

Country Report: Serbia



2022
Update



Acknowledgements & Methodology

This report was written by Nikola Kovačević, independent expert and human rights 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), Danish Refugee Council (DRC) and Council for Refugees and Asylum Seekers. The report 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 Development of Social Policies (Klikaktiv), 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 2022, 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, Türkiye, 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

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
CoI	Country of Origin Information
CSO	Civil Society Organisation
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
MoI	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
VBA	Military Security Agency
UAE	United Arab Emirates

UASC

Unaccompanied and Separated Children

UNHCR

United Nations High Commissioner for Refugees

**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.

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. It is also important to note that decision on discontinuing asylum procedure due to absconding is still the most common decision and that is the reason why, in relation to many nationalities, there are no decision in merits (e.g. India, Tunisia and Armenia in 2022).

Applications and granting of protection status at first instance: 2022

	Applicants in 2022	Pending at end of 2022	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	320	Not Available	6	14	48	9%	20%	71%

Breakdown by countries of origin of the total numbers

Burundi	156	N/A	1	0	14	7%	0%	93%
Cuba	40	N/A	0	1	7	0%	12,5%	87,5%
Russian Federation	20	N/A	0	0	1	0%	0%	100%
Syria	14	N/A	0	7	1	0%	87,5%	12,5%
Afghanistan	7	N/A	1	2	0	33,3%	66,6%	0%
Ukraine	6	2	1	1	0	50%	50%	0%
Guinea-Bissau	6	N/A	0	0	3	0%	0%	100%
India	6	N/A	0	0	0	0%	0%	100%
Tunis	5	N/A	0	0	1	0%	0%	0%
Armenia	5	N/A	0	0	0	0%	0%	0%

Source: UNHCR Office in Serbia.

Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
Total number of persons expressed their intention to lodge asylum application in the	4,181	100%
Men	3,731	89%
Women	450	11%
Children	679	16%
Unaccompanied and separated children	82	2%

Source: UNHCR Office in Serbia and Ministry of Interior.

[Note: The gender breakdown (Men/Women) for asylum applicants was not provided by the Asylum Office in 2022, but only breakdown of persons who expressed their intention to lodge asylum application, and in line with the Article 35 (11) of the Asylum and Temporary Protection Act.]

Comparison between first instance and appeal decision rates: 2022

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	68	100%	48	100%
Positive decisions	20	29%	8	18%
<ul style="list-style-type: none"> <i>Refugee status</i> 	6	9%	0	0%
<ul style="list-style-type: none"> <i>Subsidiary protection</i> 	14	20%	0	0%
Negative decisions	48	71%	36	82%

Source: UNHCR and Asylum Commission response to the request for the information on public importance no. 27-A-128-9/22-KA of 8 February 2023.

Overview of the legal framework

Main legislative acts on asylum procedures, reception conditions, detention and content of international 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) https://bit.ly/3fxuFk9 (SR)
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/3bn76ua (EN) https://bit.ly/2lpyEP (SR)
Law on Administrative Disputes, Official Gazette no. 111/2009	Zakon o upravnom sporu / Закон о управним стварима	Administrative Disputes Act	https://bit.ly/2SbzJxS (EN) https://bit.ly/42nGv8u (SR)
Law on Employment of Foreigners, Official Gazette no. 128/2014, 113/2017, 50/2018 i 31/2019	Zakon o zapošljavanju stranaca / Закон о запошљавању странаца	Foreigners Employment Act	https://bit.ly/42njKlh (EN) 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/3sDTDF0 (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 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 Official Gazette, no. 56/2018	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 Official Gazette, no. 12/2020	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 main changes since the previous report update

The previous version of this report was last published in **May 2022**.

International protection

Asylum procedure

- ❖ **Key statistics on arrivals:** In 2022, almost 120,000 newly arrived refugees and migrants were registered by the relevant state authorities, which implies that the number of arrivals doubled in comparison to 2021. The vast majority of arrivals are people coming from Syria and Afghanistan, but also other countries in which the political turmoil and instability indicate the potential need for international protection. In other words, more than 60% of people whose arrival was registered in Serbia in 2022 might be in need of international protection and can be considered to have *prima facie* claim. The above-mentioned number does not encompass the 148,000 Ukrainian refugees who predominately transited through Serbia until the end of February 2023, but also the significant number of Russian citizens who fled in fear of forced military recruitment, political turmoil and lack of business opportunities in the country hit by sanctions. Until the end of 2022, around 220,000 arrivals of Russian citizens were recorded.
- ❖ **Access to the territory - Pushback practices:** The systemic denial of access to territory prevails and practices of pushbacks and other forms of collective expulsions from Serbia to North Macedonia and Bulgaria have continued in 2022. From 2016 to 2022, a total of 227,183 'prevention of illegal entries' was registered by the highest state officials, contributing to the narrative in which this kind of behaviour is acceptable and worthy of praise. In 2022, at least 45,965 instances of denial of access to territory were outlined by the highest state officials. Despite the decision of the Constitutional Court from January 2022 (finding a violation of the prohibition of collective expulsions to Bulgaria in February 2017) as well as the same case pending before the European Court of Human Rights, the practice of pushbacks prevails and will most likely intensify after the Declaration on cooperation between Hungary, Serbia and Austria was signed in December 2022, with an aim to 'reduce the number of illegal arrivals to Serbia'.

On the other hand, only 190 persons were officially readmitted from Serbia to Bulgaria and several other countries, which is a further confirmation that informal and illegal practices applied in the context of border control are predominately based on illegal and arbitrary acts of pushbacks and other risky forms of forcible removal such as refusal of entry decision rendered automatically, deprived of any risk assessment of *refoulement*, and without possibility to be challenged with the remedy that has automatic suspensive effect. In 2022, more than 9,000 foreigners were refused entry to Serbia, out of which 8,682 at the Belgrade Nikola Tesla airport. More than 60% of refusals of entry happened in the last quarter of 2022, when Serbia reintroduced the visa regime for citizens of Tunisia, India and several other countries. The practice of issuing refusals of entry implies a complete lack of risk assessment of *refoulement*, arbitrary detention in the transit zone of airports and removal of refugees to countries of origin or third countries which cannot be considered as safe.

There were no reports of cases in which people fleeing from Ukraine were subjected to any form of denial of access to territory or asylum, temporary or other residential procedure. Thus, Ukrainian refugees are not subjected to pushback practices as well, nor there were instances in which they were refused entry or readmitted to third countries. This state of affairs clearly indicates unequal and beyond any doubt discriminatory and xenophobic treatment of refugees from Africa and Asia.

- ❖ **Push-backs from other countries to Serbia:** Due to its geographical position, being surrounded by countries which form the so-called external borders with the EU, at least several hundred instances of pushbacks from Hungary, Romania and Croatia to Serbia happened on a daily basis. Only from Hungary, almost 160,000 instances of pushbacks were reported by Hungarian

immigration services, while several thousand more pushbacks from Croatia and Romania were reported by the UNHCR, but also CSOs. Many of the reported incidents were described as violent, implying different forms of physical or psychological ill-treatment. In general, at Serbian borders (entry and exit points) there is a crisis of the rule of law and respect for the human rights of refugees from Africa, the Middle East and other parts of Asia. On the other hand, formal ways of cooperation, such as readmission, are basically non-existing. Less than 1,000 persons were officially readmitted from EU countries to Serbia.

- ❖ **Smuggling activities:** The lack of respect for the rule of law at the external borders of the EU implies that organized crime flourished on the Serbian side of the border, leading to the situation in which different criminal groups involved in smuggling activities are controlling border areas with Romania, Croatia and Hungary, but also reception centres in Sombor, Subotica, Kikinda and others. Numerous violent incidents among smuggling groups, including armed shootings were reported and documented, as well as instances in which refugees and migrants were mistreated by such groups inside and outside official reception facilities. Numerous reports indicate the involvement of police officers and interpreters in the work of these groups, raising concerns about organised crime. People pushed back from EU countries to Serbia are exposed to numerous risks, including those originating from organized criminal groups, life in destitute in places of informal gatherings in the border area, poor and unsafe living conditions in reception facilities and denial of access to the asylum procedure, which can also lead to chain-refoulement to third countries from which people had entered Serbia (mainly Bulgaria and North Macedonia).
- ❖ **Access to the asylum procedure at the airport:** As outlined above, denial of access to territory and asylum procedure at Nikola Tesla airport in Belgrade continues to be a serious problem. People refused entry are arbitrarily detained in the transit zone from several days to several weeks, without detention decisions, access to rights of persons deprived of their liberty, the possibility to challenge the lawfulness of their detention before the judicial authority and other rights which form layers of the rights to liberty and security. The decision of refusal of entry is rendered in English and Serbian language, without any risk assessment of *refoulement*, and without the possibility of lodging an appeal which has an automatic suspensive effect. Moreover, even if the foreigner, legally incompetent, and detained in the transit zone holding rooms, would decide to lodge the appeal, this would be impossible from the transit zone. The current practice has been justified by the Constitutional Court of Serbia which assessed that people being held at the transit zone should not be considered deprived of their liberty because the Foreigners Act does not envisage detention in such situations. In 2022, the European Court of Human Rights adopted two requests for interim measures indicating to the Serbian Government not to refuse entry to a Turkish journalist and an Iranian political activist and his family, but there were several other instances of mistreatment at the Belgrade airport allegedly committed by the hands of Border Police Station Belgrade border guards. For that reason, and since the Constitutional Court has failed to make an autonomous assessment of the status of people held in the airport transit zone in line with the subjective and objective criteria of the Strasbourg Court, several applications before the European Court have been lodged and are currently pending.
- ❖ **Registration and lodging of asylum applications:** In 2022, a total of 4,181 registration certificates were issued, while only 322 asylum applications were lodged. This still means that only a handful of persons are genuinely interested to apply for asylum in Serbia. The registration of intention to lodge asylum application in Serbia still suffers from long-lasting flaws. First of all, registration certificates are issued in Serbian language and Cyrillic letters, which causes difficulties for asylum seekers to understand the content of this document. Moreover, registration certificates are frequently automatically issued and asylum seekers are referred to reception centres where they cannot effectively access the asylum procedure, or asylum centres (such as those in Sjenica and Tutin) in which Asylum Office does not facilitate asylum hearings. Thus, these need to be transferred to Asylum Centres in Krnjača or Asylum Center in Obrenovac where they would have the possibility to access the Asylum Office, but also competent legal representatives. Still, even though more than 4,000 registration certificates were issued, only 322 persons applied for asylum. This represents the continuation of the trend in which the number of

persons who might be in need of international protection who entered Serbia (around 120,000 in 2022), who are registered in line with the Asylum Act (around 4,000) in the end decided to leave Serbia without even applying for asylum (only 322 in 2022).

From the creation of the Serbian asylum system, a total of 653,028 foreigners were issued the registration certificate, while only 4,020 of them applied for asylum.

Most of the asylum applications lodged in 2022 were in writing, which represents positive practice, taking into consideration the extremely low capacities of the Asylum Office (only 4 operational asylum officers in March 2023). The majority of applicants were from Burundi and Cuba.

The 15 + 8 deadline to lodge the asylum application remains a serious concern, even though it is not applied in practice. However, if the policy changes, the failure of persons in need of international protection to respect this deadline would expose them to the risk of forcible removal to countries of origin or third countries which cannot be considered safe, but without any risk assessment against *refoulement*. These provisions were not addressed by the MoI in the set of amendments to the Asylum Act which are being discussed at the time of the conclusion of this Report.

- ❖ **First-instance asylum decisions:** In the period from 1 April 2008 to 31 December 2022, the asylum authorities in Serbia rendered 158 decisions granting asylum (refugee status or subsidiary protection) to 226 persons from 26 different countries. A total of 73 decisions were rendered in relation to 117 applicants who received subsidiary protection, while 85 decisions were rendered in relation to 109 applicants who were granted refugee status. In 2022, the Asylum Office delivered 248 decisions regarding 352 asylum seekers, which is a 117% increase in comparison to the previous year. Out of that number, 48 decisions regarding 62 asylum seekers were rejected in merits, while 20 decisions granting asylum to 30 applicants were delivered in the same period. As has been the case in previous years, most of the decisions rendered were related to the discontinuation of the asylum procedure due to absconding (180 decisions regarding 258 applicants). The length of the asylum procedure, but also prioritisations of several Ukrainian applications were additional problems detected. The overall recognition rate was 29%, and refugee status was granted through 6 decisions to citizens of Afghanistan (4), Iran (3) Ukraine (1), Libya (1) and Burundi (1). The remaining 10 decisions were related to subsidiary protection: Syria (10), Ukraine (3), DR Congo (2), Afghanistan (2), Cuba (1), Cameroon (1) and Niger (1).

The most notable decisions rendered by the Asylum Office are the following:

- Decisions on granting subsidiary protection to citizens of Cuba (HIV+ and LGBTQI+ applicant denied medication in Cuba and proclaimed by incompetent legal aid providers as non-credible cases) and Cameroon (a person with a serious physical disability which requires everyday support)
- Decision on granting refugee status to a SGBV survivor from Burundi on the basis of the Istanbul Protocol Report drafted by the multidisciplinary team consisting of forensic experts, a gynaecologist and a psychiatrist and supplemented by the first SGBV Report submitted as evidence in asylum procedure.
- Decision on granting refugee status to a SGBV survivor from Afghanistan on the basis of the Istanbul Protocol Report drafted by the multidisciplinary team consisted of forensic experts and a psychiatrist and supplemented by the SGBV Report.

The practice of the Asylum Office remains contradictory and one of the major problems detected by legal aid providers is the lack of capacity of Asylum Officers to apply the principle of *dubio pro reo* (the principle of the benefit of the doubt). In other words, the burden of proof threshold has been set high, leaving the space for international protection only for those who have survived the most violent forms of acts of persecution.

The practice towards LGBTQI+ applicants and SGBV survivors remains negative, inconsistent, and it is oftentimes worsened due to the poor work of legal aid providers.

- ❖ **Asylum Commission – the second instance authority:** The practice of the second instance authority – Asylum Commission, continues to lack corrective influence on the work of the Asylum Office. In 2022 the Asylum Commission took 44 decisions regarding 59 persons, which is a significant decrease in comparison to 2021 when 74 decisions were rendered regarding 80 persons. No decision was taken after the hearing of the appellant, nor did any recognise international protection to the appellant. Notably, in the history of the body, there were only three positive decisions granting asylum to 4 applicants, the last one in 2019.
- ❖ **Administrative Court –the third instance authority:** 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. Thus, the same conclusion can be drawn from the jurisprudence of the Administrative Court as it is from the practice of the Asylum Commission. In the past 15 years, this third instance body has failed to establish itself as the corrective authority in relation to the Asylum Commission and the Asylum Office. In the same period, this body has failed to conduct a single hearing of asylum seekers and to render a single positive decision. In 2022, the Administrative Court delivered 26 decisions regarding 41 persons from the following nationalities: Iran (19), Jordan (4), Bulgaria (3), Türkiye (2), Tunis (2), Syria (2), Libya (2) and 1 from BiH, Pakistan, Burundi, Cuba, Somalia, Afghanistan and 1 unknown country. Out of that, 21 complaints were rejected encompassing 36 persons, while 4 complaints were upheld in relation to 4 persons and 1 case was discontinued. What is common for Asylum Commission and the Administrative Court is the fact that decision makers comprising these bodies have failed to develop the necessary expertise in international refugee and human rights law. Thus, the most developed practice in the Serbian asylum system is the one originating from the first instance authority – Asylum Office.
- ❖ **Legal aid:** The quality of legal aid provided by CSOs and attorneys at law still lacks necessary quality assurance control and in the past several years many instances of unprofessional, incompetent and unduly behaviour was recorded, producing devastating consequences on applicants for international protection in Serbia.
- ❖ **Asylum procedures:** Serbia is not a part of Dublin, nor does the Serbian Asylum Act recognise the admissibility procedure. The border procedure is yet to be applied in practice, while the accelerated procedure is rarely applied. Also, the practice of the safe country concept is worth praising and asylum authorities resort to such decisions only in rare situations. Since the institute of subsequent asylum applications has been introduced in the 2018 Asylum Act, not a single subsequent applicant was successful in reopening his asylum case. Vulnerability assessments in terms of procedural, but also reception guarantees are still not clearly prescribed and it largely depends on the assistance of international Organisations and CSOs.

Reception conditions

- ❖ **Reception capacity and conditions:** According to CRM, in 2022 the total capacity of the 19 asylum and reception centres increased from 5,915 to 8,155 beds. Realistic capacities which meet most of the relevant standards regarding dignified and safe accommodation, and which can be used for a longer stay are between 3,000 and 3,500 (Asylum and Reception Centres jointly). It is difficult to provide a clear picture of the realistic reception capacities which are in line with the relevant human rights standards, as no independent entity has ever conducted a non-biased, impartial and thorough monitoring of reception facilities. The situation with most of the RC is such that they cannot be considered places designated for a longer-term stay. Throughout the year numerous incidents were reported, including poor living conditions, poor hygiene, overcrowding, security incidents inside or outside the camps, presence of organized criminal groups prone to ill-treatment of other beneficiaries and others. MoI is still referring genuine asylum seekers to asylum or reception centres where the Asylum Office does not facilitate asylum procedures and they have to wait for a prolonged period of time to be transferred to one of the asylum centres where they could have their asylum hearing.

Detention of asylum seekers

- ❖ **Freedom of movement/deprivation of liberty:** Persons in need of international protection who enjoy the status of asylum seekers are rarely detained, while the same category of people who are not willing to apply for asylum can be detained and forcibly removed to one of the neighbouring countries. Living conditions in DC Padinska Skela are acceptable, while there are no credible reports which could indicate the realistic capacities or living conditions in the recently opened DC Plandište and DC Dimitrovgrad. The total capacities of immigration detention facilities are 310 places. Slightly less than 600 third country nationals, out of which 60% could be in need of international protection, were subjected to immigration detention, and only several of them expressed their intent to apply for asylum. The question that remains open is to which extent persons in need of international protection detained under the Foreigners Act have access to the asylum procedure, but also have the possibility to enjoy the right of persons deprived of their liberty, including the right to obtain legal representative who could assist them to challenge their detention, but also their expulsion. The systemic problem of arbitrary detention at airport transit zones continues to exist and there are several applications pending before the ECtHR. Alternatives to detention are yet to be used in practice.

