

Country Report: Serbia



2020
Update

Acknowledgements & Methodology

This report was written by Nikola Kovačević independent expert and refugee lawyer from Serbia and with the help of the A11 - Initiative for Economic and Social Rights (A11), the Belgrade Centre for Human Rights (BCHR), Center for Research and Social Development IDEAS, Psychosocial Innovation Network (PIN) and Danish Refugee Council (DRC) and was edited by ECRE.

This report draws on authors and the above-enlisted CSOs' experience in providing legal, psycho-social and medical assistance to 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 2020, 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.

A11	A11-Initiative for Economic and Social Right
Afis	Automated fingerprint identification system
APC	Asylum Protection Centre
BVMN	Border Violence Monitoring Network
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
CHTV	Government's Centre for Human Trafficking Victims' Protection
Col	Country of Origin Information
CSO	Civil Society Organization
CRC	Committee on the Right of the Child
CRM	Commissariat for Refugees and Migration
Dol	Declaration of Intent for Lodging an Application on Asylum
DRC Serbia	Danish Refugee Council in Serbia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GAPA	General Administrative Procedure Act
HRC	Human Rights Committee
IDEAS	Centre for Research and Social Development IDEAS
IDP	Internally displaced person
Mol	Ministry of Interior
MYLA	Macedonian Young Lawyers' Association
NES	National Employment Service
NPM	National Preventive Mechanism
OKS	Specific Category of Foreigners Određena kategorija stranaca
PIN	Psychosocial Innovation Network
SWC	Social Welfare Centre
UAE	United Arab Emirates
UASC	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, but on the basis of information provided by the Asylum Office. 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: 2020

	Applicants in 2020	Pending at end of 2020	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	145	88	10	9	51	14.3%	12.9%	72.8%

Breakdown by countries of origin of the total numbers

Iran	29	N/A	3	1	12	19%	6%	75%
Syria	21	N/A	1	2	0	33.3%	66.7%	0%
Burundi	17	N/A	1	1	12	8%	8%	84%
Iraq	12	N/A	1	0	2	33.3%	0%	66.7%
Ghana	12	N/A	0	0	1	0%	0%	100%
Turkey	5	N/A	0	0	1	0%	0%	100%
Afghanistan	4	N/A	2	2	3	28.5%	28.5%	43%
Libya	4	N/A	0	0	1	0%	0%	100%
North Macedonia	4	N/A	0	0	2	0%	0%	100%
Somalia	3	N/A	0	2	1	0%	66.7%	33.3%

Source: UNHCR Office in Serbia.

Gender/age breakdown of the total number of applicants: 2020

	Number	Percentage
Total number of applicants	145	100%
Men	104	72%
Women	41	28%
Children	28	19%
Unaccompanied children	5	3,5%

Comparison between first instance and appeal decision rates: 2020

	First instance		Appeal ¹	
	Number	Percentage	Number	Percentage
Total number of decisions	70	100%	62	100%
Positive decisions	19	27.2%	10	16%
• <i>Refugee status</i>	9	14,3%	0	0%
• <i>Subsidiary protection</i>	10	12,9%	0	0%
Negative decisions	51	72,8%	52	84%

Source: UNHCR office in Serbia and Asylum Commission. Note that the 10 positive decisions at Appeals stage refer to appeals that were upheld and sent back to the Asylum Office, i.e. they did not grant international protection.

¹ This table does not contain the data on decisions in which Asylum Commission upheld an appeal and referred case back to the Asylum Office.

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/2lpyEP (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 previous version of this report was last published in **May 2020**.

Asylum procedure

- ❖ **Consequences of COVID-19 on the asylum procedure:** The COVID-19 measures severely impacted access to territory in the period March-May 2020. During the state of emergency which was in force from 15 March 2020 to 7 May 2020, registration and the first instance asylum procedure were suspended.
- ❖ **Access to the territory:** In 2020, the practice of push-backs and other forms of collective expulsion continued, especially on the southern border with North Macedonia where the Government has built a barbed-wire fence. A total of 361 persons were collectively expelled to **North Macedonia** according to UNHCR and its partners. A landmarking ruling of the Constitution Court of 29 December 2020 involving a collective expulsion of 17 Afghans in 2017 confirmed that illegal border practices have been carried out by the authorities. This decision is the first official recognition that relevant state authorities deny access to the territory and carry out collective expulsions in practice.
- ❖ **Push-backs from other countries to Serbia:** Wide-spread push-backs **towards** Serbia have been documented along the green border with **Bosnia, Croatia, Hungary** and Romania where refugees and asylum seekers are systematically denied access to the territory and the asylum procedure, and are often subjected to various forms of ill-treatment, some of which may amount to torture. In 2020, more than 25,000 refugees and migrants were collectively expelled to Serbia from these four countries. The persons pushed back to Serbia frequently face obstacles in accessing the asylum procedure, especially if they were previously registered according to the Asylum Act or Foreigners Act and then subjected to misdemeanour proceedings for irregular entry to the neighbouring countries (in particular Croatia) or issued with an expulsion decision.
- ❖ **Access to the asylum procedure at the airport:** Persons in need of international protection still face significant problems in accessing asylum procedure at the **airport Nikola Tesla**, where they are deprived of their liberty in an arbitrary manner and in conditions which could amount to inhumane and degrading treatment. They are frequently refused entry and returned to a third country or country of origin without any assessment on the risks of *refoulement*.
- ❖ **Registration:** The number of persons issued with registration certificate has significantly dropped from around 12,900 registration certificates in 2019 to only 2,800 certificates in 2020. In the Detention Centre for Foreigners, not a single person expressed an intention to lodge an asylum application in Serbia. Registration of asylum seekers was suspended for almost 3 months, during the state of emergency. Out of the 2,800 persons who obtained a registration certificate, only 145 persons officially lodged an asylum application. This figure implies that Serbia is still considered to be a transit country, but also that many persons in need of international protection face obstacles in registering and lodging their application for international protection.
- ❖ **Procedure at first instance:** The Head of the Asylum Office was changed twice in the fourth quarter of 2020, thereby leaving the determining authority without a person in charge for the beginning of 2021. The recognition rate of the Asylum Office at first instance has dropped to 27.2% in 2020 compared to 32.5% in 2020. The inconsistency in the decision-making process regarding similar cases (e.g. unaccompanied minors, Afghan applicants, converters from Islam to Christianity in Iran and LGBTQI and SGBV claims) has continued and the length of asylum procedure is still highly problematic as it reaches 8 to 12 months, or even more in certain cases. Nevertheless, some decisions of the Asylum Office demonstrated good practices, especially in relation to unaccompanied and separated children ('UASC'). However, the vast majority of asylum seekers decide to abscond during the asylum procedure before the first instance procedure is finalised, inter alia because of its length.

- ❖ **Procedure at second instance:** The Asylum Commission and Administrative Court continued their work without any obstacles, despite COVID-19 measures. The Asylum Commission rendered a record of 62 decisions, but none of them granted international protection and only 10 appeals were upheld (i.e. the cases were referred back to the Asylum Office). The third appeal authority, the Administrative Court, rejected all of the complaints. Not a single hearing of applicants was carried out by the appeal authorities. Thus, the Asylum Commission and Administrative Court continue to lack corrective influence over the decisions of the Asylum Office, meaning that the latter is the most effective RSDP authority and that persons who receive negative decisions at first instance have hardly any chance to overturn it at appeal stage.
- ❖ **Vulnerable applicants:** The practice of the Asylum Office regarding vulnerable applicants varied. While some improvements were noted for UASC, the opposite trend was noted for LGBTQI claims. Serbian asylum authorities have never granted asylum to a victim of sexual and gender-based violence. Moreover, even if the evidentiary activities conducted during the asylum procedure imply best interest determination for UASC (BID), psychological reports drafted by PIN and sometimes even medical and forensic medical documentation, there were many instances in which this evidence was disregarded. In general, a detailed vulnerability assessment is conducted only in relation to persons in need of international protection who are willing to lodge an asylum application in Serbia.

Reception conditions

- ❖ **Reception capacity and conditions:** In 9 out of 18 functional asylum and reception centres in 2020, a high rate of overcrowding was observed. While the official reception capacity reached 5,655 places according to the authorities at the end 2020, in practice the capacities are much more limited. Serbia can only host between 3,000 and 3,500 migrants, asylum seekers and refugees in order to comply with applicable housing and human rights standards. As of March 2021, several thousand refugees, asylum seekers and migrants were accommodated in tents or collective premises with dozens of bunk beds in unhygienic conditions, deprived of privacy and with access to insufficient number of sanitary facilities.
- ❖ **Freedom of movement:** The COVID-19 pandemic has severely impacted the right to freedom of movement of refugees, asylum seekers and migrants who were prohibited from leaving asylum and reception centres from 10 March 2020 to 14 May 2020, i.e. these centres were practically transformed into detention centres. The Constitutional Court dismissed initiatives for the review of constitutionality of the legal framework that had led to a collective detention of all refugees, asylum seekers and migrants residing in asylum and reception centres, which has further led to several applications being submitted to the European Court of Human Rights.
- ❖ **Inhumane and degrading treatment:** According to the National Preventive Mechanism (NPM), conditions in the reception centres of Obrenovac and Adaševci could have possibly amounted to inhumane and degrading treatment during the COVID-19 lockdown, confirming the findings published in the previous versions of this AIDA report. From 15 March to 7 May 2020, an emergency legal framework has led to a detention of more than 9,000 refugees, asylum seekers and migrants in 18 Asylum and Reception Centres in conditions that correspond to those that were criticised by NPM and which were contrary to COVID-19 recommendations of the World Health Organisation (WHO) and European Committee for the Prevention of Torture (CPT). This detention was described by CSOs as unlawful and arbitrary, but also contrary to derogation standards developed in the practice of the European Court of Human Rights (ECtHR). Issues of violence, ill-treatment and related incidents from reception staff continued to be reported throughout the year.

Detention of asylum seekers

- ❖ **Detention of asylum seekers:** The practice of the Detention Centre for Foreigners remained unchanged, and it is still safe to claim that Serbian authorities rarely detain asylum seekers. Nevertheless, people who may be in need for international protection but are not officially recognised

as asylum seekers can be detained under the Foreigners Act during the removal procedure. The Ministry of Interior does not publish statistics on detained foreigners nor is it willing to provide this data to CSOs. Detained individuals are also not provided any legal assistance in the forcible removal procedure.

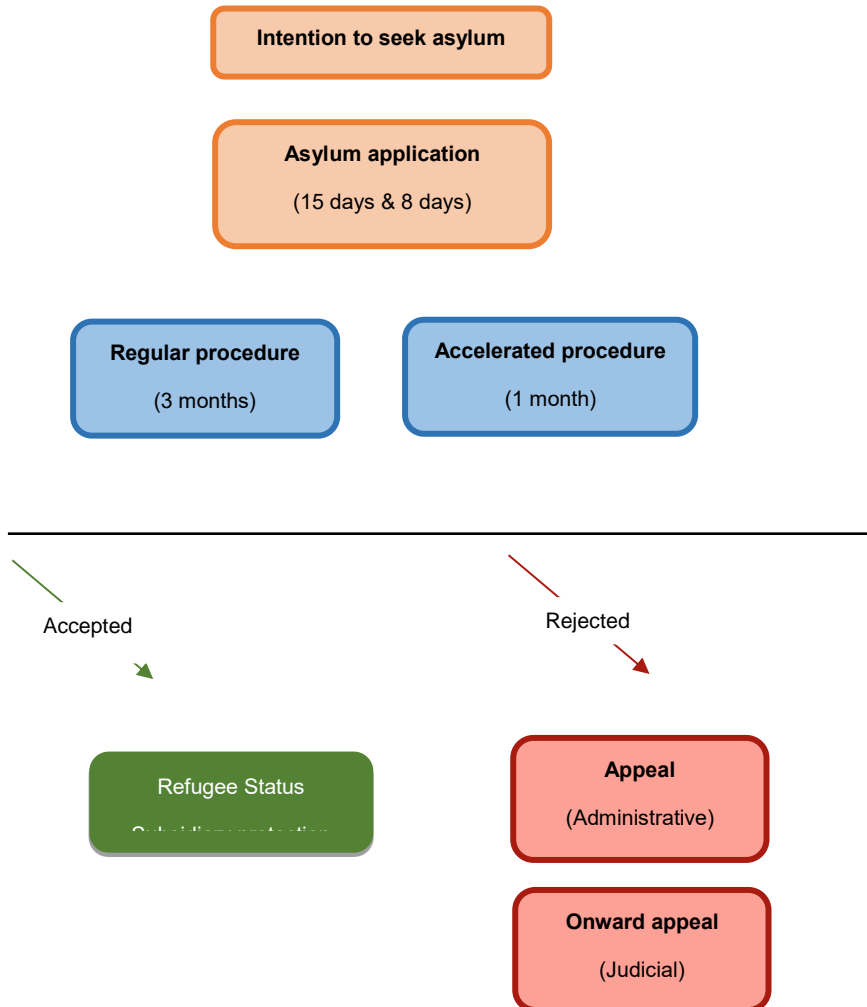
Content of international protection

- ❖ **Integration:** The integration of refugees and asylum seekers still largely depends on the assistance of CSOs, despite the clear mandate of the Commissariat for Refugees and Migration (CRM) to provide social, economic and cultural assistance. A11 reported the high rate of unemployment among persons granted asylum, but also flagged the lack of institutional support for asylum seekers. During the state of emergency refugee and migrant children were deprived of the possibility to attend school and to follow online lectures. Right to health was also severely impacted in 2020, both due to COVID-19 and the high rate of overcrowding in reception centres. According to the official data, less than 80 refugees, asylum seekers and migrants were infected during the course of 2020.
- ❖ **Travel documents:** In absence of a legal framework on travel documents for beneficiaries of international protection, which was due to be adopted 60 days after the entry into force of the Asylum Act in 2018, the loophole persists and the right to freedom of movement of persons granted asylum is still undermined.
- ❖ **Family reunification:** For the first time in 2020, a family reunification procedure was carried out in Serbia, allowing an Afghan refugee represented by the APC to reunite with his family in 2020. The procedure took 10 months but it is hoped that it will set precedent for future family reunification cases.

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: ² | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ³ | <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: ⁴ | <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 ⁵	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.⁶ 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 with former Gaddafi regime, and under Article 13 ECHR due to an alleged lack of effective remedy in Serbia.⁷ Eventually, they were granted subsidiary protection but their application is still pending before the ECtHR with regards to lack of an effective legal remedy (no suspensive effect) against an expulsion decision rendered on the basis of security reasons which have not been provided in the reasoning of the decision.⁸

² For applications likely to be well-founded or made by vulnerable applicants.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law.

⁵ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

⁶ Article 33 (2) Asylum Act.

⁷ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

⁸ See a similar case where the Court ruled that the right to an effective remedy under Article 13 of the ECHR was violated, ECtHR, *D and Others v. Romania*, Application No 75953/16, 14 January 2020, EDAL, available at: <http://bit.ly/3aBHWGZ>.

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.

As of the end of 2020, there were a total of 23 staff, of which:

Asylum Office staff: 2020	
Position	Number
Head of the Asylum Office	0
Head of the RSDP Department	0
Head of the Country of Origin Information Department	1
Country of Origin Information Officers	2
Registration Officers (Krnjača, Bogovađa and Banja Koviljača Asylum Centres)	3
Asylum Officers	11
Administrative Officers	4
Translators for English language	2
Total	23

Eleven asylum officers are in charge of the asylum procedure and for deciding on applications for international protection, out of which 7 have between 5 years and 10 years of experience. One of the asylum officers was on a maternity leave during 2020, while 2 asylum officers have left. Their decisions must further be confirmed by the Head of the Asylum Office. The increase of the capacity of the first instance body has slightly improved the effectiveness of asylum procedures in terms of more timely conduct of asylum interviews. However, it is still necessary to increase their capacities and in that way harmonise the practice, including among different asylum officers.

In September 2020, the Head of the Asylum Office was transferred to another position, and the new Head, without any prior experience was appointed. Moreover, the Deputy of the Head of the Asylum Office was transferred to another Department of the Ministry of Interior. In December 2020, the newly appointed Head of the Asylum Office was transferred again, leaving the Country-of-Origin Information Officer as an acting Head and an acting Deputy of the Head of the Asylum Office.

There is no quality assurance control in place and the practice of the Asylum Office is not publicly available for analysis. The Ministry of Interior (Mol) has stopped providing any data regarding asylum and migration issues in 2018, and the only available data can be extracted from legal representatives in asylum procedure and publicly available reports published by other State institutions such as the Ombudsman. The lack of quality assurance control and comprehensive analysis can be considered as one of the main reasons for contradicting decisions in the practice of Asylum Office, Asylum Commission and Administrative Court. However, it is fair to say that the Administrative Court has been the most transparent authority, always providing its judgments to CSOs and individual practitioners.

The specialisation and knowledge of the members of the Asylum Commission can still be considered inadequate for their role, since none of the current members have a strong background in refugee and international human rights law, except for the professor of the constitutional law from the Criminal-Police Academy appointed in 2019. Moreover, the Administrative Court judges still lack adequate resources to assess complaints lodged by asylum seekers and their legal representatives and are yet to undergo a certain level of reorganization which would lead to a situation in which certain judges will specialise in asylum and migration issues.

5. Short overview of the asylum procedure

The right to asylum is enshrined in Article 57(1) of the Constitution of the Republic of Serbia (Serbia).⁹ The constitutional appeals submitted by asylum seekers to the Constitutional Court (CC) are also examined under Article 25 which prohibits torture and inhumane or degrading treatment or punishment. 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 2018.¹⁰ Additionally, relevant are the Foreigners Act,¹¹ the General Administrative Procedure Act (GAPA)¹² and the Administrative Disputes Act.¹³ GAPA act as *legi generali* with regard to the Asylum Act and Foreigners Act in their respective subject matter, as well as the Migration Management Act,¹⁴ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees, alongside the Decree on the Manner of Involving Persons Recognised as Refugees in Social, Cultural and Economic Life (Integration Decree).

The Asylum Act introduced in 2018 has now been applied on all asylum applications. All the procedures initiated under the old Asylum Act from 2008 have been finalized by the end of 2019.¹⁵ Thus, all the novelties, except for border procedure, are generally applied in practice.¹⁶ In 2021, the Government plans to amend the Asylum Act. The dialogue on the amendments is yet to be initiated by the Ministry of Interior. Nevertheless, it is not excluded that these amendments may be postponed to 2022 since the campaign for early Parliamentary elections will begin in December 2021.¹⁷ It remains unclear what these amendments will include.

The procedure for seeking asylum in Serbia is as follows: a foreigner may "express the intention to submit asylum application" 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 registration 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. It is not possible to express the intention in diplomatic or consular representations of Serbia. In other words, the potential applicant must be present on the Serbian territory or under an effective control of Serbian Border Police or other state authority.

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. It is also possible to lodge a written application. 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

⁹ '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).

¹⁰ Official Gazette no. 24/2018.

¹¹ Official Gazette no. 24/2018.

¹² Official Gazette no. 18/2016 and 95/2018.

¹³ Official Gazette no. 111/2009.

¹⁴ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

¹⁵ AIDA Country Report Serbia, 2019 Update, May 2019, p. 32.

¹⁶ Ibid., p. 18 and 19.

¹⁷ N1, Vučić: Vanredni parlamentarni izbori najkasnije 3. aprila 2022, 20 October 2020, available at: <http://bit.ly/3pJn6eW>

decision. This deadline could be extended up to 9 months. In the case of a negative decision, asylum seeker has the possibility to lodge an appeal to the Asylum Commission and onward appeal to the Administrative Court. Both remedies have automatic suspensive effect.

The last instance in Serbian legal system is the Constitutional Court of the Republic of Serbia ('CC'). The constitutional appeal does not have an automatic suspensive effect. It is possible to lodge a request for interim measures to the CC, but several cases, which implied forcible removal, have shown that this mechanism is weak and slow,¹⁸ which was accepted by the ECtHR which granted interim measures submitted by Serbian lawyers on at least 8 occasions.

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. However, Serbia has concluded the Readmission Agreement with the European Union¹⁹ as well as North Macedonia,²⁰ Albania,²¹ Montenegro²² and Bosnia and Hercegovina ('Bosnia').²³ As regards the Readmission Agreement with the EU, it is not operational since September 2015 and Hungary expels foreigners to Serbia in an informal manner, amounting to a push-back policy.

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
 - ❖ If so, who is responsible for border monitoring? ☒ National authorities ☐ NGOs ☐ Other
 - ❖ If so, how often is border monitoring carried out? ☐ Frequently ☐ Rarely ☒ Never

1.1. Access to the territory in the green border zone

Access to territory for persons in need of international protection has remained a serious concern in 2020, especially after August 2020 when Serbia has established a barbed wire fence at its southern border with North Macedonia.²⁴ This measure came as a surprise. Yet, beforehand, there had been several worth noting events that could have indicated the government's plans. Also, the COVID-19 pandemic was used as an excuse for imposing contentious border policies, including an absolute prohibition of entering on Serbian territory during the state of emergency that was in force from 15 March to 6 May 2020.²⁵ This had significantly decreased the number of entries of refugees and migrants to Serbia in the period March-May 2020.²⁶ Additionally, the practice of collective expulsions continued, regardless of the pandemic circumstances.²⁷

¹⁸ Constitutional Court, Decision No. UŽ 3548/2013, Decision of 19 September 2013, available in Serbian at: <http://bit.ly/3cG4bhy>.

¹⁹ Official Gazette no. 103/2007

²⁰ Radio Free Europe, Srbija i Makedonija potpisale sporazum o readmisiji, 4 October 2010, available at: <http://bit.ly/3kl8Od3> [accessed on 26 February 2021].

²¹ Official Gazette no. 7/2011.

²² Official Gazette no. 13/2013.

²³ Radio Free Europe, Srbija i BiH potpisale Sporazum o readmisiji, 5 July 2013, available at: <http://bit.ly/3dSKJ1F> [accessed on 26 February 2021].

²⁴ Radio Free Europe, Srbija diže žičanu ogradu na granici sa Severnom Makedonijom, 18 August 2020, available at: <http://bit.ly/3iDWyce> [accessed on 10 January 2021].

²⁵ Decision on the Declaration of the State of Emergency, Official Gazette no. 29/2020; IDEAS, *Hod po žici - uticaj epidemije zarazne bolesti COVID-19 na sistem azila u Republici Srbiji - U susret „drugom talasu“ - preliminarni nalazi*, March 2020, available in Serbian at: <https://bit.ly/2MNN1nt>, p. 18-19. hereinafter: *Hod po žici*.

²⁶ *Ibid.*, 32.

²⁷ *Ibid.*, p. 33-34.

In 2020, the number of registered arrivals decreased.²⁸ A total of 25,003 arrivals were registered by UNHCR and its partners, compared to 29,704 arrivals in 2019. It can be assumed that the number of entries of refugees and migrants has been constant in the past two years, and that the lower figures registered in the period March-May 2020 are due to the measures introduced during the state of emergency.²⁹ The number of arrivals per month was as follows:

Observed Arrivals in the period 2019-2020		
Month	Arrivals 2019	Arrivals 2020
January	629	1,700
February	819	2,633
March	1760	1,649
April	1,826	583
May	2,512	270
June	2,366	2,108
July	2,726	3,197
August	3,673	4,146
September	3,686	2,981
October	4,123	2,703
November	3,871	2,022
December	1,713	1,011
Total	29,704	25,003

Access to the territory in the context of COVID-19

The gradual introduction of harsher border policies started on 10 March 2020 when the Government adopted the Decision Pronouncing the Disease COVID-19 for Infectious Disease ('COVID-19 decision'),³⁰ which prohibited entry from countries such as **Italy, China, South Korea, Switzerland and Iran**. This list was extended on 12 March 2020 to all neighbouring countries, including **North Macedonia, Hungary, Bulgaria, Montenegro and Romania**,³¹ and eventually **Greece**.³² On 15 March 2020, the Government introduced an absolute ban on entry to Serbia.³³ Further, on 20 April 2020, the Government amended the Decree on Measures during the State of Emergency ('*Decree on the State of Emergency*') which was in force until 6 May 2020 and which stipulated that, due to the risk of 'mass and unauthorised crossing of the state border outside the place of border crossing', an occupation of the private land, along the border line with **Northern Macedonia and Bulgaria** will be conducted.³⁴ The last measure turned out to be the construction of a fence towards North Macedonia and under the pretext of COVID-19 prevention. On 13 May 2020, the COVID-19 decision amendments introduced a new condition for entering Serbia – namely the necessity to present a negative PCR test.³⁵ Eventually, Government abolished the Decision on Closing of the Border Crossings³⁶ and reintroduced a regular regime on 21 May 2020.³⁷

A common aspect to all the above-stated provisions on border control and entry to Serbia (which were in force from 15 March to 21 May 2020) is that none of them contained any guarantees and safeguards for foreigners who are in need of international protection or other humanitarian need and their treatment at the border in the context of their right to access territory. Not a single rule reflecting, for instance,

²⁸ The data on arrivals to Serbia is published by the UNHCR, available at: <https://bit.ly/2PirIAK>.

²⁹ Hod po žici, p. 26-31.

³⁰ Official Gazette no. 23/2020

³¹ The Decision on Closing of the Border Crossings, Official Gazette no. 25/2020

³² COVID-19 Decision, Official Gazette no. 23/220, 24/220, 27/220 i 28/220.

³³ *Ibid.*, Official Gazette no. 23/220, 24/220, 27/220, 28/220 i 30/2020.

³⁴ Article 3 (a) Decree on the State of Emergency Article.

³⁵ Point 4 (1) COVID-19 Decision.

³⁶ Official Gazette no. 76/2020.

³⁷ Hod po žici, p. 31.

recommendations of UNHCR³⁸ or from the European Commission³⁹ on the safe admission of persons in need of international protection, were introduced in the emergency legal framework. More precisely, there were no provisions highlighting the principle of *non-refoulement*, prohibition of discrimination and COVID-19 preventive measures.⁴⁰ The consequences of this framework are best shown by the number of entries in the period April-May, when only 853 refugees and migrants entered Serbia.

It can be concluded that, in the period from 15 March to 21 May 2020, the emergency legal framework completely neglected the safeguards crucial for effective access to territory for persons in need of international protection. The outcome of the emergency legal framework can best be depicted through the sharp drop in the number of registered arrivals in the period spanning from second half of March to the end of May.⁴¹

The fence towards North Macedonia and pushbacks

On 15 May 2020, the Ministry of Defence announced a public procurement for buying of 2,5 tons of barbwire for the purpose of fencing asylum and reception centres.⁴² Several CSOs, including A11 and PIN, swiftly reacted on the public statement, condemning such act and declaring it to be contrary to international human rights law.⁴³ Soon after the announcement of the public procurement, an online Portal *Direktno* announced that the Government of Serbia is planning to build a barbwire fence at borders with **Northern Macedonia** and **Bulgaria**.⁴⁴ At that time, it was not possible to confirm these news, but UNHCR partners had noticed that, during the state of emergency, the military started clearing the land in the border area with **North Macedonia**.⁴⁵ On 22 May 2020, the Ministry of Defence selected the private enterprise (*Žica Best*) to build the fence around asylum and reception centres.⁴⁶ However, on 31 May 2020, the Ministry has stopped the public procurement stating that the need for such measure had ceased to exist after the state of emergency was lifted.⁴⁷ In August 2020, *the Radio Free Europe* reported that Serbia had built the fence alongside the border with **North Macedonia**.⁴⁸ Not a single state official made comments on this act, except for the Commissar for Refugees, Mr. Vladimir Cucić, who stated in the documentary '*Pushbacks and Dangerous Games*' that the building of the fence is nothing more but 'a late reaction of Serbia' which has an aim to slow down new arrivals to Europe.⁴⁹

Reports on Pushbacks from Serbia to neighbouring states

The so-called Western Balkan route represents a region in which refugees, asylum seekers and migrants are systematically subjected to collective expulsions and ill-treatment by border authorities. In 2020, the presence of civil society organisations at the borders with **North Macedonia**, **Bulgaria** and **Montenegro**

³⁸ UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020, available at: <https://bit.ly/35P5UM2>, paras. 2 i 3, hereinafter: UNCHR COVID-19 Guidelines.

