations for return or removal.⁴¹⁷ 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,⁴¹⁸ which is not the case at the moment. The current practice implies stereotypical issuance of the decision on cancellation of residency,⁴¹⁹ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.⁴²⁰ In these two procedures, foreigners do not enjoy legal assistance or services of interpretation, neither are they 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 residency⁴²¹ or the expulsion decision⁴²² does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.⁴²³ 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 Refugee 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.⁴²⁴

⁴¹⁷ 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.

⁴¹⁸ Article 1 Protocol 7 ECHR.

⁴¹⁹ Article 39 Foreigners Act.

⁴²⁰ Article 74 Foreigners Act.

⁴²¹ Article 39(7) Foreigners Act.

⁴²² Article 80(3) Foreigners Act.

⁴²³ Articles 80(3) and 83 Foreigners Act.

⁴²⁴ BCHR, *Right to Asylum in Serbia 2019*, 34-40.

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;⁴²⁵
2. Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;⁴²⁶
3. Temporary seizure of a travel document.⁴²⁷

The above-stated measures can last as long as there are **Grounds for Detention** under Article 87 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.⁴²⁸

Such measures, however, have never been taken in practice as of the end of 2019

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 measure is appropriate, taking into account his or her personal circumstances and needs, and particularly his or her health condition.⁴²⁹ This category includes 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. So far, families and UASC have never been detained during the course of asylum procedure.

In December 2019, two USAC from Afghanistan were detained on security grounds,⁴³⁰ but they were not registered as asylum seekers nor were they willing to apply for asylum. In other words, their detention was based on the Foreigners Act. However, apart from this example, it is rare in practice that children and families are deprived of their liberty in the Detention Centre for Foreigners, regardless of their status – asylum seeker or a person in need of international protection who is not willing to apply for asylum.

⁴²⁵ Article 78(1)(1) Asylum Act.

⁴²⁶ Article 78(1)(2) Asylum Act.

⁴²⁷ Article 78(1)(5) Asylum Act.

⁴²⁸ Article 79 Asylum Act.

⁴²⁹ Article 80 Asylum Act.

⁴³⁰ Information provided by CSO IDEAS.

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 may be detained for up to 3 months. This period may be extended once for another 3-month period by a decision of the Asylum Office⁴³¹ and on the same grounds as prescribed in Article 77 (1) of the Asylum Act.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

Persons who seek asylum in Serbia may be placed under detention in the 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, and where usually families who do not wish to apply for asylum are accommodated.⁴³² 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. The rooms were refurbished in the course of 2019.

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.

⁴³¹ Article 78(2) and (3) Asylum Act.

⁴³² However, in practice, it is rare that families are detained during the course of asylum procedure. Not a single case has been reported in the past couple of years.

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

2.2. Conditions in penitentiary facilities

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

The penitentiaries that are located in the border zones are the ones in which persons likely in need of international protection are 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.”⁴³³

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.⁴³⁴ NGOs specialised in asylum and migration issues are also entitled to have access to all the persons who enjoy the status of asylum seeker.⁴³⁵ 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.⁴³⁶

⁴³³ 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.

⁴³⁴ Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

⁴³⁵ Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

⁴³⁶ 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 from the delivery of the decision.⁴³⁷ The appeal against the Asylum Office's detention decision does not have suspensive effect.⁴³⁸

Since the decision is drafted in the Serbian language, and if the foreigner does not have 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.⁴³⁹

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 in detention at the Detention Centre for Foreigners, it is impossible to form a clear picture of the current state of affairs in this field. In practice, the length of stay of asylum seekers in detention is short and in BCHR's experience, up to 2 weeks.

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.

⁴³⁷ Article 78(5) Asylum Act.

⁴³⁸ Article 78(6) Asylum Act.

⁴³⁹ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 14.

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 right to permanent residence under the Asylum Act,⁴⁴⁰ 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.⁴⁴¹

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? | Not available |
| 2. Number of citizenship grants to beneficiaries in 2019: | Not available |

Under the new Asylum Act, the Republic of Serbia shall ensure conditions for naturalisation of refugees, commensurate to its capacity.⁴⁴² The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal of CRM.⁴⁴³ However, the Citizenship Act⁴⁴⁴ and Foreigners Act are not harmonized with the Asylum Act. Thus, none of these two acts recognize foreigners granted asylum as foreigners who are entitled to acquire Serbian citizenship.