Content of international protection

- ❖ **Integration:** The integration of refugees and inclusion of 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 a bit more than 100. This can also be attributed to the lack of prospects to access the labour market in the first 9 months of the asylum procedure.
- ❖ **Access to education** for all children seeking or granted asylum is guaranteed, but the quality of education remains low due to language barriers.
- ❖ **Travel documents:** In the 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 a precedent for future family reunification cases. In 2021 and 2022, there were no instances of family reunification.

Temporary protection

The information given hereafter constitute a short summary of the annex on Temporary Protection in Serbia. For further information, see [Annex on Temporary Protection](#).

Temporary protection procedure

- ❖ **Scope of temporary protection:** On 18 March 2022, for the first time in the history of the Serbian asylum system, the Government adopted the Decision on Providing Temporary Protection in the Republic of Serbia to Displaced Persons Coming from Ukraine. The scope of temporary protection is related to 'persons displaced from Ukraine' who were forced to leave Ukraine as their country of origin or country of habitual residence or who were evacuated from Ukraine and who cannot return to permanent and safe living conditions because of the current situation prevailing in that country. On 16 March 2023, the Government extended temporary protection to displaced people through the Decision on Supplementing of the TPD which will be valid until 18 March 2024.

- ❖ **Registration for temporary protection:** In the period from March 2022 until April 2023, the total number of persons registered in line with the TPD was 1,293. Out of that number, 1,237 were Ukrainian nationals, 28 were Russian nationals and 28 were other nationals (China, Latvia, Bosnia and Hercegovina, Belarus, Georgia, Uzbekistan and Armenia). A total of 840 registered individuals are female, while 453 were male. Out of 1,293 registered individuals, a total of 313 were children. Out of 1,293 registered individuals, a total of 1,257 of them were granted temporary protection. In the period March-April 2023, a total of 671 were extended temporary protection. Refugees from Ukraine have unhindered access to the territory, to registration procedures as well as to the procedure for obtaining temporary protection. Basically, the positive attitude of the Mol towards refugees from Ukraine implies that they do not require substantive legal support to access and obtain temporary protection.

Content of temporary protection

- ❖ **Access to rights:** Beneficiaries of temporary protection are entitled to identical rights as persons granted asylum or subsidiary protection and thus, they face the same obstacles. However, access to health care, access to the labour market, and consequences of the lack of biometric ID cards and other forms of assistance are mainly provided by CSOs who are funded by the UNHCR and other relevant donors such as the EU.

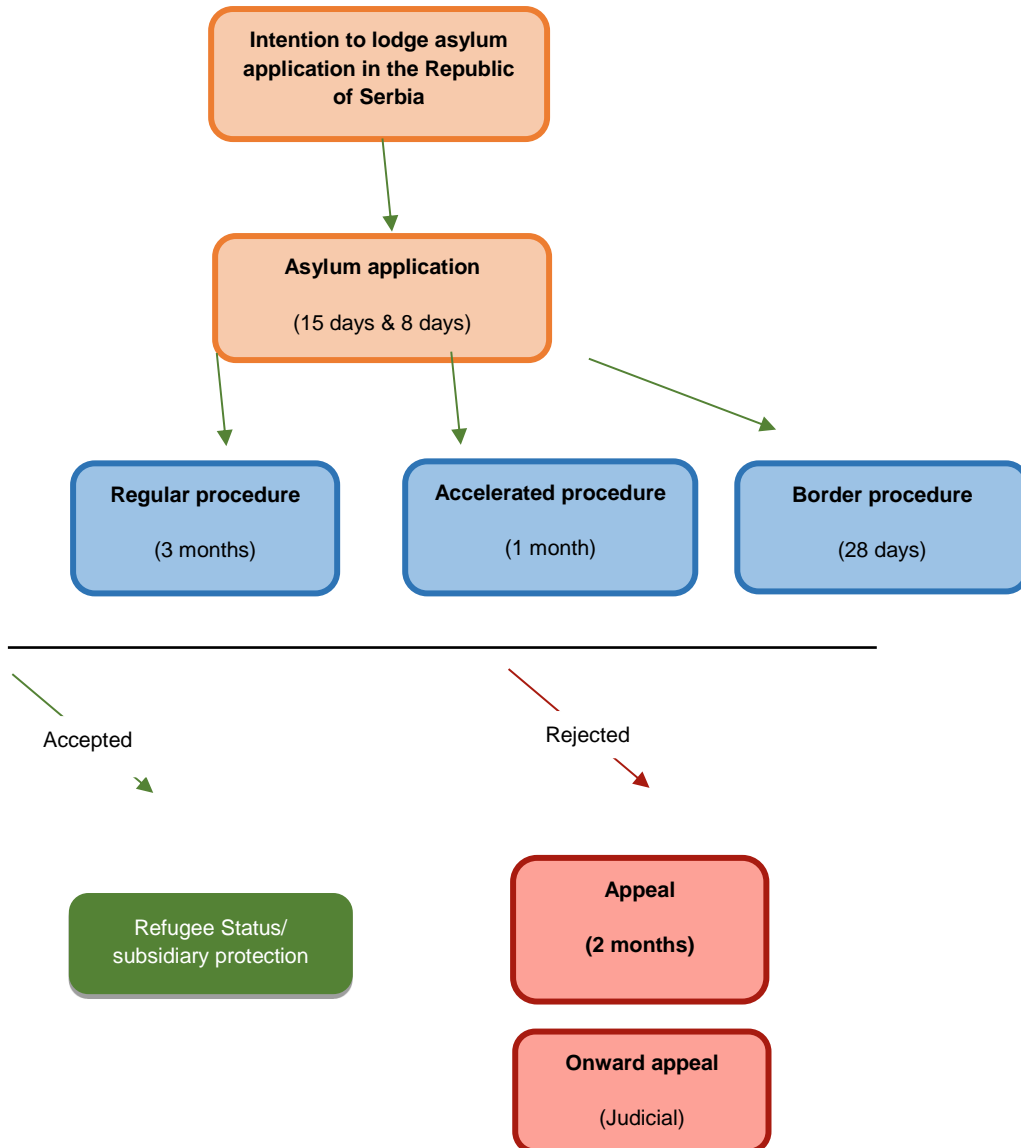


International Protection

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|---|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ¹ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ² | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Admissibility procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

Regular procedure still represents the most commonly applied procedure and is usually conducted in relation to applicants accommodated in Belgrade, in Asylum Centre (AC) Krnjača, or those who can afford to live in private accommodation in Belgrade or in other places such as social care institutions for unaccompanied and separated children (UASC) or safe houses for survivors of trafficking in human beings. Asylum Centres outside Belgrade are not visited or are rarely visited by the Asylum Office, and for the purpose of conducting regular asylum procedure.⁴ The main reason is serious lack of human capacity within the Asylum Office which is tasked with facilitating lodging of asylum applications in person and asylum hearings.

As for the **accelerated procedure**, it is still rarely used and only in instances of manifestly unfounded applications. It has also been conducted mostly in relation to applicants accommodated in Belgrade.

In 2023, there were no instances in which a **border procedure** was conducted. Thus, the border procedure has yet to be applied in practice. There are two newly opened operational immigration detention facilities in the border areas with Romania and Bulgaria – Detention Centre in Plandište and Detention Centre in Dimitrovgrad respectively. These facilities have become operational in 2023. Still, there were no border procedures conducted in these facilities.

The Ministry of Interior (MoI) had previously outlined that a **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 envisaged 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. The said reconstructions were finalised during 2022, but the newly established premises are still not considered as suitable for a longer stay due to their size and structure.⁵ Also, when the number of foreigners refused entry is high, both new and the old detention premises at the airport are put in use.

Thus, **airport transit zone procedure** is yet to be applied in practice and it is reasonable to assume that such procedure will not be conducted at the airport in the near future due to infrastructural deficiencies. For that reason, all foreigners who express their intention to lodge asylum application at the airport are issued with the certificate on the intention to lodge asylum application (registration certificate) and are referred to one of the Asylum or Reception Centres.

¹ For applications likely to be well-founded or made by vulnerable applicants.

² Accelerating the processing of specific caseloads as part of the regular procedure, without reducing procedural guarantees.

³ Entailing lower procedural safeguards, whether labelled as “accelerated procedure” in national law or not.

⁴ In 2022, AC in Sjenica and AC in Tutin were visited twice each.

⁵ Outlined by the representatives of the Asylum Office at the round table with Border Police that took place in Vrdnik on 28 December 2023.

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 ⁶	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 ❖ 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 always conducting security checks and assessments, based on which an application for international protection can be rejected.⁷ This has become the usual practice before the decision granting asylum is officially rendered.

This was applied in the period 2015-2018 in one case concerning a Libyan family whose asylum applications were 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 European Court for Human Rights (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 the former Ghaddafi regime, and under Article 13 of ECHR due to an alleged lack of effective remedy in Serbia.⁸ Eventually, they were granted subsidiary protection but at the time of writing their application was still pending before the ECtHR with regards to the lack of an effective legal remedy (no suspensive effect) against an expulsion decision rendered on the basis of security reasons which were not provided in the reasoning of the decision.⁹

Another case, which also refers to an applicant from Libya, was rejected on these grounds in 2019. The case was referred from the first to the second instance body on several occasions and eventually, the

⁶ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

⁷ Article 33 (2) Asylum Act.

⁸ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, 30 June 2016, available at: <https://bit.ly/33xHp4r>.

⁹ 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>.

applicant was granted refugee status in February 2022,¹⁰ after the second instance body obtained positive security assessment from BIA.

In 2022, there were additional three cases in which negative assessment of BIA was used as grounds for detention of Kirgizstan¹¹ and 2 Turkish¹² citizens of Uzbek and Kurdish Ethnicity respectively and one of the Turkish citizens is also the member of the Gulen movement.¹³ All these applicants were rejected in merits in asylum procedure, but it is clear that the outcome of their cases was impacted by the negative security assessment of BIA. What is also common in these cases is the fact that they were all fugitives subjected to the extradition procedure, which are still ongoing. All three cases are also currently pending before the UN Committee against Torture (CAT). The chain of events and the complete disregard of obvious grounds for persecution in their countries of origin confirms the practice from previous years in which fugitives facing the risk of persecution in their countries of origin stand no chance to obtain international protection, especially if they fled Türkiye as country of origin.¹⁴ The aspiration of Serbian authorities, embodied through the security assessment of BIA and summary rejections in asylum or other residential procedures, accompanying with security detention, depicts the lack of independence of asylum authorities in the politically sensitive cases of people who are in need of international protection.

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 first instance authority?
Asylum Office	17	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Asylum Office

4.1. Asylum Office – first Instance

The Asylum Office is responsible for examining applications for international protection and competent to take decisions at first instance.¹⁵ 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.

¹⁰ Asylum Office, Decision No. 26–1389/17, February 2022.

¹¹ Radio Free Europe, *Komitet protiv torture UN naložio Srbiji odlaganje izručenja državljanina Kirgiztana*, 24 August 2022, available at: <http://bit.ly/3KFW1LR>.

¹² BIRN, *Serbia to Extradite Kurdish Politician to Türkiye over ‘Terrorism’ Charges*, 31 May 2022, available at: <https://bit.ly/3xY3Ujj>.

¹³ Radio Free Europe, *Bez odgovora Ministarstva pravde Srbije o izručenju turskog državljanina*, 31 May 2022, available at: <http://bit.ly/41uwlTB>.

¹⁴ See more in the Chapter C.1. – Regular Procedure.

¹⁵ Article 20 Asylum Act.

As of the end of March 2023, there were a total of 17 staff, of which:

Asylum Office staff: 2022	
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	1
Registration Officers (Krnjača)	1
Asylum Officers	7
Administrative Officers	4
Translators for English language	2
Total	17

Only 4 out of 7 asylum officers were in charge of the asylum procedure and deciding on applications for international protection in 2022. In March 2022, two asylum officers left the Asylum Office, leaving this body with only 5 operational officers, while another asylum officer as well as the Head of the Col Department shifted to another Mol Unit.

Asylum officers are in charge of facilitating the lodging of asylum applications in person, asylum hearings and rendering decisions at first instance. In the decision-making process, they are assisted by the Col Department, which provides information on specific issues in countries of origin and third countries 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. However, in 2022, due to a higher number of written asylum applications situation quantitatively improved, including also in terms of the total number of decisions rendered in 2022, as well as the recognition rate.

Moreover, the average length of first instance asylum procedure was between 8 and 12 months, which is a decrease in comparison to 2021, where the average length was 10 to 14 months.¹⁶ Low capacities are one of the reasons why 90% of asylum procedures are conducted only for asylum seekers accommodated in Belgrade (in AC Krnjača) or who reside at a private address. However, there were several instances in which the Asylum Office visited AC Sjenica and AC in Tutin. As for the other asylum and reception centres, asylum seekers have to wait to be transferred to AC in Krnjača from several days to several weeks after they lodged their written asylum applications.

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 a new Head, without any prior experience was appointed. Moreover, the Deputy Head of the Asylum Office was transferred to another Department of the Mol. In December 2020, the newly appointed Head of the Asylum Office was transferred again, leaving the Country-of-Origin Information Officer as acting Head and acting Deputy Head of the Asylum Office. At the beginning of 2021, the former Head of the Asylum Office was reinstated (removed in September

¹⁶ AIDA, Country Report Serbia, 2021 Update, May 2022, p. 24.

2022), which was a positive development given the person's experience in the asylum field and her status was confirmed in December 2022. Still, the Deputy was not appointed until the conclusion of this Report.

It is important to note that the findings of the European Commission that the capacities of the Asylum Office in 2021 were sufficient to process 175 asylum requests are simply flawed.¹⁷ This statement is inaccurate and can be potentially realistic only from the quantitative point of view, which in 2021 would mean that 6 operational asylum officers (in the first 8 months, and then this number dropped to only 4 operational asylum officers in the last four months) were dealing with 175 asylum requests – 30 requests per year. Still, the European Commission Report disregards the fact that asylum officers conducting asylum procedures are of different level of experience, are frequently tasked with other administrative work (issuing ID cards, issuing hundreds of different types of certificates which are related to inclusion and integration, etc.), are without state-funded interpreters and do not have capacity to operate outside Belgrade.

The proof that their capacities are low in terms of both quantity and quality is the fact that there has not been a single case in 2021 (the period covered by the Progress Report which also outlined these problems in the ensuing paragraphs) in which the first instance procedure was conducted within 3 months as the law prescribes and that the period from which asylum application was made, until the hearing is conducted is at least 3 to 6 months (which has discouraging effect on asylum applicants who decide to abscond), and sometimes even longer. Another reason why this statement from Progress Report is misleading is the fact that Asylum Office rarely undertakes evidentiary activities *proprio motu* (expert opinions, witness statements, etc.) and that this is mainly done by legal representatives. And finally, it is important to note that the work of asylum officers can to a certain extent be considered as heroic, taking in consideration that second and third instance authority have failed to make a proper contribution to Serbian asylum system since 2008 and that quality of many decisions from 2021 and 2022 indicates realistic potential, but which cannot be fulfilled without significant infrastructural support. In the past several years, several asylum officers who were considered to be the most effective and experienced, decided to leave this body due to unbearable overload.

What is also important to highlight is the fact that 4 operational asylum officers in 2022 received 322 asylum applications, conducted 104 hearings (which last one working day at least) rendered 65 decisions in merits and 165 decisions on discontinuing asylum procedure (plus additional administrative work). If we take in consideration that every asylum officer has on average between 180 and 200 8-hour working days in a year (excluding weekends, holidays, state holidays and sick leaves), it is fair to say that the results which they achieved are impressive in terms of the numbers, but not necessarily in terms of the quality in the decision making process, even though it cannot be disputed that there was a significant number of high quality and progressive decisions. However, the current capacities are unsustainable, especially after the influx of Ukrainian refugees who applied for temporary protection. To put it in a more descriptive way, if for some reason Serbia is considered as a safe third country, and only several hundreds of persons in need of international protection are returned on a yearly basis with the guarantees that they will be allowed to lodge asylum application, the Asylum Office capacities would collapse.

Thus, it is important to note that significant increase of operational asylum officers is necessary and that their numbers should be at least 20 so they could cope in an appropriate and timely manner with the current numbers of applicants. Also, the quantitative increase would mean nothing without proper training and capacity building which takes time. For that reason, if the capacities of the Asylum Office are to be increased in the near future, it will take several years to train newly hired asylum officers to deal with several hundred asylum applications per year. To deal with several thousand asylum applications per year would require the complete shift of State policy towards the asylum issue which has never been the case, and which is further corroborated with the fact that the first instance asylum procedure would not be conducted without the assistance of international Organisations and civil society.

¹⁷ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 63.

4.2. Asylum Commission – second Instance

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, 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.¹⁸

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 2022 by the Asylum Commission confirms this statement. In the history of the Serbian asylum procedure, since 2008, this body has rendered only 3 decisions granting asylum to 4 persons. In its 2021 Concluding Observations, the UN Committee against Torture (CAT) recommended that Serbia abolish the Asylum Commission and introduce a judicial review by the Administrative Court at the second instance.¹⁹

What is important to outline is the fact that Asylum Commission, in the vast majority of cases, renders decisions timely within maximum 3 months (2 months is the deadline).

4.3. Administrative Court – third Instance

The final decisions of the Asylum Commission may be challenged before the Administrative Court.²⁰ The Administrative Court judges still lack adequate resources to assess complaints lodged by asylum seekers and their legal representatives and none of the judges are specialised in asylum and migration issues. There is no specially designated department consisted of judges with relevant and necessary knowledge and supporting infrastructure such as Col department. The complexity which the judges of the Administrative Court face are also related to the fact that in their everyday work they have to be familiar and apply several dozen laws and bylaws which are governing the field of administrative measures (taxes, election disputes, local municipality matters, issuance of permissions and licences, education, medical administrative disputes and others).

There are 52 administrative judges in total who are covering the entire territory of Serbia.²¹ Only in 2022, they have dealt with 128,376 administrative complaints, which clearly shows that the backlog of variety of administrative disputes, accompanied with the lack of tradition for administrative judges to deal with asylum and migration issues, makes this body as ineffective, theoretical and illusory for asylum seekers. 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 years²² and there are still ongoing cases, including those which are related to the unaccompanied and separated children (UASC) in which excessive length flagrantly contradicts their best interest.²³

¹⁸ Article 21 Asylum Act.

¹⁹ 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).

²⁰ Article 22 Asylum Act.

²¹ The list of judges can be found at the following link: <http://www.up.sud.rs/cirilica/sudije>.