³⁹ European Commission, *COVID-19 Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy*, Brussels, 30 March 2020, C (2020) 2050 final, available at: <https://bit.ly/2XCbPJL>, hereinafter: EU COVID-19 Guidelines.

⁴⁰ UNHCR COVID-19 Guidelines, p. 1 and 2 and EU COVID-19 Guidelines, p. 5 and 6.

⁴¹ See the above Table.

⁴² Ministry of Defence – Public Procurement, *Material for Building the Barbwire Fence*, 15 May 2020, available in Serbian at: <https://bit.ly/2VzOTI6> [accessed on 10 January 2021]; Radio Free Europe, *Ministarstvo odbrane Srbije kupuje žilet žicu za ograđivanje centara za migrante*, 20 May 2020, available in Serbian at: <https://bit.ly/2NGM51c> [accessed on 10 January 2021].

⁴³ Radio Free Europe, *Grupa NVO u Srbiji: Obustaviti tender za žilet žicu*, 21 May 2020, available in Serbian at: <https://bit.ly/38ibYOc> [accessed on 10 January 2021].

⁴⁴ *Direktno, Srbija zbog migranata diže zid prema Bugarskoj i Makedoniji!*, 10 June 2020, available at: <https://bit.ly/3gdzOgS> [accessed on 10 January 2021].

⁴⁵ Most probably in line with Article 3 (a) of the Decree on the State of Emergency.

⁴⁶ *The Best Wire*

⁴⁷ Radio Free Europe, *Ministarstvo odbrane Srbije obustavilo kupovinu žilet-žice*, 20 May 2020, available at: <https://bit.ly/31Ax3II> [accessed on 10 January 2021].

⁴⁸ Radio Free Europe, *Srbija diže žičanu ogradu na granici sa Severnom Makedonijom*, 18 August 2020, available at: <http://bit.ly/3iDWyCe> [accessed on 10 January 2021].

⁴⁹ Bojana Lekić, *Pushback and Dangerous Games*, Brendon Production, available at: <https://bit.ly/368FJkK>, 36:14.

was limited.⁵⁰ In other words, there is no effective border monitoring mechanism established in Serbia with an aim to closely and frequently observe the situation at entry borders. Still, UNHCR and its partners have continued to report on incidents involving pushbacks and collective expulsions to **North Macedonia**.⁵¹

On the other hand, there are no recent reports on pushbacks and collective expulsions committed by Serbian border authorities in the green area with **Bulgaria** and **Montenegro**. This does not exclude a very high probability that such practice still exists. It only indicates that the presence of CSOs at these borders has ceased to exist.

The findings of the Border Violence Monitoring Network (BVMN) and of UNHCR indicate that refugees and asylum seekers who were arriving from **North Macedonia** were subject to a short-term deprivation of their liberty, searches and a denial of access to basic rights.⁵² Next, they were removed and forced back to **North Macedonia** 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.⁵³ Another common trend detected in 2020 are collective expulsions to **North Macedonia** conducted directly from reception facilities, such as those in **Preševo** and **Tutin**.

According to UNHCR, at least 361 persons were collectively expelled to **North Macedonia** in the period from January – December 2020. More detailed reports on pushbacks to **North Macedonia** are solely published by the BVMN.

Pushbacks to North Macedonia in 2020	
January	27
February	40
March	6
April	27
May	0
June	0
July	10
August	22
September	0
October	159
November	30
December	40
Total	361

Source: BVMN.

One case deserves particular attention as it was documented by several CSOs. It relates to a group of 16 persons from **Morocco**, **Iran** and **Algeria** who were collectively expelled from the the asylum centre (AC) in **Tutin** to **North Macedonia**. Allegedly, the police told them that they will be transferred to the reception centre (RC) in **Preševo**. Instead, they were dropped off near a Macedonian village, **Lojane**. They were crammed into the police van and after they had arrived at the drop off point, several of them were threatened, slapped and punched. Later on, the same group was arrested by Macedonian police and

⁵⁰ These are the three countries from which more than 95% of persons in need of international protection are entering Serbia.

⁵¹ INDIGO acts as an implementing partner of UNHCR at the south of Serbia.

⁵² Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

⁵³ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

collectively expelled to **Greece**.⁵⁴ The group addressed several NGOs, including BVMN, BCHR and IDEAS.⁵⁵ The case was latter on referred to the Ombudsman by the BCHR.⁵⁶ The Ombudsman issued an extremely contentious Recommendation, stating that the MoI and Commissariat for Refugees and Migration (CRM) have failed to prevent 'uncontrolled movement' of migrants who were, according to the report, left in front of the RC in **Preševo** and then went to 'unknown direction'. This finding implies that the Ombudsman rejected as uncredible allegations of collective expulsion, even though the latter was provided with the phone number and location of victims.⁵⁷ However, the body never tried to collect testimony from these people, even though they managed to return to Serbia after several weeks and the Ombudsman was aware of their whereabouts.⁵⁸ This case displays a similar pattern as the case of collective expulsion reported by the APC in 2019.⁵⁹

BVMN described in detail four more pushbacks to **North Macedonia** in 2020, involving a total of 54 persons from **Afghanistan, Algeria, Morocco, Pakistan, Tunisia** and **Syria**. The first two incidents refer to April 2020, when 26 residents of RC in **Preševo** were taken from the camp and were collectively expelled to North Macedonia close to the Serbian border village **Miratovac**.⁶⁰ Two other reports were published in October 2020 outlining that refugees and migrants were taken respectively from AC **Tutin**,⁶¹ and the town **Preševo**,⁶² to the green border area with North Macedonia close to **Miratovac** village. APC reported pushback to **North Macedonia** in November 2020.⁶³ All the enlisted cases included different forms of ill-treatment, such as: slapping, kicking, hitting with the rubber truncheon, use of police dogs, etc. These reports suggest that collective expulsions continued to take place, regardless of the COVID-19 pandemic, and that particularly vulnerable foreigners in that regard are those who are placed in RC **Preševo** and AC **Tutin**.

Apart from BVMN, other CSOs which are present on a daily basis at reception centres in border areas have not published reports 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 major findings or testimonies by refugees and asylum seekers on this issue in 2019 and 2020.⁶⁴

All of 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.⁶⁵ In June 2020, it was published in the media that up to June 2020, 532 migrants were prevented from 'illegally' crossing the border.⁶⁶ In other words, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2020, and especially during the state of emergency when collective expulsions were not solely taking place at

⁵⁴ BVMN, *Pushed-back from a Camp in Serbia to N. Macedonia, and then to Greece*, 3 April 2020, available at: <https://bit.ly/2SRhfWJ>.

⁵⁵ *Hod po žici*, p. 34.

⁵⁶ BCHR, *Right to Asylum in the Republic of Serbia Periodic Report for January – June 2020*, July 2020, available at: <https://bit.ly/2Y8WDeA>, p. 21-25.

⁵⁷ Ombudsman, Recommendation No. 4232/127/2020, 7 October 2020, available at: <http://bit.ly/36nVVPp>.

⁵⁸ The author of this report informed the Deputy Ombudsman for Persons Deprived of Liberty on the whereabouts and the contact of victims since he was not able to visit them during the state of emergency and the curfew which implied official permission to move and reside outside the place of regular residency.

⁵⁹ AIDA, *Country Report Serbia*, 2019 Update, May 2019, p. 19 and 20.

⁶⁰ BVMN, *The Officers Encouraged the Dogs to Attack*, 17 April 2020, available at: <https://bit.ly/39ZgGSo> and *Serbian Authorities Place us 500m above the Border, they Beat you and Bring to the Border*, 17 April 2020, available at: <http://bit.ly/3iG53np>.

⁶¹ BVMN, *This gateway has been used to carry out pushbacks from north macedonia to greece repeatedly*, 22 October 2020, available at: <https://bit.ly/2LRrcTM>.

⁶² BVMN, *They told us to leave van one by one and all of them together beat us*, 20 October 2020, available at: <http://bit.ly/3iC1Oxa>.

⁶³ APC Twitter, available at: <https://bit.ly/3tnylGK>.

⁶⁴ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 16.

⁶⁵ AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 16-18 and AIDA, *Country Report Serbia*, 2019 Update, May 2020, p. 20-21.

⁶⁶ Blic, *Migranti i među lubenicama: carinici otkrili 532 "ilegalca", samo juče sprečeno 45 da uđe u srbiju*, 18 June 2020, available at: <https://bit.ly/3hly1f> [accessed on 10 January 2021]

the border, but were conducted in relation to the people residing in asylum and reception centres in the south of Serbia.

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.⁶⁷ These concerns have also been shared by the UN Committee against Torture (CAT),⁶⁸ and Amnesty International,⁶⁹ while UNHCR had reported this problem for the first time in 2012.⁷⁰ In 2015, the United Nations Committee against Torture (CAT) recommended that Serbia establish “formalised border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organisations.”⁷¹ To this date, Serbia has failed to establish an independent border monitoring mechanism and this issue will likely be raised at the forthcoming 2021 examination of Serbia by CAT.

One of the most important developments in 2020 is the decision of the Constitutional Court (CC), which confirmed that illegal border practices have been a state practice.⁷² This decision is the first official recognition that relevant state authorities denied access to territory and carried out collective expulsions.⁷³ On 29 December 2020, the CC adopted a constitutional appeal submitted by 17 refugees from Afghanistan who complained to have been collectively expelled to **Bulgaria** in February 2017.⁷⁴ The case concerned a forcible removal of 25 Afghan refugees (including 9 children) who entered Serbia from Bulgaria. The group was arrested by the border police officers and was detained for 12 hours in the basement of the Border Police Station **Gradina** in inhumane and degrading conditions.⁷⁵ Later on, they were taken to the misdemeanour court to face trial for illegal entry on Serbian territory. An acting judge dropped the charges stating that defendants are in need of international protection, that they should not be removed to **Bulgaria** due to poor living conditions in reception centres and because ‘they might be victims of human trafficking.’ The judge ordered the police to issue the applicants with registration certificates and to take them to asylum centres. Right after the trial, and upon being issued with asylum certificates, applicants were put in a van and, instead of being taken to the camp, they were taken to the green border area and collectively expelled to Bulgaria.

The Constitutional Court found that Gradina officers had violated applicants’ right to liberty and security (Article 27 (3) and Article 29 (1) of the Constitution)⁷⁶ by denying them the possibility to challenge the lawfulness of their detention with the assistance of competent legal representative. The Court dismissed applicants’ claim that the material conditions of the basement amounted to inhumane and degrading treatment stating that the period of 12 hours is not lengthy enough to reach the threshold of Article 25 of the Constitution (Article 3 of ECHR).⁷⁷ The Court has further found that it is an undisputable fact that applicants were expelled to **Bulgaria**. By applying the standards established in the ECtHR jurisprudence

⁶⁷ Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

⁶⁸ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

⁶⁹ 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.

⁷⁰ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

⁷¹ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

⁷² Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

⁷³ AIDA, *Country Report Serbia*, Update 2019, May 2020, p. 21.

⁷⁴ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

⁷⁵ DW, *Serbia: Court confirms illegal pushbacks into the EU*, 22 January 2021, available at: <http://bit.ly/3699fH8> [accessed on 24 January 2021]

⁷⁶ Which corresponds to Article 5 (4) of ECHR.

⁷⁷ Which will be further examined by the ECtHR, *Hajatolah and Others v. Serbia*, Application No 57185/17. The case is yet to be communicated to the Government.

in *Čonka*,⁷⁸ *Hirsi Jamaa*⁷⁹ and *Georgia v. Russia*,⁸⁰ the Court has determined that the applicants were expelled to Bulgaria outside any legal procedure, without examining individual circumstances of every applicant and without the possibility to provide arguments against their expulsion. The Court also awarded EUR 1,000 to each of the applicants⁸¹ This case is also pending before ECtHR.⁸²

Pushbacks to Serbia from neighbouring states in 2020

Wide-spread push-backs towards Serbia have been documented along the green border between with **Bosnia, Croatia, Hungary** and **Romania** where refugees and asylum seekers are systematically denied access to the territory and the asylum procedure, and are often subjected to various forms of ill-treatment, some of which might amount to torture.⁸³ In 2020, the UNHCR office in Serbia and its partners documented that 25,180 persons were pushed backs from **Croatia, Bosnia, Hungary** and **Romania, of whom** 13,459 persons was pushed back from **Romania**, 9,011 from **Hungary**, 1,975 from **Croatia** and 735 from **Bosnia**.⁸⁴

Month	Bosnia and Hercegovina	Croatia	Hungary	Romania
January	7	306	166	655
February	32	151	102	858
March	81	75	50	643
April	0	30	60	108
May	78	26	289	375
June	156	258	579	1,147
July	80	222	804	1,636
August	98	142	568	1,409
September	54	237	1,067	1,771
October	84	297	1,659	1,600
November	13	104	1,567	1,758
December	52	127	2,100	1,499
Total	735	1,975	9,011	13,459

Additional information on push-back practices to Serbia can be found in the other AIDA country reports on [Croatia](#), [Hungary](#) and [Romania](#).

As discussed below (see [Registration of the asylum application](#)), people pushed-back to Serbia frequently face obstacles in accessing the asylum procedure. In October 2020, a documentary 'Pushbacks and Dangerous Games' was broadcasted on N1 television. This documentary presented an overview of Croatian push back policies and presented several testimonies from refugees collectively expelled from **Croatia**. BVMN published 3 testimonies encompassing 30 people who were pushed back from **Hungary** to **Serbia**,⁸⁵ 9 testimonies involving 93 people who were **pushed** back from **Croatia**,⁸⁶ 3 testimonies referring to 67 persons who were pushed back from Romania,⁸⁷ and 2 testimonies given by 7 persons who were collectively expelled from **Bosnia**.⁸⁸ APC was also reporting on cases of collective expulsions which included severe forms of violence.⁸⁹ In November 2020, APC reported the following:

⁷⁸ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>.

⁷⁹ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

⁸⁰ ECtHR, *Georgia v Russia*, Application no 13255/07, Judgment of 3 July 2014, EDAL, available at: <http://bit.ly/3jgBhWs>.

⁸¹ Insajder, "Odluka Ustavnog suda potvrda da se migranti proteruju iz Srbije", 22 January 2021, available at: <http://bit.ly/39Wgl2U> [accessed on 24 January 2021].

⁸² AIDA, Country Report Serbia, 2019 Update, May 2020, p. 21.

⁸³ 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>.

⁸⁴ The entire statistical data has been provided by UNHCR office in Serbia.

⁸⁵ The testimonies are available at: <https://bit.ly/36aGo55>.

⁸⁶ The testimonies are available at: <https://bit.ly/2KJPezk>.

⁸⁷ The testimonies are available at: <https://bit.ly/3sTBq6z>.

⁸⁸ The testimonies are available at: <https://bit.ly/2NA7uwf>.

⁸⁹ APC Twitter, available at: <https://bit.ly/3oNZJ2L>; <https://bit.ly/39NKFxH> and <https://bit.ly/3avBZex>.

‘Croatian police continue with violent pushbacks. A group of people from Afghanistan described how they were forced to take their clothes and shoes off, and were pushed back to **Serbia**, near **Batrovac**, only in their underwear. Beating, shooting, breaking of phones and seizing money is an everyday practice of the Croatian police.’⁹⁰

It is noteworthy that in 2020 access to the territory and asylum procedure in **Hungary** was made possible only through a consulate in **Belgrade**.⁹¹ The new procedure in practice implies that persons in need of international protection have to send an email and schedule an appointment at the Consulate and to wait to be summoned in order to submit the Declaration of Intent for Lodging an Application on Asylum (‘DoI’).⁹² The new procedure is described in detail in the AIDA report on **Hungary**. According to the data obtained by IDEAS, more than hundred applications (individuals and families) have sent an email to the Consulate asking for the appointment. Only handful of them received the response stating that they are included on the list, and even less were invited to Consulate premises to lodge DoI. Only one family of Iranian converters from Islam to Christianity have entered Hungary in 2020, while many other families were rejected. IDEAS and InfoPark were providing technical assistance to those foreigners interested in applying for asylum. The problems which were detected are the following:

- DoI formulars are in English, which represents a serious obstacle for most of the applicants
- filling of the DoI formulars requires at least basic knowledge on refugee and asylum law
- many of the applicants do not know how to use email and how to communicate with the Consulate in order to schedule the DoI submission or to lodge DoI submission
- the communication with the Consulate is in English and most of the applicants do not understand this language
- several applicants have failed to appear at the scheduled meeting since they did not understand the message received *via* email from Consulate or because they do not know how to use an email
- there is no clear criterion on who will be invited to submit DoI, which creates distress and conflicts among applicants who are aware of each other applications
- persons who are informed that they are rejected are not advised that they are entitled to lodge an appeal and are not familiar with the Hungarian legal framework governing the appeal stage, neither are Serbian lawyers
- persons who are rejected are not legally competent to legally challenge the negative decision/response of the Consulate

Additional issues on the new procedure are documented in the AIDA report on **Hungary**. To conclude, persons interested to submit DoI at Hungarian consulate do not have effective access to asylum procedure, and it is clear that this mechanism has showed to be theoretical and illusory for all except one family from Iran who was allowed to access Hungarian territory. Many people who sent an email to the Consulate are without any legal status but are allowed to reside in the asylum or reception centres. They are in the same situation as thousands of other foreigners who do not enjoy any legal status and whose stay in Serbia is tolerated.

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

⁹⁰ APC Twitter, available at: <https://bit.ly/3jhWXkZ>.

⁹¹ ECRE, *Hungary: New Law on the Lodging of Asylum Applications at Embassies*, 19 June 2020, available at: <http://bit.ly/2MRn0mX>.

⁹² Available at: <https://bit.ly/3jiyD2h>.

put in practice and it triggers debates in both Austria,⁹³ and Serbia.⁹⁴ As of December 2020, this agreement has not been applied in practice.

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 2020.⁹⁵ BPSB issued only 44 certificates on intention to submit asylum application ('registration certificate'), which represents a further decrease in comparison to previous year when 68 registration certificates had been issued.⁹⁶ To a certain extent, the lower number can be attributed to the fact that air traffic was limited in 2020 due to COVID-19 circumstances. 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 concerning issue remains unlawful and arbitrary deprivation of liberty and the manner in which decisions on refusal of entry are being issued.⁹⁷

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.⁹⁸ Their detention can last from several hours up to several weeks. However, BPSB does not consider them as persons deprived of their liberty since there are no legal grounds in the current legal framework which governs foreigners stay in the transit zone. Thus, BPSB 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.⁹⁹

In June 2019, the Constitutional Court (CC) dismissed as manifestly unfounded BCHR's constitutional appeal submitted on behalf of Iranian refugee H.D.¹⁰⁰ 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 CC's reasoning gives serious reason for concern and indicates the lack of capacity of this body to examine violations of Article 5 of ECHR,¹⁰¹ in line with the criteria established in the jurisprudence of the ECtHR.¹⁰² 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,¹⁰³ using the subjective and objective criteria¹⁰⁴ such as the

⁹³ 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>.

⁹⁴ 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>.

⁹⁵ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 18-20.

⁹⁶ AIDA, *Country Report*, 2019 Update, p. 22.

⁹⁷ Article 15 *Foreigners Act*.

⁹⁸ Article 13(2) *Foreigners Act*.

⁹⁹ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15.

¹⁰⁰ Constitutional Court, *Constitutional appeal no 9440/16*, Decision of 13 June 2019.

¹⁰¹ Article 27 *Constitution*.

¹⁰² 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>.

¹⁰³ ECtHR, *Nolan and K. v. Russia*, Application No. 2512/04, Judgment of 12 February 2009, EDAL, available at: <http://bit.ly/36NVSdx>, para. 96.

¹⁰⁴ 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.

type, duration, effects and manner of implementation of the measure in question.¹⁰⁵ 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.¹⁰⁶ The case is yet to be communicated to the Government by the ECtHR.

The critical 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*.¹⁰⁷ More precisely, since the new Foreigners Act entered into force in October 2018, foreigners are issued a decision on refusal of entry in the procedure that lacks any guarantees against *refoulement*,¹⁰⁸ without the possibility to use services of a lawyer and an interpreter, and lodge an appeal with a suspensive effect.¹⁰⁹

According to the information provided by the Ombudsman,¹¹⁰ BPSB rendered 705 decisions on refusal of entry in the period 1 January to 1 October 2020, including for such nationalities as Turkey (104), Cuba (25), Libya (4) Palestine (1), Burundi (1) and Afghanistan (1).

During 2020, BCHR lawyers were denied access to the transit zone for most of the year, on the basis of COVID-19 restrictions. However, the practice from previous years remained unchanged and it is still necessary that the person who wishes to apply for asylum explicitly asks for Centre's support. Another CSO who occasionally has access to airport transit zone is APC, but no reports on their activities in this regard were published.

Still, 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, passport number and arrival flight details. Otherwise, the BPSB 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,¹¹¹ 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. This problem was highlighted by the European Commission.¹¹² Also, most of the interventions made by CSOs are conducted over the phone and there are almost no instances in which lawyers go directly to the transit zone in order to provide legal counselling. Thus, it cannot be claimed with certainty that asylum seekers are actually allowed to enter Serbia nor that the lawyers in general strive to stay touch with these people to ensure that they entered Serbia and to, challenge their arbitrary detention at the transit zone. Deeper communication is only established with foreigners who decide to submit asylum application.

¹⁰⁵ ECtHR, *Amuur v. France*, Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>, para. 42.

¹⁰⁶ ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

¹⁰⁷ ECtHR - Gebremedhin (Gaberamadhien) v France, Application No. 25389/05, Judgment of 26 April 2007, EDAL, available at: <http://bit.ly/2RwU82a>, para. 66-67.

¹⁰⁸ Article 15 Foreigners Act.

¹⁰⁹ 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.

¹¹⁰ Information was obtained in October 2020 by the Author of this Report.

¹¹¹ BCHR, Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020, available at: <https://bit.ly/2LZHGgW>, p. 12-13.

¹¹² European Commission, Progress Report: Serbia, 6 October 2020, SWD(2020) 352 final, available at: <https://bit.ly/2YaPjPJ>, p. 49.

It is important to reiterate that 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, APC or other CSOs or independent 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 stay on Serbian territory,¹¹³ 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, CSOs and representatives of the Ministry of Interior.

1.3. Refusal of entry under the Foreigners Act

Article 15 of the Foreigners Act 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,¹¹⁴ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant an entry, or if the international commitments of the Republic of Serbia indicate otherwise.¹¹⁵ The foreigner can lodge an appeal to the border authority against the decision,¹¹⁶ but the appeal does not have suspensive effect.¹¹⁷ This 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 suggests that this remedy is theoretical and illusory.¹¹⁸ The refusal of entry decision is mainly applied at the airport, as discussed in the previous section, but also at the official border crossings. Still, the MoI does not provide data on the number of refusals of entry at official border crossings.

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,¹¹⁹ specific position of people with disabilities,¹²⁰ family unity,¹²¹ etc. If necessary, during the return

¹¹³ ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

¹¹⁴ Article 15(2) Foreigners Act.

¹¹⁵ Article 15(3) Foreigners Act.

¹¹⁶ Article 15(6) Foreigners Act.

¹¹⁷ Annex 1 Regulation on the Refusal of Entry.

¹¹⁸ 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.

¹¹⁹ Article 75(1) Foreigners Act.

¹²⁰ Article 75(2) Foreigners Act.

¹²¹ Article 75(3) Foreigners Act.

procedure, an interpreter should be provided for a language that the foreigner understands, or is reasonably assumed to understand.¹²² 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.¹²³ 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.¹²⁴ 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.

Notwithstanding all the prescribed guarantees against *refoulement*, 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, as discussed above. Thus, after the 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 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.¹²⁵ 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.¹²⁶ 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).

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.¹²⁷ 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*.¹²⁸

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.¹²⁹

In February 2020, 3 **Cubans** who expressed the intent to apply for asylum were issued a decision on refusal of entry, and were returned, most likely, to **Russia**.¹³⁰ There were several instances of asylum seekers from India, for whom it remains unclear if they had been allowed to access asylum procedure.¹³¹

In October 2020, BCHR was contacted by a transgender person from Cuba which was allegedly issued with the registration certificate but failed to remain in touch with acting lawyers. Thus, since the

¹²² Article 75(5) Foreigners Act.

¹²³ Article 75(6) Foreigners Act.

¹²⁴ Article 83(2) Foreigners Act.

¹²⁵ ECtHR, *M.A. v. Lithuania*, para 83-84.

¹²⁶ See e.g. the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

¹²⁷ BCHR's email correspondence from 10 to 12 February 2019.

¹²⁸ CAT, *Concluding observations on the third periodic report of Qatar*, 4 June 2018, CAT/C/QAT/CO/3, para. 37-38 and 41-42.

¹²⁹ Registration Certificate No. 21/2019/2019 issued by BPSB on 21 February 2019.

¹³⁰ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020*, available at: <https://bit.ly/2LZHGSw>, p. 13.

¹³¹ *Ibid.*

interventions are made mainly over the phone, it cannot be excluded that foreigners are denied access to territory and asylum procedure, despite the information that legal representatives receive over the phone.¹³²

In February 2021, a political refugee of Kurdish origin from **Turkey** was refused entry, while A11 lawyers were denied access to the transit zone. Since it was the weekend, it was not possible to address the ECtHR and submit the Rule 39 request. Still, A11 managed to establish the contact with the person and will pursue his case further before the ECtHR.¹³³ Another similar case happened the following weekend, and it is obvious that Kurdish refugees from Turkey are at a very high risk of *refoulement* at the airport.

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. In practice, however, interpreters do not seem to be employed. 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*,¹³⁴ the Foreigners Act should be amended and automatic suspensive effect of the appeal against the decision on refusing the entry should be introduced and in order to meet the standard of effective remedy, as stated in the Court's judgment.

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
5. Can an application for international protection for international protection be lodged at embassies, consulates or other external representations? ☐ 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.¹³⁵ Foreigners may express intention to seek asylum to the competent police officers at the border or within territory either verbally or in writing,¹³⁶ including places such as prisons, the Detention Centre for Foreigners in **Padinska Skela**, airport transit zones or during court proceedings e.g. misdemeanour proceedings.¹³⁷ Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.¹³⁸

¹³² BCHR, Right to Asylum in the Republic of Serbia 2020, available at: <https://bit.ly/37Q36R2>.

¹³³ A11 Twitter, available at: <https://bit.ly/3bHKgfZ>.

¹³⁴ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹³⁵ Article 4(1) Asylum Act.

¹³⁶ Article 35(1) Asylum Act.

¹³⁷ Article 35(2) Asylum Act.

¹³⁸ Article 11 Asylum Act.

An authorised police officer shall photograph and fingerprint the person,¹³⁹ who will thereafter be issued a certificate on registration of a foreigner who has expressed intention to seek asylum ('registration certificate').¹⁴⁰ 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 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 MoI organisational unit where the officer who issued the registration certificate is employed.¹⁴¹ Registration certificates issued to foreigners who expressed intention are in Serbian and in Cyrillic alphabet. Given that the majority of foreigners do not understand Serbian and do not use the Cyrillic alphabet, as well as the fact that interpreters are rarely 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 and obligations specified therein.¹⁴² There were instances in practice where UASCs were issued registration certificates as adults, but were later identified as minors and registration certificates were corrected upon the request of Social Welfare Centre.

Over the course of 2019, the MoI issued a total of 12,937 registration certificates, which is a significant increase in comparison to 2018 (8,436). However, this number sharply dropped to 2,830 in 2020. The certificate was issued to citizens of Afghanistan (1,561), Syria (297), Pakistan (264), Iraq (102), Bangladesh (100), Iran (93), Morocco (64), India (49), Algeria (49), Palestine (43), Mali (27), Egypt (25), Somalia (18), Burundi (15), Eritrea (13), Ghana (11), Turkey (10), Cuba (10), Russia (9), China (6), Myanmar (4), Moldavia (3), Gambia (3), Bosnia (2), North Macedonia (2), Yemen (2), Senegal (2), Ukraine (2), Nepal (2) and 1 from Belarus, Antigua and Barbuda, Croatia, Angola, Albania, Bulgaria, Western Sahara, Jordan, Togo, Ethiopia, Guinea, Cote D Ivory, Nigeria, DR Congo,

The registration certificate in Serbia is not considered an asylum application and thus, individual who possesses asylum certificate is not considered to be an asylum seeker, but the person who intends to become one.¹⁴³ Therefore, expressing the intention to seek asylum does not constitute the initiation of the asylum procedure. It is, however, a precondition for lodging 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, which are usually other Reception Centres. The foreigner is obliged to report to such facility within 72 hours from the moment of issuance of the registration certificate.¹⁴⁴ 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.¹⁴⁵ He or she then risks

¹³⁹ Article 35(5) Asylum Act

¹⁴⁰ Article 35(12) Asylum Act.

¹⁴¹ Article 8 Rulebook on Registration.

¹⁴² See also BCHR, Right to Asylum in the Republic of Serbia 2019, 22-24.

¹⁴³ Article 2 (1) (4) Asylum Act.

¹⁴⁴ Article 35(3) Asylum Act.

¹⁴⁵ Article 35 (13) Asylum Act.

being penalised in the misdemeanour proceeding¹⁴⁶ and served with one of the expulsion decisions (decision on cancellation of residency¹⁴⁷ or return decision¹⁴⁸).

According to a Mol's letter sent to the BCHR, when issuing registration certificates and referring persons to one of the Asylum Centres or 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.¹⁴⁹ The letter also indicates that a brochure on asylum seekers' rights and obligations is being drafted and that it will be made available in all the organisational units of the Mol which issue registration certificates, and to the facilities for accommodation of asylum seekers and migrants.¹⁵⁰ 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 information collected from CSOs providing free legal aid, the multilingual information leaflets are still not available at police departments and police stations in charge for issuing registration certificates, nor do the police officers have at their disposal translators for the languages that asylum seekers usually understand.

Concerns in practice

According to the Asylum Office, one person cannot be issued with two or more registration certificates, but 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. Also, there were many instances in which the registration certificate which had expired was considered as valid and an individual was allowed to submit his or her asylum application.¹⁵¹ This possibility exists as long as asylum application has not been rejected, in which case asylum seeker may lodge a [Subsequent Application](#).¹⁵²

The above-described approach was taken by the Asylum Office in all the scenarios except in those in which foreigners receive the decision on cancellation of residency¹⁵³ or return decision.¹⁵⁴ In these kinds of situations, it is still not entirely clear whether or not Asylum Office and Mol consider that these people still have right to apply for asylum and the practice varies from one case to another. For instance, an unaccompanied child was allowed to submit asylum application regardless of the fact that he was served with two return decisions.¹⁵⁵ On the other hand, a boy from Afghanistan who was issued with the return decision was not allowed to access asylum procedure and submit his asylum application.¹⁵⁶

The lack of clarity with regard to access to the asylum procedure of people in need of international protection who are treated as irregular migrants (since they are issued with an expulsion order or penalised in the misdemeanour proceeding) gives reasons for concern. They could be forcibly removed to a third country (in the vast majority of cases to **Bulgaria** and **North Macedonia**) or even the country of origin in which they could be subjected to ill-treatment. Thus, it is very important to outline that the current practice of the most police departments in Serbia regarding the issuance of expulsion decisions 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

¹⁴⁶ Article 71 of the Border Control Act and Article 121 and 122 of the Foreigners Act and BCHR, *Right to Asylum in the Republic of Serbia -Periodic Report for January – June 2020*, available at: <https://bit.ly/3jiKT31>, p. 15-21.

¹⁴⁷ Article 39 (3) Foreigners Act.

¹⁴⁸ Article 77 (1) Foreigners Act.

¹⁴⁹ The letter from the Mol-Police Directorate-Border Police Administration No. 26-1991/18.

¹⁵⁰ Information provided by the Border Police, 6 December 2018.

¹⁵¹ A Pakistani national represented by independent attorney at law submitted asylum application in December 2020, regardless of the fact that his registration certificate 'expired'.

¹⁵² Article 46 Asylum Act.

¹⁵³ Article 39 Foreigners Act.

¹⁵⁴ Articles 74 and 77 (1) Foreigners Act.

¹⁵⁵ IDEAS lawyers submitted written asylum application in December 2020.

¹⁵⁶ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

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.¹⁵⁷

As it has been the case in previous years, the total of 2,830 certificates issued in 2020 does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia since only 145 of them officially lodged asylum application. However, the number of registration certificates issued in 2020 more realistically reflect the interest of foreigners in need of international protection to remain in Serbia.¹⁵⁸ 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 Mol does not adequately assess an individual's aspirations, i.e. whether or not they genuinely want to remain in Serbia. However, it is important to highlight that a person who possesses a registration certificate is not considered to be an asylum seeker, and thus is not recognised in the Asylum Act as person who is entitled to enjoy rights enshrined in Article 48. In other words, foreigners issued with registration certificates, but also those who are not registered at all, but are accommodated in Asylum or Reception centres, are in legal limbo. They are not entitled to any of the rights, including the right to reside in reception facilities administered by the CRM, but their stay has always been tolerated. Still, this indicates that the vast majority of persons in need of international protection lack legal certainty with regards to their status.

It is a common practice that persons who genuinely want to apply for asylum are referred to Reception Centres¹⁵⁹ instead of Asylum Centres (see section on [Housing](#)), thereby prolonging their entry into the asylum procedure. Consequently, CSOs providing legal assistance have to advocate for their transfer to one of the five Asylum Centres. This process can sometimes last for several weeks, which further delays access to the asylum procedure, and can cause frustration or discouragement to the applicants. APC even highlighted that asylum seekers referred to AC **Tutin** have been denied access to asylum procedure since Asylum Office has failed to visit this Centre in 2020.¹⁶⁰

One of the solutions for this problem would be that all genuine asylum seekers should be placed in the Asylum Centre in **Krnjača** or/and Asylum Center in **Banja Koviljača** which have the capacity to accommodate on an annual basis all persons who are interested in staying in Serbia, provided that the reception conditions in these centres address the issue of overcrowding.¹⁶¹ The Asylum Office shares these views, however, the CRM has been declining this without providing any reasonable explanation.

By placing all genuine asylum seekers in Krnjača or Banja Koviljača, 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 the same city, and thus would conduct the asylum procedure in a more effective manner, scheduling lodging of asylum applications and interviews faster and more often than it is the case now, especially in distant Asylum Centres such as **Sjenica** and **Tutin**;

¹⁵⁷ ECtHR, *Chahal v the United Kingdom*, Application no. 22414/93, Judgment of 15 November 1996, EDAL, available at: <http://bit.ly/2TGX4vU>, para. 96 and *D and Others v. Romania*, Application No 75953/16, 14 January 2020, EDAL, available at: <http://bit.ly/3aBHWGZ>.

¹⁵⁸ For instance, Mol issued 12,918 registration certificates in 2019, 7,638 in 2018, 6,200 in 2017 and 12,699 in 2016.

¹⁵⁹ 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.

¹⁶⁰ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

¹⁶¹ *Hod po žici*, p. 56-57.

- Genuine asylum seekers would have access to more effective legal counselling since the CSOs providing free legal assistance are based in **Belgrade** and can be present more often in the centre;
- 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.¹⁶²

Access to asylum procedure for persons expelled/returned from neighbouring States

It is important to reiterate that people expelled or returned from **Hungary, Croatia and Romania** informally or in line with the Readmission Agreement between the EU and the Republic of Serbia on the readmission of persons residing without authorisation¹⁶³ can face serious obstacles in accessing the asylum procedure. It is not clear what the official stance of Serbian authorities vis-à-vis such cases is, but there were several BCHR interventions in the past which show that access to asylum procedures may be impeded for people who were penalised in misdemeanour proceeding or were issued with an expulsion order.¹⁶⁴ In particular, 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.¹⁶⁵ Both of these decisions have the nature of an expulsion order. Therefore, if they decide to apply for asylum, they could be denied that possibility and will be further treated as irregular migrants¹⁶⁶ and 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**.¹⁶⁷

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 who was informally expelled from Hungary. M.W. was issued with the decision on cancellation of residency without presence of a legal guardian, legal representative, while the MoI 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 2019.¹⁶⁸ 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.

It is necessary that Asylum Office pass a clear message to all police departments that every person who expresses the intention to apply for asylum should be issued with a registration certificate.¹⁶⁹

The conclusion that can be drawn from the above-described practices is that 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 assurances¹⁷⁰ 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.¹⁷¹

¹⁶² *Ibid.*

¹⁶³ Available at: <https://bit.ly/2ScFtKK>.

¹⁶⁴ See more in AIDA, Country Report Serbia, 2019 Update, May 2020, p. 29

¹⁶⁵ Misdemeanor Judgment No. P 65/19 from 14 January 2019.

¹⁶⁶ 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.

¹⁶⁷ N1, 'Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda', 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

¹⁶⁸ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

¹⁶⁹ *Ibid.*

¹⁷⁰ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>, para. 121-122.

¹⁷¹ The cases of M.W. and USAC X. are the most striking examples of this practice.

To summarise, before returning asylum seekers back to **Serbia, Croatian, Hungarian, Romanian** 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, APC, IDEAS, HCIT or other lawyers who have demonstrated 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.

Even though APC and BCHR have continued to have effective access to the Detention Centre for Foreigners in Padinska Skela one case deserves a special attention and indicates the late reaction of lawyers, but also contentious practice of MoI which was observed by NPM which also failed to react and prevent an expulsion lacking procedural safeguards against *refoulement*. Namely, In August 2020, an Iranian family was forcibly removed to **Bulgaria** for the second time, even though they strongly objected to such act. Thus, they were denied the possibility to access asylum procedure or to legally challenge expulsion decision in the procedure where they will actively participate with the help of lawyer and interpreter.¹⁷²

Not a single registration certificate was issued by the Detention Centre for Foreigners in 2020.

It is also important to outline that, during the state of emergency, which was in force from 15 March to 6 May 2020, the registration procedure was suspended. Namely, on 18 March 2020, the Government adopted a Conclusion introducing the ban on the direct work with parties of all state authorities.¹⁷³ Thus, registration, which implies direct contact for the purpose of taking of biometric data and photographing of foreigners was halted. This standing was confirmed on 24 March 2020 when the Government adopted a Decision on the Status of Foreign Nationals¹⁷⁴ which also prohibited collection of biometric data, but also extended this legal regime was in force until 7 May 2020, after the Government adopted another Decree stating in Article 11 that all procedures regarding the determination of the status of foreigners will be continued within 30 days from the day when the state of emergency was lifted.¹⁷⁵

Thus, in the first 6 month, only 1,150 registration certificates were issued: January (290), February (400), March (149), April (0), May (71) and June (240). The last registration certificate in March was issued on 21 March 2020, while the first certificate after the state of emergency was issued on 16 May 2020.¹⁷⁶

Month	Total number of registration certificates	Airport	Detention centre in Padinska Skela	Border Area
January	290	3	0	49
February	400	25	0	14
March	149	5	0	14
April	0	0	0	0

¹⁷² The Ombudsman, *Тим Заштитника грађана у обављању послова НПМ обавио надзор над принудним удаљењем иранске породице у Бугарску*, 3 September 2020, available at: <http://bit.ly/3csPK0i>.

¹⁷³ Official Gazette no. 35/2020 and 27/2020.

¹⁷⁴ Official Gazette no. 27/2020.

¹⁷⁵ Official Gazette no. 66/2020.

¹⁷⁶ *Hod po žici*, p. 36.

May	71	0	0	11
June	240	0	0	69
July	253	1	0	161
August	681	0	0	478
September	382	1	0	284
October	173	5	0	0
November	97	2	0	0
December	94	2	0	0
Total	2,830	44	0	1,080

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.¹⁷⁷ 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.¹⁷⁸ The asylum procedure shall be considered initiated after the lodging of the asylum application form to the Asylum Office.¹⁷⁹

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 hundreds of cases in which the registration certificate is automatically issued, and the police officer of the Asylum Office is only present in AC in **Banja Koviljača**;
2. The capacities of CSOs 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 standing of the Asylum Office still implies flexible interpretation of Article 36, as it considers that the possibility to lodge an asylum application should 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

¹⁷⁷ Article 36(1) Asylum Act.

¹⁷⁸ Article 36(2) Asylum Act.

¹⁷⁹ Article 36(3) Asylum Act.

considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.”¹⁸⁰ 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 36.¹⁸¹ 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 2020, a total of 145 asylum applications were submitted. Out of them, 57 applications were submitted in writing and sent to the Asylum Office, while 88 were lodged directly in person. In the second half of 2020, the Asylum Office has started to conduct hearings based on the written asylum applications. This means that lodging of a written asylum application has started to function in practice. Also, formulars for written asylum applications were translated in languages such as Arabic, Farsi, Urdu, Pashto and were distributed to Asylum and Reception Centres, which means that foreigners can now lodge asylum applications by themselves. A total of five asylum seekers lodged written applications by themselves in 2020. The question that remains open is if asylum seekers would need a support to properly fill in the formulars.

Several weeks before, during and after the state of emergency, lodging of asylum application was suspended, even though it was possible to submit asylum application in writing. The same legal framework that enabled issuing of the registration certificates, enabled Asylum Office to facilitate the submission of asylum application in person (see [Registration of the asylum application](#)). However, the 15 + 8 deadline (even though it is not applicable in practice), was extended until 15th day from lifting of the state of emergency. This was introduced through the Government Decree on the Deadlines in the Administrative Procedure which was in force from 24 March to 7 May 2020.¹⁸² In practice, this implied that in the span from 12 March to the first week of June 2020, only one written asylum application was lodged.¹⁸³

Month	Asylum Applications	Written Asylum Application
January	6	6
February	14	4
March	9	3
April	0	0
May	1	0
June	6	1
July	3	3
August	9	7
September	17	2
October	9	11
November	2	6
December	13	13
Total	88	57

¹⁸⁰ ECtHR, *Jabari v. Turkey*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

¹⁸¹ AIDA, Country Report, 2019 Update, p. 31-32.

¹⁸² Official Gazette no. 41/2020 i 43/2020

¹⁸³ *Hod po žici*, p. 37.

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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of the end of 2020: | 88 |

The asylum procedure in Serbia is governed by the Asylum Act as *lex specialis* to the General Administrative Procedure Act (GAPA).

The Asylum Act provides that a decision on asylum applications in the regular procedure must be taken within a maximum period of 3 months from the date of the lodging of the asylum application or the admissible subsequent application.¹⁸⁴

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.¹⁸⁵ 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.¹⁸⁶ The applicant shall be informed on the extension.¹⁸⁷ According to the experience of BCHR lawyers, this notification was provided by the Asylum Office only on 2 occasions in 2020.

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.¹⁸⁸ Nevertheless, the decision must be taken no later than 12 months from the date of the application.¹⁸⁹ 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 is rarely used, and there is no official data that indicates that this possibility was used in 2020, regardless of the fact that the state of emergency was in force in the period 15 March 6 May 2020. 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 8 to 12 months, and even for more than a year in certain cases)¹⁹⁰ which discourages asylum seekers from considering Serbia to be a country of destination. APC and BCHR have submitted more than 10 appeals complaining about lack of response by the administration to the Asylum Commission and excessive length of first instance procedure.¹⁹¹

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;¹⁹² (b) a decision to reject the asylum

¹⁸⁴ Article 39(1) Asylum Act.

¹⁸⁵ Article 39(2) Asylum Act.

¹⁸⁶ Article 39(3) Asylum Act.

¹⁸⁷ Article 39(4) Asylum Act.

¹⁸⁸ Article 39(5) Asylum Act.

¹⁸⁹ Article 39(6) Asylum Act.

¹⁹⁰ BCHR, *Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020*, p. 24-25.

¹⁹¹ *Ibid.*

¹⁹² Article 34(1)(1)-(2) Asylum Act.

application;¹⁹³ (c) a decision to discontinue the procedure;¹⁹⁴ or a decision to dismiss the application as inadmissible.¹⁹⁵

The Asylum Act contains detailed provisions regarding the grounds for persecution,¹⁹⁶ *sur place* refugees,¹⁹⁷ acts of persecution,¹⁹⁸ actors of persecution,¹⁹⁹ actors of protection in the country of origin,²⁰⁰ the internal flight alternative,²⁰¹ and grounds for exclusion.²⁰² 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. If an applicant fails to do so, asylum officer has the possibility to render a decision in an accelerated procedure.²⁰³ 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 – as contained in various sources provided by international organisations including UNHCR and the European Asylum Support Office (EASO), and other human rights organisations;
3. the position and personal circumstances of the Applicant, including his or her sex and age, in order to assess on those bases whether the procedures and acts to which he or she has been or could be exposed would amount to persecution or serious harm;
4. whether the Applicant’s activities since leaving the country of origin were engaged in for the sole purpose of creating the necessary conditions to be granted the right to asylum, so as to assess whether those activities would expose the Applicant to persecution or a risk of serious harm if returned to that country...”²⁰⁴

Also, the benefit of the doubt principle (*in dubio pro reo*) 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.”

¹⁹³ Article 38(1)(3)-(5) Asylum Act.

¹⁹⁴ Article 47 Asylum Act.

¹⁹⁵ Article 42 Asylum Act.

¹⁹⁶ Article 26 Asylum Act.

¹⁹⁷ Article 27 Asylum Act.

¹⁹⁸ Article 28 Asylum Act.

¹⁹⁹ Article 29 Asylum Act.

²⁰⁰ Article 30 Asylum Act.

²⁰¹ Article 31 Asylum Act.

²⁰² Articles 33 and 34 Asylum Act.

²⁰³ Article 40 Asylum Act.

²⁰⁴ Article 32 Asylum Act.

Since 2017, the Asylum Office rendered the following decisions:²⁰⁵

First instance decisions by the Asylum Office: 2017-2020				
Type of decision	2017	2018	2019	2020
Grant of asylum	6	17	26	19
Rejection on the merits	11	23	54	51
Dismissal as inadmissible	47	38	10	2
Discontinuation	112	128	133	89
Total	176	206	223	161

Protection was granted to citizens of the following countries in 2020:

Countries of origin of persons granted refugee status / subsidiary protection: 2020		
Country	Granted refugee status	Granted subsidiary protection
Afghanistan	6	2
Iran	5	1
Syria	4	1
Burundi	2	2
Somalia	0	2
Stateless	2	0
Mali	0	1
Iraq	0	1
Total	17	12

Source: Asylum Office and UNCHR office in Serbia.

Asylum Office practice in 2020

In 2020, the Asylum Office delivered 161 decisions regarding 223 asylum seekers. Out of that number, 70 decisions regarding 101 asylum seekers were decided in merits, while in two 2 cases regarding two persons, a decision on dismissal was rendered. Asylum procedure was discontinued in 89 cases regarding 119 applicants and due to their absconding.

The first conclusion that can be drawn from these figures is that the number of total decisions has dropped by 28% in comparison to 2019 and was the lowest in the past 4 years. One of the main reasons for such state of affairs were circumstances caused by COVID-19, especially during the state of emergency which was in force from 15 March to 6 May 2020. Still, the trend from previous years has continued and the vast majority of applicants decided to abscond from asylum procedure before the decision in the first instance was rendered. This represents a total of 55% of all decisions rendered in 2020.

When it comes to decisions rendered on the merits, it can be concluded that rejection rate in 2020 was 73%, while the recognition rate was 27%. This represents 5,5% recognition drop in comparison to 2019.²⁰⁶ Refugee status was granted through 10 decisions (14,3%) encompassing 17 persons, while subsidiary protection was granted through 9 decisions (12,9%) encompassing 12 persons. The refugee status was granted to citizens of Afghanistan (6), Iran (5), Syria (4), Burundi (2) and 2 stateless persons. Subsidiary protection was granted to citizens of Afghanistan (2), Burundi (2), Somalia (2), Syria (1), Iraq (1), Iran (1) and Mali (1).

²⁰⁵ 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.

²⁰⁶ AIDA, *Country Report Serbia*, 2019 Update, p. 35.

Most of the decisions were rendered in relation to citizens of **Iran** – 17 regarding 33 applicants. Out of that, 4 decisions were positive, 1 application was dismissed, and 12 applications were rejected. Thus, the recognition rate for Iranians in 2020 was 25%.

Significant number of decisions was rendered in relation to **Burundians** – 13 regarding 18 applicants. Two applications were resolved positively, while 11 was rejected. One application was dismissed on the basis of the first country of asylum concept.²⁰⁷ Accordingly, recognition rate for citizens of Burundi in 2020 was 16%.

The third largest group of applicants whose cases were decided on merits are asylum seekers from **Afghanistan**, and the recognition rate for Afghanis in 2020 was 57%, which is higher than the past years, e.g. 50% in 2019), 4 asylum applications were adopted, while 3 were rejected. This also means that the 50% plus recognition rate exists only in relation to applicants from Syria and Afghanistan.

Asylum Office rendered one negative decision for the applicants from the following countries: Bangladesh, Bosnia, Bulgaria, Croatia, Ghana, India, China, Palestine, Nigeria, Libya and Turkey. Additionally, the first instance body rendered two negative decisions for the applicants from North Macedonia, Tunis and Iraq, three negative decisions with respect to Russian applicants and four negative decisions regarding Pakistani applicants.

The quality of the decision-making process in 2020 remained on the similar level as in 2019.²⁰⁸ The Asylum Office rendered 19 decisions in relation to 29 applicants granting them asylum. In those cases where Asylum Office granted refugee status or subsidiary protection the following can be observed:

- 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 (Col);
- 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 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 and invoking Article 17 which provides for special procedural guarantees for vulnerable applicants such as UASC;
- the safe third country concept was not applied in any of the said decisions and the reasoning of each decision contains a paragraph on why the country in which the applicant resided before coming to Serbia cannot be considered as a safe third country.

The Asylum Office rendered three decisions granting asylum to five Syrians.²⁰⁹ These decisions confirmed impeccable practice of this body when it comes to Syrian asylum applicants whose cases are decided on the merits. In other words, the Asylum Office has never rejected Syrian applicants and its practice reflects, for instance, UNHCR moratorium on returns to Syria,²¹⁰ or the current standing of ECtHR when it comes to the risks of treatment contrary to Article 2 and 3 of ECHR in case of removal to Syria.²¹¹ Nevertheless, the number of Syrian applicants in Serbia remains low.

²⁰⁷ Asylum Office, Decision No. 26-1515/19, 13 August 2019.

²⁰⁸ AIDA, *Country Report Serbia*, Update May 2020, p. 35.

²⁰⁹ Asylum Office, Decision No. 26-57/20, 23 October 2020.

²¹⁰ UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, Update V, 3 November 2017, available at: <http://bit.ly/3or74Vq>, p. 70.

²¹¹ ECtHR, *L.M. and Others v. Russia*, Application Nos. 40081/14 40088/14 40127/14, Judgment of 15 December 2015, EDAL available at: <http://bit.ly/3psdOE7> and *S.K. v. Russia*, Application No. 52722/15, Judgment of 14 February 2017, EDAL, available at: <http://bit.ly/3oqsouq>.

On 15 January 2020, the Asylum Office granted refugee status to a gay man from Iran qualifying him under the concept of the specific social group. From the reasoning of the decision, it can be seen that the Asylum Office assessed both individual and general circumstances in Iran, including relevant Col, psychological report of the applicant provided by PIN and other relevant evidence such as documentaries on the rights of LGBTQI people in Iran.²¹² This decision represents an example of good practice when it comes to LGBTQI claims,²¹³ but does not mean that practice regarding this category of applicants is impeccable.

On 13 February 2020, the Asylum Office granted subsidiary protection to a homeless boy from **Afghanistan** who fled Nirjab district in Afghanistan due to family issues which resulted in severe forms of domestic violence, but also situation of arbitrary violence and general insecurity.²¹⁴ However, the first instance body mainly relied on the situation of general violence in Afghanistan and more narrowly in Nirjab district, which was supported by a decent Col analysis and which eventually resulted in the decision on subsidiary protection. Asylum Office took in consideration the best interest of a child assessment (BID) provided by the boy's legal guardian from IDEAS. The similar attitude was detected in the decision of another Afghan boy who was granted subsidiary protection in October 2020.²¹⁵

Another welcome decision was rendered in relation to a **Palestinian stateless** boy from Syria who was granted refugee status due to persecution on the basis of his nationality (Palestinian) and membership in the particular social group (forced mobilization).²¹⁶ Even though the applicant turned 18 during the procedure, the Asylum Office once again relied on the 'buffer age' principle, taken in combination with PIN's report on his psychological well-being.²¹⁷ A similar decision was rendered in October 2020 when a **Palestinian stateless** boy was granted refugee status on identical grounds – forced mobilisation for the war in Syria by Hezbollah.²¹⁸

The Asylum Office granted refugee status to two women, torture victims from **Burundi**, who fled political persecution which arose from the period of political instability connected to 2015 protests against President Pierre Nkurunziza.²¹⁹ Similar decision was rendered in relation to another Burundian couple, but they were granted subsidiary protection because Asylum Office took a stance that there was no 'personal persecution', but the risk of ill-treatment can be attributed to the general situation of insecurity which ensued after the above-stated period of political instabilities.²²⁰

On 16 June 2020 Asylum Office granted refugee status to **Iranian** woman who converted from Islam to Orthodox Christianity upon arrival to Serbia.²²¹ It is interesting to note that Asylum Office assessed the appearance of the applicant who was, during the interview, wearing necklace with the cross, rosary and the pendants with the Virgin Mary. The first instance authority also assessed credible Col on the status of converters and Christians in Iran.

One of the most interesting decisions was rendered on 15 October 2020 when Hazari man from **Afghanistan** was granted refugee status due to persecution on the basis of his nationality and membership in a particular social group – child forcibly recruited by Taliban forces who was also a victim of *bacha bazi*.²²² In this decision, the Asylum Office explicitly invoked Article 17 which prescribes special procedural guarantees for vulnerable applicants and highlighted that these guarantees were secured by

²¹² Asylum Office, Decision No. 26-2467/17, 15 January 2020.

²¹³ See also, Asylum Office, Decision Nos. 26-1216/18, 26-1218/18 and 26-1219/18, 12 February 2019 and, Decision No. 26-1605/18, 15 March 2019; AIDA, *Country Report Serbia*, Update May 2020, p. 36.

²¹⁴ Asylum Office, Decision No. 26-1437/18, 13 February 2020.

²¹⁵ Asylum Office, Decision No. 26-2474/19, 15 October 2020.

²¹⁶ Asylum Office, Decision No. 26-218/19, 20 February 2020.

²¹⁷ AIDA, *Country Report: Serbia*, Update May 2020, p. 29-30 and UNGA, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, para. 28.

²¹⁸ Asylum Office, Decision No. 26-2063/17, 11 August 2020.

²¹⁹ Asylum Office, Decision No. 26-2328/19, 24 February 2020.

²²⁰ Asylum Office, Decision No. 26-1615/19, 16 June 2020.