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. The issue of naturalization was one the questions put forward by the Committee on Economic, Social and Cultural Rights.⁴⁴⁵

⁴⁴⁰ Article 60 Asylum Act.

⁴⁴¹ Article 90 Asylum Act.

⁴⁴² Article 71(1) Asylum Act.

⁴⁴³ Article 71(2) Asylum Act.

⁴⁴⁴ Official Gazette no. 135/04, 90/7 and 24/18.

⁴⁴⁵ CESCR, *List of Issues in relation to the third periodic report of Serbia**, 12 November 2019, E/C.12/SRB/Q/3, para. 12.

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.⁴⁴⁶

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.⁴⁴⁷

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.⁴⁴⁸

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.

⁴⁴⁶ Article 81(4), (5) and (6) Asylum Act.

⁴⁴⁷ Article 82 Asylum Act.

⁴⁴⁸ 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.⁴⁴⁹ 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.⁴⁵⁰

A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.⁴⁵¹

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.⁴⁵²

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.⁴⁵³ 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

⁴⁴⁹ Articles 70(1) and 9(2) Asylum Act.

⁴⁵⁰ Article 2(2) and (12) Asylum Act.

⁴⁵¹ Article 70(4) Asylum Act.

⁴⁵² Article 62 Asylum Act.

⁴⁵³ 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.⁴⁵⁴ 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.⁴⁵⁵

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.⁴⁵⁶ This provision is yet to be applied.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres? 1 year⁴⁵⁷
2. Number of beneficiaries staying in reception centres as of 31 December 2019: 2

The Commissariat for Refugees and Migration is responsible for ensuring temporary accommodation for persons who have been granted international protection.⁴⁵⁸ 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.⁴⁵⁹ 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. The CRM may provide them housing for temporary use or financial assistance which is used to cover the costs of temporary accommodation.⁴⁶⁰ 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, due to a lack of adequate housing capacities, the Commissariat usually resorts to financial assistance.⁴⁶¹ Also, it is possible that persons granted asylum could be allowed to stay in Asylum Centres for longer than year. Today, that is the case for only 2 refugees who have been living in Asylum Centre in **Banja Koviljača** for more than a decade. Also, it is important to highlight that only 156 persons were granted asylum in Serbia between 2008 and 2019. At least 40% to 50% of them have left. Additionally, a

⁴⁵⁴ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

⁴⁵⁵ Seraj Eddin v. Serbia, Application No 61365/16, Communicated to the Government on 23 February 2018.

⁴⁵⁶ Article 91(3) Asylum Act.

⁴⁵⁷ Article 61 Asylum Act.

⁴⁵⁸ Article 23 Asylum Act.

⁴⁵⁹ Official Gazette no. 63/15 and 56/18, hereinafter: Accommodation Decree.

⁴⁶⁰ Article 2 (1) Integration Decree.

⁴⁶¹ Article 9 (1) Integration Decree.

significant number of them have already had enough resources for accommodation and very high level of integration since they are *sur place* refugees who have lived on different grounds in Serbia for years.⁴⁶² Thus, it is reasonable to assume that only handful persons granted asylum are eligible for the State funded accommodation.

In order to apply for the financial assistance, refugees are obliged to attend the Serbian language classes. The Asylum Act outlines that if a refugee fails to report to the Commissariat to attend Serbian language classes within 15 days from the final decision granting asylum or if he/she stops attending Serbian classes without a justified reason, he/she would lose the right to temporary accommodation assistance⁴⁶³

As for the practical obstacles in obtaining and enjoining state funded support, there are several issues detected in practice. The first one refers to the method of determining the amount of financial assistance. If an individual has no income or if his/her income does not exceed 20% of the minimum Republic of Serbia wage for the previous month, the value of financial assistance is equal to the established RS minimum wage per employee for the previous month. The Accommodation Decree does not provide for progressive assistance levels which would take in consideration the number of family members.⁴⁶⁴ Another challenge identified in practice concerns the necessity of paying the fee 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 sources⁴⁶⁵ and that he or she is registered as unemployed with the National Employment Service (NES).