²² 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.

²³ For instance, Administrative Court procedures related to Afghan UASCs Nos. U 14-095/20 lodged in July 2020 (32 months); U 6013/20 lodged in April 2020 (34 months) and U 3268/20 lodged in January 2020 (37 months).

4.4. Quality assurance, transparency and cooperation with the UNHCR, EU, CSOs and other entities

The Asylum Act explicitly envisages that the asylum authorities should cooperate with the UNHCR when undertaking activities related to its mandate and the UNHCR should have free access to all persons who might be in need of international protection.²⁴

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 their 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.²⁵

Apart from human, professional and infrastructural lack of capacities, the lack of effective quality assurance control and comprehensive analysis of the asylum case law can be considered as one of the main reasons for contradicting decisions in the practice of Asylum Office, Asylum Commission and Administrative Court. This can also explain the lack of corrective influence of the second and third instance authorities on the quality of the decision making process in general.²⁶

There is no State quality assurance control in place and also, the practice of the Asylum Office, Asylum Commission and Administrative Court cannot be adequately assessed by professionals acting externally. Thus, there are no personal records of asylum officers or judges 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 rendered, the length of the asylum procedure and the overall quality of the decision-making process. The same can be said for the members of the Asylum Commission.

In 2022, the Mol has agreed with UNHCR to gradually introduce external control mechanisms, which implies the 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 hired a Quality Assurance Officer who has regular meetings with the Administration for Border Control and the Asylum Office. Also, the 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.²⁷ UNHCR and its partners have also designed indicators to measure the length of the first instance asylum procedure, which should be considered as a positive step.

The EASO, now EUAA (European Union Asylum Agency) has also been providing support in Serbia since 2016. The support is currently provided under the second roadmap for cooperation between Serbia and EASO/EUAA 2020-2022, established by the Mol and CRM. The main focus with regards to refugee status determination procedure is on country-of-origin information (CoI).²⁸ EUAA representatives held a meeting with relevant CSOs recognised as main providers of free legal aid in Serbia in October 2021.²⁹ In addition, representatives of asylum authorities have attended numerous seminars and trainings outside Serbia. The third phase project *Protection sensitive Migration Management* is a regional IPA project which started in 2022 and will end in 2025, based on 4 pillars – identification and registrations, access to protection,

²⁴ Article 5 (1) and (2) Asylum Act.

²⁵ Article 5 (3) Asylum Act.

²⁶ AIDA: Country Report Serbia, 2021 Update, May 2022, pp. 87 and 90.

²⁷ UNHCR, UNHCR: Authorities of Italy and Serbia exchange experiences related to refugee protection, 26 November 2021, available at: <https://bit.ly/3HXnuzD>.

²⁸ European Commission, Serbia 2021 Report, 19 October 2021, SWD (2021) 288 final, available at: <https://bit.ly/3Byi8IQ>, 52.

²⁹ The author of this report attended the meeting.

return management and contingency plan. It is conducted by the UNHCR, IOM, FRONTEX, EU and EUAA.

When it comes to the transparency of asylum authorities' work, it is important to outline that the MoI has stopped providing data to CSOs regarding asylum issues in 2018, and the only available data is to be extracted from legal representatives in asylum procedures and publicly available reports published by other State institutions such as the Ombudsman or the CRM. For that reason, it is not possible to analyse all 67-decision rendered in merits in 2023, but only those decisions obtained from the legal representatives, published in other reports or collected from the applicants. However, in 2023 the MoI delivered comprehensive statistical data on border practices, readmission, refusals of entry and immigration detention.³⁰ This data can shed more light on the issues related to the access to territory and asylum procedure.

Thus, and as it has been the case in previous years, Asylum Office and Asylum Commission have not provided copies of relevant decisions for the purpose of their analysis, while the Administrative Court remained as the most transparent and all the judgments rendered in 2022 were delivered to the author of this Report in late February 2023.³¹ The Commission, but also the Asylum Office, are of the opinion that sharing copies of decisions with legal practitioners and researchers would violate the privacy of applicants.³² Asylum Office still provides regular statistical data to the UNHCR, but the statistical overview can be significantly improved. For instance, there is no gender or age breakdown when it comes to asylum applicants, nor there is a breakdown by particular vulnerabilities or the basis of the claim. In system in which several hundred applications are made per year and are addressed to one centralised body – Asylum Office, this should not be considered as a burden.

5. Short overview of the asylum procedure

5.1. International Legal Framework

Serbia is a State party to almost all relevant universal and regional treaties and conventions including the 1951 Refugee Convention Relating to the Status of Refugees,³³ 1967 Protocol,³⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms,³⁵ UN Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment,³⁶ International Covenant on Civil and Political Rights,³⁷ International Covenant on Economic, Social and Cultural Rights,³⁸ Convention on the Rights of the Child,³⁹ Convention on Preventing and Combating Violence against Women and Domestic Violence,⁴⁰ Convention on Action Against Trafficking in Human Beings,⁴¹ Convention on the Elimination

³⁰ Response of the MoI, Border Police Administration on the freedom of information request no. 072/1-32/23-3 of 26 February 2023.

³¹ Administrative Court response to the freedom of information request no. Cu-II-17a 94/22 od 26 February 2023.

³² See for example the response on the freedom of information request of the Asylum Commission No. no. 27-A-128-9/22-KA of 8 February 2023.

³³ UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://bit.ly/2GCMu4R>, hereinafter: Refugee Convention.

³⁴ UNGA, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://bit.ly/3kbPLpf>, hereinafter: the Protocol.

³⁵ CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://bit.ly/3oUqWkC>, hereinafter: ECHR.

³⁶ UNGA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://bit.ly/3auJbJj>, hereinafter: UN CAT.

³⁷ ICCPR, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://bit.ly/3nBpWBv>, hereinafter: ICCPR.

³⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://bit.ly/3mRV4fy>, hereinafter: ICESCR.

³⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://bit.ly/3mfoK5y>, hereinafter: UN CRC.

⁴⁰ Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6, available at: <https://bit.ly/3mv1V3q>.

⁴¹ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, available at: <https://bit.ly/2IRT9ZV>, hereinafter: Istanbul Convention.

of All Forms of Discrimination Against Women,⁴² Convention on the Rights of Persons with Disabilities⁴³ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴⁴ and several others.

This further means that persons in need of international protection can address with individual complaints/communications/applications most of the UN and CoE Treaty bodies and that the legal framework and practice related to the field of asylum and migrations can be assessed through other forms of work of these bodies such as monitoring visits, periodic reporting and review, inquiry procedures and others. However, it is important to note that Serbia has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁴⁵, nor the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.⁴⁶ This basically means that individuals cannot address the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC). A11-Initiative for Economic and Social Rights (A11) has been advocating for the ratification of the OPCESCR since 2019,⁴⁷ launching campaigns, but also securing public promises of Ministers of Human Rights.⁴⁸ However, and to this date, there have not been any significant developments which could potentially open a new platform for refugees, asylum seekers and migrants to address the CESCR on issues related to inclusion and integration and the same can be said for the OP to the CRC.

5.2. Constitutional Legal Framework

Article 16 of the Constitution of the Republic of Serbia⁴⁹ stipulates that generally recognised rules of international law and ratified international treaties are an integral part of the legal system of Serbia and that relevant authorities shall apply them directly. **Article 18 of the Constitution** further confirms that human rights enshrined in the Constitution shall also be applied directly, as well as human rights arising from the generally recognised rules of international law and in line with the values common to democratic societies and in line with international human rights standards, as well as the practice of international bodies for the protection of human rights. And finally, **Article 145 (2) of the Constitution** entails that courts' decisions shall be based on the Constitution, laws, ratified international treaties and other generally recognised rules of the international law.

Through cumulative interpretation of the above-outlined constitutional provisions, it can be safely concluded that all ratified universal and regional international treaties, as well as the practice of the European Court of Human Rights (ECtHR), UN Treaty Bodies and other relevant international bodies for the protection of human rights, should be interpreted as legally binding by asylum and other relevant authorities. This also implies that legal framework governing asylum and migration issues should be aligned with the rules outlined in the sub-chapter 5.1., but also to the relevant practice of the bodies for the protection of human rights.

⁴² UNGA, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://bit.ly/3rEQrlF>, hereinafter: UN CEDAW.

⁴³ UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <https://bit.ly/3wVbbNZ>. <https://bit.ly/3rEQrlF>, hereinafter: CRPD.

⁴⁴ Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1987, ETS 126, available at: <https://bit.ly/3h2KQXQ>.

⁴⁵ UNGA, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: resolution / adopted by the General Assembly*, 5 March 2009, A/RES/63/117, available at: <https://bit.ly/3ydMXBD>, hereinafter: OPCESCR.

⁴⁶ UN Human Rights Council, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: resolution / adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/18, available at: <https://bit.ly/3tFVecN>.

⁴⁷ A11, *The Initiative to Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 1 April 2019, available at: <http://bit.ly/3LOBxca>.

⁴⁸ Insajder, Čomić: *Do kraja godine ratifikacija Opcionog protokola; Čurčić: To bi bila velika stvar za zaštitu ljudskih prava u Srbiji*, 25 February 2022, available at: <http://bit.ly/3ZIZpes>.

⁴⁹ Official Gazette of the Republic of Serbia, nos. 98/2006 and 115/2021.

It is also important to note **that the Constitutional Court of the Republic of Serbia** (Constitutional Court) is entitled to receive individual complaints – **constitutional appeals** – and that the final outcome of the procedure initiated with the constitutional appeal can be pecuniary and non-pecuniary damage.⁵⁰ Accordingly, Constitutional Court is entitled to examine individual complaints of refugees, asylum seekers and migrants and in theory, this body can be considered as an effective legal remedy.⁵¹ However, the practice has shown the opposite.⁵²

The right to refugee status ('utočište') is explicitly enshrined in the Article 57(1) of the Constitution and it goes as follows:

'Any foreign national with reasonable fear of persecution 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.'

Another relevant provision of the Constitution which recognizes persecution in terms of the Article 1 of the Refugee Convention, but also provides wider protection from *refoulement* is the Article 39 (3) of the Constitution:

'A foreigner can be expelled only on the basis of a decision of the competent authority, rendered in the procedure governed by law and if they are provided with the right to appeal, and only where they are not threatened with persecution because of their race, gender, religion, nationality, citizenship, belonging to a certain social group, political opinions or where they are not threatened with a serious violation of the rights guaranteed by this constitution.'

Thus, the right to international protection in terms of both international human rights law and international refugee law, revolving around the refugee definition outlined in the Article 1 of the Refugee Convention, and the principle of *non-refoulement* in terms of both frameworks, is explicitly guaranteed. Also, the constitutional framework and its link with universal and regional treaties for the protection of human rights and the practice of relevant monitoring bodies (ECtHR, CAT, CCPR and others) provides additional layers of protection for persons in need of international protection. Moreover, constitutional appeals submitted by refugees and asylum seekers to the Constitutional Court are also examined under Article 25 of the Constitution 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, including under the auspices of the *non-refoulement* principle. Articles 27 to 29 of the Constitution reflect the content of the Article 5 of ECHR, including the Article 5-1-f which is related to immigration detention. Article 36 (2) of the Constitution reflects Article 13 of the ECHR usually read in conjunction with the *non-refoulement* principle, but also other relevant rights. Article 4 of Protocol 4 to the ECHR was examined by the Constitutional Court through the framework of the Article 39 (3) of the Constitution.⁵³ Article 26 prohibits slavery and other contemporary forms of slavery such as forced labour (Article 26). And finally, the Constitution also contains provisions which are related to economic and social rights which can be linked with the inclusion and integration of asylum seekers and refugees: non-discrimination (Article 21), right to work (Article 60), right to health care (Article 68), right to social protection (Article 69), right to education (Article 71) and others.

5.3. Asylum legal framework

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 2018.⁵⁴ Additionally, relevant are the

⁵⁰ Constitutional Court Act, Official Gazette of the Republic of Serbia, nos. 109/2007, 99/2011, 18/2013, 103/2015 and 40/2015, available at: <http://bit.ly/2NH0tVm>, Articles 82 to 92.

⁵¹ On the effectiveness of the Constitutional Court see more in the following chapters.

⁵² More about the practice of the Constitutional Court in the following chapters.

⁵³ Constitutional Court, Decision No. UŽ 1823/17, Decision of 29 December 2020, available at: <http://bit.ly/3fk0aPD>.

⁵⁴ Official Gazette no. 24/2018.

Foreigners Act,⁵⁵ the General Administrative Procedure Act (GAPA)⁵⁶ and the Administrative Disputes Act (ADA).⁵⁷ GAPA acts as *legi generali* with regard to the Asylum Act and Foreigners Act in their respective subject matter, as well as the Migration Management Act,⁵⁸ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees, alongside the Decree on the Manner of Involving Persons Recognised as Refugees in Social, Cultural and Economic Life (Integration Decree).⁵⁹ There are several more laws and bylaws which regulate the House Rules in reception facilities, social and health-care issues, right to work and other aspects related to inclusion and integration of asylum seekers and refugees.

The Asylum Act was introduced in 2018 and is now applied to all asylum applications. All the procedures initiated under the old Asylum Act from 2008 were finalised by the end of 2019.⁶⁰ Thus, all the law's novelties, except for the border procedure, are generally applied in practice.⁶¹

5.3.1. Ongoing amendments of the Asylum Act

In 2021, the Government was working towards amending the Asylum Act. The MoI initiated dialogue on the amendments and all relevant CSOs were invited to take part in consultations in November 2021. The consultations continued in 2022 and were finalised on 28 February 2023.⁶² The MoI shared with CSOs the first draft of the amendments to the Asylum Act which included numerous positive changes such as:

- ❖ 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;⁶³
- ❖ harmonisation of terminology and certain procedural steps governed by GAPA;
- ❖ pre-elementary school education and preparation for children under the age of 7 who belong to the category of asylum seekers;
- ❖ introduction of additional provisions related to refugee travel documents, but still limiting access to travel document to persons granted subsidiary protection (except in exceptional circumstances);
- ❖ recognizing subsequent applicants as persons entitled to all the rights as the first time asylum seekers, including the right to have ID cards.

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

- ❖ prescribing more precise criteria for the assessment of the possibility for asylum seekers to enjoy protection from persecution in the country of origin – Article 31;
- ❖ excluding the deadline 15+8 days for submission of asylum application – Article 36 (see Lodging an application);
- ❖ introducing specific evidentiary activities such as forensic expert opinions and witnesses – Article 37;
- ❖ clarifying the 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 the asylum procedure or forced removal– Article 48;
- ❖ making a clear distinction between measures which imply deprivation of liberty and measures which are related to the limitation of the freedom of movement – Article 78;
- ❖ introducing clear criteria for the application of the safe third country concept – Article 45;

⁵⁵ Official Gazette no. 24/2018.

⁵⁶ Official Gazette no. 18/2016 and 95/2018.

⁵⁷ Official Gazette no. 111/2009.

⁵⁸ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

⁵⁹ Official Gazette, no. 101/2016 and 56/2018.

⁶⁰ AIDA Country Report Serbia, 2019 Update, May 2019, 32.

⁶¹ Ibid., 18-19.

⁶² The final proposal of the amendments is available in Serbian language on the following link: <http://bit.ly/3yepU9U>.

⁶³ At this moment, only persons who lodged asylum application are recognized as a category which is entitled to material reception conditions.

- ❖ specifying which aspects of material reception conditions should be granted to the newly introduced category of “foreigner who expressed intention to lodge asylum application”;
- ❖ harmonisation of provisions on guardianship contained in the Family Law with provisions of the Asylum Act governing accommodation of unaccompanied and separated children (“UASC”).
- ❖ Introduction of the biometric ID cards of asylum seekers and persons granted asylum.

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

It has remained unclear by the end of this reporting period to which extent have proposals made by CSOs were taken in consideration because the new draft version which will be sent to the Parliament has not been published. However, from the public debates which took place on several occasions, it can be reasonably assumed that many important amendments and more complex changes (related to deadlines, detention and others) will not be taken on board by the MoI.

5.3.2. Overview of the asylum procedure

The procedure for seeking asylum in Serbia is as follows: a foreigner may ‘express the intention to submit an asylum application’ within Serbian territory or at border crossings (including the Nikola Tesla or Niš Airport in Belgrade), following which they are registered by the officials of the MoI before whom they have expressed the intention and receive a registration certificate of having done so.⁶⁴ The asylum seeker is then expected to go to their designated asylum centre, or to notify the Asylum Office should they wish to stay at private accommodation within 72 hours.⁶⁵ It is not possible to express such intention in diplomatic or consular representations of Serbia. In other words, the potential applicant must be present on Serbian territory or under the 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 them 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.⁶⁶ Afterwards, an asylum officer will conduct the asylum hearing.⁶⁷

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.⁶⁸ Thus, the maximum length of an asylum procedure is 1 year.

In the case of a negative decision (in merits or inadmissible), the asylum seeker has 15 days to lodge an appeal to the Asylum Commission. A negative decision also contains an order to leave the country and a deadline to do so, which can be up to 30 days. However, when the decision on rejection becomes final (confirmed by the Administrative Court), the relevant MoI unit for foreigners renders an additional expulsion decision in cases where the applicant has failed to voluntarily leave the territory of the State within the given deadline.⁶⁹ Only the expulsion decision creates grounds for forcible removal and potential immigration detention imposed for the purpose of forced removal.

The Asylum Commission has to decide and deliver the second instance decision to the applicant within 60 days.⁷⁰ 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.⁷¹ Both remedies have automatic suspensive effect.⁷²

⁶⁴ Article 35 Asylum Act.

⁶⁵ *Ibid.*

⁶⁶ Article 36 Asylum Act.

⁶⁷ Article 37 Asylum Act.

⁶⁸ Article 39 Asylum Act.

⁶⁹ Article 74 (1-8) Foreigners Act.

⁷⁰ Article 95 Asylum Act and Article 174 GAPA.

⁷¹ Article 96 Asylum Act.

⁷² *Ibid.*

5.3.2. Constitutional Court procedure

The last instance in the 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, but several cases, which implied forcible removal, have shown that this mechanism is weak and slow.⁷³ This was accepted by the ECtHR which has granted interim measures submitted by Serbian lawyers on at least 10 occasions in the past several years.

According to the Constitutional Court, in its practice, there were in total 10 constitutional appeals related to the alleged violations of human rights of refugees, asylum seekers and migrants decided by this body, out of which 5 have been concluded, while 5 are still pending.⁷⁴ This data seems to be inaccurate, and the following decisions have been collected for the purpose of this Report.

The practice of the Constitutional Court for the period 2008-2023 – concluded and pending cases

No.	Case file number	Date of decision/pending	Article	Description	Decision
<u>CONCLUDED</u>					
1.	UŽ 1286/2012 ⁷⁵	29.03.2012	32 (1) and 57	Automatic application of the safe third country concept	Rejected as unfounded
2.	UŽ 5331/2012 ⁷⁶	24.12.2012	22, 36 (2) and 57	Automatic application of the safe third country concept	Rejected as manifestly unfounded
3.	UŽ 3548/2013 ⁷⁷	19.09.2013	32 (1), 39 (3), 57 and 66	Automatic application of the safe third country concept	Rejected as unfounded
4.	UŽ 124/2014 ⁷⁸	30.10.2014	32 (1) and 57	Right to a fair trial	Adopted as founded
5.	UŽ 4197/2015 ⁷⁹	20.06.2016	39	Right to freedom of movement	Rejected as manifestly unfounded
6.	UŽ 6006/2016 ⁸⁰	19.12.2018	25, 36 (2), 39 (3) and 57	Libyan refugees rejected in merits and served with an expulsion decision on the basis of security grounds	Rejected as manifestly unfounded

⁷³ Constitutional Court, Decision No. UŽ 3548/2013, Decision of 19 September 2013, available in Serbian at: <http://bit.ly/3cG4bhy>.

⁷⁴ Constitutional Court, Response to the freedom of information request no. 17/1 of 9 January 2023.

⁷⁵ Available at: <http://bit.ly/3kKVHME>.

⁷⁶ Available at: <http://bit.ly/3ygC4yO>.

⁷⁷ Available at: <http://bit.ly/3cG4bhy>.

⁷⁸ Available at: <http://bit.ly/3F5BmZk>.

⁷⁹ Not available online.

⁸⁰ Not available online.

7.	UŽ 8023/2016 ⁸¹	07.03.2019	25, 36 (2), 39 (3) and 57	Automatic application of the safe third country concept	Rejected as unfounded
8.	UŽ 9940/2016 ⁸²	13.06.2019	22, 27, 28, 29 and 36 (2)	Arbitrary refusal of entry and deprivation of liberty at the transit zone	Manifestly unfounded
9.	UŽ 1823/17 ⁸³	29.12.2020	25, 27, 28, 29, 36 (2) and 39 (3)	Arbitrary deprivation of liberty, ill-treatment, non-refoulement, collective expulsion and right to an effective legal remedy	Partially adopted as founded in relation to arbitrary deprivation of liberty, ill-treatment and violation of prohibition of collective expulsion
10.	UŽ 29/2018	01.07.2021	22, 27, 29 and 36	Arbitrary deprivation of liberty	Rejected as manifestly unfounded
11.	UŽ 3651/2015	27.07.2022	22, 27, 28, 29 and 36 (2)	Arbitrary refusal of entry and deprivation of liberty at the transit zone	Partially adopted in relation to the lack of legal remedy against the act of refusal of entry
<u>PENDING</u>					
12.	UŽ 10165/17	7.12.2017	25, 36 (2), 39 (3) and 57	Automatic application of the safe third country concept	Pending
13.	X.	11.06.2020	27, 28 and 29	Arbitrary deprivation of liberty during COVID-19 lockdown	Pending
14.	X.	2022	25, 27 and 57	Extradition of Bahrein national to his country of origin	Pending
15.	X.	2022	25 and 57	Rejecting of LGBTQI+ applicant from Tunis in asylum procedure	Pending
16.	X. ⁸⁴	2022	25 and 57	Rejecting of LGBTQI+	Pending

⁸¹ Available at: <http://bit.ly/3oeSFND>.

⁸² Not available online.

⁸³ Available at: <http://bit.ly/3fk0aPD>.

⁸⁴ For the said cases see more in BCHR, *Right to Asylum in the Republic of Serbia 2022*, available at: <https://bit.ly/3F4yJXE>, para. 3.4, hereinafter: *Right to Asylum 2022*.

				applicant from Tunis in asylum procedure	

5.3.3. International legal procedures

In the past several years, the number of asylum seekers addressing UN Treaty Bodies, UN Special Procedures and the ECtHR has been increasing. Currently, there are 11 communicated cases pending before the ECtHR related to the rights of asylum seekers:

1. *A. and Others v. Serbia*;⁸⁵
2. *Seraj Eddin v. Serbia*;⁸⁶
3. *M.H. v. Serbia*;⁸⁷
4. *A.K. v. Serbia*;⁸⁸
5. *M.W. v. Serbia*;⁸⁹
6. *A.H. v. Serbia and North Macedonia and A.H. v. Serbia*;⁹⁰
7. *H.G.D. v. Serbia*;⁹¹
8. *O.H. and Others v. Serbia*;⁹²
9. *E.B. v. Serbia and A.A. v. Serbia*;⁹³
10. *S.B. and Others v. Serbia*;⁹⁴
11. *Mohamed v. Serbia*⁹⁵

Also, there are at least two complaints pending before the Committee against Torture and 1 pending before the Working Group on Arbitrary Detention (WGAD):

1. *Piroglu v. Serbia* (CAT)⁹⁶
2. *Sulaimanov v. Serbia* (CAT)⁹⁷
3. *Piroglu v. Serbia* (WGAD)

⁸⁵ Application No 37478/16, 30 June 2016, available at: <https://bit.ly/3JyPWs8>.

⁸⁶ Application No 61365/16, 19 October 2016, available at: <https://bit.ly/3sO861Z>.

⁸⁷ Application No. 62410/17, 23 October 2017, available at: <https://bit.ly/34MuQHJ>.

⁸⁸ Application No. 57188/16, 3 October 2016, available at: <https://bit.ly/3rVFfde>.

⁸⁹ Application No. 70923/17, 29 September 2017, available at: <https://bit.ly/3oT0Ot0>.

⁹⁰ Application Nos. 60417/16 79749/16, 19 October and 27 December 2016 respectively, available at: <https://bit.ly/3oVp8dz>.

⁹¹ Application No. 3158/20, 12 December 2019, available at: <https://bit.ly/3HU3uxR>.

⁹² Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

⁹³ Application Nos. 50086/20 50898/20, available at: <https://bit.ly/3GUV4F1>.

⁹⁴ Application No. 22463/17, 8 February 2017, available at: <https://bit.ly/3JuDPfu>.

⁹⁵ Application No. 4662/22, 4 July 2022, available at: <http://bit.ly/3ynDYO8>.

⁹⁶ Communication No. 1130/2022, 2 June 2022, see more at Balkan Insight, *Serbia Ignores Calls to Free Kurdish Politician on Hunger Strike*, 29 July 2022, available at: <https://bit.ly/3PtXgaP>.

⁹⁷ Communication No. 1145/2022, 10 August 2022, see more at Danas, *CAT zatražio od Srbije da se uzdrži od izručenja državljanina Kirgistanu*, 24 August 2022, available at: <http://bit.ly/3L6gzZe>.

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
3. Who is responsible for border monitoring? National authorities NGOs Other
4. How often is border monitoring carried out? Frequently Rarely Never

1.1. Legal access to the territory and effective access to means of legal entry at the border crossings

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.

Also, Serbia has not designated official border crossings as places where asylum applications can be lodged or registered in terms of the standard which is reared to the existence of the effective access to means of legal entry, which should be praised. In other words, persons in need of international protection who successfully access territory or who are not subjected to pushbacks or any other form of collective expulsion, can access asylum procedure regardless of the place of entry – official border crossing or green border area.

1.2. Hindering of access through legal ways

1.2.1. Readmission agreements

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 Readmission Agreements with the European Union⁹⁸ as well as North Macedonia,⁹⁹ Albania,¹⁰⁰ Montenegro¹⁰¹ and Bosnia and Hercegovina ('Bosnia').¹⁰²

As regards the Readmission Agreement with the EU, it has not been functioning properly since September 2015 and Hungary mostly 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.¹⁰³ In 2022, a total of 678 foreigners was readmitted to Serbia from neighbouring countries.¹⁰⁴

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

⁹⁸ Official Gazette no. 103/2007

⁹⁹ Radio Free Europe, Srbija i Makedonija potpisale sporazum o readmisiji, 4 October 2010, available at: <http://bit.ly/3kl8Od3> [accessed on 26 February 2021].

¹⁰⁰ Official Gazette no. 7/2011.

¹⁰¹ Official Gazette no. 13/2013.

¹⁰² Radio Free Europe, Srbija i BiH potpisale Sporazum o readmisiji, 5 July 2013, available at: <http://bit.ly/3dSKJ1F> [accessed on 26 February 2021].

¹⁰³ Mol, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available at: <https://bit.ly/3Dtss4r>, 24.

¹⁰⁴ Mol, Response to the freedom of information request no. 072-1-32/23-2, 30 January 2023.

*'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 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.'*¹⁰⁵

These findings remain valid until this date which can be seen from the under-outlined statistical data.

In April 2019, Serbia and Austria signed an agreement that would allow **Austria** to send back to Serbia asylum seekers whose asylum applications have been rejected in merits and who had entered from Serbia. Upon their return, they are to be placed in an "adequate" accommodation, for which Vienna will pay. What is important to outline is that this agreement is most likely the technical agreement between Serbia and Austria which should serve as foundation for operationalization of the Readmission Agreement which Serbia has signed with the European Union. At the time of writing the agreement has not yet been applied in practice and it triggers debates in both Austria,¹⁰⁶ and Serbia.¹⁰⁷

In November 2022, the President of Serbia Aleksandar Vučić, Austria's Chancellor Karl Nehammer and Hungarian Presidency Viktor Orbán signed trilateral agreement with an aim to strengthen Balkans border security policies.¹⁰⁸ Even though it is not clear from this agreement which concrete measures will be undertaken and in line with what kind of procedures, the visible consequences of the agreement are detachments of Austrian and Hungarian border officers to Serbian border with North Macedonia, provision of additional equipment for monitoring of the borders, etc.¹⁰⁹ As future measures, the heads of Austria, Serbia and Hungary highlighted readmission of those persons who are not in need of international protection. Without disputing the sovereign right of these States to cooperate in managing the mixed migratory flows, the practice of systemic denial of access to territory based on ill-treatment, pushbacks or other forms of collective expulsions has been recorded as the most common practice applied at borders of Serbia and Hungary in 2022. The terminology used at the press conference completely disregarded the category of refugees and asylum seekers, and was only based around the notions of 'migrants' and 'illegal migration'.

For the purpose of 2022 Report, the MoI has delivered statistical data on the number of readmissions returns from and to Serbia. Even though the numbers are quite low,¹¹⁰ they should be considered as important for the comparative analysis with the number of pushbacks and other forms of collective expulsions which took place in the same period.

Also, it is important to highlight that persons readmitted from Serbia to neighbouring countries are primarily detained in one of the Immigration Detention Centres, mainly in the one located at the border with Bulgaria (Dimitrovgrad) and in line with the Article 87 of the Foreigners Act. The basis for detention is the forcible removal, so one of the additional preconditions for detention is the issuance and serving of the expulsion order to the foreign national and in line with the Article 77 of the Foreigners Act.

The expulsion order is served in Serbian language and in the procedure in which the acting police officer is not taking in consideration the potential risks of *refoulement*, where foreigners, and especially those

¹⁰⁵ 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.

¹⁰⁶ 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/2TOLzOv>.

¹⁰⁷ 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/2T31tlh>.

¹⁰⁸ Euronews, *Austria, Serbia and Hungary strike migration deal, saying EU measures have failed*, 17 November 2022, available at: <http://bit.ly/3T1LWGk>.

¹⁰⁹ RTS, *Vučić, Orbán i Nehamer potpisali Memorandum o borbi protiv ilegalnih migracija*, 16 November 2022, available at: <https://bit.ly/3T0VzVG>.

¹¹⁰ Especially in comparison to the number of pushbacks from and to Serbia.

that are in need of international protection, are denied effective possibility to contest this decision. Expulsion decisions, as well as refusal of entry decisions, are rendered in a bureaucratic manner on the template which is in Serbian Cyrillic. Thus, these decisions are served to foreigners who rarely enjoy access to legal aid and who are not allowed to inform third persons of their whereabouts at the first hours of the arrest, which are also basic safeguards against ill-treatment, including the safeguards against *refoulement*.¹¹¹ They are not informed in a language they understand on their other rights, but also obligations and applicable procedures, which further undermine their capacity to challenge both detention and expulsion decision.¹¹² And finally, the appeal against an expulsion order does not have an automatic suspensive effect.¹¹³

1.2.2. Readmission from neighbouring countries to Serbia in 2022

Readmission from Romania to Serbia in the period 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
India	89	0	1	0	90
Bangladesh	49	0	0	0	49
Afghanistan	29	0	1	0	30
Pakistan	29	0	1	0	30
Tunis	11	0	0	0	11
Syria	9	0	0	0	9
Iraq	5	0	0	0	5
Others	16	1	2	0	19
Total	237	1	5	0	243

Readmission from Hungary to Serbia in the period 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Tunis	12	0	1	0	13
Türkiye	6	0	0	0	6
India	4	0	0	0	4
Afghanistan	1	2	0	0	3
Syria	2	0	0	0	2
Yemen	1	0	0	0	1
Morocco	1	0	0	0	1
Total	28	1	1	0	30

Readmission from Croatia to Serbia in the period from 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
India	121	3	4	0	128
Pakistan	47	0	1	0	48
Türkiye	28	1	1	1	31
Morocco	23	1	1	0	25
Cuba	12	0	8	1	21
Afghanistan	20	0	0	0	20
Burundi	13	0	2	0	15
Syria	8	0	0	0	8
Bolivia	5	0	1	0	6
Others	8	1	3	1	12
Total	285	6	21	2	314

¹¹¹ CPT, *Immigration Factsheet*, CPT/Inf(2017)3, available at: <https://bit.ly/3zntMUA>, pp. 2 and 3.

¹¹² *Ibid.*

¹¹³ Article 80, Foreigners Act.

Readmission from Montenegro to Serbia in the period from 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Angola	1	0	0	0	1
Ecuador	1	0	0	0	1
India	1	0	0	0	1
Pakistan	1	0	0	0	1
Türkiye	1	0	0	0	1
Iran	1	0	0	0	1
Total	6	0	0	0	6

Readmission from Bosnia and Hercegovina to Serbia in the period from 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Cuba	24	1	17	0	42
Nepal	6	0	0	0	6
Afghanistan	5	0	0	0	5
India	2	0	0	0	2
Others	6	0	0	0	6
Total	43	1	17	0	61

Readmission from Bulgaria to Serbia in the period 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Syria	5	0	0	0	5
China	1	0	4	0	5
Cuba	2	0	2	0	4
Morocco	3	0	0	0	3
Vietnam	3	0	0	0	3
Others	4	0	0	0	4
Total	18	0	6	0	24

There were no readmissions from North Macedonia and Albania to Serbia in 2022.

1.2.3. Readmission from Serbia to neighbouring countries**Readmission from Serbia to Bulgaria in the period from 1 January 2022 to 31 December 2022**

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Afghanistan	110	0	0	0	110
Syria	55	0	0	0	55
Iraq	4	0	0	0	4
Palestine	3	0	0	0	3
Egypt	2	0	0	0	2
Total	174	0	0	0	174

Readmission from Serbia to Montenegro in the period from 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Morocco	2	0	0	0	2
India	7	0	0	0	7
Pakistan	2	0	0	0	2

Syria	1	0	0	0	1
Total	12	0	0	0	12

Readmission from Serbia to Romania in the period 1 January 2022 to 31 December 2022

Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Nepal	2	0	1	0	3
Sudan	2	0	0	0	2
Total	4	0	1	0	5

In 2022, Serbia has not readmitted foreign nationals to Hungary, Croatia, Bosnia and Hercegovina, Albania and North Macedonia.

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. In 2022, a total of 874 persons were subjected to the readmission procedure, out of which 191 were readmitted to neighbouring countries, especially Bulgaria. Moreover, 172 persons from Syria, Afghanistan, Palestine and Iraq were removed to Bulgaria, and on the basis of an expulsion decision rendered in the above-described manner, while 683 of them were returned to Serbia.

The fact that most of the people returned to Bulgaria could be in need of international protection gives serious reasons for concern because none of their expulsion orders were challenged through an appeal.¹¹⁴ Also, the manner in which expulsion orders are rendered and served clearly indicates that these people were sent back without any risk assessment of *refoulement*. If we add to that that only 4 persons were issued with registration certificate in Belgrade Immigration Detention Centre, while 0 in other detention facilities, it is clear that access to asylum procedure of persons that are in need of international protection who are detained for the purpose of forcible removal is highly questionable.

1.2.4. Refusal of entry under the Foreigners Act

Article 15 of the Foreigners Act foresees 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 for their stay in the Republic of Serbia, for return to their country of origin or transit to another country, or is not in other ways provided with subsistence during their 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,¹¹⁵ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant entry, or if

¹¹⁴ Response of the MoI, Border Police Administration on the freedom of information request no. 072/1-32/23-3 of 26 February 2023.

¹¹⁵ Article 15(2) Foreigners Act.

the international commitments of the Republic of Serbia indicate otherwise.¹¹⁶ The foreigner can lodge an appeal to the Mol – Border Police Administration against the decision.¹¹⁷

In practice, however, the foreigners at Nikola Tesla airport are taken to the detention room and are cut off from the outside world. In other words, their treatment amounts to arbitrary detention in terms of the ECtHR jurisprudence established in the *Amuur v. France* judgment.¹¹⁸ They typically cannot draft and send the appeal against the refusal of entry decisions 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) 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.¹¹⁹ This means that, even if the foreigner manages to lodge an appeal, they will have to wait for the decision on their appeal in the country to which they are expelled, which suggests that this remedy is theoretical and illusory.¹²⁰ The refusal of entry decision is mainly applied at the airport, as discussed in the next section, but also at the official border crossings. In 2022, the Mol has provided the statistical overview of the refusal of entry decisions rendered on the land border crossings, and which will be outlined in the ensuing parts of this chapter. However, they were mainly applied at foreigners who are not in need of international protection.

The Foreigners Act contains the entire set of principles which aim to guarantee the respect of *non-refoulement* in all forcible removal procedures, including 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,¹²¹ specific position of people with disabilities,¹²² family unity,¹²³ 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.¹²⁴ 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 information on the right to lodge legal remedy into a language that the foreigner understands or may be reasonably assumed to understand.¹²⁵ Furthermore, Article 83 envisages that a foreigner may not be forcibly removed to a territory where they would be under threat of persecution on the grounds of their race, sex, sexual orientation or gender identity, religion, nationality, citizenship, membership of a particular social group or their political views, unless they represent a threat for national security or public order.¹²⁶ Regardless of the existence of such exceptions, Article 83(3) strictly prohibits foreigners' removal to a territory in which they would be at risk of the 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 below. 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 the territory is now based on pushbacks, but also on legal

¹¹⁶ Article 15(3) Foreigners Act.

¹¹⁷ Article 15(6) Foreigners Act.

¹¹⁸ Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>.

¹¹⁹ Annex 1 Regulation on the Refusal of Entry.

¹²⁰ 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.

¹²¹ Article 75(1) Foreigners Act.

¹²² Article 75(2) Foreigners Act.

¹²³ Article 75(3) Foreigners Act.

¹²⁴ Article 75(5) Foreigners Act.

¹²⁵ Article 75(6) Foreigners Act.

¹²⁶ Article 83(2) Foreigners Act.

decisions that cannot be effectively challenged before the competent judicial authority since the appeal does not have automatic suspensive effect.¹²⁷

The guarantees against *refoulement* that are introduced in the Foreigners Act existed in the Serbian legal framework before this Act came into force.¹²⁸ However, they were not applied properly, and there are plenty of documented cases where *prima facie* refugees were denied access to territory regardless of the risks in the receiving states (most notably in Bulgaria and North Macedonia).

Refusal of entry in relation North Macedonia for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
North Macedonia	13	North Macedonia
Türkiye	8	North Macedonia
Albania	3	North Macedonia
Afghanistan	2	North Macedonia
Others	6	North Macedonia
Total	32	

Refusal of entry in relation to Bulgaria for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Bulgaria	53	Bulgaria
Stateless	46	Bulgaria
Germany	36	Bulgaria
Romania	17	Romania
Syria	13	Bulgaria
Georgia	11	Bulgaria
Afghanistan	1	Bulgaria
Others	58	Bulgaria
Total	235	

Refusal of entry in relation to Romania for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Romania	119	Romania
Stateless	19	Romania
Germany	13	Romania
Austria	8	Romania
Iran	5	Romania
USA	5	Romania
Others	66	Romania
Total	235	

Refusal of entry in relation to Hungary for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Germany	57	Hungary
Stateless	30	Hungary
Bulgaria	29	Hungary
Türkiye	28	Hungary
Hungary	25	Hungary

¹²⁷ ECtHR, *M.A. v. Lithuania*, para 83-84.

¹²⁸ See e.g. the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

Austria	23	Hungary
Afghanistan	8	Hungary
Others	112	Hungary
Total	312	

Refusal of entry in relation to Croatia for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Stateless	75	Croatia or Bosnia and Hercegovina
Germany	50	Croatia or Bosnia and Hercegovina
Bulgaria	40	Croatia or Bosnia and Hercegovina
Croatia	24	Croatia or Bosnia and Hercegovina
Bosnia and Hercegovina	18	Croatia or Bosnia and Hercegovina
Austria	16	Croatia or Bosnia and Hercegovina
Others	191	Croatia or Bosnia and Hercegovina
Total	414	

Refusal of entry in relation to Bosnia and Hercegovina for the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Bosna and Hercegovina	28	Bosnia and Hercegovina
Türkiye	26	Bosnia and Hercegovina
Syria	13	Bosnia and Hercegovina
China	8	Bosnia and Hercegovina
Croatia	7	Bosnia and Hercegovina
Montenegro	6	Bosnia and Hercegovina
Others	42	Bosnia and Hercegovina
Total	130	

Refusal of entry in relation to Montenegro for the from period 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Montenegro	100	Montenegro
Ecuador	12	Montenegro
Syria	10	Montenegro
Türkiye	9	Montenegro
Cuba	8	Montenegro
Egypt	5	Montenegro
Others	33	Montenegro
Total	177	

Refusal of entry at the Belgrade 'Nikola Tesla' airport in the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
India	4,516	mainly Türkiye

Tunis	2,787	mainly Türkiye
Türkiye	573	mainly Türkiye
Cuba	262	mainly Russia
Guinea Bissau	126	mainly Türkiye
Burundi	84	mainly Türkiye
Iran	29	mainly Türkiye
Syria	23	mainly Qatar
Afghanistan	4	3 Türkiye and 1 the Netherlands
Somalia	3	Türkiye
Others	275	Mainly countries of origin
Total	8,682	

Refusal of entry at Niš International Airport in the period from 1 January 2022 to 31 December 2022

Nationality	Number of Persons	Country of Removal
Türkiye	141	Türkiye
Tunis	28	Türkiye
Stateless	25	Different countries
Others	34	Different countries
Total	228	

The above outlined numbers indicate that refusal of entry decisions are mainly rendered in relation to foreign nationals who are most likely not in need of international protection. Those who are in need of protection are simply subjected to pushback practices. However, the nationalities of people refused entry at the Belgrade airport (Syria, Afghanistan, Iran, Türkiye, Cuba, Somalia and others) give serious reasons for concern because the receiving states (mainly Türkiye) cannot be in any way considered as safe for refugees and these people are exposed to both risk of *refoulement* and *chain-refoulement*. The data obtained by the Mol provide several interesting and contentious details:

- a total of 170 stateless persons was returned to neighbouring countries, out of which 30 was returned to Hungary which does not provide international protection to foreigners who have not applied for the embassy procedure,
- 8 Afghans were refused entry and returned to Hungary, which cannot be considered as acceptable and most likely these people were automatically returned back to Serbia.
- Afghan nationals were returned back from Belgrade airport to Türkiye which is also contentious taking in consideration return policies to Afghanistan in this country,
- Refusal of entry from Serbian airports to Turkish nationals, and in a manner which cannot be considered as adequate due to the lack of risk assessment of risks of *refoulement* is also worrying, especially if we take in consideration numerous instances in which people fleeing persecution (journalists, political activists and others) from Türkiye were treated in the transit zone (arbitrarily detained, asylum claims ignored, etc.).

Examples of flawed application of the refusal of entry decisions in the period 2019-2022:

- On 10 February 2019, a Burundi citizen (M.F.) addressed the Belgrade Centre for Human Rights (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.¹²⁹ 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

¹²⁹ BCHR's email correspondence from 10 to 12 February 2019.

degrading conditions and for the purpose of forced return without adequate assessment of the risks of *refoulement*.¹³⁰

- On 21 February 2019, a high-profile political refugee from **Türkiye** was automatically served a decision on refusal of entry and was about to be returned to Qatar and [possibly] further to Türkiye. Only after BCHR's intervention did he receive a registration certificate and allowed access to territory and asylum procedure.¹³¹
- 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**.¹³² There were several cases of asylum seekers from India, for whom it remains unclear if they were allowed to access asylum procedure.¹³³
- In October 2020, BCHR was contacted by a transgender person from Cuba who was allegedly issued the registration certificate but had failed to remain in touch with acting lawyers. Since the interventions are made mainly over the phone, it cannot be excluded that foreigners are denied access to the territory and the asylum procedure, despite the information that legal representatives receive over the phone.¹³⁴
- In February 2021, a political refugee of Kurdish origin from **Türkiye** 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 for interim measures. Another similar situation happened the following weekend, and it is obvious that Kurdish refugees from Türkiye are at a very high risk of *refoulement* at the airport.
- On 15 September 2021, IDEAS and A11 lawyers lodged a request for urgent interim measures in order to prevent expulsion of a Kurdish political activist from Türkiye to his country of origin where he would face a life sentence without parole. The request was granted on the same day and the man decided to flee Serbia upon his release.¹³⁵ This was the fourth Rule 39 request which was granted, since 2013, with regards to persons arbitrarily detained at the airport who face expulsion to a third country or to their country of origin where they would face treatment contrary to Article 2 or 3 of the ECHR.¹³⁶
- On 15 October 2021, a victim of SGBV from Burundi, X., and her daughter were arbitrarily detained at the transit zone of the airport. They were kept there for more than 48 hours, and was forced to sleep on the chairs. The mother automatically served with a decision on refusal of entry and were about to be sent back to Istanbul, and then further to Addis Ababa and Bujumbura. Her cousin contacted IDEAS and its lawyers intervened and secured her access to Serbia. Prior to her arrival to Serbia, X. had been raped by the members of Imbonerakure – a 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 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

¹³⁰ CAT, *Concluding observations on the third periodic report of Qatar*, 4 June 2018, CAT/C/QAT/CO/3, para. 37-38 and 41-42.

¹³¹ Registration Certificate No. 21/2019/2019 issued by BPSB on 21 February 2019.

¹³² BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020*, available at: <https://bit.ly/2LZHGSw>, 13.

¹³³ *Ibid.*

¹³⁴ BCHR, *Right to Asylum in the Republic of Serbia 2020*, available at: <https://bit.ly/37Q36R2>.

¹³⁵ ECtHR, *Ozen v. Serbia*, Application No. 45794/21, granted on 15 September 2021.

¹³⁶ 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

Burundian men 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 was never served her copy of the decision on refusal of entry, but IDEAS later on obtained the copies where it was stated that she had 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.¹³⁷

- 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 the Burundi secret service *Documentation*. He also claimed that he was never 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 he managed to enter was thanks to his cousin who was in the Asylum Centre in Krnjača contacted IDEAS.¹³⁸
- On 10 December 2021, a family of 4 from Burundi arrived at the airport and tried to express intent to submit an 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 were they 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 the 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 on the 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 Türkiye, but without avail. Upon his landing in Bujumbura on 12 January, he was arrested and taken to the building of the 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 the 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 assaulted by Tunisian nationals but was defended by other Burundian boys. On 4 January in the morning, the police came to the 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 the 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 the territory and the asylum procedure.
- Between 14 and 15 February BPSB, Afghan national M.Z. was refused entry and denied access to asylum procedure. He was about to be sent back to Türkiye, but after intervention of IDEAS, he was allowed to access territory and asylum procedure. In his testimony collected later, he claimed that he addressed border police in English, but that he was just served with 'some papers' (refusal of entry) which he refused to sign.

¹³⁷ The author of this Report intervened in the case.

¹³⁸ *Ibid.*

- On 16 February, Cuban Y.A.E. national whose brother in law is a political dissident from San Isidro was arbitrarily detained and served with the decision of refusal of entry at the Belgrade airport. Since he only spoke Spanish language, he was not able to elaborate on the risk of persecution that he faces in Cuba. He was denied access to territory and asylum procedure and was forced to sign refusal of entry decision. Only after IDEAS intervention he was issued with the registration certificate.
- On 30 May 2022, the ECtHR granted the Rule 39 request in relation to Narin Capan, Turkish journalist of Kurdish origin who fled Türkiye and Kurdistan in Iraq after she was sentenced to spreading terrorist propaganda and after she avoided assassination in Erbil. She spoke excellent English and was clearly outlining to BPSB officers that she cannot go back due to the above-mentioned reasons. However, her claims were ignored, she was detained for three days and was about to be boarded to the plane, when the Strasbourg Court issued interim measure.¹³⁹ In her testimony which was recorded for the purpose of ECtHR procedure she explained in details modus operandi of BPSB and the manner in which people are forced to sign refusal of entry, without interpreted, without access to legal aid and while ignoring arguable claims. The testimony will be used for the purpose of another procedure against Serbia which is related to arbitrary detention and another attempt of forcible removal without any risks assessment of refoulement in line with the Article 83 of Foreigners Act.
- On 9 December 2022, 3-member family from Iran was refused entry and arbitrarily detained.¹⁴⁰ M.B. and his family fled political persecution and criminal procedure in which one of the prescribed penalties, in line with Iranian Criminal Code, was death sentence. The BPSB officers attempted several times to board the family to the plane, but the family provided physical resistance including in the bus taking them to the plane on a runway – morning of 9th December 2022. BPSB ignored IDEAS emails and phone calls, lawyers were denied access to the transit zone and the ECtHR interim measure request was used as the last resort. The Rule 39 request was granted on the same day. During the testimony collection in IDEAS office, after M.B. and his family were allowed to access territory, the family in details described treatment at the airport, mental and milder versions of physical violence, treatment of other detainees (including from Afghanistan), but also the interview with the FRONTEX officer. IDEAS informed FRONTEX fundamental officers about the case.

In 2022, there were at least 34 interventions at the Belgrade airport performed by IDEAS, but also BCHR,¹⁴¹ in which 72 persons required legal aid from the transit zone. The legal aid was required via phone or through family members or friends who contacted UNHCR and its partners. The question that remains open is what was the destiny of those persons in need of international protection who were not able to contact legal aid providers, especially when it comes to nationals of Syria, Afghanistan, Türkiye, but also Cuba, Burundi, Iran or Stateless people? It is also important to note that people who were highlighted as stateless in the Mol response were most likely not even assessed as such,¹⁴² but the Mol did not even attempt to identify them. In other words, these could have been people who destroyed their travel documents and who originated from countries where they could face persecution. All of these problems were briefly outlined in the EU Progress Report.¹⁴³

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 entitled to render a decision on refusal of entry, but also to develop standard operational procedures which would help border officers to recognise different vulnerable categories of persons on the move. Additionally, all the Regional Border

¹³⁹ ECtHR, *Capan v. Serbia*, Application No. 26005/22, Request for Interim Measures granted on 30 May 2022, see more at: Radio Free Europe, *Disidenti iz Turske prepušteni na milost Srbiji*, 30 May 2022, available at: <http://bit.ly/3YLeJQG>.

¹⁴⁰ ECtHR, *Moazen and Others v. Serbia*, Application No. 56318/22, Request for Interim Measure granted on 9 May 2022.

¹⁴¹ Right to Asylum 2022, p. 33.

¹⁴² Serbia does not have the law which treats stateless people through specially designed procedure.

¹⁴³ Progress Report 2022, p. 63.

Centres should have in their ranks interpreters for Arabic, Farsi, Urdu, Pashtu, Turkish, Kurdish, Kirundi and other languages that foreigners who might be in need of international protection understand. In practice, however, interpreters do not seem to be employed. Additionally, a person who is about to be denied access to territory should be afforded adequate and free of charge legal assistance. Finally, the implementation of the Foreigners Act should be made transparent and border monitoring activities, as recommended by the CAT, would dispel any existing doubts on the flawed practices of border authorities. One of the standards of the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment (CPT) implies that detaining authority should serve foreign nationals deprived of their liberty with multi-lingual form which contains rights, obligations and applicable procedures in a language which the foreigner understands.¹⁴⁴

It is also worth mentioning that in light of the recent ECtHR judgment in *M.A. v. Lithuania*,¹⁴⁵ the Foreigners Act should be amended to introduce automatic suspensive effect of the appeal against the decision on refusing the entry. The recent Strasbourg Court jurisprudence in cases such as *A.I. and Others v. Poland*,¹⁴⁶ or *A.B. and Others v. Poland*, further confirm the above-highlighted necessity.¹⁴⁷ The findings in these judgments also indicate that the practice at Serbian airports can also amount to collective expulsion in terms of the Article 4 of Protocol 4.

1.3. Informal pushbacks

1.3.1. Pushbacks from Serbia

Access to the territory for persons in need of international protection has continued to remain a serious concern in 2022. 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 liberty¹⁴⁸ according to both the subjective and objective criteria of the ECtHR;¹⁴⁹
- denial of access to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination;¹⁵⁰
- 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;¹⁵¹
- denial of access to asylum procedure;¹⁵²
- 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.;¹⁵³

¹⁴⁴ CPT, Immigration detention, CPT/Inf (2017)3, March 2017, available at: <https://bit.ly/3Li4Xzd>.

¹⁴⁵ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹⁴⁶ ECtHR, *A.I. and Others v. Poland*, Application No. 39028/17, Judgment of 14 November 2022, EDAL, available at: <http://bit.ly/3l67o0m>.

¹⁴⁷ ECtHR, *A.B. and Others v. Poland*, Application No. 42907/17, Judgment of 14 November 2022, EDAL, available at: <https://bit.ly/3l67o0m>.

¹⁴⁸ ECtHR, *Creangă v. Romania*, Application No. 29226/03, Judgment of 23 February 2012, available at: <https://bit.ly/3BjU8bl>, para. 84.

¹⁴⁹ ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, available at: <https://bit.ly/3tS73AI>, 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, but see also, CPT, *Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020*, CPT/Inf (2021) 29 , 3 December 2021, available at: <https://bit.ly/3978tyQ> , para. 10.

¹⁵⁰ CPT, Extract from the 2nd General Report [CPT/Inf (92) 3], p. 6, para. 36, available at: <https://bit.ly/3GVD4KU>.

¹⁵¹ ECtHR, *Khlaifia and Others v. Italy*, App. Nos. 16483/12, Judgment of 15 December 2016, EDAL, available at: <https://bit.ly/2Bojevu>, para. 92.

¹⁵² 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.

¹⁵³ ECHR, Article 3.

- forcible removal without examination of individual circumstances of each person or outside any legal procedure;¹⁵⁴
- lack of assessment on any risks of *refoulement* and *chain-refoulement*¹⁵⁵ 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.¹⁵⁶

The COVID-19 pandemic did not lead to imposing additional restrictive and contentious border polices in 2022, as it was the case in 2020.¹⁵⁷ 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.¹⁵⁸ However, the practice of collective expulsions continued, regardless of the pandemic circumstances.¹⁵⁹

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.¹⁶⁰ The FRONTEX officers are designated on the border with Bulgaria, but there are not allegations on human rights violations made against FRONTEX officer that are known to the author of this Report.

As outlined above, IDEAS has addressed FRONTEX fundamental rights officers with regards to the case of attempted forcible removal of Iranian refugee family to Türkiye and further to Iran from Belgrade airport. Even though the allegations were not made against FRONTEX, the collected testimony indicates that the family briefly spoke with one of the FRONTEX officers who assured them that they will not be returned. Still, it is important to outline that there were no allegations in FRONTEX officers taking part in the removal procedure or any other contentious practice.

Arrivals

The number of arrivals to Serbia remain high, but it is necessary to consult different sources such as UNHCR, CRM, but also Frontex in order to get the clearest picture possible.

It is not possible to determine the exact number of arrivals to Serbia for several reasons:

- The Mol, CRM and UNHCR apply different methods to collect and compile data on refugees and migrants entering and residing on the Serbian soil;
- A significant number of refugees and migrants are not registered (fingerprinted and photographed) by the Mol. Thus, they are not introduced into the database with fingerprints and

¹⁵⁴ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>, para. 59.

¹⁵⁵ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

¹⁵⁶ The issue of pushbacks and various forms and layers of human rights violations was addressed by different bodies for the protection of human rights such as CPT, The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders, available at: <https://bit.ly/43uWNxA>, paras. 69-107 as well as Special Rapportero on Human Rights of Migrants, Human rights violations at international borders: trends, prevention and accountability, A/HRC/50/31, 26 April 2022, available at: <https://bit.ly/3JzQgtu>.

¹⁵⁷ AIDA, Country Report Serbia, 2020 Update, March 2021, 19.

¹⁵⁸ 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 and Country Report: Serbia, 2021 Update, May 2022, p. 37.

¹⁵⁹ *Ibid.*, 33-34.

¹⁶⁰ Frontex, Frontex expands presence in Western Balkans with operation in Serbia, 16 June 2021, available at: <https://bit.ly/3H2aG9X>.

pictures of foreigners - *Afis*. This is the only way to properly identify persons without any ID and which can further prevent the recording of one person several times using a different name or when their name is not properly typed into one of the databases.¹⁶¹

- It is not clear if the FRONTEX data on the number of irregular crossings to the EU from the Western-Balkan countries implies also those foreigners who were pushed-back.

Until 2020, the UNHCR office in Serbia kept 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 conducted with newly arrived foreigners. By using this method, 29,704 persons were recorded as newly arrived in 2019 and 25,003 in 2020.¹⁶² 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.¹⁶³ 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).¹⁶⁴

In 2021, the UNHCR and CRM harmonised their respective methodologies and now apply the 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 2021.¹⁶⁵ This number almost doubled in 2022, reaching 119,670. Additionally, in 2022, FRONTEX detected 145,600 cases of irregular border crossings into EU from Serbia and Bosnia outlining nationals of Syria, Afghanistan, Türkiye, Burundi, India and Tunisia as the majority

'In 2022, there were 145 600 irregular border crossings reported on the Western Balkans route, 136% more than in 2021. This is the highest number of crossings reported on this route since 2015 and about half of all reported irregular entries in 2022. Citizens of Syria, Afghanistan and Türkiye accounted for the largest number of detections. Nationalities that previously had been little on this route were also reported, such as Tunisians, Indians and Burundians.'¹⁶⁶

According to Frontex's information, numbers of irregular border crossings corresponds to a large extent to the number of people residing in Serbian camps. However, in its 2021 Report, FRONTEX outlined that these are persons who repeatedly try to reach their target country in the EU.¹⁶⁷ The word 'repeated' was not used in the 2022 Report, but it is reasonable to assume that this number does not imply that there were 145,600 different persons, but also persons who attempted to cross the EU external borders on numerous occasions, but who were pushed back. 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 a 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 the Mol in the *Afis*, which cannot be expected in the near future due to lack of capacities of the Border Police Administration.

The number of arrivals per month was as follows:

¹⁶¹ 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.

¹⁶² This data is extracted from UNHCR data portal, available: <https://bit.ly/3rYbS9O>.

¹⁶³ European Commission, Serbia 2021 Report, 19 October 2021, SWD(2021) 288 final, available at: <https://bit.ly/3Byi8lQ>, p. 49.

¹⁶⁴ *Ibid.*

¹⁶⁵ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹⁶⁶ FRONTEX, *EU's external borders in 2022: Number of irregular border crossings highest since 2016*, available at: <http://bit.ly/3ZWZAwM>; for the past year see also: Frontex, *EU external borders in 2021: Arrivals above pre-pandemic levels*, 11 January 2022, available at: <https://bit.ly/33w9fTu>.

¹⁶⁷ *Ibid.*

Observed Arrivals in the period 2019-2022						
Month	Arrivals 2019		Arrivals 2020		Arrivals 2021	Arrivals 2022
	UNHCR	CRM	UNHCR	CRM	UNHCR and CRM	UNHCR and CRM
January	629	/	1,700	/	3,180	2,644
February	819	/	2,633	/	2,273	3,236
March	1760	/	1,649	/	3,832	1,238
April	1,826	/	583	/	4,344	6,132
May	2,512	/	270	/	3,182	8,019
June	2,366	/	2,108	/	4,111	10,039
July	2,726	/	3,197	/	5,762	13,425
August	3,673	/	4,146	/	7,101	17,997
September	3,686	/	2,981	/	8,978	19,345
October	4,123	/	2,703	/	6,570	14,519
November	3,871	/	2,022	/	6,027	11,916
December	1,713	/	1,011	/	4,978	11,160
Total	29,704	10,145	25,003	63,408	60,338	119,670

What is important to underline is the fact that in 2022, a record number of arrivals from Tunisia, Cuba, Burundi, India and Türkiye was recorded. What is also important to mention is that citizens of Tunisia, Cuba, Burundi and India, as well as several other countries were using the air route, flying directly to Belgrade. The reason for this has been the visa policy of Serbia which was established in relation to the countries which have not recognized independence of Kosovo, or who withdrew recognition. With some countries, such as Cuba or Tunisia, Serbia has had a free visa regime since early 1970s.

In its 2022 Progress Report, the European Commission outlined the following:

Serbia's visa policy is not fully aligned with the EU list of third countries whose nationals are visa exempt or visa required. The following countries that are on the EU list of visa required countries enjoy visa-free travel to Serbia: Armenia, Azerbaijan, Bahrain, Belarus, Bolivia, Burundi, China, Cuba, Guinea Bissau, India, Indonesia, Jamaica, Kyrgyzstan, Kuwait, Kazakhstan, Mongolia, Oman, Qatar, Russia, Suriname, Tunisia and Türkiye.¹⁶⁸

Thus, and due to the increased number of irregular entries to the EU of Indian, Burundian, Guinea Bissau and Tunisian citizens, Serbia was pressured to reintroduce visa regime with these countries.¹⁶⁹ This decision was preceded with the shift in policies at the airport, when several thousand citizens of India (4,516 in total in 2022) and Tunis (2,787 in total in 2022) were refused entry. The free visa regime with Cuba and Türkiye, as well as with Russia.

Apart from 119,670 of arrivals of people from Africa and Asia, in 2022, around 180,000 citizens of Ukraine, Russia, and Belarus were granted some form of temporary residency, mostly on labour, but also family grounds.¹⁷⁰ According to the Commissariat for Refugees and Migration (CRM), more than 148,000 Ukrainian refugees were recorded in Serbia in 2022, out of which around 26,000 were granted temporary residency, while 1,231 were granted temporary protection.¹⁷¹ The remaining continued their journey predominantly towards EU countries.

¹⁶⁸ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 64.

¹⁶⁹ BalkanInsight, *Serbia Ends Visa-Free Regimes with Tunisia and Burundi*, 25 October 2022, available at: <https://bit.ly/400dcav> and Schengen Visa, *Serbia Introduces Visas for Nationals of India & Guinea-Bissau From January 1, 2023*, 23 December 2022, available at: <https://bit.ly/42aQP3Z>.

¹⁷⁰ Mondo, *Od početka rata u Ukrajini, u Srbiju je došlo 178.000 ljudi sa područja Istočne Evrope*, 16 December 2022, available at: <http://bit.ly/429Z2FR>.

¹⁷¹ Dijalog.net, *Kroz Srbiju prošlo 148.000 državljana Ukrajine, a 26.000 prijavilo boravište*, 24 February 2023, available at: <http://bit.ly/3YKcYDr>.

1.3.2. Pushbacks to North Macedonia, Bulgaria and Montenegro

The so-called Western Balkan route represents a region in which refugees, asylum seekers and migrants are systematically subjected to collective expulsions and very often ill-treatment committed by the hands of border authorities. In 2022, the presence of civil society organisations at the borders with **North Macedonia, Bulgaria and Montenegro** continued to be limited.¹⁷² 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.

It is important to note that there are not too many 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.'¹⁷³

The argumentation of the MoI that refugees and migrants are discouraged from irregular crossings when they encounter border police is simply 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'.¹⁷⁴ This argument was publicly used for the first time by Mr. Jovan Krivokapić from the Ministry of Defence who stated on national television that refugees and migrants are discouraged when they spot border patrol forces.¹⁷⁵ 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 2020.¹⁷⁶ Three months before, a Kurdish family of 7 was left in the forest to freeze to death and only because of CSO InfoPark reaction, was a search and rescue mission carried out and refugees saved.¹⁷⁷ Accordingly, the credibility of such statements can be verified only if an independent border monitoring mechanism is established, as recommended by the Committee against Torture in 2015¹⁷⁸ and 2021.¹⁷⁹

In one of the Klikaktiv Reports the following was outlined:

'In the end of September, the Klikaktiv team spoke to a group of four men from Morocco who stated they had been pushed back to Bulgaria by the Serbian police on the green border near the city of Pirot: the police did not issue them with any documentation or provided information on asylum procedure, but allegedly had beat them, took away their personal belongings (3 mobile phones and 350 euros) and made them walk back to Bulgaria.'¹⁸⁰

¹⁷² More than 95% of persons in need of international protection are entering Serbia from these three countries.
¹⁷³ 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.
¹⁷⁴ AIDA, Country Report Serbia, 2016 Update, February 2017, p. 19 and p. 15.
¹⁷⁵ RTS, *Migrantsko proleće*, 29 March 2017, 12:40, available at: <https://bit.ly/3sQtUdq>.
¹⁷⁶ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.
¹⁷⁷ N1, "Patrola vojske i policije ostavila migrante da umru u šumi", 19 December 2016, available at: <https://bit.ly/34SBIZA>.
¹⁷⁸ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.
¹⁷⁹ CAT, *Concluding observations on the third periodic report of Serbia**, 20 December 2021, CAT/C/SRB/CO/3, available at: <https://bit.ly/3vd0s4r>.
¹⁸⁰ Klikaktiv, The Third Quarterly Report in 2022 (July-August-September), available at: <https://bit.ly/3Ld2pFU>, 20.

The 2022 Progress Report from 2021 indicates that 14,806 foreign nationals were prevented from entering Serbia, and it is reasonable to assume that some of these people were prevented to enter from Bulgaria and Montenegro.¹⁸¹ This data was probably obtained by the MoI who keeps this kind of records, but does not have the practice to disclose it publicly. These numbers are usually disclosed by state officials in the context of assuring the public that Serbia is successfully combating organized crime, smuggling, human trafficking and illegal migration.¹⁸²

1.4. The border with North Macedonia

In 2022, the presence of civil society organisations at the border with **North Macedonia** continued to be limited.¹⁸³ However, UNHCR and its partners continued to report on incidents involving pushbacks and other forms of collective expulsions to **North Macedonia**.¹⁸⁴ APC also published a report containing allegations and statistics on pushbacks to North Macedonia in the first six months of 2021,¹⁸⁵ but it appears that their activities on this border have become limited in the past period.¹⁸⁶

The fence towards North Macedonia

On 15 May 2020, the Ministry of Defence announced a public procurement for the purchase of 2.5 tons of barbwire for the purpose of fencing asylum and reception centres.¹⁸⁷ Several CSOs, including A11 and PIN, swiftly reacted to the public statement, condemning the idea and declaring it to be contrary to international human rights law.¹⁸⁸ Soon after the announcement of the public procurement, an online Portal *Direktno* announced that the Government of Serbia was planning to build a barbwire fence at its borders with **Northern Macedonia** and **Bulgaria**.¹⁸⁹ At the time, it was not possible to confirm the news, but UNHCR partners noticed that, during the state of emergency, the military had started clearing the land in the border area with **North Macedonia**.¹⁹⁰ On 22 May 2020, the Ministry of Defence selected a private company (*Žica Best*) to build fences around asylum and reception centres. However, on 31 May 2020, the Ministry stopped the public procurement stating that the need for such a measure had ceased to exist after the state of emergency was lifted.¹⁹¹ In August 2020, *the Radio Free Europe* reported that Serbia had built the fence alongside the border with **North Macedonia**.¹⁹² Not a single state official made comments on this act, except for the Commissar for Refugees, Mr. Vladimir Cucić, who stated in the documentary *'Pushbacks and Dangerous Games'* that the building of the fence is nothing more but 'a late reaction of Serbia' which has an aim to slow down new arrivals to Europe.¹⁹³

In July 2022, Klikaktiv reported the following:

'The construction of the fence on the border between Serbia and North Macedonia continues: between June 2021 and June 2022 a minimum of additional 10-15 km were built. The fence has

¹⁸¹ Progress Report 2022, 61.

¹⁸² See for example, Government of the Republic of Serbia, Меморандум о сарадњи Србије, Мађарске и Аустрије у борби против илегалних миграција, 16 November 2022, available at: <http://bit.ly/3yxUIld>.

¹⁸³ More than 95% of persons in need of international protection are entering Serbia from these three countries.

¹⁸⁴ INDIGO acts as an implementing partner of UNHCR at the south of Serbia.

¹⁸⁵ APC, Migracije na jugu Srbije, 29 December 2021, available at: <https://bit.ly/33xTxHm>.

¹⁸⁶ There were not publicly available reports on the APC's website: <http://www.apc-cza.org/en/>.

¹⁸⁷ 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].

¹⁸⁸ 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].

¹⁸⁹ *Direktno*, *Srbija zbog migranata diže zid prema Bugarskoj i Makedoniji!*, 10 June 2020, available at: <https://bit.ly/3gdzOgS> [accessed on 10 January 2021].

¹⁹⁰ Most probably in line with Article 3 (a) of the Decree on the State of Emergency.

¹⁹¹ Radio Free Europe, *Ministarstvo odbrane Srbije obustavilo kupovinu žilet-žice*, 20 May 2020, available at: <https://bit.ly/31Ax3II> [accessed on 10 January 2021].

¹⁹² 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].

¹⁹³ Bojana Lekić, *Pushback and Dangerous Games*, Brendon Production, available at: <https://bit.ly/368FJKK>, 36:14.

three layers, one of which is made of barbed wire. Unfortunately, the fence has been notably increased, both in its length and size. The fence is approximately 3 to 4 meters high; between the double fence, there is a space for patrolling army and police vehicles. At the top of the fence, there is barbed wire. At the moment it is tens of kilometres long and is situated on the hills along the border. Due to the fence and increased presence of border police, including Frontex (European Border and Coast Guard Agency, in control of the European Schengen Area), some of the refugees have tried to enter Serbia via an alternative route through Kosovo.¹⁹⁴

Pushbacks

The findings of the Border Violence Monitoring Network (BVMN) from 2020 and of UNHCR and APC in 2021 indicate that refugees and asylum seekers arriving from **North Macedonia** were subject to short-term deprivation of their liberty, searches, occasional ill-treatment and a denial of access to basic rights.¹⁹⁵ 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 risks of chain *refoulement* further to **Greece** or **Türkiye**. They did not have the possibility to apply for a remedy with suspensive effect in order to challenge their forcible removal.¹⁹⁶

According to UNHCR, at least 773 refugees and migrants were pushed back to **North Macedonia** in 2019, 977 in 2020, 210 in 2021 and 576 in 2022. More detailed reports on pushbacks to North Macedonia were solely published by the BVMN in 2020 and APC in 2021, while there were no reports published by CSOs in 2022. However, the UNHCR reported an increased number of testimonies on pushbacks.

Pushbacks to North Macedonia in 2020-2022				
	2019	2020	2021	2022
January	78	74	0	4
February	87	150	31	8
March	96	112	2	6
April	35	9	7	85
May	49	9	22	20
June	19	88	5	6
July	59	10	21	2
August	28	154	46	301
September	159	142	14	6
October	67	159	57	0
November	90	30	0	103
December	6	40	5	35
Total	773	977	210 ¹⁹⁷	576 ¹⁹⁸

Source: UNHCR.

One case from 2020 deserves 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 were being transferred to the reception centre (RC) in **Preševo**. Instead, they were dropped off near a Macedonian village,

¹⁹⁴ Klikaktiv, The Second Quarterly Report in 2022 (April-May-June), available at: <http://bit.ly/3yx2dcX>, pp. 7-8.

¹⁹⁵ Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

¹⁹⁶ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹⁹⁷ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹⁹⁸ *Ibid.*

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**.¹⁹⁹ The group addressed several NGOs, including BVMN, BCHR and IDEAS.²⁰⁰ The case was latter on referred to the Ombudsman by the BCHR.²⁰¹ The Ombudsman issued an extremely contentious Recommendation, stating that the Mol and Commissariat for Refugees and Migration (CRM) had failed to prevent 'uncontrolled movement' of migrants who were, according to the report, left in front of the RC in **Preševo** and then went in an 'unknown direction'. This finding implies that the Ombudsman rejected as not credible the allegations of collective expulsion, even though he was provided with the phone number and location of the victims.²⁰² However, the body never tried to collect testimony from these people, even though they managed to return to Serbia after several weeks and the Ombudsman was aware of their whereabouts.²⁰³ This case displays a similar pattern as the case of collective expulsion reported by the APC in 2019.²⁰⁴

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 collectively expelled to North Macedonia close to the Serbian border village **Miratovac**.²⁰⁵ Two other reports were published in October 2020 outlining that refugees and migrants were taken respectively from AC **Tutin**,²⁰⁶ and the town **Preševo**,²⁰⁷ to the green border area with North Macedonia close to **Miratovac** village. APC reported pushbacks to **North Macedonia** in November 2020.²⁰⁸ All the enlisted cases included different forms of ill-treatment, such as: slapping, kicking, hitting with a 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 a 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 pushbacks from Serbia and particularly from North Macedonia to Greece are likely to be happening on a much larger scale.²⁰⁹

An encouraging sign in 2021 was a 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 [...]

¹⁹⁹ BVMN, *Pushed-back from a Camp in Serbia to N. Macedonia, and then to Greece*, 3 April 2020, available at: <https://bit.ly/2SRhfWJ>.

²⁰⁰ *Hod po žici*, 34.

²⁰¹ 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.

²⁰² Ombudsman, Recommendation No. 4232/127/2020, 7 October 2020, available at: <http://bit.ly/36nVVPp>.

²⁰³ 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.

²⁰⁴ AIDA, *Country Report Serbia*, 2019 Update, May 2019, p. 19 and 20.

²⁰⁵ 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>.

²⁰⁶ 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>.

²⁰⁷ 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>.

²⁰⁸ APC Twitter, available at: <https://bit.ly/3tnylGK>.

²⁰⁹ Protection Rights at Borders, *Pushing Back Responsibility*, April 2021, available at: <https://bit.ly/3GUSm2f>, 7.

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.
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.²¹⁰

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 others collected by the BVMN from 2020. Still, apart from BVMN in 2020 and APC in 2021, other CSOs 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 2021²¹¹

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.²¹²

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.²¹³ In June 2020, it was published in the media that up to June 2020, 532 migrants had been prevented from 'illegally' crossing the border.²¹⁴ 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.²¹⁵ This part of the Ombudsman's report contradicts the Ombudsman's own findings based on the above-cited testimonies compiled in the same document.

Klikaktiv reported in October 2022 that 'some of the refugees interviewed here stated they had been pushed back by the Serbian police back to North Macedonia, with no physical violence committed during the push back.'²¹⁶

²¹⁰ 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.

²¹¹ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 16.

²¹² APC, *Migracije na jugu srbije*, 29 December 2021, available at: <https://bit.ly/33xTxHm>, 2.

²¹³ AIDA, *Country Report Serbia*, 2018 Update, March 2019, p. 16-18 and AIDA, *Country Report Serbia*, 2019 Update, May 2020, 20-21.

²¹⁴ 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/3hllly1f> [accessed on 10 January 2021].

²¹⁵ 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.

²¹⁶ Klikaktiv, *The Third Quarterly Report in 2022 (July-August-September)*, available at: <https://bit.ly/3Ld2pFU>, 15.

Beyond North Macedonia, in the Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, the MoI 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.'²¹⁷

On 15 December 2022, president of Serbia Aleksandar Vucic outlined that in 2022, a total of 45,965 illegal entries from North Macedonia were prevented.²¹⁸ He did not disclose such numbers in relation to arrivals from Bulgaria.

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 were not issued with the decision on refusal of entry²¹⁹ 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	2022	Total
No. of persons denied access to territory	(at least) 18,000 ²²⁰	(at least) 21,000 ²²¹	(at least) 23,000 ²²²	20,221 ²²³	38,226 ²²⁴	14,806	45,965 (until 15 December 2022 from North Macedonia)	(at least) 227,183

To conclude, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2022.

International and judicial reactions

Thus, although reports of collective expulsions to North Macedonia and Bulgaria have been decreasing in the past several years, data published by the highest state authorities (MoI, but also the Ombudsman) indicate that pushbacks are still a reality. This 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 a

²¹⁷ MoI, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available at: <https://bit.ly/3Dtss4r>, 10.

²¹⁸ *YouTube, Вучић: Предузимамо важне мере за сигурност наших грађана*, 15 December 2022, available at: <http://bit.ly/3l6xtwi>.

²¹⁹ Article 15 Foreigners Act.

²²⁰ Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

²²¹ 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>.

²²² Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EoIHol>.

²²³ 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>.

²²⁴ 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.

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 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.²²⁵ These concerns have also been shared by the CAT²²⁶ and Amnesty International,²²⁷ while UNHCR had reported this problem for the first time in 2012.²²⁸ In 2015, the CAT recommended that Serbia establish ‘formalised border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organisations.’²²⁹ To this date, Serbia has failed to establish an independent border monitoring mechanism. The CAT reiterated its recommendation in 2021 and urged Serbia to:

‘Introduce a border monitoring mechanism that includes representatives of independent entities, such as international Organisations 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’.²³⁰

In 2021, the Constitutional Court (CC) confirmed that illegal border practices have been a state practice.²³¹ This decision is the first official recognition that relevant state authorities denied access to territory and asylum procedure and carried out collective expulsions.²³² On 29 December 2020, the CC adopted the constitutional appeal submitted by 17 refugees from Afghanistan who complained to have been collectively expelled to **Bulgaria** in February 2017.²³³ The case concerned the 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.²³⁴ 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 the defendants were 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 asylum certificates, the applicants were put in a truck and, instead of being taken to the camp, were taken to the green border area and collectively expelled to Bulgaria.

The Constitutional Court found that Gradina officers had violated the applicants’ right to liberty and security (Article 27 (3) and Article 29 (1) of the Constitution)²³⁵ by denying them the possibility to challenge the lawfulness of their detention with the assistance of a competent legal representative. The Court dismissed the applicants’ claim that the material conditions of the basement amounted to inhumane and degrading treatment stating, that a period of 12 hours is not lengthy enough to reach the threshold of

²²⁵ Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

²²⁶ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

²²⁷ 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.

²²⁸ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

²²⁹ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

²³⁰ 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.

²³¹ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

²³² AIDA, *Country Report Serbia*, Update 2019, May 2020, 21.

²³³ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

²³⁴ DW, *Serbia: Court confirms illegal pushbacks into the EU, 22 January 2021*, available at: <http://bit.ly/3699fH8> [accessed on 24 January 2021].

²³⁵ Which corresponds to Article 5 (4) of ECHR.

Article 25 of the Constitution (Article 3 of ECHR).²³⁶ The Court further found that it is an undisputable fact that the applicants were expelled to **Bulgaria**. By applying the standards established in the ECtHR jurisprudence in *Čonka*,²³⁷ *Hirsi Jamaa*²³⁸ and *Georgia v. Russia*,²³⁹ the Court determined that the applicants were expelled to Bulgaria outside any legal procedure, without examining the individual circumstances of every applicant and without the possibility for them to provide arguments against their expulsion. The Court also awarded EUR 1,000 to each of the applicants.²⁴⁰

This case was further appealed to the ECtHR. On 12 July 2021, the ECtHR communicated the case to the Government of Serbia so it could answer on the issues raised by the Court in its questions, 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).²⁴¹ The communication phase was concluded at the end of 2022, and the judgment of the Court is pending.

On 14 June 2021, another case referring to informal expulsions to North Macedonia and then further to Greece was communicated to the Governments of Serbia and North Macedonia (*A.H. v. Serbia and North Macedonia*, and *A.H. v. Serbia*). The case concerns a Sudanese applicant who attempted to seek international protection in Serbia. Instead of being registered, he was 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 was never 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*.²⁴²

1.5. Pushbacks towards Serbia and its consequences

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.²⁴³

This state of affairs indicates that Serbia's geographical position puts the country in a difficult situation. Namely, the Serbian asylum system cannot be considered as fair and effective, and thus, it is not attractive to refugees and asylum seekers.²⁴⁴ For that reason, most 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 and Croatia. One of the exit routes is also towards Bosnia and Hercegovina.

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 one of the over 20 informal settlements established in abandoned facilities or tent settlements formed in forests and fields. Apart from food, water and a roof over their heads, refugees, asylum seekers and migrants who stay in reception centres sleep in conditions

²³⁶ 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.

²³⁷ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>.

²³⁸ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

²³⁹ ECtHR, *Georgia v Russia*, Application no 13255/07, Judgment of 3 July 2014, EDAL, available at: <http://bit.ly/3JgBhWs>.

²⁴⁰ Insajder, "Odluka Ustavnog suda potvrda da se migranti proteruju iz Srbije", 22 January 2021, available at: <http://bit.ly/39Wgl2U> [accessed on 24 January 2021].

²⁴¹ ECtHR, *O.H. and Others v. Serbia*, Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

²⁴² 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 form Asylum Protection Center.

²⁴³ International Aid Network (IAN), Documenting ill-treatment and collective expulsions of refugees and migrants, January 2019, available at: <https://bit.ly/2T8kEI5>.

²⁴⁴ Progress Report 2022, p. 48.

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 2021.²⁴⁵ In 2022, Klikaktiv and BVMN regularly reported on the appalling conditions in which people on the move experience.²⁴⁶

Thus, illegal border practices of the neighbouring countries are not only contentious from the perspective of domestic laws and international standards but also disregard Serbia's lack of capacity to accommodate victims of pushbacks in a manner which respects their physical and mental integrity. Simply, Serbia does not have the capacity to address basic needs of refugees, asylum seekers and migrants staying in border area, nor it has the capacity to establish the system which can handle hundreds of informal returns from Romania, Hungary and Croatia outside readmission or any other formal cooperation. Moreover, refugees and migrants tend to use more dangerous ways in crossing the borders, including digging undergrounds tunnel with an aim to cross to Hungary.²⁴⁷

One of the consequences of illegal border polices, very often explained as a 'necessity' in the combat against organized crime, irregular migration, human trafficking and smuggling, was the increased number of operations from organized smuggling groups. The state of affairs on the field indicates the failure of such approach. According to the work of investigative journalist Saša Dragojlo from BIRN, organized smuggling groups are consisted of refugees and migrants, local population, but also local police and interpreters like Alen Dayoub Basil, Syrian-Serbian national hired by the police for the purpose of raids and questioning. The report also contains allegations on the involvement of employees of BIA and Military-Security Agency (VBA).²⁴⁸ A day after BIRN story about criminal groups was published, armed clash and stabbings happened in the RC Sombor and in areas around the RC between opposed smuggling groups. According to BIRN, organized criminal groups intended to discover journalist sources.²⁴⁹ Similar incident occurred in the small town Horgoš, located at the very border with Hungary, when a 20-year-old man was shoot from the automatic weapon (Kalashnikov).²⁵⁰ A day after, one the police raids was conducted and the Mol informed the public that weapons such as guns, automatic rifles and knives were seized.²⁵¹ The final outcome of the armed clash was that one person was killed while the other one wounded.

On 19 February 2023, the N1 television published the documentary 'Bellow the surface – the Network' authored by the investigative journalist Ksenija Pavkov which covered the work of another smuggling group on the border with Hungary governed by the Moroccan national using alias 'the king of Horgoš' Mohamad Tetuania who metaphorically formed the State of Harabu.²⁵² The Documentary provides testimonies of the operations of smuggling groups, ill-treatment they apply on refugees and migrants who are not able to pay for services, the scheme of services and prices for such services, the hierarchy within groups, relationship and distribution of territories among different groups, etc. The testimonies also clearly indicate that RC Sombor and RC Subotica are run by organized smuggling groups in which foreigners have to pay for the stay in state-established camps, in which people who do not abide informal rules are expelled from the camp or physically ill-treated. Also, the Documentary analysis the content of social networks in which these services are publicly offered, and several interviews outlined the link which heads of smuggling groups have with Serbian and Hungarian police. The statements from representatives of

²⁴⁵ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>, 1-4.

²⁴⁶ See for example BVMN, *Violence Within State Border: Serbia*, 26 September 2022, available at: <https://bit.ly/3Fi3ys6>.

²⁴⁷ FRA, *Migration: Key fundamental rights concerns, Bulletin 1 for 2021*, available at: <https://bit.ly/3ApVld2>, p10,
²⁴⁸ BIRN, *With Police Connections, Serbian-Syrian Translator Turned People-Smuggler*, 22 June 2022, available at: <https://bit.ly/3A9SBqf>.

²⁴⁹ BIRN, *Shootings, Stabbing Reported Near Serbian Migrant Camp*, 24 June 2022, available at: <https://bit.ly/3l4f17l>.

²⁵⁰ Infomigrants, *Serbia: Man shot in border town clash between migrants and smugglers*, 28 November 2022, available at: <https://bit.ly/3yAIYR4>.

²⁵¹ Reuters, *Serbian police find 600 migrants after shootout near Hungarian border*, 28 November 2022, available at: <http://bit.ly/3JBdm2W>.

²⁵² N1, *'Bellow the surface – the Network'*, Ksenija Pavkov, 20 February 2023, available at: <http://bit.ly/3YH2epp>.

local population also imply that armed clashes have been happening on a daily basis, but were not publicised, until the July.²⁵³

These, and many other media stories would always trigger reaction of the MoI which would imply raids and massive arrests filmed with cameras. These images included hundreds of refugees and migrants kneeling in the fields with their hand behind their head, surrounded with police special forces with balaclavas and automated weapons.²⁵⁴ This kind of treatment undoubtedly amounts to degrading, but it has deeper consequences in presenting refugees and migrants as security threat to the wider public. Thus, in 2022, the actions of the police in north of Serbia undoubtedly incited further animosity towards refugees and migrants who are exclusively portrayed as security threat. Minister of Police at that time, Aleksandar Vulin, formed 'the special task force for combating crimes committed by migrants'.

All of these events cumulatively, further incited actions of right-wing groups such as Citizens Patrols (Narodne patrolе),²⁵⁵ Levijatan,²⁵⁶ but also opposition parties such as Dveri.²⁵⁷ The Insider TV work has shown that there is not a single criminal case pending against members of these groups for the acts which are based on hate speech, physical attacks and discrimination.²⁵⁸ The BVMN outlined the following:

'People-on-the-move in Serbia are subjected to violence from far-right groups of civilians within the country. These groups seem to have grown in structure, geographical scope and membership in the past years. This type of non-institutionalized violence can take different forms and intensities. One of them is the rise of anti-migrant messages in public spaces, including posters inside public buses or the increasing appearance of hostile graffiti such as "Migrants go home", especially around the areas usually inhabited and transited by people-on-the-move. Though more subtle and less immediately dangerous than direct physical violence, these messages contribute to the creation of an even more hostile environment for people-on-the-move in the cities and can further impact the general public's opinion and attitudes. The anti-migrant rhetoric takes a particularly virulent shape on Facebook and other social media platforms, tools that have become integral to the growth and Organisation of these groups all around the world. On Facebook, Narodna Patrolа ("People's Patrol) and STOP Naseljavanju migranata ("STOP Settlement of migrants"), constitute two of the biggest groups each with daily posts and 1,700 and 318,100 followers, respectively. Outside of the online sphere, and as their name suggests, Narodna Patrolа has become increasingly well-known for organizing patrolling vigilante groups in a growing number of cities in the country.'

On the other hand, refugees and migrants could be afforded with better and safer conditions in reception facilities in the south or east of the country. As already outlined, Serbian police has been organising frequent transfers of people staying in appalling conditions in border areas to the Reception Centre in Preševo, especially during the winter times,²⁵⁹ but also in summer times after the above-described incidents. Again, 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:

²⁵³ *Ibid.*

²⁵⁴ YouTube, *Ministar Vulin-Subotica akciji usmerena na suzbijanju krivičnih dela i prekršaja koje čine migranti*, 14 July 2022, available at: <https://bit.ly/3TahUjO>.

²⁵⁵ YouTube, *Narodna patrolа razgovara sa Ahmedom*, 27 March 2022, <https://bit.ly/3TemAFh>.

²⁵⁶ YouTube, *Pavle Bihali o odnosu prema migrantima*, 23. November 2020, available at: <http://bit.ly/3T9aoWe>.

²⁵⁷ YouTube, *Boško Obradović Migranti stvorili autonomnu oblast u AP Vojvodini*, 23 November 2022, available at: <https://bit.ly/427HbPF>.

²⁵⁸ Insajder, *Postupci u tužilaštvu protiv Narodnih patrolа i dalje bez epiloga*, 11 January 2023, available at: <http://bit.ly/3ywQvyT>.

²⁵⁹ Večernje Novosti, *МИГРАНТИ ПРЕБАЧЕНИ СА СЕБЕРА НА ЈУГ: Више од 300 избеглица транспортовано из Сомбора у Прешеву*, 4 February 2021, available at: <https://bit.ly/36ql0uF>; see also, APC, available at: <https://bit.ly/36k5v8x>.

- [...] 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 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.²⁶⁰

In 2022, in one of the Klikaktiv reports the following was reported;

Near Sombor, Klikaktiv regularly visited one of the largest squats in the border area, who at the time of a visit in September accommodated approximately 400 people on the move, in an abandoned factory facility. Previously, in July 2022, refugees at the squat reported regular police raids at the location during which the Serbian police detained them, used physical violence and destroyed their personal belongings (tents, backpacks, mobile phones etc.). In August the raids ceased, according to the refugees' testimonies. In September however, the increased number of people and tents in several of the factories' buildings was notable, as well as a significant proportion of young unaccompanied boys from Syria (7-14 years old).²⁶¹

Thus, the consequences of pushbacks to Serbia with regards to persons who might be in need of international protection implies the potential risks of ill-treatment, particularly targeting UASC and other vulnerable groups, and which can be materialised through:

- Ill-treatment committed by trans-national organized criminal groups controlling the border area and reception facilities.
- Poor, unhygienic and unsafe living conditions in the informal settlements
- Poor and unsafe living conditions in reception facilities of RC Sombor, RC Subotica or RC Kikinda.
- excessive use of force by police and special forces of Serbia
- Acts of extreme right-wing groups who act against impunity.

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.²⁶² In 2022, the UNHCR collected testimonies on 5,554 persons who claimed to be pushback to Serbia – BiH (2), Croatia (297), Hungary (3,929) and Romania (1,326).

UNHCR statistics on pushbacks to Serbia in 2022²⁶³

Month	Bosnia and Hercegovina	Croatia	Hungary	Romania
January	2	47	1506	226
February	0	28	659	40
March	0	62	264	61
April	0	21	449	121
May	0	21	231	181
June	0	13	140	150
July	0	14	90	106
August	0	18	147	172

²⁶⁰ BVMN, Balkan Region – January 2022, available at: <https://bit.ly/3sQqmrD>, 4.

²⁶¹ Klikaktiv, The Third Quarterly Report in 2022 (July-August-September), available at: <https://bit.ly/3Ld2pFU>, pp. 12 and 13.

²⁶² The entire statistical data has been provided by UNHCR office in Serbia.

²⁶³ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

September	0	33	170	95
October	0	27	118	124
November	0	7	115	46
December	0	6	40	4
Total	2	297	3,929	1,326

APC reported 527 pushbacks from Hungary, Croatia and Romania in the first half of 2021 and estimate that on average at least 200 people are pushed back to Serbia every day,²⁶⁴ outside of the 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.²⁶⁵

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

1.6. Pushbacks from Hungary to Serbia and Embassy Procedure

Since the contentious changes in the Hungarian legal framework in the period 2015-2020,²⁶⁶ including the legalisation of a practice which is considered to be in violation of the prohibition of collective expulsions, more than 288,000 persons were expelled back to Serbia. Due to such practice, but also the Court of Justice of the European Union (CJEU) judgment, FRONTEX suspended its operational activities in Hungary.²⁶⁷

In 2020, BVMN published 3 testimonies encompassing 30 people who were pushed back from **Hungary** to **Serbia**.²⁶⁸ 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 the other 25 cases the following forms of ill-treatment by the 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 lie or sit on the ground, dog attacks, insulting, threatening, pepper spraying, etc.²⁶⁹ The same trend continued in 2022, when BVMN compiled 77 reports encompassing 1,337 persons who were pushed back from Hungary.²⁷⁰

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.²⁷¹

²⁶⁴ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>.

²⁶⁵ *Ibid.*

²⁶⁶ See AIDA Hungary report.

²⁶⁷ FRA, *Migration: Key fundamental rights concerns*, Bulletin 2 for 2021, available at: <https://bit.ly/3BwONyt>, p. 6

²⁶⁸ The testimonies are available at: <https://bit.ly/36aGo55>.

²⁶⁹ BVMN, *Testimony Database*, available at: <https://bit.ly/3Jvmhjs>.

²⁷⁰ *Ibid.*

²⁷¹ A detailed report will be published in late June 2023.

APC reported that over 300 people attempted to cross the border with Hungary every day in the first 6 months of 2021.²⁷² 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.'²⁷³

Particularly worrying examples of push-back practices 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 2016.²⁷⁴ In April 2021, an SGBV survivor who arrived from Senegal to Budapest airport was expelled to Serbia.²⁷⁵ In September 2021, an Afghan student in Hungary was expelled to Serbia.²⁷⁶ 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 victim of human trafficking in Serbia.²⁷⁷

It is noteworthy that in 2020 access to the territory and the asylum procedure in **Hungary** was made possible only through a consulate in **Belgrade**.²⁷⁸ 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 wait to be summoned in order to submit the Declaration of Intent for Lodging an Application on Asylum ('DoI').²⁷⁹ The new procedure is described in detail in the AIDA report on **Hungary**. According to the data obtained by IDEAS, several hundred applicants (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 the Consulate premises to lodge the DoI. So far, only 3 families from Iran (12 persons in total) have entered Hungary. IDEAS and InfoPark have been providing technical assistance to the foreigners interested in applying for asylum. The problems that were detected are the following:

- ❖ DoI forms are in English, which represents a serious obstacle for most of the applicants
- ❖ The filling out of the DoI forms requires at least basic knowledge of 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 appointment or to lodge the DoI submission
- ❖ the communication with the Consulate is in English and most of the applicants do not understand this language
- ❖ several applicants have failed to appear at the scheduled meeting since they did not understand the message received *via* email from Consulate or because they did not know how to use an email
- ❖ there is no clear criterion on who will be invited to submit the 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 in submitting the DoI at the Hungarian consulate do not have effective access to the asylum procedure, and it is clear that this mechanism has showed to be theoretical and illusory for all

²⁷² APC, Pushbacks - January -Jun 2021, 8 December 2021, available at: <https://bit.ly/3LHhOw5>, 6.

²⁷³ Available at: <https://bit.ly/3gWxyx1>.

²⁷⁴ HHC, World Refugee Day – 1 out of 40,000: Karox, 20 June 2020, available at: <https://bit.ly/3h2z0Oe>.

²⁷⁵ BCHR, Mađarska - ovde se ne traži azil, 16 November 2021, available at: <https://bit.ly/3JDXSbj>.

²⁷⁶ 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>.

²⁷⁷ The author of this Report acts as her legal representative.

²⁷⁸ ECRE, *Hungary: New Law on the Lodging of Asylum Applications at Embassies*, 19 June 2020, available at: <http://bit.ly/2MRn0mX>.

²⁷⁹ Available at: <https://bit.ly/3jyD2h>.

except three families from Iran who were 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 contrary to Article 4 of Protocol 4 of the ECtHR in the case *Shahzad v. Hungary*.²⁸⁰ The ECtHR outlined that the 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 4.²⁸¹ An identical Judgment as *Shahzad* was rendered in the case *H.K. v. Hungary*.²⁸² Also, three more applications lodged against Hungary were upheld with Court's judgment in the case *W.A. and Others v. Hungary*, where three Syrian refugees were expelled back to Serbia on the basis of the automatic application of the safe third country.²⁸³

Official statistics on pushbacks from Hungary to Serbia 2016-2021²⁸⁴

Year	No. of persons pushed back
2016	8,466
2017	9,259
2018	4,151
2019	11,101
2020	25,603
2021	71,470
2022	158,565
Total	288,615

As it can be seen from the table above, the Hungarian immigration authorities have been transparent when it comes to the number of persons expelled back to Serbia under their domestic framework, outside of any readmission procedure, and without the knowledge of Serbian border authorities. According to the data delivered by the MoI, only 30 foreigners were officially readmitted from Hungary to Serbia in 2022. Due to increasing violence at the Croatian border and taking into consideration that the Hungarian barbed wire fence carries significant risk to the life and physical integrity of the concerned persons, in 2018 refugees and migrants started to use the 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, while that number in 2022 was 1,326.

This was one of the reasons why Frontex instigated a joint operation with the Romanian Border Police aimed at preventing and combating irregular migration at the EU border with Serbia.²⁸⁵

BVMN published 3 testimonies referring to 67 persons who were pushed back from Romania in 2020.²⁸⁶ In 2021, 20 incidents encompassing 238 persons were 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.²⁸⁷ In 2022, BVMN reported 17 pushback testimonies encompassing 126 persons.²⁸⁸

²⁸⁰ Application No 12625/17, Judgment of 8 July 2021, available at: <https://bit.ly/3BwQH1U>.

²⁸¹ *Ibid.*, para. 67.

²⁸² Application No. 18531/17, Judgment of 22 September 2022, available at: <http://bit.ly/3LhVaMI>.

²⁸³ ECtHR, *W.A. and Others v. Hungary*, Applications Nos. 64050/16 64558/16 and 66064/16, Judgment of 15 December 2022, available at: <http://bit.ly/427BS2z>.

²⁸⁴ Hungarian Ministry of Interior official data.

²⁸⁵ FRA, Migration: Key fundamental rights concerns, Bulletin 3 for 2021, available at: <https://bit.ly/41yNuLz>, p. 9.

²⁸⁶ The testimonies are available at: <https://bit.ly/3sTBq6z>.

²⁸⁷ BVMN, Testimony Database, available at: <https://bit.ly/3Jvvhjs>.

²⁸⁸ *Ibid.*

The European Union Agency for Fundamental Rights (FRA) highlighted that the Romanian police reported that in just the first six months of 2021, 28,737 refugees and migrants were 'prevented' from entering from Serbia. Thus, this number shows that the push-back practice represents an official state policy in this country as well.²⁸⁹ The total number of persons who were 'prevented from entering' from Serbia is almost 75,000.²⁹⁰

APC reported that at least 50 persons per day were trying to cross to Romania in the first half of 2021.²⁹¹ IDEAS has observed the trend whereby refugees who cross to Romania continue to the city of Arad and then enter Hungary. After being apprehended by the Hungarian police, they are expelled to Serbia.²⁹²

And finally, it is interesting to note that 1,243 persons was officially readmitted to Serbia from Romania, while Kikaktiv published the analysis in which it described individual cases in which people returned to Serbia were denied access to the asylum procedure.²⁹³

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 the period 2018-2022²⁹⁴

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
2022	At least 1,326
Total	At least 18,418

1.7. 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 into 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**.²⁹⁵

In 2020, BVMN published 9 testimonies involving 93 people who were pushed back from **Croatia**,²⁹⁶ and APC was also reporting on cases of collective expulsions which included severe forms of violence.²⁹⁷ 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

²⁸⁹ FRA, *Migration: Key Fundamental Rights Concerns*, available at: <https://bit.ly/3BwONyt>.

²⁹⁰ FRA, *Migration: Key Fundamental Rights Concerns*, available at: <https://bit.ly/404kWYW>.

²⁹¹ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>, 8.

²⁹² data collected in 2021.

²⁹³ Kikaktiv, *Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border*, available at: <https://bit.ly/3yyttru>.

²⁹⁴ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

²⁹⁵ 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.

²⁹⁶ The testimonies are available at: <https://bit.ly/2KJPezk>.

²⁹⁷ 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.²⁹⁸

APC estimates that in the first 6 months of 2021, approximately 300 to 400 persons were present in the border area with Croatia trying to cross the border.²⁹⁹ 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 [...]³⁰⁰

BVMN documented 33 cases involving 92 refugees and migrants being denied access to Croatian territory in 2021. Each and every case implied some form of ill-treatment such as: punches, kicks, undressing, hitting with rubber truncheon and others.³⁰¹ As for 2022, only 7 testimonies encompassing 41 persons were recorded by the BVMN, which further indicates that this route has been less frequent.³⁰²

And finally, it is important to note that the ECtHR 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 that the State had hindered the effective exercise of the applicants' right to an individual application by restricting access to their lawyer among other things.³⁰³

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 2021.³⁰⁴

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)'s report.³⁰⁵

UNHCR statistics on pushbacks from Croatia to Serbia in 2021³⁰⁶

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
2022	At least 297

²⁹⁸ APC Twitter, available at: <https://bit.ly/3jhWXkZ>.

²⁹⁹ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>, 9.

³⁰⁰ *Ibid.*, 9.

³⁰¹ BVMN, Testimony Database, available at: <https://bit.ly/3Jvnhjs>.

³⁰² *Ibid.*

³⁰³ ECtHR, *M.H. and Others v. Croatia*, Application Nos 15670/18 43115/18, Judgment of 18 November 2021, available at: <https://bit.ly/3LO77b5>.

³⁰⁴ ECtHR, *Y.K. v. Croatia*, Application No. 38776/21, lodged on 24 July 2021, available at: <https://bit.ly/3sSP0YT>.

³⁰⁵ 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>.

³⁰⁶ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

Total	At least 12,752

1.8. 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** remained unchanged in 2022.³⁰⁷ 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 their country of origin, or after their admission into Serbia which ensued after CSOs interventions. Allegations of ill-treatment were particularly worrying in the last quarter of 2022, when free visa regimes with Tunis and India were cancelled and when BPSB has been issuing hundreds of refusal of entry decisions per week, which was the reason why NPM conducted the visit.³⁰⁸ 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 truncheons and handcuffing in painful position. Ill-treatment occurred in situations where refugees and asylum seekers were forced to go to the detention premises at the airport or forced to board the plane.³⁰⁹

In 2021, BPSB issued 146 certificates of intention to submit an asylum application ('registration certificate'). This is a significant increase in comparison to 2020, where only 44 certificates were issued and 2019, where 69 persons was registered by the BPSB.³¹⁰ 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. In 2022, a total of 689 asylum certificates were issued at Serbian airports.

The majority of certificates were issued to 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 its recognition of Kosovo*'s unilaterally declared independence.³¹¹ Following this, hundreds of Burundian citizens moved to Serbia and applied for asylum. The free visa regime was cancelled in November 2022.³¹²

Even though the number of issued certificates increased in 2022, the practice of BPSB remained unpredictable, inconsistent and deprived of any clear criteria. In fact, as the number of arrivals of Burundians, but also other nationalities (Türkiye, Tunisia, India and others) continued to increase, BPSB continued with contentious practices including one comprising of the following steps:³¹³

1. the police wait at the exit of the plane with decisions on refusal of entry forms already filled in with all the available details (flight details, arrival time in Serbia, reasons for refusal of entry, etc.) except for the personal details of the travellers which are later on taken from their passports;
2. Foreigners, including persons that might be in need of international protection, are then apprehended right after they leave the plane and are invited to sign the forms while they are still not aware of what these forms mean;
3. their cell phones and passports are frequently taken away and the personal details from the passport are filled in on the decisions on refusal of entry;
4. if the flight immediately flies back to Istanbul, foreigners are boarded back onto the plane threatened with the use of force;

³⁰⁷ AIDA, *Country Report Serbia*, 2018 Update, March 2019, 18-20 and AIDA, *Country Report Serbia*, 2020 Update, March 2021, 26.

³⁰⁷ AIDA, *Country Report*, 2019 Update, 22.

³⁰⁸ NPM, *НПМ у ненајављеној посети Аеродрому „Никола Тесла“, проверавао услове боравка*, 22 November 2022, available at: <http://bit.ly/3T7QPxK>.

³⁰⁹ More information in the list of incidents outlined above in the chapter on refusal of entry.

³¹⁰ AIDA, *Country Report*, 2019 Update, 22.

³¹¹ Društvo putnika Srbije, *Srbija ukinula vize za državljane Republike Burundi*, 21 June 2018, available at: <https://bit.ly/3H3GGKI>.

³¹² See more in the chapter on the arrivals to Serbia.

³¹³ 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.

5. if individuals manage to decline to board this immediate boarding or there is no immediate 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 a seat on a return flight to Istanbul does not become available;
7. when a seat on a return flight becomes available, detainees are forcibly taken to the side exit, forced into police cars and driven across the runway to the plane which is already boarded with regular travellers.
8. decisions on refusal of entry in English and Serbian are served to detained individuals prior to their forcible boarding onto the plane, regardless of whether they have been signed or not by detainees.

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

- ❖ unlawful and arbitrary deprivation of liberty at the transit zone;
- ❖ the manner in which decisions on refusal of entry are being issued;³¹⁴
- ❖ 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, the 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.³¹⁵ 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.³¹⁶

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*.³¹⁷ 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*,³¹⁸ without the possibility to use services of a lawyer and an interpreter, and to lodge an appeal with a suspensive effect.³¹⁹

In June 2019, the Constitutional Court (CC) dismissed as manifestly unfounded BCHR's constitutional appeal submitted on behalf of Iranian refugee H.D.³²⁰ In November 2016, Mr. H.D. was detained at the

³¹⁴ Article 15 Foreigners Act.

³¹⁵ Article 13(2) Foreigners Act.

³¹⁶ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15.

³¹⁷ ECtHR, *Gebremedhin (Gaberamadhien) v France*, Application No. 25389/05, Judgment of 26 April 2007, EDAL, available at: <http://bit.ly/2RwU82a>, para. 66-67.

³¹⁸ Article 15 Foreigners Act.

³¹⁹ 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.

³²⁰ Constitutional Court, Constitutional appeal no 9440/16, Decision of 13 June 2019.

airport transit zone for 30 days, in the manner described 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,³²¹ in line with the criteria established in the jurisprudence of the ECtHR.³²² Namely, the Court outlined that the legal framework that had been in force at the time of the applicant's stay at the airport did not envisage the procedure in which a foreigner can be deprived of liberty in the transit zone. For that reason, H.D.'s claims about unlawful and arbitrary detention could not be 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,³²³ using the subjective and objective criteria³²⁴ such as the type, duration, effects and manner of implementation of the measure in question.³²⁵ 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 the asylum procedure. The applicant faced *refoulement* to Türkiye, and further [*chain-refoulement*] to Iran. Eventually, the ECtHR granted the Rule 39 request, submitted by the BCHR.³²⁶ 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'.³²⁷ According to the said reports, MoI 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. In 2022, the BPSB issued the record of 8,682 refusal of entry decisions, while Border Police Station at Niš airport issued 229 decisions.

During 2022, 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 were 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 MoI has been issuing temporary entry cards for the transit zone to CSOs lawyers who were contacted via email or cell phone by foreigners detained at the airport. The main condition for access to the transit zone was that lawyers have to know the exact name of the person detained, their 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 contacted CSOs were allowed to enter Serbia after the phone call or an

³²¹ Article 27 Constitution.

³²² 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>.

³²³ ECtHR, *Nolan and K. v. Russia*, Application No. 2512/04, Judgment of 12 February 2009, EDAL, available at: <http://bit.ly/36NVSDx>, para. 96.

³²⁴ 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.

³²⁵ ECtHR, *Amuur v. France*, Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>, para. 42.

³²⁶ ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

³²⁷ Available at: <https://bit.ly/3H0ILah>.

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,³²⁸ nor do they all have access to phones or internet. Accordingly, very often, the people receiving counsel from CSOs at the airport state that there are dozens of others who are detained and wish to apply for asylum or receive additional information on their legal possibilities in Serbia. The European Commission highlighted this problem.³²⁹ 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 an asylum application.

In 2021, the 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,³³⁰ 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? Yes No
❖ If so, what is the time limit for making an application?
2. Are specific time limits laid down in law for lodging an application? Yes No
❖ If so, what is the time limit for lodging an application? 15 days and 8 days
3. Are making and lodging an application distinct stages in the law or in practice? Yes No
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application for international protection for international protection be lodged at embassies, consulates or other external representations? Yes No

³²⁸ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020*, available at: <https://bit.ly/2LZHGsw>, 12-13.

³²⁹ European Commission, *Progress Report: Serbia*, 6 October 2020, SWD (2020) 352 final, available at: <https://bit.ly/2YaPjPJ>, p. 49; Progress Report 2022, 48.

³³⁰ ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

1.1. Expression of the intention to seek asylum and registration

1.1.1. The procedure

The Asylum Act envisages that foreigners within the territory of Serbia have the right to express the intention to lodge an asylum application.³³¹ Foreigners may express the intention to lodge an asylum application to the competent police officers at the border or within the territory either verbally or in writing,³³² including in places such as prisons, the Detention Centre for Foreigners in **Padinska Skela, Dimitrovgrad and Plandište**, as well as the airport transit zones or during extradition proceedings or court proceedings e.g. misdemeanour proceedings.³³³ Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.³³⁴

An authorised police officer shall photograph and fingerprint the person (identification),³³⁵ who will thereafter be issued a certificate on registration as a foreigner who has expressed their intention to lodge an asylum application in the Republic of Serbia ('registration certificate - registration').³³⁶ 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.³³⁷ 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.³³⁸ 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 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 certificates automatically. In 2021, certificates were 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), Türkiye (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 citizen from Bosnia and Hercegovina, Colombia, Comoros, Congo, Equatorial Guinea, Georgia, Kyrgyzstan, Lebanon, Mexico, Niger, South Sudan, Tajikistan, Tunisia, Turkmenistan, Sudan and 1 stateless person.

In 2022, the Mol issued the total of 4,181 registration certificates to the citizens of: Afghanistan (1,452), Burundi (943), Syria (574), Pakistan (263), Morocco (191), Egypt (81), India (77), Iran (72), Congo (72), Guinea-Bissau (64), Cuba (49), DR Palestine (40) Iraq (36), Russia (34), Tunisia (31), Ghana (23), Bangladesh (23), Türkiye (15), Somalia (13), Cameroon (12), Congo (12), Guinea (9), Ukraine (8), Algeria (6), Sudan (5); as well as 4 registration certificates to citizens of Sierra Leone, Libya, BiH and Bulgaria; 3 to citizens of China, Comoros, Eritrea, Germany, Gambia and Cote d'Ivoire; 2 to citizens of Angola, Belarus, Georgia, Kyrgyzstan, Mauritania, Nigeria, Poland, Senegal, Tanzania and Yemen; and 1 to

³³¹ Article 4(1) