

Country Report: Serbia



2021
Update

Acknowledgements & Methodology

This report was written by Nikola Kovačević independent expert and refugee lawyer from Serbia and coordinator of Asylum and Migration Program at the Center for Research and Social Development IDEAS, with the help of the Initiative for Economic and Social Rights (A11), 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 with the asylum authorities and monitoring the respect for the right to asylum in the country.

The Report also draws on the findings and reports of other CSOs who are active in the field of asylum and migration in Serbia, such as Asylum Protection Center (APC), Belgrade Center for Human Rights (BCHR) Border Violence Monitoring Network (BVMN), Center for Peace Studies (CMS) and Hungarian Helsinki Committee (HHC), as well as the findings of regional and international human rights bodies, United Nations High Commissioner for Refugees office in Serbia (UNHCR), European Commission and other relevant and credible sources.

The information in this report is up-to-date as of 31 December 2021, 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
BPS	Border Police Station
BPSB	Border Police Station Belgrade
CAT	United Nations Committee against Torture
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CHTV	Government's Centre for Human Trafficking Victims' Protection
Col	Country of Origin Information
CSO	Civil Society Organization
CPT	European Committee for Prevention of Torture
CRC	Committee on the Right of the Child
CRM	Commissariat for Refugees and Migration
CSW	Centre for Social Work
DoI	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
IAN	International Aid Network
IDEAS	Centre for Research and Social Development IDEAS
IDP	Internally displaced person
ISIS	Islamic State of Iraq and Syria
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
RBC	Regional Border Center
RSDP	Refugee Status Determination Procedure
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. It does not refer to the number of persons, which is higher than the number of decisions. One decision can encompass two or more asylum seekers.

Applications and granting of protection status at first instance: 2021

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	175	-	6	6	39	12 %	12 %	76 %

Breakdown by countries of origin of the total numbers

Burundi	29	-	2	1	5	25 %	12.5 %	62.5 %
Afghanistan	22	-	0	1	0	0 %	100 %	0 %
Iran	20	-	1	0	8	12.5 %	0 %	87.5 %
Syria	16	-	0	2	1	0 %	66,7 %	33.3 %
Pakistan	8	-	1	0	1	50 %	0 %	50 %
Turkey	8	-	0	0	6	0 %	0 %	100 %
Iraq	6	-	2	0	0	100 %	0 %	0 %
Cuba	5	-	0	0	4	0 %	0 %	100 %
Congo	5	-	0	0	1	0 %	0 %	100 %
DR Congo	5	-	0	0	0	0 %	0 %	0 %

Source: UNHCR Office in Serbia.

Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
Total number of applicants	175	100%
Men	123	70%
Women	52	30%
Children	46	26%
Unaccompanied children	8	4.5%

Comparison between first instance and appeal decision rates: 2021

	First instance		Appeal ¹	
	Number	Percentage	Number	Percentage
Total number of decisions	51	100%	74	100%
Positive decisions	12	22%	19	26%
• <i>Refugee status</i>	6	11%	0	0%
• <i>Subsidiary protection</i>	6	11%	0	0%
Negative decisions	39	78%	51	69%

Source: Asylum Commission response to the request for the information of public importance no. 27-A-1169-82/18 from 14 February 2022.

Note that 11 out of 19 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. 8 out of 19 positive decisions refer to the cases in which the Administrative Court, as the third instance body, upheld the complaint against Asylum Commission decision and sent back the case to the second instance body. In all 8 cases, Asylum Commission referred the case back to the Asylum Office. The number of second instance decisions refers to appeals lodged against inadmissibility decisions, as well as decisions on discontinuation of asylum procedure or other decisions of procedural nature. Thus, it is not possible to determine how many of 74 decisions of Asylum Commission were related to cases decided in merits.

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	https://bit.ly/2RQR7gY (EN) 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/2lppyEP (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)
Law on Employment of Foreigners	Zakon o zapošljavanju stranaca / Закон о запошљавању странаца	Foreigners Employment Act	https://bit.ly/35bggXD (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
<p>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</p>	<p>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 / Правилник о изгледу обрасца о одбијању уласка у Републику Србију, о изгледу обрасца о одобрењу уласка у Републику Србију и начину уноса податка о одбијању уласка у путну исправу странца</p>	<p>Rulebook on the Refusal of Entry</p>	<p>https://bit.ly/2EkP1N9 (SR)</p>
<p>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</p>	<p>Pravilnikom o načinu i postupku registracije i izgledu i sadržini potvrde o registraciji stranca koji je izrazio nameru da podnese zahtev za azil / Правилник о начину и поступку регистрације и изгледу и садржини потврде о регистрацији странца који је изразио намеру да поднесе захтев за азил</p>	<p>Rulebook on Registration</p>	<p>https://bit.ly/2U3A3AE (SR)</p>
<p>Rulebook on the Content and Structure of the Asylum Application Form and the Content and Appearance of the Forms of Documents issued to Asylum Seeker and Person Granted Asylum or Temporary Protection Official Gazette, no. 42/2018</p>	<p>Pravilnik o sadržini i izgledu obrasca zahteva za azil i sadržini i izgledu obrazaca isprava koje se izdaju tražiocu azila i licu kojem je odobren azil ili privremena zaštita / Правилник о садржини и изгледу обрасца захтева за азил и садржини и изгледу образаца исправа које се издају тражиоцу азила и лицу којем је одобрен азил или привремена заштита</p>	<p>Rulebook on Asylum Application</p>	<p>https://bit.ly/3sDTDFO (SR)</p>
<p>Decree on the Manner of Involving Persons Granted Asylum in Social, Cultural and Economic Life</p>	<p>Uredba o načinu uključivanja u društveni, kulturni i privredni život lica kojima je odobreno 11 erti na azil / Уредба о начину</p>	<p>Integration Decree</p>	<p>https://bit.ly/2J5b3rW (SR)</p>

Official Gazette, no. 101/2016 and 56/2018.	укључивања у друштвени, културни и привредни живот лица којима је одобрено право на азил		
Rulebook on Medical Examinations of Asylum Seekers upon Admission to the Asylum Center or other Facility for Accommodation of Asylum Seekers Official Gazette, no. 57/2018	Pravilnik o zdravstvenim pregledima tražioca azila prilikom prijema u Centar za azil ili drugi objekat za smeštaj tražilaca azila / Правилник о здравственим прегледима тражиоца азила приликом пријема у Центар за азил или други објекат за смештај тражилаца азила	Rulebook on Medical Examinations	https://bit.ly/3LG93IS (SR)
Rulebook on House Rules in the Asylum Centre and other Facility for Accommodation of Asylum Seekers Official Gazette, no. 96/2018	Pravilnik o kućnom redu u centru za azil i drugom objektu za smeštaj tražilaca azila / Правилник о кућном реду у центру за азил и другом објекту за смештај тражилаца азила	Rulebook on House Rules	https://bit.ly/3gRBnmV (SR)
Decree on the Criteria for Determining the Priority for Accommodation of Persons who have been Granted Refugee Status or Subsidiary Protection and the Conditions for the Use of Housing for Temporary Accommodation	Uredba o merilima za utvrđivanje prioriteta za smeštaj lica kojima je priznato parvo na utočište ili dodeljena supsidijarna zaštita i uslovima korišćenja stambenog prostora za privremeni smeštaj / Уредба о мерилима за утврђивање приоритета за смештај лица којима је признато право на уточиште или додељена супсидијарна заштита и условима коришћења стамбеног простора за привремени смештај	Decree on Accommodation of persons granted refugee status or subsidiary protection	https://bit.ly/3oSVo0Y (SR)
Rulebook on Social Allowances for Asylum Seekers and Persons Granted Asylum	Pravilnik o socijalnoj pomoći za lica koja traže, odnosno kojima je odobren azil / Правилник о социјалној помоћи за лица која траже, односно којима је одобрен азил	Rulebook on Social Allowances	https://bit.ly/3LFNp0O (SR)

Overview of the main changes since the previous report update

The previous version of this report was last published in **March 2021**.

Asylum procedure

- ❖ **Access to the territory:** In 2021 according to the UNHCR and Commissariat for Refugees and Migration, at least 60,338 refugees and migrants resided on Serbian territory. In 2021, the COVID-19 preventive measures were not introduced at Serbian entry borders as it was the case in 2020, but push-back practices continued. However, the exact number of arrivals and departures from and to Serbia cannot be determined with certainty taking in consideration low registration capacities of the MoI, but also different methodologies for counting of new arrivals used by different state and non-state stakeholders.
- ❖ **Pushback practices:** 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 in 2020. UNHCR, civil society organizations, and the Ombudsman office reported numerous instances in which refugees, migrants and asylum seekers were collectively expelled to North Macedonia and Bulgaria. Expulsions were very often of violent nature and included different instances of ill-treatment such as: slaps, kicks, hits with rubber truncheons, insults, and threats. According to the official statistics of the Ministry of Interior (MoI) and public praises of highest police figures, at least 120,000 refugees, asylum seekers and migrants have been 'prevented from illegally crossing of the border' since 2016. This further means that the denial of access to territory represent a systemic practice reflected along the entire Balkan Route.
In January 2021, the Constitutional Court adopted a constitutional appeal submitted by 17 refugees from Afghanistan who complained about being collectively expelled to **Bulgaria** in February 2017. The case concerned a forcible removal of 25 Afghan refugees in total (including 9 children) who entered Serbia from Bulgaria. The Court found violation of the prohibition of collective expulsions and applicants' right to liberty and security. This landmark judgment did not have a major influence on unlawful border practices and the implementation of judgment has not been considered from the systemic point of view.
In 2021, two applications to the European Court of Human Rights were communicated to the Government of the Republic of Serbia with regards to unlawful expulsion practices involving collective expulsions or forcible removals which lacked procedural guarantees against refoulement in terms of the Article 3 and Article 13 read in conjunction with Article 3 of the Convention.
In December 2021, the United Nations Committee against Torture criticized Serbia again for practices which undermine refugees' and asylum seekers' right to access territory and asylum procedure recommending once again establishment of the independent border monitoring mechanism which will be comprised of representatives of the MoI, UNHCR and CSOs. The findings of the Committee are just the continuation of international criticism, which in the past had come from the UNHCR, Human Rights Committee, Amnesty International, and other reliable entities.
- ❖ **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 2021, a total of 71,470 persons were pushed back from Hungary to Serbia, and since 2016, a total of 130,050 instances of pushbacks were reported by Hungarian immigration authorities. European Union Agency for Fundamental Rights (FRA) reported that in 2021 28,737 persons were pushed back from Romania to Serbia, while UNHCR reported at least 1,000 persons being pushed-back from Croatia to Serbia. The persons pushed back to Serbia might still face obstacles in accessing the asylum procedure, especially if they were previously registered according to the Asylum Act or Foreigners Act and may be subjected to misdemeanour proceedings for irregular entry to the neighbouring countries (in particular Croatia) or issued with an expulsion decision.

Ukrainian refugees have unhindered access to territory and asylum procedure, irrespective of having travel documents or not. Their treatment should be praised, but at the same time, the violent and discriminatory approach of border authorities towards other persons in need of international protection transparently embodies the widespread trend within European countries. There were no instances of push-backs of Ukrainian refugees from Serbia to other countries, nor pushbacks from Hungary, Croatia or Romania to Serbia.

- ❖ **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*. In 2021, several instances of severe violence were reported at the airport, including kicks, slaps, insults and threats. The vast majority of applicants reported that ill-treatment occurred during the attempt of forcible removal. Moreover, the manner in which refusal of entry decision is issued gives serious reasons for concern, especially in situation where persons who are obviously in need of international protection are returned to their country of origin. One such arbitrary removal resulted in applicant's imprisonment in his country of origin. The European Court of Human Rights (ECtHR) granted one interim measure in the case of Kurdish political activist from Turkey who was eventually granted access to territory. The described practice has been criticized again by the UN CAT. Not a single relevant authority considers persons in need of international protection who are refused entry and placed in the detention room at the airport as persons deprived of their liberty, including the Constitutional Court of Serbia. In 2022, a communication phase before the ECtHR, in a case relating to a transit zone detention, has been concluded.
- ❖ **Registration:** The number of persons issued with registration certificate has significantly dropped from around 12,900 in 2019 to 2,800 certificates in 2020 and 2,306 in 2021. In 2021, the certificates were mainly issued to citizens of Afghanistan (1,025), Syria (466) and Burundi (134). In the Detention Centre for Foreigners, not a single person expressed an intention to lodge an asylum application in Serbia. Out of the 2,306 persons who obtained a registration certificate in 2021, only 175 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. Between 2008 and 2021, a total of 652,708 registration certificates were issued in line with the legal framework governing asylum system. Out of that number, only 3,700 asylum applications were lodged, which is 0,6% of all foreigners registered in line with the new and old Asylum Act in Serbia.
- ❖ **Asylum procedure:** In the period from 1 April 2008 to 31 December 2021, asylum authorities in Serbia rendered 138 decisions granting asylum (refugee status or subsidiary protection) to 196 persons from 25 different countries. A total of 59 decisions was rendered in relation to 97 applicants who received subsidiary protection, while 79 decisions were rendered in relation to 99 applicants who were granted refugee status. This means that out of 3,700 asylum applications in the afore-mentioned period, only 196 applicants were granted asylum. In other words, only 5,3 % of asylum applications were resolved positively. In comparison to the number of persons who received registration certificates (652,708) but did not submit asylum application, the number of persons who received international protection is nothing but the statistical mistake (0,03 %). These numbers clearly reflect the fact that Serbia has never had fair and effective asylum procedure and that it has always been considered as a transit country, which unfortunately supports the narrative used by the highest state officials.

The highest number of decisions was rendered in 2019 (26), and then in the following order: 2015 (24), 2016 (21), 2020 (19), 2018 (16), 2021 (12), 2017 (7), 2014 (4), 2009 (4), 2012 (3), 2013 (1) and 2010 (1). In 2008 and 2011, not a single positive decision was rendered. Top 5 nationalities which received international protection in Serbia are: Libya (46), Syria (27), Afghanistan (26), Iran (19) and Iraq (16). In the history of Serbian asylum system, asylum authorities have granted asylum on almost all grounds envisaged in Article 1 of the 1951 Refugee Convention. However, there are numerous

examples showing that the practice of the Asylum Office has been inconsistent and especially in relation to LGBT applicants, survivors of SGBV, UASCs, draft evaders and converts from Islam to Christianity. These inconsistencies were obvious also in 2021.

- ❖ **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. At the beginning of 2021, the former head of the Asylum Office was reappointed, but the capacities of the first instance authority remain low in terms of the number of staff and the quality of work among different asylum officers. The quality assurance activities which will be conducted by UNCHR and in cooperation with the MoI and CRM in 2022 are much needed.
- ❖ **Key asylum statistics:** In 2021, the Asylum Office delivered only 114 decisions regarding 156 asylum seekers which means that the total number of decisions has continued to decrease in relation to previous years and shows a drop of 29% in comparison to 2020, and the lowest number of decisions in the past 5 years. Out of that number, 39 decisions regarding 51 asylum seekers were rejected in merits. A total of 12 decisions granting asylum to 14 asylum seekers were delivered. Four cases regarding 4 persons were declared inadmissible. Asylum procedure was discontinued in 51 cases regarding 73 applicants, due to their absconding, while in 6 instances subsequent asylum application was declined in relation 12 applicants. In 2021, the Asylum Office also rendered two interesting decisions regarding the age assessment of two boys from Afghanistan and Pakistan which indicate that the problem of age assessment procedure should be treated as a priority. These cases manifested the lack of capacity of relevant authorities to apply the *dubio pro reo* principle with regards to children's age.
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 45% of all decisions rendered in 2021.
Rejection rate in 2021 was 76%, while the recognition rate was 24%. This represents 3% drop in recognition in comparison to 2020. Asylum was granted through 12 decisions (24%) encompassing 14 persons. The refugee status was granted through 6 decisions to citizens of Iraq (3), Burundi (2), Iran (1) and Pakistan (1). Subsidiary protection was granted through 6 decisions to citizens of Syria (3), Somalia (2), Afghanistan (1) and Libya (1). What is common for the vast majority of positive decisions is the fact that the procedure lasted for more than 1 year.
The number of asylum interviews was extremely low in 2021, when only 85 were conducted.
- ❖ **Procedure at the second instance:** In 2021, the Asylum Commission took 74 decisions regarding 80 persons, which is an increase in comparison 2020 when 62 decisions were rendered regarding 80 persons. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 51 cases, while in only 11 cases the appeals were upheld, and the cases were referred back to the Asylum Office for further consideration. Also, additional 8 decisions quashing the first instance decision were rendered after the judgment of the Administrative Court in which the onward appeals were upheld. Additional four decisions discontinuing asylum procedure were rendered in the same period. In 2021, the Asylum Commission did not render any positive decision, i.e. it did not grant international protection. As it was the case in previous years, the second instance body has not carried out any asylum hearing. In other words, the corrective influence on the Asylum Office has continued to lack. The qualifications of the members of Asylum Commission remain contentious, and it is clear that the quality assurance control is necessary in the future.
- ❖ **Procedure at the third instance:** In 2021, the Administrative Court delivered 22 judgments regarding 36 persons from the following nationalities: Iran (12), North Macedonia (4), Unknown (4), Bulgaria (4), Burundi (2) and 1 from Iraq, Turkey, Ghana, Congo, Croatia and Russia. Only three decisions could be considered relevant for the development of the practice of lower instance authorities. Still, as it was the case in previous years, the Court did not carry out any asylum hearing nor did it grant international protection. The judges of the Court lacked resources and infrastructure to act in asylum cases and one of the solutions would be to designate a special department within the Court which would comprise judges with a defined specialization in asylum, migration and human rights law.

- ❖ **Legal assistance:** The quality of legal aid performed by CSOs remains a serious concern. In 2020 and 2021, there were instances in which poor initial assessment, inadequate preparation for asylum procedure and reckless behaviour of certain legal representatives have contributed to the negative outcomes in asylum procedure, the drop in asylum applications and in general the lower recognition rate. The fluctuation of legal aid providers continues to be a problem, as well as the lack of quality assurance control. The legal framework should be amended in order to introduce free legal aid from the first instance and by attorney at law. Additionally, the training modules should be designed with an aim to introduce a profile of migration lawyers.
- ❖ **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 and SGBV claims. Regardless, a positive development was the fact that Serbian asylum authorities granted asylum to two victims of sexual and gender-based violence from Iraq. The evidentiary activities conducted during the asylum procedure and which imply best interest determination (BID) for UASC, psychological reports drafted by PIN or IAN and sometimes even medical and forensic medical documentation can be 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. The identification of vulnerable applicants, as well as their vulnerability assessment is usually conducted by CSOs or with the help of CSOs. The length of asylum procedure for vulnerable applicants is particularly worrying.
- ❖ **Inadmissibility decisions:** In 2021, as it was the case in 2020, only a handful of decisions (4 in total) implied rejection of asylum applications as inadmissible and on the basis of the safe third country, safe country of origin or first country of asylum concepts. 12 subsequent asylum applications were rejected as unfounded. There were no instances in which asylum seekers lodged subsequent asylum application after they returned to their country of origin, and came back to Serbia due to a significant change of circumstances.

Reception conditions

- ❖ **Reception capacity and conditions:** In 2021, 7 reception facilities were designated as Asylum Centres, while the remaining 12 were designated as Reception Centres in which only material reception conditions are provided, but asylum procedure was not conducted. The asylum procedure was conducted only in 2 out of 7 Asylum Centres – AC Krnjača and AC Banja Koviljača. While the official reception capacity reached 5,655 places according to the authorities at the end 2021, in practice it was 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 2022, several thousand refugees, asylum seekers and migrants were accommodated in tents or collective premises with dozens of bunk beds in unhygienic conditions and with limited privacy and insufficient number of sanitary facilities.
- ❖ **Freedom of movement/deprivation of liberty:** 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. Fortunately, this practice was not applied in 2021. 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. These applications were communicated to the Government of Serbia, and it remains to be seen if the 2020 COVID-19 measures amounted to detention or they were a simple limitation of the right to freedom of movement.
- ❖ **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 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 ECtHR. Issues of violence, ill-treatment and related incidents from reception staff continued to be reported throughout the year. In 2021, there appeared to be no instances of inhumane and degrading detention conditions, but a longer stay in Reception Centres in Subotica, Sombor, Adaševci, Kikinda and several others, regardless of the fact that these facilities are open, might amount to inhumane and degrading treatment due to the lack of space, privacy, hygiene and security.

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. In 2021, a new Detention Centre was opened in Dimitrovgrad, close to border with Bulgaria. It is still not clear what are the official capacities of this new facility. This Detention Centre has not been used so far.

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. There is no precise data on how many persons granted asylum remained in Serbia, but it is reasonable to assume that it is less than 100. This can be attributed to the lack of prospect to access the labour market. Access to education for all children seeking or granted asylum is guaranteed, and first 4 refugees enrolled into universities in 2021.
- ❖ **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.

Response to the situation in Ukraine as of 27 April 2022

On 18 March 2022, the Government of the Republic of Serbia adopted Decision on providing temporary protection in the Republic of Serbia to displaced persons coming from. According to the data from **31 March 2022**, 51 Ukrainian citizens received temporary protection, while only 4 of them lodged asylum application. A total of 40 Ukrainian citizens resided in the Asylum Centre in Vranje on 31 March 2022.

Additionally, around 15,000 Ukrainian citizens have resided or transited through the Republic of Serbia since the beginning of the conflict and Russian aggression and as of 31 March 2022. On 21 April 2022, a total of 5,589 refugees from Ukraine reported their residency in Serbia.² What is important to mention is that Ukrainian citizens who arrive to Serbia are entitled to 90-day stay, because they do not require visa to enter. The vast majority of them use this time to find a way to move on towards EU countries. Also, many Ukrainians decided to regulate their stay in line with the Foreigners Act, applying for different forms of residencies, such as temporary residency based on work, family connections or humanitarian reasons. The practice has shown that these types of residencies were granted without major problems, providing refugees from Ukraine with the possibility to work and have access to other relevant rights. On the contrary, if they decide to apply for asylum, they would be denied access to labour market for at least 9 months. Thus, the fact that the Decision on Temporary Protection was adopted in 2022 is an extraordinary act of the Government which in a proper manner could treat mass arrival of refugees from Ukraine. On the other hand, this Decisions means that Ukrainians will not apply for asylum in regular procedure in high numbers, which would be insurmountable burden on the already low capacities of Serbian asylum authorities.

DECISION

on providing temporary protection in the Republic of Serbia to displaced persons coming from Ukraine

Official Gazette of RS, No. 36 of March 18, 2022.

1. Temporary protection is granted in the Republic of Serbia to displaced persons coming from Ukraine, i.e. who were forced to leave Ukraine as a country of their origin or habitual residence or who were evacuated from Ukraine, but who cannot return to permanent and safe living conditions due to the current situation prevailing in that state.

2. Displaced persons referred to in Item 1 of this Decision shall be considered:

1) citizens of Ukraine and members of their families who have resided in Ukraine;

2) asylum seekers, stateless persons and foreign citizens who have been granted asylum or equivalent national protection in Ukraine and members of their families who have been granted residence in Ukraine;

3) foreign nationals who have been granted valid permanent residence or temporary residence in Ukraine and who cannot return to their country of origin under permanent and long-term circumstances.

Temporary protection is also granted to citizens of Ukraine and members of their families who legally resided in the Republic of Serbia at the time of the decision referred to in item 1 of this Decision, but whose right to residence expired before the decision on temporary protection was revoked.

² Danas, Komesarijat Paketi pomoć za izbeglice iz Ukrajine na privatnim adresama, 21 April 2022, available at <https://bit.ly/39cvErz>.

For the purposes of this Decision, family members are considered to be persons who are considered family members in accordance with the provisions of the Law on Asylum and Temporary Protection.

3. The Ministry of the Interior, in accordance with the provisions of the Law on Asylum and Temporary Protection and this Decision, registers persons who have been granted temporary protection and makes a decision on granting temporary protection for each person separately.

4. Persons granted temporary protection shall have access to all rights under Article 76 of the Law on Asylum and Temporary Protection.

The competent authorities shall take care of the exercise of the rights referred to in Article 76 of the Law on Asylum and Temporary Protection in accordance with the law.

5. Temporary protection shall last for one year from the date of entry into force of this Decision.

6. This Decision shall enter into force on the day following that of its publication in the "Official Gazette of the Republic of Serbia".

Decision No. 05 number 019-2345 / 2022

ARTICLE 76 of the Law on Asylum and Temporary Protection

Rights and obligations of the person who has been granted temporary protection

A person granted temporary protection is entitled to:

- 1) stay during the period of temporary protection;
- 2) a document confirming his/her status and right to reside;
- 3) health care, in accordance with the regulations governing the health care of foreigners;
- 4) access to the labour market during the period of temporary protection, in accordance with the regulations governing the employment of foreigners;
- 5) free primary and secondary education in public schools, in accordance with special regulations;
- 6) legal assistance under the conditions prescribed for the applicant;
- 7) freedom of religion under the same conditions as citizens of the Republic of Serbia;
- 8) collective accommodation in facilities designated for those purposes;
- 9) appropriate accommodation in the case of a person in need of special reception guarantees, in accordance with Article 17 of this Law.

A person who has been granted temporary protection has the right to apply for asylum.

The competent authority may, in justified cases, allow family reunification in the Republic of Serbia and grant temporary protection to family members of a person who has been granted temporary protection.

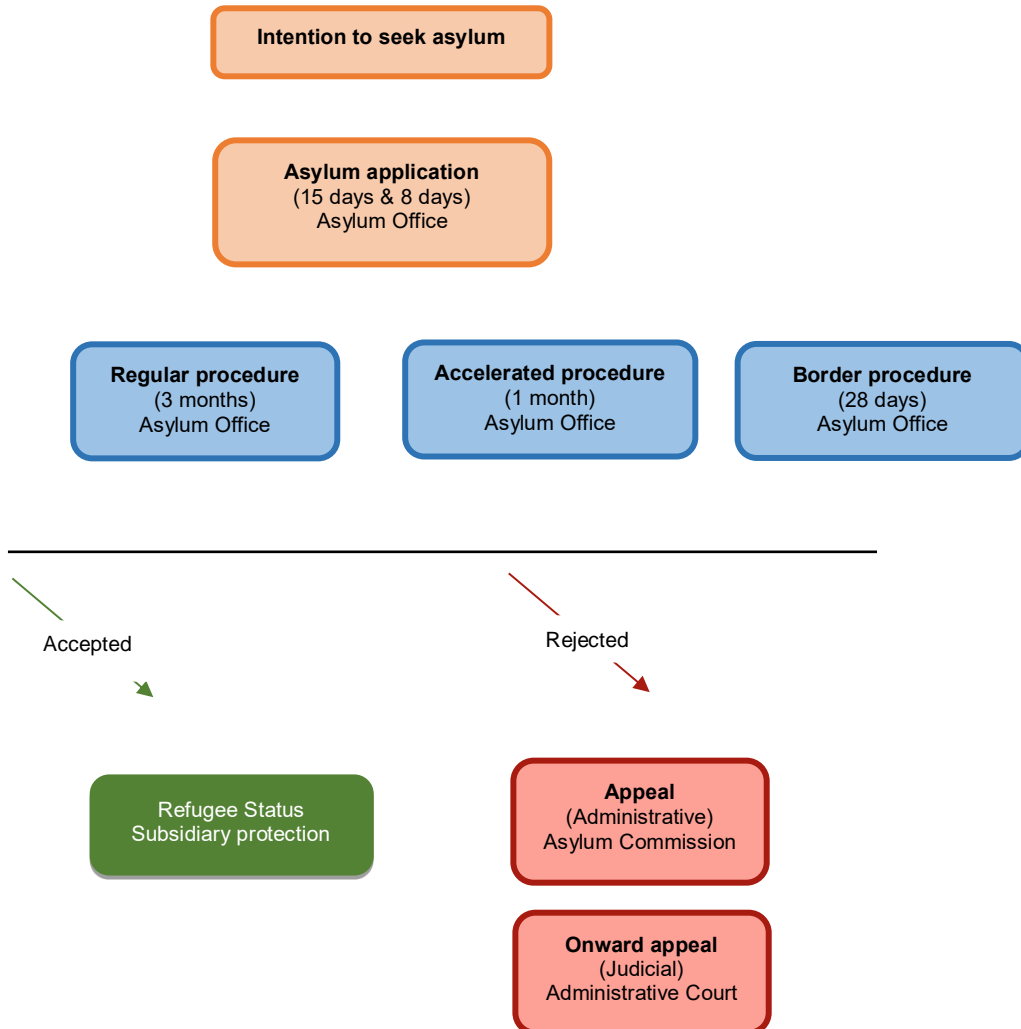
A person who has been granted temporary protection is obliged to respect the Constitution, laws, other regulations and general acts of the Republic of Serbia.

The decision on the accommodation of persons who have been granted temporary protection is made by the Government, at the proposal of the Commissariat for Refugees and Migration.

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: ³ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ⁴ | <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: ⁵ | <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. The MoI has outlined that border/transit zone procedure at the airport will be conducted after reconstruction and extension of the Terminal facility at the airport Nikola Tesla. The project envisages the construction of detention premises for persons refused entry, but also persons who might apply for asylum and who could then be subjected to the airport/border procedure. Even though the reconstructions should have been finalised in the first quarter of 2021, they were still ongoing in February 2022.⁶ The old detention premises at the airport are still being used.

There are no operational facilities in the border areas with North Macedonia and Bulgaria where border procedure can be conducted. However, a new Detention Center in Dimitrovgrad, which is located at the very border with Bulgaria will become operational in 2022.

³ For applications likely to be well-founded or made by vulnerable applicants.

⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

⁵ Labelled as "accelerated procedure" in national law.

⁶ Ombudsman, [Одговор Аеродрома "Никола Тесла" и Станице граничне полиције Београд на препоруке Заштитника грађана](https://bit.ly/3uUNfNt), 4 November 2020, available at: <https://bit.ly/3uUNfNt>.

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 and Decision on refusal of entry ⁷	Regional Border Centres (RBC) or Border Police Stations (BPS) established within the Border Police Administrations of the Ministry of Interior	Regionalni centri granične policije (RCGP) i stanice granične policije (SGP) / Регионални центри граничне полиције (РЦГП) и станице граничне полиције (СГП)
Registration Certificate	RBC, BPS and Foreigners Units within Police Departments in Serbia	RCGP, SGP i Odeljenje za strance unutar policijskih uprava / РЦГП, СГП и Одељења за странце унутар полицијских управа
Application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Refugee status determination	Asylum Office	Kancelarija za azil / Канцеларија за азил
Appeal procedure <ul style="list-style-type: none"> ❖ First appeal ❖ Onward appeal 	Asylum Commission Administrative Court	Komisija za azil / Комисија за азил Upravni sud / Управни суд
Subsequent application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Constitutional Appeal	Constitutional Court of the Republic of Serbia	Ustavni sud / Уставни судд

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.⁸ 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 was considered a threat to national security. The family has complained before the ECtHR that their expulsion to Libya would violate Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) due to their political affiliation with former Ghaddafi regime, and under Article 13 of ECHR due to an alleged lack of effective remedy in Serbia.⁹ Eventually, they were granted subsidiary protection but as of March 2022 their application was 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.¹⁰ Another case, which also refers to an applicant from Libya, was rejected on these grounds in 2019. The case has been referred from the first to the second instance body on several occasions and eventually, the applicant was granted refugee status in February 2022,¹¹ and after the second instance body obtained positive security assessment from BIA.

⁷ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

⁸ Article 33 (2) Asylum Act.

⁹ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

¹⁰ 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>.

¹¹ Asylum Office, Decision No. 26–1389/17, February 2022.

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	19	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.¹² In line with the Rulebook on the internal organisation and systematisation of positions in the Mol, which established the Asylum Office on 14 January 2015, there should be 29 positions within the Asylum Office.

As of the end of March 2022, there were a total of 19 staff, of which:

Asylum Office staff: 2021	
Position	Number
Head of the Asylum Office	1
Head of the RSDP Department	0
Head of the Country of Origin Information Department	1
Country of Origin Information Officers	2
Registration Officers (Krnjača)	1
Asylum Officers	8
Administrative Officers	4
Translators for English language	2
Total	19

Only 7 out of 12 asylum officers were in charge of the asylum procedure and for deciding on applications for international protection in 2021. Two asylum officers were on a maternity leave, while two other officers were not active in RSDP. All of them have at least 5 years of experience. In March 2022, two asylum officers left the Asylum Office, leaving this body with only 5 operational officers.

Asylum officers are in charge of organizing of lodging of asylum applications in person, asylum hearings and rendering decisions in the first instance. In the decision-making process, they are assisted by the Col Department, which provides information on specific issues which were raised during the asylum hearing. The Head of the Asylum Office must further confirm the decision of asylum officers.

The decrease in the capacity of the first instance body was one of the reasons why the number of asylum applications taken in person and the number of hearings sharply dropped in 2021. The same can be said for the total number of decisions rendered in 2021. Moreover, an average length of the first instance asylum procedure was between 10 and 14 months, which is an increase in comparison to 2020, when an average length was 8 to 12 months.¹³ Low capacities are one of the reasons why asylum procedure is in 90% of the cases conducted only for asylum seekers accommodated in Belgrade (in AC Krnjača) or who reside on private address. However, there were several instances in which Asylum Office visited AC in Banja Koviljača and AC in Bogovađa. As for the other asylum and reception centres, asylum seekers have to wait to be transferred to AC in Krnjača.

¹² Article 20 Asylum Act.

¹³ AIDA: Country Report Serbia, 2020 Update, March 2021, p. 13.

There were several changes in the office in the past few years. 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 MoI. 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. At the beginning of 2021, the former Head of the Asylum Office was reinstated, which was a positive development given the person's experience in the asylum field.

There is no quality assurance control in place and the practice of the Asylum Office is not subject to a public assessment. Thus, there are no personal records of asylum officers available to the public or upon explicit request which can provide information on the decision-making process such as the number and type of decisions issued, the length of the asylum procedure and the overall quality of the decision-making process. Still, MoI has agreed with UNHCR to gradually introduce external control mechanisms, which implies occasional presence of UNHCR officers at the asylum hearings. This is the first step in establishing the quality assurance control in partnership with the UNHCR. In April 2022, the UNCHR office in Serbia intends to hire a Quality Assurance Officer. Based on that, a group of state officials from asylum authorities, Commissariat for Refugees and Migration (CRM) and other relevant institutions took part in the study visit to Italian asylum authorities facilitated by the UNHCR office in Serbia.¹⁴

The MoI has stopped providing 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 or the CRM.

The Asylum Commission decides on appeals against decisions of the Asylum Office as the second instance body. It is comprised of the Chairperson and eight members, appointed by the Government for a four-year term. To be appointed Chairperson or member of the Asylum Commission a person must be a citizen of Serbia and must have a university degree in law and minimum five years of working experience and must have an 'understanding' of the human rights legislation. The Asylum Commission shall operate independently and shall pass decisions with a majority of the entire membership votes.¹⁵

The specialisation and knowledge of the 9-member Asylum Commission can still be considered inadequate for their role, since none of the current members has a strong background in refugee and international human rights law. The fact that not a single applicant was granted asylum in 2021 by the Asylum Commission confirms this statement. In history of Serbian asylum procedure, since 2008, this body rendered only 3 decisions granting asylum to 4 persons. In its 2021 Concluding Observations, the UN Committee against Torture (CAT) recommended that Serbia should abolish Asylum Commission and introduce judicial review by the Administrative Court at the second instance.¹⁶

The final decisions of the Asylum Commission may be challenged before the administrative Court.¹⁷ The Administrative Court judges still lack adequate resources to assess complaints lodged by asylum seekers and their legal representatives and none of the judges is specialised in asylum and migration issues. The length of procedure before the Administrative Court can sometimes be counted in years, meaning that there were instances in which asylum procedure lasted for more than 4 years.¹⁸

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

¹⁴ UNHCR, UNHCR: Authorities of Italy and Serbia exchange experiences related to refugee protection, 26 November 2021, available at: <https://bit.ly/3HXnuzD>.

¹⁵ Article 21 Asylum Act.

¹⁶ CAT, *Concluding observations on the third periodic report of Serbia*, 20 December 2021, CAT/C/SRB/CO/3, available at: <https://bit.ly/3vd0s4r>, para. 34 (b).

¹⁷ Article 22 Asylum Act.

¹⁸ Administrative Court, Judgment U 12638/18, 20 July 2021; this judgment was rendered with regards to Iraqi applicant who lodged his asylum application in 2017.

authority, always providing its judgments to CSOs and individual practitioners. From the judgments, it is also possible to analyse the practice of Asylum Office and Asylum Commission.

Asylum Act explicitly envisages that the asylum authorities should cooperate with the UNHCR when undertaking the activities related to its mandate and the UNHCR should have free access to all persons who might be in need of international protection.¹⁹

At the request of UNHCR, the competent authorities shall provide:

1. General information concerning the applicants, refugees or persons who have been granted subsidiary or temporary protection in Serbia, including statistical data, and specific information on individual cases, provided that the person to whom the asylum procedure refers has given his/her consent in the manner and under the conditions prescribed by the law governing the protection of personal data;
2. Information regarding the interpretation of the 1951 Convention and other international instruments relating to refugee protection and their application in the context of this Law.²⁰

However, it is clear that only Asylum Office provides regular statistical data to the UNHCR. Asylum Commission only provides roughly processed data on its practice. The Commission, but also the Asylum Office, are of the opinion that sharing copies of decisions with legal practitioners and researchers would violate privacy of applicants.

The MoI and CRM have established the second roadmap for cooperation between Serbia and European Asylum Support Office (EASO, now European Union Asylum Agency (EUAA)) 2020-2022. The main focus with regards to refugee status determination procedure will be on country of origin information (CoI).²¹ EUAA representatives held a meeting with relevant CSOs recognized as main providers of free legal aid in Serbia in October 2021.²² In addition, representatives of asylum authorities have attended numerous seminars and trainings outside Serbia.

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).²³ 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 and which can be interpreted in line with the practice of the ECtHR and Article 3 of the ECHR.