In the first ten months of 2019, the Commissariat granted financial assistance for accommodation in 19 cases, which is higher than 2018 when financial assistance was granted 8 times.⁴⁶⁶

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.⁴⁶⁷ The Asylum Act guarantees equality in the rights and obligations of persons granted refugee status with those of persons granted subsidiary protection,⁴⁶⁸ even though the Employment of Foreigners Act (EFA) explicitly states that persons who have been granted subsidiary protection are to be issued personal work permits for the duration of that status.⁴⁶⁹ And finally, 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 of all the necessary documents for registration with the National Employment Service (NES), 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.⁴⁷⁰

The NES is tasked with issuing personal work permits which further allows refugees free employment, self-employment and the right to unemployment insurance.⁴⁷¹ This further provides foreigners who have

⁴⁶² Mostly Libyans and several Syrians and Iraqis.

⁴⁶³ Article 59 (4) Asylum Act.

⁴⁶⁴ Article 10 Integration Decree.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 162.

⁴⁶⁷ Article 65 Asylum Act.

⁴⁶⁸ Article 59 Asylum Act.

⁴⁶⁹ Article 13(6) Employment of Foreigners Act.

⁴⁷⁰ Article 7 Integration Decree.

⁴⁷¹ Article 12 EFA.

been granted asylum an unimpeded access to the labour market. The Rulebook on Work Permits⁴⁷² governs the procedure for issuing and extending work permits, as well as criteria that one must meet in order to receive the permit. In order to be issued with a personal work permit, in addition to a completed application, a person granted asylum needs to submit proof of payment of the administrative fee, a certified copy of the identity card and a certified copy of the decision granting asylum. This set of procedural requirements creates a serious set of bureaucratic obstacles for persons granted asylum in Serbia and disregards their unfavourable and vulnerable position.

The GAPA envisages that, in line with the principle of procedural efficiency and cost-effectiveness, the procedure for issuing work permits must be conducted without delay and at the least possible cost to the party. The competent authority is required to inspect, *ex officio* and in accordance with the law, the information related to the facts necessary for taking a decision which is available in the official records of different state authorities. It may request from the party such information as is necessary for its identification and documents confirming facts only if they are not available in the official records.⁴⁷³ Taking this in consideration, it can be reasonably assumed that an identity card for a person granted asylum should be considered as sufficient evidence of the legal status and should shift the bureaucratic burden on the NES to *ex-officio* obtain all other necessary documents from the MoI.

Another 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. Moreover, these obstacles push refugees to the so called “grey zone”, where they find employment without a work permit, which exposes them to various harmful practices which deprive them of the minimum wage and other employment rights.⁴⁷⁴ The fee that person granted asylum has to pay in order to obtain a work permit amounts to RSD 13.890,766 (119 Euros)⁴⁷⁵ plus the administrative fee which is RSD 320,00.⁴⁷⁶

In addition to being a prerequisite for foreigners to engage in employment in Serbia, a work permit is also a prerequisite for the registration on the NES unemployment register. This issue is relevant also for refugees wishing to exercise their right to accommodation in accordance with the law, as one of the requirements for accessing that right is evidence of registered unemployment. That is why such high costs are a major impediment for this vulnerable population. The GAPA stipulates exemptions from payment of the costs of procedure⁴⁷⁷ if the party cannot afford to bear the costs without endangering his/her subsistence or the subsistence of his/her family or if provided for in a ratified international treaty. In practice, this is possible only for persons staying in one of the Asylum or Reception centres. For persons staying in private accommodation, demonstrating the inability to afford the costs of procedure would require obtaining the opinion of a Social Work Centre and would cause additional delays in their access to the right to work or other related rights.

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 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.⁴⁷⁸

⁴⁷² Official Gazette no. 63/18, 56/19.

⁴⁷³ Article 9 GAPA.

⁴⁷⁴ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 170-171.

⁴⁷⁵ Fee Schedule No. 205 of the Law on Republic Administrative Fees.

⁴⁷⁶ Fee Schedule No. 1 of the Law on Republic Administrative Fees.

⁴⁷⁷ Article 89 GAPA.

⁴⁷⁸ 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 and 2019.⁴⁷⁹

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.⁴⁸⁰ 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.

It should be also born in mind that the support for accessing the labour market is solely provided by CSOs. In other words, state institutions still do not provide organised assistance to refugees for inclusion into the labour market, despite the provisions of the Integration Decree which stipulates such assistance.⁴⁸¹

In the first 10 months of 2019, NES issued 14 personal work permits to persons from the refugee category, and 115 to persons from the special category of foreigners.⁴⁸² In the same period of 2018, 6 personal work permits were issued to persons from the refugee category, and 71 to persons from the special category of foreigners.⁴⁸³

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.⁴⁸⁴ Specific degrees of education are regulated by the Law on Primary Education,⁴⁸⁵ the Law on Secondary Education,⁴⁸⁶ and the Law on Higher Education.⁴⁸⁷

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.⁴⁸⁸ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.⁴⁸⁹ A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.⁴⁹⁰ It is also important to highlight that primary school is free and mandatory, and that underage asylum seekers are to be ensured access to education immediately, and no later than three months from the date of asylum application.⁴⁹¹ Secondary education is also free of charge, but is not prescribed as mandatory.