²²¹ Asylum Office, Decision No. 26-1435/18, 16 June 2020.

²²² Asylum Office, Decision No. 26-2573, 15 October 2020.

the appointment of a temporary legal guardian. The first instance authority examined in detail Col submission provided by boy's representative and applied the 'buffer age' standard which is now cemented in Asylum Office's practice in cases where applicants turn 18 years during the course of asylum procedure.

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 (but rather granting subsidiary protection 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, especially in decisions on rejection.

One of the most contentious decisions rendered in 2020 refers to a boy from **Afghanistan** whose asylum application was rejected due to inconsistencies between three different assessments/statements given by PIN's psychologist, Social Welfare Centre worker in BID and the boy applicant himself during the asylum interview.²²³ First of all, the Asylum Office correctly determined that unaccompanied child from Afghanistan provided different information which were compiled in BID report, psychological report and which were stated during the asylum hearing and introduced in the minutes of the hearing signed by the applicant and his legal representative. Secondly, it is the legal representative who most likely did not prepare his client for an interview and who provided psychological report to the Asylum Office, obviously without reading it first. It remains unclear how the legal representative had failed to determine very obvious inconsistencies between minutes from the asylum hearing and psychological report drafted after the hearing. For its part, the Asylum Office failed to at least try to clarify the said inconsistencies and to schedule additional hearings of the boy, but also to question psychologist and social welfare worker. Also, it failed to examine this application from the child specific perspective, as it did in the case of a boy from Nirjab district who was granted subsidiary protection.²²⁴

Another decision which refers to an **Afghan** UASC was rendered in February 2020 and in which the risk of persecution was assessed in relation to the situation in Pakistan, not Afghanistan. Namely, the boy lived with his family in Pakistan as a refugee, and even though the boy explicitly expressed that the Taliban in Pakistan attempted on several occasions to recruit him and threatened him not to continue his education. From the reasoning of the decision, it cannot be seen in which way acting asylum officer assessed psychological report, decision on BID and Col which goes in favour of his claims. The first instance authority took a one-sided stance citing the Col sources which only go in favour or rejection and dismissed applicants' lawyers Col submissions on Pakistan. The 'buffer age' standard was not applied as well. This, and the previous decision, indicate a clear problem of contradicting practice when it comes to Afghan applicants and UASC.²²⁵

Even though Asylum Office rendered an excellent decision in relation to a gay man from **Iran** discussed above,²²⁶ there were three further decisions based on LGBTQI claims which were negative. One decision referred to a gay man from **Bosnia** whose asylum application was also rejected in the Netherlands.²²⁷ In two other, separate decisions,²²⁸ which are related to a gay couple from **Tunisia**, the first instance

²²³ Asylum Office, Decision No. 26-378/19, 11 February 2020.

²²⁴ Asylum Office, Decision No. 26-1437/18, 13 February 2020.

²²⁵ Asylum Office, Decision No. 26-374/18, 14 February 2020 and AIDA, *Country Report Serbia*, Update May 2020, p. 38.

²²⁶ Asylum Office, Decision No. 26-2467/17, 15 January 2020.

²²⁷ Asylum Office, Decision No. 26-2347/19, 8 June 2020.

²²⁸ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

authority rejected their applications as unfounded, stating that the state of human rights of LGBTQI in Tunisia has been significantly improving throughout the years, outlining the fact that even one of the presidential candidates openly declared as gay. However, the Asylum Office disregarded the fact that the Tunisian legal framework still stipulates ‘forced anal examination’ of people ‘suspected to be gay’ and criminalises homosexuality in its Criminal Code, prescribing the prison sentence of up to 5 years. The fact that both applicants were detained by the Tunisian police on several occasions on suspicion that they are gay was not disputed by the Asylum Office but was assessed as ‘not serious enough’ since both applicants avoided anal examination and were afforded lawyers. This interpretation gives serious reasons for concern since the threshold for persecution was set too high, and the Asylum Office failed to acknowledge that a very fact that someone who is suspected to be a gay can be taken to police custody, in combination with the risk of anal examination and criminal charges, undoubtably amounts to persecution.

These two decisions represent a worrying departure from a very decent practice with regards to LGBTQI applicants established back in 2013, when a Turkish gay couple was granted refugee status due to systemic discrimination and violence to which they were submitted in different places of residency.²²⁹ The Turkish legal framework is far more favourable than the Tunisian, but the interpretation of the Asylum Office from 7 years ago appears to be much more progressive than in these two decisions. In combination with another contentious decision of a transgender applicant from Iran rendered in 2019,²³⁰ the practice of the first instance authority regarding LGBTQI claims seriously deteriorated. It is also important to outline the lack of coordination between legal representatives in this case since Asylum Office was not aware until several weeks after the hearing that applicants are the couple. Thus, the recognition rate of LGBTQI applicants in 2020 was only 25%.

In January 2020, the Asylum Office rejected an application on the merits concerning a mother and daughter from **Iran**, who were obvious victims of gender-based violence and whose serious psychological state, confirmed in PIN’s report, accompanied by other evidence compiled in CoI submissions created a strong and credible asylum claim.²³¹ Before this decision, Asylum Office applied on two occasions the safe third country concept in relation to **Turkey**. After both decisions were overturned by the Asylum Commission, Asylum Office decided to reject application in merits. Mother and daughter eventually decided to leave **Serbia**. This case lasted for more than two years, several hearings took place, and several lawyers changed. Without any doubt, this case was permeated with acts which caused secondary traumatisation. Even though the mother had visible injuries and scares from the alleged violence, forensic medical examination was never conducted by either Asylum Office or one of several legal representatives.

Another highly problematic decision was rendered in August 2020 regarding a **Palestinian** man, who was wounded by Israeli army and then detained for several years.²³² According to an acting asylum officer, he did not provide enough evidence to support his claims. The relativisation of the treatment of Palestinians by Israeli armed forces which can be extracted from this decision is extremely concerning, but also the failure to undertake certain evidentiary activities, such as forensic medical examinations of wounds allegedly inflicted by Israeli army (bullet wounds).

Several other negative decisions were rendered in 2020, including the decision rejecting an application of two **Iranian** applicants who converted from Islam to Christianity.²³³ This decision confirms again an inconsistent approach taken by the Asylum Office in cases of converters from **Iran**.²³⁴ Another decision which, according to the applicant’s legal representatives, embodies an example of bad practice, was a rejection of asylum application of atheist activist from Iran who was publicly criticizing the system in Iran.²³⁵

²²⁹ Asylum Office, Decision No. 26-1280/13, 25 December 2013.

²³⁰ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

²³¹ Asylum Office, Decision No. 26-148/18, 27 December 2019.

²³² Asylum Office, Decision No. 26-2177/19, 20 August 2020

²³³ Asylum Office, Decision No. 26-1436/18, 21 February 2020.

²³⁴ AIDA, Country Report: Serbia, Update May 2020, p. 38.

²³⁵ Asylum Office, Decision No. 26-1986/18, 14 May 2020 and BCHR, *Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020*, p. 29-32.

Two families of Arab minority from Iran was rejected in February,²³⁶ and July 2020.²³⁷ Overall, this category of applicants in **Iran** are not considered as credible in the practice of the Asylum Office.

1.2. Prioritised examination and fast-track processing

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

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

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.²³⁸

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.²³⁹ 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.²⁴⁰ 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. This possibility has never been applied in practice.

The Asylum Act also specifies three situations when interviewing of applicants may be omitted, where:²⁴¹

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;²⁴²
3. The admissibility of a **Subsequent Application** is being assessed.

An applicant is entitled to request that an interview is to be conducted by the person of specific gender. The same rule applies to interpreters.²⁴³ In practice, asylum seekers often wait from several weeks to

²³⁶ Asylum Office, Decision No. 26-1994/18, 25 February 2020.

²³⁷ Asylum Office, Decision No. 26-1831/18, 30 July 2020.

²³⁸ Article 37(1) Asylum Act.

²³⁹ Article 37(2) Asylum Act.

²⁴⁰ Article 37(12) Asylum Act.

²⁴¹ Article 37(10) Asylum Act.

²⁴² Article 37(11) Asylum Act.

²⁴³ Article 16 (2) Asylum Act.

several months following the lodging of their application for an interview to be scheduled. Due to COVID-19 circumstances, this period has been extended for several months.

The Asylum Office conducted only 84 interviews in 2020, compared to 178 in 2019. The reason for this drop is mainly due to COVID-19 which suspended this stage of asylum procedure from second half of March until June 2020. The legal framework that stopped registration and lodging of asylum application produced identical consequences.²⁴⁴ Basically, except in February and October 2020, Asylum Office conducted less than 10 hearings per month.²⁴⁵

Month	Number of hearings in 2019	Number of hearings in 2020
January	16	5
February	32	20
March	16	9
April	26	0
May	12	0
June	3	3
July	9	1
August	6	1
September	19	8
October	17	23
November	8	7
December	14	7
Total	178	84

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.²⁴⁶

The costs of interpretation are covered by UNHCR and the interpreters are hired from their list. The interpreters are available for the following languages: English (31), Arabic (29), Farsi (17), French (13), Turkish (11), Russian (9), Spanish (8), Bengali (4), Kurdish (4), Urdu (4), German (3), Macedonian (3), Georgian (2), Bulgarian (2), Kirundi (2), Romanian (2) and Swahili (2). One interpreter is also available for each of the following languages: Albanian, Armenian, Azeri, Chinese, Dutch, Hazaragi, Hindu, Hungarian, Italian, Portuguese, Pashto, Polish, Somali, Turkmen and Uzbek.

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. There were several other instances in which lawyers failed to react and which had damaging consequences for the applicant. Such was the case of an Afghan boy who, according to his testimony given to his legal guardian, did not understand an interpreter for Farsi. His asylum application was rejected in the first instance,²⁴⁷ and the decision was upheld by the Asylum Commission.²⁴⁸ It remains to be seen if flaws in interpretation will be taken in consideration by the Administrative Court.

²⁴⁴ Hod po zici.

²⁴⁵ *Ibid.*

²⁴⁶ Article 13 Asylum Act.

²⁴⁷ Asylum Office, Decision No. 932/19, 30 September 2019.

²⁴⁸ Asylum Commission, Decision No. AŽ 38/19, 3 December 2019.

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.²⁴⁹ 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?

<ul style="list-style-type: none">❖ If yes, is it❖ If yes, is it suspensive	<table border="0"><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input type="checkbox"/> Judicial</td><td><input checked="" type="checkbox"/> Administrative</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> Some grounds <input type="checkbox"/> No</td></tr></table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds <input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No						
<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: 2-3 months

1.4.1. Appeal before the Asylum Commission

Appeals against Asylum Office decisions are reviewed by the Asylum Commission, a body comprising nine members appointed to four-year terms in office by the Government.²⁵⁰ 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.²⁵¹ 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, and was later replaced by the professor of Constitutional Law from the Criminal-Police Academy. The membership of the second instance body remained unchanged.²⁵²

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.²⁵³

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.²⁵⁴ 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. During the state of emergency, Asylum Commission delivered more decisions than in 2019. The main reason for this is because Asylum Commission has never held a hearing in order to directly determine the facts.²⁵⁵ However, it is welcome that, in the vast majority of cases, this body has been rendering decisions within two to three months.

When the Asylum Commission receives the appeal, it may render a different decision on the matter and substitute the impugned ruling with a new one, should it find the appeal well-founded and that it is unnecessary to conduct the procedure again.²⁵⁶ 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.²⁵⁷ In the event it does not reject the appeal,²⁵⁸ the Asylum Commission may itself decide on the administrative matter.²⁵⁹ It may also set aside

²⁴⁹ Article 63 GAPA.

²⁵⁰ Article 21(1)-(2) Asylum Act.

²⁵¹ Article 21(3) Asylum Act.

²⁵² AIDA, Country Report Serbia, Update May 2020, p. 40.

²⁵³ Article 95 Asylum Act.

²⁵⁴ Article 19 Administrative Disputes Act.

²⁵⁵ *Hod po žici*, p. 53.

²⁵⁶ Article 165 GAPA.

²⁵⁷ Article 165(2)-(3) GAPA.

²⁵⁸ Article 170 GAPA.

²⁵⁹ Article 171(5) GAPA.

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.²⁶⁰ The last possibility is the usual scenario, and since the establishment of the Serbian asylum system, the second instance body has rendered only three decisions granting asylum to applicants from **Somalia**,²⁶¹ **Libya**,²⁶² and **Iran**.²⁶³

Asylum Commission Practice in 2020

In 2020, the Asylum Commission took 62 decisions regarding 84 persons, which is an increase in comparison 2019 when 45 decisions were rendered. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 52 cases, while in only 10 cases the appeals were upheld, and the cases were referred back to the Asylum Office for further consideration. In 2020, the Asylum Commission did not render any positive decision, i.e. it did not grant international protection.

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.²⁶⁴ 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.²⁶⁵ This means that the Commission has limited corrective influence on the practice of the Asylum Office.

Since the Asylum Commission refused to share with the authors decisions rendered in 2020, which was not the case in previous years, only a few decisions will be shortly analysed below, in light of cases which were outlined in the previous updates of this AIDA report.

The Asylum Commission rejected the appeal of the transgender applicant from **Iran**, whose asylum application was rejected in November 2019,²⁶⁶ and confirmed the stance of the first instance authority that the fact that Iranian state authorities formally acknowledged her gender transition implies that she would be safe in Iran.²⁶⁷ However, the Asylum Commission, in the same manner as the Asylum Office, disregarded the threats and attacks she received from her family, but also from members of Iranian society and her former employer. The applicant was granted mandate status by the UNHCR, and will be resettled to another country. This decision adds up to negative practice of Serbian asylum authorities when it comes to LGBTQI claims.

Asylum Commission rejected appeals of the two **Afghan** boys whose case has already been described above. In the first case, where UASC's statements and circumstances were provided in a contradictory manner during the hearing, in BID and in the psychological report, the Asylum Commission had an ample opportunity to conduct the hearing and clarify the said inconsistencies.²⁶⁸ However, the Asylum Commission decided on the basis of the case files and rejected the appeal.²⁶⁹ This is an example of the lack of capacity of the Asylum Commission to have a corrective influence on the Asylum Office as in this case it would require carrying out a hearing and questioning the temporary legal guardian, the psychologist and the concerned boy, but also take into consideration the reflection on the previous practice of the Asylum Office in which UASC from Afghanistan were granted at least subsidiary protection. A similar stance could have been taken in another Asylum Commission's decision regarding an UASC from Afghanistan.²⁷⁰

²⁶⁰ Article 173(3) GAPA.

²⁶¹ Asylum Commission, Decision AŽ 25/09, 23 April 2010.

²⁶² Asylum Commission, Decision AŽ 06/16, 12 April 2016.

²⁶³ Asylum Commission, Decision AŽ , 2 September 2019.

²⁶⁴ This statement mainly refers to the BCHR's clients since the author had an opportunity to examine the entire case files.

²⁶⁵ Article 5 (3) GAPA.

²⁶⁶ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

²⁶⁷ Asylum Commission, Decision No. AŽ 44/19, 30 January 2020.

²⁶⁸ Asylum Office, Decision No. 26-1437/18, 13 February 2020.

²⁶⁹ Asylum Commission, Decision AŽ 13/20, 21 July 2020.

²⁷⁰ Asylum Commission, Decision AŽ 14/20, 9 July 2020.

Another contentious decision concerns an **Iranian** man whose asylum application was dismissed on the basis of the first country of asylum concept.²⁷¹ Namely, the applicant was granted UNHCR mandate refugee status, which raises a question if this fact can be a reasons to declare Turkey as a first country of asylum and if Turkey would be willing to admit the applicant back on its territory.²⁷² Other problems refer to general prospect of refugees in Turkey to enjoy rights enshrined in the 1951 Refugee Convention, which was not outlined by applicant's legal representatives nor taken into consideration by the asylum authorities *proprio motu*. Another decision in which the Asylum Commission relied on the first country of asylum concept refers to a gay applicant from **Burundi**, who was granted asylum in Uganda (see [First country of asylum](#)).²⁷³

Asylum Office rejected two appeals of Arab families from **Iran** who claimed that they have been the victims of systemic discrimination and were at the risk of ill-treatment due to their opposition to Government's policies regarding the Arab lands rich in oil.²⁷⁴ These two decisions imply that Arab applicants from Iran are not considered as credible in the practice of all three asylum instances.²⁷⁵

Finally, the Asylum Commission confirmed the flawed findings of the first instance authority regarding the safety of **Palestinians** living on the occupied west coast and failed to conduct the hearing of the applicant and order forensic medical examination in order to confirm his claim of having been wounded and tortured.²⁷⁶ In the last two case, the Commission missed an opportunity to remedy the flaws of both legal representatives and Asylum Office.

1.4.2. Onward appeal (“complaint”) before the Administrative Court

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.²⁷⁷ The first training was facilitated by the UNHCR in 2019, but the training planned for 2020 were postponed due to COVID-19 situation.

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.

According to the Asylum Act, the initiation of an administrative dispute has an automatic suspensive effect.²⁷⁸

²⁷¹ Asylum Office, Decision No. 26-788/19, 28 February 2020.

²⁷² Asylum Commission, Decision No. AŽ 17/20, 15 April 2020.

²⁷³ Asylum Commission, Decision No. AŽ 36/20, 4 December 2020.

²⁷⁴ Asylum Commission, Decisions Nos. AŽ 16/20, 15 April 2020 and AŽ 34/20, 15 September 2020.

²⁷⁵ See also the Chapter on the practice of the Administrative Court.

²⁷⁶ Asylum Commission, Decision AŽ 35/20, 2 November 2020.

²⁷⁷ 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.

²⁷⁸ Article 96 Asylum Act.

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 2020 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 three to four months for the Administrative Court to deliver its judgment, but there were instances in which the judgment was pending for a year or more.²⁷⁹

Administrative Court Practice in 2020

In 2020, the Administrative Court delivered 19 decisions regarding 25 persons. Out of that, 13 complaints were rejected and not a single complaint was upheld and referred back to the Commission or overturned and applicant was granted asylum. The Court also rendered 2 decisions rejecting the request for the reopening of asylum procedure²⁸⁰ and 2 decisions discontinuing asylum procedure upon the request of the applicant²⁸¹ or due to applicants' absconding.²⁸² It also dismissed one request for interim measures as manifestly unfounded²⁸³ and one objection regarding the issuance of asylum ID card.²⁸⁴

Administrative Court rejected 6 complaints lodged by 9 **Iranian** applicants. In one of the decisions, the applicants claimed that as atheists,²⁸⁵ they would face arbitrary detention and ill-treatment in case of their return to Iran. This decision implies that Iranian atheists' claims are not considered as credible in all three instances.²⁸⁶ In the second case the applicant claimed problems related to his corruptive activities with Sepah, but the Court took a stance that he failed to provide sufficient and individual evidence.²⁸⁷ Another judgment was rendered in relation to **Iranian** Arabs, who claimed to be systematically discriminated against. However, the Administrative Court confirmed the negative decision of Asylum Commission.²⁸⁸ This decision confirm a clear stance of the Asylum Office, Asylum Commission and the Court with regard to all Arab asylum applicants who claimed persecution on the basis of systemic discrimination they face in their country of origin.²⁸⁹ The Administrative Court automatically applied the safe third country concept in relation to **Bulgaria**,²⁹⁰ and in that way continued this flawed practice which lack individual guarantees obtained from Bulgaria and regarding the applicant's access to territory and asylum procedure.²⁹¹ The Court also rejected the complaint of Iranian family who converted from Islam to Christianity, stating that applicants had failed to provide sufficient evidence that their conversion could trigger acts of persecution.²⁹² This judgment indicates the inconsistency in the practice of all three instances and with regards to people who converted from Islam to Christianity.²⁹³ And finally, a very interesting judgment was rendered in relation to **Iranian** citizen who was granted mandate refugee status by UNHCR office in Turkey.²⁹⁴ This fact was taken as grounds for dismissal of applicant's asylum application on the basis of the first country of asylum concept. However, it remains unclear if the decision of UNHCR can be attributed to Turkish authorities and if Turkish authorities are obliged to take the applicants back on these grounds.

²⁷⁹ Administrative Court, Judgment U 10233/19, 13 May 2020.

²⁸⁰ Administrative Court, Judgment U 10233/19, 13 May 2020.

²⁸¹ Administrative Court, Judgment U 13912/19, 9 October 2020.

²⁸² Administrative Court, Judgment U 3937/18, 5 May 2020.

²⁸³ Administrative Court, Decision U7899/20, 22 May 2020.

²⁸⁴ Administrative Court, Judgment Uv 95/20, 19 May 2020 and 9017/19, 13 November 2020.

²⁸⁵ Administrative Court, Judgment U 20398/19, 5 March 2020.

²⁸⁶ Asylum Office, Decision No. 26-1986/18, 14 May 2020 and BCHR, *Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020*, p. 29-32.

²⁸⁷ Administrative Court, Judgment U 16525/17, 4 May 2020.

²⁸⁸ Administrative Court, Judgment U 11206/20, 17 September 2020.

²⁸⁹ Asylum Office, Decision No. 26-1831/18, 30 July 2020.

²⁹⁰ Administrative Court, Judgment U 11984/17, 28 September 2020.

²⁹¹ AIDA, Country Report Serbia, 2019 Update, May 2020, p. 44.

²⁹² Administrative Court, Judgment U 8001/20, 8 October 2020.

²⁹³ AIDA, Country Report Serbia, 2019 Update, May 2020, p. 38.

²⁹⁴ Administrative Court, Judgment U 13967/20, 13 November 2020.

What is undisputable is the fact that all three instances, including the Administrative Court, have failed to obtain individual guarantees that **Turkey** would receive the applicant on its territory. For that reason, the application of this concept can be considered as misguided.

In May 2020, the Administrative Court rejected the complaint of an **Iraqi** applicant of Kurdish origin whose asylum application was dismissed on the basis of the internal flight alternative. The main reasons given by all three instances were that applicant's family lives as IDPs in Kurdish part of Iraq where they are safe and where he felt safe, but was unsatisfied with the lack of prospect for his future.²⁹⁵

Another interesting decision was related to the so far only case where asylum authorities applied the exclusion clause on the **Iraqi** prison lieutenant who was working in the prison in Kurdish part of Iraq and at the time when a lot of ill-treatment allegations were made. All three instances came to the conclusion that his hierarchical position made it impossible for him not to be aware of ill-treatment practices, even though there was no evidence that he was involved in any illegal activity.²⁹⁶ This rare decision in Serbian asylum system is also important for several other reasons. Namely, the Administrative Court accepted the findings of Asylum Office and Asylum Commission who assessed that **Bulgaria** cannot be considered safe, which represents a contradicting, but positive approach in the practice of this body which so far had always been confirming automatic application of the STC concept. And finally, since all three instances assessed that neither Bulgaria nor Iraq could be considered safe for the applicant, but it remains unclear what status would have been granted to the applicant if he had decided to remain in Serbia.²⁹⁷

Also, the Administrative Court automatically applied the safe third country concept in relation to 1 citizen of **Cuba** who entered Serbia from Montenegro, again failing to obtain individual guarantees,²⁹⁸ rejected 3 applications in merits, submitted by 3 Pakistani nationals²⁹⁹ and rejected the complaint of Indian family from Kashmir.³⁰⁰

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to State funded free legal assistance at first instance in practice?
☐ Yes ☐ With difficulty ☒ No
❖ Does the State funded 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,³⁰¹ refugees and persons granted subsidiary protection.³⁰² However, the Free Legal Aid Fee Schedule Regulation (FLA Regulation)³⁰³ envisages free legal aid only for administrative dispute procedures conducted before the Administrative Court. This means that asylum seekers could apply for the State funded free legal aid only if they reach the third instance authority. Still, asylum seekers can cover the cost of free legal aid in all three instances. So far, not a single asylum

²⁹⁵ Administrative Court, Judgment U 917/18, 4 May 2020.

²⁹⁶ Administrative Court, Judgment U 17973/17, 21 May 2020.

²⁹⁷ The applicant left Serbia during the course of third instance procedure.

²⁹⁸ Administrative Court, Judgment U 19223/18, 9 October 2020.

²⁹⁹ Administrative Court, Judgment U U18198/19, 29 July 2020, U 20092/19, 1 October 2020 and U 14660/19, 8 October 2020.

³⁰⁰ Administrative Court, Judgment U 19868/19, 23 October 2020.

³⁰¹ Article 4 (2-6) FLA.

³⁰² Article 4 (2-7) FLA.

³⁰³ Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), Official Gazette of the RS No. 74/2019.

seeker has used State funded free legal aid,³⁰⁴ but in the course of 2020, several attorneys at law provided legal representation to asylum seekers who had their own financial means.

The right to free legal aid is also guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.³⁰⁵ 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. Their work and assistance is not state, but project funded. CSOs represent asylum seekers in all three instances.

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 2020 only five civil society organisations (CSO) were providing legal aid in Serbia: APC, Balkan Centre for Migration and Humanitarian Activities ('BCMHA'), BCHR, IDEAS and Humanitarian Centre for Tolerance and Integration (HCIT). The total number of active lawyers in these CSOs is between 14 and 16, out of which many are also tasked with other project activities.³⁰⁶ Other, non-CSOs lawyers, occasionally provide legal aid but are also tasked with other responsibilities. All of these CSOs are based in **Belgrade**, except for HCIT which is based in **Novi Sad**. Thus, their presence in asylum and reception centres located on south or east is rare,³⁰⁷ and refugees and asylum seekers are not only forced to wait for weeks or months to access asylum procedure and lodge asylum application, but also to wait for initial legal advice by a competent lawyer.

Given that in 2020 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 2,830), it is clear that current capacities are insufficient. The low number of legal representatives is also the reason why some CSOs sometimes deny legal assistance to applicants whose asylum claim has less prospect of success. Thus, 2020 was the year in which several dozen asylum seekers either failed to lodge their asylum application or lodged their asylum applications in writing by themselves, and without legal support.

The second reason is the fact that most of legal representatives from respective CSOs have between 1 to 3 years of experience,³⁰⁸ which is usually the period after which many of them decide to leave the field of asylum and migration. For instance, at the beginning of 2020, the only child-protection officer left BCHR even though her work had led to record 5 positive decisions rendered in relation to 5 UASC. The fluctuation of legal representatives has also been present in APC.

As a result, the capacity and quality of legal assistance provided by CSOs remains limited.³⁰⁹ While certain CSO lawyers are successful, the large majority of them do not obtain positive outcomes. Several decisions analysed in this Report show that applicants who had strong asylum claims were not adequately prepared for hearing and, for instance, provided more detailed statements to their psychologist than to their lawyer. The contradicting statements in asylum hearing which ensued was the reason why Asylum office rejected their claims.³¹⁰ Another example is the lack of coordination in preparation for asylum hearing of a Tunisian gay couple.³¹¹ These flaws are mainly due to their lack of experience and knowledge of the asylum field which raises serious concerns. Several applicants decided to abscond during asylum procedure due to non-responsiveness of their legal representatives and the lack of certainty about the outcome of their process. One of the UASC applicants absconded a couple of months before he was granted asylum due

³⁰⁴ This conclusion is drawn from the fact that legal representatives in all Administrative Court judgments were CSOs.

³⁰⁵ Article 56(3)-(4) Asylum Act.

³⁰⁶ BCHR has 5 lawyers who are solely providing legal aid to asylum seekers, HCIT 2, IDEAS 2, BCMHA 2 and APC does not have more than 4.

³⁰⁷ Once to two times per month.

³⁰⁸ Some of them less than a year and without previous training and experience in the field of asylum and migration.

³⁰⁹ 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.

³¹⁰ Asylum Office, Decision No. 26-378/19, 11 February 2020.

³¹¹ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

to violence to which he was subjected. His legal representative was not aware of this fact, even though the violence was reported to him.³¹² The other UASC had only had half an hour meeting with two different legal representatives within a year and decided to abscond to Bosnia.³¹³ Specific issues in relation to the provision of legal assistance include a lack of assessment of COI information and individual circumstances,³¹⁴ lack of thorough preparations of clients for their personal interview and failure to conduct evidentiary activities such as medical expert opinion.³¹⁵

The lack of any legal response is evident in cases which concern push-backs and the risk of violation of the *non-refoulement* principle. The poor quality of legal assistance by CSOs is particularly patent in the cases where access to territory and asylum procedure is at stake. Even though several hundred pushbacks to **North Macedonia** were recorded, there was no attempt to legally challenge such practice. It appears that most of the CSOs providing legal aid are mainly focused on persons who wish to apply for asylum and who are accommodated in asylum or reception centres after they successfully avoided harmful border practices. For instance, CSOs providing legal aid in asylum procedure failed to react on time to prevent readmission of an Iranian family which was detained in Detention Centre for Foreigners in **Padinska Skela** even though they requested legal assistance. In the statement of the National Mechanism for Prevention of Torture (NPM) it can be seen that NPM was present during the forcible removal in that particular case,³¹⁶ while in all other statements (regarding other forcible removals) it highlighted that persons subjected to forcible removal did not have any complaints against the treatment and removal³¹⁷ and that police officer acted professionally.³¹⁸ This remark was not highlighted in this Statement regarding Iranian family expelled to Bulgaria. However, some witnesses indicate that the family was in a distress during the forcible removal since it was their second time being returned to Bulgaria under the Readmission agreement with the EU (father and two small children).³¹⁹

To conclude, it is necessary to improve the 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 that 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 attorneys at law should be facilitated so that each person who expresses the wish to apply for asylum is provided with the assistance.

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:³²⁰

1. The applicant comes from a **First Country of Asylum**

³¹² Asylum Office, Decision No. 26-2573/19, 15 October 2020. This boy fled to Bosnia where he got in touch with his former legal representative who changed jobs.

³¹³ The boy decided to return back to Serbia and, with the help of IDEAS lawyers, submitted subsequent application.

³¹⁴ 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.

³¹⁵ Asylum Office, Decision No. 26-2177/19, 20 August 2020.

³¹⁶ The Ombudsman, Тим Заштитника грађана у обављању послова НПМ обавио надзор над принудним удаљењем иранске породице у Бугарску, 3 September 2020, available at: <http://bit.ly/3csPK0i>.

³¹⁷ The Ombudsman, Обављен надзор над удаљењем страних држављана, 8 December 2020, available at: <http://bit.ly/3csgsGk>.

³¹⁸ The Ombudsman, Обављен надзор над поступком принудног удаљења страног држављанина, 18 September 2020, available at: <http://bit.ly/2L3uJ0D>.

³¹⁹ This case will be the subject of further analysis and assessment which has not been completed until this Report was concluded.

³²⁰ Article 42(1) and (3) Asylum Act.

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.³²¹

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

The Asylum Office dismissed 2 asylum applications as inadmissible in 2020. Both were dismissed on the basis of the first country of asylum concept.³²²

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](#);³²³
2. The application is a [Subsequent Application](#).³²⁴

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.³²⁵ 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.³²⁶

The deadline for the Asylum Office to take a decision is 28 days from the lodging of the asylum application.³²⁷ 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.³²⁸

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.³²⁹

The border procedure was not used in the course of 2020 and it is unlikely that this will change in the near future since there are no adequate facilities for that purpose within the transit zone of **Nikola Tesla Airport** or any other border-crossing point. However, the planned reconstruction of Belgrade Airport indicates that detention facilities at Nikola Tesla Airport will be designed in line with the requirements set in the Asylum Act.³³⁰ Hence, in the future it can be expected that asylum applications will be assessed at the airport.

5. Accelerated procedure

The Asylum Act provides an accelerated procedure, which can be conducted where the applicant:³³¹

1. Has presented only facts that are irrelevant to the merits of the application;

³²¹ Article 42(4) Asylum Act.

³²² Asylum Office, Decision No. 26-1515/19, 13 August 2020 and 26-788/19, 28 February 2020.

³²³ *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

³²⁴ Article 41(1) Asylum Act.

³²⁵ Article 41(2) Asylum Act.

³²⁶ Article 41(3) Asylum Act.

³²⁷ Article 41(5) Asylum Act.

³²⁸ Article 41(6) Asylum Act.

³²⁹ Article 41(7) Asylum Act.

³³⁰ The Ombudsman, *Представници компаније Belgrade Airport у посети Заштитнику грађана*, 16 December 2020, available at: <http://bit.ly/36thCNU>.

³³¹ Article 40(1) Asylum Act.

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.³³² The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.³³³ 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.³³⁴

In 2020, the accelerated procedure was applied in 3 cases in relation to citizens of **China, Pakistan** and **Cameroon**. The Cameroon applicant absconded during the procedure, while the applications of the Chinese and Pakistani nationals were rejected.³³⁵

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.³³⁶

³³² Article 40(2) Asylum Act.

³³³ Article 40(3) Asylum Act.

³³⁴ Article 40(5) Asylum Act.

³³⁵ Data obtained from UNHCR monthly statistic.

³³⁶ Article 17(1) and (2) Asylum Act.

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.³³⁷

However, it is still not entirely 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 should be declared through separate decision, or this fact will be indicated during the asylum interview. Yet, in several decisions which related to UASC, the first instance authority explicitly stated that special procedural and reception guarantees were secured in UASC's cases since they were appointed legal guardian, legal representative and were accommodated in social care institution designated for children.³³⁸

However, it has become undisputable in 2020 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, which so far has been the case only with regards to UASC and victims of human trafficking. The best interest determination assessment is conducted by the Social Welfare Centres (SWCs) under the supervision of IDEAS, psychological reports are mainly provided by PIN, victims of sexual and gender-based violence (SGBV) by DRC, 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, but are conducted in cooperation with different state institutions. Thus, the State support system can be described as partially effective and strongly dependant on limited resources of CSOs who assist USAC, victims of trafficking in human beings, victims of SGBV, persons with health and mental issues, torture victims, etc. It should be also born in mind that the capacities of CSOs are also limited and not always of the highest quality. For that reason, it is safe to say that only small number of vulnerable persons that may be in need of international protection receive the comprehensive support and mainly after they are introduced in asylum procedure. For those persons who are in need of international protection but are not registered as asylum seekers, the limited support is almost exclusively provided by CSOs. However, the past several years has shown some improvements in the joint work of state institutions and CSOs.

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).³³⁹ According to the UNHCR, 1,749 UASC were recorder entering on Serbian territory in 2020, but only 71 of them were issued with the registration certificate, and only five effectively lodged an application for international protection.³⁴⁰ On the other hand, the Centre for Research and Social Development (IDEAS) indicated that temporary legal guardians worked with less than 250 children who received urgent assistance.³⁴¹ Out of the 71 children with a registration certificate, around 50 received a more detailed support, while at least 20 underwent best interest assessments (BIA).³⁴² Thus, substantial support was provided to less than 5% of totally recorded USAC. On the basis of Memorandum of Understanding signed with the Ministry for Social Affairs, IDEAS has been conducting supervision of all social care workers in Serbia working with UASC. This assistance implies counselling on individual cases, providing general guidelines and assistance in conducting BID. Thus, out of 1,749 children recorded in

³³⁷ Article 17(3) Asylum Act.

³³⁸ Asylum Office, Decision No. 2573/19, 15 October 2020, Decision No. 26-374/19, 14 February 2020 and Decision No. 26-1946/18, 9 October 2020.

³³⁹ Only 20 in 2019, and for the purpose of asylum procedure.

³⁴⁰ UNHCR statistic are available at: <https://bit.ly/2LklrZY>.

³⁴¹ Urgent assistance covers the most basic needs such as food, water, clothes

³⁴² 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.

2020, only 71 of them were registered, 5 of them lodged asylum application, while the rest remained in legal limbo, being at risk of being issued with expulsion order or penalised in the misdemeanour proceeding. Moreover, since registration certificate does not provide for any legal status, even the children issued with this document were in the same situation as those children who were not registered at all.

The screening of USAC vulnerability is conducted by the temporary legal guardians of IDEAS - an implementing partner of UNHCR and legal guardians funded by IOM and who were deployed from IDEAS in 2020. 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 did not submit any request for BID in 2020,³⁴³ and in general, 2020 was the year in which only a few UASC applied for asylum – only 5. For that reason, IDEAS has started to provide free legal aid to UASC in the second half of 2020, applying the multidisciplinary approach which implies that initial assessment, legal counselling and preparation for lodging of asylum application and hearing is conducted by a team comprised by legal representative, legal guardian and psychologist. This has led to first comprehensive written asylum applications submitted by UASC in November and December 2020 and all of them were submitted by IDEAS. Thus, in the first 10 months, and when it comes to the work of UNHCR implementing partners (BCHR, IDEAS and HCIT), only one UASC submitted asylum application, while it is reasonable to assume that two UASC submitted asylum application with the help of APC lawyers.

Also, CHTV can be considered as an authority that can contribute to the effective implementation of Article 17 of the Asylum Act. In 2020, CHTV identified 18 refugees and migrants as potential victims of trafficking in human beings. Out of that number, 7 of them were girls (3 **Afghanistan**, one from **India**, one from **Syria**, one from **DRC** and one **Somalia**), 4 boys (3 from **Afghanistan** and 1 from **Syria**), 6 women (2 from **Eritrea**, 2 from **Syria**, one from **Somalia** and one from **Tunisia**) and 2 men (from **India** and **Guinea**). Also, one girl from **Congo** and one boy from **Pakistan** 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 specialised in providing assistance to the victims, Serbia does not have an official procedure for the victim's identification.³⁴⁴

The psychological assessment is usually 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). In 2020, PIN provided 64 psychological assessments for BCHR, HCIT, IDEAS and UNHCR, 4 assessments for the Asylum Office and 9 assessments for Social Welfare Centres. Thus, most of the psychological assessments were conducted upon request from legal representatives in 2020. Several asylum seekers were examined by the psychiatrist. The reports were then submitted to the Asylum Office with the aim to indicate vulnerabilities.³⁴⁵ In 2020, PIN's psychological report was outlined in at least 9 decisions of the Asylum Office.

According to PIN's 5-year research published in 2019 and conducted in partnership with UNHCR, between 79% and 89% of refugees in Serbia are in need of psychological assistance and support as evidenced by the mental health screenings. Prevalence of depression and anxiety related difficulties varied from 35%-48% to 29%-37% over the years, while the number of those experiencing posttraumatic stress disorder related difficulties ranged from 19% to 28%.³⁴⁶

As a response to the identified needs, standards for mental health protection of refugees, asylum seekers, and migrants in Serbia are defined in *Guidance for protection and improvement of the mental health of*

³⁴³ All the information was obtained from IDEAS.

³⁴⁴ Report on Trafficking in Persons: Serbia 2019, letter to US State Department, Astra (20 June 2019), available (in Serbian) at: <http://bit.ly/3bVYqJl>.

³⁴⁵ All the information was obtained from PIN.

³⁴⁶ Vukčević Marković, M., Stanković, I., Živić, I., Stojadinović, I., Todorović, A., Šapić, D. & Bjekić, J. (2020). Mental health of refugees and migrants. Research report. Serbia, Belgrade: Psychosocial Innovation Network.

*refugees, asylum seekers and migrants in Serbia*³⁴⁷, issued in 2018 by the WHO Office in Serbia, with PIN as one of the authors, and adopted by the Ministry of Health and Commissariat for Refugees and Migration. In line with these standards, mental health protection services should be delivered on four levels – initial screening, prevention activities, psychological interventions, and psychiatric care. It is recommended that these services are available through the public healthcare system, while civil society organisations would fill in the gaps in line with identified needs.³⁴⁸ The four layers of screening are yet to take place in practice.

At this moment, all asylum and reception centres in Serbia are covered with medical teams (medical doctor and nurse), while 5 out of 18 centres have a psychologist as a part of the medical team who represents a focal point for mental health protection services. In the remaining 10 centres, psychological services are provided by CSOs (PIN, Indigo, and Group 484), while at the moment 3 centres are without available psychological services except for PIN's online support program (Preševo, Sombor and Bosilegrad).³⁴⁹

PIN has identified, assisted, counselled and further referred 706 asylum seekers, refugees and migrants in 2020 (545 male and 161 female), including 170 UASC. PIN also provides group support to UASCs. PIN's psychologist also assisted 42 visits to specialised institutions for mental health and has been a focal point for mental health protection of refugees at 5 asylum/reception centres (ACs **Banja Koviljaca**, **Tutin** and **Sjenica**, RC **Sid** and RC **Principovac**), and at 4 out of 5 shelters for unaccompanied and separated children (UASC) in **Belgrade** and **Loznica**.³⁵⁰ In collaboration with CRM, PIN established a national coordination mechanism - Working Group for Protection and Improvement of Mental Health of Refugees, Asylum Seekers and Migrants, that gathers representatives of governmental institutions, international agencies and NGOs involved in mental health protection of refugees and migrants in Serbia, as well as International Consortium on Refugees' and Migrants' Mental Health (CoReMH). The goal is to gather experts that will work together towards establishing a common framework for the provision of mental health and psychosocial services to the refugee, asylum seeker and migrant populations on the European transit route.

In 2020, DRC has implemented projects which aimed to provide assistance to SGBV survivors in refugee and asylum seekers' population. This organisation was the only one who provided legal assistance to the refugees and asylum seekers in cases of SGBV in 2020. Also, DRC established the first Women Safe Space inside Asylum Center in **Krnjača**. The space has been used by 3 organisations (DRC, ADRA and Atina) where they conducted activities raising awareness of women rights and to provide direct assistance to the beneficiaries. Community based protection has been integral part of DRC field activities and therefore DRC trained three female asylum seekers to be gender focal points in AC Krnjača.

In order to fill the gap in lacking of trained staff in the field, DRC and IDEAS conducted two online workshops on prevention of and protection against SGBV for 15 outreach social workers from: **KrnjacaKrnjača**, **Sid/Adaševci/Principovac**, **Kikinda**, **Knezevac**, **Vranje** and **Loznica**. The workshops for outreach social workers were activities implemented by IDEAS, approved by Ministry of Social Affairs. IDEAS invited DRC to join the training with session on SGBV. The session were organised in August 2020.

Within cases identified by DRC in 2020, specific follow-up was conducted in relation to 30 SGBV survivors. The vast majority of supported SGBV survivors suffered from intimate partner violence (54%). That figure is followed by 23% of survivors who suffered sexual violence, 13% suffered sexual harassment and 10% of were identified as sexual exploitation cases. DRC Legal Counsellor has been providing assistance in form of counselling, writing submissions and representation before relevant state institutions. It is important to mention that provided statistics took into account the form of violence that was primarily

³⁴⁷ Svetozarević, S., Vukčević, Marković, M., Pejušković, B., & Simonović, P. (2019). *Guidance for protection and improvement of mental health of refugees, asylum seekers and migrants in republic of Serbia*. Serbia, Belgrade: World Health Organization, available at: <https://bit.ly/3r7wBEZ>.

³⁴⁸ *Ibid.*

³⁴⁹ Information obtained by PIN.

³⁵⁰ *Ibid.*

identified. Unfortunately, in-depth work with SGBV survivors showed that majority of them suffered multiplied forms of violence. For instance, one case showed that a woman was trafficked and sexually exploited before she met her abusive partner. In the other case, which involved rape, survivor lived with the abusive partner and escaped from the perpetrator, but was later on raped on the way to Europe. Furthermore, vast majority of identified SGBV survivors were married before 18 and those marriages were arranged.

Regarding the national structure of the survivors, DRC supported SGBV survivors from: **Afghanistan, Iran, Iraq, Syria, Somalia, Palestine, Burundi, Lebanon, Turkey, Tunis, Chechenia and Ukraine.** DRC supported SGBV survivors at various locations, but majority of the cases were identified in AC **Krnjača** and AC **Banja Koviljača** (where DRC was regularly present in the course of 2020). DRC has also provided occasional assistance to SGBV survivors who were accommodated in Reception Center in **Šid**, and Asylum Centre in **Tutin**, as well as in the shelter for SGBV survivors run by NGO **Atina**. The assistance was also provided to survivors accommodated at the private addresses.

When it comes to the response of the State institutions, DRC outlined that the practice varies from one location to another, which implies that CRM staff is lacking training and knowledge on SGBV. Also, prejudices among professionals toward asylum seeking and refugee women in regards to their culture and origin prevail in many facilities, affecting the timely reactions to SGBV.

The majority of SGBV incidents happened during late evening hours or weekends, when specialised organisations or institutions like social welfare centres were not present.³⁵¹ Response usually depends on knowledge and beliefs of persons who are on duty in reception facilities. In almost all cases police was informed, but practice shows that further prosecution still depends on willingness of the survivor to testify even though it is not mandatory by the law. The Public Prosecutor usually drops the charges after the survivor refuses to testify, the professionals do not take into consideration the existence of other evidence, like medical certificate of injuries and testimonies of other witnesses, etc.

On the other side, there are challenges in psychosocial support of the survivors as well. The survivors usually lack information about their rights and existing support services. Furthermore, according to the relevant legal framework, after receiving the report of SGBV case, SWC is obliged to conduct the interview with survivor and to prepare an individual plan of measures and services for each SGBV survivor including the plan for their family members. The survivor has the right to participate in the creation of the plans and to be informed about the measures and services which are written within the plan in a language that she understands. According to DRC experience, in almost all cases the survivors were not informed about the plans and measures prescribed by SWC. DRC was the only organization who provided legal assistance to the refugees and asylum seekers in cases of SGBV.

In 2020, lockdowns, quarantines, and other movement restrictions during the State of Emergency have also disrupted access to police, legal, and social service, as well as access to counselling, safe shelters, medical treatment, and sexual and reproductive health services. The COVID-19 pandemic has further deteriorated the situation of SGBV survivors. First, survivors were stuck with their perpetrators in overcrowded centres due to the lockdown. Second, a majority of institutions and organisations suspended their activities in the field following the imposed measures in order to prevent further spreading of infectious disease. DRC Protection Team was in contact with two SGBV survivors who suffered domestic violence during the state of emergency. One case was recorded in AC **Banja Koviljaca** and another in AC **Krnjaca**. In both cases institutions were involved - CRM separated spouses in different rooms, SWC conducted the interview with SGBV survivor in AC **Banja Koviljača** while in AC **Krnjača** police intervened. Due to the pressure of their families, both survivors decided to reconcile with their spouses which results in dropping off charges against perpetrators. It is worth mentioning that due to the COVID-19 pandemic, during the state of emergency almost all court hearings were postponed. However, cases related to domestic violence, determination of preventive measures, minors were excluded from that decision.

³⁵¹ According to the CRM, 10 cases of domestic violence were reported to the Public Prosecutor Office.

Accordingly, CSOs who provide legal and other assistance to asylum seekers are the ones who usually provide care to vulnerable applicants in terms of referral to appropriate accommodation, medical care, psychological or other needs assessment. Also, the fact that asylum authorities have recognised asylum seeker's vulnerability (age, state of health or other vulnerability) can mainly 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."³⁵²

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,³⁵³ 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. On 16 September 2020, IDEAS has received a legal opinion from the Ministry of Justice in which it was stated that Serbia does not have an age assessment procedure in its legal framework.³⁵⁴

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.³⁵⁵ On 4 April 2018, the Ministry of Labour, Employment, veteran and Social Affairs adopted the Instruction on Procedures of Social Work Centres³⁵⁶ 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.³⁵⁷

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.³⁵⁸ The Committee on the Rights of the Child,³⁵⁹ and the Human Rights Committee,³⁶⁰ underlined these problems as well. During 2020, there were two cases in which the age assessment arose as a problem. One case refers to an **Afghan** boy who suffers from serious psychiatric condition and who was shortly deprived of legal guardianship, on the basis of the flawed assessment of his age. IDEAS and PIN intervened and the boy was later on put under temporary guardianship and submitted his asylum application with the help of IDEAS multidisciplinary team. In other case, a boy from Guinea, is still deprived of temporary guardianship. The Social Welfare centre in **Belgrade** is still reluctant to accept the boy's statement that he is underage without conducting any kind of age assessment procedure.

³⁵² Article 2 Asylum Act.

³⁵³ Article 35(6) Asylum Act.

³⁵⁴ Ministry of Justice, Legal Opinion No. 011-00-125/2020-05, 16 September 2020.

³⁵⁵ There is no record that an age assessment procedure has ever been conducted in line with the Family Act.

³⁵⁶ 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.

³⁵⁷ Section II, para. 2 of the Instruction on Procedure of Social Work Centres.

³⁵⁸ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 97-98.

³⁵⁹ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, 56-57.

³⁶⁰ HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para. 32-33.

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 2020, the asylum authorities issued registration certificates to a total of 71 UASC, out of a total of 1,749 registered arrivals. The remaining children were travelling with their family members and relatives. However, bearing in mind the above-mentioned challenges in identifying UASC, their real number is without any doubt far greater and it is undisputable fact that the vast majority of UASC reside on Serbian territory unregistered and, thus, at risk of being treated as irregular migrants and forcibly removed. In order to encourage more UASC to register their stay in Serbia, IDEAS, DRC and CRPC has facilitated several trainings with UASC who were granted asylum in Serbia and who will act as peer educators for newly arrived children.

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.³⁶¹

In 2020, 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.³⁶² Moreover, the length of the procedure can be described as extensive.³⁶³ 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.³⁶⁴ However, in several decisions regarding UASC the Asylum Office disregarded BID which indicated that applicants should be granted asylum as the most suitable status for permanent solution.³⁶⁵

National law further foresees the exemption of unaccompanied children from accelerated and border procedures.³⁶⁶

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

³⁶¹ Article 15 Asylum Act.

³⁶² Asylum Office, Decisions Nos. 26-1437/18, 13 February 2020, 26-218/19, 20 February 2020, 26-20163/17, 11 August 2020 and 26-2573/19, 15 October 2020.

³⁶³ Asylum Office, Decision Nos. 26-1437/18, 13 February 2020, 26-218/19, 20 February 2020 and 26-2573/19, 15 October 2020.

³⁶⁴ The most important decisions regarding vulnerable applicants are analysed in the Chapter C.1. – Asylum Practice in 2020.

³⁶⁵ Asylum Office, Decisions Nos. 26-378/19, 11 February 2020 and 26-374/19, 14 February 2020.

³⁶⁶ Articles 40(4) and 41(4) Asylum Act.

Medical or psychological reports may be used in order to substantiate asylum claims; as is prescribed by the General Administrative Procedure Act.³⁶⁷ The number of decisions in which Asylum Office outlines in the reasoning of its decisions medical and psychological reports has increased. 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 2020, there were 4 cases in which the Asylum Office submitted the request to PIN and took in consideration PIN's report and BID in at least 9 decisions.

The Asylum Office has continued to render 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.³⁶⁸

The second time the Asylum Office directly took into consideration the state of health of the applicants was in December 2017, when one Nigerian³⁶⁹ and one Bangladesh³⁷⁰ 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.³⁷¹

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.³⁷² 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,³⁷³ as well as the BID,³⁷⁴ while the report of the psychiatrist was taken in consideration in the case of Uyghur applicant from China who is a torture victim.³⁷⁵

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 lower number of children, including unaccompanied and separated children in particular, was registered during the course of 2020 and at the same time the number of genuine asylum seekers out of this population remains low. In total, 71 UASC were issued with the registration certificate (compared to 823 in 2019). However, only handful of them submitted asylum application and only in the last two months of 2020.

³⁶⁷ 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.

³⁶⁸ ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

³⁶⁹ Asylum Office, Decision No. 26-4370/15, 27 December 2017.

³⁷⁰ Asylum Office, Decision No. 26-5044/15, 25 December 2017.

³⁷¹ Asylum Office, Decision No. 26-222/15, 3 July 2018.

³⁷² Asylum Office, Decision No. 26-329/18, 28 December 2019.

³⁷³ Asylum Office, Decisions Nos. 26-2348/17, 28 January 2019; 26-2643/17, 30 January 2019; 26-1605/18, 15 March 2019;

³⁷⁴ Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

³⁷⁵ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

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.³⁷⁶

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.³⁷⁷

The Asylum Office requested the SWC to carry out a best interests assessment in 5 cases which were positively resolved in 2020.³⁷⁸

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.³⁷⁹

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.³⁸⁰ The police cannot register an unaccompanied child who expressed the wish to seek asylum in absence of a temporary guardian.³⁸¹

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.³⁸²

One of the greatest challenges in practice has been the fact that the guardianship authorities lacked sufficient human resources to ensure effective support to each individual child.³⁸³ For instance, it was a frequent situation that one guardian was appointed to dozens of UASC making it impossible for them to develop a meaningful and trusting relationship with the children notwithstanding their enormous efforts and motivation.³⁸⁴ Thus, only those children who apply for asylum are provided with the possibility to establish a deeper connection with the multidisciplinary team which involves legal representative, temporary legal guardian and psychologist. The children who do not apply for asylum are mainly provided

³⁷⁶ 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.

³⁷⁷ Article 10(2) Asylum Act.

³⁷⁸ See for instance, Asylum Office, Decision Nos. 26-1437/18, 13 February 2020, 26-218/19, 20 February 2020, 26-20163/17, 11 August 2020 and 26-2573/19, 15 October 2020.

³⁷⁹ Articles 125 and 126 Family Act.

³⁸⁰ Article 12 Asylum Act.

³⁸¹ Article 11 Asylum Act.

³⁸² Article 128 Asylum Act.

³⁸³ 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.

³⁸⁴ That was the case in AC in Bogovadja, which was designated for the accommodation of UASC in 2020, as well as AC in Sjenica. .

with accommodation, urgent health care and food, but their more fundamental needs are not assessed at all.

UNHCR launched project conducted in cooperation with the Ministry of Labour, Employment, Veteran and Social Affairs and the CSO IDEAS to improve the capacity-building of guardianship authorities in **Belgrade**, primarily through funding the work of a certain number of professional guardians. This project is still ongoing and IDEAS psychosocial workers and legal representatives have started providing full support to understaffed social welfare centres in **Belgrade**, **Sjenica** and **Bogovađa**, where UASC are accommodated. With the help of other CSOs such as CRPC which provides translators, the problem with communication with children has largely been overcome in 2020.

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.³⁸⁵ The next step is urgent appointment of a temporary guardian to the child.

In 2020, **BCHR**, **IDEAS** and **HCIT** 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. 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 (e.g. due to the inadequate BID and the length of asylum interview) in terms of the ICL standards.³⁸⁶

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☐ Yes ☒ No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No

The Asylum Act envisages that a foreigner whose asylum application has been rejected on the merits “may submit a subsequent asylum application if he or she can provide evidence that the circumstances relevant to recognising his or her right to asylum have changed substantially or if he or she can provide any evidence that he or she did not present in the previous procedure due to justified reasons.”³⁸⁷ 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.³⁸⁸ The applicant must provide all the above and bring forward evidence in a comprehensible manner.³⁸⁹ 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.³⁹⁰

³⁸⁵ 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.

³⁸⁶ Asylum Office, Decisions Nos. 26-378/19, 11 February 2020 and 26-374/19, 14 February 2020.

³⁸⁷ Article 46(1) Asylum Act.

³⁸⁸ *Ibid.*

³⁸⁹ Article 46(2) Asylum Act.

³⁹⁰ Article 46(3) Asylum Act.

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.³⁹¹

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.³⁹² In 2020, only 2 subsequent applications were submitted in line with understanding in the Asylum Act, out of which one was rejected (Montenegro) and one is still pending (UASC from Pakistan) who absconded asylum procedure due to a lack of diligence by his former legal representative.

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.³⁹³ 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.

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 to absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment.³⁹⁴ 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.³⁹⁵

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.³⁹⁶

³⁹¹ Article 46(4), (5) and (6) Asylum Act.

³⁹² ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

³⁹³ Article 43-45 Asylum Act.

³⁹⁴ Article 44 Asylum Act.

³⁹⁵ Article 44 (1) Asylum Act.

³⁹⁶ Article 44 (2) and (5) Asylum Act.

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,³⁹⁷ as well as “the views of the competent authorities specified by this Law.”³⁹⁸ 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.³⁹⁹ This list is yet to be adopted.

The safe country of origin concept was applied only once in practice so far and in relation to the citizen of **Montenegro**.⁴⁰⁰ This decision was confirmed during the course of 2019 both by the Asylum Commission⁴⁰¹ and the Administrative Court.⁴⁰² No decisions relying on the safe country of origin concept were rendered in 2020.

2. Safe third country

The flawed and automatic application of the safe third country concept used to be a major problem of the Serbian asylum system since its very establishment.⁴⁰³ 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.⁴⁰⁴ 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 claim⁴⁰⁵ 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 2020, the Asylum Office stopped 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 for the shift of the Office’s attitude towards the safe third country notion is the fact that there are currently two cases pending before ECtHR and which are expected to be decided in 2021.⁴⁰⁶ 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 and none in 2020.

Article 42 of the 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.⁴⁰⁷

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

³⁹⁷ Article 44 (3) Asylum Act.

³⁹⁸ Article 44 (4) Asylum Act.

³⁹⁹ Article 44 (6) Asylum Act.

⁴⁰⁰ Asylum Office, Decision No. 26-1720/18, 21 December 2018.

⁴⁰¹ Asylum Commission, Decision AŽ 2/19, 1 March 2019.

⁴⁰² Administrative Court, Judgment U 5037/19, 12 June 2019.

⁴⁰³ AIDA, Country Report Serbia, 2020 Update, May 2020, p. 57-58.

⁴⁰⁴ 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.

⁴⁰⁵ 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.

⁴⁰⁶ 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.

⁴⁰⁷ Article 45(1) Asylum Act.

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

Additional provisions 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 fulfils 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.⁴⁰⁸ The new approach of the Asylum Act is encouraging 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. It is still not clear how will this function in practice.

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.

⁴⁰⁸ Article 45(2) 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.

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.⁴⁰⁹

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to his or her specific circumstances.⁴¹⁰

The first country of asylum concept was applied twice in 2020, including in relation to a gay man from **Burundi** who was granted refugee protection in Uganda.⁴¹¹ According to the BCHR legal representatives, the Asylum Office failed to assess the risk and problems that the applicant faced as a gay man in Uganda and the persecution that he was subjected to by Ugandan security forces. Another problem that was flagged by BCHR lawyers is the fact that the applicant was left only one day to provide evidence and challenge the application of the first country of asylum concept.⁴¹² In other case of Burundian applicant, the Asylum Office informed BCHR on its inclination to apply the safe third country concept in relation Ruanda, but this decision was not rendered in 2020.⁴¹³ Another case concerns the client of APC whose asylum application was dismissed because he was granted UNHCR refugee mandate status in Turkey. All three instances took a stance that Turkey should be considered as a first country of asylum, even though the protection was granted by UNHCR.⁴¹⁴

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.⁴¹⁵ 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.⁴¹⁶

⁴⁰⁹ Article 43(1) Asylum Act.

⁴¹⁰ Article 43(2) Asylum Act.

⁴¹¹ Asylum Office Decision No. 26-1515/19 of 13 August 2020.

⁴¹² BCHR, Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020, p.22-23.

⁴¹³ *Ibid.*

⁴¹⁴ Administrative Court, Judgment U 13967/20, 13 November 2020.

⁴¹⁵ Article 56 Asylum Act.

⁴¹⁶ Article 56(1) Asylum Act.

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. BCHR developed information leaflets for asylum seekers that his field workers are distributing in asylum and reception centres, while IDEAS designed child-friendly leaflets that are being distributed in AC Bogovađa and AC Sjenica, as well as social care institutions for UASC. Also, IDEAS DRC and CRPC have trained 10 UASC who have resided in Serbia for more than a year to be peer educators who will inform other children on their rights and obligations while in Serbia.

Police departments around Serbia tasked with issuing the registration certificates are still not providing such information due to lack of interpreters and state developed leaflets. This was confirmed by BCHR, APC and IDEAS.

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?⁴¹⁷ ☒ 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, the Asylum Office rendered 126 decisions and Asylum Commission 3 decisions jointly granting asylum to 185 persons, including from Libya (45), Syria (27), Afghanistan (25), Iran (12), Iraq (13), Ukraine (11), Cuba (7), Burundi (5), Sudan (5), Somalia (4), Ethiopia (3), Russia (3), Pakistan (3), Cameroon (2), Nigeria (2) Turkey (2), Stateless (2) Lebanon (1), Egypt (1), South Sudan (1), Bangladesh (1), Tunisia (1), Kazakhstan (1), Mali (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.

⁴¹⁷ Whether under the “safe country of origin” concept or otherwise.

Reception Conditions

Short overview of the reception system

The Commissariat for Refugees and Migration (CRM) is in charge of governing asylum and reception centres in Serbia.⁴¹⁸ There are 5 Asylum Centres (AC) and 13 Reception Centres (RC) which have been used for accommodation of refugees, asylum seekers and other categories of migrants in 2020. According to official data, the total capacity of 19 asylum and reception centres in 2020 was 5,655 beds. The reception capacity is measured in terms of available beds and not in accordance with certain standards, for instance, EASO Guidelines,⁴¹⁹ or other standards developed by other bodies such as CPT,⁴²⁰ or the Committee on Economic, Social and Cultural Rights (CESCR).⁴²¹ Most of the facilities are collective accommodation centre or even a large-scale type since only RC **Dimitrovgrad** and RC **Bosilegrad** have a reception capacity below 100.

Additionally, during the COVID-19 lockdown in 2020,⁴²² two additional emergency shelters in **Miratovac** and **Morović** were established but their respective capacity was unknown at the time of writing of this report.⁴²³ These centres were made out of tents, with no electricity and sanitary facilities. They were operational for three months and mostly during the state of emergency. Two categories of people were accommodated there, namely (i) newly arrived foreigners and (ii) foreigners who were transferred there for disciplinary reasons because they objected to a lockdown in other reception facilities, in particular in AC **Bogovađa** and RC **Obrenovac**.

The asylum procedure is conducted only in asylum centres, and mainly in AC **Krnjača** and AC **Banja Koviljača**, while less frequently in AC **Sjenica** and AC **Bogovađa**. The asylum procedure was not conducted in AC **Tutin** in 2020, nor in Reception Centres. Those foreigners who are issued with registration certificates have to be, usually with the assistance of legal representatives, transferred to one of 5 asylum centres. In 2020, CRM designated AC **Bogovađa** and AC **Sjenica** for accommodation of UASC. None of the said facilities meet the child-specific standards.

According to the Asylum Act, a foreigner obtains the status of an asylum seekers only after he or she lodges asylum application.⁴²⁴ Prior to that, persons issued with registration certificates are not considered to be asylum seekers and thus are not entitled to rights and obligations envisaged in the Asylum Act, which encompass the right to accommodation.⁴²⁵ Accordingly, even though the vast majority of foreigners were accommodated in asylum and reception centres in the course of 2020, they were not explicitly entitled to it under the Asylum Act, Foreigners Act or any other law governing the field of asylum and migration. Hence, the vast majority of persons in need of international protection who have been transiting through the territory of the Republic of Serbia since 2008 were in a legal *limbo*, deprived of any status, but provided with the existential minimum while in Serbia. In other words, their stay in Asylum and Reception Centres was rather tolerated than regulated by legal framework.

In practice, asylum seekers are referred to one of the asylum or reception centres stated in the registration certificate (see [Registration of the asylum application](#)). Accordingly, only 2,830 foreigners were officially referred to one of 18 functional accommodation facilities in 2020, while the remaining 22,173 foreigners

⁴¹⁸ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁴¹⁹ EASO, *EASO guidance on reception conditions: operational standards and indicators*, September 2016, available at: <http://bit.ly/3j1XabQ>.

⁴²⁰ See for example CPT, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, 19 February 2019, CPT/Inf (2019) 4, available at: <https://bit.ly/3gbcH7y>, para. 103-105.

⁴²¹ CESCR, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: <http://bit.ly/2KyNBRC>.

⁴²² A11, *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 Auspices of the State of Emergency*, May 2020, available at: <https://bit.ly/39BiG4m>., hereinafter: A11 Analysis on Detention of Foreigners during the State of Emergency.

⁴²³ Ibid., p. 4 and 5.

⁴²⁴ Article 2 (1) (4) Asylum Act.

⁴²⁵ Article 48 Asylum Act.

whose entry was recorded by the UNHCR and its partners were allowed to reside in reception facilities without any legal status. It should be also born in mind that some of the people who were issued with registration certificates in previous years have also resided in reception facilities.⁴²⁶

AC **Krnjača** and AC **Banja Koviljača** mostly accommodate persons with registration certificates and that is one the main conditions set by the management. Still, there are instances in which foreigners are allowed to enter these centres without the certificate, but they are usually registered within 48 hours. On the other hand, RCs in **Adaševci**, **Sombor**, **Principovci**, **Šid**, **Subotica** and other facilities located closer to borders with **Romania**, **Croatia** or **Hungary** imply more fluctuations and much more flexible policies on entering and exiting the camps, since dozens or even hundreds of refugees and migrants are attempting to irregularly cross to the EU on a daily basis. Accommodation in these facilities does not require registration certificates.

Asylum seekers who are granted asylum are entailed to stay in asylum centres up to one year after their decision on asylum became final.⁴²⁷

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 CRM is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.⁴²⁸

In 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.⁴²⁹ These other facilities are 13 Reception Centres which were functional during 2020 (see [Types of Accommodation](#)).⁴³⁰

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.⁴³¹

Unlike in 2019, in 2020, the vast majority of foreigners accommodated in Asylum Centres and Reception Centres did not have any legal status. The reason for this is that the most of them are not genuinely interested in staying in Serbia and to apply for asylum and thus did not lodge asylum application. However,

⁴²⁶ Many of them have resided in asylum or reception centers for more than a year or two.

⁴²⁷ Article 61 Asylum Act.

⁴²⁸ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁴²⁹ Article 51(1) Asylum Act.

⁴³⁰ RC Dimitrovgrad was not operational during 2020.

⁴³¹ Article 35(12) Asylum Act.

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](#)).

In the vast majority of reception centres there were persons who are not issued with the registration certificates, nor do they enjoy any other status in line with the Foreigners Act or other legislation. Thus, their stay is tolerated by the CRM. For instance, a lot of people who are staying in the Western camps (**Adaševci**, **Šid** and **Principovci**) or Northern camps (**Subotica**, **Sombor** or **Kikinda**) are not registered, or their certificates have expired, but they are attempting to cross the border with **Croatia**, **Hungary** or **Romania** 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 who are residing in the informal settlements in **Belgrade** and border areas with **Croatia**, **Hungary** and **Romania**. Many of them are UASC.⁴³² They sleep in tents or abandoned facilities deprived of the existential minimum.

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. UASC are all placed in **Sjenica** and **Bogovađa** 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.⁴³³ 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. On 10 January 2021, 124 refugees and asylum seekers were residing on private address, while 34 UASCs were accommodated in social care institutions designated for children.⁴³⁴

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 2020 (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.⁴³⁵ The new Asylum Act has introduced in 2018 the possibility of cash allowance for personal needs.⁴³⁶ 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.⁴³⁷ 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:⁴³⁸

- Single adult: RSD 8,283

⁴³² UNHCR Statistical Report for 10 January 2021 highlighted that 1,354 persons were spotted in informal settlements.

⁴³³ Article 50(8) Asylum Act.

⁴³⁴ UNHCR Statistical Report for 10 January 2021

⁴³⁵ Article 50(1) Asylum Act.

⁴³⁶ Article 50(2) Asylum Act.

⁴³⁷ Article 53 Asylum Act.

⁴³⁸ Decision on nominal amounts of social assistance, 27 April 2018.

- Family member: RSD 4,142
- Minor child: RSD 2,485

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Material reception conditions may be reduced or withdrawn if 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.⁴³⁹

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.⁴⁴⁰ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.⁴⁴¹

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,⁴⁴² and equal and planned economic development by managing migration,⁴⁴³ 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.

⁴³⁹ Article 50(4) Asylum Act.

⁴⁴⁰ Article 50(5) and (6) Asylum Act.

⁴⁴¹ Article 50(7) Asylum Act.

⁴⁴² Article 4 Migration Management Act.

⁴⁴³ Article 5 Migration Management Act.

COVID-19 restrictions

The COVID-19 pandemic has severely impacted the right to freedom of movement of refugees, asylum seekers and migrants who were prohibited from leaving asylum and reception centres from 10 March 2020 to 14 May 2020.⁴⁴⁴ The military and the police was deployed to all reception facilities. The same measures impacted UASC accommodated in Social Care Institutions for children,⁴⁴⁵ whose detention lasted until August 2020 and on the basis of a Ministry of Social Affairs Instruction which has never been published.⁴⁴⁶ Moreover, after the state of emergency was lifted, and due to alleged 'increase of petty crime' in the Western part of Serbia where RCs **Adaševci**, **Šid** and **Principovci** are located, the President of Serbia has issued an order to military to secure these camps and a perimeter around them, extending their detention until September 2020.⁴⁴⁷ President's order has never been published.⁴⁴⁸

The prohibition on leaving asylum and reception centres was *de facto* introduced between 7 and 10 March 2020 when the police started to pick up refugees and migrants residing in informal settlements around **Belgrade** and border areas with **Hungary**, **Croatia** and **Romania**. All foreigners detained in the Detention Centre for Foreigners were also transferred to different reception centres. CSOs providing different services were also banned from visiting all accommodation facilities.⁴⁴⁹

In the period between 16 March and 14 May 2020, three different legal regimes were used as grounds for the above-described ban on leaving reception facilities. The first one was the Government's Decision on Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum Centres and Reception Centres in the Republic of Serbia.⁴⁵⁰ This decision was rendered in line with Article 6, Paragraph 1 of the Law on the Protection of the Population from Infectious Diseases (LPPID).⁴⁵¹ Thus, this restriction was imposed through bylaw which consisted of only 2 Articles:

'1. In order to protect against the spread of infectious diseases in 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. 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.'

The Decision on Temporary Restriction of Movement of 9 April 2020 was suspended and its provisions were transposed into a new 2020 Decree on Emergency Measures (Decree) in identical form.⁴⁵² The Decree was the main legal act in force during the state of emergency and it prescribed the derogation measures in general.⁴⁵³ Thus, from the "regular legal regime",⁴⁵⁴ the ban on leaving asylum centres and reception centres was moved into an "emergency legal framework", which made the above stated ban as a measure of derogation.

⁴⁴⁴ *Hod po žici*, Chapter IV.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

⁴⁴⁷ N1, *Vučić naredio da vojska ide u Šid zbog migranata*, 16 May 2020, available at: <http://bit.ly/36taocS> [accessed on 20 January 2020].

⁴⁴⁸ *Hod po žici*, p. 64.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Official Gazette no. 32/2020, hereinafter: Decision of Temporary Restriction of Movement.

⁴⁵¹ Official Gazette no. 15/2016.

⁴⁵² Official Gazette, nos. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020 and 53/2020

⁴⁵³ A11, *Analysis of Measures Derogating from Human and Minority Rights during the State of Emergency in the Republic of Serbia caused by the Epidemic of Infectious Disease COVID-19*, March 2020, available at: <https://bit.ly/329fgT7>, p. 4-6.

⁴⁵⁴ Meaning the legal regime, which is valid in regular circumstances, not during the state of emergency.

After the state of emergency was lifted on 7 May 2020, the ban on leaving reception facilities for foreigners was transposed into another bylaw introduced by the Minister of Health - Order on Restriction of Movement on Open Accesses and Facilities of Reception Centres for Migrants and Asylum Centres.⁴⁵⁵

The regime of life introduced through the above-enlisted legal framework, and to which refugees, asylum seekers and migrants were subject to implied the following:

- prohibition on leaving space within the facilities that make up asylum centres and reception centre whose area does not reach up to 0.1 km²;
- constant surveillance by CRM workers and armed Ministry of Defence soldiers and Ministry of Interior police officers which were authorized to use force;
- Inability to make direct social contact with the outside world, including legal representatives and psychologists, except by phone and social networks;
- the risk of criminal and misdemeanour liability in the event of leaving the centre, which could ultimately result in imprisonment of up to three years;
- the prohibition on leaving asylum and asylum centre was in force for more than 60 days;
- the prohibition on leaving RCs Sid, Principovci and Adaševci was extended to September 2020.

The above-mentioned regime was also recorded by NPM during its visit to RC **Adaševci** and RC **Obrenovac**,⁴⁵⁶ but also in two Analysis published by A11 and IDEAS.⁴⁵⁷ Thus, the type, duration, effects and manner of implementation of COVID-19 measures raised a question of whether this limitation affected foreigners' freedom of movement or their right to liberty and security.⁴⁵⁸ The terminology that was used in all of the laws was 'limitation to freedom of movement'.

However, the above-described treatment undoubtably amounted to deprivation of liberty, considering foreigners' individual situation and choice; the legal regime applied to them and its purpose and duration, nature and extent of the COVID-19 restriction imposed and experienced by refugees, asylum seekers and migrants.⁴⁵⁹ This is further supported by the existence of both subjective and objective criteria developed in ECtHR jurisprudence and which could be determined here in relation to foreigners' confinement in restricted space of asylum and reception centres for a period of over 60 days, without possibility to leave centres. This proposition is further supported by the level of supervision by CRM, police and military, as well as the level of control of their movement within the centre, high extent of isolation from the outside world and the lack of possibility of social contacts.⁴⁶⁰ The subjective criterion is determined on the basis of general frustration of refugees and asylum seekers and their unwillingness to remain in such regime and conditions.⁴⁶¹

Cumulatively, these measures could not have been considered a "temporary restriction of movement" but a deprivation of liberty. So, refugees, asylum seekers and migrants who were prohibited from leaving asylum centres and reception centres were deprived of liberty. The basis on which foreigners were deprived of the liberty were Decision on Temporary Restriction of Movement, the Decree and MoH Order.

⁴⁵⁵ Official Gazette No. 66/2020, hereinafter: MoH Order.

⁴⁵⁶ NPM, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, 16 June 2020, available at: <https://bit.ly/2NlywRc>, p. 23.

⁴⁵⁷ A11, *Analysis of Measures Derogating from Human and Minority Rights during the State of Emergency in the Republic of Serbia caused by the Epidemic of Infectious Disease COVID-19*, March 2020, available at: <https://bit.ly/329fgT7>, p. 40.

⁴⁵⁸ ECtHR, *Guzzardi v. Italy*, App. No. 7367/76, Judgment of 6 November 1980, available at: <http://bit.ly/2V0jJmt>, para. 92.

⁴⁵⁹ ECtHR, *Ilias and Ahmed v. Hungary*, Application No. 47287/15, Judgment of 21 November 2019 [GC], EDAL, available at: <http://bit.ly/3pCI7I1>, para. 217.

⁴⁶⁰ ECtHR, *Stroock v. Germany*, App. No. 61603/00, Judgment of 16 June 2005, available at: <http://bit.ly/3esoyws>, para. 73.

⁴⁶¹ ECtHR, *Stanev v. Bulgaria*, App. No. 36760/06, Judgment of 17 January 2012, available at: <http://bit.ly/3fGxdvK>, para. 117.

Ministry of Health (MoH) Order and Decision on Temporary Restriction of Movement

When it comes to MoH Order and Decision on Temporary Restriction of Movement, both of these acts were bylaws in their nature and were rendered on the basis of the LPPID which does not contain a single provision which would prescribe detention measures. Thus, it is clear that detention of foreigners was not carried out on the basis of the law and in line with substantive and procedural national rules.⁴⁶² The short content of both bylaws lacked all other elements arising from the Article 5 of the ECHR such as legal certainty, principle of proportionality and the principle of protection against arbitrariness.⁴⁶³

Moreover, refugees, asylum seekers and other categories of migrants were never issued with individual decision and were not informed on reasons for their detention, which represents one of the most basic safeguards against arbitrariness.⁴⁶⁴ Thus, they were not able to find out why they were put in such a situation and what were the arguments that they could have challenged before a judicial body.⁴⁶⁵ In essence, they were denied the possibility to effectively use the right to appeal to the judicial body⁴⁶⁶ since they have never been served or informed of specific and individual reasons in a language that they would understand.

The Decision on Temporary Restriction of Movement and MoH Order did not provide for:

- 1) procedure for deprivation of liberty
- 2) the reasons and conditions for determining, extending and ending the detention
- 3) the duration of detention
- 4) making individual and reasoned decision on deprivation of liberty
- 5) the obligation to communicate the reasons for deprivation of liberty in a language that the person concerned understands
- 6) the possibility of appealing or filing any other legal remedy that could initiate the process of challenging the legality of deprivation of liberty
- 7) the possibility of engaging a legal representative by a person deprived of liberty and potentially other rights such as the right to medical examination and the right to be informed by a third party of his/her own choice.⁴⁶⁷

And finally, refugees, migrants and asylum seekers who were prohibited from leaving asylum centres and reception centres were unlawfully and arbitrarily deprived of liberty on the basis of discriminatory criteria based on their legal status, origin and temporary residence.⁴⁶⁸

Decree on Emergency Measures

As already stated, on 9 April 2019, the Decision on Temporary Deprivation of Liberty was put out of power and its provisions were moved into the Decree, making it indisputable that the deprivation of liberty of refugees, asylum seekers and migrants has become a derogation measure. Several NGOs outlined that derogation of right to liberty and security of refugees, migrants and asylum seekers was not in line with the requirements set in the jurisprudence of ECtHR for the following reasons:

1. There was no need for the introduction of the state of emergency since the COVID-19 outbreak could have been treated in line with LPPID and thus, the 'life of the nation' was not at stake,⁴⁶⁹

⁴⁶² ECtHR, *Creangă v. Romania*, Application No. 29226/03, available at: <http://bit.ly/2NcU1XD>, para. 101.

⁴⁶³ ECtHR, *Plesó v. Hungary*, Application No. 41242/08, Judgment of 2 October 2012, available at: <http://bit.ly/2N97nnX>, para. 59, and *Simons v. Belgium*, Application No. 71407/10, Decision of 28 August 2012, available at: <http://bit.ly/3fBTnPC>, para. 32: see more in *A11 Analysis on Detention of Foreigners during the State of Emergency*, p.12-13

⁴⁶⁴ ECtHR, *Khlaifia and Others v. Italy*, Application No. 16483/12, Judgment of 15 December 2016 [GC], EDAL, available at: <http://bit.ly/2Bojevu>, para. 71.

⁴⁶⁵ ECtHR, *Conka v. Belgium*, Application No. 51564/99, Judgment of 5 February 2002, EDAL, available at: <http://bit.ly/2YLIUeh>, para. 50.

⁴⁶⁶ ECtHR, *Shamayev and Others v. Georgia and Russia*, App. No. 36378/02, Judgment of 12 April 2005, par. 413.

⁴⁶⁷ *A11 Analysis on Detention of Foreigners during the State of Emergency*, p. 16.

⁴⁶⁸ *Ibid.*, p. 17 and 18.

⁴⁶⁹ *Hod po žici*, p.77.

especially taking in consideration that state of emergency was not in force when the number of infected persons was much higher in the period October-December 2020.⁴⁷⁰

2. The criteria of necessity and proportionality was also lacking, especially in relation to certain guarantees arising from the ECtHR jurisprudence and which should imply that foreigners should have at least received an individual detention decision rendered in clearly defined procedure and by the authority entitled by law to make that decision which could have been challenge before the judicial body.⁴⁷¹

3. Just as MoH Order and Decision on Temporary Restriction of Movement were not in line with the principle of non-discrimination the Decree was not either, since it contains identical provisions.⁴⁷²

4. On 7 April 2020, the Republic of Serbia officially informed the Secretary General of the Council of Europe that it had waived certain human rights guarantees of the European Convention on Human Rights. However, the letter of only two pages did not specify which human rights were specifically derogated from, nor the specific reasons for these respective derogations. Instead, the letter provided a link to the legal information system where changes to the Decree that is the subject of this Analysis are posted.⁴⁷³ In addition, at the time of notification, the deprivation of liberty of refugees, migrants and asylum seekers was carried out solely on the basis of the Decision on Temporary Restriction of Movement and not on the basis of the Decree, since the provisions of the Decision were transposed into the Decree on 9 April 2020. Therefore, the Government of the Republic of Serbia has not fulfilled its obligation to inform the Council of Europe regarding the total derogation of the right to liberty and security of person of refugees, asylum seekers and migrants.⁴⁷⁴

A11 submitted to the Constitutional Court the initiative for the assessment of constitutionality and legality of MoH Order, Decision on Temporary Restriction of Movement and the Decree on Emergency Measures, stating that limitation measures imposed on foreigners should be considered as deprivation of liberty and that their detention was unlawful, arbitrary and was not in line with the principle of proportionality and necessity. BCHR also submitted the same request, but only in relation to MoH order stating that such order is not in line with the Constitution, but also with LPPID. The CC has dismissed all initiatives stating that limitations to which refugees, asylum seekers and migrants were subject to did not amount to deprivation of liberty.⁴⁷⁵ Several applications were submitted to ECtHR (1 by BCHR and 2 by IDEAS) soon after.

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Baş v. Turkey*, App. No. 66448/17, Judgment of 3 March 2020, available at: <http://bit.ly/2CnULal>, para. 230 and 231, and *Kavala v. Turkey*, App. No. 28749/18, Judgment of 10 December 2019, available at: <http://bit.ly/3hIQkao>, para. 194–196.

⁴⁷² *A. and Other v. the United Kingdom*, App. No. 3455/05, Judgment of 19 February 2009 [GC], available at: <http://bit.ly/3hr8Tj0> para. 190.

⁴⁷³ Available at: <https://bit.ly/3beJju9> [visited on 18 April 2020].

⁴⁷⁴ See more in A11 and IDEAs.

⁴⁷⁵ CC, Decision no. Iyo – 45/2020, Decision of 15 October 2020, p. 31-32 and Iyo – 62/2020, 1 Februray 2020.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:⁴⁷⁶ 19
 - ❖ Asylum Centres 5
 - ❖ Reception Centres 14
2. Total number of places in the reception centres: 5,665
 - ❖ Asylum Centres 1,920
 - ❖ Reception Centres 3,745
3. Total number of places in private accommodation: There is no private accommodation funded by the Government.
4. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Both Asylum Centres and Reception Centres are established by the Government's decision.⁴⁷⁷ The work of Asylum Centres and Reception Centres is managed by the Commissariat.⁴⁷⁸

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. On 10 January 2021, 127 persons granted asylum and asylum seekers were residing at a private address. 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 2020 continued to be a lack of profiling and differentiation between those persons with a genuine interest in applying for asylum in Serbia, and those who were in need of a shelter in one of the centres close to the borders with **Hungary, Romania and Croatia**. 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.

1.1. Asylum Centres

There were 5 active Asylum Centres in Serbia in 2020:

Asylum Centre	Capacity
Banja Koviljača	120
Bogovađa	200
Tutin	200
Sjenica	400
Krnjača	1,000
Total	1,920

⁴⁷⁶ Both permanent and for first arrivals.

⁴⁷⁷ Article 51(2) and (3) Asylum Act.

⁴⁷⁸ 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 1,920. 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. Most of the enumerated Asylum Centres were not overcrowded during 2020,⁴⁷⁹ except for Asylum Centre in **Tutin** which was overcrowded throughout entire year, with the resulting 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, Obrenovac, Šid, Principovac, Adaševci, Sombor, Subotica, Kikinda** and **Bela Palanka** ('Divljana').

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

Temporary reception centre	Border location	Capacity
Preševo	North Macedonia	800
Vranje	North Macedonia	230
Bujanovac	North Macedonia	270
Sombor	Croatia	120
Principovac	Croatia	220
Obrenovac	Belgrade	400
Adaševci	Croatia	400
Subotica	Hungary	130
Bela Palanka	Bulgaria	300
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	110
Pirot	Bulgaria	190
Kikinda	Romania	280
Šid	Croatia	205
Total		3,745

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? Unknown
- 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

⁴⁷⁹ Except during the COVID-19 lockdown.

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.⁴⁸⁰

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 beginning the COVID-19 lockdown, all Asylum Centres except for AC Banja **Koviljača** were overcrowded, with a lack of privacy and poor hygienic conditions.⁴⁸¹

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.

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. Translators are present on a daily basis, while legal aid is provided by APC, BCHR and HCIT. Asylum procedure is regularly conducted by the Asylum Office and all foreigners are registered in line with the Asylum Act.

One doctor and one medical technician are present four hours on each workday. 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. PIN and Group 484 provide psycho-social counselling on a regular basis.

⁴⁸⁰ 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>.

⁴⁸¹ A11 Analysis on Detention of Foreigners during the State of Emergency, p. 4-6.

AC **Banja Koviljača** was the only AC which was not overcrowded during the COVID-19 lockdown if we take in consideration its official capacity (120). However, since the capacities of all accommodation facilities are measured in relation to available beds, it is safe to assume that realistic capacities of this Centre are at least couple of dozens less. On 10 January 2020, AC accommodated 54 asylum seekers which means that living conditions and regime of life provided the respect for human dignity of all asylum seekers. It can be safely argued that AC **Banja Koviljača** is the best accommodation facility for asylum seekers in Serbia and CRM should strive to keep the number of asylum seekers below 80 in the future.

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. This also why many of them are dissatisfied when referred to this AC and why the fluctuations of foreigners are very intensive.

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. In 2020, AC **Bogovađa** was designated for UASC and the capacities were almost always full. However, in December 2020, an incident between the children and employees occurred,⁴⁸² and almost half of its population was transferred to RC **Preševo**, even though this facility is not designated for UASC. The conflict between employees and UASC who were praying arose after on the employees accidentally stepped on the praying rogue. This has led to the protest of UASC and the situation in which a CRM employee was forced to kiss the praying rogue. Even though this kind of behaviour was unacceptable, the fact that dozens of UASC were transferred to RC Preševo gives serious reasons for concern, especially if we take in consideration that, during 2020, CRM and Mol were frequently resorting to 'disciplinary measure' which implies that 'problematic' foreigners are transferred to reception centres where living conditions can be even described as inhumane and degrading.⁴⁸³ This kind of measure was applied at several dozen of UASC and this act was praised by the Ombudsman,⁴⁸⁴ which gives another reason for concern because informal forms of punishment which imply transferring of children to poor living conditions is in clear contradiction with the best interest of a child principle.

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.

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.

In the second half of 2020, Asylum Office police officer was deployed to AC **Bogovađa** for the purpose of registration of UASC who wish to express the intention to seek asylum and issuance of registration certificates and identity cards for asylum seekers. During 2020, the vast majority of children residing in this Centre was unregistered and lodging of asylum application or hearings were not facilitated after the COVID-19 lockdown. One of the main reasons for such state of affairs is the fact that most of UASCs do not want to remain in Serbia. CRPC translator is present on a weekly basis.

⁴⁸² N1, *Zaštitnik građana traži podatke o incidentu sa migrantima u Bogovađi*, 24 December 2020, available at: <http://bit.ly/39A2Tmg> [accessed on 1 February 2021]

⁴⁸³ NPM, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, 16 June 2020, available at: <https://bit.ly/2NLyWRc>, p. 25.

⁴⁸⁴ The Ombudsman, *Недовољно обезбеђење Центра за азил у Боговађи, део миграната пребачен у Прешево*, available at: <http://bit.ly/3aCLSav> [accessed on 1 February 2021].

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 and Group 484.

It is important to highlight that AC **Bogovađa** does not meet the standards for accommodation of UASC. The reason for this mainly lies in the fact that Social Welfare Centre in **Lajkovac** does not have sufficient capacity to provide adequate support to all UASC, but only to those who had resided in Centre for more than 6 months, and those who wish to apply for asylum (two boys from **Afghanistan** in 2020). They tend to be then transferred to Belgrade, to a social institution for children.

In June 2020, a video appeared showing members of private security ill-treating children in their rooms. The video shows how one of the security officers is yelling and slapping boys who allegedly did not want to go to sleep. This video became viral and triggered reactions of almost all state institutions and CSOs, and BCHR submitted criminal complaint.⁴⁸⁵ The Ombudsman issued a recommendation failing to qualify such acts as at least inhumane and degrading and indicating only that CRM has failed to timely inform Mol and competent public prosecutor⁴⁸⁶ This once again showed that the Ombudsman (excluding NPM department) is reluctant to properly assess cases of human rights violations of refugees and migrants.

In comparison to Ombudsman's reaction on the December incident, when the group of boys forced one of the employees to kiss the praying rug on which she accidentally stepped recorded and published video online, it can be clearly seen that the Ombudsman reacted with different intensity. The difference in reaction was also evident with regard to Public Prosecutor who, in the case of misbehaving boys, ordered pre-trial detention, while in the case of private actors who ill-treated children just opened a pre-investigative procedure.

To conclude, it is evident that the situation in AC **Bogovađa** is tensed, that children are not satisfied with the accommodation and location of the camp and that this AC should not be used for the accommodation of children.

The incidents in **Bogovađa** have triggered a reaction from CSOs, and IDEAS decided to form the Coalition which has an aim to combat ill-treatment of UASC in Serbia. The Coalition has 9 members now and will become fully operational in February 2021.⁴⁸⁷

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. Officially, the centre can accommodate 200 persons. The average number of persons in this centre was more than 200 per day in 2020, meaning that even the official capacities suffered from lower overcrowding rate.

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

⁴⁸⁵ Mondo, JEZIV SNIMAK iz Bogovađe: Obezbeđenje TUČE DETE MIGRANTA! (VIDEO), available at: <http://bit.ly/3pQuu8B> [accessed on 1 February 2021].

⁴⁸⁶ The Ombudsman, Заштитник грађана тражи да МУП Србије утврди све околности физичког злостављања малолетних миграната, 23 June 2020, available at: <http://bit.ly/2YAvK3C> [accessed on 1 February 2021].

⁴⁸⁷ IDEAS, *Osnovana Koalicija za zaštitu dece izbeglica i migranata od zlostavljanja i zanemarivanja*, 30 August 2020, available at: <http://bit.ly/3avMdvq>.

frequently blocks the road, thereby preventing access to the camp for several weeks or even months. In 2020, Asylum Office has failed to conduct asylum procedure in AC **Tutin**, meaning that asylum seekers do not have effective access to asylum procedure.⁴⁸⁸

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. An average of 100 persons per day stayed in this centre in the course of 2020. 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 2020. The living conditions could be described as inadequate in the old part of the factory, while significant improvements were made during 2019 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 specialised 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.

During the COVID-19 lockdown, AC **Sjenica** was severely overcrowded reaching at one point 382 persons.⁴⁸⁹ Thus, the overcrowding rate was 153%. In the last quarter of 2020, the number of UASC staying in AC **Sjenica** was below 100 and on 10 January 2021 this number was 74.

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

⁴⁸⁸ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

⁴⁸⁹ A11 *Analysis on Detention of Foreigners during the State of Emergency*, p. 4-5.

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. However, it can be safely argued that the most realistic capacities are up to 600 places and taking in consideration other standards which refer to privacy, overcrowding and hygiene.

Given its proximity to downtown **Belgrade**, this Asylum Centre housed the greatest number of persons in 2020 i.e., an average of 400 to 500 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, the video surveillance was installed but the number of security staff is inadequate. Further, asylum seekers 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.⁴⁹⁰ For that reason, AC in **Krnjača** cannot be considered as adequate and safe for UASC. Additionally, there were several incidents during the COVID-19 lockdown when different CSOs (who did not have access to AC at that time), received dozens of complaints regarding violence between inhabitants of the Centre, but also violence committed by the police, military, CRM and private security. On 7 April 2020 military fired shots in air in order to deter several Afghan refugees who requested to leave the AC. Minister of Defence at that time, Aleksandar Vulin praised the military officers⁴⁹¹ and outlined that such practice will be applied in all similar situations. On 10 April 2020, police officers belonging to the Gendarmery Unit, ill-treated several dozen refugees from Afghanistan, alongside with one of the CRM employees who was the one navigating the police. The purpose of police intervention was to transfer 'problematic' refugees and asylum seekers to RC **Morović**. The Ombudsman opened an inquiry, refugees were examined by the forensic expert but until this report was concluded, failed to publish his findings.⁴⁹²

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.

During the COVID-19 lockdown, the highest recorded number was slightly above 1,000 persons, but only for a few days. An average number during the COVID-19 lockdown was between 830 to 920.⁴⁹³ All of these numbers clearly led to extreme rate of overcrowding.

⁴⁹⁰ N1, Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda', 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

⁴⁹¹ N1, Vulin: Vojnik ispalio tri hica u vazduh jer su migranti pokušali da pobegnu, 9 April 2020, available at: <https://bit.ly/3hCXHA3> [accessed on 1 February 2021]

⁴⁹² Danas, Iz Krnjače u Morović prebačeno 90 migranata, 12 April 2020, available at: <https://bit.ly/37zvKEz> [accessed on 1 February 2021] and H-Alter, Krnjača: Umjesto sapuna, izbjeglice i migranti dobili batine!, 12. april 2020, available at: <https://bit.ly/2USyOq5> [accessed on 1 February 2021].

⁴⁹³ A11 Analysis on Detention of Foreigners during the State of Emergency, p. 4-5.

The number of foreigners accommodated in asylum centres and reception centres on 6 April 2020

Asylum Centre	Capacity	Current situation	Overcrowding rate
Banja Koviljača	120	111	-
Bogovađa	200	261	131%
Tutin	200	209	105%
Sjenica	250	382	153%
Krnjača	1,000	909	-
Total	1,770	1,872	106%

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia was generally stable throughout 2020,⁴⁹⁴ except in the period March-May 2020, when the restrictive border policies introduced during the state of emergency sharply decreased the number of arrivals. 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, even though the Asylum Act provides for the possibility for asylum procedure to be facilitated there. Persons in need of international protection and other categories of migrants were placed in the majority of these centres throughout the year.

The reception ('one-stop') centre in **Preševo** (800 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. On 10 January 2020, 578 persons was accommodated there. During the COVID-19 lockdown, the highest recorded number was 1,501. It is important to highlight that RC **Preševo** is mainly built for a short term stay and is comprised of the sleeping premises of collective nature, with several dozen bunk beds and without the possibility to enjoy the right to privacy. APC has been constantly reporting overcrowding, poor hygiene, lack of clothes, ruined and dilapidated toilets and lack of privacy.⁴⁹⁵

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. On 10 January 2020, the number of persons accommodated was 182, while the highest number was 260 during the COVID-19 lockdown.

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, but the realistic capacities that would guarantee human dignity and a longer stay are several dozen less.

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. However, RC **Sombor** has been one of the most overcrowded RCs during 2020, accommodating during the COVID-

⁴⁹⁴ An average number of refugees and migrants residing in Serbia was between 5,000 to 6,500 on a daily basis.

⁴⁹⁵ APC Twitter, available at: <https://bit.ly/3pHZVI8> and <https://bit.ly/3cFGUMq>.

19 lockdown 537 refugees and migrants. Several dozen tents have been installed in the yards in front of the centre and people were crammed inside the tents with limited access to water, sanitation and hygienic packages. Many foreigners were forced to sleep on the floor, on dirty mattresses and rugs and in unhygienic conditions.⁴⁹⁶ It is reasonable to assume that longer stay in such conditions, especially during the COVID-19 lockdown, amounted to inhumane and degrading treatment. On 10 January 2021, 847 refugees and migrants were accommodated in RC Sombor whose official capacities are 120 persons.⁴⁹⁷

Additional centres function in **Principovac** (220 places) and **Adaševci** (400 places), in the Šid municipality, close to the Croatian border. Identically as RC Sombor, RC Adaševci and RC Principovci have been among the most overcrowded RCs during the course of 2020 and at the beginning of 2021. On 6 April 2020, 665 refugees and migrants were detained accommodated in RC **Principovci**, while on 10 January 2021, 606 foreigners were placed in this Centre. On 9 April, during the COVID-19 lockdown, 1,142 refugees and migrants were detained in RC **Adaševci**. On 10 January 2021, 1,168 refugees and migrants were accommodated in this centre.

The continuous overcrowding in these two centres have led to the situation in which foreigners were crammed inside huge tents ('rap-holes') with limited or no heating during the winter, with access to limited number of toilets and showers, where hygiene was on an extraordinary low level and where foreigners complained on livestock lice and different types of skin disease. The NPM in his report outlined the following:

'In the first of the two rap-holes located on the west side of the area where the camp is located, about 150 migrants were found, who were sleeping on a total of 142 bunk beds, which were arranged in three rows along the length of the facility. So, each person has less than 2 m2 at his disposal. The beds are in extremely poor condition, with dilapidated mattresses that are in most cases without sheets. Some of the beds have been completely destroyed and cannot be used, so it is clear that there are not enough beds in the rap-whole for all the people staying in it, and that it is often the case that two people sleep on one bed or three on two connected beds. Due to the high rate of overcrowding, lack of windows and unsuitability of the building to climatic conditions, the rap-whole itself is stuffy and steamy, and an unpleasant odour is intensive, which is a consequence the lack of personal hygiene and inability to maintain general hygiene inside the building. Practically, there are no conditions for a minimum degree of privacy, nor are there lockers or cassettes for storing personal belongings.'⁴⁹⁸

NPM recommended that all of the rap-holes should be put out of use and that overcrowding in the solid building should be resolved by decreasing the number of inhabitants. Taking in consideration NPM's findings, it can be concluded that maximum capacities which meet the standards necessary for the respect of human dignity, cannot be higher than 200 to 250 places.

At the same time, RC **Principovci** and RC **Adaševci** are considered to be the most unsecure RCs with a high level of fluctuations in terms that people are coming and going towards the border with Croatia. Smuggling groups are present in all of the Western RCs, including RC Šid and inter-foreigner violence is common. In RC **Adaševci** the NPM recorded testimonies which implied the violence committed by the camp employees. The Ombudsman stated in the Report the following:

'The NPM received several allegations of inadequate conduct of CRM officers in both reception centres, and allegations of other actions in the PC in **Adaševci**, which by their nature indicate the possible presence of corruption. In addition, it was noticed that there was an atmosphere of fear and mistrust among the migrants because they were not ready to openly discuss the relationship with CRM officers, RC security, police and military officers. In fact, the people who made up the visiting team were, according to the migrants, the first people to visit the centre and talk to them about the conditions in which they live, the needs and the overall realization of their rights.

A number of migrants interviewed by the NPM reported allegations of ill-treatment that included: insults,

⁴⁹⁶ APC Twitter, available at: <https://bit.ly/3tfQTy2>.

⁴⁹⁷ SolInfor.org, *Više od 850 izbeglica u somborskom centru*, 18 January 2021, available at: <http://bit.ly/2MHtK6S>.

⁴⁹⁸ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, p. 14.

threats, slaps, kicking, but also beatings with rubber truncheons, metal bars and wooden poles. Migrants pointed out that security workers often pushed, slapped, kicked or shouted at them, threatened them with physical violence and insulted them, and that they were afraid to complain about them, often in line for a meal or when distributing masks, gloves, hygiene kits, shoes or clothes. They are afraid to report many things that bother them because in that case they would be "marked", after which they would be transferred to the temporary reception centre in **Morović**. Some also pointed out that they procure blankets and hygiene packages from certain employees, whose names they did not want to say for money.⁴⁹⁹

'The NPM uses this opportunity to draw the attention of CRM officials to the fact that the prohibition of ill-treatment is absolute and that physical and mental integrity is inviolable. For this reason, and having in mind the allegations received, the NPM makes the following recommendation:

The Commissariat for Refugees and Migration will send a clear message to its officials, which contains a clear position that torture and other cruel, inhuman or degrading treatment or punishment is absolutely forbidden and that there will be zero tolerance for such acts at the level of the entire Commissariat.⁵⁰⁰

Another reception centre for the accommodation of a larger number of migrants was opened in a military barracks in **Obrenovac** (400 places) in January 2017. The centre was initially designed for 900 persons, but as it is the case of all other reception facilities, the capacities were assessed in relation to available beds. 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 functioning, 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. During the COVID-19 lockdown, **Obrenovac** hosted 1,063 foreigners, where most of them was accommodated in the military tents, with no heating, electricity and sanitary facilities. The NPM highlighted in its report on April 2020 visit to RC **Obrenovac** the following:

The NPM team performed a detailed inspection of two larger and one smaller tent located behind the concrete sports field. A total of 22 Kurdish refugees from Syria were found in the tent number one, which measures 3.3 m by 11 m. Thus, 22 people were accommodated in a building of about 36 m², which means that about 1.6 m² was left at the disposal for each person, which indicates an extremely high overcrowding rate. During the night, or during the day during Ramadan, migrants are forced, due to lack of space, to sleep close and crammed next to each other, with their legs bent, in conditions depriving them of any privacy.

The floor is covered with a dilapidated and torn tarpaulin in several places, on which dirty and dilapidated dark grey blankets have been thrown. Not a single bed, in the sense of a sponge or mattress found in other tents, was observed in this facility. Therefore, migrants are practically separated from the ground only by a thin tarpaulin and possibly another blanket used by those migrants who managed to provide themselves an additional one. The NPM team noticed that the surface and blankets on which the migrants were lying during the visit seemed damp.

The building itself was stuffy and steamy and there was an unpleasant odour that was a combination of moisture, mold and lack of personal hygiene. Ventilation is extremely difficult because there are only 10 windows measuring 20 cm by 20 cm on the tent itself, so the only purposeful way to ventilate the room to some extent is by opening the door to its full width. However, when the door is wide open, insects enter the tent. And indeed, at the time of the visit, swarms of flies were spotted in the tent itself. The small windows and the very nature of the building are such that the inflow of natural light is also problematic, so it is in the tent in addition to being stuffy and quite dark. There is no artificial lighting because there is no electricity in the entire tent part of the centre.⁵⁰¹

Several incidents were recorded during the COVID-19 lockdown, some of which involved CRM workers who, according to some testimonies, ill-treated refugees and asylum seekers. On 6 April 2020, refugees and migrants rebelled against their detention and there was a conflict with employees from the camp,

⁴⁹⁹ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, p. 26-27.

⁵⁰⁰ *Ibid.*, p. 26.

⁵⁰¹ *Ibid.*, p. 7.

which ended with the intervention of the gendarmerie. According to the testimonies of many foreigners, the gendarmerie entered the PC and randomly started hitting people, who were mostly housed in the tent area of the PC, with rubber truncheons. After the intervention, all foreigners were ordered to lie on the floor facing the ground. The foreigners remained in such a position for several hours, and about 30 people who were marked as the perpetrators of the incident were transferred to PC Morović.⁵⁰² On 13 May an **Egyptian** citizen was allegedly beaten with a metal bar by CRM employees and members of a private security company. The Ombudsman opened an inquiry on this case.⁵⁰³ Also, the recommendation given by the NPM in relation to RC **Adaševci** encompassed the CRM staff in **Obrenovac**.⁵⁰⁴ On 10 January 2021, RC Obrenovac hosted 591 persons, and many of them were accommodated in tents. The conditions in RC Obrenovac were described as inhumane and degrading.

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** (280), 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. Both of these centers were overcrowded during the year, many people were placed in tents, the hygiene was on a disturbingly low level and it appears that living conditions were identical to those which were recorded by NPM in relation to RCs **Adaševci** and **Obrenovac**. For instance, during the COVID-19 lockdown, RC **Kikinda** hosted 660 refugees and migrants. The number remained unchanged on 10 January 2021.

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. Still, the COVID-19 lockdown did not lead to overcrowding of these facilities, and on 10 January 2021, the number of reported people staying in these centres was way below its capacities. Moreover, RC in **Dimitrovgrad** was not put in function in 2020.

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.

Moreover, during the COVID-19 lockdown, the living conditions in most of the Reception Centres could be described as inhumane and degrading and completely contrary to COVID-19 circumstances.⁵⁰⁵ Namely, the recommendations of World Health Organization,⁵⁰⁶ but also the CPT principles⁵⁰⁷ which were applicable during the lockdown, indicated that States should undertake measures to reduce overcrowding in all places of deprivation of liberty.⁵⁰⁸ Thus, even though every reception and asylum centre designated premises for isolation and quarantine, and masks and gloves were distributed on several occasions, the

⁵⁰² *Hod po žici*, p 80-89.

⁵⁰³ *Ibid.*

⁵⁰⁴ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, p. 26-27.

⁵⁰⁵ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, p. 23.

⁵⁰⁶ World Health Organization (WHO), *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, Interim guidance, 15 March 2020, available at: <https://bit.ly/34h5du5>.

⁵⁰⁷ CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, 20 March 2020, CPT/Inf(2020)13,

⁵⁰⁸ *A11 Analysis on Detention of Foreigners during the State of Emergency*, p. 22-24.

level of overcrowding in 9 out of 18 functional reception facilities was, and still is epidemiologically contentious.

However, it is fair to say that COVID-19 cases were not recorded during the lockdown, but after the state of emergency was lifted. Thus, several dozens of refugees and migrants were suspected to have COVID-19, while 17 cases were confirmed by the end of November 2020.⁵⁰⁹ Also, several dozen CRM employees, were infected with COVID.

Finally, it is also important to outline that CSOs in Serbia have not paid particular 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 prioritised 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.⁵¹⁰ 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. According to the official data, but also reports published by the NPM, realistic capacities of reception centres are at least 30 to 40% lower than the official number, if we apply the standards of EASO and other human rights standards.

Reception centre	Capacity	9 April 2020	Overcrowding rate
Preševo	800	1.501	187%
Vranje	230	230	100%
Bujanovac	270	260	96%
Sombor	120	537	448%
Principovac	220	665	302%
Obrenovac	400	1,063	267%
Adaševci	400	1,142	285%
Bela Palanka	300	284	95%
Dimitrovgrad	90	-	-
Bosilegrad	110	80	73%
Pirot	190	192	101%
Kikinda	280	660	235%
Šid	205	238	116%
Total	3,615	6,852	189%

⁵⁰⁹ Radio Free Europe, Policijsko 'disciplinovanje' migranata u Srbiji, 3 December 2020, available at: <http://bit.ly/36ApvBa> [accessed on 1 February 2021]

⁵¹⁰ 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

Asylum seekers did not have the right to work when the old Asylum Act was in force.⁵¹¹ Only after the Employment of Foreigners Act was adopted at the end of 2014, asylum seekers were recognized as members of specific category of foreigners entitled to obtain the work permit.⁵¹²

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market.⁵¹³ 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.⁵¹⁴ 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. However, this period can be shortened through the wider use of written asylum applications, which was recorded in the second half of 2020. However, the 9-month period still has discouraging effect on asylum seekers to genuinely consider Serbia as a destination country and is contrary to the position of the Committee for Economic, Social and Cultural Rights (CESCR).⁵¹⁵

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 (**Tutin, 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 Permits⁵¹⁶ 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. Asylum seekers are usually assisted

⁵¹¹ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 14-16 and 55.

⁵¹² Article 2 (1) (9) Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014

⁵¹³ Article 57 Asylum Act.

⁵¹⁴ Article 13 Employment of Foreigners Act,.

⁵¹⁵ The Committee expressed concern over a nine-month period applied in Slovakia, see CESCR, *Concluding observations on the third periodic report of Slovakia***, 14 November 2019, E/C.12/SVK/CO/3*, available at: <https://bit.ly/32TR1aM>, para. 20 and 21

⁵¹⁶ Official Gazette no. 63/18, 56/19.

by CSOs providing legal aid. Thus, APC,⁵¹⁷ BCHR, HCIT and IDEAS, with the assistance of UNHCR, have been assisting asylum seekers in obtaining work permits.⁵¹⁸

However, as it was noted by A11, asylum seekers in Serbia do not have effective access to right to work due to the following reasons:

- There is no specialised state authority which would provide support in access to the labour market.
- There is no regulation governing the manner in which support in access to labour market would be provided,
- The right to work is not exercised in practice with institutional support, but only with support of CSOs that are UNHCR partners.⁵¹⁹

Taking in consideration that asylum seekers are qualified under the same category as persons granted subsidiary protection, but also victims of human trafficking, it is not possible to determine what is the exact number of asylum seekers issued with work permits. However, the first working permit to asylum seeker was issued in 2017. From 2016 to 31 October 2020, a total of 470 personal working permits were issued for the territory of AC **Krnjača**, AC **Banja Koviljača** and AC **Bogovađa** and to foreigners who belong to the special category.⁵²⁰ However, this number does not reflect the number of persons, but the joint number of first time issued and extended working permits. Thus, the number of asylum seekers granted a permit is significantly lower than 470 because they have to renew their working permit every six months (while persons granted subsidiary protection every year). Every extension is included in the total number because that is the way National Employment Service (NES) keeps the record. Also, NES does not keep the record on the number of asylum seekers who are actually employed.

All asylum seekers are recorded at the NES as unqualified workforce and the condition to register their qualification in the records is validation of their diplomas which can prove their qualification degree. However, the majority of them do not hold original diplomas and documentation from the state of origin and most frequently, there is no real possibility to obtain them.⁵²¹

The COVID-19 pandemic deprived asylum seekers accommodated in Asylum or Reception Centres of work, and due to a March-May lockdown. Also, the State of Emergency and the COVID-19 circumstances in general have led to a loss of jobs of several asylum seekers.⁵²² However, it is not possible to determine the exact number of asylum seekers who lost their jobs.

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Asylum seekers have the right to free primary and secondary education.⁵²³ The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,⁵²⁴

⁵¹⁷ APC, APC/CZA panel u Beogradu „Pristup zapošljavanju izbeglicama i azilantima. u Srbiji: iskustva, izazovi i naučene lekcije”, 6 December 2019, available at: <https://bit.ly/2MMGCZA>.

⁵¹⁸ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, p. 39-40.

⁵¹⁹ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 55-58.

⁵²⁰ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 32-33.

⁵²¹ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, p. 41.

⁵²² *Ibid*, p.39.

⁵²³ Article 55(1) Asylum Act.

⁵²⁴ 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.

with relevant issues also regulated by the Primary School Act,⁵²⁵ the Secondary School Act⁵²⁶ and the High Education Act.⁵²⁷ 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.⁵²⁸ Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.⁵²⁹

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. This trend has continued during the 2020 and especially during the COVID-19 circumstances when all the children were deprived of the possibility to go to school due to the state of emergency and the fact that online lectures were not adapted to children who do not speak Serbian, i.e. the vast majority of them.

Primary and secondary education is available to all the children residing in **Krnjača**, **Tutin**, **Sjenica** 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 USAC usually 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 COVID-19 lockdown, children accommodated in Asylum and Reception Centres were deprived of possibility to attend school. The same can be said for children accommodated in social care institutions for UASC.

In 2019/2020, the number of children from AC in **Krnjača** enrolled into **Belgrade** elementary schools was 79, while 53 regularly attended. There were no children enrolled into secondary school. In **Sjenica**, only two UASC regularly attend primary school, even though several dozen was enrolled in September 2020, while in **Tutin** that number is 0. UASC in **Bogovađa** do not attend school at all due to a high fluctuation rate, while those children who expressed their wish to apply for asylum are transferred to Belgrade where they are enrolled into schools. All the children accommodated in social care institutions in Belgrade and Nis regularly attend school.⁵³⁰

⁵²⁵ 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.

⁵²⁶ 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.

⁵²⁷ 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.

⁵²⁸ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

⁵²⁹ Article 55(2) Asylum Act.

⁵³⁰ Information obtained by CRM and IDEAS and IOM temporary legal guardians.

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.⁵³¹ 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.⁵³²

Upon their arrival to the reception facility, asylum seekers are obliged to undergo a 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.⁵³³ The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations.⁵³⁴

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.⁵³⁵

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. However, it is important to reiterate that the vast majority of persons accommodated in Asylum or Reception Centres do not enjoy the status of asylum seeker (they did not lodge asylum application) and are thus not entitled to health care, as envisaged in Article 54 of the Asylum Act. However, all persons issued with registration certificates are in practice treated as asylum seekers and are allowed to receive medical treatment. Still, even those people who lodged asylum application can have difficulties in accessing health care services by themselves because they are not issued with health care cards, nor are they introduced into health care records in local medical centres.

When it comes to mental-health care problems, in 2018, PIN and WHO developed the *Guidance for protection and improvement of the mental health of refugees, asylum seekers and migrants in Serbia*⁵³⁶, which was adopted by the Ministry of Health and Commissariat for Refugees and Migration. This Guidance stipulates that mental health protection services should be delivered on four levels – initial screening, prevention activities, psychological interventions, and psychiatric care. It is recommended that these services are available through the public healthcare system, while civil society organizations would fill in the gaps in line with identified needs.⁵³⁷

⁵³¹ Article 54 Asylum Act.

⁵³² Article 54(3) Asylum Act.

⁵³³ Article 2 Rulebook on medical examinations.

⁵³⁴ Article 3 Rulebook on medical examinations.

⁵³⁵ Article 4 Rulebook on medical examinations.

⁵³⁶ Svetozarević, S., Vukčević, Marković, M., Pejušković, B., & Simonović, P. (2019). *Guidance for protection and improvement of mental health of refugees, asylum seekers and migrants in republic of Serbia*. Serbia, Belgrade: World Health Organization, available at: <https://bit.ly/3r7wBEZ>.

⁵³⁷ *Ibid.*

The COVID-19 lockdown has led to a high rate of overcrowding which contradicted recommendations of WHO and CPT (see [Freedom of movement](#)).

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.⁵³⁸

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.⁵³⁹ However, this does not refer to reception conditions, although persons with special needs might receive slightly better accommodation compared to other residents of asylum centres. Very often even these 'improved' reception conditions are inadequate for such persons.

The Asylum Act envisages that material conditions of reception of unaccompanied children are provided in Asylum Centres or other facilities designated for accommodation of asylum seekers until passing of the final decision on the asylum application.⁵⁴⁰ However, it is clear that the vast majority of reception facilities do not meet adequate standards. In 2020, AC **Sjenica** and AC **Bogovađa** were designated for UASC. None of the said centres, taking into consideration their remote location and lack of available social services, can be considered to be in line with child-specific standards. Moreover, the number of incidents in **Bogovađa** during 2020 indicates that personnel of this facility does not have the capacity to work with children.⁵⁴¹

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.⁵⁴² Since the end of 2015, unaccompanied children have been accommodated in institutions in **Belgrade** and **Niš**. 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. However, all the children placed in Belgrade social institutions regularly attend school and most of them speak Serbian language. On 10 January 2021, 34 children were accommodated in social welfare institutions in Belgrade and Niš. The total official capacities are 74.

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.

⁵³⁸ Article 50(3) Asylum Act.

⁵³⁹ Article 17 Asylum Act.

⁵⁴⁰ Article 53 Asylum Act.

⁵⁴¹ FRA, *Migration: Key Fundamental Rights Concerns*, November 2020, available at: <https://bit.ly/2LfbPEj>.

⁵⁴² See more in BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 61-66.

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,⁵⁴³ as well as about NGOs providing free legal aid.⁵⁴⁴ (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.

During the COVID-19 lockdown, CRM, CSOs and UNHCR provided refugees, asylum seekers and migrants with the relevant information on COVID-19 and measures which the Government of Serbia has taken. The Guidelines on preventive measures were also translated to Arabic, Farsi, Urdu, Pashto, English and French and were publicly displayed in all facilities. However, the overcrowding rate in almost all reception facilities, accompanied with the lack of hygiene and privacy created an extremely risky situation considering WHO recommendations.

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.⁵⁴⁵ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.⁵⁴⁶ However, planned UNHCR visits should be announced in a timely fashion.

From 10 March 2020, until second half of June, CSOs providing different kinds of services were prevented from visiting asylum and reception centres.

G. Differential treatment of specific nationalities in reception

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

⁵⁴³ Article 56(2) Asylum Act.

⁵⁴⁴ Article 56(3) and (4) Asylum Act.

⁵⁴⁵ Article 5 Asylum Act.

⁵⁴⁶ Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2020: ⁵⁴⁷	3
2. Number of asylum seekers in detention at the end of 2020:	1
3. Number of detention centres:	1
4. Total capacity of detention centres:	80

The possibility of placing asylum seekers under detention in Serbia is prescribed by the Asylum Act. In 2020 the Asylum Office rarely resorted to such measures, and only issued 3 decisions to detain asylum seekers in order to ensure their presence in the asylum procedure. Asylum seekers are detained in Detention Centers for Foreigners in **Padinska Skela**.

Also, persons who are likely in need of international protection (and who are not recognised as asylum seekers) can be detained in the Detention Centre for Foreigners in **Padinska Skela** on grounds which are set in the Foreigners Act, mainly for the purpose of forcible removal.⁵⁴⁸ However, the Ministry of Interior has stopped providing statistical data in 2018.⁵⁴⁹ Overall, persons who are likely to be in need of international protection can be detained 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](#)).

Detention Centre for Foreigners in **Padinska Skela** is the only official institution established for the purpose of detaining migrants or asylum seekers. It is located in Belgrade and has the maximum capacity of 80.⁵⁵⁰ In 2020, the reconstruction and expansion of the centre's capacity continued, and it will become operational during 2021. The bedrooms, the kitchen, the dining room, and Detention Centre management offices were renovated in 2019.

The cooperation between BCHR and the Detention Center for Foreigners was less intensive during 2020. One of the reasons was the fact that all foreigners were transferred from **Padinska Skela** to RC **Obrenovac** during the State of Emergency. In other words, the Detention Centre was not functioning for more than 3 months. It became operational in July 2020.

Not a single foreigner detained was issued with the registration certificate in 2020. The BCHR's lawyers were informed on several occasions about foreigners who wished to receive information on asylum in Serbia. However, the case of **Iranian** family who was expelled to **Bulgaria** against their will indicates that CSOs providing free legal aid should always be informed on the date of forcible removal in order to assess if the persons in question are in need of international protection.

The Detention centre for Foreigners does not have translators, medical experts and psychologist as members of permanent staff.

⁵⁴⁷ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

⁵⁴⁸ Articles 87 and 88 Foreigners Act.

⁵⁴⁹ However, according the Ombudsman reports, it can determine that at least 13 foreigners were forcibly removed to third countries or countries of origin in 2020. The MoI forcibly removed citizens of Turkey (1), China (1), Afghanistan (1) and Croatia (1) to their countries of origin, and 1 Pakistani to Romania and 3 Iranians and 1 Iraqi to Bulgaria.

⁵⁵⁰ Article 3(1)(28) Foreigners Act.

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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ at the border: ⁵⁵¹ | <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 checked="" type="checkbox"/> Rarely |
| | | <input type="checkbox"/> Never |

1.1. Detention of asylum seekers

An asylum seeker can be detained by a decision of the Asylum Office, when it is necessary to:⁵⁵²

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;⁵⁵³
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.⁵⁵⁴

In practice, the Asylum Office rarely orders detention of asylum seekers. Only 3 detention orders were issued in 2020 on those grounds, including the Cameroon citizen who was introduced in an accelerated asylum procedure.

The practice of arbitrary detention at the airport has already been described in [Access to the Territory](#), as well as detention in Asylum and Reception Centres during the COVID-19 lockdown. 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.⁵⁵⁵ However, since there are no adequate facilities located in border areas or in the transit zone, the border procedure has not yet been applied. However, MoI plans to open a Detention Centre for Foreigners in **Dimitrovgrad**, a city located at the green border with **Bulgaria**.

⁵⁵¹ Accommodation in airport transit zone with very restricted freedom of movement.

⁵⁵² Article 77(1) Asylum Act.

⁵⁵³ 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.

⁵⁵⁴ Article 58(1)(3) and (7) Asylum Act.

⁵⁵⁵ Article 44(1)(1) Asylum Act.

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”.⁵⁵⁶ 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 with the preparations for return or removal.⁵⁵⁷ 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.

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 should have access to procedural safeguards in the context of expulsion,⁵⁵⁸ which is not the case at the moment. The current practice implies stereotypical issuance of the decision on cancellation of residency,⁵⁵⁹ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.⁵⁶⁰ 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 residency,⁵⁶¹ or the expulsion decision,⁵⁶² does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.⁵⁶³ 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*.

⁵⁵⁶ Articles 87 and 88 Foreigners Act.

⁵⁵⁷ 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.

⁵⁵⁸ Article 1 Protocol 7 ECHR.

⁵⁵⁹ Article 39 Foreigners Act.

⁵⁶⁰ Article 74 Foreigners Act.

⁵⁶¹ Article 39(7) Foreigners Act.

⁵⁶² Article 80(3) Foreigners Act.

⁵⁶³ Articles 80(3) and 83 Foreigners Act.

Additionally, another problematic is the widespread practice of convicting persons coming from refugee-producing countries for irregular 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 irregular 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.⁵⁶⁴

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;⁵⁶⁵
2. Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;⁵⁶⁶
3. Temporary seizure of a travel document.⁵⁶⁷

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.⁵⁶⁸ The Asylum Office is the authority in charge of ordering alternatives to detention with regard to asylum seekers.

Such measures, however, have never been taken in practice as of the end of 2020. In general, Serbia can still be considered a country that does not resort to systematic detention of asylum seekers or other foreigners that might be in need of international protection.

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 a 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

⁵⁶⁴ BCHR, *Right to Asylum in Serbia 2020*, p. 44.

⁵⁶⁵ Article 78(1)(1) Asylum Act.

⁵⁶⁶ Article 78(1)(2) Asylum Act.

⁵⁶⁷ Article 78(1)(5) Asylum Act.

⁵⁶⁸ Article 79 Asylum Act.

his or her health condition.⁵⁶⁹ 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 in the course of asylum procedure.

In December 2019, two USAC from **Afghanistan** were detained on security grounds,⁵⁷⁰ 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, it is rare in practice for children and families to be detained 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.

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? | 3 months |

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 Office⁵⁷¹ and on the same grounds as prescribed in Article 77 (1) of the Asylum Act. The detention order in line with the Foreigners Act can last for 180 days maximum.⁵⁷²

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)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Persons who seek asylum in Serbia may be detained 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 territory are detained in 27 different penitentiaries around Serbia. Persons who are detained at **Nikola Tesla Airport** (see [Access to the Territory](#)) are placed 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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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

⁵⁶⁹ Article 80 Asylum Act.

⁵⁷⁰ Information provided by CSO IDEAS.

⁵⁷¹ Article 78(2) and (3) Asylum Act.

⁵⁷² Article 88 Foreigners Act.

for asylum are accommodated.⁵⁷³ 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.

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

During the COVID-19 lockdown, all detainees were transferred to RC **Obrenovac**, while after July 2020, a special premise for isolation and quarantine were designated for newly arrived detainees. No COVID-19 cases were recorded in **Padinska Skela**.

2.2. Conditions in penitentiary facilities

Conditions in the penitentiaries where asylum seekers and migrants 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.

In 2019, 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.”⁵⁷⁴

⁵⁷³ 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.

⁵⁷⁴ 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.

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.⁵⁷⁵ NGOs specialised in asylum and migration issues are also entitled to have access to all the persons who enjoy the status of asylum seeker.⁵⁷⁶ 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.⁵⁷⁷ BCHR and APC are only CSOs who had access to Detention Centre in **Padisnka Skela** in 2020. Usually, the visits are conducted upon the invitation of the management, and when a foreigner express his intention to apply for asylum.⁵⁷⁸

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.⁵⁷⁹ The appeal against the Asylum Office's detention decision does not have suspensive effect.⁵⁸⁰

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 their rights, 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 irregular border crossing or 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.⁵⁸¹

⁵⁷⁵ Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

⁵⁷⁶ Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

⁵⁷⁷ Article 41(3) Asylum Act.

⁵⁷⁸ BCHR conducted 8 visits to Detention Center in 2020.

⁵⁷⁹ Article 78(5) Asylum Act.

⁵⁸⁰ Article 78(6) Asylum Act.

⁵⁸¹ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 14.

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.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

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

Despite their right to permanent residence under the Asylum Act,⁵⁸² 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.⁵⁸³

All ID cards were automatically extended during the state of emergency, and in line Decision on the Status of Foreign Nationals.⁵⁸⁴

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, and the Serbian legal framework does not recognise the institute of long-term residency.

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|----------------|
| 1. What is the waiting period for obtaining citizenship? | Not applicable |
| 2. Number of citizenship grants to beneficiaries in 2020: | 0 |

Under the new Asylum Act, the Republic of Serbia shall ensure conditions for naturalisation of refugees, commensurate to its capacity.⁵⁸⁵ The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal of CRM.⁵⁸⁶ However, the Citizenship Act⁵⁸⁷ and Foreigners Act are not harmonised 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 naturalisation was one the questions put forward by the Committee on Economic, Social and Cultural Rights in 2019.⁵⁸⁸

⁵⁸² Article 60 Asylum Act.

⁵⁸³ Article 90 Asylum Act.

⁵⁸⁴ Official Gazette no. 27/2020.

⁵⁸⁵ Article 71(1) Asylum Act.

⁵⁸⁶ Article 71(2) Asylum Act.

⁵⁸⁷ Official Gazette no. 135/04, 90/7 and 24/18.

⁵⁸⁸ 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? | 0 |
| 2. Does the law provide for an appeal against the first instance decision in the cessation procedure? | No |
| 3. Do beneficiaries have access to free legal assistance at first instance in practice? | Yes |

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.⁵⁸⁹ Even though the cessation institute has never been applied, it is reasonable to assume that refugees who could be subjected to such practice in future would have at their disposal free legal aid from CSOs.

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.⁵⁹⁰

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.⁵⁹¹ Not a single CSO which provide free legal aid to asylum seekers have reported such practice.⁵⁹²

6. Withdrawal of protection status

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

⁵⁸⁹ Article 81(4), (5) and (6) Asylum Act.

⁵⁹⁰ Article 82 Asylum Act.

⁵⁹¹ Article 83 Asylum Act.

⁵⁹² Information obtained in December 2020 from APC, BCHR, BCMHA, HCIT and IDEAS.

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.⁵⁹³ 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.⁵⁹⁴

A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.⁵⁹⁵

For the first time in 2020, a family reunification procedure was carried out. In July 2020, the APC's client from **Afghanistan** was reunited with his wife and 5 children who were transferred from **Afghanistan** to the consulate of Serbia in **New Delhi, India**.⁵⁹⁶ The family reunification procedure lasted 10 months, but this case should be observed as a model for all future cases. IDEAS has started a consultation with 2 **Afghan** nationals who expressed their wish to reunite with their families.

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.⁵⁹⁷ Since most of the persons granted asylum in Serbia are accommodated at a private address, they were in identical situation as other citizens of Serbia during the COVID-19 lockdown and were not detained in asylum or reception centres. Those people who were still residing in reception facilities shared the faith of all other refugees, asylum seekers and migrants who were detained from 15 March to 7 May 2020 (see also [Freedom of movement](#)).

⁵⁹³ Articles 70(1) and 9(2) Asylum Act.

⁵⁹⁴ Article 2(2) and (12) Asylum Act.

⁵⁹⁵ Article 70(4) Asylum Act.

⁵⁹⁶ APC, *Prvi slučaj spajanja porodice izbeglice u Srbiji*, 20 July 2020, available at: <http://bit.ly/2YCpEzC>.

⁵⁹⁷ Article 62 Asylum Act.

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.⁵⁹⁸ The bylaw was not passed by the time of writing of this report.

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

The Constitutional Court dismissed the constitutional appeal on 20 June 2016, stating that the subject of constitutional appeal cannot be a failure to adopt general legal act, but only the individual act as it is prescribed by Article 170 of the Constitution.⁵⁹⁹ 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.⁶⁰⁰

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.⁶⁰¹ This provision is yet to be applied.

D. Housing

Indicators: Housing

- | | |
|--|----------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 1year ⁶⁰² |
| Number of beneficiaries staying in reception centres as of 31 December 2020: | At least 10 |

The Commissariat for Refugees and Migration is responsible for ensuring temporary accommodation for persons who have been granted international protection.⁶⁰³ 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.⁶⁰⁴ 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.

⁵⁹⁸ Article 101 Asylum Act.

⁵⁹⁹ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

⁶⁰⁰ ECtHR, *Seraj Eddin v. Serbia*, Application No 61365/16, Communicated to the Government on 23 February 2018.

⁶⁰¹ Article 91(3) Asylum Act.

⁶⁰² Article 61 Asylum Act.

⁶⁰³ Article 23 Asylum Act.

⁶⁰⁴ Official Gazette no. 63/15 and 56/18, hereinafter: Accommodation Decree.

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.⁶⁰⁵ 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.⁶⁰⁶ 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 185 persons were granted asylum in Serbia between 2008 and 2020. According to the survey conducted by A11, out of 185 persons granted asylum, 44 left Serbia, 1 passed away and 1 changed his legal residency on the basis of the marriage.⁶⁰⁷ Additionally, a 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.⁶⁰⁸ 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 assistance⁶⁰⁹

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.⁶¹⁰ 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 sources⁶¹¹ 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.⁶¹² In 2020, 7 persons were granted financial assistance.

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.⁶¹³ The Asylum Act guarantees equality in the rights and obligations of persons granted refugee status with those of persons granted subsidiary protection,⁶¹⁴ even though the Employment of Foreigners Act (EFA) explicitly states that persons who have been granted subsidiary protection are to be issued personal work

⁶⁰⁵ Article 2 (1) Integration Decree.

⁶⁰⁶ Article 9 (1) Integration Decree.

⁶⁰⁷ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 31-32.

⁶⁰⁸ Mostly Libyans and several Syrians and Iraqis.

⁶⁰⁹ Article 59 (4) Asylum Act.

⁶¹⁰ Article 10 Integration Decree.

⁶¹¹ *Ibid.*

⁶¹² BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 162.

⁶¹³ Article 65 Asylum Act.

⁶¹⁴ Article 59 Asylum Act.

permits for the duration of that status.⁶¹⁵ The Integration Decree further 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.⁶¹⁶

The NES is tasked with issuing personal work permits which further allows refugees free employment, self-employment and the right to unemployment insurance.⁶¹⁷ This further provides foreigners who have been granted asylum an unimpeded access to the labour market. The Rulebook on Work Permits⁶¹⁸ 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 General Administrative Procedure Act (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.⁶¹⁹ 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.⁶²⁰ The fee that person granted asylum has to pay in order to obtain a work permit amounts to RSD 13.890,766 (EUR 119)⁶²¹ plus the administrative fee which is RSD 320,00 (EUR 2,73).⁶²²

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 procedure 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.⁶²³ 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

⁶¹⁵ Article 13(6) Employment of Foreigners Act.

⁶¹⁶ Article 7 Integration Decree.

⁶¹⁷ Article 12 EFA.

⁶¹⁸ Official Gazette no. 63/18, 56/19.

⁶¹⁹ Article 9 GAPA.

⁶²⁰ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 170-171.

⁶²¹ Fee Schedule No. 205 of the Law on Republic Administrative Fees.

⁶²² Fee Schedule No. 1 of the Law on Republic Administrative Fees.

⁶²³ Article 89 GAPA.

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.⁶²⁴

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, 2019 and 2020.⁶²⁵

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.⁶²⁶ 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.⁶²⁷

According to the Analysis published by A11 and taking in consideration the number of persons granted asylum in Serbia, it can be concluded that persons granted asylum usually do not have effective access to the labour market. Out of 185 persons who were granted asylum in the period 1 April 2008 to 31 December 2020, 44 left Serbia, one passed away and 1 refugee from Lebanon changed the type of residency. Thus, a maximum of 139 refugees were in Serbia, out of whom 23 are children who cannot yet establish employment, while two persons are unable to work due to their health condition, which brings the total number of persons incapable to work to 25.⁶²⁸ Therefore, a maximum of 110 persons who have been granted asylum in Serbia are available to the Serbian labour market and are subject to provisions in which the CRM should enable them to “be included in the economic life of Serbia”. However, it is reasonable to assume that some of these persons also left Serbia. Still, A11 confirmed that at least 53 refugees were present in Serbia on 31 October 2020, while 4 more adult refugees could be added to this list (granted asylum in November and December 2020) which makes the total number of persons granted asylum and present in the country 57.⁶²⁹

Out of 57 refugees whose presence was confirmed at the end of 2020, the A11 determined that at least 24 were unemployed,⁶³⁰ while it can be safely assumed that, in COVID-19 circumstances the remaining 4 refugees granted asylum in November and December 2020 were not successful in finding jobs.⁶³¹ The

⁶²⁴ Article 59 Asylum Act.

⁶²⁵ BCHR, Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020, p. 40.

⁶²⁶ National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

⁶²⁷ Article 7 of the Integration Decree.

⁶²⁸ A11, *Precondition for Integration*, February 2021, available at: , p. 31-32.

⁶²⁹ Ibid.

⁶³⁰ Ibid., p. 35-36.

⁶³¹ Author's own observation.

other half of refugees who are employed found their jobs by themselves or were assisted by CSOs. Thus, there are rare examples where access to labour market was secured through specialized state services. It is also important to stress that COVID-19 affected the job market in general in Serbia, and that most of the refugees who were employed in catering and hotel industry lost their jobs.⁶³²

In the first 10 months of 2020, NES issued 3 personal work permits to persons from the refugee category, and 117 to persons from the special category of foreigners.⁶³³ In the period 1 January 2015 – 31 October 2020, NES issued 470 work permits for asylum seekers and persons granted subsidiary protection and 55 to persons who were granted refugee status. The first working permit was issued in 2015 to a Tunisian man who was granted refugee status in 2014.

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.⁶³⁴ Specific degrees of education are regulated by the Law on Primary Education,⁶³⁵ the Law on Secondary Education,⁶³⁶ and the Law on Higher Education.⁶³⁷

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.⁶³⁸ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.⁶³⁹ A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.⁶⁴⁰ 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.⁶⁴¹ 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.⁶⁴² The Commissariat is to assist recognised refugees who are children and enrolled in pre-school, elementary and high-school education, as well as illiterate adults, who are to be enlisted in adult literacy programmes in cooperation with the Ministry of Education. The assistance provided to children includes provision of textbooks and education material, assistance in having foreign degrees recognised, learning support and financial support for engaging in extracurricular activities.⁶⁴³ However, the Government's Decision failed to recognise persons seeking or granted asylum as a category entitled to free of charge textbooks.⁶⁴⁴ 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 Serbia further regulates access to education for refugee children.⁶⁴⁵ If the refugee children have proof of prior education, the enrolment is made according to their age and level of education completed.⁶⁴⁶ On the other hand, if they do not have any proof of prior education, the enrolment is based

⁶³² A11, *Precondition for Integration*, February 2021, available at: , p. 36 and 40.

⁶³³ 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.

⁶³⁴ Official Gazette, no. 88/17 and 27/18.

⁶³⁵ Official Gazette, no. 55/13, 101/17 and 27/18.

⁶³⁶ Official Gazette, no. 55/13, 101/17 and 27/18.

⁶³⁷ Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

⁶³⁸ Article 3(5) Law on Basics of the Education System.

⁶³⁹ Articles 55 and 64 Asylum Act.

⁶⁴⁰ Article 64 Asylum Act.

⁶⁴¹ Article 55 (2) Asylum Act.

⁶⁴² Article 2(4) Integration Decree.

⁶⁴³ Article 6 Integration Decree.

⁶⁴⁴ 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.

⁶⁴⁵ Ministry of Education, Science and Technological Development Instruction No. 601-00-00042/17–2018 of May 2017.

⁶⁴⁶ *Ibid*, pp. 1 and 2.

on a test which has an aim to assess the level of their knowledge.⁶⁴⁷ 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.⁶⁴⁸

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.⁶⁴⁹ 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.⁶⁵⁰

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.⁶⁵¹ 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.⁶⁵²

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.⁶⁵³

All children granted asylum regularly attend elementary or secondary school.

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.⁶⁵⁴ The Social Welfare Act (SWA) defines social welfare as an organised social

⁶⁴⁷ *Ibid.* p. 2.

⁶⁴⁸ *Ibid.* p. 3.

⁶⁴⁹ BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 87-88.

⁶⁵⁰ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 178,

⁶⁵¹ Article 4 Integration Decree.

⁶⁵² Article 5 Integration Decree.

⁶⁵³ 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).

⁶⁵⁴ Article 52 and 67 Asylum Act.

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.⁶⁵⁵ 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.⁶⁵⁶ This right is exercised through the provision of social protection services and material support.⁶⁵⁷ 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).⁶⁵⁸

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.⁶⁵⁹ 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.⁶⁶⁰ 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.⁶⁶¹ One of the problems identified in practice is the extensive length for granting of the social welfare.⁶⁶²

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.⁶⁶³ Additionally, foreigners' health care is also governed by the Health Care Act (HCA)⁶⁶⁴ and the Health Insurance Act (HIA)⁶⁶⁵ as well as the Rulebook on the Terms and Procedure for Exercising the Right to Compulsory Health Insurance (RHI).⁶⁶⁶ HCA stipulates that refugees and asylum seekers are entitled to health care under equal terms as Serbian nationals.⁶⁶⁷

⁶⁵⁵ Article 2 Social Welfare Act, Official Gazette no. 24/2011.

⁶⁵⁶ Article 6 SWA.

⁶⁵⁷ Article 4 (2) SWA.

⁶⁵⁸ Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

⁶⁵⁹ *Ibid*, Article 3.

⁶⁶⁰ *Ibid*, Article 8.

⁶⁶¹ *Ibid*, Article 9.

⁶⁶² BCHR, Right to Asylum in the Republic of Serbia 2019, 181-182.

⁶⁶³ Article 63 Asylum Act.

⁶⁶⁴ Official Gazette no. 25/19.

⁶⁶⁵ 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.

⁶⁶⁶ Official Gazette no. 10/10, 18/10 – correction, 46/10, 52/10 – correction, 80/10, 60/11 – Constitutional Court Decision, and 1/13.

⁶⁶⁷ Article 236, para. 1, and Article 239 of the Law on Health Care.

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.⁶⁶⁸ The same conclusion can be drawn in relation to the Serbian Health Insurance Fund.⁶⁶⁹ Hence, asylum seekers and persons granted asylum are not entitled to compulsory health insurance and issuance of health insurance cards.⁶⁷⁰ In practice, they need to rely on CSOs 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 Organisations.⁶⁷¹

⁶⁶⁸ Article 11 HIA.

⁶⁶⁹ Exercising the Right to Compulsory Health Insurance, Serbian Health Insurance Fund, Belgrade, May 2015, available (in Serbian) at: <http://bit.ly/33amche>.

⁶⁷⁰ Article 25 HIA; see more in BCHR, *Right to Asylum in the Republic of Serbia* 2019, 184-185.

⁶⁷¹ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 185-187.