The asylum system and procedure *stricto sensu* are mainly governed by the Law on Asylum and Temporary Protection (Asylum Act) that came into force on 3 June 2018.²⁴ Additionally, relevant are the Foreigners Act,²⁵ the General Administrative Procedure Act (GAPA)²⁶ and the Administrative Disputes Act (ADA).²⁷ 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,²⁸ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees, alongside the Decree on the Manner of Involving

¹⁹ Article 5 (1) and (2) Asylum Act.

²⁰ Article 5 (3) Asylum Act.

²¹ European Commission, Serbia 2021 Report, 19 October 2021, SWD(2021) 288 final, available at: <https://bit.ly/3Byi8lQ>, 52.

²² The author of this report attended the meeting.

²³ '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).

²⁴ Official Gazette no. 24/2018.

²⁵ Official Gazette no. 24/2018.

²⁶ Official Gazette no. 18/2016 and 95/2018.

²⁷ Official Gazette no. 111/2009.

²⁸ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

Persons Recognised as Refugees in Social, Cultural and Economic Life (Integration Decree). There are several more bylaws which regulate the House Rules in reception facilities, social and health-care issues and other aspects related to inclusion and integration of asylum seekers and refugees.

The asylum Act was introduced in 2018 and 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 2019.²⁹ Thus, all the novelties, except for border procedure, are generally applied in practice.³⁰

In 2021, the Government was working towards amending the Asylum Act. The Mol initiated the dialogue on the amendments and all relevant CSOs were invited to take part in consultations in November 2021. The Mol shared with CSOs the first draft of the amendments of Asylum Act which included numerous positive changes such as:

1. introduction of the new category of the “foreigner who expressed intention to lodge asylum application” who will be entitled to the majority of aspects of the material reception conditions;³¹
2. harmonization of terminology and certain procedural steps governed by GAPA;
3. pre-elementary school education and preparation for children under the age of 7;
4. introduction of additional provisions related to refugee travel document.

The suggestions for the amendments of the First Draft of the amendments to the Asylum Act were proposed by some of the CSOs after the consultations. IDEAS has suggested the following changes, which to a certain extent, reflect the proposals of other CSOs:

1. prescribing more precise criteria for the assessment of the possibility of asylum seekers to enjoy protection from persecution in the country of origin – Article 31;
2. excluding the deadline 15+8 days for submission of asylum application – Article 36 (see [Lodging an application](#));
3. introducing specific evidentiary activities such as forensic expert opinion and witnesses – Article 37;
4. clarifying registration of asylum seekers at the border in terms of their detention and introducing provisions which govern the procedure and competent body for a decision on deprivation of liberty for the purpose of asylum procedure or forced removal– Article 48;
5. making the clear distinction between measures which imply deprivation of liberty and measures which are related to the limitation of the freedom of movement – Article 78;
6. introducing clear criteria for the application of the safe third country concept – Article 45;
7. specifying which aspects of material reception conditions should be granted to the newly introduced category of “foreigner who expressed intention to lodge asylum application”;
8. harmonization of provisions on guardianship contained in the Family Law with provisions of Asylum Act governing accommodation of unaccompanied and separated children (“UASC).

It was also suggested that the amendments of the provisions governing the exclusion procedure require more time and external expertise.

²⁹ AIDA Country Report Serbia, 2019 Update, May 2019, 32.

³⁰ Ibid., 18-19.

³¹ At this moment, only persons who lodged asylum application are recognized as a category which is entitled to material reception conditions.

However, it is unclear when the process will resume and when will it be finalized.³² Given political developments,³³ amendments of the Asylum Act could be adopted in the last quarter of 2022 at earliest.

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.³⁴ 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.³⁵ 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 should wait for 15 days 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 within 8 days after the expiry of the above-mentioned deadline.³⁶ Afterwards, asylum officer will conduct the asylum hearing.³⁷

The Asylum Office is under the legal obligation to decide on the application within 3 months of its submission, during which time one or more hearings must be held in order to establish all of the facts and circumstances relevant to rendering a decision. This deadline could be extended up to 9 months.³⁸ Thus, the maximum length of asylum procedure is 1 year.

In the case of a negative decision, asylum seeker has 15 days to lodge an appeal to the Asylum Commission. Negative decision also contains an order to leave the country and the deadline which can be up to 30 days. However, when the decision on rejection becomes final (confirmed by the Administrative Court), the relevant Mol unit for foreigners renders additional expulsion decision in case where the applicant has failed to voluntarily leave the territory of the State within the given deadline.³⁹

The Asylum Commission has to decide and deliver the second instance decision to the applicant within 60 days.⁴⁰ An onward appeal to the Administrative Court must be submitted within 30 days from the delivery of the second instance decision and there is no deadline within which the third instance body has to decide.⁴¹ Both remedies have automatic suspensive effect.⁴²

The last instance in Serbian legal system is the Constitutional Court (CC). The constitutional appeal does not have an automatic suspensive effect. It is possible to lodge a request for interim measures to the CC,

³² The usual remaining steps are the following:

1. drafting of the final Draft of the Amendments to the Law on Asylum and Temporary Protection by the Mol;
2. Additional comments by the CSOs and other interested parties such as UNHCR;
3. Adoption of the Draft by the Government;
4. Public debate on the Draft;
5. Referral of the Draft to the relevant Committee within the Parliament;
6. Referral of the Draft to the Plenary meeting of the Parliament;
7. Adoption of the Draft by the Parliament;
8. Promulgation of the Law by the President;
9. *Vacation Legis*.

³³ The Parliament was dissolved on 15 February and early parliamentary elections will take place on 3 April 2022. It is also reasonable to assume that results of the elections will be pronounced at least several weeks after the elections. The new Government can be formed in late July 2022 at latest.

³⁴ Article 35 Asylum Act.

³⁵ *Ibid.*

³⁶ Article 36 Asylum Act.

³⁷ Article 37 Asylum Act.

³⁸ Article 39 Asylum Act.

³⁹ Article 74 (1-8) Foreigners Act.

⁴⁰ Article 95 Asylum Act and Article 174 GAPA.

⁴¹ Article 96 Asylum Act.

⁴² *Ibid.*

but several cases, which implied forcible removal, have shown that this mechanism is weak and slow.⁴³ This was accepted by the ECtHR which granted interim measures submitted by Serbian lawyers on at least 10 occasions.

In the past several years, the number of asylum seekers addressing UN Treaty Bodies and the ECtHR has been increasing. Currently, there are 10 communicated cases pending before the ECtHR related to the rights of asylum seekers:

1. *A. and Others v. Serbia*;⁴⁴
2. *Seraj Eddin v. Serbia*;⁴⁵
3. *M.H. v. Serbia*;⁴⁶
4. *A.K. v. Serbia*;⁴⁷
5. *M.W. v. Serbia*;⁴⁸
6. *A.H. v. Serbia and North Macedonia and A.H. v. Serbia*;⁴⁹
7. *H.G.D. v. Serbia*;⁵⁰
8. *O.H. and Others v. Serbia*;⁵¹
9. *E.B. v. Serbia and A.A. v. Serbia*;⁵²
10. *S.B. and Others v. Serbia*.⁵³

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 Union⁵⁴ as well as North Macedonia,⁵⁵ Albania,⁵⁶ Montenegro⁵⁷ and Bosnia and Herzegovina ('Bosnia').⁵⁸

As regards the Readmission Agreement with the EU, it has not been properly functioning since September 2015 and Hungary expels foreigners to Serbia in an informal manner, amounting to a push-back policy. The same practice is applied by Croatia and Romania in the vast majority of cases. According to the Mol, in 2019, not a single foreigner was returned to Serbia under the Readmission Agreement, while in 2020, 84 readmission requests were accepted by Serbia. It is not clear from which states foreigners were returned as well as how many foreigners were included in these 84 requests.⁵⁹

The same can be said for the functioning of Readmission agreement with North Macedonia. The NPM outlined in its Report the following:

'The NPM also wants to point out the difficult implementation of readmissions with North Macedonia. According to the data obtained during the visit, in 2020, 68 requests for readmission of same number of persons were submitted to North Macedonia and all requests were rejected, usually with the

⁴³ Constitutional Court, Decision No. UŽ 3548/2013, Decision of 19 September 2013, available in Serbian at: <http://bit.ly/3cG4bhy>.

⁴⁴ Application No 37478/16, 30 June 2016, available at: <https://bit.ly/3JyPWs8>.

⁴⁵ Application No 61365/16, 19 October 2016, available at: <https://bit.ly/3sO861Z>.

⁴⁶ Application No. 62410/17, 23 October 2017, available at: <https://bit.ly/34MuQHJ>.

⁴⁷ Application No. 57188/16, 3 October 2016, available at: <https://bit.ly/3rVFfde>.

⁴⁸ Application No. 70923/17, 29 September 2017, available at: <https://bit.ly/3oT0Ot0>.

⁴⁹ Application Nos. 60417/16 79749/16, 19 October and 27 December 2016 respectively, available at: <https://bit.ly/3oVp8dz>.

⁵⁰ Application No. 3158/20, 12 December 2019, available at: <https://bit.ly/3HU3uxR>.

⁵¹ Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

⁵² Application Nos. 50086/20 50898/20, available at: <https://bit.ly/3GUV4F1>.

⁵³ Application No. 22463/17, 8 February 2017, available at: <https://bit.ly/3JuDPfu>.

⁵⁴ Official Gazette no. 103/2007

⁵⁵ Radio Free Europe, Srbija i Makedonija potpisale sporazum o readmisiji, 4 October 2010, available at: <http://bit.ly/3kl8Od3> [accessed on 26 February 2021].

⁵⁶ Official Gazette no. 7/2011.

⁵⁷ Official Gazette no. 13/2013.

⁵⁸ Radio Free Europe, Srbija i BiH potpisale Sporazum o readmisiji, 5 July 2013, available at: <http://bit.ly/3dSKJ1F> [accessed on 26 February 2021].

⁵⁹ Mol, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available at: <https://bit.ly/3Dtss4r>, 24.

explanation that there was no evidence that a foreigner entered Serbia from North Macedonia, even though, according to officials' statements, that was more than obvious, and all the necessary evidence was provided.⁶⁰

In April 2019, Serbia and Austria signed an agreement that would allow **Austria** to send to Serbia refused asylum seekers who had entered from Serbia. Upon their return, they are to be placed in an "adequate" accommodation, for which Vienna will pay. As of April 2020, the agreement has not yet been put in practice and it triggers debates in both Austria,⁶¹ and Serbia.⁶² As of December 2020, this agreement has not been applied in practice.

The conclusion that can be drawn is that formal cooperation on returns of refugees, asylum seekers and migrants between the States in the Western-Balkan region is basically non-existing. The border policies are mainly based on illegal forms of expulsions which are contrary to the principle of *non-refoulement* and prohibition of collective expulsions.

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. 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 vaccination 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,⁶³ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant an entry, or

⁶⁰ Ombudsman, Serbia: National Report on the situation of human rights of migrants at the borders, ENNHRI, July 2021, available at: <https://bit.ly/3JxAnRn>, 21.

⁶¹ 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>.

⁶² BCHR, 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/2T31tIh>.

⁶³ Article 15(2) Foreigners Act.

if the international commitments of the Republic of Serbia indicate otherwise.⁶⁴ The foreigner can lodge an appeal to the Mol – Border Police Administration against the decision.⁶⁵ In practice, however, the foreigners at Nikola Tesla airport are taken to the detention room and are cut off from the outside world. They typically cannot draft and send the appeal as they do not know domestic legal provisions and often do not speak Serbian or English language (the decision on refusal of entry is issued in Serbian and English languages). Also, they have to pay a fee of 12.470,00 dinars (around 105 EUR) before they can send the appeal to the Administrative Court. There is no post office in the transit zone, nor any other way to access the second instance body. The appeal does not have automatic suspensive effect.⁶⁶ This means that, even if the foreigner manages to lodge an appeal, he or she 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.⁶⁷ The refusal of entry decision is mainly applied at the airport, as discussed in the next section, but also at the official border crossings. Still, the Mol 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,⁶⁸ specific position of people with disabilities,⁶⁹ family unity,⁷⁰ etc. If necessary, during the return procedure, an interpreter should be provided for a language that the foreigner understands, or is reasonably assumed to understand.⁷¹ 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.⁷² 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 treat for national security or public order.⁷³ 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 Mol 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.⁷⁴

The guarantees against *refoulement* that are introduced in the Foreigners Act had existed in the Serbian legal framework before this Act came into force.⁷⁵ However, they were not applied properly, and there are

⁶⁴ Article 15(3) Foreigners Act.

⁶⁵ Article 15(6) Foreigners Act.

⁶⁶ Annex 1 Regulation on the Refusal of Entry.

⁶⁷ 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.

⁶⁸ Article 75(1) Foreigners Act.

⁶⁹ Article 75(2) Foreigners Act.

⁷⁰ Article 75(3) Foreigners Act.

⁷¹ Article 75(5) Foreigners Act.

⁷² Article 75(6) Foreigners Act.

⁷³ Article 83(2) Foreigners Act.

⁷⁴ ECtHR, *M.A. v. Lithuania*, para 83-84.

⁷⁵ See e.g. the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

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.⁷⁶ 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*.⁷⁷

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.⁷⁸

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**.⁷⁹ There were several instances of asylum seekers from India, for whom it remains unclear if they had been allowed to access asylum procedure.⁸⁰

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 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.⁸¹

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.⁸² 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.

On 15 September 2021, IDEAS and A11 lawyers lodged the request for urgent interim measures in order to prevent expulsion of Kurdish political activist from Turkey to his country of origin where he would face life sentence without a parole. The request was granted on the same day and the man decided to flee Serbia upon his release.⁸³ This was the fourth Rule 39 request which was granted, since 2013, and with regards persons arbitrary detained at the airport who faced expulsion to third country or country of origin where they would face treatment contrary to Article 2 or 3 of the ECHR.⁸⁴

On 15 October 2021, a victim of SGBV from Burundi X. and her daughter were arbitrary detained at the transit zone of the airport. She was kept there for more than 48 hours, and she was forced to sleep on the chairs. She was automatically served with the decision on refusal of entry and was about to be sent back

⁷⁶ BCHR's email correspondence from 10 to 12 February 2019.

⁷⁷ CAT, *Concluding observations on the third periodic report of Qatar*, 4 June 2018, CAT/C/QAT/CO/3, para. 37-38 and 41-42.

⁷⁸ Registration Certificate No. 21/2019/2019 issued by BPSB on 21 February 2019.

⁷⁹ BCHR, Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020, available at: <https://bit.ly/2LZHG5W>, 13.

⁸⁰ *Ibid.*

⁸¹ BCHR, Right to Asylum in the Republic of Serbia 2020, available at: <https://bit.ly/37Q36R2>.

⁸² A11 Twitter, available at: <https://bit.ly/3bHKgfZ>.

⁸³ ECtHR, *Ozen v. Serbia*, Application No. 45794/21, granted on 15 September 2021.

⁸⁴ ECtHR, *P. v. Serbia*, Application No. 80877/13, granted on 23 December 2013 – *refoulement* from the Belgrade airport 'Nikola Tesla' to Greece as a country that could not had been considered as a safe for Iranian political activist; Ahmed Ismail (Shiine Culay) v Serbia, Application No. 53622/14, granted on 29 July 2014 – *refoulement* from the Belgrade airport 'Nikola Tesla' to Somalia where the applicant would have faced persecution as a journalist who was targeted by al-Shabab and H.G.D. v. Serbia, Application No 3158/20, granted on 30 November 2016 – *refoulement* to Iran of a man who converted from Islam to Christianity

to Istanbul, and then further to Addis Abebe and Bujumbura. Her cousin contacted IDEAS and its lawyers intervened and secured her access to Serbia. Prior to her arrival to Serbia, X. was raped by the members of Imbonerakure - paramilitary force close to the Government of Burundi. Ms. X only speaks Kirundi language and understands French. She wrote 'I want asylum' on the tissue, but the contact with the border police was impossible. She claims that the police addressed her in a disrespectful and violent manner shouting 'there is no asylum in Serbia'. Ms. X. explained that border police officers apprehended a group of Burundian man at the very exit of the plane and took them 'somewhere'. Most likely, they were taken to the detention room at the airport. She was not taken there because she was with a small child. She has never been served with her copy of decision on refusal of entry, but IDEAS later on obtained the copies where it was stated that she rejected to sign the decision. This represents the most flagrant example of automatic practice of refusing entry to persons who are in need of international protection.⁸⁵

On 10 December 2021, IDEAS again intervened in the case of Mr. K. from Burundi who was arbitrarily detained at the airport for more than 7 days. He claims that he was punched several times when he tried to explain that he wanted asylum. At one point, he was electrocuted with a device that he describes as a mini battery. He witnessed ill-treatment of other persons from Tunisia, Burundi and India who were crammed into the detention room. Mr. K. fled political persecution from Burundi secret service *Documentation*. He also claimed that he has never been served with a decision on refusal of entry and that he was offered some documents to sign but he refused. His cell phone was taken as well, so the only reason why he was allowed to enter was because his cousin who was in the Asylum Center in Krnjača contacted IDEAS.⁸⁶

On 10 December 2021, a family of 4 from Burundi arrived at the airport and tried to express intention to submit asylum application in Serbia. Their family contacted IDEAS after they had been returned back to Istanbul. The family claims that they were deprived of their liberty at the very exit of the plane and that their cell phones were taken. Later on, with several other citizens of Burundi, they were taken to detention premises where they remained for two days. They were not able to communicate with the outside world, nor they were allowed to have food.

On 25 December 2021, Mr. X. arrived from Istanbul to Belgrade airport. At the exit from the plane, his cell phone, passport and other personal belongings were taken away from him. He was detained with around 25 more people in the detention premises at the airport. He stayed there until morning of 29 December 2021. Alongside 12 other Burundians, he was expelled back to Istanbul. The police came into the room and handcuffed them. Those who opposed the police, including Mr. X, were hit with rubber truncheons. They were forcibly put in the police car and were driven to the plane of Istanbul Airlines via runway. He remained at the Istanbul airport for more than 10 days, without his passport and without food. IDEAS attempted to alarm UNHCR and CSOs in Turkey, but without avail. Upon his landing in Bujumbura on 12 January, he was arrested and taken to the building of Burundian secret service. His whereabouts are unknown until the date of the conclusion of this report, but IDEAS is in touch with the family.

On 1 January 2022, Ms. Y. from Burundi landed at Belgrade airport and was subjected to above-described practice. She was taken to the detention room where she was crammed with more than 20 male detainees. Ms. Y. alleges that she was sexually attacked by Tunisian national but was defended by other Burundian boys. On 4 January in the morning, the police came to detention premises and took Ms. Y. and another woman from Burundi to the police car with several other boys from the same country. The boys were handcuffed and boarded to the plane, while two Burundian women laid on the ground and screamed. According to their testimonies, the crew from the plane refused their boarding. In the afternoon, IDEAS addressed the Ombudsman office, and the women were allowed to access territory and asylum procedure.

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

⁸⁵ The author of this Report intervened in the case.

⁸⁶ *Ibid.*

Arabic, Farsi, Urdu, Pashtu, Turkish, Kurdish, Kirundi 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*,⁸⁷ the Foreigners Act should be amended to introduce automatic suspensive effect of the appeal against the decision on refusing the entry.

As regards legal access to the territory, third country nationals cannot apply for a (humanitarian) visa, specifically with the intention to apply for international protection upon arrival, nor are there any resettlement or relocation operations in place.

1.2. Access to the territory in the green border zone

The number of arrivals to Serbia remain high, but it is still not possible to determine the exact number of refugees and migrants who enter Serbia on annual basis. The reason for this is different criteria applied by different bodies who collect such data. Thus, it is necessary to consult different sources such as UNHCR, CRM, but also Frontex, and in order to get the clearest picture possible.

Even though the numbers of arrivals remain high, access to territory for persons in need of international protection has continued to remain a serious concern in 2021. The pattern of multiple human rights violations which occur through the practice of pushbacks and other forms of collective expulsions includes:

- short term unlawful and arbitrary deprivation of liberty⁸⁸ according to both the subjective and objective criteria of the ECtHR;⁸⁹
- denial of access to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination;⁹⁰
- failure to inform refugees and migrants on the reasons for deprivation of their liberty, as well as procedures which are applicable to them, and in a language they understand;⁹¹
- denial of access to asylum procedure;⁹²
- ill-treatment including kicks, slaps, punches, dropping off at locations where refugees and asylum seekers cannot fulfil their basic needs (food, water, medical assistance), destroying of cell phones, etc.;⁹³
- forcible removal without examination of individual circumstances of each person or outside any legal procedure;⁹⁴

⁸⁷ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

⁸⁸ ECtHR, *Creangă v. Romania*, Application No. 29226/03, Judgment of 23 February 2012, available at: <https://bit.ly/3BjU8bl>, para. 84.

⁸⁹ ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, available at: <https://bit.ly/3tS73Al>, para. 95; *Z.A. and Others v. Russia*, Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment of 21 November 2019 [GC], EDAL, available at: <https://bit.ly/3JB0Hdu>, para. 138.

⁹⁰ CPT, Extract from the 2nd General Report [CPT/Inf (92) 3], p. 6, para. 36, available at: <https://bit.ly/3GVD4KU>.

⁹¹ ECtHR, *Khlaifia and Others v. Italy*, App. Nos. 16483/12, Judgment of 15 December 2016, EDAL, available at: <https://bit.ly/2Bojevuv>, para. 92.

⁹² ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>, paras. 156, 157 and 185.

⁹³ ECHR, Article 3.

⁹⁴ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>, para. 59.

- lack of assessment on any risks of *refoulement* and *chain-refoulement*⁹⁵ in the receiving states and complete disregard of special needs e.g., age, mental or medical state, trauma caused by torture, human trafficking, sexual or gender-based violence (SGBV);
- denial of access to effective legal remedy for the above-enlisted violations cumulatively and under Article 13 of ECHR.

Additional contentious circumstances arise from the events of August 2020, when Serbia has constructed a barbed wire fence at its southern border with North Macedonia, which is the entry point for the vast majority of refugees and migrants.⁹⁶ This measure came as a surprise.

The COVID-19 pandemic did not lead to imposing additional restrictive and contentious border policies, as it was the case in 2020.⁹⁷ Namely, the absolute prohibition of entering on Serbian territory during the state of emergency that was in force from 15 March to 6 May 2020 was not applied in 2021, and there are no indicators that something similar would repeat in the near future.⁹⁸ However, the practice of collective expulsions continued, regardless of the pandemic circumstances,⁹⁹

Reports of collective expulsions to North Macedonia and Bulgaria have been decreasing in the past several years. However, data published by the highest state authorities (MoI, but also the Ombudsman) indicate that violent pushbacks are still a reality, which was confirmed in the decision of the Constitutional Court of Serbia, as well as in findings of the CAT in its latest Concluding Observations. This data represents continuation of the previous findings of relevant CSOs and international bodies for the protection of human rights and can be considered as evidence that collective expulsions are widespread and systematic.

The Status Agreement on border management cooperation between the European Union and Serbia entered into force in June 2021. The agreement allows Frontex to carry out joint operations in Serbia, especially in the event of sudden border management challenges. The European Commissioner for Home Affairs and Migration, Ylva Johansson, visited Serbia to launch the first Frontex joint operation at the Serbian border with Bulgaria.¹⁰⁰

Arrivals to Serbia

It is not possible to determine the exact number of arrivals to Serbia and there are several reasons it:

- there are different methods of collecting and compiling data on refugees and migrants entering and residing on the Serbian soil, and which are applied by the MoI, CRM and UNHCR;
- a significant number of refugees and migrants are not registered (fingerprinted and photographed) by the MoI. Thus, they are not introduced in data base with fingerprints and pictures of foreigners - *Afis*. This is the only way to properly identify persons without any ID and which can further prevent recording one person several times when using a different name or when his or her name is not properly typed in one of the databases.¹⁰¹

⁹⁵ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

⁹⁶ 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].

⁹⁷ AIDA: Country Report Serbia, 2020 Update, March 2021, 19.

⁹⁸ 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>, 18-19. hereinafter: *Hod po žici*, see also AIDA: Country Report Serbia, 2020 Update, March 2021, 19.

⁹⁹ *Ibid.*, 33-34.

¹⁰⁰ Frontex, *Frontex expands presence in Western Balkans with operation in Serbia*, 16 June 2021, available at: <https://bit.ly/3H2aG9X>.

¹⁰¹ Precisely, this might lead to a situation in which CRM registers one person in several different camps under different names, including persons who were introduced in *Afis* because CRM workers do not have access to this database in reception facilities.

Until 2020, the UNHCR office in Serbia was keeping its own statistics on the number of new arrivals which in, e.g., 2019 and 2020, were based on the initial interviews that UNHCR staff and its partners were conducting with newly arrived foreigners. By using this method, 29,704 persons were recorded as newly arrived in 2019 and 25,003 in 2020.¹⁰² On the other hand, in 2020, CRM recorded 63,408 refugees and migrants who passed through governmental reception facilities, which is almost 40% more than figures collected by UNHCR.¹⁰³ However, according to the European Commission Progress Report for 2021 which contains data delivered by the State, the number of persons who passed through asylum and reception centres in 2019 was around 12,000, which is 40% less than the number of arrivals registered by the UNHCR in the same year (29,704).¹⁰⁴

In 2021, the UNHCR and CRM harmonized their respective methodologies and now they apply CRM approach which is based on the number of refugees and migrants who were accommodated at asylum or reception centres.

According to that criterion, a total of 60,338 refugees and migrants were observed as new arrivals in 2021.¹⁰⁵ This data cannot be considered as 100 % accurate, especially taking in consideration that FRONTEX detected 60,540 cases of 'illegal entries' to EU and from Serbia and Bosnia:

'The Western Balkan route saw a further 124% increase of reported detections of illegal border-crossings in 2021 compared to 2020. The route marked an increasing trend until September and a slight decrease in the subsequent months. The majority of detected illegal border crossings can be traced back to people who have been in the region for some time and who repeatedly try to reach their target country in the EU.'¹⁰⁶

According to Frontex's information, almost identical number of persons who resided in camps in Serbia attempted to cross to EU from Bosnia and Serbia. Moreover, FRONTEX outlined that these are persons who repeatedly try to reach their target country in the EU. In other words, one person can try several irregular crossings to the EU, and one person can be registered in several different camps in Serbia. Thus, it can be assumed that realistic number of new arrivals in Serbia is closer to the numbers which can be obtained by the UNHCR methodology from the previous years (i.e. based on the initial interviews), than the one which is applied by the CRM. Certainly, the most reliable way to determine the most accurate arrival numbers is recording by MoI in the Afis, which cannot be expected in the near future due to lack of capacities of Border Police Administration.

¹⁰² This data is extracted from UNHCR data portal, available: <https://bit.ly/3rYbS9O>.

¹⁰³ European Commission, Serbia 2021 Report, 19 October 2021, SWD(2021) 288 final, available at: <https://bit.ly/3Byi8lQ>, p. 49.

¹⁰⁴ *Ibid.*

¹⁰⁵ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹⁰⁶ Frontex, EU external borders in 2021: Arrivals above pre-pandemic levels, 11 January 2022, available at: <https://bit.ly/33w9fTu>.

The number of arrivals per month was as follows:

Observed Arrivals in the period 2019-2021					
Month	Arrivals 2019		Arrivals 2020		Arrivals 2021
	UNHCR	CRM	UNHCR	CRM	UNHCR and CRM
January	629	/	1,700	/	3,180
February	819	/	2,633	/	2,273
March	1760	/	1,649	/	3,832
April	1,826	/	583	/	4,344
May	2,512	/	270	/	3,182
June	2,366	/	2,108	/	4,111
July	2,726	/	3,197	/	5,762
August	3,673	/	4,146	/	7,101
September	3,686	/	2,981	/	8,978
October	4,123	/	2,703	/	6,570
November	3,871	/	2,022	/	6,027
December	1,713	/	1,011	/	4,978
Total	29,704	10,145	25,003	63,408	60,338

Access to the territory in the context of COVID-19

The measures that were in force in 2020 and introduced in the context of COVID-19 prevention were not applied in 2021,¹⁰⁷ which should be applauded. However, it is also important to highlight that these measures were without any doubt discriminatory and disproportionate. The main argument for this claim lies in the fact that restrictive measures, which were applied at the border in the first half of 2020, were not applied at all in 2021. The number of infected people with COVID-19 during 2020 has never exceeded 8,000 per day. In 2021, the highest number of infected people was 14,000.

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.¹⁰⁸ Several CSOs, including A11 and PIN, swiftly reacted to the public statement, condemning such act and declaring it to be contrary to international human rights law.¹⁰⁹ 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**.¹¹⁰ 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**.¹¹¹ On 22 May 2020, the Ministry of Defence selected the private enterprise (*Žica Best*) to build the fence around asylum and reception centres. 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.¹¹² In August 2020, *the Radio Free Europe* reported that Serbia had built the fence alongside the border with **North Macedonia**.¹¹³ Not a single state official made

¹⁰⁷ AIDA: Country Report Serbia, 2020 Update, March 2021, p. 19.

¹⁰⁸ 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].

¹⁰⁹ 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].

¹¹⁰ *Direktno*, *Srbija zbog migranata diže zid prema Bugarskoj i Makedoniji!*, 10 June 2020, available at: <https://bit.ly/3gdzOgS> [accessed on 10 January 2021].

¹¹¹ Most probably in line with Article 3 (a) of the Decree on the State of Emergency.

¹¹² Radio Free Europe, *Ministarstvo odbrane Srbije obustavilo kupovinu žilet-žice*, 20 May 2020, available at: <https://bit.ly/31Ax3ll> [accessed on 10 January 2021].

¹¹³ 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].

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.¹¹⁴

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 2021, the presence of civil society organisations at the borders with **North Macedonia**, **Bulgaria** and **Montenegro** continued to be limited.¹¹⁵ 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 other forms of collective expulsions to **North Macedonia**.¹¹⁶ Apart from that, APC has published a report that contains allegations and statistics on pushbacks to North Macedonia in the first six months of 2021.¹¹⁷

It is important to note that 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 basically ceased to exist. Official statistics of the MoI indicate that collective expulsions are still carried out towards Bulgaria, as it can be seen from the Ombudsman report:

'According to official data of the RBPCs, in 2020 [...] 434 [persons/refugees and migrants] on the border with Bulgaria gave up trying to illegally enter the Republic of Serbia. According to police officers, these are foreigners who, after noticing the presence of border police patrols, gave up entering the country.'¹¹⁸

The argumentation of the MoI that refugees and migrants are discouraged from irregular crossings when they encounter border police is nothing but the misleading. It represents the usual MoI and Ministry of Defence mantra that has been repeated since 2016, when mixed patrols of army and police were introduced with an aim 'to suppress illegal migration'.¹¹⁹ This argument was publicly used for the first time by Mr. Jovan Krivokapić from the Ministry of Defence who stated on the national television that refugees and migrants are discouraged when they spot border patrol forces.¹²⁰ A month before that statement, a group of 17 Afghan refugees were collectively expelled back to Bulgaria. This incident was declared as a violation of prohibition of collective expulsions by the Constitutional Court in December 2020.¹²¹ Three months before, a Kurdish family of 7 was left in the forest to freeze to death and only because of CSO InfoPark reaction, a search and rescue mission was carried out and refugees were saved.¹²² Accordingly, the credibility of such statements can only be checked if independent border monitoring mechanism is established, as recommended by the Committee against Torture in 2015¹²³ and 2021.¹²⁴

The findings of the Border Violence Monitoring Network (BVMN) from 2020 and of UNHCR and APC in 2021, indicate that refugees and asylum seekers who were arriving from **North Macedonia** were subject

¹¹⁴ Bojana Lekić, *Pushback and Dangerous Games*, Brendon Production, available at: <https://bit.ly/368FJKK>, 36:14.

¹¹⁵ More than 95% of persons in need of international protection are entering Serbia from these three countries.

¹¹⁶ INDIGO acts as an implementing partner of UNHCR at the south of Serbia.

¹¹⁷ APC, *Migracije na jugu Srbije*, 29 December 2021, available at: <https://bit.ly/33xTxHm>.

¹¹⁸ Ombudsman, Serbia: National Report on the situation of human rights of migrants at the borders, ENNHRI, July 2021, available at: <https://bit.ly/3JxAnRn>, p. 21.

¹¹⁹ AIDA: Country Report Serbia, 2016 Update, February 2017, p. 19 and p. 15.

¹²⁰ RTS, *Migrantsko proleće*, 29 March 2017, 12:40, available at: <https://bit.ly/3sQtUdq>.

¹²¹ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

¹²² N1, "Patrola vojske i policije ostavila migrante da umru u šumi", 19 December 2016, available at: <https://bit.ly/34SBIZA>.

¹²³ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

¹²⁴ CAT, *Concluding observations on the third periodic report of Serbia**, 20 December 2021, CAT/C/SRB/CO/3, available at: <https://bit.ly/3vd0s4r>.

to a short-term deprivation of their liberty, searches, occasional ill-treatment and a denial of access to basic rights.¹²⁵ 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.¹²⁶

According to UNHCR, at least 773 refugees and migrants were pushed back to **North Macedonia** in 2019, 977 in 2020, and 210 in 2021. More detailed reports on pushbacks to North Macedonia were solely published by the BVMN in 2020 and APC in 2021.

Pushbacks to North Macedonia in 2020-2021			
	2019	2020	2021
January	78	74	0
February	87	150	31
March	96	112	2
April	35	9	7
May	49	9	22
June	19	88	5
July	59	10	21
August	28	154	46
September	159	142	14
October	67	159	57
November	90	30	0
December	6	40	5
Total	773	977	210 ¹²⁷

Source: UNHCR.

One case from 2020 deserves a particular attention as it was documented by several CSOs and demonstrates the practice of collective expulsions from the mainland, not at the very border line. It relates to a group of 16 persons from **Morocco, Iran** and **Algeria** who were collectively expelled from 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 collectively expelled to **Greece**.¹²⁸ The group addressed several NGOs, including BVMN, BCHR and IDEAS.¹²⁹ The case was later on referred to the Ombudsman by the BCHR.¹³⁰ 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.¹³¹ However, the body never tried to collect testimony from these people, even though they managed to return to Serbia after several weeks and the

¹²⁵ Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

¹²⁶ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹²⁷ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹²⁸ BVMN, *Pushed-back from a Camp in Serbia to N. Macedonia, and then to Greece*, 3 April 2020, available at: <https://bit.ly/2SRhfWJ>.

¹²⁹ *Hod po žici*, 34.

¹³⁰ BCHR, *Right to Asylum in the Republic of Serbia Periodic Report for January – June 2020*, July 2020, available at: <https://bit.ly/2Y8WDeA>, 21-25.

¹³¹ Ombudsman, Recommendation No. 4232/127/2020, 7 October 2020, available at: <http://bit.ly/36nVVPp>.

Ombudsman was aware of their whereabouts.¹³² This case displays a similar pattern as the case of collective expulsion reported by the APC in 2019.¹³³

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**.¹³⁴ Two other reports were published in October 2020 outlining that refugees and migrants were taken respectively from AC **Tutin**,¹³⁵ and the town **Preševo**,¹³⁶ to the green border area with North Macedonia close to **Miratovac** village. APC reported pushback to **North Macedonia** in November 2020.¹³⁷ 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**.

One of the reports published by the coalition of CSOs in April 2021 gives a detailed account of push backs of 4 persons to North Macedonia in the first four months. The report further outlines that pushback from Serbia and particularly from North Macedonia to Greece are likely to be happening on a much larger scale.¹³⁸

An encouraging sign in 2021 was one border initiative of the Ombudsman office. When it comes to pushbacks to North Macedonia committed by Serbian authorities, the Ombudsman recorded the following testimonies:

1. [...] four young men from Syria stated that they had been sent back across the border several times, first from Serbia to North Macedonia, and then from North Macedonia to Greece. They added that during the first attempt to enter the country, they came across a group of police officers and that on that occasion they took their SIM cards from their mobile phones and told them to go back to where they came from. They added that they kicked one of them [...]
2. A young man from Somalia states that after crossing the border and entering Serbia from North Macedonia, he was returned to North Macedonia together with a group of ten people he was with. He adds that he did not experience any form of violence on that occasion but that they were not given any information nor explained anything
3. A boy and a girl, who state that they are brother and sister, described that in January, after crossing the border and entering Serbia from North Macedonia, they came across the police and that they were all non-violently expelled to North Macedonia. When crossing the border again, he and his sister managed to separate from the group before the new contact with the police, in order to escape from them, and then cross the border.

¹³² 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.

¹³³ AIDA, *Country Report Serbia*, 2019 Update, May 2019, p. 19 and 20.

¹³⁴ 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>.

¹³⁵ 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>.

¹³⁶ 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>.

¹³⁷ APC Twitter, available at: <https://bit.ly/3tnylGK>.

¹³⁸ Protection Rights at Borders, *Pushing Back Responsibility*, April 2021, available at: <https://bit.ly/3GUSm2f>, p. 7.

4. A young man from Lebanon states that he and a small group of people came across uniformed persons, and that they pushed them into a car and returned them to North Macedonia. He adds that on that occasion, they also received punches to the back.
5. A young man from Afghanistan states that during January and February 2021, he was returned to North Macedonia seven times by uniformed persons, that the reasons for his return were never explained to him, and that on one occasion the group he was traveling with suffered violence from police officers.¹³⁹

Thus, 5 testimonies which encompass several dozen persons, were collected in only 2- 3 days in the border area with North Macedonia. This data clearly demonstrates the widespread or even systematic extent of the pushback practice. These testimonies reflect testimonies collected by the BVMN from 2020. Still, apart from BVMN in 2020 and APC in 2021, 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 2020, and 2021¹⁴⁰

APC reported that in the first half of 2021, 410 pushbacks were documented by their field teams, and estimation of this CSO is that every day, at least 50 refugees and migrants are collectively expelled to North Macedonia.¹⁴¹

All pushback allegations are further supported by the continuing self-praise of Serbian officials who publicly present 'the positive results' of Serbian border authorities as they successfully combat 'illegal entries' from neighbouring states.¹⁴² In June 2020, it was published in the media that up to June 2020, 532 migrants were prevented from 'illegally' crossing the border.¹⁴³ In the Ombudsman report, it was stated that in 2020, 14,390 people gave up trying to illegally enter Serbia from North Macedonia after they spotted border police forces.¹⁴⁴ This part of the Ombudsman's report contradicts Ombudsman's own findings based on the above-cited testimonies compiled in the same document.