The Integration Decree foresees assistance by the Commissariat for Refugees and Migrations to persons recognised as refugees in entering the educational system.⁴⁹² 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

⁴⁷⁹ BCHR, Right to Asylum in the Republic of Serbia 2019, 172-173.

⁴⁸⁰ National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

⁴⁸¹ Article 7 of the Integration Decree.

⁴⁸² Which encompasses persons granted subsidiary protection, asylum seekers and victims of human trafficking. Response by the NES following a request for information of public importance of 8 November 2019.

⁴⁸³ Response by the NES following a request for information of public importance of 8 November 2019.

⁴⁸⁴ Official Gazette, no. 88/17 and 27/18.

⁴⁸⁵ Official Gazette, no. 55/13, 101/17 and 27/18.

⁴⁸⁶ Official Gazette, no. 55/13, 101/17 and 27/18.

⁴⁸⁷ Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

⁴⁸⁸ Article 3(5) Law on Basics of the Education System.

⁴⁸⁹ Articles 55 and 64 Asylum Act.

⁴⁹⁰ Article 64 Asylum Act.

⁴⁹¹ Article 55 (2) Asylum Act.

⁴⁹² Article 2(4) Integration Decree.

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.⁴⁹³ However, the Government's Decision⁴⁹⁴ failed to recognize persons seeking or granted asylum as a categories entitled to free of charge textbooks. Thus, the Integration Decree is not harmonized with the Government's Decision governing free of charge textbook

The Professional Instruction on the Inclusion of Refugee/Asylum Seeker Students in the Education System of Serbia⁴⁹⁵ further regulates access to education for refugee children. If the refugee children have proof of prior education, the enrolment is made according to their age and level of education completed.⁴⁹⁶ On the other hand, if they do not have any proof of prior education, the enrolment is based on a test which has an aim to assess the level of their knowledge.⁴⁹⁷ For each student, the school is required to develop a Support Plan that should include the adaptation and stress management programme, the intensive Serbian language programme, individualised teaching activities programme, and the extracurricular activities programme.⁴⁹⁸

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.⁴⁹⁹ However, the problem regarding the validation lies in the fact that refugees must cover the costs of this process by themselves. For now, the costs of validation are covered by NGOs.⁵⁰⁰

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. 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.⁵⁰¹ 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.⁵⁰²

⁴⁹³ Article 6 Integration Decree.

⁴⁹⁴ Decision on Financing Procurement of Textbooks from the Budget of the Republic of Serbia for School Year 2019/2020, No. 451–2660/19, RS Government (Belgrade, 21 March 2019), Official Gazette no. 22/19.

⁴⁹⁵ Ministry of Education, Science and Technological Development Instruction No. 601-00–00042/17–2018 of May 2017.

⁴⁹⁶ *Ibid.*, pp. 1 and 2.

⁴⁹⁷ *Ibid.* p. 2.

⁴⁹⁸ *Ibid.* p. 3.

⁴⁹⁹ BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 87-88.

⁵⁰⁰ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 178,

⁵⁰¹ Article 4 Integration Decree.

⁵⁰² Article 5 Integration Decree.

The problems that arose in practice are related to all levels of education. For instance, a girl of Cameroonian origin was initially deprived of the possibility to receive subsidies from the City of Belgrade since she does not have Serbian citizenship. It took a year to secure her admission to a pre-school that was accompanied by the equal treatment as Serbian citizens in terms of the subsidies.⁵⁰³ Also, the textbook for primary and secondary education are not free of charge for refugee and asylum seeking children. A study conducted by the BCHR found only 14% of refugee and asylum seeking children attended school regularly.⁵⁰⁴ The reasons for this poor statistics lies in the fact that a language barrier still represent a major obstacle in exercising right to education effectively, but also the fact that the vast majority of children stay in Serbia temporarily. And finally, the nostrification of foreign diplomas or inability to obtain them from the country of origin.

The conclusion that can be made is that access to education is more or less adequately guaranteed in the legal framework, but an entire set of problems still exists in practice. The UN Committee on the Elimination of Racial Discrimination (CERD) urged Serbia to facilitate more effective inclusion of children, including migrants, to be included in primary education.⁵⁰⁵

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.⁵⁰⁶ The Social Welfare Act (SWA) 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.⁵⁰⁷ 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.⁵⁰⁸ This right is exercised through the provision of social protection services and material support.⁵⁰⁹ 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 (RSW).⁵¹⁰

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.⁵¹¹ 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.⁵¹² Once granted, the conditions for benefiting from social welfare are re-examined by the social welfare centre on an annual basis. The second instance body is the Minister responsible for social affairs.⁵¹³ One of the problems identified in practice is the extensive length for granting of the social welfare.⁵¹⁴

⁵⁰³ BCHR, *The Right to Asylum in the Republic of Serbia* 2019, 175-176.

⁵⁰⁴ *Ibid*, 177.

⁵⁰⁵ CERAD, *Concluding Observations on the Combined Second, Third, Fourth and Fifth Periodic Reports of Serbia*, 3 January 2018, CERD/C/Srb/Co/2–5, para. 27 (c).

⁵⁰⁶ Article 52 and 67 Asylum Act.

⁵⁰⁷ Article 2 Social Welfare Act, Official Gazette no. 24/2011.

⁵⁰⁸ Article 6 SWA.

⁵⁰⁹ Article 4 (2) SWA.

⁵¹⁰ Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

⁵¹¹ *Ibid*, Article 3.

⁵¹² *Ibid*, Article 8.

⁵¹³ *Ibid*, Article 9.

⁵¹⁴ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 181-182.

The conclusion that can be drawn is that provisions of the Asylum Act and RSW do not recognise the actual needs of both asylum seekers and persons granted asylum as a member of a particularly underprivileged group. The main reason for this claim lies in the fact that asylum seekers and persons granted asylum who are accommodated in Asylum Centres and who do not have sufficient means of livelihood are not eligible for social allowances.

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 18,000 RSD / 155 €. The amount is by no means sufficient to enable recipients to live even a modest existence in Serbia, but it is no less than may otherwise be provided to citizens of Serbia.

G. Health care

Asylum Act prescribes that right to a healthcare is guaranteed to all persons granted asylum and that all the costs of health care are covered by the State.⁵¹⁵ Additionally, foreigners' health care is also governed by the Health Care Act (HCA)⁵¹⁶ and the Health Insurance Act (HIA)⁵¹⁷ as well as the Rulebook on the Terms and Procedure for Exercising the Right to Compulsory Health Insurance (RHI).⁵¹⁸ HCA stipulates that refugees and asylum seekers are entitled to health care under equal terms as Serbian nationals.⁵¹⁹

HIA and RHI do not specify further the rights of refugees other than those from former Yugoslavian republics. Thus, the HIA does not recognise the refugees and asylum seekers referred to in the Asylum Act as a separate category of insured standard.⁵²⁰ The same conclusion can be drawn in relation to the Serbian Health Insurance Fund.⁵²¹ Hence, asylum seekers and persons granted asylum are not entitled to compulsory health insurance and issuance of health insurance cards.⁵²² In practice, they need to rely on NGOs and UNHCR to access health care facilities.

In general, appropriate enjoyment of the right to health care depends on the assistance of relevant CSOs and International Organizations.⁵²³

⁵¹⁵ Article 63 Asylum Act.

⁵¹⁶ Official Gazette no. 25/19.

⁵¹⁷ Official Gazette no. 107/25, 109/05 – correction, 57/11, 110/12 – Constitutional Court Decision, 119/12, 99/14, 123/14, and 126/14 – Constitutional Court Decision.

⁵¹⁸ Official Gazette no. 10/10, 18/10 – correction, 46/10, 52/10 – correction, 80/10, 60/11 – Constitutional Court Decision, and 1/13.

⁵¹⁹ Article 236, para. 1, and Article 239 of the Law on Health Care.

⁵²⁰ Article 11 HIA.

⁵²¹ Exercising the Right to Compulsory Health Insurance, Serbian Health Insurance Fund, Belgrade, May 2015, available (in Serbian) at: <http://bit.ly/33amche>.

⁵²² Article 25 HIA; see more in BCHR, *Right to Asylum in the Republic of Serbia* 2019, 184-185.

⁵²³ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 185-187.