Beyond North Macedonia, in the Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, the Mol outlined the following:

'During 2019, a total of 20,221 people were prevented from attempting to cross the state border illegally, of which 4,990 were caught trying to cross the state border illegally, while 15,231 people gave up after being spotted by the state border security authorities, while in 2020, a total of 38,226 persons were prevented, of which 22,572 were directly prevented from attempting to cross the state border illegally, while 15,654 were the results of preventive action by the state border security authorities.'¹⁴⁵

Once again, it remains unclear what the following terms mean: 'prevented from attempting to cross the state border', 'were caught while trying to cross the state border', 'gave up after being spotted', 'directly prevented from attempting to cross' and 'results of preventive action.' One thing is certain, these people

¹³⁹ Ombudsman, *Serbia: National Report on the situation of human rights of migrants at the borders*, ENNHRI, July 2021, available at: <https://bit.ly/3JxAnRn>, 16.

¹⁴⁰ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 16.

¹⁴¹ APC, *Migracije na jugu srbije*, 29 December 2021, available at: <https://bit.ly/33xTxHm>, 2.

¹⁴² AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 16-18 and AIDA, *Country Report Serbia*, 2019 Update, May 2020, 20-21.

¹⁴³ 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].

¹⁴⁴ Ombudsman, *Serbia: National Report on the situation of human rights of migrants at the borders*, ENNHRI, July 2021, available at: <https://bit.ly/3JxAnRn>, 21.

¹⁴⁵ Mol, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available at: <https://bit.ly/3Dtss4r>, 10.

were not issued with the decision on refusal of entry¹⁴⁶ as formal way to prevent someone from unlawfully entering Serbia.

The number of persons prevented from ‘illegally crossing the border’ (data extracted from the statements of the state officials and official reports of the MoI)

Year	2016	2017	2018	2019	2020	2021	Total
No. of persons denied access to territory	(at least) 18,000 ¹⁴⁷	(at least) 21,000 ¹⁴⁸	(at least) 23,000 ¹⁴⁹	20,221 ¹⁵⁰	38,226 ¹⁵¹	N/A	(at least) 120,447

To conclude, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2021.

International criticism

The practice of pushbacks has been criticised by the UN Human Rights Committee which expressed its concerns related to “collective and violent” denial of access to territory.¹⁵² These concerns have also been shared by the CAT¹⁵³ and Amnesty International,¹⁵⁴ while UNHCR had reported this problem for the first time in 2012.¹⁵⁵ In 2015, the CAT recommended that Serbia should establish “formalised border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organisations.”¹⁵⁶ To this date, Serbia has failed to establish an independent border monitoring mechanism. CAT reiterated its recommendation in 2021 and urged Serbia to:

‘Introduce a border monitoring mechanism that includes representatives of independent entities, such as international organizations and civil society with expertise in international refugee law and international human rights law, to ensure that border authorities are acting in line with the principle of *non-refoulement* and the prohibition of collective expulsion, as well as for the purpose of collecting accurate data’.¹⁵⁷

¹⁴⁶ Article 15 Foreigners Act.

¹⁴⁷ Danas, ‘Migrants unhappy with conditions of life’, 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

¹⁴⁸ Alo, ‘Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!’, 22 July 2017, available in Serbian at: <http://bit.ly/2DGDgRx>.

¹⁴⁹ Serbian Army, ‘Престанак ангажовања Заједничких снага Војске Србије и МУП’, 2 April 2018, available in Serbian at: <https://bit.ly/2EolHol>.

¹⁵⁰ BETA, ‘MUP: Na dnevnom nivou spreči se ilegalni ulazak 2’0 do 50 ilegalnih migranata’, 26 November 2019, available (in Serbian) at: <http://bit.ly/2TdLuYL>.

¹⁵¹ Danas, ‘Vučić: There are currently 3,977 migrants in Serbia, last year we prevented more than 38,000 illegal crossings’, 17 June 2021, available (in Serbian) at: <https://bit.ly/3koFNV0> and Ministry of Interior, Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година, available at: <https://bit.ly/3Dtss4r>, 10.

¹⁵² Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

¹⁵³ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

¹⁵⁴ 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.

¹⁵⁵ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

¹⁵⁶ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

¹⁵⁷ CAT, *Concluding observations on the third periodic report of Serbia**, 20 December 2021, CAT/C/SRB/CO/3, available at: <https://bit.ly/3vd0s4r>, para. 34.

European and domestic jurisprudence

One of the most important developments in 2021 is the decision of the Constitutional Court (CC), which confirmed that illegal border practices have been a state practice.¹⁵⁸ This decision is the first official recognition that relevant state authorities denied access to territory and asylum procedure and carried out collective expulsions.¹⁵⁹ 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 2017.¹⁶⁰ 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.¹⁶¹ 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)¹⁶² 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).¹⁶³ 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 in *Čonka*,¹⁶⁴ *Hirsi Jamaa*¹⁶⁵ and *Georgia v. Russia*,¹⁶⁶ 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 applicants¹⁶⁷

On 12 July 2021, the above-mentioned case, which was decided partially by the Constitutional Court,¹⁶⁸ was communicated to the Government of Serbia and the issues which were raised in ECtHR's questions to the Government are related to Article 3, Article 13 read in conjunction with Article 3, Article 4 of Protocol 4, Article 13 read in conjunction with Article 4, Article 5, Article 5 (2) and Article 5 (4).¹⁶⁹

On 14 June 2021, another case referring to informal expulsion to North Macedonia, and then further to Greece, was communicated to the Governments of Serbia and North Macedonia (*A.H. v. Serbia and*

¹⁵⁸ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

¹⁵⁹ AIDA, *Country Report Serbia*, Update 2019, May 2020, 21.

¹⁶⁰ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

¹⁶¹ DW, *Serbia: Court confirms illegal pushbacks into the EU, 22 January 2021*, available at: <http://bit.ly/3699fH8> [accessed on 24 January 2021].

¹⁶² Which corresponds to Article 5 (4) of ECHR.

¹⁶³ 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.

¹⁶⁴ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>.

¹⁶⁵ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

¹⁶⁶ ECtHR, *Georgia v Russia*, Application no 13255/07, Judgment of 3 July 2014, EDAL, available at: <http://bit.ly/3jgBhWs>.

¹⁶⁷ Insajder, "Odluka Ustavnog suda potvrda da se migranti proteruju iz Srbije", 22 January 2021, available at: <http://bit.ly/39Wgi2U> [accessed on 24 January 2021].

¹⁶⁸ Opinion of the author of this report who acts as a legal representative before ECtHR. The CC found violation of article 4 and 5(1) only.

¹⁶⁹ ECtHR, *O.H. and Others v. Serbia*, Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

North Macedonia, and *A.H. v. Serbia*). The case concerns the Sudanese applicant, who attempted to seek international protection in Serbia. Instead of being registered, he has been allegedly subject to several summary removals to North Macedonia by the authorities of Serbia and to Greece by the authorities of North Macedonia, respectively. A formal removal decision has never been rendered. The case refers to Article 3 and Article 13 read in conjunction with Article 3 in terms of the risk assessment of *refoulement* and *chain-refoulement*.¹⁷⁰

Pushbacks to Serbia from neighbouring states in 2021

Wide-spread pushbacks 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.¹⁷¹

This state of affairs indicates that Serbian geographical position puts this country in a difficult situation. Namely, Serbian asylum system cannot be considered as fair and effective, and thus, it is not attractive to refugees and asylum seekers. For that reason, most of persons in need of international protection who arrive to Serbia strive to leave to one of the three neighbouring states which form the so-called external borders of the EU – Romania, Hungary or Croatia.

The will to leave to the EU countries implies that refugees, asylum seekers and migrants strive to stay in border areas, in one of six Reception Centres or in more than 20 informal settlements which are established in abandoned facilities or tent settlements formed in forests and fields. Apart from food, water and roof over their heads, refugees, asylum seekers and migrants who decided to stay in Reception Centres sleep in conditions that can only be described as inhumane and degrading due to overcrowding, lack of privacy, poor hygiene, insecurity and others. On the other hand, even more appalling conditions are inevitable in the informal settlements where there is no access to the most basic needs, especially during the hot summer or cold winter days. According to the APC, between 2,000 and 3,000 refugees and migrants were residing in informal settlements every day in 2021.¹⁷²

Thus, illegal border practices of the neighbouring countries are not only contentious from the perspective of domestic laws and international standards but they also disregard lack of capacity of Serbia to accommodate victims of pushbacks in a manner which respects their physical and mental integrity.

On the other hand, refugees and migrants could be afforded with better conditions in reception facilities in the south or east of the country. Serbian police organized several transfers of people staying in appalling conditions in border areas to Reception Center in Preševo, especially during the winter times.¹⁷³ Many of these transfers were described as violent, degrading, and ineffective. These locations are far from the EU external borders so after transfers, people typically come back to the same locations from which they were removed.

BVMN outlined in its December 2021 report the following:

- [...] As stated in previous monthly reports, large-scale operations in the North were carried out several times this winter. These evictions are notoriously ineffective in tackling smuggling networks, and rather sometimes contribute to reshaping smuggling routes or, at a smaller scale, the distribution of individuals in a given space. [...] As witnessed by members of our team on the field, an overwhelming number of individuals tend to come back to locations they were evicted

¹⁷⁰ ECtHR, *A.H. v. Serbia and North Macedonia, and A.H. v. Serbia*, Application Nos. 60417/16 79749/16, 19 October and 27 December 2016 respectively, available at: <https://bit.ly/3oVp8dz>. The case is litigated by Ms. Olga Đurović, attorney at law from Asylum Protection Center.

¹⁷¹ 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>.

¹⁷² APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQzMY>, 1-4.

¹⁷³ Večernje Novosti, *МИГРАНТИ ПРЕБАЧЕНИ СА СЕБЕРА НА ЈУГ: Више од 300 избеглица транспортовано из Сомбора у Прешево*, 4 February 2021, available at: <https://bit.ly/36ql0uF>; see also, APC, available at: <https://bit.ly/36k5v8x>.

from. The endless circle of evictions triggered this winter is not only efficient on the part of the state but violent and endangering vulnerable communities with few other options to turn towards when it comes to housing.¹⁷⁴

In 2021, the UNHCR office in Serbia and its partners documented that 29,289 persons were pushed back from **Croatia, Bosnia, Hungary** and **Romania** to Serbia, of whom 68% from Hungary, 27% from Romania, 4,5% from Croatia and less than 1% from Bosnia and Hercegovina.¹⁷⁵

UNHCR statistics on pushbacks to Serbia in 2021¹⁷⁶

Month	Bosnia and Hercegovina	Croatia	Hungary	Romania
January	2	78	1,092	1,011
February	4	82	2,076	1,611
March	90	115	930	991
April	62	134	677	298
May	39	94	691	346
June	17	88	689	266
July	35	60	987	395
August	10	112	2,009	791
September	-	67	1,457	475
October	16	58	3,110	835
November	-	23	3,507	933
December	-	48	2,411	254
Total	275	959	19,636	8,206

APC reported that 527 pushbacks from Hungary, Croatia and Romania in the first half of 2021 and this CSO estimate that, on average at least 200 people are pushed back to Serbia every day,¹⁷⁷ outside formal readmission procedure which is almost never applied. It is further highlighted in the Report that every person interviewed was returned to Serbia at least twice, while less people claimed that they were pushed back 10 to 15 times. Some of the people alleged that they were pushed back several dozen times.¹⁷⁸

Pushbacks from Hungary to Serbia and Embassy Procedure

Since the contentious changes in Hungarian legal framework in the period 2015-2020,¹⁷⁹ including the legalization of practice which is considered to be in violation of prohibition of collective expulsions, more than 130,000 persons was expelled back to Serbia.

In 2020, BVMN published 3 testimonies encompassing 30 people who were pushed back from **Hungary** to **Serbia**.¹⁸⁰ This number significantly increased in 2021 amounting to 30 documented pushback cases encompassing 347 persons. Only in 5 out of 30 cases allegations of violence were not reported, while in other 25 cases the following forms of ill-treatment by Hungarian authorities were outlined: kicks, slaps, punches, hitting with police buttons, forcing to undress, handcuffing in painful positions, arbitrary detention, pushing to the ground, forcing to lye or sit on the ground, dog attacks, insulting, threatening, pepper spraying, etc.¹⁸¹

¹⁷⁴ BVMN, Balkan Region – January 2022, available at: <https://bit.ly/3sQqmrD>, 4.

¹⁷⁵ The entire statistical data has been provided by UNHCR office in Serbia.

¹⁷⁶ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹⁷⁷ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>.

¹⁷⁸ *Ibid.*

¹⁷⁹ See AIDA Hungary report.

¹⁸⁰ The testimonies are available at: <https://bit.ly/36aGo55>.

¹⁸¹ BVMN, Testimony Database, available at: <https://bit.ly/3Jvmhjs>.

The Centre for Research and Social Development (IDEAS) has interviewed 276 individuals who claimed that they were pushed back from Hungary to Serbia in line with the Hungarian legal framework which allows arbitrary expulsions. Many of them reported the following practice:

- short term (in case they are arrested in the vicinity of the barbed wire fence) or long-term arbitrary deprivation of liberty (up to 24 hours in one of the police stations or containers located close to the border);
- inhumane and degrading treatment which includes hits, punches, hand cuffing in painful positions, insults, threats, deprivation of food and water, forcing to lie or sit on the ground and other;
- lining up of refugees and migrants and camera recording of reading of the statement by one of the refugees or migrants in the group who speak or understand English language;
- collective expulsion at one of the gates in the fence.¹⁸²

Out of 276 persons, 16 persons expressed their will to challenge the practice they endured. The legal assistance to these persons involved cross border cooperation and referrals to CSOs in Hungary.

APC reported that over 300 people attempted to cross the border with Hungary every day in the first 6 months of 2021.¹⁸³ APC reported in December 2021 the following incident:

'Horgos. M. from Morocco describes that a Hungarian policeman hit him twice on the head with a truncheon, after which he spent 8 days in a hospital on Hungarian territory. Afterwards, Hungary pushed him back to Serbia.'¹⁸⁴

A particularly worrying examples of push-back practice from Hungary to Serbia are related to individuals who have never been in Serbia beforehand. There are probably dozens of cases of foreigners subjected to such practice. The first such case was recorded in 2016.¹⁸⁵ In April 2021, SGBV survivor who arrived from Senegal to Budapest airport was expelled to Serbia.¹⁸⁶ In September 2021, an Afghan student in Hungary was expelled to Serbia.¹⁸⁷ On 31 December 2021, a woman from Cameroon who was traveling from Romania towards Austria was apprehended by Hungarian immigration authorities and expelled to Serbia. In February 2022, she obtained the status of the victim of human trafficking in Serbia.¹⁸⁸

It is noteworthy that in 2020 access to the territory and asylum procedure in **Hungary** was made possible only through a consulate in **Belgrade**.¹⁸⁹ 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').¹⁹⁰ The new procedure is described in detail in the AIDA report on **Hungary**. According to the data obtained by IDEAS, several 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. So far, only 3 families from Iran (12 persons in total) have entered Hungary. IDEAS and InfoPark were providing technical assistance to the foreigners interested in applying for asylum. The problems that 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

¹⁸² A detailed report will be published in late March 2022.

¹⁸³ APC, Pushbacks - januar-jun 2021, 8 December 2021, available at: <https://bit.ly/3LHhOw5>, 6.

¹⁸⁴ Available at: <https://bit.ly/3gWxyx1>.

¹⁸⁵ HHC, World Refugee Day – 1 out of 40,000: Karox, 20 June 2020, available at: <https://bit.ly/3h2z0Oe>.

¹⁸⁶ BCHR, Mađarska - ovde se ne traži azil, 16 November 2021, available at: <https://bit.ly/3JDxSbj>.

¹⁸⁷ Telex, He had never been to Serbia in his life, he did not know anyone there, and yet he was pushed-back there, 30 September 2021, available at: <https://bit.ly/3l83gmN>.

¹⁸⁸ The author of this Report acts as her legal representative.

¹⁸⁹ ECRE, *Hungary: New Law on the Lodging of Asylum Applications at Embassies*, 19 June 2020, available at: <http://bit.ly/2MRn0mX>.

¹⁹⁰ Available at: <https://bit.ly/3jyD2h>.

- 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.

And finally, it is important to outline that the above-described practice of automatic expulsions to Serbia was declared as contrary to Article 4 of Protocol 4 of the ECtHR in the case *Shahzad v. Hungary*.¹⁹¹ The ECtHR outlined that Hungarian authorities removed the applicant without identifying him and examining his situation and that he was denied effective access to means of legal entry, which amounted to expulsion of collective nature contrary to Article 4 of Protocol 4.¹⁹²

Official statistics on pushbacks from Hungary to Serbia 2016-2021¹⁹³

Year	No. of persons pushed back
2016	8,466
2017	9,259
2018	4,151
2019	11,101
2020	25,603
2021	71,470
Total	130,050

As it can be seen from the table above, Hungarian immigration authorities have been transparent when it comes to the number of persons expelled back to Serbia under domestic framework, outside any readmission procedure, and without a knowledge of Serbian border authorities.

Pushbacks from Romania to Serbia¹⁹⁴

Due to increasing violence at the Croatian border and taking in consideration that Hungarian barbwire fence carries significant risk to live and physical integrity of the concerned persons, in 2018 refugees and migrants started to use Romanian border route. According to the UNHCR, the number of pushbacks from this country have been increasing gradually, from at least 700 persons in 2018, to 1,857 in 2019 and then 13,459 in 2020. In 2021, the number of people who reported pushbacks from Romania was at least 8,206.

¹⁹¹ Application No 12625/17, Judgment of 8 July 2021, available at: <https://bit.ly/3BwQH1U>.

¹⁹² *Ibid.*, para. 67.

¹⁹³ Hungarian Ministry of Interior official data.

¹⁹⁴ Data obtained by the UNHCR office in Serbia.

BVMN published 3 testimonies referring to 67 persons who were pushed back from Romania in 2020.¹⁹⁵ In 2021, 20 incidents encompassing 238 persons was reported. Every single report contained allegations on ill-treatment by Romanian authorities: kicks, slaps, punches, hits with rubber truncheons, electric shocks, forcing to undress and other.¹⁹⁶

European Union Agency for Fundamental Rights (FRA) highlighted that Romanian police reported that only in the first six months of 2021, 28,737 refugees and migrants were ‘prevented’ from entering from Serbia. Thus, this number shows that push-back practice represents an official state policy in this country as well.¹⁹⁷

APC reported that at least 50 persons per day were trying to cross to Romania in the first half of 2021.¹⁹⁸ IDEAS has observed the trend regarding refugees who cross to Romania continue their movement to the city of Arad and then enter Hungary. After being apprehended by the Hungarian police, they are expelled to Serbia.¹⁹⁹

It is also important to outline that there is no cross-border cooperation between Serbian and Romanian CSOs and individuals, which could help legal initiatives to legally challenge Romanian border practice.

UNHCR statistics on pushbacks from Romania to Serbia in 2021²⁰⁰

Year	Minimum No. of persons pushed back
2018	At least 700
2019	At least 1,857
2020	At least 13,459
2021	At least 8,206
Total	At least 16,822

Pushbacks from Croatia to Serbia

The number of pushbacks from Croatia to Serbia has been decreasing since 2018. The vast majority of refugees and migrants have decided to move to Bosnia and Hercegovina and try from there to cross to Croatia. In October 2020, a documentary ‘Pushbacks and Dangerous Games’ was broadcasted on N1 television. This documentary gave an overview of Croatian push back policies and presented several testimonies from refugees collectively expelled from **Croatia**.²⁰¹

In 2020, BVMN published 9 testimonies involving 93 people who were pushed back from **Croatia**,²⁰² APC was also reporting on cases of collective expulsions which included severe forms of violence.²⁰³ In November 2020, APC reported the following:

‘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

¹⁹⁵ The testimonies are available at: <https://bit.ly/3sTBq6z>.

¹⁹⁶ BVMN, Testimony Database, available at: <https://bit.ly/3Jvnhjs>.

¹⁹⁷ FRA, *Migration: Key Fundamental Rights Concerns*, available at: <https://bit.ly/3BwONyt>.

¹⁹⁸ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>, 8.

¹⁹⁹ IDEAS Report will be published in late May 2021.

²⁰⁰ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

²⁰¹ In December 2021, Rosa-Luxemburg-Stiftung Southeast Europe published the document titled ‘Documenting Human Rights Violation on the Serbian-Croatian Border: Guidelines for Reporting, Advocacy and Strategic Litigation’. Nikola Kovačević, *Documenting Human Rights Violation on the Serbian-Croatian Border: Guidelines for Reporting, Advocacy and Strategic Litigation*, , Rosa-Luxemburg-Stiftung Southeast Europe, Belgrade 2021, available at: <https://bit.ly/3gX9f1J>. The aim of these Guidelines is to contribute to better documentation of push-back cases and to provide guide on how to conduct strategic litigation before international bodies for the protection of human rights.

²⁰² The testimonies are available at: <https://bit.ly/2KJPezk>.

²⁰³ APC Twitter, available at: <https://bit.ly/3oNZJ2L>; <https://bit.ly/39NKFxH> and <https://bit.ly/3avBZex>.

Batrovac, only in their underwear. Beating, shooting, breaking of phones and seizing money is an everyday practice of the Croatian police.²⁰⁴

APC estimates that in the first 6 months of 2021, approximately 300 to 400 persons was present in the border area with Croatia trying to cross the border.²⁰⁵ One of the testimonies of APC's report goes as follows:

'AA, 21, from Afghanistan, described his experience of pushback from Croatia, when he was caught together with the group he was traveling with, in the vicinity of Batrovci. The Croatian police put the whole group in the official vehicle, which took them to the border with Serbia. After getting out of the police vehicle, they started shouting and beating them. They were forced to take off their shoes [...] They were then ordered to kneel and keep their hands behind their heads. Some of them were hit with a truncheon on the back. In the end, they were forced to cross into Serbian territory [...] only in underwear [...]'²⁰⁶

BVMN documented 33 cases involving 92 refugees and migrants being denied access to Croatian territory. Each and every case implied some form of ill-treatment such as: punches, kicks, undressing, hitting with rubber truncheon and others.²⁰⁷

And finally, it is important to note that the ECtHR has found multiple violations of the Convention in the case *M.H. and Others v. Croatia*. The case concerned the death of a six-year-old Afghan girl, M.H., who was hit by a train after she and her family were denied the opportunity to seek asylum by the Croatian authorities and ordered to return to Serbia via the tracks. The Court found that the investigation into the death had been ineffective, the applicant children's detention had amounted to ill-treatment, and the decisions on the applicants' detention had not been dealt with diligently. It also held that some of the applicants were subjected to a collective expulsion from Croatia and the State had hindered the effective exercise of the applicants' right to an individual application by restricting access to their lawyer among other things.²⁰⁸

In March 2021, a Kurdish political activist was denied access to asylum procedure and expelled back to Serbia. IDEAS and Center for Peace Studies (CMS) documented the case and CMS addressed the ECtHR. The case was communicated in December 2021.²⁰⁹

The systemic practice of pushbacks in Croatia was widely exposed in the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT).²¹⁰

UNHCR statistics on pushbacks from Croatia to Serbia in 2021²¹¹

Year	Minimum No. of persons pushed back
2018	At least 6,200
2019	At least 3,280
2020	At least 1,975
2021	At least 1,000
Total	At least 12,455

²⁰⁴ APC Twitter, available at: <https://bit.ly/3jhWXkZ>.

²⁰⁵ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>, 9.

²⁰⁶ *Ibid.*, 9.

²⁰⁷ BVMN, Testimony Database, available at: <https://bit.ly/3Jvmhjs>.

²⁰⁸ ECtHR, *M.H. and Others v. Croatia*, Application Nos 15670/18 43115/18, Judgment of 18 November 2021, available at: <https://bit.ly/3LO77b5>.

²⁰⁹ ECtHR, *Y.K. v. Croatia*, Application No. 38776/21, lodged on 24 July 2021, available at: <https://bit.ly/3sSP0YT>.

²¹⁰ CPT, Council of Europe anti-torture Committee publishes report on its 2020 ad hoc visit to Croatia, 3 December 2021, available at: <https://bit.ly/33z7Rzm>.

²¹¹ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

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

1.3. 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 2021²¹² However, a recent and additional problem is the increasing number of ill-treatment allegations made by the people who were refused entry at the airport and addressed CSOs in Serbia upon their return to country of origin, or after their admission to territory which ensued after CSOs interventions. The use of violence towards persons who might be in need of international protection was recorded on numerous occasions by CSOs in Serbia. This violence reportedly includes punches, slaps, kicks, hits with rubber truncheon and handcuffing in painful position. Ill-treatment was applied in situations when refugees and asylum seekers were forced to go to the detention premises at the airport or when they were forced to board the plane.

BPSB issued 146 certificates of intention to submit asylum application ('registration certificate'). This is a significant increase in comparison to 2020, when only 44 certificates were issued and 2019, when 69 persons was registered by the BPSB.²¹³ To a certain extent, the higher number can be attributed to the fact that air traffic was not limited anymore in 2021 due to COVID-19 circumstances.

The majority of certificates were issued to the citizens of Burundi (more than 100). Namely, in 2018, Serbia introduced a free visa regime for citizens of Burundi because the Government of this country withdrew the recognition of Kosovo*'s unilaterally declared independence.²¹⁴ Following this, hundreds of Burundian citizens moved to Serbia and applied for asylum.

Even though the number of issued certificates increased, the practice of BPSB is unpredictable, inconsistent and deprived of any clear criteria. In fact, as the number of arrivals of Burundians was gradually increasing, BPSB allegedly started to introduce different contentious practices including the one which has the following steps:²¹⁵

1. the police would wait at the exit of the plane with decision on refusal of entry formulars already filled in with all the available details (flight details, time arrival to Serbia, reasons for refusal of entry, etc.) except for the personal details of travellers which are later on taken from their passports;
2. Burundians are then apprehended right after they would leave the plane and are invited to sign the formulars while they are still not aware of what these formulars mean;
3. their cell phones and passports are instantly taken away and the personal details from the passport are introduced in decisions on refusal of entry;
4. if the flight would fly back instantly back to Istanbul, Burundians would be boarded back to the plane threatened with the force;
5. if individuals manage to decline to board the plane instantly or there is no instant return flight, they are taken to detention premises at the transit zone with the use of force or the threat of the use of force (except for the women and small children);
6. their arbitrary detention can then last from several hours to several days, as long as the seat on the return flight to Istanbul does not become available;
7. when the seat at the return flight becomes available, detainees are forcibly taken on the side exit, forced into the police car and driven across the runway to the plane which is already boarded with regular travellers.

²¹² AIDA, *Country Report Serbia*, 2018 Update, March 2019, 18-20 and AIDA, *Country Report Serbia*, 2020 Update, March 2021, 26.

²¹² AIDA, *Country Report*, 2019 Update, 22.

²¹³ AIDA, *Country Report*, 2019 Update, 22.

²¹⁴ Društvo putnika Srbije, *Srbija ukinula vize za državljane Republike Burundi*, 21 June 2018, available at: <https://bit.ly/3H3GGK1>.

²¹⁵ This pattern of behavior was designed on the basis of 27 interviews which the author of this report has conducted with Burundians who managed to access Serbian territory.

8. decisions on refusal of entry which is in English and Serbian is served to detained individuals prior to their forcible boarding to the plane regardless of decisions being signed or not by detainees.

Regardless of the number of persons who were recognised by airport border authorities as individuals who might be refugees, the most concerning issues which remain are the following:

1. unlawful and arbitrary deprivation of liberty at the transit zone;
2. the manner in which decisions on refusal of entry are being issued;²¹⁶
3. lack of capacity of BPSB officers to recognize persons who might be in need of international protection and those who are not (in line with Article 35 of Asylum Act and Article 83 of Foreigners Act).

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.²¹⁷ 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.²¹⁸

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*.²¹⁹ 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*,²²⁰ without the possibility to use services of a lawyer and an interpreter, and to lodge an appeal with a suspensive effect.²²¹

In June 2019, the Constitutional Court (CC) dismissed as manifestly unfounded BCHR's constitutional appeal submitted on behalf of Iranian refugee H.D.²²² 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,²²³ in line with the criteria established in the jurisprudence of the ECtHR.²²⁴ 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.

²¹⁶ Article 15 Foreigners Act.

²¹⁷ Article 13(2) Foreigners Act.

²¹⁸ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15.

²¹⁹ ECtHR, *Gebremedhin (Gaberamadhien) v France*, Application No. 25389/05, Judgment of 26 April 2007, EDAL, available at: <http://bit.ly/2RwU82a>, para. 66-67.

²²⁰ Article 15 Foreigners Act.

²²¹ 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.

²²² Constitutional Court, Constitutional appeal no 9440/16, Decision of 13 June 2019.

²²³ Article 27 Constitution.

²²⁴ 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>.

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,²²⁵ using the subjective and objective criteria²²⁶ such as the type, duration, effects and manner of implementation of the measure in question.²²⁷ 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.²²⁸ The case was communicated to the Government of Serbia on 12 July 2021 and issues which will be examined are the following:

1. Was the applicant's confinement by the immigration officers in the transit zone of Belgrade International Airport, in the period between 31 October and 25 November 2016, in breach of Article 5-1 of the Convention?
2. Was the applicant's confinement "in accordance with a procedure prescribed by law"?
3. Was the applicant informed promptly, in a language which he understood, of the reasons for his deprivation of liberty, as required by Article 5-2 of the Convention?
4. Did the applicant have at his disposal an effective and accessible procedure by which he could challenge the lawfulness of his confinement, as required by Article 5-4 of the Convention?
5. Did the applicant have an effective and enforceable right to compensation for his unlawful detention, as required by Article 5-5 of the Convention?

There is no available data on the number of decisions on refusal of entry rendered at the airport 'Nikola Tesla'. However, CRM has been publishing data on the number of refusal of entries on an annual basis in their annual reports titled 'Migration Profile of the Republic of Serbia'.²²⁹ According to the said reports, Mol has refused entry to 6,096 foreigners in 2018, 5,214 in 2019 and 3,866 in 2020. The report for 2021 is yet to be published. Unfortunately, it is not possible to extract the data on refusal of entry and nationalities at the airport for the previous years.

During 2021, CSOs (APC, BCHR, IDEAS or KlikAktiv) lawyers were not denied access to the airport transit zone but there were no instances in which lawyers actually entered the zone, as people had been sent back before lawyers came or were informed. 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 CSO support.

Still, since April 2018, the Mol has been issuing temporary entry cards for the transit zone to CSOs 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 CSOs. Most of asylum seekers who addressed CSOs were allowed to enter Serbia after the phone call or an email that was sent by CSOs lawyers. Conversely, not 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,²³⁰ nor do they all have access to phones or internet. Accordingly, very often, the people who would receive counsel from CSOs 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. The European Commission

²²⁵ ECtHR, *Nolan and K. v. Russia*, Application No. 2512/04, Judgment of 12 February 2009, EDAL, available at: <http://bit.ly/36NVSDx>, para. 96.

²²⁶ 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.

²²⁷ ECtHR, *Amuur v. France*, Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>, para. 42.

²²⁸ ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

²²⁹ Available at: <https://bit.ly/3H0ILah>.

²³⁰ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020*, available at: <https://bit.ly/2LZHGsw>, 12-13.

highlighted this problem.²³¹ Additionally, 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.

In 2021, IDEAS has developed, as an internal document, a methodology for strategic litigation against arbitrary detention and refusal of entry decisions issued by the BPSB, regardless of the will of foreigners to remain in Serbia and actually apply for asylum. This has led to several applications which are being prepared for ECtHR at the time of finalizing of this report.

In 2021, CAT recommended that Serbia should:

‘Ensure access to territory and sufficient and effective protection from *refoulement* at the Belgrade International Airport by ensuring that persons detained in the transit zone of the airport receive information about their right to seek asylum, including effective access to asylum procedure, immediately and in language they understand;’

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, IDEAS, KlikAktivor 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,²³² 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 managed jointly by UNHCR, CSOs and representatives of the Mol.

2. Registration of the asylum application

Indicators: Registration

- | | |
|---|---|
| 1. Are specific time limits laid down in law for making an application?
❖ If so, what is the time limit for lodging an application? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Are specific time limits laid down in law for lodging an application?
❖ If so, what is the time limit for lodging an application? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
15 days and 8 days |
| 3. Are registration and lodging distinct stages in the law or in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Is the authority with which the application is lodged also the authority responsible for its examination? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. Can an application for international protection for international protection be lodged at embassies, consulates or other external representations? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

²³¹ European Commission, *Progress Report: Serbia*, 6 October 2020, SWD(2020) 352 final, available at: <https://bit.ly/2YaPjPJ>, p. 49.

²³² ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

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 lodge asylum application n.²³³ Foreigners may express intention to lodge asylum application to the competent police officers at the border or within territory either verbally or in writing,²³⁴ including places such as prisons, the Detention Centre for Foreigners in **Padinska Skela**, airport transit zones or during extradition proceedings or court proceedings e.g. misdemeanour proceedings.²³⁵ Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.²³⁶

An authorised police officer shall photograph and fingerprint the person,²³⁷ who will thereafter be issued a certificate on registration of a foreigner who has expressed intention to lodge asylum application in the Republic of Serbia asylum ('registration certificate').²³⁸ 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 registration certificates.

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 Mol organisational unit where the officer who issued the registration certificate is employed.²³⁹ 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.²⁴⁰ 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. This is a consequence of the lack of any age assessment procedure.

Over the course of 2019, the Mol 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 and 2,306 in 2021, because the police try to avoid issuing automatically certificates. In 2021, the certificate was issued to citizens of Afghanistan (1,025), Syria (466), Burundi (134), Pakistan (120), Bangladesh (107), Cuba (92), Iraq (51), Iran (35), India (35), Somalia (31), Morocco, (29), Turkey (22), Egypt (18), Algeria (12), Armenia (11), Palestine (11), Yemen (10), Cameroon (9), Guinea-Bissau (9), Libya (8), DR Congo (6), Russia (6), North Macedonia (4), Sierra Leone (4), Unknown (4), Burkina Faso (3), Ghana (3), Guinea (3), Togo (3), Albania (2), Bulgaria (2), Croatia (2), Gambia (2), Jordan (2), Mali (2), Nigeria (2), Poland (2), Senegal (2), USA (2) and 1 from Bosnia and Hercegovina, Colombia, Comoros, Congo, Equatorial Guinea, Georgia, Kyrgyzstan, Lebanon, Mexico, Niger, South Sudan, Tajikistan, Tunisia, Turkmenistan, Sudan and 1 stateless person.

The registration certificate in Serbia is not considered an asylum application and thus, individual who possesses asylum certificate is not considered an asylum seeker, but the person who intends to become one.²⁴¹ 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

²³³ Article 4(1) Asylum Act.

²³⁴ Article 35(1) Asylum Act.

²³⁵ Article 35(2) Asylum Act.

²³⁶ Article 11 Asylum Act.

²³⁷ Article 35(5) Asylum Act

²³⁸ Article 35(12) Asylum Act.

²³⁹ Article 8 Rulebook on Registration.

²⁴⁰ See also BCHR, Right to Asylum in the Republic of Serbia 2019, 22-24.

²⁴¹ Article 2 (1) (4) Asylum Act.

to report to such facility within 72 hours from the moment of issuance of the registration certificate.²⁴² 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.²⁴³ He or she then risks being penalised in the misdemeanour proceeding²⁴⁴ and served with one of the expulsion decisions (decision on cancellation of residency²⁴⁵ or return decision²⁴⁶). Still, the practice has shown that persons issued with certificates which expired are allowed to lodge asylum application in the vast majority of cases.

According to the Mol 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.²⁴⁷ 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.²⁴⁸ The said brochures in languages that asylum seekers understand have not been distributed yet. Hence, 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. There were also 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.²⁴⁹ This possibility exists as long as asylum application has not been rejected, in which case asylum seeker may lodge a [Subsequent Application](#).²⁵⁰

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 residency²⁵¹ or return decision.²⁵² 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.²⁵³ 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.²⁵⁴ There were

²⁴² Article 35(3) Asylum Act.

²⁴³ Article 35 (13) Asylum Act.

²⁴⁴ 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>, 15-21.

²⁴⁵ Article 39 (3) Foreigners Act.

²⁴⁶ Article 77 (1) Foreigners Act.

²⁴⁷ The letter from the Mol-Police Directorate-Border Police Administration No. 26-1991/18.

²⁴⁸ Information provided by the Border Police, 6 December 2018.

²⁴⁹ A Pakistani national represented by independent attorney at law submitted asylum application in December 2020, regardless of the fact that his registration certificate 'expired'.

²⁵⁰ Article 46 Asylum Act.

²⁵¹ Article 39 Foreigners Act.

²⁵² Articles 74 and 77 (1) Foreigners Act.

²⁵³ IDEAS lawyers submitted written asylum application in December 2020.

²⁵⁴ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

no instances in 2021 were persons with decision on cancellation of residency or return decision were denied access to asylum procedure, which is welcome.

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. According to the Foreigners Act, 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 that implies that the foreigner is allowed to contest his or her removal to a third country of country of origin with the assistance of a lawyer and interpreter, with the possibility to lodge a remedy for the judicial review of the negative first instance decision. This remedy must have an automatic suspensive effect. None of these safeguards are currently in place. Moreover, the entire procedure is based on the simple delivery of the decision to a foreigner drafted in a standard template that only contains different personal data, but no rigorous scrutiny of risks of *refoulement* is applied.²⁵⁵

As it has been the case in previous years, the total of 2,306 certificates issued in 2021 does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia since only 175 of them officially lodged asylum application. However, the number of registration certificates issued in 2021 more realistically reflect the interest of foreigners in need of international protection to remain in Serbia.²⁵⁶ 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.

Since 2009, a total of 652,708 registration certificates were issued. Out of that number, only 3,700 asylum applications were lodged, which is 0.6% of all foreigners registered in line with the Asylum Act in Serbia.

The correlation of registration certificates and asylum applications in Serbian asylum system 2009-2021

Year	No. of Registration Certificates	No. of Asylum Applications
2009	272	181
2010	788	215
2011	3,131	218
2012	2,856	335
2013	5,066	89
2014	16,498	379
2015	579,507	583
2016	12,699	574
2017	6,200	233
2018	7,638	324
2019	12,918	249
2020	2,830	145
2021	2,306	175
Total	652,708	3,700

²⁵⁵ 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>.

²⁵⁶ For instance, Mol issued 12,918 registration certificates in 2019, 7,638 in 2018, 6,200 in 2017 and 12,699 in 2016.

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. The first draft of Amendments of the Asylum Act contained a provision under which this category will be recognized and entitled to the material reception conditions.

It is a common practice that persons who genuinely want to apply for asylum are referred to Reception Centres²⁵⁷ instead of Asylum Centres (see section on [Housing](#)), thereby postponing their entry into the asylum procedure. Consequently, CSOs providing legal assistance have to advocate for their transfer to one of the five Asylum Centres or only to AC in Krnjača and Banja Koviljača in 2021. 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 2020²⁵⁸ and 2021. In 2021, Asylum Office facilitated asylum procedure in Belgrade in more than 90% of the cases by allowing people accommodated in Belgrade to lodge asylum application in person or organising asylum hearings. However, legal representatives successfully managed to negotiate with CRM and Asylum Office that asylum seekers be placed in AC Krnjača regardless of the reception facility to which they were referred in the registration certificate. This is an example of good practice.

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.²⁵⁹ 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, sometimes, 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**;
- 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.²⁶⁰

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

²⁵⁷ 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.

²⁵⁸ APC, *Azilni postupak nedostizan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

²⁵⁹ *Hod po žici*, 56-57.

²⁶⁰ *Ibid.*

of persons residing without authorisation²⁶¹ can face 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.²⁶² 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.²⁶³ 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 migrants²⁶⁴ 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**.²⁶⁵

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 and was pending as of February 2022.²⁶⁶ 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.²⁶⁷

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 assurances²⁶⁸ 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.²⁶⁹

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;

²⁶¹ Available at: <https://bit.ly/2ScFtKK>.

²⁶² See more in AIDA, Country Report Serbia, 2019 Update, May 2020, p. 29

²⁶³ Misdemeanor Judgment No. P 65/19 from 14 January 2019.

²⁶⁴ 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.

²⁶⁵ N1, 'Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda', 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

²⁶⁶ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

²⁶⁷ *Ibid*,

²⁶⁸ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>, para. 121-122.

²⁶⁹ The cases of M.W. and USAC X. are the most striking examples of this practice.

- 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.²⁷⁰

Not a single registration certificate was issued by the Detention Centre for Foreigners in 2021.

There were no obstacles in registration procedure due to COVID-19 in 2021, as it was the case in 2020.²⁷¹

One case from January 2022 deserves a special attention and is related to the political activist from Bahrein, who was denied access to asylum procedure, and who was extradited to his country of origin despite request for interim measures granted by the ECtHR and lodged by the BCHR.²⁷² The person was held in extradition detention in Serbia since November 2021, although he expressed the intention to seek asylum to the relevant authorities during the extradition procedure, claiming that he was at risk of being subjected to torture and political persecution if returned to his country of origin. This flagrant denial of access to asylum procedure, and ignoring of ECtHR's interim measure resembles the case of Cevdet Ayaz, who was extradited to Turkey despite CAT interim measure and before his asylum procedure was concluded.²⁷³

Month	Total number of registration certificates	Airport	Detention centre in Padinska Skela	Police Departments	Border Area
January	71	2	0	69	0
February	41	5	0	36	0
March	124	2	0	117	5
April	91	3	0	83	5
May	112	4	0	103	5
June	161	4	0	153	4
July	149	1	0	138	10
August	237	6	0	201	32
September	340	22	0	225	93
October	313	9	0	175	129
November	391	35	0	258	98
December	276	53	0	161	62
Total	2,306	146	0	1,717	443

²⁷⁰ 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>.

²⁷¹ AIDA Country Report Serbia, 2020 Update, March 2021, 35.

²⁷² *Mohamed v. Serbia*, Application No 4662/22, granted on 21 January 2022.

²⁷³ BCHR, *Serbia wrongfully extradited Bahraini national despite European Court of Human Rights interim measure*, available at: <https://bit.ly/3LGA8W5>.

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.²⁷⁴ 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.²⁷⁵ The asylum procedure shall be considered initiated after the lodging of the asylum application form to the Asylum Office.²⁷⁶

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.
5. Vulnerable applicants such as SGBV survivors, torture victims and vulnerable applicants sometimes require weeks or months before they are capable of sharing their traumatic experiences in asylum procedure.

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 considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.”²⁷⁷ 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

²⁷⁴ Article 36(1) Asylum Act.

²⁷⁵ Article 36(2) Asylum Act.

²⁷⁶ Article 36(3) Asylum Act.

²⁷⁷ ECtHR, *Jabari v. Turkey*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

of a strict interpretation of Article 36.²⁷⁸ 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. IDEAS has suggested the removal of the deadline-related provision from the Asylum Act on the consultations with the Mol in November 2021 and provided the draft of potential solutions.

In 2021, a total of 175 asylum applications were submitted. Out of them, 88 applications were submitted in writing and sent to the Asylum Office, while 76 were lodged directly in person. A total of 11 applications were subsequent applications. Out of total of 164 first-time asylum applications, 29 were submitted by Burundians, 22 by Afghans, 16 by Syrians, 14 by Iranians and 8 by Turkish nationals. The remaining nationalities are Pakistan (7), Guinea-Bissau (7), Iraq (6), Cuba (5), India (5), DR Congo (5), Jordan (5), Cameroon (4) Russia (3), Bangladesh (3), Armenia (2), Congo (2), Guinea (2), Morocco (2), Somalia (2) and 1 by Algeria, Angola, Bosnia and Hercegovina, Kyrgyzstan, Lebanon, Mali, Niger, Nigeria, North Macedonia, Poland, Tunisia, Turkmenistan and USA, and a stateless person.

As for the subsequent applications, 6 were submitted by Iranians (four-member and two-member family), 3 by Bulgarians (1 family), 1 by Pakistani UASC and 1 Cameroonian.

In the second half of 2020, the Asylum Office has started to conduct hearings based on the written asylum applications and this has now become a predominant way of initiating asylum procedure. This means that lodging of a written asylum application has consistently 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. It remains unclear how many asylum seekers lodged asylum applications by themselves because the Asylum Office does not keep such data. According to IDEAS field experience, at least several dozen asylum seekers lodged written asylum applications without the help of legal representatives. The question that remains open is if asylum seekers would need a support to properly fill in the formulars.

In 2021, there were no COVID-19 measures which in any way affected lodging of asylum application as it was the case in 2020.²⁷⁹

Month	Asylum Applications submitted in persons	Written Asylum Application	Subsequent asylum applications
January	5	11	0
February	3	9	5
March	3	2	3
April	14	2	0
May	9	10	0
June	5	0	0
July	10	6	3
August	0	8	0
September	0	20	0
October	15	5	0
November	3	6	0
December	9	9	0
Total	76	88	11

²⁷⁸ AIDA, Country Report, 2019 Update, 31-32.

²⁷⁹ AIDA, Country Report Serbia, 2020 Update, March 2021, 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 2021: | No data |
| 4. Average length of the first instance procedure in 2021: | N/A |

The asylum procedure in Serbia is governed by the Asylum Act as *lex specialis* to GAPA which is applied in relation to questions that are not regulated by the Asylum Act.²⁸⁰ The provisions of the Asylum Act shall be interpreted in accordance with the Convention and Protocol relating to the Status of Refugees and the generally recognised rules of international law.²⁸¹ Additionally, the third instance procedure before the Administrative Court is also governed by the ADA.

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.²⁸² In 2021, there were almost no instances in which the first instance asylum procedure was concluded within the 3-month period when the case was complex despite vulnerability of the applicant and credibility of the claim. Manifestly unfounded cases can be rejected within a month, but the question that remains open is why the highly credible cases, or the most vulnerable cases have to wait for more than a year for a positive decision. The best example is the case of *prima facie* not credible application of Pakistani national, and a torture victim from Iran.²⁸³ The first one was rejected in exactly 1 month, while the torture victim received international protection after 20 months.²⁸⁴

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.²⁸⁵ 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.²⁸⁶ The applicant shall be informed on the extension.²⁸⁷ BCHR reported two such cases in 2020, while IDEAS recorded one such case in 2021.²⁸⁸ Other CSOs providing legal aid to asylum seekers did not publicly disclose such information. It is quite clear that in the vast majority of cases, such notifications are not provided to applicants and their legal representatives.

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.²⁸⁹ Nevertheless, the decision must be taken no later than 12 months from the date of the

²⁸⁰ Article 3 (1), Asylum Act.

²⁸¹ Article 3 (3), Asylum Act.

²⁸² Article 39(1) Asylum Act.

²⁸³ Asylum Office, Decision No. 26-760/21, 20 May 2021.

²⁸⁴ Asylum Office, Decision No. 26-108/20, 27 August 2021.

²⁸⁵ Article 39(2) Asylum Act.

²⁸⁶ Article 39(3) Asylum Act.

²⁸⁷ Article 39(4) Asylum Act.

²⁸⁸ Notification No. 26-1197/21, 18 November 2021.

²⁸⁹ Article 39(5) Asylum Act.

application.²⁹⁰ Thus, the Asylum Office has a discretionary power to decide on the extension of the time limit for the decision.

As outlined, the possibility to extend the deadline for delivering the first instance decision is rarely used, and there is no official data on how many times this possibility was used in 2021 which represents a continuation of such practice from 2020 when the state of emergency was in force.²⁹¹ Still, not a single decision was rendered within three months. The length of the first instance asylum procedure is still much longer than three months. In other words, the first instance procedure still lasts unreasonably long (around 12 to 14 months on average) which is one of the reasons discouraging asylum seekers from considering Serbia a country of destination. In 2021, CSOs in Serbia did not lodge appeals complaining about lack of response by the administration to the Asylum Commission and excessive length of first instance procedure, as it was the case in 2020 when APC and BCHR submitted more than 10 appeals. In March 2022, the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that Serbia ensure compliance with the statutory deadlines of the asylum procedure.²⁹²

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;²⁹³ (b) a decision to reject the asylum application;²⁹⁴ (c) a decision to discontinue the procedure;²⁹⁵ or a decision to dismiss the application as inadmissible.²⁹⁶

The Asylum Act contains detailed provisions regarding the grounds for persecution,²⁹⁷ *sur place* refugees,²⁹⁸ acts of persecution,²⁹⁹ actors of persecution,³⁰⁰ actors of protection in the country of origin,³⁰¹ the internal flight alternative,³⁰² and grounds for exclusion.³⁰³ This clearly indicates that the legislature was guided by the Common European Asylum System framework, namely the recast Qualification Directive. Still, there is plenty more room for improvement, especially with regard to the exclusion clause which lacks the clear procedural rules which would be in line with UNHCR Guidelines (see [Short overview of the asylum procedure](#)).³⁰⁴

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.³⁰⁵ 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;

²⁹⁰ Article 39(6) Asylum Act.

²⁹¹ AIDA, *Country Report Serbia*, 2020 Update, 38.

²⁹² CESCR, *Concluding observations on the third periodic report of Serbia*, 4 March 2022, E/C.12/SRB/CO/3, available at: <https://bit.ly/3u87IBl>, paras. 32-33.

²⁹³ Article 34(1)(1)-(2) Asylum Act.

²⁹⁴ Article 38(1)(3)-(5) Asylum Act.

²⁹⁵ Article 47 Asylum Act.

²⁹⁶ Article 42 Asylum Act.

²⁹⁷ Article 26 Asylum Act.

²⁹⁸ Article 27 Asylum Act.

²⁹⁹ Article 28 Asylum Act.

³⁰⁰ Article 29 Asylum Act.

³⁰¹ Article 30 Asylum Act.

³⁰² Article 31 Asylum Act.

³⁰³ Articles 33 and 34 Asylum Act.

³⁰⁴ UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <https://bit.ly/3pIP7es>.

³⁰⁵ Article 40 Asylum Act.

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...³⁰⁶

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.”

Overview of the practice of the Asylum Office for the period 2008-2021

No.	Case file No.	Date of decision	Country of origin	Type of protection	No. of persons
2008					
2009					
1.	26-766/08	04.02.2009	Iraq	Subsidiary Protection	1
2.	26-753/08	11.05.2009	Ethiopia	Subsidiary Protection	1
3.	26-754/08	11.05.2009	Ethiopia	Subsidiary Protection	1
4.	26-755/08	11.05.2009	Ethiopia	Subsidiary Protection	1
2010					
5.	AŽ – 25/09	22.04.2010	Somalia	Subsidiary Protection	1
2011					
2012					
6.	26-17/12	06.12.2012	Egypt	Refugee Status	1
7.	26-2324/11	19.12.2012	Libya	Refugee Status	1
8.	26-2326/11	20.12.2012	Libya	Refugee Status	1
2013					
9.	26-1280/13	25.12.2013	Turkey	Refugee Status	2
2014					
10.	26-2429/13	23.05.2014	Tunis	Refugee Status	1

³⁰⁶ Article 32 Asylum Act.

11.	26-1762/13	23.05.2014	Syria	Subsidiary Protection	1
12.	26-304/13	23.05.2014	Syria	Subsidiary Protection	1
13.	26-1445/14	04.08.2014	Syria	Subsidiary Protection	1
2015					
14.	26-5266/15	26.03.2015	Iraq	Refugee Status	2
15.	26-1342/14	28.04.2015	Syria	Refugee Status	1
16.	26-3516/15	25.06.2015	Syria	Refugee Status	1
17.	26-1296/14	01.07.2015	Ukraine	Refugee Status	1
18.	26-986/14	06.07.2015	Ukraine	Refugee Status	1
19.	26-67/11	06.07.2015	Ukraine	Refugee Status	1
20.	26-66/11	06.07.2015	Ukraine	Refugee Status	1
21.	26-65/11	06.07.2015	Ukraine	Refugee Status	1
22.	26-5615-14	06.07.2015	Iraq	Refugee Status	1
23.	26-3599-14	07.07.2015	Ukraine	Refugee Status	1
24.	26-3777/15	09.07.2015	Syria	Refugee Status	1
25.	26-5751/14	13.07.2015	South Sudan	Refugee Status	1
26.	X	15.07.2015	Syria	Refugee Status	1
27.	26-71/15	15.07.2015	Syria	Refugee Status	1
28.	X	31.07.2015	Sudan	Refugee Status	1
29.	26-5792/14	03.08.2015	Libya	Subsidiary Protection	1
30.	26-5794/14	03.08.2015	Libya	Subsidiary Protection	1
31.	26-5793/14	05.08.2015	Libya	Subsidiary Protection	1
32.	26-4099/15	07.08.2015	Libya	Subsidiary Protection	4
33.	26-3886/15	09.09.2015	Lebanon	Refugee Status	1
34.	26-2879/15	11.09.2015	Iraq	Subsidiary Protection	1
35.	26-4099/15	07.10.2015	Libya	Subsidiary Protection	1
36.	26-4906/5	09.12.2015	Kazakhstan	Refugee Status	1
37.	26-151/15	31.12.2015	Syria	Subsidiary Protection	1
2016					
38.	26-4062/15	08.01.2016	Syria	Subsidiary Protection	1
39.	26-4747/15	10.02.2016	Ukraine	Subsidiary Protection	1
40.	26-5626/15	01.03.2016	Sudan	Refugee Status	1
41.	26-5413/15	02.03.2016	Syria	Refugee Status	1
42.	26-223/16	08.03.2016	Afghanistan	Refugee Status	1
43.	26-5629/15	08.03.2016	Sudan	Refugee Status	1
44.	26-5625/15	14.03.2016	Sudan	Refugee Status	1
45.	26-4133/15	22.03.2016	Ukraine	Subsidiary Protection	3
46.	26-5047/15	11.04.2016	Sudan	Refugee Status	1
47.	AŽ-06/16	12.04.2015	Libya	Subsidiary Protection	2

48.	26-652/16	17.06.2016	Afghanistan	Subsidiary Protection	5
49.	26-423/16	27.06.2016	Cuba	Refugee Status	1
50.	26-425/16	04.07.2016	Cuba	Refugee Status	1
51.	26-424/16	04.07.2016	Cuba	Refugee Status	1
52.	26-4568/16	12.07.2016	Libya	Subsidiary Protection	1
53.	26-11/16	04.08.2016	Cuba	Refugee Status	1
54.	26-1051/16	13.09.2016	Iran	Refugee Status	1
55.	26-812/16	29.09.2016	Libya	Refugee Status	5
56.	26-5618/15	01.12.2016	Libya	Subsidiary Protection	5
57.	26-536/16	16.12.2016	Cameroon	Refugee Status	2
58.	26-2149/16	26.12.2016	Iraq	Subsidiary Protection	1
2017					
59.	26-926/16	21.07.2017	Syria	Refugee Status	1
60.	26-77/17	01.08.2017	Afghanistan	Refugee Status	1
61.	26-2434/16	20.09.2017	Burundi	Refugee Status	1
62.	26-331/15	21.09.2017	Ukraine	Subsidiary Protection	1
63.	26-5489/15	21.09.2017	Libya	Subsidiary Protection	9
64.	26-5044/15	25.12.2017	Bangladesh	Subsidiary Protection	1
65.	26-4370/15	27.12.2017	Nigeria	Subsidiary Protection	1
2018					
66.	26-1239/17	10.01.2018	Afghanistan	Refugee Status	1
67.	26-78/17	10.01.2018	Afghanistan	Refugee Status	1
68.	26-1083/18	26.01.2018	Iran	Refugee Status	1
69.	26-4568/15	11.02.2018	Somalia	Subsidiary Protection	1
70.	26-881/17	10.04.2018	Afghanistan	Refugee Status	1
71.	26-81/17	16.04.2018	Afghanistan	Refugee Status	1
72.	26-2152/17	16.04.2018	Afghanistan	Refugee Status	1
73.	26-1223/17	20.04.2018	Pakistan	Subsidiary Protection	1
74.	26-430/17	23.04.2018	Iran	Refugee Status	1
75.	26-2489/17	01.06.2018	Syria	Subsidiary Protection	1
76.	26-1695/17	15.06.2018	Libya	Subsidiary Protection	5
77.	26-222/15	15.06.2018	Libya	Subsidiary Protection	5
78.	26-1081/17	04.07.2018	Iran	Refugee Status	1
79.	26-2554/17	19.07.2018	Iran	Refugee Status	1
80.	26-187/18	01.11.2018	Iran	Refugee Status	1
81.	26-329/18	28.12.2018	Nigeria	Refugee Status	1
2019					
82.	26-1351/18	14.01.2019	Libya	Subsidiary Protection	1
83.	26-1352/18	14.01.2019	Libya	Subsidiary Protection	1

84.	26-2348/17	28.01.2019	Iraq	Refugee Status	1
85.	26-2643/17	30.01.2019	Afghanistan	Subsidiary Protection	1
86.	26-1395/18	05.02.2019	Iran	Refugee Status	3
87.	26-1216/18	12.02.2019	Russia	Refugee Status	1
88.	26-1217/18	12.02.2019	Russia	Refugee Status	1
89.	26-1218/18	12.02.2019	Russia	Refugee Status	1
90.	26-1260/18	13.03.2019	Cuba	Refugee Status	3
91.	26-176/18	15.03.2019	Syria	Subsidiary Protection	3
92.	26-1605/18	15.03.2019	Iran	Refugee Status	1
93.	26-2047-17	21.03.2019	Iraq	Subsidiary Protection	4
94.	26-1731-18	08.05.2019	Syria	Subsidiary Protection	1
95.	26-787-19	29.05.2019	Afghanistan	Refugee Status	1
96.	26-2050-17	12.09.2019	China	Refugee Status	1
97.	26-3638-15	16.09.2019	Syria	Subsidiary Protection	1
98.	AŽ X	02.09.2019	Iran	Subsidiary Protection	1
99.	26-784-18	20.11.2019	Afghanistan	Refugee Status	1
100.	26-1403-19	11.12.2019	Afghanistan	Refugee Status	1
101.	26-1719/18	11.12.2019	Syria	Subsidiary Protection	1
102.	X	2019	Libya	Subsidiary Protection	1
103.	X	2019	Pakistan	Subsidiary Protection	1
104.	X	2019	Pakistan	Subsidiary Protection	1
105.	X	2019	Syria	Subsidiary Protection	1
106.	X	2019	Afghanistan	Refugee Status	1
107.	X	2019	Iran	Refugee Status	1
2020					
108.	26-2467/17	15.01.2020	Iran	Refugee Status	1
109.	26-1437/17	13.02.2020	Afghanistan	Refugee Status	1
110.	26-218/19	20.02.2020	Stateless	Refugee Status	1
111.	26-2328/19	20.02.2020	Burundi	Refugee Status	2
112.	X	February	Iran	Refugee Status	3
113.	26-1435/18	16.06.2020	Iran	Refugee Status	1
114.	26-1615/19	18.06.2020	Burundi	Refugee Status	2
115.	X	June	Somalia	Subsidiary Protection	1
116.	26-1451/12	June	Syria	Subsidiary Protection	1
117.	26-2063/17	10.08.2020	Stateless	Refugee Status	1
118.	X	August	Mali	Subsidiary Protection	1
119.	X	August	Somali	Subsidiary Protection	1
120.	26-1516/19	15.10.2020	Afghanistan	Refugee Status	1

121.	26-2474/19	15.10.2020	Afghanistan	Subsidiary Protection	1
122.	26-1271/19	15.10.2020	Iran	Subsidiary Protection	1
123.	X	2019	Afghanistan	Refugee Status	5
124.	26-270/20	23.10.2020	Syria	Subsidiary Protection	3
125.	26-1433/12	x.11.2020	Syria	Refugee Status	1
126.	X.	x.12.2020	Iraq	Refugee Status	1
2021					
127.	X.	x.04.2021	Iraq	Refugee Status	1
128.	X.	x.04.2021	Libya	Subsidiary Protection	1
129.	26-536/19	14.05.2021	Burundi	Subsidiary Protection	1
130.	26-1357/20	21.05.2021	Somalia	Subsidiary Protection	1
131.	26-1084/20	07.06.2021	Afghanistan	Subsidiary Protection	1
132.	26-1337/20	29.06.2021	Burundi	Refugee Status	1
133.	26-103/20	30.06.2021	Burundi	Refugee Status	1
134.	26-1376/20	12.07.2021	Syria	Subsidiary Protection	2
135.	26-108/20	27.08.2021	Iran	Refugee Status	1
136.	26-1601/20	30.08.2021	Iraq	Refugee Status	2
137.	141113	14.09.2021	Pakistan	Refugee Status	1
138.	X.	x.12.2021	Syria	Subsidiary Protection	1

In the period from 1 April 2008 to 31 December 2021, asylum authorities in Serbia rendered 138 decisions granting asylum (refugee status or subsidiary protection) to 196 persons from 25 different countries.³⁰⁷ A total of 59 decisions was rendered in relation to 97 applicants who received subsidiary protection, while 79 decisions were rendered in relation to 99 applicants who were granted refugee status.

The highest number of decisions was rendered in 2019 (26), and then in the following order: 2015 (24), 2016 (21), 2020 (19), 2018 (16), 2021 (12), 2017 (7), 2014 (4), 2009 (4), 2012 (3), 2013 (1) and 2010 (1). In 2008 and 2011, not a single positive decision was rendered. Top 5 nationalities which received international protection in Serbia are: Libya (46), Syria (27), Afghanistan (26), Iran (19) and Iraq (16).

Libya

The highest number of applicants who were granted international protection in Serbia originate from Libya – **46 persons** through **18 decisions**. A total of 3 decisions were rendered granting refugee status to 7

³⁰⁷ The author of this Report has collected 119 out of 138 decisions. The number of decisions and applicants was counted by the author of this Report and on the basis of a unique database which is established in IDEAS. Namely, official number of persons who received international protection in Serbia is 208 or even more according to some CSOs. However, this number includes the cases which were not final in the given year. For instance, there is at least 7 asylum procedures in which legal representatives appealed the decision on subsidiary protection claiming that their clients deserve refugee status. Asylum Commission or Administrative Court upheld appeals and onward appeals respectively and sent the case back to the Asylum Office. However, Asylum Office rendered the same decision (subsidiary protection) with regards to the same person again. The lawyers were then complaining again. There were instances in which 1 person received 3 decisions on subsidiary protection in the period of 7 years and was granted refugee status in the end. However, it is possible that the statistics provided by the author of this Report are not 100% accurate. Still, the author believes that this is the most accurate statistics which can be provided for now and potential variations cannot be higher than maximum 5 decisions regarding 5 applicants.

Libyans. On the other hand, 15 decisions granting subsidiary protection were rendered in relation to 39 applicants. Decisions on subsidiary protection were based on the state of general insecurity and widespread violence which implied the risk of suffering serious harm. The main source, in terms of the Col, were different updates of UNHCR position papers on returns to Libya and moratorium on returns which is valid as of March 2022.³⁰⁸ The remaining 3 decisions referred to the risk of persecution on ethnic and political grounds for applicants belonging to the same tribe as Muammar Gaddafi³⁰⁹ or a 5-member family belonging to the ethnic group of Berbers which was particularly targeted during the civil war and in post-conflict period in Libya.³¹⁰

In the history of Serbian asylum system, a total of 65 Libyans applied for asylum, even though 655 was issued with registration certificate, but never applied for asylum. There were no instances in which the applicant from Libya has been rejected with the final decision of the Administrative Court, except in one case where a 5-member family addressed the ECtHR and was later on granted subsidiary protection.³¹¹ This case, as well as another which was positively resolved in 2022, were the cases in which asylum applications were rejected on the basis of negative security assessment from BIA. Still, it can be safely assumed that, if provided with adequate legal support, applicants from Libya have decent chances to obtain international protection in Serbia.

Syria

A total of **27 Syrians** were granted international protection in Serbia through **22 decisions**. Eight were granted refugee status via 8 decisions while 19 were granted subsidiary protection through 14 decisions. However, a total of 319,746 Syrians was registered in Serbia since 2008, while 526 lodged asylum application. The vast majority of Syrians absconded before the first instance decision was rendered, while at least several dozens were subjected to the automatic application of the safe third country concept (STCC), which plagued Serbian asylum system in the period 2008-2018.³¹² The vast majority of the applicants whose asylum application was dismissed absconded asylum procedure, while only 1 remained and his case is currently pending before the ECtHR.³¹³ There were no instances in which Syrian asylum application was rejected in merits with the final decision, but there is 1 case which was rejected as such in the first instance, in 2022. Still, it is safe to assume that Syrians have strong prospects to receive international protection in Serbia at the end of 2021

Decision in which Syrians were granted subsidiary protection in Serbia were based on the state of general insecurity and widespread violence which implied the risk of suffering serious harm. The main sources in terms of Col which were cited in such decisions were UNHCR position paper on returns to Syria³¹⁴ and EASO reports on Syria.³¹⁵ As for the decisions granting refugee status, they were mainly based on the risk of persecution due to political opinion or draft evasion.³¹⁶ When it comes to draft evasion, the practice has been contradictory, implying that some applicants were granted refugee status, while other subsidiary protection.

Afghanistan

Persons in need of international protection from Afghanistan are the second biggest group of persons registered in Serbia (184.737) and the largest group that actually lodged asylum application (953).

³⁰⁸ E.g. UNHCR, *UNHCR Position on Returns to Libya - Update II*, September 2018, available at: <http://bit.ly/39VMQNZ>.

³⁰⁹ Asylum Office, Decisions Nos. 26-2324/11, 19 December 2012 and 26-2326/11, 20 December 2012.

³¹⁰ Asylum Office, Decision No. 26-812/16, 29 September 2016.

³¹¹ Asylum Office, Decision No. 26-222/15, 16 June 2018; ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

³¹² AIDA, *Country Report Serbia*, Update March 2018, 41-53.

³¹³ *M.H. v. Serbia*, Application No 62410/17, Communicated on 26 October 2018.

³¹⁴ E.g. UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update VI*, March 2021, HCR/PC/SYR/2021/06, available at: <https://bit.ly/3HO7C1B>.

³¹⁵ E.g. EASO, *EASO Country of Origin Information Report: Syria Security situation (July 2021)*, available at: <https://bit.ly/3HKwasb>.

³¹⁶ Asylum Office, Decision No. 26-5413/15, 2 March 2016.

However, only **26 Afghanis** were granted asylum through 18 decisions. The vast majority of Afghan applicants absconded asylum procedure, as it has been the case with Syrians and Iraqis. The Asylum Office rendered 13 decisions granting refugee status to 17 Afghanis on the basis of the risk of persecution which they faced as: interpreters,³¹⁷ artists,³¹⁸ members of police and other security forces,³¹⁹ persons who worked for US companies³²⁰ or persons who faced risk of Taliban recruitment.³²¹ The subsidiary protection was granted to individuals who belonged to vulnerable categories such as UASC or families with small children who faced the state of general insecurity and arbitrary violence from Talibans.³²² The recognition rate of Afghan applicants varied throughout the years, but it is yet to be seen how the Taliban rule will affect the practice of asylum authorities in the future.³²³ There was only 1 decision in 2021 in which the Taliban rule and general situation in Afghanistan was declared as grounds for subsidiary protection.³²⁴

Iraq

A total of 10 decisions granting international protection was rendered in relation to **15 Iraqi nationals**. Through 4 decisions 7 persons were granted subsidiary protection as Sunni Muslims who faced arbitrary violence in post US invasion Iraq,³²⁵ during Islamic State of Iraq and Syria (ISIS) control of area around Mosul³²⁶ and in post-ISIS period.³²⁷ Iraqis granted refugee status faced risk of forcible military recruitment,³²⁸ were directly targeted as Sunni Muslims³²⁹ or were victims of sexual and gender-based violence (SGBV).³³⁰

It is noteworthy to say that 82,750 Iraqi were registered in Serbia since 2008 and that only 292 lodged asylum application. As it was the case with Syrians, the vast majority of them absconded before the first instance decision was rendered, or afterwards, after they were subjected to the practice of the STCC. In one instance, the STCC was applied through final decision of the Administrative Court, and this person was later on granted humanitarian residency due to his integration into Serbian society. In this particular case, the legal representatives have failed to challenge automatic application of the STCC before the ECtHR which would potentially provide a durable solution for the applicant.³³¹ There were probably several more instances in which the STCC was confirmed with the final decision in relation to Iraqi applicants. The author of this Report is not aware of any decisions in which Iraqi asylum applications was rejected in merits with the final decision.

Iran

Iranian asylum seekers were granted asylum through 15 decisions encompassing **19 persons**. A total of 17 applicants received refugee status through 13 decisions and the grounds were mainly of religious nature – conversion from Islam to Christianity.³³² There were instances in which the victims of torture who opposed the Iranian political system received refugee status,³³³ as well as LGBT persons.³³⁴ One human

³¹⁷ Asylum Office, Decision No. 26-77/17, 1 August 2017.

³¹⁸ Asylum Office, Decision No. 26-78/17, 10 January 2018.

³¹⁹ Asylum Office, Decision No. 26-81/17, 16 April 2018.

³²⁰ Asylum Office, Decision No. 26-1239/17, 10 January 2018.

³²¹ Asylum Office Decisions Nos. 26-784/18, 20 November 2019 and 26-1403/19, 11 December 2019.

³²² Asylum Office Decisions Nos. 26-652/16, 17 June 2016, 26-2643/17, 30 January 2019, 26-2474/19, 15 October 2020 and 26-1084/20, 7 June 2021.

³²³ AIDA, *Country Report Serbia*, Update March 2020, pp. 41 and 43.

³²⁴ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

³²⁵ Asylum Office, Decision No. 26-766/08, 4 February 2009.

³²⁶ Asylum Office, Decisions Nos. 26-2879/15, 11 September 2015 and 26-2149/16, 26 December 2016.

³²⁷ Asylum Office, Decision No. 26-2047/17, 21 March 2019.

³²⁸ Asylum Office, Decision No. 26-2348/17, 28 January 2019.

³²⁹ Asylum Office, Decision No. 26-5266/15, 26 March 2015.

³³⁰ Asylum Office, Decision No. 26-1601/20, 30 August 2021.

³³¹ Administrative Court, Judgment U 6060/18, 4 October 2018.

³³² Asylum Office, Decisions Nos. 26-1051/16, 13 September 2016, 26-1083/18, 26 January 2018, 26-430/17, 23 April 2018, 26-1081/17, 4 July 2018, 26-1395/18, 5 February 2019, etc.

³³³ Asylum Office, Decision No. 26-108/20, 27 August 2021.

³³⁴ Asylum Office, Decisions Nos. 26-1605/18, 15 March 2019 and 26-2467/17, 15 January 2020.

rights activist³³⁵ and 1 UASC received subsidiary protection.³³⁶ Since 2008, a total of 14,579 Iranians were registered, while only 348 lodged asylum application. The vast majority of asylum applications based on religious reasons (conversion) were rejected in merits and became final and executive.

Ukraine

Even though only 18 Ukrainians were registered in the period 2014-2016, 16 of them lodged asylum application and **10 were granted asylum**. Five Ukrainian applicants received subsidiary protection through 3 decisions, and 5 were granted refugee status through the same number of decisions. All of their claims were based on their Russian ethnicity or pro-Russian orientation, or they had previous family or other connections with Serbia. It remains to be seen how many Ukrainians will apply for asylum following the invasion by Russia from February 2022. In March 2022, 4 Ukrainian officials lodged asylum application to the Asylum Office.

Burundi

A total of 222 Burundians were registered in line with the Asylum Act, and 78 of them lodged asylum application in the period 2017-2021. The increase in the number of Burundian applicants can be connected with the free visa regime that Serbia has introduced for Burundian citizens. Still, only **8 Burundians** were granted asylum through 6 decisions. A total of 7 Burundians was granted refugee status through 5 decisions and 1 Burundian was granted subsidiary protection. Refugee status was granted to women victims of SGBV, torture victims and political opponents. All of them are ethnic Tutsi.

Cuba

A total of 167 Cubans were registered in line with the Asylum Act, while 57 of them lodged asylum application since the onset of Serbian asylum system. Only **7** of them received refugee status through 5 decisions and on the basis of political persecution which they faced as political activist opposed to the Government.

Somalia

A total of 66,463 Somalians were registered in line with the Asylum Act, while only 336 of them lodged asylum applications. Subsidiary protection was granted to **5 individuals**, and on the basis of the state of general insecurity in the Somaliland.

Other nationalities

A total of **5 Sudanese from Darfur** were granted refugee status in the period 2015-2016 (5 decisions), 4 **Pakistanis** were granted asylum out of which 3 subsidiary protection and 1 UASC refugee status and as a survivor of human trafficking. A total of **3** athletes from **Ethiopia** were granted subsidiary protection in 2009 due to political reasons, as well as **3** women from **Chechnya-Russia**, who had LGBT claims. The same claim had a **LGBT couple from Turkey** who received refugee status in 2013. A woman from **Cameroon** and her daughter were granted refugee status as survivors of SGBV, while one underage girl from **Nigeria** was granted refugee status as a survivor of human trafficking. Another Nigerian man with severe disability received subsidiary protection. Two **stateless Palestinians** were recognized as refugees and victims of forced military recruitment in Syria. One applicant from **Bangladesh** who is quadriplegic was granted subsidiary protection. The same protection was granted to the applicant from **Mali** in 2020. Refugee status was granted to **Christian Copt from Egypt** on the basis of religious persecution, as well as to **Chinese Uygur, Kazakh Christian** and **Tunisian Christian** on the same grounds. A man from **Lebanon** escaped political persecution from Hezbollah and received refugee status, as well as **South Sudanese** who belonged to the opposition.

³³⁵ Asylum Commission, Decision No. AŽ 16/19, 2. September 2019.

³³⁶ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

	Country of Origin	Subsidiary Protection		Refugee Status		Total	
		No. of Decisions	No. of Persons	No. of Decisions	No. of Persons	No. of Decisions	No. of Persons
1.	Libya	15	39	3	7	18	46
2.	Syria	14	19	8	8	22	27
3.	Afghanistan	5	9	13	17	18	26
4.	Iran	2	2	13	17	15	19
5.	Iraq	5	8	6	8	11	16
6.	Ukraine	3	5	6	6	9	11
7.	Burundi	1	1	5	7	6	8
8.	Cuba	0	0	5	7	5	7
9.	Somalia	5	5	0	0	5	5
10.	Sudan	0	0	5	5	5	5
11.	Pakistan	3	3	1	1	4	4
12.	Russia	0	0	3	3	3	3
13.	Ethiopia	3	3	0	0	3	3
14.	Turkey	0	0	1	2	1	2
15.	Cameroon	0	0	1	2	1	2
16.	Nigeria	1	1	1	1	2	2
17.	Stateless	0	0	2	2	2	2
18.	Mali	1	1	0	0	1	1
19.	Egypt	0	0	1	1	1	1
20.	Tunis	0	0	1	1	1	1
21.	Lebanon	0	0	1	1	1	1
22.	Kazakhstan	0	0	1	1	1	1
23.	Bangladesh	1	1	0	0	1	1
24.	China	0	0	1	1	1	1
25.	South Sudan	0	0	1	1	1	1
	Total	59	97	79	99	138	196

Particular grounds for international protection, contradicting practices and different trends

Out of the total of 138 decisions rendered by Asylum Office (135) and Asylum Commission (3), it can be said with certainty that the recognition rate in Serbia would have been much higher if not for automatic application of the STCC in the period 2008-2018.³³⁷ On other hand, among 138 decisions, excellent examples of good practice can be observed. In the history of Serbian asylum system, asylum authorities have granted asylum on almost all grounds envisaged in Article 1 of the 1951 Refugee Convention. However, there are numerous examples in which the practice of the Asylum Office has been inconsistent and especially in the following type of cases:

- LGBT applicants
- SGBV survivors
- UASCs
- draft evaders
- converts from Islam to Christianity

LGBT

When it comes to LGBT applicants, the first ever-positive decision was granted to the Turkish gay couple in 2013.³³⁸ Several other decisions, which represent an example of good practice, ensued in the following years. Among those are decisions granting refugee status to two gay men from Iran³³⁹ and 3 lesbians

³³⁷ AIDA, *Country Report Serbia*, Update March 2018, 41-53.

³³⁸ Asylum Office, Decision No.26-1280/13, 25 December 2013.

³³⁹ Asylum Office, Decisions No. 26-1605-18, 15 March 2019 and 26-2467/17, 15 January 2020.

from Chechnya.³⁴⁰ However, in the same period, several contentious decisions indicate the inconsistency in assessing LGBT claims by asylum authorities in Serbia. One decision referred to a transgender man from Bosnia whose asylum application was also rejected in the Netherlands.³⁴¹ In two other, separate decisions, which related to a gay couple from Tunisia, the first instance authority outlined that the state of human rights of LGBTQI in Tunisia has been significantly improving throughout the years, highlighting 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.³⁴² Another contentious decision referred to a transgender woman from Iran who was rejected even though the UNHCR office in Serbia eventually granted her the mandate status.³⁴³ In 2021, there were two decisions in which application from a gay man from Iran was rejected as unfounded,³⁴⁴ as well as application from a gay man from Bangladesh.³⁴⁵ The threshold set in these two cases represents a dangerous precedent when it comes to LGBT claims.³⁴⁶

Victims of SGBV

The practice of asylum authorities when it comes to the survivors of SGBV has also been inconsistent. The first notable case goes back to 2016, when a woman from Chechnya was rejected in merits. Namely, during the hearing, M.G. unequivocally expressed her well-founded fear of persecution by Chechens (including her family members), who threatened her because she 'lost her virginity out of wedlock' and because she was pregnant at the time of leaving Russia. In addition, the mere fact that the asylum seeker left Russia and her family may be a reason for retaliation by her father and other Chechens. She specifically stated that she received threats from her father that he would kill her if she had sexual relations before marriage, and described how Chechens treat girls in such cases, i.e. that those girls are often victims of honour killing. The applicant stated that her mother once told her about a case where a brother killed a sister who was had sex before marriage, then killing her mother because she did not take good care of her daughter.³⁴⁷

Another contentious case was recorded in December 2017, when an application by a woman who was a victim of SGBV in Afghanistan was dismissed on the basis that Bulgaria was a safe third country. The Asylum Office disregarded the fact that Z.F. was also raped in Bulgaria, manifesting in that way the lack of capacity to establish gender sensitive approach in admissibility procedure.³⁴⁸ Asylum Office decision was also confirmed by the Asylum Commission and the woman eventually was resettled by UNHCR and received refugee status in France.³⁴⁹

A case which represents an example of good practice refers to a woman N. with a small child from Cameroon who escaped arranged marriage and whose asylum application was assessed as credible through individual circumstances which she put forward and relevant Col.³⁵⁰ This was the first ever case in which the applicant was qualified to be a member of a particular social group – persons at risk of SGBV, manifested through the risk of forced marriage. On the contrary, a case of another women from Cameroon was not examined with rigorous scrutiny as the case of N., even though it referred to the practice of forced marriage when she was underage. Her case was dismissed even though she has never had the opportunity to apply for asylum at one of the airports in Italy which Serbia considered as the safe third country.³⁵¹ A very high burden of proof for the risk of gender based violence was established in the case

³⁴⁰ Asylum Office, Decisions Nos. 26-1216/18, 26-1217/18 and 26-1218/18, 12 February 2019.

³⁴¹ Asylum Office, Decision No. 26-2347/19, 8 June 2020.

³⁴² Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

³⁴³ Asylum Office, Decision No. 26-1592/18, 20 November 2019 and see also, AIDA, *Country Report Serbia*, Update March 2019, 37.

³⁴⁴ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

³⁴⁵ Asylum Office, Decision No. 26-404/12, 4 November 2021.

³⁴⁶ See more in the Chapter on 2021 practice of the Asylum Office.

³⁴⁷ Asylum Office, Decision No. 26-286/16, 26 October 2016.

³⁴⁸ Asylum Office, Decision No. 26-1667/17, 25 December 2017.

³⁴⁹ Asylum Commission, Decision No. AŽ 2/18, 25 January 2018.

³⁵⁰ Asylum Office, Decision No. 26-536/16, 16 December 2016.

³⁵¹ Asylum Office, Decision No. 3109/16, 18 December 2017.

of Ms. Y from Iran,³⁵² and Ms. Z from Burundi in 2021.³⁵³ On the other hand, a high quality decision was rendered in relation to Iraqi women and her daughter who received refugee status as SGBV survivor who was forcibly married to her cousin when she was only 15 years old.³⁵⁴

UASC

Since the establishment of Serbian asylum system, only 10 UASC received international protection in Serbia. The first child was a girl from Nigeria who was also recognized as a survivor of human trafficking which occurred in her country of origin and which was assessed as an act of persecution.³⁵⁵ Another UASC who received subsidiary protection was boy from Afghanistan who avoided forced recruitment by Taliban.³⁵⁶ The same decision was rendered in relation to a Kurdish boy who fled forcible military recruitment by Peshmergas in Iraq and who was granted refugee status.³⁵⁷ In both of these cases Asylum Office applied the standard of a 'buffer age period,' which is a remarkable example of good practice.³⁵⁸ An identical case of forced recruitment of UASC by Taliban forces was positively resolved at the end of 2019 in the case of an Afghan boy who was granted refugee status.³⁵⁹ A child soldier from Palestine (proclaimed as stateless), received refugee status after it was determined that he was forcibly recruited in the conflict in Syria.³⁶⁰ Similar case was resolved for an UASC from Afghanistan who fled Taliban recruitment as well.³⁶¹ A boy from Iran who converted from Islam to Christianity was granted subsidiary protection.³⁶² Another boy from Afghanistan who fled customary family dispute and revenge killing was granted subsidiary protection in 2020.³⁶³ Afghan boy who suffered severe injuries in a car accident in Serbia and remained in induced coma was granted subsidiary protection in 2021.³⁶⁴ And finally, the last UASC who was granted a refugee status was a boy from Pakistan who received the status of the victim of human trafficking and who was granted refugee status in 2021 on the basis of labour and sexual exploitation.³⁶⁵

Apart from positive decisions, there have been a handful of cases in which UASC's applications were rejected in merits even though their asylum claims were similar or identical to the above-described. In all these cases boys, mainly from Afghanistan, had a positive best interest assessment decision issued by CSW which contained a recommendation for protection in Serbia. This indicates that practice in the field of UASC also varies, which can be also seen in the past AIDA reports.³⁶⁶

Draft evaders and forcible recruitment

A significant number of male Syrian applicants who received international protection outlined in their applications that one of the main reasons why they had to flee their country was the risk of being recruited by some of the fighting sides. The reasoning of the Asylum Office decisions always outlined such individual circumstances, but in the end awarded different forms of international protection – mainly subsidiary protection and rarely refugee status. Moreover, draft evasions and rejection in general to take part in the armed conflict, was outlined by the UNHCR in its position papers as a reason for protection arising from 1951 Refugee Convention.³⁶⁷ Thus, there were instances in which draft evaders were granted refugee

³⁵² Asylum Office, Decision No. 26-1672/19, 29 January 2021.

³⁵³ Asylum Office, Decision No. 26-3136/19, 26 November 2020.

³⁵⁴ Asylum Office, Decision No. 26-1601/20, 30 August 2021

³⁵⁵ Asylum Office, Decision No. 26-329/18, 28 December 2018.

³⁵⁶ Asylum Office, Decision No. 26-2643/17, 30 January 2019.

³⁵⁷ Asylum Office, Decision No. 26- 2348/17, 28 January 2019.

³⁵⁸ UNGA, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, para. 28.

³⁵⁹ Asylum Office, Decision No. 26-784/18, 20 November 2019.

³⁶⁰ Asylum Office, Decision No. 26-218/19, 20 February 2020.

³⁶¹ Asylum Office, Decision No. 26-2573/19, 15 October 2020.

³⁶² Asylum Office, Decision No. 26-1271/19, 15 October 2020.

³⁶³ Asylum Office, Decision No. 26-2474/19, 15 October 2020.

³⁶⁴ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

³⁶⁵ Asylum Office, Decision No. 26-3064/19, 14 September 2019.

³⁶⁶ Asylum Office, Decision No. 26-378/19, 11 February 2020 and 26-1437/18, 13 February 2020, and see also: AIDA, *Country Report Serbia*, Update March 2020, 43.

³⁶⁷ UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update VI*, March 2021, HCR/PC/SYR/2021/06, available at: <https://bit.ly/3HO7C1B>.

status³⁶⁸ and instances in which the same category received subsidiary protection.³⁶⁹ The same examples can be seen in the practice towards UASC who fled Taliban recruitments described above.

Converts from Islam to Christianity

The vast majority of Iranian claims were based on the alleged risk of religious persecution, frequently due to a conversion from Islam to Christianity. However, even before the mass arrival of Iranian citizens in 2017-2018,³⁷⁰ the first refugee status was granted to a man from Kazakhstan, who converted to Christianity.³⁷¹ The second person was a man from Iran who was granted refugee status in 2016 for the same reasons.³⁷² And then, in the period 2018 – 2020, the Asylum Office granted refugee status on the said grounds on at least 7 occasions.³⁷³

However, in the same period, dozens of other Iranian applicants who put forward the same claims with identical or similar evidence, were rejected in merits. Also, the number of persons who received international protection on these grounds was slowly decreasing and in 2021, not a single Iranian was granted refugee status on these grounds. Thus, it is clear that the threshold for Iranian converts has significantly increased and that it is not reasonable to expect that in the future these claims will have prospect of success.³⁷⁴ Since 2017, the Asylum Office rendered the following decisions:³⁷⁵

First instance decisions by the Asylum Office: 2017-2021					
Type of decision	2017	2018	2019	2020	2021
Grant of asylum	6	17	26	19	12
Rejection on the merits	11	23	54	51	39
Dismissal as inadmissible	47	38	10	2	4
Rejected subsequent applications	0	0	0	0	6
Rejected the request for age assessment	0	0	0	0	2
Discontinuation	112	128	133	89	51
Total	176	206	223	161	114

³⁶⁸ Asylum Office, Decision No. 26-5413/15, 2 March 2016.

³⁶⁹ Asylum Office, Decisions Nos. 26-4062/15, 8 January 2016, 26-2489/17, 1 June 2018 and 26-1731/18, 16 September 2019.

³⁷⁰ See more in AIDA, *Country Report Serbia*, Update March 2018, 18.

³⁷¹ Asylum Office, Decision No. 26-4906/5, 9 December 2015.

³⁷² Asylum Office, Decision No. 26-1051/16, 13 September 2016.

³⁷³ Asylum Office, Decision Nos. 26-1083/18, 26 January 2018, 26-430/17, 23 April 2018, 26-1081/17, 4 July 2018, 26-187/18, 1 November 2018, 26-1395/18, 5 February 2019, 26-1435/18, 16 June 2020.

³⁷⁴ See more in AIDA, *Country Report Serbia*, Update March 2020, 44.

³⁷⁵ 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.

Protection was granted to citizens of the following countries in 2021:

Countries of origin of persons granted refugee status / subsidiary protection: 2021		
Country	Granted refugee status	Granted subsidiary protection
Burundi	2	1
Iraq	3	0
Syria	0	3
Somalia	0	1
Pakistan	1	0
Iran	1	0
Afghanistan	0	1
Libya	0	1
Total	7	7

Source: Asylum Office and UNCHR office in Serbia.

Asylum Office practice in 2021

In 2021, the Asylum Office delivered only 114 decisions regarding 156 asylum seekers. Out of that number, 39 decisions regarding 51 asylum seekers were rejected in merits. 12 decisions granting asylum to 14 asylum seekers were delivered. Four cases regarding 4 persons were assessed as inadmissible.³⁷⁶ Asylum procedure was discontinued in 51 cases regarding 73 applicants, due to their absconding, while in 6 instances subsequent asylum application was declined in relation 12 applicants. Finally, in 2021, the Asylum Office rendered two interesting decisions regarding the age assessment and in relation to two boys from Afghanistan and Pakistan.

The first conclusion that can be drawn from these figures is that the total number of decisions has continued to decrease in previous years. A total number of decisions dropped by 29% in comparison to 2020 and was the lowest in the past 5 years. If COVID-19 was the reason for such state of affairs in 2020, in 2021 this can be attributed to general degradation of Serbian asylum system. 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 45% of all decisions rendered in 2021. Around 5% of decisions concerned rejections of subsequent applications, while 3,5% of decisions were inadmissibility decisions.

In 2021, it can be said that 63 decisions, rendered in relation to 83 asylum seekers can be considered as relevant for analysis and better understanding of the quality and effectiveness of asylum procedure, the practice with regards to certain nationalities, the grounds for persecution and the origin of the applicants. These 63 decisions were rendered in relation to 83 asylum seekers: Iran (20), Burundi (9), Cuba (6), Turkey (6), Jordan (5), Pakistan (4), Syria (4), Ghana (3), Libya (3), Iraq (3), Afghanistan (3), Bulgaria (3), Bangladesh (2), Nigeria (2) and 1 from Bosnia and Hercegovina, Stateless, Congo, Sudan, Mali, Tunis, Somalia, Cameroon, Russia and Senegal.

When it comes to decisions rendered on the merits, it can be concluded that rejection rate in 2021 was 76%, while the recognition rate was 24%. This represents 3% drop in recognition in comparison to 2020.³⁷⁷ In total, international protection was granted through 12 decisions (24%) encompassing 14 persons. Of this, the refugee status was granted through 6 decisions and to citizens of Iraq (3), Burundi (2), Iran (1) and Pakistan (1). In turn, subsidiary protection was granted through 6 decisions and to citizens of Syria (3), Somalia (2), Afghanistan (1) and Libya (1),

³⁷⁶ Either because of the safe third country concept or first country of asylum concept.

³⁷⁷ AIDA, *Country Report Serbia*, 2020 Update, 40.

Most of the decisions were rendered in 2021 in relation to citizens of **Iran** – 11 regarding 20 applicants. Out of them, 8 decisions regarding 13 applicants was rendered in merits, 2 decisions regarding 6 applicants referred to subsequent applications and 1 decision on dismissal was rendered in relation to 1 Iranian citizen. Only in 1 out of 8 decisions rendered in merits, the Asylum Office granted refugee status.³⁷⁸ All other applications were rejected as unfounded. The Asylum Office rendered two decisions rejecting subsequent applications of two Iranian families of 4 and 2 respectively.³⁷⁹ Both families had claims based on conversion from Islam to Christianity.

Second highest number of decisions were rendered in relation to **Burundians** – 9 regarding 9 applicants. Three applications were resolved positively, while 5 were rejected and 1 was dismissed. Accordingly, recognition rate for citizens of Burundi in 2021 was 37,5%%.

The third largest group of applicants whose cases were decided on merits are asylum seekers from **Cuba**, and the recognition rate for **Cubans** in 2021 was 0%. The same recognition rate characterised applications by **Turkish** citizens. Asylum Office rendered 4 decisions rejecting 6 applicants from Turkey. This kind of practice is dangerous, taking in consideration that many of the applicants can be affiliated with Gulenist movement or belong to Kurdish ethnic group.

In 2021, Asylum Office rendered 3 decisions in relation to 4 citizens of **Syria**. In August 2021, the first ever applicant from Syria was rejected in merits, while 3 applicants were granted subsidiary protection through 2 decisions.³⁸⁰ Conversely, all three applicants from **Iraq** received refugee status through 2 decisions.³⁸¹ In turn, one Afghan citizen was granted subsidiary protection, while other UASC from **Afghanistan** had his request for the change of date of birth in registration certificate rejected.³⁸²

The zero-recognition rate is recorded in relation to the applicants from **Jordan**. Asylum Office rendered 2 decisions rejecting asylum application of 6 Jordanians, including the mother of 4 whose husband died in Serbia.³⁸³ Asylum Office was solely rendering decision rejecting asylum applications in merits in cases of the citizen of **Ghana** (3 decisions in relation to 3 persons),³⁸⁴ **Nigeria** (2 decisions in relation to 2 persons), **Bangladesh** (2 decisions in relation to 2 persons), **Senegal, Mali, Russia, Tunis, Congo, Bosnia and Hercegovina** (1 decision in relation to 1 person in each case).

Asylum Office rendered 3 decisions in relation to three applicants from **Libya**. Two cases were decided in merits, 1 positive, the other one negative,³⁸⁵ and one case was rejected as inadmissible. With regards to 4 applicants from **Pakistan**, one application was rejected in merits,³⁸⁶ one application was upheld and UASC applicant was granted refugee status,³⁸⁷ while one case was rejected as inadmissible. One UASC from Pakistan lodged subsequent application, which was rejected as unfounded.³⁸⁸ The same boy requested the change of his year of birth in registration certificate, and in line with the principle of *in dubio pro reo* with regards to age assessment, which was also rejected as unfounded.³⁸⁹

The quality of the decision-making process in 2021 deteriorated in comparison to previous years.³⁹⁰ The Asylum Office rendered 12 decisions in relation to 14 applicants granting them asylum. In those cases where Asylum Office granted refugee status or subsidiary protection the following can be observed:

³⁷⁸ Asylum Office, Decision No. 26-108/20, 27 August 2021.

³⁷⁹ Asylum Office, Decision No. 26-2404/18, 7 June 2021.

³⁸⁰ Asylum Office, Decision No. 26-1376/20, 12 July 2021.

³⁸¹ Asylum Office, Decision No. 26-1601/20, 30 August 2021.

³⁸² Asylum Office, Decision No. 26-11/21, 13 April 2021.

³⁸³ Asylum Office, Decision No. 26-649/21, and 26-558/21, 3 November 2021.

³⁸⁴ Asylum Office, Decision No. 26-1212/20, 4 October 2021.

³⁸⁵ Asylum Office, Decision No. 26-1389/17, 19 January 2021.

³⁸⁶ Asylum Office, Decision No. 26-760/21, 20 May 2021.

³⁸⁷ Asylum Office, Decision No. 26-3064/19, 14 September 2021.

³⁸⁸ Asylum Office, Decision No. 26-3229/19, 26 January 2021.

³⁸⁹ Asylum Office, Decision No. 26-3229/19, 16 May 2021.

³⁹⁰ AIDA, *Country Report Serbia*, Update March 2021, 41.

- 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 1 case, 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 two decisions granting subsidiary protection to 3 Syrians.³⁹¹ However, in August 2021, one Syrian applicant was rejected in merits. Thus, the impeccable practice of this body when it comes to Syrian asylum applicants whose cases are decided on the merits does no longer exist. Still, the said case is still pending, and it is reasonable to assume that this decision will not become final. In one of the two decisions granting subsidiary protection, it can be seen that the practice of the Asylum Office still largely reflects, for instance, UNHCR moratorium on returns to Syria,³⁹² 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.³⁹³ Nevertheless, the number of Syrian applicants in Serbia remains low.

In April 2021, Asylum Office granted subsidiary protection to a Libyan citizen, confirming its standing from previous case law that the current political instability in this country is still considerable enough for international protection.³⁹⁴ In the same month, a citizen from Iraq was granted refugee status.³⁹⁵

On 14 May 2021, E.J. from Burundi was granted subsidiary protection and on the basis of the problems that he had faced due to his father political involvement with one of the opposition parties. After his father was killed, he decided to escape to Serbia where he applied for asylum in 2019. This decision indicates that family affiliation with opposition parties can be considered as source of risk of serious harm in Burundi.³⁹⁶ However, the flexible approach based on the principle of *in dubio pro reo*, is not generally applied in other Burundian cases.

On 21 May 2021, Asylum Office granted subsidiary protection to the Somali national Y. and due to the situation of general insecurity caused by Al-Shabab group. This was a fifth decision in which Somali applicant was granted subsidiary protection due to the risk of serious harm which can be caused by terrorist acts of this militant group. According to the BCHR, the risks outlined in asylum applications should have been considered as grounds for refugee status.³⁹⁷

³⁹¹ Asylum Office, Decision No. 26-1376/20, 12 July 2021

³⁹² UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: <http://bit.ly/3or74Vq>, 70.

³⁹³ 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>.

³⁹⁴ The author of this Report was not able to obtain the copy of this decision.

³⁹⁵ *Ibid.*

³⁹⁶ Asylum Office, 26-536/19, 14 May 2021.

³⁹⁷ Asylum Office, 26-536/19, 21 May 2021, see also, BCHR, *Right to Asylum in the Republic of Serbia Periodic Report for January–June 2021*, 14-16.

On 29 and 30 of June 2022, two torture victims from Burundi were granted refugee status.³⁹⁸ The entire assessment of individual and objective circumstances can be assessed as thorough, accompanied with forensic medical reports lodged by legal representatives.³⁹⁹ These two decisions outline why the multidisciplinary approach is a necessity at this stage of development of Serbian asylum system.

In June 2021, an UASC from Afghanistan was granted subsidiary protection due to a state of insecurity in his country which has strongly affected the health-care system.⁴⁰⁰ Namely, the applicant suffered serious injuries in one of the traffic incidents in Serbia in 2019 and requires everyday care since he is immobile and cannot speak. Thus, the health care reasons were grounds for subsidiary protection, and this decision represents the continuation of the good practice of the Asylum Office in which people who have severe health issues and who would not be able to receive treatment and care in their countries of origin are granted asylum.⁴⁰¹

Another positive decision was rendered in relation to the torture victim from Iran who was persecuted on political grounds and as a person who supported the opposition candidate in elections. The complexity of this case implied the application of the safe third country concept in relation to several countries in which the applicant applied for asylum. The Asylum Office took in consideration the psychological report which indicated the consequences of different torture techniques that were applied at the applicant.⁴⁰²

Another extraordinary example of good practice was a decision on refugee status which was granted to a woman and her daughter from Iraq, who was a SGBV survivor and victim of the arranged marriage. The applicants were qualified under the membership in a particular social group and all relevant subjective and objective criteria were taken into consideration.⁴⁰³ However, this decision does not reflect a general approach of the Asylum Office when it comes to the assessment of the risk of ill-treatment in countries of origin of applicants who have a gender component in their claim.

And finally, in September 2021, an UASC from Pakistan was granted refugee status as a victim of human trafficking which involved both sexual and labour exploitation. Asylum Office took in consideration the Best Interest Decision provided by the Center for Social Work, as well as the decision on granting the status of the victim of human trafficking by the Government's Centre for Human Trafficking Victims' Protection (CHTV).⁴⁰⁴ However, this case had lasted extensively long, which can be particularly damaging for a vulnerable applicant.

What is common for most of the cases in which Asylum Office granted refugee or subsidiary protection to the applicants is the fact that first instance procedure lasted on average for more than 1 year. This is completely unacceptable for the most vulnerable applicants such as UASC, SGBV survivors and survivors of human trafficking. At the same time, excessive length of asylum procedure for applicants coming from Syria or Afghanistan also lack proper justification, taking in consideration the clarity of the situation in these countries, as well as position of UNHCR on returns to these countries, or EASO Guidelines.

Regardless of the above stated examples of good practice, there are still serious concerns in practice which indicate that the Serbian asylum procedure should not be considered as fair and efficient, and in some cases can be seen as unpredictable. 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;

³⁹⁸ Asylum Office, Decisions Nos. 26-1337/20, 29 June 2021 and 26-103/20, 30 June 2021.

³⁹⁹ BCHR, *Right to Asylum in the Republic of Serbia Periodic Report for January–June 2021*, 11-12.

⁴⁰⁰ Asylum Office, Decision No. 26-1084-20, 7 June 2021.

⁴⁰¹ Asylum Office, Decision No. 26-5044-15, 25 December 2017 and 26-4370-15, 27 December 2017.

⁴⁰² Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁴⁰³ Asylum Office, Decision No. 26-1601/20, 30 August 2021, see also: BCHR, *Right to Asylum in the Republic of Serbia 2021*, 114-116.

⁴⁰⁴ Asylum Office, Decision No. 26-3064/19, 14 September 2021, see also, BCHR, *Right to Asylum in the Republic of Serbia 2021*, 111-113.

- 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.

In January 2021, a Libyan applicant was rejected based on the negative security assessment by BIA.⁴⁰⁵ This case had been pending since 2018 and from the very beginning, it was obvious that decision making process was influenced by the negative assessment by security agencies in Serbia. Mr. G. has lived in Serbia for decades, he has established family, but had undisputable connections with the former regime of colonel Ghaddafi. However, the absolute nature of the principle of *non-refoulement* does not allow any limitations or derogations. This case can be connected with the case of family A. which was also declared as a security threat by BIA. Only after the case was communicated to the ECtHR, the security assessment was declared as positive,⁴⁰⁶ and they were granted subsidiary protection.⁴⁰⁷ Mr. G. was rejected on several occasions, but every time, Asylum Commission would refer the case back to the first instance body. His case was finally resolved in February 2022, when he was granted refugee status.⁴⁰⁸ However, this positive outcome ensued only after the Commission obtained positive security assessment from BIA, which clearly shows that national security reasons can play a significant role in asylum procedure,

One of the most contentious decisions rendered in 2020, and which is relevant for the practice in 2021, 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.⁴⁰⁹ 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.⁴¹⁰ This case is currently pending before the Administrative Court and it appears that deficiencies and uncoordinated work of legal representative, legal guardian and psychologist will be assessed by that court.

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 Talibans 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.⁴¹¹ A similar case occurred in 2021, when an UASC of Afghan origin who

⁴⁰⁵ Asylum Office, Decision No. 26-1389/17, 19 January 2021.

⁴⁰⁶ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

⁴⁰⁷ Asylum Office, Decision No. 26-222/15, 3 July 2018.

⁴⁰⁸ Asylum Office, Decision No. 26-1389/17, February 2022.

⁴⁰⁹ Asylum Office, Decision No. 26-378/19, 11 February 2020.

⁴¹⁰ Asylum Office, Decision No. 26-1437/18, 13 February 2020.

⁴¹¹ Asylum Office, Decision No. 26-374/18, 14 February 2020 and AIDA, *Country Report Serbia*, Update May 2020, 38.

was born in Pakistan was rejected in merits and the first instance authority disregarded BID again. Asylum Office also disregarded the fact that the boy is stateless and does not enjoy refugee status in Pakistan and that Pakistan is not a state signatory of the 1951 Refugee Convention.⁴¹² An entire set of child specific recommendations from the BID were completely disregarded.

Even though Asylum Office rendered excellent decisions in relation to a LGBTQI applicants in the past, there were at least three decisions based on LGBTQI claims which were negative in 2021. The first case referred to a gay man from Congo who escaped his former partner's family who wanted to kill him, but also abuse from his own family. His boyfriend was killed, and his mother provided a letter of testimony confirming the said incidents.⁴¹³ This, as well as numerous Col reports were declined as relevant evidence by the Asylum Office.

The second case referred to an extremely vulnerable applicant from Iran who was raped, abused and who was questioned by the police as a suspect for committing criminal offence which implies sexual acts between men. The applicant provided an entire set of evidence, including the court summon which ensued after the arrest during which he was questioned about his sexual orientation. The reasoning of the Asylum Office gives serious reasons for concern taking in consideration the Criminal Code of Iran, individual problems that the applicants faced and relevant Col. This decision is a perfect example on how the first instance authority in some cases strive to cite Col which goes in favour of negative decision, but completely disregards Col which clearly indicates the risks of persecution of LGBTQI applicants from Iran. Moreover, even though Asylum Office failed to take relevant Col *proprio motu*, the applicant's legal representatives provided an entire set of relevant reports which confirm the existence of the events and incidents which were experienced by the applicant.⁴¹⁴ They were not addressed in the reasoning of the decision.

Another worrying decision which involves LGBTQI applicant was rendered at end of 2021. It was the case of X. from Bangladesh, who left his country of origin because of his sexual orientation, but also religious beliefs (atheist). The applicant was targeted by extremist student organization, which further led to him being forced to quit studies. He was not able to address Bangladeshi authorities for protection due to discriminatory legal framework which penalizes LGBTQI people. He was also raped, and his boyfriend committed a suicide.⁴¹⁵

In two other, separate decisions from 2020,⁴¹⁶ which were related to a gay couple from **Tunisia**, the first instance 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.

Thus, the practice from 2020 and 2021 indicated that Asylum Office has been departing 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

⁴¹² Asylum Office, Decision No. 2349/19, 12 January 2021.

⁴¹³ Asylum Office, Decision No. 26-81/20, 13 January 2021.

⁴¹⁴ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

⁴¹⁵ Asylum Office, Decision No. 26- 26-404/21, 4 November 2021, and see also BCHR, *Right to Asylum in the Republic of Serbia 2021*, 114-115.

⁴¹⁶ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

different places of residency.⁴¹⁷ The Turkish legal framework is far more favourable than the Tunisian, Iranian or Bangladeshi, but the interpretation of the Asylum Office from 8 years ago appears to be much more progressive than in several more recent decisions. In combination with another contentious decision of a transgender applicant from Iran rendered in 2019,⁴¹⁸ the practice of the first instance authority regarding LGBTQI claims seriously deteriorated. Thus, the recognition rate of LGBTQI applicants in 2021 was 0%.

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.⁴¹⁹ 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.

One decision from the end of 2020 which was related to SGBV survivor and her two children from Turkey also goes in favour of the general assessment that practice with regards to SGBV applicants varies and is unpredictable.⁴²⁰ BCHR also observed the negative practice of Asylum Office as regards a victim of genital mutilation from Somalia.⁴²¹ What represents an additional aggravating circumstance is the fact that the lawyer in the case of Somali applicant failed to lodge a complaint within 15-day deadline. This has led to the dismissal of lawyer's appeal by the Asylum Commission and the applicant is now facing potentially several years of procedural struggle to have her case re-examined in merits.⁴²²

In 2021, another Iranian citizen whose claim was based on religious grounds was rejected as unfounded. Thus, it appears that converts from Islam to Christianity are no longer considered as persons in need of international protraction,⁴²³ even though 17 Iranians received refugee status in the period 2016-2020 on these grounds. Several other negative decisions rendered in 2020, including the decision rejecting an application of two **Iranian** applicants who converted from Islam to Christianity,⁴²⁴ were just the beginning of now well-established case law of the Asylum Office. These decisions confirm again an inconsistent approach taken by the Asylum Office in cases of converters from **Iran**.⁴²⁵

1.2. Prioritised examination and fast-track processing

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

⁴¹⁷ Asylum Office, Decision No. 26-1280/13, 25 December 2013.

⁴¹⁸ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁴¹⁹ Asylum Office, Decision No. 26-148/18, 27 December 2019.

⁴²⁰ Asylum Office, Decision No. 26-1073/20, 1 December 2020.

⁴²¹ Asylum Office, Decision No. 26-1599/19, 13 October 2020, see also: BCHR, *Right to Asylum in the Republic of Serbia 2021*, p.114.

⁴²² Asylum Commission, Decision No. AŽ 51/20, 24 December 2020.

⁴²³ Asylum Office, Decision No. 26-3079/19, 13 January 2021.

⁴²⁴ Asylum Office, Decision No. 26-1436/18, 21 February 2020.

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. More precisely, the interview must be conducted within the period of 3 months during which Asylum Office has to render and deliver to the applicant and his legal representatives the first instance decision. 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.⁴²⁶

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.⁴²⁷ 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.⁴²⁸ 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:⁴²⁹

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.⁴³⁰ This option was applied for the first time in 2021, and in relation to an Afghan UASC who was not able to take part in the hearing procedure due to his health condition which implies that he is immobile and not able to talk.⁴³¹ He was granted subsidiary protection;
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.⁴³² In practice, asylum seekers often wait from several weeks to several months following the lodging of their application for an interview to be scheduled. Due to COVID-

⁴²⁶ Article 37(1) Asylum Act.

⁴²⁷ Article 37(2) Asylum Act.

⁴²⁸ Article 37(12) Asylum Act.

⁴²⁹ Article 37(10) Asylum Act.

⁴³⁰ Article 37(11) Asylum Act.

⁴³¹ Asylum Office, Decision No. 26-1084-20, 7 June 2021.

⁴³² Article 16 (2) Asylum Act.

19 circumstances, this period has been extended for several months in 2020, and remained very long in 2021. For instance, a woman with a child from Burundi lodged her asylum application on 29 May 2021, and was not questioned as of March 2022. The same can be said about a 4-member Afghan family who lodged their asylum applications on 30 August 2021 and are yet to be invited for an asylum interview. Identical example is an application of Burundian family of 5 who lodged asylum application in September 2021, or Afghan man who lodged asylum application in December 2021.

The Asylum Office conducted only 85 interviews in 2021, which is comparable to the number of interviews in 2020 (84) but represents an overall drop compared to 2019 (178). The reason for the low number in 2020 can be attributed to COVID-19 which suspended this stage of asylum procedure from second half of March until June 2020. However, it is hard to find an excuse for such a low number of hearings in 2021.

There were no instances in which asylum interviews were conducted through video conferencing, including during the COVID-19 invasive measures in 2020. There were at least two instances in which witnesses of applicants in asylum procedure were interviewed via Skype application, in line with Article 111 of GAPAA which provides for such possibility. One case is still pending,⁴³³ while the other one resulted in a positive decision regarding an UASC from Iran.⁴³⁴ No major problems were recorded with regards to video conferencing, but it is clear that this practice is rarely applied and is yet to be seen whether problems will arise in the future.

Month	Number of hearings in 2019	Number of hearings in 2020	Number of hearings in 2021
January	16	5	8
February	32	20	7
March	16	9	2
April	26	0	5
May	12	0	15
June	3	3	14
July	9	1	11
August	6	1	0
September	19	8	0
October	17	23	9
November	8	7	1
December	14	7	13
Total	178	84	85

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.⁴³⁵

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, Hindi, Hungarian, Italian, Portuguese, Pashto, Polish, Somali, Turkmen and Uzbek.

When it comes to the practice, there were several instances in which CSO lawyers decided to halt the interview since it was clear that interpreters were incompetent and that they could not establish effective

⁴³³ Asylum Office, Case File No. 26-2534/17, 7 May 2021.

⁴³⁴ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

⁴³⁵ Article 13 Asylum Act.

communication with the applicants. Afterwards, the CSO 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,⁴³⁶ and the decision was upheld by the Asylum Commission.⁴³⁷ It remains to be seen if flaws in interpretation will be taken in consideration by the Administrative Court. One interpreter for Kirundi was removed from the list because of his affiliation with the Burundian Government.

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.⁴³⁸ The asylum seekers' legal representatives are entitled to ask additional questions to ensure comprehensive establishment of the facts of the case.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds <input type="checkbox"/> No

 - ❖ If yes, is it
 - ❖ If yes, is it suspensive

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.⁴³⁹ 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.⁴⁴⁰ 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 undergone one change which is not relevant for the quality of their work and general competencies in asylum issues.⁴⁴¹

An appeal to the Asylum Commission automatically suspends the enforcement of the first instance decision and it must be submitted within 15 days from the delivery of the decision.⁴⁴² The first instance decision may be challenged for the following reasons which are relevant for asylum procedure:

- 1) lack or flawed application of the Law, other regulation or general act in the first instance decision;
- 2) incompetent authority in charge of the first instance decision;
- 3) incorrectly or incompletely established factual grounds;
- 4) flawed conclusion derived from the established factual grounds;
- 5) violation of the rules of the administrative procedure.⁴⁴³

⁴³⁶ Asylum Office, Decision No. 932/19, 30 September 2019.

⁴³⁷ Asylum Commission, Decision No. AŽ 38/19, 3 December 2019.

⁴³⁸ Article 63 GAPA.

⁴³⁹ Article 21(1)-(2) Asylum Act.

⁴⁴⁰ Article 21(3) Asylum Act.

⁴⁴¹ AIDA, Country Report Serbia, Update May 2020, p. 40.

⁴⁴² Article 95 Asylum Act and Articles 151 and 153 GAPA.

⁴⁴³ Article 158 GAPA.

New facts and evidence may be presented in the appeal, but the appellant is obliged to explain why he or she did not present them in the first instance procedure.⁴⁴⁴ This provision is often relied on in the second instance decisions when applicants, mainly due to poor quality work of their legal representatives, invoke or provide new evidence which they had failed to provide in the course of the first instance procedure. Asylum Commission appears to be very rigorous in examining new facts and evidence in the appeal stage and limits itself by the framework established in asylum application and during the asylum hearing before the Asylum Office. However, it is important to note that many evidence and facts should be gathered by the asylum authorities *proprio motu*, especially Col reports and other general circumstances, and regardless of the efforts of legal representatives and the quality of their work.

The appeal must be submitted to the Asylum Office in a sufficient number of copies for the Asylum Commission and the opposing party.⁴⁴⁵ The Asylum Office then examines if an appeal is timely, allowed in line with the GAPA rules of procedure and if it is lodged by an authorized person. If Asylum Office determines any of the above-enlisted deficiencies, an appeal will be dismissed.⁴⁴⁶

Also, the GAPA envisages that Asylum Office might uphold the appeal without referring the case to the Asylum Commission if it determines that arguments from the appeal are founded⁴⁴⁷ and render a new decision which annuls the initial decisions and contains a new one. It is also possible that Asylum Office supplements the procedure with additional asylum interview or other evidentiary activity which it deems necessary.⁴⁴⁸

If an appeal is not dismissed, the Asylum Office will refer the case files to the second instance body within 15 days from the receipt of the appeal and will also provide its response to arguments, facts and evidence outlined in the appeal.⁴⁴⁹

The Asylum Act does not specify the duration of the second instance procedure. However, the GAPA stipulates that the second instance decision must be rendered within 60 days.⁴⁵⁰ 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.⁴⁵¹ 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.⁴⁵² 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.⁴⁵³ 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.⁴⁵⁴ In the event it does not reject the appeal,⁴⁵⁵ the Asylum Commission may itself decide on the administrative matter.⁴⁵⁶ It may also set aside

⁴⁴⁴ Article 159 (2).

⁴⁴⁵ Article 160 GAPA.

⁴⁴⁶ This was the case with the application of an alleged SGBV survivor from Somalia who claimed that she has been subjected to the practice of genital mutilation. The legal representative in this case failed to lodge an appeal in time. Asylum Office, Decision No. 26-1599/19, 13 October 2020.

⁴⁴⁷ Article 165 (1) GAPA.

⁴⁴⁸ Article 165 (2) GAPA.

⁴⁴⁹ Article 166 GAPA.

⁴⁵⁰ Article 174 GAPA.

⁴⁵¹ Article 19 Administrative Disputes Act.

⁴⁵² *Hod po žici*, p. 53.

⁴⁵³ Article 165 GAPA.

⁴⁵⁴ Article 165(2)-(3) GAPA.

⁴⁵⁵ Article 170 GAPA.

⁴⁵⁶ 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.⁴⁵⁷ 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**,⁴⁵⁸ **Libya**,⁴⁵⁹ and **Iran**.⁴⁶⁰

Statistical Overview of Asylum Commission practice 2009-2021

Year	Decision rejecting an appeal	Decision upholding an appeal	Decision dismissing an appeal	Decision on discontinuing of asylum procedure	Other decisions	Total
2009	28	14	1	0	0	43
2010	6	16	0	1	9	32
2011	29	7	2	1	0	39
2012	16	4	0	0	2	22
2013	10	2	0	0	0	12
2014	10	3	0	0	6	19
2015	8	24	1	0	1	34
2016	6	6	0	0	0	12
2017	11	15	0	0	0	26
2018	6	10	0	0	0	16
2019	28	14	1	0	0	43
2020	52	10	0	0	0	62
2021	51	19	0	4	0	74
Total	261	144	5	6	18	434

Asylum Commission Practice in 2021

In 2021, the Asylum Commission took 74 decisions regarding 80 persons, which is an increase in comparison 2020 when 62 decisions were rendered regarding 80 persons. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 51 cases, while in only 11 cases the appeals were upheld, and the cases were referred back to the Asylum Office for further consideration. Also, additional 8 decisions quashing the first instance decision after the judgment of the Administrative Court in which the onward appeals were upheld. Additional four decisions discontinuing asylum procedure were rendered in the same period. In 2021, 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.⁴⁶¹ 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.⁴⁶² 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 and 2021, 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 nationalities encompassed in

⁴⁵⁷ Article 173(3) GAPA.

⁴⁵⁸ Asylum Commission, Decision AŽ 25/09, 23 April 2010.

⁴⁵⁹ Asylum Commission, Decision AŽ 06/16, 12 April 2016.

⁴⁶⁰ Asylum Commission, Decision AŽ X, 2 September 2019.

⁴⁶¹ This statement mainly refers to the BCHR's clients since the author had an opportunity to examine the entire case files.

⁴⁶² Article 5 (3) GAPA.

these decisions in 2021 are the following: Iran (23), Burundi (9), Bulgaria (8), Turkey (6), Jordan (4), Libya (4), Cuba (3), Pakistan (3), Syria (2), Ghana (2), Bangladesh (2), Nigeria (2), Russia (2), Afghanistan (2) and 1 from Cameroon, Iraq, Congo, Bosnia and Hercegovina, Montenegro, China, Tunis and 1 Stateless person.

On 18 January 2021, Asylum Commission rejected an appeal of Burundian citizen who escaped his country of origin after several members of his family were killed. His asylum application and appeal were rejected because both first and second instance body determined that he was not politically active and that on several occasions, he pointed to poor economic situation in Burundi.⁴⁶³

In February 2021, Asylum Commission rejected an appeal of Burundian citizen of Tutsi ethnic background who claimed that his ethnicity was a reason for persecution.⁴⁶⁴ Asylum Commission determined that Col reports are not sufficient to prove the risk of persecution.

On 8 March 2021, Asylum Commission rejected the appeal of gay man from Congo whose case was rejected in merits by the Asylum Office which took a standing that applicant failed to prove the risk of persecution as a member of a particular social group. Letter from applicant's mother, as well as relevant Col were not found to be sufficient for granting of asylum.⁴⁶⁵ This represents a continuation of the practice from 2020, and with regards to LGBT applicants. In 2021, the Commission rejected the appeal of the transgender applicant from **Iran**, whose asylum application was rejected in November 2019,⁴⁶⁶ 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.⁴⁶⁷ 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 was resettled to another country.

On 17 March 2021, Asylum Commission rejected another appeal of Iranian converts from Islam to Christianity, confirming in that manner that this kind of asylum claims are no longer considered as credible in Serbian asylum system.⁴⁶⁸ However, in the same month, Asylum Commission upheld an appeal of an UASC who was declared as stateless and whose asylum application was rejected without adequate assessment of the treatment of Afghan refugees in Pakistan which is not a state signatory of the 1951 Refugee Convention.⁴⁶⁹

On 15 April 2021, Asylum Commission refereed the case of Iranian family back to the first instance authority after the Administrative Court upheld the complaint.⁴⁷⁰ The case is related to the family who escaped political persecution and who lodged their asylum application in 2019. Asylum Office rejected their asylum application in merits again⁴⁷¹ and this decision was confirmed by Asylum Commission again.⁴⁷² On the other hand, Asylum Commission upheld an appeal of a women from Iran who was a human rights activist in her country of origin.⁴⁷³ The Commission indicated to the first instance authority to assess all evidence lodged by the applicant, as well as Col reports outlined by legal representatives.⁴⁷⁴

In May 2021, Asylum Commission upheld BCHR's appeal and refereed the case back to Asylum Office. The case is related to Cuban couple who fled Cuba due to political persecution.⁴⁷⁵

⁴⁶³ Asylum Commission, Decision No. AŽ 55/20, 18 January 2021.

⁴⁶⁴ Asylum Commission, Decision No. 55/20, 3 February 2021, see also more in: BCHR, *Right to Asylum in the Republic of Serbia 2021*, p. 51.

⁴⁶⁵ Asylum Commission, Decision No. AŽ 04/21, 8 March 2021.

⁴⁶⁶ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁴⁶⁷ Asylum Commission, Decision No. AŽ 44/19, 30 January 2020.

⁴⁶⁸ Asylum Commission, Decision No. AŽ 02/21, 17 March 2021.

⁴⁶⁹ Asylum Commission, Decision No. AŽ 46/20, 17. March 2021.

⁴⁷⁰ Asylum Commission, Decision No. 06/19, 5 April 2021.

⁴⁷¹ Asylum Office, Decision No. 26-1382/18, 20 July 2021.

⁴⁷² Asylum Commission, Decision No. AŽ-47/20, 5 July 2021.

⁴⁷³ Asylum Commission, Decision No. AŽ 8/21, 26 April 2021.

⁴⁷⁴ BCHR, *Right to Asylum in the Republic of Serbia 2021*, p. 55.

⁴⁷⁵ Asylum Commission, Decision No. 41/20, 31 May 2021.

In July 2021, Asylum Commission rendered one contentious decision rejecting applicant's asylum application. Namely, additional evidence which was submitted after the first instance decision was declared as unacceptable. The Commission stated that applicant had enough time to provide all of the evidence during the course of the first instance procedure, and thus, rejected to take new evidence in consideration. This kind of approach can be considered as dangerous, and it deters from the standard which implies that any risk of treatment contrary to prohibition of ill-treatment must be assessed with rigorous scrutiny, *ex nunc* and *proprio motu*. By rejecting to assess the new evidence, Asylum Commission failed to act in line with the basic guarantees against *refoulement*. Also, the fact that all evidence was not lodged in time can most likely be attributed to the work of legal representative. Inadequate work of legal representative should not be taken as a reason to deny applicant the possibility to have his case examined thoroughly.⁴⁷⁶ However, it appears that Asylum Commission has failed to reflect on other parts of the appeal, which further confirms that the second instance body frequently repeats the first instance mistakes, which imply the lack of assessment of all individual and objective circumstances outlined by the applicant and his or her representatives.⁴⁷⁷

In September 2021, Asylum Commission upheld an appeal of Libyan citizen whose asylum procedure had been pending since 2018 and who was declared to be a security risk due to his connections with the former Ghaddafi regime.⁴⁷⁸ An appeal was upheld after the Commission obtained from BIA a positive security assessment, even though this assessment was different in January 2021 when asylum application was rejected.⁴⁷⁹ This case perfectly illustrates that BIA conducts security assessment of each and every applicant and prior to the first instance decision. This case irresistibly resembles on the case of family A. whose asylum application was rejected on the same grounds in 2016. They were granted subsidiary protection after their case was communicated to the ECtHR. Mr. G. from Libya was finally granted subsidiary protection in February 2022.

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.⁴⁸⁰ The first training was facilitated by the UNHCR in 2019, but the training planned for 2020 were postponed due to COVID-19 situation. In December 2021, UNHCR facilitated the training on credibility assessment which included judges from the Administrative Court.

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

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

⁴⁷⁶ Asylum Commission, Decision No. 47/20, 5 July 2021.

⁴⁷⁷ BCHR, *Right to Asylum in the Republic of Serbia 2021*, 52-63.

⁴⁷⁸ Asylum Commission, AŽ-29/19, 23 September 2021.

⁴⁷⁹ Asylum Office, Decision No. 26–1389/17, 19 January 2021, see also BCHR, *Right to Asylum in the Republic of Serbia 2021*, 55.

⁴⁸⁰ Roundtables were organised through the project “Novelties in the Asylum and Migration System in the Republic of Serbia and Challenges in their Application”, implemented by the AIRE Centre, IOM and the British Embassy in Serbia.

According to the Asylum Act, the initiation of an administrative dispute has an automatic suspensive effect.⁴⁸¹

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 2021 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.⁴⁸²

Statistical Overview of the Administrative Court Practice 2009-2021

Year	Decision rejecting a complaint	Decision upholding a complaint	Decision dismissing a complaint	Decision on discontinuing of asylum procedure	Total
2009	11	2	0	0	13
2010	1	1	0	1	3
2011	10	1	0	0	11
2012	9	0	1	0	10
2013	9	0	0	0	9
2014	5	4	0	0	9
2015	1	6	0	1	8
2016	8	1	0	0	9
2017	20	5	0	3	28
2018	15	9	2	0	26
2019	14	4	1	1	20
2020	22	0	3	2	27
2021	10	9	1	2	22
Total	135	42	8	10	195

Administrative Court Practice in 2021

No.	Case file No.	Date of Judgment	Country of Origin	No. of Persons	Outcome	Type of Issue
1.	U 11006/20	28.01.2021	Iran	2	Rejected	Conversion Islam to Christianity
2.	U 20833/20	05.02.2021	Iran	3	Upheld	Application of old Asylum Act
3.	U 8275/19	05.03.2021	Iran	3	Upheld	Procedural Issues
4.	U 1760/20	08.03.2021	Croatia	1	Rejected	Persecution of Serbian in Croatia

⁴⁸¹ Article 96 Asylum Act.

⁴⁸² Administrative Court, Judgment U 10233/19, 13 May 2020.

5.	U 15585/20	17.03.2021	Russia	1	Rejected	Religious Persecution
6.	U 6801/20	27.04.2021	Unknown	1	Upheld	Legality of Discontinuation of Procedure
7.	U 6801/20	27.04.2021	Bulgaria	1	Upheld	Legality of Discontinuation of Procedure
8.	U 4487/21	13.05.2021	North Macedonia	4	Rejected	Manifestly Unfounded
9.	U 12133/19	13.05.2021	Bulgaria	3	Rejected	Manifestly Unfounded
10.	U 2144/21	21.05.2021	Unknown	3	Upheld	Silence of Administration
11.	7697/20	27.05.2021	Unknown	1	Discontinued	/
12.	U 3526/21	23.06.2021	Burundi	1	Rejected	Political and ethnic persecution in Burundi of Tutsi applicant
13.	U 5163/21	23.06.2021	Burundi	1	Rejected	Political and ethnic persecution in Burundi of Tutsi applicant
14.	U 1263/18	20.07.2021	Iraq	1	Upheld	Internal Flight Alternative
15.	U 734/21	03.09.2021	Burundi	1	Upheld	First Country of Asylum Concept
16.	U 25046/20	16.09.2021	Unknown	1	Upheld	Silence of Administration
17.	U 8380/21	21.09.2021	Unknown	1	Dismissed	Procedural Issues
18.	U 19743-19	23.09.2021	Iran	3	Upheld	Political persecution in Iran
19.	U 21427/21	26.10.2021	Turkey	1	Rejected	Kurdish applicant in extradition proceeding
20.	U 22906/18	25.11.2021	Ghana	1	Rejected	Alleged SGBV victim from Ghana
21.	U 7784/21	06.12.2021	Iran	1	Discontinued	/
22.	U 8080/21	07.12.2021	Congo	1	Rejected	LGBTQI claim from Congo
Total	22 DECISIONS		36 PERSONS			

In 2021, the Administrative Court delivered 22 decisions regarding 36 persons from the following nationalities: Iran (12), North Macedonia (4), Unknown (4), Bulgaria (4), Burundi (2) and 1 from Iraq, Turkey, Ghana, Congo, Croatia and Russia.

Out of that, 10 complaints were rejected encompassing 16 persons. In one judgment referring to a 4-member family from North Macedonia, the Court rejected their applications as manifestly unfounded.⁴⁸³ The same outcome can be found in judgments in which the Court rendered a final decision rejecting one Croatian applicant,⁴⁸⁴ one Russian applicant⁴⁸⁵ and 3 applicants from Bulgaria.⁴⁸⁶ All 4 decisions can be described as well-reasoned and justified.

Administrative Court rendered 2 judgments regarding 2 applicants from Burundi in which it confirmed decision on rejection due to the lack of evidence of persecution on the basis of their ethnic origin – Tutsi.⁴⁸⁷ In both judgments, the Court outlined that additional evidence lodged with the appeal, and which was not taken in consideration by the Asylum Commission, should have been provided in the course of the first instance procedure. This approach can only be described as inadequate, but at the same time, this has been a long-lasting standard applied by both Commission and the Court. However, it is important to note that each and every evidence should be examined with rigorous scrutiny, taking in consideration the procedural limb of the principle of *non-refoulement*. On the other hand, it is clear that as long as this kind of standing exists in the practice of asylum authorities in Serbia, legal representative should strive to collect and put forward all the necessary evidence in the first instance and provide additional evidence at later instances with the accompanying justifications of why it was not possible to provide them at earlier stages of asylum procedure.

Another Turkish applicant was rejected with the final judgment of the Administrative Court.⁴⁸⁸ The case referred to a man who was also in extradition proceeding. He claimed that he would face persecution in Turkey because of his Kurdish ethnic origin. However, it is not possible to assess the credibility of his statement because the reasoning of the decision does not contain detailed information on the type and nature of the persecution in Turkey. Still, this decision further confirms that Turkish applicants of Kurdish origin who claim ethnical and political persecution do not have strong chances to be granted asylum in Serbia.

In January 2021, another judgment rejecting Iranian converts from Islam to Christianity was rendered. With this judgment, it became clear that in the practice of the third instance body as well, these kinds of applications have minimum chances of success.⁴⁸⁹

The Administrative Court rendered a judgment rejecting alleged SGBV survivor from Ghana, who, according to the legal representative, might also be the victim of human trafficking.⁴⁹⁰ From the reasoning of the judgment, it cannot be seen if asylum authorities and the applicant have provided all the necessary evidence based on the multidisciplinary approach. Thus, there are no expert opinions of the Center for Social Work, or assessment of the Centre for Human Trafficking Victims' Protection (CHTV). The Court only shallowly states that such assessments were not provided but fails to see its responsibility to obtain such expert opinions. Thus, regardless of the credibility of the claim, it is clear that all three instances and legal representative have failed to undertake all the necessary assessments in order to thoroughly examine risks of persecution and the existence of the SGBV and human trafficking component. In other words, this case clearly shows how this applicant was failed by asylum system as whole.

The case of gay man from Congo was rejected with the final judgment of the Court, confirming a 100% rejection rate of LGBTQI applicants in 2021.⁴⁹¹

In 2021, the Administrative Court upheld 9 complaints encompassing 15 persons. However, 6 of these judgments are irrelevant for the assessment of effectiveness of the work of the Court. One question

⁴⁸³ Administrative Court, Judgment U 4487/21, 13 May 2021.

⁴⁸⁴ Administrative Court, Judgment U1760/20, 8 March 2021.

⁴⁸⁵ Administrative Court, Judgment U 15585/20, 17 March 2021.

⁴⁸⁶ Administrative Court, Judgment U 12133/19, 13 May 2021.

⁴⁸⁷ Administrative Court, Judgment U 3526/21, 23 June 2021 and Judgment U 5163/21, 23 June 2021.

⁴⁸⁸ Administrative Court, U 21427/21, 26 October 2021.

⁴⁸⁹ Administrative Court, Judgment, U 11006/20, 28 January 2021.

⁴⁹⁰ Administrative Court, Judgment U 22906/18, 25 November 2021.

⁴⁹¹ Administrative Court, Judgment U 8080/21, 7 December 2021.

implied the assessment of whether old or new Asylum Act should be applied in the application of 3 Iranian citizens.⁴⁹² Procedural issues were examined in the judgment U 8275/19 which was rendered on 5 March 2021. Two judgments were related to the legality of discontinuation of asylum procedure⁴⁹³ and the same number of judgements referred to the issue of the silence of administration (the failure of Asylum Commission to render the second instance decision within the legal deadline of two months).⁴⁹⁴

Three decisions upholding the complaint deserve a more detailed assessment. The first one refers to the gay applicant from Burundi who was not afforded enough time to dispute the application of the first country of asylum concept. Namely, the applicant's asylum application was dismissed on the basis that the refugee statutes that he was granted in Rwanda in line with Article 43 (2) of the Asylum Act. The principal legal question in this case was how much time Asylum Office affords to the applicant to dispute the safety in the first country of asylum. In this particular case, it is clear that several days cannot be considered as sufficient. Thus, this decision should be welcome.⁴⁹⁵

The other case referred to a 4-member family from Iran who claims to face political and religious persecution due to their digital activism on social networks and the fact that applicants are atheist who promote atheist views.⁴⁹⁶ The Court indicated that the first and the second instance authority have failed to provide an explanation of why the evidence provided by the applicants is not assessed as credible. However, it impossible to escape the impression that the Court had had the possibility to determine these facts directly through the hearing. In this way, asylum procedure of this family will continue which can never be considered as an example of good practice.

And finally, the last judgment upholding the complaint referred to an internal flight alternative, and a failure of Asylum Office and Asylum Commission to properly outline reasons for considering other parts of Iraq as safe in the case of Iraqi applicants. The Court determined that a special hearing should be facilitated in order to assess to possibility of the applicant to find protection in other part of the country. What is the most disturbing aspect of this judgment is the fact that it took 3 years to the Court to render it. The applicant left Serbia long time earlier.⁴⁹⁷

Finally, two procedures were discontinued⁴⁹⁸ and 1 complaint was declared as inadmissible.⁴⁹⁹

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?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does the State funded free legal assistance cover:

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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,⁵⁰⁰ refugees and persons granted subsidiary protection.⁵⁰¹ However, the

⁴⁹² Administrative Court, Judgment U 20833/20, 5 February 2021.

⁴⁹³ Administrative Court, Judgments U 6801/20 and U 6801/20, 27 April 2021.

⁴⁹⁴ Administrative Court, Judgments U 2144/21, 21 May 2021 and U 25046/20, 16 September 2021.

⁴⁹⁵ Administrative Court, Judgment U 734/21, 3 September 2021.

⁴⁹⁶ Administrative Court, Judgment U 19743/19, 23 September 2021.

⁴⁹⁷ Administrative Court, judgment U 1263/18, 20 July 2021.

⁴⁹⁸ Administrative Court, Judgment U7697/20, 27 May 2021 and U 7784/21, 6 December 2021.

⁴⁹⁹ Administrative Court, Judgment U 8380/21, 21 September 2021.

⁵⁰⁰ Article 4 (2-6) FLA.

⁵⁰¹ Article 4 (2-7) FLA.

Free Legal Aid Fee Schedule Regulation (FLA Regulation)⁵⁰² 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 seeker has used State funded free legal aid,⁵⁰³ but in the course of 2021, several attorneys at law provided legal representation to asylum seekers who had their own financial means.

The fact that free legal aid is only guaranteed in the third instance can be considered as an extremely bad solution, taking in consideration the level of development of Serbian asylum system in general, but also the quality of the decision-making process of the first and the second instance authority. In 90% of the cases which reach the Administrative Court, the negative decision will most likely be confirmed. Additionally, the quality of legal aid provided by CSOs is also highly questionable, taking in consideration the fluctuation of lawyers in different CSOs, lack of clear recruitment criteria, lack of experience and necessary training. However, it is fair to say that asylum seekers who enjoy CSO's legal support from the beginning of asylum procedure have more chance for a positive outcome, than those who do not have such support. Still, it is clear that a **migration lawyer profile** does not exist in Serbia as it is the case in EU countries in which asylum systems have been established several decades ago. Unfortunately, there are no signs that such profile will be established in the near future taking in consideration that practising other branches of law is more lucrative and attractive to attorneys at law.

The right to free legal aid is also guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.⁵⁰⁴ The Asylum Act further provides that an asylum seeker shall have access to free legal aid and representation by UNHCR and CSO 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 CSO 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, and in front of the Constitutional Court.

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 2021 only six civil society organisations (CSO) were providing legal aid in Serbia: APC, Balkan Centre for Migration and Humanitarian Activities (BCMHA), BCHR, IDEAS, Humanitarian Centre for Tolerance and Integration (HCIT), and KlikAKtiv. 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 or are hired part-time.⁵⁰⁵ Other, non-CSOs lawyers, occasionally provide legal aid. 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,⁵⁰⁶ 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 2021 an approximate number of persons who are likely in need of international protection was at least 65% of total migrant population who entered Serbia and received registration certificates (around 2,306), 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, 2021 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. At the same time, the number of asylum applications dropped, which can also be attributed to insufficient human capacities.

⁵⁰² Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), Official Gazette of the RS No. 74/2019.

⁵⁰³ This conclusion is drawn from the fact that legal representatives in all Administrative Court judgments were CSOs.

⁵⁰⁴ Article 56(3)-(4) Asylum Act.

⁵⁰⁵ 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.

⁵⁰⁶ Once to two times per month.

The second reason is the fact that most of legal representatives from respective CSOs have between 1 to 3 years of experience,⁵⁰⁷ which is usually the period after which many of them decide to leave the field of asylum and migration.

As a result, the capacity and quality of legal assistance provided by CSOs remains limited.⁵⁰⁸ While certain CSO lawyers are successful, the large majority of them do not obtain positive outcomes at all, or have one or two positive decisions in 5 years and 90% of decisions in which the outcome is negative.

Several decisions from 2020 and 2021 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.⁵⁰⁹ Another example is the lack of coordination in preparation for asylum hearing of a Tunisian gay couple.⁵¹⁰ 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 to violence to which he was subjected. His legal representative was not aware of this fact, even though the violence was reported to him.⁵¹¹ The other UASC had only had half an hour meeting with two different legal representatives within a year and decided to abscond to Bosnia.⁵¹² He attempted to lodge subsequent application, but was unsuccessful and eventually decided to abscond from Serbia.⁵¹³ Specific issues in relation to the provision of legal assistance include a lack of assessment of COI information and individual circumstances,⁵¹⁴ lack of thorough preparations of clients for their personal interview and failure to conduct evidentiary activities such as medical expert opinion.⁵¹⁵

For instance, a family D. from Iran outlined that they signed the PoA in November 2018 and the next time they met their lawyer was in December 2018 prior to the submission of asylum application and for only 1 hour. They stated that they were not prepared for lodging of the asylum application in person, and that their preparation with the lawyer for the asylum interview lasted for several hours and only a few days before the hearing in August 2019. Col report attached to this application after the interview has outlined more facts than the facts provided to the Asylum Office orally. In the practice of Serbian asylum authorities, the impression that asylum officer gets at the hearing is crucial and usually determining factor for a positive decision. And *vice versa*, applicants who are not capable to go into details during the interview face risk of being rejected in the first instance, and chances of remedying of such outcome are extremely low. In the same case, legal representative has failed to gather additional evidence, such as decision on refugee status in the Netherlands of the brother of one of the applicants or his written testimony. The family has attempted to lodge the subsequent asylum application submitting additional evidence, but the standing of asylum authorities was that they should have done it in the initial asylum procedure.⁵¹⁶ Thus, in this particular case, the flaws can be found in the work of both legal representatives and asylum authorities. The proof that this case is an example of bad practice in terms of legal representation is the fact that this family of 4 is 1 of total 2 cases where refugees were granted asylum in Hungary since summer 2020. Thus, their claim was strong enough for deteriorating and basically non-existing asylum system in Hungary, but not good enough for Serbian asylum authorities.

⁵⁰⁷ Some of them less than a year and without previous training and experience in the field of asylum and migration.

⁵⁰⁸ 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.

⁵⁰⁹ Asylum Office, Decision No. 26-378/19, 11 February 2020.

⁵¹⁰ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁵¹¹ 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.

⁵¹² The boy decided to return to Serbia and, with the help of IDEAS lawyers, submitted subsequent application.

⁵¹³ Asylum Office, Decision No. 26-3229/19.

⁵¹⁴ 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.

⁵¹⁵ Asylum Office, Decision No. 26-2177/19, 20 August 2020.

⁵¹⁶ *Ibid.*

The following cases from 2018-2021 also contain examples of poor legal representation:

- UASC A.A. application was rejected as unfounded even though he outlined during the interview that he did not understand the interpreter. His legal officer remained silent. Additionally, the legal officer has failed to provide the written testimony from his mother of the persecution that this boy faced by the Talibans.⁵¹⁷ His case is still pending before the Administrative Court with minimum chances of success.
- Family X. from Iran outlined that they have not established any communication with their legal representative and the case files in all three instances indicate the same passive attitude which can be seen in the case of family D. granted asylum in Hungary.⁵¹⁸
- in 2021, a woman from Cameroon was assessed by one of the CSOs as non-credible case. It turned out that she was an active case of human trafficking and was later on granted the status of the victim of human trafficking.⁵¹⁹
- Similar case was recorded at the end of 2021, when a woman from Cameroon, who is a suspected victim of human trafficking and a victim of SGBV, was told that she does not have a case.⁵²⁰
- In November 2021, Asylum Office discontinued asylum procedure of the woman from Iraq and her underage son who arrived in Serbia in February 2020. She has an identical case as the women from Iraq granted refugee status on the basis of SGBV in 2021.⁵²¹ Still, she was assessed as uncredible case after a 1-hour long interview in which she was not ready to outline traumatic events to, at that time, unknown persons. Only after intensive psychosocial support, Ms. M.I. shared her life story which implies systemic violence committed by her family and her former husband. She lodged her asylum application in May 2021, but absconded after several months because she was frustrated about being forced to stay in legal limbo for more than 18 months. If she had lodged her asylum application in the first half of 2020, she would have been granted refugee status before May 2021.⁵²²
- Identical case was recorded in 2021, where a 5-member family from Afghanistan lodged asylum application after more than 4 years of being in Serbia. Not a single CSO who counselled them in AC Krnjača assessed their case as credible, disregarding in that way the security situation in Herat, girl-specific risks of 3 daughters (the risk of child marriage for instance) and the fact that their mother was also a victim of SGBV and arranged marriage. After they lodged asylum application, they absconded. Still, if they had lodged their asylum application, for instance, in 2018, they would have been granted asylum before COVID-19 pandemic.⁵²³
- And finally, the most notable example of reckless and unprofessional service provision relates to the case of an alleged victim of genital mutilation from Somalia whose lawyer has failed to lodge an appeal against the first instance decision in time. This case clearly demonstrates not only the lack of capacity among providers of free legal aid, but also the need for the establishment of responsibility mechanisms for those legal representatives whose inadequate behaviour has led to a situation in which highly vulnerable and traumatized people were let down by individuals who are not capable to follow statutory deadlines and perform the roles of legal representatives.⁵²⁴

It is reasonable to assume that there are plenty of more cases such as the ones enlisted above.⁵²⁵ These cases clearly indicate that the number of applicants would have been higher if not for a restrictive and shallow approach which lawyers from different CSOs display during the initial assessment. This would also mean that recognition rates would have been higher. Thus, the low number of applicants and the low

⁵¹⁷ Asylum Office, Decision No. 26-932/19, 30 September 2019.

⁵¹⁸ Asylum Office, Decision No. 26-1831/18, 30 July 2020.

⁵¹⁹ The applicant lodged her asylum application in March 2022.

⁵²⁰ She lodged her application in March 2022.

⁵²¹ Asylum Office, Decision No. 26-1601/20, 30 August 2021

⁵²² Asylum Office, Decision No. 26-876/21, 10 November 2021.

⁵²³ Asylum Office, Decision No. 26-1791/21, 9 March 2021.

⁵²⁴ Asylum Office, Decision No. 26-1599/19, 22 November 2019 and AŽ 51/20, 24 December 2020.

⁵²⁵ The author of this Report only analysed cases in which he had an opportunity to assess in details personal circumstances of the applicants with regards to their asylum claims, but also their experience with regards to Serbian asylum system.

recognition rate, in a system such as Serbian, can also be attributed to the low quality of legal service provided to the applicants. The role of CSOs at this stage of development of Serbian asylum system is crucial and the proactive approach is necessary. And for that reason, as it is the case with the assessment of decisions of asylum authorities, it is also important to conduct an analysis of all stages through which beneficiaries pass in their work with legal representatives and to introduce a quality assurance control of free legal aid providers.

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 thousands of pushbacks to **North Macedonia** were recorded, there was no attempt to legally challenge such practice. There is only one case litigated by the APC which implied informal expulsion from Belgrade to North Macedonia.⁵²⁶ 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,⁵²⁷ 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 removal⁵²⁸ and that police officer acted professionally.⁵²⁹ 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).

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 so all potential asylum seekers can have at least technical assistance when lodging asylum applications. 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:⁵³⁰

1. The applicant comes from a **First Country of Asylum**
2. The applicant comes from a **Safe Third Country**;
3. The applicant makes a **Subsequent Application** with no new elements.

⁵²⁶ ECtHR, *A.H. v. Serbia and North Macedonia, and A.H. v. Serbia*, Application Nos. 60417/16 79749/16, 19 October and 27 December 2016 respectively, available at: <https://bit.ly/3oVp8dz>

⁵²⁷ 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>.

⁵²⁸ The Ombudsman, Обављен надзор над удаљењем страних држављана, 8 December 2020, available at: <http://bit.ly/3csGk>.

⁵²⁹ The Ombudsman, Обављен надзор над поступком принудног удаљења страног држављанина, 18 September 2020, available at: <http://bit.ly/2L3uJ0D>.

⁵³⁰ Article 42(1) and (3) Asylum Act.

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 application which must be lodged within 8 days before the Asylum Commission.⁵³¹

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

The Asylum Office dismissed 4 asylum applications as inadmissible in 2021 and in relation to 4 persons.

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](#);⁵³²
2. The application is a [Subsequent Application](#).⁵³³

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.⁵³⁴ 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.⁵³⁵

The deadline for the Asylum Office to take a decision is 28 days from the lodging of the asylum application.⁵³⁶ 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.⁵³⁷

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.⁵³⁸

The border procedure was not used in the course of 2021 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.⁵³⁹ Even though the reconstructions should have been finalised in the first quarter of 2021, they were still ongoing as of February 2022.⁵⁴⁰

5. Accelerated procedure

The Asylum Act provides an accelerated procedure, which can be conducted where the applicant:⁵⁴¹

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

⁵³¹ Article 42(4) Asylum Act.

⁵³² *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

⁵³³ Article 41(1) Asylum Act.

⁵³⁴ Article 41(2) Asylum Act.

⁵³⁵ Article 41(3) Asylum Act.

⁵³⁶ Article 41(5) Asylum Act.

⁵³⁷ Article 41(6) Asylum Act.

⁵³⁸ Article 41(7) Asylum Act.

⁵³⁹ The Ombudsman, *Представници компаније Belgrade Airport у посети Заштитнику грађана*, 16 December 2020, available at: <http://bit.ly/36thCNU>.

⁵⁴⁰ Ombudsman, *Одговор Аеродрома "Никола Тесла" и Станице граничне полиције Београд на препоруке Заштитника грађана*, 4 November 2020, available at: <https://bit.ly/3uUNfNt>.

⁵⁴¹ 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.⁵⁴² The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.⁵⁴³ 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.⁵⁴⁴

In 2021, the Asylum Office did not apply the accelerated procedure.

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.⁵⁴⁵

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

⁵⁴² Article 40(2) Asylum Act.

⁵⁴³ Article 40(3) Asylum Act.

⁵⁴⁴ Article 40(5) Asylum Act.

⁵⁴⁵ Article 17(1) and (2) Asylum Act.

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.⁵⁴⁶

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 were 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.⁵⁴⁷ This practice continued in 2021 as well.

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.⁵⁴⁸ The best interest determination assessment (BID) which is accompanied by a BID decision is conducted by the Social Welfare Centres (under the supervision of IDEAS - implementing partner of UNHCR). However, CSOs also provide its findings and expert opinions for the purpose of asylum procedure. Psychological reports are mainly provided by PIN, but also International Aid Network (IAN). Reports with regards to persons at risk of SGBV or SGBV survivors are provided by DRC, mental health assessment by psychiatric clinics, human trafficking assessment by the Government's Centre for Human Trafficking Victims' Protection (CHTV), and forensic medical reports by forensic medical experts hired by CSOs, etc. Victims of human trafficking or SGBV are accommodated in safe houses of CSO ATINA.

Regardless of the type of vulnerability, the common feature of all kinds of screening mechanisms is that they largely depend on the work and referrals made by different CSOs, but are conducted in cooperation with different state institutions. Thus, the State support system can be described as partially effective with regards to UASC and survivors of human trafficking, 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.

Unaccompanied and separated children

UASCs who decided to apply for asylum undergo a detailed vulnerability assessment through the Best Interest Determination Procedure conducted by the CSW. BID is requested either by the Asylum Office or by legal representatives and then are used, processed and cited in the decision-making process.

The Family Law stipulates that everyone is obliged to be guided by the best interests of the child in all activities concerning the child.⁵⁴⁹ The Social Protection Act (SPA), as one of the principles of social protection, prescribes the best interest of beneficiaries, as well as the right of beneficiaries to participate in decision-making.⁵⁵⁰ The legislative framework also explicitly stipulates that the UASC case manager and the supervisor from the CSW must respect the best interests of the beneficiaries in all proceedings.⁵⁵¹

⁵⁴⁶ Article 17(3) Asylum Act.

⁵⁴⁷ 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.

⁵⁴⁸ See for instance: Asylum Office, Decision No. 26-3064/19, 14 September 2021.

⁵⁴⁹ Article 6 (1) Family Law.

⁵⁵⁰ Article 26 and 35 Social Protection Act.

⁵⁵¹ Article 30 and 32 Rulebook on the Work of Centre for Social Work

Also, the Asylum Act stipulates that all activities carried out with the child must be in accordance with the best interests of the child.⁵⁵²

The relevant framework does not define the procedure for assessing the best interests of the child, but the Centre for Social Work, as a guardianship authority, is responsible for making decisions on protection of children's rights and best interests. All professional and legal decisions are rendered in the process which is called **the case management method**. When CSW identifies UASC, the caseworker shall instantly initiate **the procedure of the case management** which starts with the official activity which is called **initial assessment**.⁵⁵³ The initial assessment is performed in order to determine the further content of support to the child and the facts collected during the initial assessment are the basis for future decision-making, including decision on BID.⁵⁵⁴ In this sense, the case management process is established as a basis for assessing the best interest of a child, including for the purpose of asylum procedure. Finally, the relevant CSW provides a BID which is drafted in the form of Expert Opinion on an individual applicant.

Thus, in practice, only 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).⁵⁵⁵ According to the UNHCR, 1,133 UASC were recorded entering on Serbian territory in 2021, but only 60 of them were issued with the registration certificate, and only eight effectively lodged an application for international protection.⁵⁵⁶ Out of the 60 children with a registration certificate, almost all received a more detailed support, while at least 30 underwent best interest assessments (BIA).⁵⁵⁷ Thus, substantial support was provided to less than 3% of all recorded USAC. BID decisions were rendered in 5 instances, and in relation to UASC who applied for asylum or temporary residence on humanitarian grounds.

Survivors of human trafficking or persons at risk of human trafficking

Also, CHTV can be considered as an authority that can contribute to the effective implementation of Article 17 of the Asylum Act. In 2021, CHTV identified only 1 person who belongs to refugee population as a survivor of human trafficking – unaccompanied girl from Eritrea.⁵⁵⁸ 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.⁵⁵⁹

If a police officer, CSO, or any other entity assumes that a person in need of international protection is a victim of human trafficking, they are obliged to immediately inform the CSW and the CHTV, who then take measures to take care of the alleged victim. The CHTV will then start the process of identifying the victim and at the same time inform the Ministry of the Interior about the initiation of the identification procedure.⁵⁶⁰ The CHTV then renders a **decision on the recognized status of the victim of human trafficking** which is then used during the course of asylum procedure.

Asylum seekers with mental health issues and torture victims

The psychological assessment for the purpose of asylum procedure is usually conducted by the Psychosocial Innovation Network (PIN) and IAN (implementing partners of UNHCR in 2021). In 2021 PIN has identified, assisted, counselled and further referred 513 asylum seekers, refugees and migrants (403 male and 110 female), including 88 UASC (78 boys and 10 girls). PIN also provides group support to

⁵⁵² Article 10 Asylum Act.

⁵⁵³ Article 48 Rulebook on the Work of Centre for Social Work.

⁵⁵⁴ Only 20 in 2019, and for the purpose of asylum procedure.

⁵⁵⁵ Only 20 in 2019, and for the purpose of asylum procedure.

⁵⁵⁶ UNHCR statistic are available at: <https://bit.ly/2LklrZY>.

⁵⁵⁷ 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>, 30 and 44-45.

⁵⁵⁸ CHTV, *Annual Statistical Report*, available at: <https://bit.ly/3xCcp4D>.

⁵⁵⁹ Report on Trafficking in Persons: Serbia 2019, letter to US State Department, Astra (20 June 2019), available (in Serbian) at: <http://bit.ly/3bVYqJl>.

⁵⁶⁰ Article 62 Social Protection Act.

UASCs. PIN's psychologist also assisted 13 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 Krnjača, Banja Koviljača, Tutin and Sjenica and RC Sid), and at 4 out of 5 shelters for UASC in Belgrade and Loznica. In 2021, PIN performed 20 psychological assessments in total. Most of them, 16, were conducted for the purpose of asylum procedure and upon request of legal representatives from BCHR, HCIT and IDEAS. Two assessments were conducted as additional psychological reports for the asylum procedure requested by legal representatives, 1 report was drafted as a supporting document for other legal proceedings requested by legal representatives, while 1 report was compiled upon request of the medical team in RC Šid for the purpose of referring a beneficiary to psychiatric examination. In total 18 reports were submitted to the Asylum Office with an aim to indicate the level and type of psychological vulnerability of the person of concern.

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%.⁵⁶¹

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 refugees, asylum seekers and migrants in Serbia*⁵⁶², 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.⁵⁶³ 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).⁵⁶⁴

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.

When it comes to the vulnerability assessment of torture victims, it is usually conducted by CSOs who have funds for forensic medical or psychiatric examinations. These reports are then delivered to the Asylum Office.

⁵⁶¹ 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.

⁵⁶² 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>.

⁵⁶³ *Ibid.*

⁵⁶⁴ Information obtained by PIN.

Persons at risk of SGBV and SGBV survivors

In 2021, 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 2021. Additionally, 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.

Within cases identified by DRC in 2021, specific follow-up was conducted in relation to 31 SGBV survivors. When it comes to forms of violence, DRC Protection Team has identified 16 cases of domestic violence, 13 cases of sexual violence (of which 2 cases of sexual exploitation) and 2 cases of sexual harassment. DRC Legal Counsellor (part time presence) provided legal counselling to all 31 SGBV survivors, lodged 6 criminal complaints, and 3 lawsuits and represented 8 SGBV survivors before relevant institutions. Upon the request of the legal representatives, DRC wrote expert opinions for **three SGBV survivors**, that were required for their asylum procedure.

In 2021, a total number of **132 female POCs** participated in 30 awareness-raising activities on the following topics: position of women, minors and other vulnerable categories of population in asylum proceedings; status and rights of asylum seekers and refugees in Serbia – legislation and practice; family law in Serbia, prevention and protection against SGBV including information regarding existing legislation, COVID-19 preventive measures, information regarding immunisation, reproductive health, access to the health system in Serbia, etc.

With changes of nationalities of applicants accommodated in AC Krnjača, the reported forms of GBV has changed as well. The survivors from Burundi, and other African countries such as Cameroon, reported torture as a main reason for leaving their country and that torture in majority of the cases included group raping by the military forces. That was a main reason for increasing number of identified cases of sexual violence.

When it comes to the response of the mandatory institutions, DRC Protection Team noticed that practice varies from location to location and depends on who reported the violence. Police immediately reacted in cases when violence happened within the asylum centre and was reported by SCRM as a state institution.

Excessive length of asylum procedure, negative decisions rendered without SGBV safeguards, as well as challenges with regards inclusion and integration (employment, housing, child care, etc) accompanied with a pressure by their families in countries of origin, have been a driving force for the majority of the SGBV survivors to continue risky journey towards EU countries. The lack of an independent life due to the fact that the majority of women were not able to go to school and had no job experience were the main causes for reconciliation with their abusive partners. Further, lack of childcare support for single mothers has been a huge obstacle in searching for employment. DRC /UNHCR Protection Team identified two cases of survival sex due to lack of money for the basic needs.

It is important to mention that provided statistics took into account the form of violence that was primarily 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.

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. Prejudices

among professionals toward asylum seeking and refugee women in regard 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.⁵⁶⁵ 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.

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.”⁵⁶⁶

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,⁵⁶⁷ it is not prescribed

⁵⁶⁵ According to the CRM, 10 cases of domestic violence were reported to the Public Prosecutor Office.

⁵⁶⁶ Article 2 Asylum Act.

⁵⁶⁷ Article 35(6) Asylum Act.

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.⁵⁶⁸

According to the current legal framework, the Mol and the social protection system are primarily responsible for protecting the rights of unaccompanied and separated children in Serbian asylum system, but also the health care system plays significant role. In line with the Mol Instruction on Standard Operating Procedures for Profiling, Search and Registration of Irregular Migrants (SoP), during the first contact with the child (at the border or within mainland), the police officer is obliged to determine whether there is an urgent need for health care provision⁵⁶⁹ and if so, the police officer is obliged to contact the competent health-care services.⁵⁷⁰ Also, an UASC identified at the border shall not be served with a decision on refusal of entry but will receive decision granting him or her entry.⁵⁷¹

The identification of UASC, which includes the assessment of the child's age, is done through the procedure of verification and identification, which is performed by a police officer. Identity verification is performed through inspection of an identification document which contains photograph, or exceptionally, based on the statement of the person whose identity has been verified.⁵⁷² Regarding UASC who does not have identification document, and if identity cannot be verified in another way, identity will be determined by using data from forensic records, applying methods and using means of criminal tactics and forensics, medical or other appropriate expertise.⁵⁷³ In order to establish their identity, the child can be brought to the official premises of the police.⁵⁷⁴ The police officer is obliged to inform the child, when bringing him, about the reasons for bringing him, the right to inform the family or other persons of their choice and other rights of persons deprived of liberty and in a language that the child understands.⁵⁷⁵

When a police officer determines that an individual is UASC, they are obliged to compile a report which also contains the identity determined in line with the above-described methods, which in practice is only the statement of a child, unless he or she has a document.⁵⁷⁶ This report should be then submitted to the competent Center for Social Work (CSW) in order for a child to be taken over by the social-care system.⁵⁷⁷ A police officer shall contact a representative of the CSW without a delay, if there is a reasonable suspicion that the person in case is a child and in order to gather additional information important to establish facts from their life and provide adequate protection.

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 1,133 children recorded in 2021, only 60 were registered, 8 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 2021⁵⁷⁸

⁵⁶⁸ Ministry of Justice, Legal Opinion No. 011-00-125/2020-05, 16 September 2020.

⁵⁶⁹ Page 20 SoP.

⁵⁷⁰ *Ibid.*

⁵⁷¹ Article 15 Foreigners Act.

⁵⁷² Article 76 Police Act.

⁵⁷³ Article 77 Police Act.

⁵⁷⁴ Article 12 (2) Rulebook on Police Powers.

⁵⁷⁵ Article 85 Police Act.

⁵⁷⁶ Which is usually not the case taking in consideration that the cast majority of children are UASC.

⁵⁷⁷ Article 12 (2) Rulebook on Police Powers.

⁵⁷⁸ All the information was obtained from IDEAS.

and in general, 2021 was the year in which only few UASC applied for asylum – only 8. Thus, the age is determined on the basis of the statement of a child. What is also a concerning practice is that Mol officers who are tasked with issuing of the registration certificates usually ask children how old they are. When a child says the number of years, the police officer then subtracts that number from the number of the given year (e.g. 2021) and puts 1 January as a date of birth. This practice is not in line with the principle of *in dubio pro reo*, i.e. the principle of the benefit of the doubt established by the CRC.⁵⁷⁹ Thus, if a child who is 17 arrives in Serbia in 2021, his date of birth would be set at 1 January 2004. Thus, this child would be considered as an adult on 1 January 2022. However, what if this child was born in December of 2004? This means that a person under the age of 18 would be treated as adult, which is contrary to Asylum Act, Constitution and international standards. The benefit of the doubt criterion would be respected only if the registration certificate would outline 31 December of the given year.

To reiterate, 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.⁵⁸⁰ On 4 April 2018, the Ministry of Labour, Employment, veteran and Social Affairs adopted the Instruction on Procedures of Social Work Centres⁵⁸¹ 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.⁵⁸²

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 Mol 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.⁵⁸³ The Committee on the Rights of the Child,⁵⁸⁴ and the Human Rights Committee,⁵⁸⁵ underlined these problems as well. During 2021, 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.

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.

In 2021, IDEAS tried to challenge the practice of 'age assessment' conducted by police officers issuing registration certificates. By invoking of the benefit of the doubt principle, IDEAS lawyers requested from the Asylum Office to issue registration certificates of two boys – Pakistan and Afghanistan – on 31 December of the year in which they were born, not on 1 January as it had already been done. They

⁵⁷⁹ CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, dostupno na: <https://bit.ly/2KIs2S5>, u daljem tekstu: Opšti komentar br. 6.

⁵⁸⁰ There is no record that an age assessment procedure has ever been conducted in line with the Family Act.

⁵⁸¹ 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.

⁵⁸² Section II, para. 2 of the Instruction on Procedure of Social Work Centres.

⁵⁸³ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 97-98.

⁵⁸⁴ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, 56-57.

⁵⁸⁵ HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para. 32-33.

invoked the practice of the CRC and its General Comments.⁵⁸⁶ However, both of these requests were rejected as unfounded by both Asylum Office⁵⁸⁷ and Asylum Commission.⁵⁸⁸

Over the course of 2021, the asylum authorities issued registration certificates to a total of 60 UASC, out of a total of 1,133 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. This activity continued in 2021.

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.⁵⁸⁹

In 2021, 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.⁵⁹⁰ Moreover, the length of the procedure can be described as extensive.⁵⁹¹ 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.⁵⁹² 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.⁵⁹³

National law further foresees the exemption of unaccompanied children from accelerated and border procedures.⁵⁹⁴

⁵⁸⁶ CRC, *A.B v. Spain*, Decision of 7 February 2020, CRC/C/83/D/24/2017, available at: <https://bit.ly/3kbTzsh>, para. 10.4; *N.B.F. v. Spain*, Decision of 18 February 2019, CRC/C/79/D/11/2017, available at: <https://bit.ly/37Dm1hF>, para. 8; *A.D v. Spain*, Decision of 14 August 2019, CRC/C/80/D/14/2017, available at <https://bit.ly/3aJuGkw>, para. 10.4 and *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6.

⁵⁸⁷ Asylum Office, Decisions Nos. 26-3229/19, 21 May 2021 and 26-11/21, 13 April 2021.

⁵⁸⁸ Asylum Commission, Decision No. AŽ 09/21, 5 July 2021.

⁵⁸⁹ Article 15 Asylum Act.

⁵⁹⁰ Asylum Office, Decisions Nos. 26-1084-20, 7 June 2021 and. 26-3064/19, 14 September 2021

⁵⁹¹ *Ibid*; the procedures lasted for more than 18 months.

⁵⁹² The most important decisions regarding vulnerable applicants are analysed in the Chapter C.1. – Asylum Practice in 2021.

⁵⁹³ Asylum Office, Decision No. 2349/19, 12 January 2021.

⁵⁹⁴ Articles 40(4) and 41(4) Asylum Act.

3. Use of medical and psychological reports

Indicators: Use of Medical Reports

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

Medical or psychological reports may be used in order to substantiate asylum claims; as is prescribed by the General Administrative Procedure Act.⁵⁹⁵ 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 2021 the Asylum Office did not submit any the request to PIN, but there were dozens of cases in which lawyers provided such reports.

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.⁵⁹⁶

The second time the Asylum Office directly took into consideration the state of health of the applicants was in December 2017, when one Nigerian⁵⁹⁷ and one Bangladesh⁵⁹⁸ 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.⁵⁹⁹

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.⁶⁰⁰ 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,⁶⁰¹ as well as the BID,⁶⁰² while the report of the psychiatrist was taken in consideration in the case of Uyghur applicant from China who is a torture victim.⁶⁰³ This practice continued in 2021 and in cases of Afghan⁶⁰⁴ and Pakistani⁶⁰⁵ UASC, Iranian torture victim⁶⁰⁶ and two torture victims from Burundi.⁶⁰⁷ An Afghan applicant received subsidiary protection due to inability to receive medical

⁵⁹⁵ 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.

⁵⁹⁶ ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

⁵⁹⁷ Asylum Office, Decision No. 26-4370/15, 27 December 2017.

⁵⁹⁸ Asylum Office, Decision No. 26-5044/15, 25 December 2017.

⁵⁹⁹ Asylum Office, Decision No. 26-222/15, 3 July 2018.

⁶⁰⁰ Asylum Office, Decision No. 26-329/18, 28 December 2019.

⁶⁰¹ Asylum Office, Decisions Nos. 26-2348/17, 28 January 2019; 26-2643/17, 30 January 2019; 26-1605/18, 15 March 2019.

⁶⁰² Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

⁶⁰³ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

⁶⁰⁴ Asylum Office, Decision No. 26-1084/20, 7 June 2021

⁶⁰⁵ Asylum Office, Decision No. 26-3064/19, 14 September 2019.

⁶⁰⁶ Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁶⁰⁷ Asylum Office, Decisions Nos. 26-1337/20, 29 June 2021 and 26-103/20, 30 June 2021.

treatment in his country of origin. Pakistani boy was psychologically assessed and CHTV decision granting him the status of the victim of human trafficking was also taken in consideration. Asylum Office closely examined forensic medical reports from two Burundian applicants, as well as psychological report lodged by torture victim from Iran.

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 in the course of 2021 and at the same time the number of genuine asylum seekers out of this population remains low. In total, 60 UASC were issued with the registration certificate (compared to 823 in 2019). However, only 8 of them submitted asylum application.

In the history of Serbian asylum system, only 10 UASC were granted asylum in Serbia:

No.	Decision No.	Date of Decision	Country of Origin	Type of Protection	Grounds for Asylum
1.	26-329/18	28 December 2018	Nigeria	Refugee Status	Human Trafficking – Sexual Exploitation
2.	26- 2348/17	28 January 2019	Iraq	Refugee Status	Forced recruitment by Iraqi Kurdish armed forced Peshmerga
3.	26-2643/17	30 January 2019	Afghanistan	Subsidiary Protection	Forced recruitment by Taliban
4.	26-784/18	20 November 2019	Afghanistan	Refugee Status	Forced recruitment by Taliban
5.	26-218/19	20 February 2020.	Stateless	Refugee Status	Forced recruitment by Syrian armed forces
6.	26-2573/19	15 October 2020	Afghanistan	Refugee Status	Forced recruitment by Taliban
7.	26-1271/19	15 October 2020	Iran	Subsidiary Protection	Conversion from Islam to Christianity
8.	26-2474/19	15 October 2020	Afghanistan	Subsidiary Protection	Honour killing arising from the family dispute
9.	26-1084/20	7 June 2021	Afghanistan	Subsidiary Protection	Medical condition and the lack of medical treatment in country of origin
10.	26–3064/19	14 September 2019	Pakistan	Refugee Status	Human Trafficking – Sexual and Labour Exploitation

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.⁶⁰⁸

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,

⁶⁰⁸ 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.

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.⁶⁰⁹

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.⁶¹⁰

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.⁶¹¹ The police cannot register an unaccompanied child who expressed the wish to seek asylum in absence of a temporary guardian.⁶¹²

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.⁶¹³

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.⁶¹⁴ 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.⁶¹⁵ 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 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

⁶⁰⁹ Article 10(2) Asylum Act.

⁶¹⁰ Articles 125 and 126 Family Act.

⁶¹¹ Article 12 Asylum Act.

⁶¹² Article 11 Asylum Act.

⁶¹³ Article 128 Asylum Act.

⁶¹⁴ 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.

⁶¹⁵ That was the case in AC in Bogovadja, which was designated for the accommodation of UASC in 2020, as well as AC in Sjenica.

or direct knowledge about an unaccompanied child.⁶¹⁶ The next step is urgent appointment of a temporary guardian to the child.

In 2021, **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.

In March 2022, CESCR recommended that Serbia provide all unaccompanied and separated children with alternative care arrangements and guardianship protection and ensure that they continue education with adequate support, including adequate language learning.⁶¹⁷

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.”⁶¹⁸ 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.⁶¹⁹ The applicant must provide all the above and bring forward evidence in a comprehensible manner.⁶²⁰ 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.⁶²¹

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.⁶²²

⁶¹⁶ 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.

⁶¹⁷ CESCR, *Concluding observations on the third periodic report of Serbia*, 4 March 2022, E/C.12/SRB/CO/3, available at: <https://bit.ly/3u87IBI>, paras. 32-33.

⁶¹⁸ Article 46(1) Asylum Act.

⁶¹⁹ *Ibid.*

⁶²⁰ Article 46(2) Asylum Act.

⁶²¹ Article 46(3) Asylum Act.

⁶²² Article 46(4), (5) and (6) Asylum Act.

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.⁶²³ In 2020, only 2 subsequent applications were submitted, while in 2021 a total of 11 subsequent asylum applications were lodged: Iran (6), Bulgaria (3), Cameroon (1) and Pakistan (1). All subsequent applications were rejected as unfounded and all applicants were already on the territory of the Serbia.

Two decisions are worth mentioning because they were both based on subsequent asylum applications which contained new facts and evidence which were not examined in the initial asylum procedure. The argumentation of applicants (4 member Iranian family who converted from Islam to Christianity) in the first case implied that they failed to outline the new evidence because they were not aware that such possibility. This evidence was a witness statement of applicant's brother as well as decision on refugee status which the brother received in the Netherlands. The Asylum Office outlined that it is the applicant's fault that they failed to provide such evidence, and that the fact that they had legal representative is an additional argument that goes in favour of their standing that there is no justification for not bringing that up in the initial procedure.⁶²⁴

The second case gives serious reasons for concern because it was related to an UASC from Pakistan who lodged his asylum application, but then absconded because his lawyer was not answering his calls. Thus, there has never been a decision on his case. After he returned back, he expressed his will to apply for asylum again. The argumentation which was provided by his legal representatives was the following:

- he was in mental distress due to COVID-19 pandemic as an extremely vulnerable and traumatized applicant who suffered from Albinism. Psychological report was provided to support this claim
- he outlined new facts which he did not outline in his asylum application because he changed two lawyers and none of them spent more than 1 hour in total in preparation for asylum request. For that reason, the very asylum request did not contain all relevant facts
- the very fact that Asylum Office has never decided on his asylum application, but simply discontinued his asylum procedure due to his absconding, implies that asylum authorities have never even considered facts and evidence that he outlined in his first asylum application, but also newly provided facts and evidence which he provided after through legal counselling.

Arguments of Pakistani subsequent applicant was rejected and the essence of the reasoning was that applicants had legal representatives who should have secured that he outlines all the evidence. Also, the argument that his case has never been examined in merits, but simply discontinued were completely ignored. This further means that subsequent applications can only be considered as theoretical and illusory in case of absconding, but also in case of inadequate legal representation.⁶²⁵

There were no instances in which applicants who had been returned to their countries of origin came back to Serbia and lodged subsequent application. Applicants who lodge subsequent application are considered to be asylum seekers and are entitled to material reception conditions.

⁶²³ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

⁶²⁴ Asylum Office, Decision No. 26-2404/18, 7 June 2021.

⁶²⁵ Asylum Office, Decision No. 26-3229/19, 21 May 2021.

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.⁶²⁶ 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.

In 2021, the Asylum Office dismissed 4 asylum applications of citizens of citizens of Iran (1), Pakistan (1), Libya (1) and Burundi. Since the author of this Report could not obtain these decisions, it remains unclear to which of the bellow described concepts it referred.

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.⁶²⁷ 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.⁶²⁸

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.⁶²⁹

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,⁶³⁰ as well as “the views of the competent authorities specified by this Law.”⁶³¹ 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.⁶³² This list is yet to be adopted.

⁶²⁶ Article 43-45 Asylum Act.

⁶²⁷ Article 44 Asylum Act.

⁶²⁸ Article 44 (1) Asylum Act.

⁶²⁹ Article 44 (2) and (5) Asylum Act.

⁶³⁰ Article 44 (3) Asylum Act.

⁶³¹ Article 44 (4) Asylum Act.

⁶³² Article 44 (6) Asylum Act.

The safe country of origin concept was applied only once in practice so far and in relation to the citizen of **Montenegro**.⁶³³ This decision was confirmed during the course of 2019 by both the Asylum Commission⁶³⁴ and the Administrative Court.⁶³⁵ No decisions relying on the safe country of origin concept were rendered in 2020 and 2021 according to the author's knowledge.

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.⁶³⁶ 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.⁶³⁷ 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 claim⁶³⁸ 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 two relevant cases pending before ECtHR as of March 2022.⁶³⁹ 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. In 2021, maximum of 4 applicants could have been subjected to the STCC decision (Iran, Pakistan, Libya and Burundi), but since the author did not succeed in obtaining these decisions, it is not possible to claim with certainty if this concept was applied.

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.⁶⁴⁰

Interpreting the Asylum Act as a whole, it follows from Article 32 that the Asylum Office collects and considers all the relevant facts, evidence and circumstances when deciding on the merits of the asylum application as well as on the assessment of a certain third country as "safe". Under "facts, evidence and circumstances" it considers "current reports about the situation in... countries of transit [of the applicant], including the laws and regulations of these countries and the manner in which they are applied – as contained in various sources provided by international organizations including UNHCR and the European Asylum Support Office... and other human rights organisations."

Additional provisions regarding the application of the safe third country concept have been provided in Article 17 of the Asylum Act which refers to specific personal circumstances that must be taken into

⁶³³ Asylum Office, Decision No. 26-1720/18, 21 December 2018.

⁶³⁴ Asylum Commission, Decision AŽ 2/19, 1 March 2019.

⁶³⁵ Administrative Court, Judgment U 5037/19, 12 June 2019.

⁶³⁶ AIDA, Country Report Serbia, 2020 Update, May 2020, p. 57-58.

⁶³⁷ 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.

⁶³⁸ 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.

⁶³⁹ 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.

⁶⁴⁰ Article 45(1) Asylum Act.

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.⁶⁴¹ 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 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.

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.

⁶⁴¹ Article 45(2) Asylum Act.

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.⁶⁴²

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to his or her specific circumstances.⁶⁴³

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,⁶⁴⁴ but the author of this report cannot claim with certainty if this concept was applied in 2021. 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.⁶⁴⁵ Asylum Commission rejected BCHR's appeal, but the Administrative Court upheld it stating in essence that the time which was left to the applicant to dispute the safety in the first country of asylum was insufficient.⁶⁴⁶ 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.⁶⁴⁷

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.⁶⁴⁸ 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.⁶⁴⁹

⁶⁴² Article 43(1) Asylum Act.

⁶⁴³ Article 43(2) Asylum Act.

⁶⁴⁴ Asylum Office Decision No. 26-1515/19 of 13 August 2020.

⁶⁴⁵ BCHR, Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020, 22-23.

⁶⁴⁶ See more in, BCHR, *Right to Asylum in the Republic of Serbia 2021*, 60.

⁶⁴⁷ Administrative Court, Judgment U 13967/20, 13 November 2020.

⁶⁴⁸ Article 56 Asylum Act.

⁶⁴⁹ 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?⁶⁵⁰ Yes No

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

Since the entry into force of the Asylum Act in 2008, asylum authorities in Serbia rendered 138 decisions granting asylum (refugee status of subsidiary protection) to 196 persons from 25 different countries.⁶⁵¹ including from Libya (46), Syria (27), Afghanistan (26), Iran (19), Iraq (16), Ukraine (10), Burundi (8), Cuba (7), Sudan (5), Somalia (5), Pakistan (4), Ethiopia (3), Russia (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. Also, it is important to note that Turkish political activists, mainly of Kurdish origin, stand no chance to receive international protection.

⁶⁵⁰ Whether under the “safe country of origin” concept or otherwise.

⁶⁵¹ The author of this Report has collected 119 out of 138 decisions. The number of decisions and applicants was counted by the author of this Report and on the basis of a unique database which is established in IDEAS. Namely, official number of persons who received international protection in Serbia is 208. However, this number includes the cases which were not final in the given year. For instance, there is at least 7 asylum procedures in which legal representatives appealed the decision on subsidiary protection claiming that their clients deserve refugee status. Asylum Commission or Administrative Court upheld appeals and onward appeals respectively and sent the case back to the Asylum Office. However, Asylum Office rendered the same decision (subsidiary protection) with regards to the same person. The lawyers were then complaining again. There were instances in which 1 person received 3 decisions on subsidiary protection in the period of 7 years and was granted refugee status in the end. However, it is possible that the statistics provided by the author of this Report are not 100% accurate. Still, the author believes that this is the most accurate statistics which can be provided for now and potential variations cannot be higher than maximum 5 decisions regarding 5 applicants.

Short overview of the reception system

The Commissariat for Refugees and Migration is in charge of governing asylum and reception centres in Serbia.⁶⁵² There are 7 Asylum Centres (AC) and 12 Reception Centres (RC) which have been used for accommodation of refugees, asylum seekers and other categories of migrants in 2021. According to official data, the total capacity of 19 asylum and reception centres in 2021 remained 5,655 beds. The reception capacity is measured in terms of available beds and not in accordance with certain standards, for instance, EASO Guidelines,⁶⁵³ or other standards developed by other bodies such as CPT,⁶⁵⁴ or the CESCR.⁶⁵⁵ Most of the facilities are collective accommodation centre or even a large-scale type since only RC **Dimitrovgrad** and RC **Bosilegrad** have the reception capacity below 100. Thus, realistic capacities which meet all relevant standards, and which can be used for a longer stay is between 2,500 to 3,000.

Additionally, during the COVID-19 lockdown in 2020,⁶⁵⁶ two additional emergency shelters in **Miratovac** and **Morović** were established but they were not operational in 2021.⁶⁵⁷ 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, which lasted in the period March-May 2020. 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 **Bogovađa**. The asylum procedure was not conducted in AC **Tutin**, AC **Sjenica**, AC **Obrenovac** and AC **Vranje** nor in Reception Centres in 2021. Those foreigners who are issued with registration certificates and referred to Reception Centres, have to be, usually with the assistance of legal representatives, transferred to one of 3 asylum centres to which asylum officers go for the purpose of facilitating asylum procedure (Krnjača, Bogovađa and Banja Koviljača). Several dozen foreigners lodged written asylum application from the Reception Centres, after which they were transferred to AC Krnjača.

In 2020, CRM designated AC **Bogovađa** and AC **Sjenica** for accommodation of UASC, None of the said facilities meet the child-specific standards, even though these centres are usually not overcrowded, and hygiene is decent. However, AC Sjenica ceased to be used as a camp for UASC, while AC Bogovađa was partially designated for adult asylum seekers in the second half of 2021. In 2021, AC Banja Koviljača was closed for the purpose of refurbishment. RC Obrenovac and RC Vranje were officially turned into Asylum Centres since they underwent refurbishment in 2020-2021.⁶⁵⁸ As of 20 April 2022, AC Vranje accommodated 40 refugees from Ukraine.

According to the Asylum Act, a foreigner obtains the status of asylum seekers only after he or she lodges asylum application.⁶⁵⁹ Prior to that, persons issued with registration certificates are not considered to be

⁶⁵² Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁶⁵³ EASO, *EASO guidance on reception conditions: operational standards and indicators*, September 2016, available at: <http://bit.ly/3j1XabQ>.

⁶⁵⁴ 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.

⁶⁵⁵ 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>.

⁶⁵⁶ 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.

⁶⁵⁷ Ibid., 4 and 5.

⁶⁵⁸ Decision of the Government of the Republic of Serbia, no. 02-5650/2021, available at: <https://bit.ly/3nqLK4Z>.

⁶⁵⁹ Article 2 (1) (4) Asylum Act.

asylum seekers and thus are not entitled to rights and obligations envisaged in the Asylum Act, which encompass the right to accommodation.⁶⁶⁰ Accordingly, even though the vast majority of foreigners were accommodated in asylum and reception centres in the course of 2021, 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. Still, it is important to note that the first draft of Amendments to the Asylum Act tends to remedy this situation and recognizes a new category of persons in need of international protection – persons issued with the registration certificate who did not lodge asylum application.

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 2,306 foreigners were officially referred to one of 19 functional accommodation facilities in 2021, while the remaining 58,32 foreigners whose presence in asylum or reception centres was recorded by the UNHCR and CRM s 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.⁶⁶¹

AC **Krnjača** and AC **Bogovađa** 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 entitled to stay in asylum centres up to one year after their decision on asylum became final.⁶⁶²

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 |

⁶⁶⁰ Article 48 Asylum Act.

⁶⁶¹ Many of them have resided in asylum or reception centres for more than a year or two.

⁶⁶² Article 61 Asylum Act.

The CRM is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.⁶⁶³

In the course of asylum procedure, asylum seekers are entitled to be accommodated in one of the 7 Asylum Centres or other designated facility established for that purpose.⁶⁶⁴ These other facilities are 12 Reception Centres. However, it is important to note that AC in Banja Koviljača, as well as AC Vranje, RC Bujanovac, RC Pirot and RC Dimitrovgrad were not functional during 2021 (see [Types of Accommodation](#)).⁶⁶⁵

Persons issued with a registration certificate are expected to present themselves at the centre indicated via a central mechanism between the MoI 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.⁶⁶⁶

Similarly as in 2020, in 2021 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, 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, many 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. Additionally, 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.⁶⁶⁷ 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 **Bogovađa** Asylum Centre, but since October 2021, UASC were also referred to one of the barracks in AC **Krnjača**.

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.⁶⁶⁸ 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.

⁶⁶³ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁶⁶⁴ Article 51(1) Asylum Act.

⁶⁶⁵ RC Dimitrovgrad was not operational during 2020.

⁶⁶⁶ Article 35(12) Asylum Act.

⁶⁶⁷ UNHCR Statistical Report for 10 January 2021 highlighted that 1,354 persons were spotted in informal settlements.

⁶⁶⁸ Article 50(8) Asylum Act.

On 20 June 2021, 124 refugees and asylum seekers were residing in private accommodation, while 41 UASCs were accommodated in social care institutions designated for children.⁶⁶⁹

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 2021 (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.⁶⁷⁰ The new Asylum Act has introduced in 2018 the possibility of cash allowance for personal needs.⁶⁷¹ However, not a single cash allowance has been granted so far according to the author's knowledge, nor was such practice publicly reported by relevant CSOs in 2021 and the first quarter of 2022.

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.⁶⁷² 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:⁶⁷³

- Single adult: RSD 8,781 (74.5 EUR)
- Family member: RSD 4,391 (38 EUR)
- Minor child: RSD 2,634 (22 EUR)

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 GAPAs 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.⁶⁷⁴

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.⁶⁷⁵ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.⁶⁷⁶

⁶⁶⁹ UNHCR Statistical Report for 20 June 2021.

⁶⁷⁰ Article 50(1) Asylum Act.

⁶⁷¹ Article 50(2) Asylum Act.

⁶⁷² Article 53 Asylum Act.

⁶⁷³ Decision on nominal amounts of social assistance, 21 April 2021.

⁶⁷⁴ Article 50(4) Asylum Act.

⁶⁷⁵ Article 50(5) and (6) Asylum Act.

⁶⁷⁶ Article 50(7) Asylum Act.

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,⁶⁷⁷ and equal and planned economic development by managing migration,⁶⁷⁸ 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.

COVID-19 restrictions in 2020

The COVID-19 pandemic severely impacted the right to freedom of movement of refugees, asylum seekers and migrants as they were prohibited from leaving asylum and reception centres from 10 March 2020 to 14 May 2020.⁶⁷⁹ While these restrictions no longer applied in 2021, i.e. refugees, asylum seekers and migrants were allowed to fully enjoy their right to liberty and security and right to freedom of movement, the description of these measures are outlined below for background information and because the ECtHR communicated two applications to the Government of the Republic of Serbia and decided to treat these applications as 'impact cases'.⁶⁸⁰

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.⁶⁸¹

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.⁶⁸² This decision was rendered in line with Article 6, Paragraph 1 of the Law on the Protection of the Population from Infectious Diseases (LPPID).⁶⁸³ Thus, this restriction was imposed through bylaw, which consisted of only 2 Articles:

⁶⁷⁷ Article 4 Migration Management Act.

⁶⁷⁸ Article 5 Migration Management Act.

⁶⁷⁹ *Hod po žici*, Chapter IV, see also AIDA, Country Report Serbia, 2021 Update, March 2020, 74-77.

⁶⁸⁰ A.A. and Others v. Serbia, Application Nos. 50086/20 50898/20, available at: <https://bit.ly/3GUV4F1>.

⁶⁸¹ *Ibid.*

⁶⁸² Official Gazette no. 32/2020, hereinafter: Decision of Temporary Restriction of Movement.

⁶⁸³ Official Gazette no. 15/2016.

'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 2019 was suspended and its provisions were transposed into a new 2020 Decree on Emergency Measures (Decree) in identical form.⁶⁸⁴ The Decree was the main legal act in force during the state of emergency and it prescribed the derogation measures in general.⁶⁸⁵ Thus, from the "regular legal regime",⁶⁸⁶ 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.

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.⁶⁸⁷

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**,⁶⁸⁸ but also in two Analysis published by A11 and IDEAS.⁶⁸⁹ 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.⁶⁹⁰ The terminology that was used in all of the laws was 'limitation to freedom of movement'.

⁶⁸⁴ Official Gazette, nos. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020 and 53/2020

⁶⁸⁵ 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>, 4-6.

⁶⁸⁶ Meaning the legal regime, which is valid in regular circumstances, not during the state of emergency.

⁶⁸⁷ Official Gazette No. 66/2020, hereinafter: MoH Order.

⁶⁸⁸ NPM, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, 16 June 2020, available at: <https://bit.ly/2NLyWRc>, 23.

⁶⁸⁹ 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>, 40.

⁶⁹⁰ ECtHR, *Guzzardi v. Italy*, App. No. 7367/76, Judgment of 6 November 1980, available at: <http://bit.ly/2V0jJmt>, para. 92.

However, the above-described treatment undoubtedly 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.⁶⁹¹ 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.⁶⁹² 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.⁶⁹³

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.

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.⁶⁹⁴ 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.⁶⁹⁵

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.⁶⁹⁶ 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.⁶⁹⁷ In essence, they were denied the possibility to effectively use the right to appeal to the judicial body⁶⁹⁸ 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

⁶⁹¹ ECtHR, *Ilias and Ahmed v. Hungary*, Application No. 47287/15, Judgment of 21 November 2019 [GC], EDAL, available at: <http://bit.ly/3pCI711>, para. 217.

⁶⁹² ECtHR, *Strock v. Germany*, App. No. 61603/00, Judgment of 16 June 2005, available at: <http://bit.ly/3esoyws>, para. 73.

⁶⁹³ ECtHR, *Stanev v. Bulgaria*, App. No. 36760/06, Judgment of 17 January 2012, available at: <http://bit.ly/3fGxdvK>, para. 117.

⁶⁹⁴ ECtHR, *Creangă v. Romania*, Application No. 29226/03, available at: <http://bit.ly/2NcU1XD>, para. 101.

⁶⁹⁵ 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*, 12-13

⁶⁹⁶ 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.

⁶⁹⁷ ECtHR, *Čonka v. Belgium*, Application No. 51564/99, Judgment of 5 February 2002, EDAL, available at: <http://bit.ly/2YLIUeh>, para. 50.

⁶⁹⁸ ECtHR, *Shamayev and Others v. Georgia and Russia*, App. No. 36378/02, Judgment of 12 April 2005, par. 413.

- 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.⁶⁹⁹

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.⁷⁰⁰

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,⁷⁰¹ 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 2020.⁷⁰²

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.⁷⁰³

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.⁷⁰⁴

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.⁷⁰⁵ 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.⁷⁰⁶

⁶⁹⁹ A11 Analysis on Detention of Foreigners during the State of Emergency, 16.

⁷⁰⁰ *Ibid.*, p. 17 and 18.

⁷⁰¹ *Hod po žici*, 77.

⁷⁰² *Ibid.*

⁷⁰³ *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.

⁷⁰⁴ *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.

⁷⁰⁵ Available at: <https://bit.ly/3beJju9> [visited on 18 April 2020].

⁷⁰⁶ See more in A11 and IDEAs.

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.⁷⁰⁷ Several applications were submitted to ECtHR (1 by BCHR and 2 by IDEAS) soon after.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ⁷⁰⁸	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:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input type="checkbox"/> Private housing
<input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input type="checkbox"/> Private housing
<input type="checkbox"/> Other	

Both Asylum Centres and Reception Centres are established by the Government's decision.⁷⁰⁹ The work of Asylum Centres and Reception Centres is managed by the Commissariat.⁷¹⁰

Persons entering the asylum procedure in Serbia are usually accommodated at one of the 7 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 June 2021, 125 persons granted asylum and asylum seekers were residing at a private address, compared to 135 on 19 December 2021.⁷¹¹ These facilities 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 2021 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.

⁷⁰⁷ CC, Decision no. Iyo – 45/2020, Decision of 15 October 2020, p. 31-32 and Iyo – 62/2020, 1 February 2020.

⁷⁰⁸ Both permanent and for first arrivals.

⁷⁰⁹ Article 51(2) and (3) Asylum Act.

⁷¹⁰ Article 51(4) Asylum Act.

⁷¹¹ UNHCR Statistical Reports for 10 June 2021 and 19 December 2021.

1.1. Asylum Centres

There were 5 active Asylum Centres in Serbia in 2021:

Asylum Centre	Capacity
Banja Koviljača	120
Bogovađa	200
Tutin	200
Sjenica	400
Krnjača	1,000
Vranje	230
Obrenovac	650
Total	2,440

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 2,440. 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. Asylum Centres were not overcrowded during 2021.⁷¹²

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 transiting towards their preferred destination countries in the European Union.

Reception Centres established in Serbia are the following: **Preševo, Bujanovac, Pirot, Dimitrovgrad, Bosilegrad, Šid, Principovac, Adaševci, Sombor, Subotica, Kikinda** and **Bela Palanka** ('Divljana').

In 2021, the respective capacities of the temporary reception centres were as follows:

Temporary reception centre	Border location	Capacity
Preševo	North Macedonia	800
Bujanovac	North Macedonia	270
Sombor	Croatia	120
Principovac	Croatia	220
Adaševci	Croatia	400
Subotica	Hungary	130
Bela Palanka (Divljana)	Bulgaria	300
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	110
Pirot	Bulgaria	190
Kikinda	Romania	280
Šid	Croatia	205
Total		3,115

⁷¹² Except during the COVID-19 lockdown.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Unknown
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

Overcrowding, lack of privacy and poor hygiene are just some of the reported issues. These deficiencies were also highlighted in the 2017 report of the Council of Europe Special Representative of the Secretary General on migration and refugees who highlighted that standards of accommodation in both Asylum and Reception Centres could potentially raise issues under Article 3 ECHR.⁷¹³

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.⁷¹⁴ AC Banja Koviljača was closed for refurbishing for most of 2021 and as of March 2022, the renovation was still ongoing.

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 near 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.

Prior to the renovation, the centre in **Banja Koviljača** had 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. The AC also 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.

⁷¹³ 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>.

⁷¹⁴ *A11 Analysis on Detention of Foreigners during the State of Emergency*, 4-6.

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.

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.

It is reasonable to assume that AC Banja Koviljača will be one of the best accommodations for asylum seekers after the refurbishments are concluded.

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 it was running at its capacity most of the time. During 2021, after one barrack in AC Krnjača was designated for UASC, half of AC Bogovađa's capacity were designated for asylum seekers from Cuba.

In December 2020, an incident between the children and employees occurred,⁷¹⁵ 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.⁷¹⁶ This kind of measure was applied at several dozen of UASC and this act was praised by the Ombudsman,⁷¹⁷ which gives another

⁷¹⁵ 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]

⁷¹⁶ NPM, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, 16 June 2020, available at: <https://bit.ly/2NLYwRc>, 25.

⁷¹⁷ 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].

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.

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.⁷¹⁸ 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 prosecutor⁷¹⁹ 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.

There were no noteworthy incidents recorded in 2021.

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. However, the registration officer was not present in AC Bogovađa in 2021, and those UASC who wished to apply for asylum had to be transported to PS Lajkovac. During 2020 and 2021, 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. The same situation was recorded in 2021. 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.

A medical team used to be present in the centre every working day. However, the full time employed doctor decided to leave during 2021, leading to a situation in which nurses were providing primary health care, while doctor from Lajkovac Health Care Center was visiting AC when it is necessary. 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.

⁷¹⁸ Mondo, JEZIV SNIMAK iz Bogovađe: Obezbeđenje TUČE DETE MIGRANTA! (VIDEO), available at: <http://bit.ly/3pQuu8B> [accessed on 1 February 2021].

⁷¹⁹ 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].

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. A total of 24 children was enrolled into elementary school in 2021.

However, the situation in AC **Bogovađa** can be described as harmonious in 2021, mainly due to the fact that AC was not overcrowded. Still, children are still not satisfied with the location of the camp.

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 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.⁷²⁰

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.

⁷²⁰ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

The AC in **Sjenica** was mostly used for USAC accommodation during the 2020 but in 2021 it was mainly empty, accommodating between 10 and 20 beneficiaries who required medical attention. 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 who used to be 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 workdays. 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.

Krnjača was founded in the Belgrade municipality of **Palilula** in 2014 as a temporary centre for accommodation of asylum-seekers. The AC is located in the compound of workers' barracks used – since early 1990s – for accommodation of refugees from Croatia and Bosnia and Herzegovina as well as of IDPs from Kosovo. It can optimally take up to 750 persons, and up to 1,000 at times of urgency, making it – in addition to the reception/transit centre in **Preševo** – the biggest centre for accommodation of migrants and asylum-seekers on the territory of Serbia. 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 2021 i.e., an average of 300 to 400 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. However, the incidents and tensions which were recorded in 2020 were rare in 2021.⁷²¹

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, and there were several instances in which ambulance failed to respond to the calls of CRM workers, which has led to a situation in which camp employees transferred the applicant to the hospital.

In May 2017, Reception Centre in **Vranje** (220 places) was opened, 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. In June 2021, this facility became an asylum centre, accommodating Ukrainian families (28 persons in total) at the end of March 2022, and 40 persons in mid-April.

⁷²¹ See more in AIDA, Country Report Serbia, 2021 Update, March 2020, p. 84.

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 current capacities are estimated by the CRM on 650 persons. Still, this number is not realistic and it is clear that RC Obrenovac should not host more than 400 persons. 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. In June 2021, this facility was turned into Asylum Centre but no official activities of the Asylum Office were reported as of March 2022.

The number of foreigners accommodated in asylum centres and reception centres on 19 December 2021 were the following:

Asylum Centre	Capacity	Number of residents on 19 December 2021	Overcrowding rate
Banja Koviljača	120	0	0 %
Bogovađa	200	144	0 %
Tutin	200	93	0 %
Sjenica	400	16	0 %
Krnjača	1000	431	0 %
Obrenovac	650	608	0 %
Vranje	230	0	0 %
Total	2,440	1,292	

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia was generally stable throughout 2021.⁷²² 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 19 December 2021, 568 persons were 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. As in the past years, throughout 2021, APC reported poor living conditions, overcrowding and lack of privacy.⁷²³ In general, RC Preševo cannot be considered as suitable accommodation for persons in need of international protection.

⁷²² An average number of refugees and migrants residing in Serbia was between 5,000 to 6,500 on a daily basis.

⁷²³ APC Twitter, available at: <https://bit.ly/3uaRMcx>.

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. RC Bujanovac was not operational for most of 2011.

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-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.⁷²⁴ 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.⁷²⁵ On 20 June 2021, 636 persons were accommodated in this RC. APC reported appalling conditions on several occasions.⁷²⁶ On 19 December 2021, overcrowding rate in this RC was 580%.

Additional centres function in **Principovac** (220 places), **Adaševci** (400 places), and the Šid municipality, close to the Croatian border. Identically as RC Sombor, RC Adaševci and RC Principovac have been among the most overcrowded RCs in the course of 2020 and at the beginning of 2021. On 6 April 2020, 665 refugees and migrants were accommodated in RC **Principovci**, compared to 606 on 10 January 2021. On 19 December 2021 there was no overcrowding and the number of accommodated refugees and migrants was 227. As regards RC **Adaševci**, on 9 April 2020, during the COVID-19 lockdown, it accommodated 1,142 refugees and migrants, compared to 1,168 on 10 January 2021, 608 on 20 January 2021, and 601 on 19 December 2021, which implied an overcrowding rate of 150%.

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.'⁷²⁷

⁷²⁴ APC Twitter, available at: <https://bit.ly/3tfQTy2>.

⁷²⁵ SoInfor.org, *Više od 850 izbeglica u somborskom centru*, 18 January 2021, available at: <http://bit.ly/2MHtK6S>.

⁷²⁶ APC Twitter, available at: <https://bit.ly/37Q88zX>.

⁷²⁷ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 14.

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, 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.⁷²⁸

'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.⁷²⁹

These testimonies were repeated in 2021 and 2022, when several dozen beneficiaries reported physical violence committed by the employees of CRM and private security.⁷³⁰

During the 2020 COVID-19 lockdown, RC **Obrenovac**, which has been operating as Asylum Center since June 2021, hosted 1,063 foreigners, with most of them accommodated in the military tents, without 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

⁷²⁸ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 26-27.

⁷²⁹ *Ibid.*, 26.

⁷³⁰ N1, N1 u centru Adaševci: Izbeglice se žale na uslove i nasilje, uprava negira, 9 February 2022, available at: <https://bit.ly/3ilvKhB>.

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.⁷³¹

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, 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.⁷³² 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,⁷³³ but as of March 2022, this institution has failed to disclose its findings.

On 10 January 2021, RC Obrenovac hosted 591 persons, and many of them were accommodated in tents, while this number on 20 June 2021 was 449.

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. Beneficiaries are accommodated in group container rooms which do not guarantee privacy and the possibility to maintain hygiene. There were instances of attacks and stabbing reported by beneficiaries who resided there, as well as attacks from local population.⁷³⁴ The RC Subotica was overcrowded throughout 2021. In June 2021, it hosted 162 persons.

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 used to be on the waiting list for entry to 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

⁷³¹ Ibid., 7.

⁷³² *Hod po žici*, 80-89.

⁷³³ *Ibid.*

⁷³⁴ APC Twitter, available at: <https://bit.ly/3ioXFgC>.

January 2021, while on 6 June 2021, it hosted 884 persons.

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**, RC Bela Palanka and RC Pirot were not operational in 2021.

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.⁷³⁵ Namely, the recommendations of World Health Organization,⁷³⁶ but also the CPT principles⁷³⁷ which were applicable during the lockdown, indicated that States should undertake measures to reduce overcrowding in all places of deprivation of liberty.⁷³⁸ Thus, even though every reception and asylum centre designated premises for isolation and quarantine, and masks and gloves were distributed on several occasions, the level of overcrowding in 9 out of 18 functional reception facilities was, and still is epidemiologically contentious.

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.⁷³⁹ 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.

⁷³⁵ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 23.

⁷³⁶ 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>.

⁷³⁷ 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,

⁷³⁸ *A11 Analysis on Detention of Foreigners during the State of Emergency*, 22-24.

⁷³⁹ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>.

Reception centre	Capacity	19 December 2021	Overcrowding rate
Preševo	800	568	0%
Bujanovac	270	0	0%
Sombor	120	697	580 %
Principovac	220	227	0%
Adaševci	400	601	150 %
Subotica	130	173	133 %
Bela Palanka	300	0	0%
Dimitrovgrad	90	0	0%
Bosilegrad	110	55	0 %
Pirot	190	0	0%
Kikinda	280	701	250 %
Šid	205	115	0 %

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.⁷⁴⁰ 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.⁷⁴¹

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market.⁷⁴² 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.⁷⁴³ 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

⁷⁴⁰ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 14-16 and 55.

⁷⁴¹ Article 2 (1) (9) Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014

⁷⁴² Article 57 Asylum Act.

⁷⁴³ Article 13 Employment of Foreigners Act.

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 throughout 2021. Nevertheless, the practice has shown in 2021 that time which National Employment Service (NES) takes to issue the working permit is extensively long (from two to six weeks), while the validity of the working permit is counted from the day of submission of the request. Thus, the working permit which is issued to asylum seekers is valid for less than 6 months. This severely impacts asylum seekers' opportunities at the job market. Overall, the 9-month period 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).⁷⁴⁴

Also, one of the biggest concerns regarding access to the labour market is the fact that 4 out of 7 Asylum Centres are located in remote areas in Serbia, where the unemployment rate in general is quite high (**Tutin, Sjenica, Vranje** 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 Permits⁷⁴⁵ 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. The fee for obtaining the work permit is too high, and it is clear that asylum seekers would not be able to afford it without a support by CSOs. The fee is 14,360 dinars (around 121 EUR)⁷⁴⁶ plus the fee for lodging the request for working permits which is around 330,00 dinars (a around 3 EUR). Still, there is a possibility of exemption from paying expenses in special cases provided for in the GAPA,⁷⁴⁷ but in practice it applies only to persons who are staying in ACs or PCs.

Asylum seekers are usually assisted by CSOs providing legal aid. Thus, APC,⁷⁴⁸ BCHR, HCIT, KlikAktiv, CPRC and IDEAS, with the assistance of UNHCR, have been assisting asylum seekers in obtaining work permits.⁷⁴⁹ In other words, the vast majority of asylum seekers would never be able to obtain working permits without financial and administrative support of CSOs.

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.⁷⁵⁰

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

⁷⁴⁴ 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

⁷⁴⁵ Official Gazette no. 63/18, 56/19.

⁷⁴⁶ Law on Administrative Fees, Fee No. 205, available at: <https://bit.ly/3kXBe0P>.

⁷⁴⁷ Article 89 GAPA.

⁷⁴⁸ 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>.

⁷⁴⁹ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, 39-40.

⁷⁵⁰ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYZcS>, 55-58.

the special category.⁷⁵¹ Several dozen working permits were issued or extended in 2021. 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 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.

Taking in consideration the 9-month period during which the person is not allowed to work, it can be safely assumed that by the end of March of 2022, 73 asylum seekers who lodged their asylum application in the period from January to June 2021 are entitled to work. However, not all of these 73 persons are adults and it is reasonable to assume that some of them have decided to abscond the procedure. Thus, it can be safely assumed that, until the end of March 2022, less the 50 asylum seekers from 2021 were entitled to work. On the other hand, it is also reasonable to assume that there are several dozen asylum seekers whose cases are pending from 2020 or 2019 and who are also entitled to work. Thus, it can be safely estimated that the number of asylum seekers who are entitled to work is around 100 persons. The exact number of asylum seekers who meet the requirements set in the Employment of Foreigners Act could be obtained only from the Asylum Office who can extract from its records the number of pending asylum applications of persons who have been in asylum procedure for more than 9 months. Unfortunately, it was not possible to obtain information on the number of pending cases in 2022.

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 country of origin and most frequently, there is no real possibility to obtain them.⁷⁵²

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.⁷⁵³ 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.⁷⁵⁴ The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,⁷⁵⁵ with relevant issues also regulated by the Primary School Act,⁷⁵⁶ the Secondary School Act⁷⁵⁷ and the High Education Act.⁷⁵⁸ These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas. Asylum seekers are not entitled to receive

⁷⁵¹ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 32-33.

⁷⁵² BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, 41.

⁷⁵³ *Ibid*, 39.

⁷⁵⁴ Article 55(1) Asylum Act.

⁷⁵⁵ 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.

⁷⁵⁶ 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.

⁷⁵⁷ 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.

⁷⁵⁸ 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.

the pre-elementary school education.⁷⁵⁹ Also, the Integration Decree does not foresee any kind of support for asylum seeking children in their preparation for enrolling into elementary school. These children are mainly supported by CSOs and international organizations, but it is also important to note the assistance provided by CRM to asylum seeking children enrolling to elementary school.

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.⁷⁶⁰ Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.⁷⁶¹

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 2021 and especially during the COVID-19 circumstances which disrupted regular school attendance for entire population, including the asylum-seeking children.

In 2021, with the help of the UNHCR office in Serbia, the ENRIC/NARIC Center of the Qualification Agency of the Republic of Serbia joined the Council of Europe project of the European Qualification Passport for Refugees.⁷⁶²

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. In 2021, all the children accommodated in AC Krnjača enrolled into elementary school without major problems. UASC in **Bogovađa** do not attend school regularly or 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.⁷⁶³

⁷⁵⁹ Article 48 Asylum Act.

⁷⁶⁰ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

⁷⁶¹ Article 55(2) Asylum Act.

⁷⁶² More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

⁷⁶³ Information obtained by CRM and IDEAS and IOM temporary legal guardians.

According to the UNHCR office in Serbia, around 175 refugees and asylum seekers were enrolled into educational system of Serbia. This number encompasses both asylum seekers and children granted asylum. Around 140 of them attended the elementary school, 20 secondary school and 4 persons enrolled into universities for the first time – one asylum seeker from Afghanistan and 3 refugees from Afghanistan, Burundi and Libya.⁷⁶⁴ All four of them were supported by the UNHCR DAFI program.⁷⁶⁵

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.⁷⁶⁶ 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.⁷⁶⁷

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.⁷⁶⁸ The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations.⁷⁶⁹

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.⁷⁷⁰

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. There are no indications that this state of affairs will change.

⁷⁶⁴ Danas, UNHCR: Stopa upisa izbeglica u škole i univerzitete u Srbiji i dalje kritično niska, 7 September 2021, available at: <https://bit.ly/3KXdIUK>.

⁷⁶⁵ More information on the DAFI program are available here: <https://bit.ly/3vIEADy>.

⁷⁶⁶ Article 54 Asylum Act.

⁷⁶⁷ Article 54(3) Asylum Act.

⁷⁶⁸ Article 2 Rulebook on medical examinations.

⁷⁶⁹ Article 3 Rulebook on medical examinations.

⁷⁷⁰ Article 4 Rulebook on medical examinations.

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*⁷⁷¹, 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.⁷⁷²

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

The Republic of Serbia was one of the first countries in the world which allowed refugees, asylum seekers and migrants to get, under the same conditions as local population, vaccines.⁷⁷³ Also, all residents of asylum and reception centres have had an unhindered access to PCR and other forms of COVID-19 tests. Each asylum and reception centre has designated rooms for quarantine.

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.⁷⁷⁴

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.⁷⁷⁵ 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.⁷⁷⁶ 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.⁷⁷⁷ In 2021, AC Sjenica was designated as a place where refugees with physical injuries are placed, while several barracks in AC Krnjača were designated for the UASC.

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

⁷⁷¹ 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>.

⁷⁷² *Ibid.*

⁷⁷³ WHO, *Refugees and migrants hosted in Serbian reception centres get their COVID-19 vaccine doses*, 12 May 2021, available at: <https://bit.ly/3jZUsFb>.

⁷⁷⁴ Article 50(3) Asylum Act.

⁷⁷⁵ Article 17 Asylum Act.

⁷⁷⁶ Article 53 Asylum Act.

⁷⁷⁷ FRA, *Migration: Key Fundamental Rights Concerns*, November 2020, available at: <https://bit.ly/2LfbPEj>.

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.⁷⁷⁸ 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 19 December 2021, 30 children were accommodated in social welfare institutions in Belgrade and Niš. The total official capacity of these two institutions 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.

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,⁷⁷⁹ as well as about NGOs providing free legal aid.⁷⁸⁰ (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 UNCHR 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

⁷⁷⁸ See more in BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 61-66.

⁷⁷⁹ Article 56(2) Asylum Act.

⁷⁸⁰ Article 56(3) and (4) Asylum Act.

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.⁷⁸¹ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.⁷⁸² However, planned UNHCR visits should be announced in a timely fashion.

G. Differential treatment of specific nationalities in reception

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

⁷⁸¹ Article 5 Asylum Act.
⁷⁸² Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2021: ⁷⁸³	0
2. Number of asylum seekers in detention at the end of 2021:	0
3. Number of detention centres:	2
4. Total capacity of detention centres:	180

The possibility of placing asylum seekers under detention in Serbia is prescribed by the Asylum Act. In 2021 the Asylum Office did not resort to such measure. Asylum seekers are detained in long-standing Detention Centre for Foreigners in **Padinska Skela**. In addition, in 2021, a new centre was opened in **Dimitrovgrad**, at the green border with **Bulgaria**, but is yet to become fully operational. It is still not clear what is the capacity of the Detention Center in Dimitrovgrad.

Besides asylum seekers, 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.⁷⁸⁴ However, the Ministry of Interior has stopped providing statistical data in 2018.⁷⁸⁵ 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 irregular 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 main official institution established for the purpose of detaining migrants and asylum seekers. It is located in Belgrade and has the maximum capacity of 80.⁷⁸⁶ In 2020, the reconstruction and expansion of the centre's capacity continued, and it was concluded during 2021. As of April 2022, the capacity of the centre is 180. The bedrooms, the kitchen, the dining room, and Detention Centre management offices were renovated in 2019.

The cooperation between CSOs and the Detention Centre for Foreigners continued to be rare during 2021. One of the reasons was the fact that all foreigners usually do not wish to apply for asylum.

Not a single foreigner detained was issued with the registration certificate in 2021 (as they did not apply for).

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

⁷⁸³ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

⁷⁸⁴ Articles 87 and 88 Foreigners Act.

⁷⁸⁵ 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.

⁷⁸⁶ 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: Yes No
 - ❖ at the border:⁷⁸⁷ Yes No
2. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never
3. Are asylum seekers detained during an accelerated procedure in practice?
 Frequently Rarely 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:⁷⁸⁸

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;⁷⁸⁹
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.⁷⁹⁰

In practice, the Asylum Office rarely orders detention of asylum seekers. Not a single detention order was issued in 2021 on those grounds.

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.⁷⁹¹ 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, in 2021, Mol opened a Detention Centre for Foreigners in **Dimitrovgrad**, a city located at the green border with **Bulgaria**, but so far, not a single asylum seeker or other category of migrant was detained there.

⁷⁸⁷ Accommodation in airport transit zone with very restricted freedom of movement.

⁷⁸⁸ Article 77(1) Asylum Act.

⁷⁸⁹ 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.

⁷⁹⁰ Article 58(1)(3) and (7) Asylum Act.

⁷⁹¹ 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”.⁷⁹² 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.⁷⁹³ 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,⁷⁹⁴ which is not the case at the moment. The current practice implies stereotypical issuance of the decision on cancellation of residency,⁷⁹⁵ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.⁷⁹⁶ 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,⁷⁹⁷ or the expulsion decision,⁷⁹⁸ does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.⁷⁹⁹ 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*.

⁷⁹² Articles 87 and 88 Foreigners Act.

⁷⁹³ 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.

⁷⁹⁴ Article 1 Protocol 7 ECHR.

⁷⁹⁵ Article 39 Foreigners Act.

⁷⁹⁶ Article 74 Foreigners Act.

⁷⁹⁷ Article 39(7) Foreigners Act.

⁷⁹⁸ Article 80(3) Foreigners Act.

⁷⁹⁹ 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.⁸⁰⁰

In general, it can be safely assumed that relevant state authorities of Serbia rarely resort to measures of deprivation of liberty of asylum seekers and persons who are likely in need of international protection.

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;⁸⁰¹
2. Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;⁸⁰²
3. Temporary seizure of a travel document.⁸⁰³

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.⁸⁰⁴ 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 2021. 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.

⁸⁰⁰ BCHR, *Right to Asylum in Serbia 2020*, 44.

⁸⁰¹ Article 78(1)(1) Asylum Act.

⁸⁰² Article 78(1)(2) Asylum Act.

⁸⁰³ Article 78(1)(5) Asylum Act.

⁸⁰⁴ Article 79 Asylum Act.

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 his or her health condition.⁸⁰⁵ 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,⁸⁰⁶ 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 Office⁸⁰⁷ 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.⁸⁰⁸

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

⁸⁰⁵ Article 80 Asylum Act.

⁸⁰⁶ Information provided by CSO IDEAS.

⁸⁰⁷ Article 78(2) and (3) Asylum Act.

⁸⁰⁸ Article 88 Foreigners Act.

Persons who seek asylum in Serbia may be detained in the Detention Centre in **Padinska Skela**, Belgrade, which can host up to 180 persons. In addition, in 2021, a new centre was opened in **Dimitrovgrad**, at the green border with **Bulgaria**.

Foreigners who are sanctioned for misdemeanour of unlawful border crossing or 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 Centres

Persons held in **Padinska Skela** are accommodated in two separate parts, with the male part comprising 6 rooms, and the female one comprising 3 rooms, and where usually families who do not wish to apply for asylum are accommodated.⁸⁰⁹ 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**.

No information is available yet about the conditions in the new centre in **Dimitrovgrad**.

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).

⁸⁰⁹ 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.

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.”⁸¹⁰

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.⁸¹¹ NGOs specialised in asylum and migration issues are also entitled to have access to all the persons who enjoy the status of asylum seeker.⁸¹² 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.⁸¹³ BCHR and APC are the only CSOs who visited the Detention Centre in **Padisnka Skela** in 2021. Usually, the visits are conducted upon the invitation of the management, and when a foreigner express his intention to apply for asylum.⁸¹⁴

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.⁸¹⁵ The appeal against the Asylum Office's detention decision does not have suspensive effect.⁸¹⁶

⁸¹⁰ 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.

⁸¹¹ Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

⁸¹² Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

⁸¹³ Article 41(3) Asylum Act.

⁸¹⁴ BCHR conducted 8 visits to Detention Center in 2020.

⁸¹⁵ Article 78(5) Asylum Act.

⁸¹⁶ Article 78(6) Asylum Act.

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.⁸¹⁷

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.

⁸¹⁷ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 14.

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,⁸¹⁸ 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.⁸¹⁹

All ID cards were automatically extended during the state of emergency, and in line Decision on the Status of Foreign Nationals.⁸²⁰

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 2021: | 0 |

Under the new Asylum Act, the Republic of Serbia shall ensure conditions for naturalisation of refugees, commensurate to its capacity.⁸²¹ The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal of CRM.⁸²² However, the Citizenship Act⁸²³ 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 of the questions put forward by the Committee on Economic, Social and Cultural Rights in 2019.⁸²⁴

⁸¹⁸ Article 60 Asylum Act.

⁸¹⁹ Article 90 Asylum Act.

⁸²⁰ Official Gazette no. 27/2020.

⁸²¹ Article 71(1) Asylum Act.

⁸²² Article 71(2) Asylum Act.

⁸²³ Official Gazette no. 135/04, 90/7 and 24/18.

⁸²⁴ 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.⁸²⁵ 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.⁸²⁶

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.⁸²⁷ Not a single CSO which provide free legal aid to asylum seekers have reported such practice.⁸²⁸

6. Withdrawal of protection status

To the knowledge of CSOs providing legal assistance, withdrawal has never been applied in practice.

⁸²⁵ Article 81(4), (5) and (6) Asylum Act.

⁸²⁶ Article 82 Asylum Act.

⁸²⁷ Article 83 Asylum Act.

⁸²⁸ 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.⁸²⁹ 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.⁸³⁰

A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.⁸³¹

In 2020, a family reunification procedure was carried out for the first time. 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**.⁸³² The family reunification procedure lasted 10 months, but this case should be observed as a model to learn from for all future cases. IDEAS has started a consultation with 2 **Afghan** nationals who expressed their wish to reunite with their families, but the family members decided to leave their country of origin in the meantime. BCHR has initiated one family reunification procedure which was ongoing as of March 2022.

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.⁸³³ 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

⁸²⁹ Articles 70(1) and 9(2) Asylum Act.

⁸³⁰ Article 2(2) and (12) Asylum Act.

⁸³¹ Article 70(4) Asylum Act.

⁸³² APC, *Prvi slučaj spajanja porodice izbeglice u Srbiji*, 20 July 2020, available at: <http://bit.ly/2YCpEzC>.

⁸³³ Article 62 Asylum Act.

refugees, asylum seekers and migrants who were detained from 15 March to 7 May 2020 (see also [Freedom of movement](#)).

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.⁸³⁴ 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.⁸³⁵ 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 communication phase before the ECtHR was concluded in 2021 and it remains to be seen whether the Court will find a violation of the freedom of movement under Article 2(3) Protocol 4 ECHR.⁸³⁶

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.⁸³⁷ This provision is yet to be applied.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres? 1year⁸³⁸

Number of beneficiaries staying in reception centres as of 31 December 2021: At least 5

The Commissariat for Refugees and Migration is responsible for ensuring temporary accommodation for persons who have been granted international protection.⁸³⁹ 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.⁸⁴⁰ The Decree defines the manner of granting accommodation to beneficiaries of

⁸³⁴ Article 101 Asylum Act.

⁸³⁵ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

⁸³⁶ ECtHR, *Seraj Eddin v. Serbia*, Application No 61365/16, Communicated to the Government on 23 February 2018.

⁸³⁷ Article 91(3) Asylum Act.

⁸³⁸ Article 61 Asylum Act.

⁸³⁹ Article 23 Asylum Act.

⁸⁴⁰ Official Gazette no. 63/15 and 56/18, hereinafter: Accommodation Decree.

asylum, including the conditions that need to be met in order to receive accommodation, the priorities to be respected when doing so, as well as the conditions of housing.

Accommodation is granted to individual beneficiaries together with their families if they have a final decision granting asylum which is not older than one year at the time of the request and if they do not possess sufficient financial resources to find accommodation on their own. The CRM may provide them housing for temporary use or financial assistance which is used to cover the costs of temporary accommodation.⁸⁴¹ 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.⁸⁴² Also, it is possible that persons granted asylum could be allowed to stay in Asylum Centres for longer than year. However, all persons granted asylum prior to 2021 have moved to private accommodation. 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.⁸⁴³ 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.⁸⁴⁴ 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 assistance⁸⁴⁵

As for the practical obstacles in obtaining and enjoying 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.⁸⁴⁶ 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 sources⁸⁴⁷ and that he or she is registered as unemployed with the National Employment Service (NES).

There is no data on how many persons granted asylum were provided with financial assistance from the State in 2021. The reason for this lies in the fact that 14 people granted asylum were either employed or they enjoyed financial assistance from CSOs or UNHCR.

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.⁸⁴⁸ The Asylum Act guarantees equality in the rights and obligations of persons granted refugee status with

⁸⁴¹ Article 2 (1) Integration Decree.

⁸⁴² Article 9 (1) Integration Decree.

⁸⁴³ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 31-32.

⁸⁴⁴ Mostly Libyans and several Syrians and Iraqis.

⁸⁴⁵ Article 59 (4) Asylum Act.

⁸⁴⁶ Article 10 Integration Decree.

⁸⁴⁷ *Ibid.*

⁸⁴⁸ Article 65 Asylum Act.

those of persons granted subsidiary protection,⁸⁴⁹ even though the Employment of Foreigners Act (EFA) explicitly states that persons who have been granted subsidiary protection are to be issued personal work permits for the duration of that status.⁸⁵⁰ 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.⁸⁵¹

The NES is tasked with issuing personal work permits which further allows refugees free employment, self-employment and the right to unemployment insurance.⁸⁵² This further provides foreigners who have been granted asylum an unimpeded access to the labour market. The Rulebook on Work Permits⁸⁵³ 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.⁸⁵⁴ 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.⁸⁵⁵ The fee is 14,360 dinars (around 121 EUR)⁸⁵⁶ plus the fee for lodging the request for working permits which is around 330,00 dinars (around 3 EUR). There is a possibility of exemption from paying these expenses in special cases provided for in the GAPA,⁸⁵⁷ but in practice it applies only to persons who are staying in ACs or PCs.

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

⁸⁴⁹ Article 59 Asylum Act.

⁸⁵⁰ Article 13(6) Employment of Foreigners Act.

⁸⁵¹ Article 7 Integration Decree.

⁸⁵² Article 12 EFA.

⁸⁵³ Official Gazette no. 63/18, 56/19.

⁸⁵⁴ Article 9 GAPA.

⁸⁵⁵ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 170-171.

⁸⁵⁶ Law on Administrative Fees, Fee No. 205, available at: <https://bit.ly/3kXB0P>.

⁸⁵⁷ Article 89 GAPA.

or the subsistence of his/her family or if provided for in a ratified international treaty.⁸⁵⁸ In practice, this is possible only for persons staying in one of the Asylum or Reception centres. For persons staying in private accommodation, demonstrating the inability to afford the costs of procedure would require obtaining the opinion of a Social Work Centre and would cause additional delays in their access to the right to work or other related rights.

In spite of the fact that, in terms of the law, persons granted asylum in Serbia should not face significant challenges in accessing the labour market, finding employment is difficult in practice, especially bearing in mind the language barrier that exists between most of these persons and the local community.

It is important to highlight that the Asylum Act imposes upon beneficiaries an obligation to attend classes of the Serbian language and script. If the beneficiary fails to do so without a justified reason 15 days from the date of the effectiveness of the decision granting him or her the right to asylum or stops attending such courses, he or she shall lose the right to financial assistance for temporary accommodation, as well as the right to one-time financial assistance provided from the budget of the Republic of Serbia.⁸⁵⁹

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.⁸⁶⁰ 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.⁸⁶¹

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 196 persons who were granted asylum in the period 1 April 2008 to 31 December 2021 45 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 22 are children who cannot yet establish employment and three persons are unable to work due to their health condition.⁸⁶² 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 under 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 57.⁸⁶³

Another important indicator, which might lead to the conclusion that less than 100 persons granted asylum remained in Serbia are the official statistics of the UNHCR. According to their data, on 19 December 2021, a total of 135 asylum seekers and persons granted asylum were residing on a private address. If this data is accurate, this means that less than 100 persons granted asylum currently resides in Serbia, because at least 30 to 40 % of this number are asylum seekers residing on the private address.⁸⁶⁴

⁸⁵⁸ Article 89 GAPA.

⁸⁵⁹ Article 59 Asylum Act.

⁸⁶⁰ National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

⁸⁶¹ Article 7 of the Integration Decree.

⁸⁶² A11, *Precondition for Integration*, February 2021, p. 31-32 and UNHCR statistics.

⁸⁶³ Ibid.

⁸⁶⁴ Statistics obtained by the UNHCR office in Serbia.

In the period from 1 April 2008 to 31 December 2021, asylum authorities in Serbia rendered 138 decisions granting asylum (refugee status of subsidiary protection) to 196 persons from 25 different countries.⁸⁶⁵ A total of 59 decisions was rendered in relation to 97 applicants who received subsidiary protection, while 79 decisions were rendered in relation to 99 applicants who were granted refugee status.

Out of 57 refugees whose presence was confirmed at the end of 2020, the A11 determined that at least 24 were unemployed,⁸⁶⁶ 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.⁸⁶⁷ The 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.⁸⁶⁸ In 2021, there were no surveys on persons granted asylum and assessment of their employment rate.

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.⁸⁶⁹ Specific degrees of education are regulated by the Law on Primary Education,⁸⁷⁰ the Law on Secondary Education,⁸⁷¹ and the Law on Higher Education.⁸⁷²

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.⁸⁷³ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.⁸⁷⁴ A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.⁸⁷⁵ 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.⁸⁷⁶ 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.⁸⁷⁷ 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

⁸⁶⁵ The author of this Report has collected 119 out of 138 decisions. The number of decisions and applicants was counted by the author of this Report and on the basis of a unique database which is established in IDEAS. Namely, official number of persons who received international protection in Serbia is 208. However, this number includes the cases which were not final in the given year. For instance, there is at least 7 asylum procedures in which legal representatives appealed the decision on subsidiary protection claiming that their clients deserve refugee status. Asylum Commission or Administrative Court upheld appeals and onward appeals respectively and sent the case back to the Asylum Office. However, Asylum Office rendered the same decision (subsidiary protection) concerning the same person for a second time. The lawyers were then complaining again. There were instances in which 1 person received 3 decisions on subsidiary protection in the period of 7 years and was granted refugee status in the end. However, it is possible to that the statistics provided by the author of this Report are not 100% accurate. Still, the author believes that this is the most accurate statistics which can be provided for now and potential variations cannot be higher than maximum 5 decisions regarding 5 applicants.

⁸⁶⁶ Ibid., 35-36.

⁸⁶⁷ Author's own observation.

⁸⁶⁸ A11, *Precondition for Integration*, February 2021, 36 and 40.

⁸⁶⁹ Official Gazzette, no. 88/17 and 27/18.

⁸⁷⁰ Official Gazzette, no. 55/13, 101/17 and 27/18.

⁸⁷¹ Official Gazzette, no. 55/13, 101/17 and 27/18.

⁸⁷² Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

⁸⁷³ Article 3(5) Law on Basics of the Education System.

⁸⁷⁴ Articles 55 and 64 Asylum Act.

⁸⁷⁵ Article 64 Asylum Act.

⁸⁷⁶ Article 55 (2) Asylum Act.

⁸⁷⁷ Article 2(4) Integration Decree.

extracurricular activities.⁸⁷⁸ However, the Government's Decision failed to recognise persons seeking or granted asylum as a category entitled to free of charge textbooks.⁸⁷⁹ 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.⁸⁸⁰ If the refugee children have proof of prior education, the enrolment is made according to their age and level of education completed.⁸⁸¹ On the other hand, if they do not have any proof of prior education, the enrolment is based on a test which has an aim to assess the level of their knowledge.⁸⁸² 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.⁸⁸³

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.⁸⁸⁴ 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.⁸⁸⁵

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.⁸⁸⁶ 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.⁸⁸⁷

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

⁸⁷⁸ Article 6 Integration Decree.

⁸⁷⁹ 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.

⁸⁸⁰ Ministry of Education, Science and Technological Development Instruction No. 601-00–00042/17–2018 of May 2017.

⁸⁸¹ *Ibid.*, 1-2.

⁸⁸² *Ibid.* 2.

⁸⁸³ *Ibid.*, 3.

⁸⁸⁴ BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 87-88.

⁸⁸⁵ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 178,

⁸⁸⁶ Article 4 Integration Decree.

⁸⁸⁷ Article 5 Integration Decree.

Elimination of Racial Discrimination (CERD) urged Serbia to facilitate more effective inclusion of children, including migrants, to be included in primary education.⁸⁸⁸

All children granted asylum regularly attend elementary or secondary school.

In 2021, with the help of the UNHCR office in Serbia, the ENRIC/NARIC Center of the Qualification Agency of the Republic of Serbia has joined the Council of Europe project of the European Qualification Passport for Refugees.⁸⁸⁹ The outcomes of this project are yet to be seen in 2022.

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.⁸⁹⁰ The Social Welfare Act (SWA) defines social welfare as an organised social activity in the common interest whose purpose is to provide assistance and strengthen individuals and families for an independent and productive life in society, as well as prevent the causes of, and eliminate, social exclusion.⁸⁹¹ 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.⁸⁹² This right is exercised through the provision of social protection services and material support.⁸⁹³ 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).⁸⁹⁴

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.⁸⁹⁵ 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.⁸⁹⁶ 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.⁸⁹⁷ One of the problems identified in practice is the extensive length for granting of the social welfare.⁸⁹⁸

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.

As of March 2022, 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.

⁸⁸⁸ CERD, *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).

⁸⁸⁹ More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

⁸⁹⁰ Article 52 and 67 Asylum Act.

⁸⁹¹ Article 2 Social Welfare Act, Official Gazette no. 24/2011.

⁸⁹² Article 6 SWA.

⁸⁹³ Article 4 (2) SWA.

⁸⁹⁴ Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

⁸⁹⁵ *Ibid*, Article 3.

⁸⁹⁶ *Ibid*, Article 8.

⁸⁹⁷ *Ibid*, Article 9.

⁸⁹⁸ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 181-182.

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.⁸⁹⁹ Additionally, foreigners' health care is also governed by the Health Care Act (HCA)⁹⁰⁰ and the Health Insurance Act (HIA)⁹⁰¹ as well as the Rulebook on the Terms and Procedure for Exercising the Right to Compulsory Health Insurance (RHI).⁹⁰² HCA stipulates that refugees and asylum seekers are entitled to health care under equal terms as Serbian nationals.⁹⁰³ All persons granted asylum had unhindered access to COVID-19 vaccines and PCR and other forms of testing.

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.⁹⁰⁴ The same conclusion can be drawn in relation to the Serbian Health Insurance Fund.⁹⁰⁵ Hence, asylum seekers and persons granted asylum are not entitled to compulsory health insurance and issuance of health insurance cards.⁹⁰⁶ 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.⁹⁰⁷

⁸⁹⁹ Article 63 Asylum Act.

⁹⁰⁰ Official Gazette no. 25/19.

⁹⁰¹ 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.

⁹⁰² Official Gazette no. 10/10, 18/10 – correction, 46/10, 52/10 – correction, 80/10, 60/11 – Constitutional Court Decision, and 1/13.

⁹⁰³ Article 236, para. 1, and Article 239 of the Law on Health Care.

⁹⁰⁴ Article 11 HIA.

⁹⁰⁵ Exercising the Right to Compulsory Health Insurance, Serbian Health Insurance Fund, Belgrade, May 2015, available (in Serbian) at: <http://bit.ly/33amche>.

⁹⁰⁶ Article 25 HIA; see more in BCHR, *Right to Asylum in the Republic of Serbia* 2019, 184-185.

⁹⁰⁷ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 185-187.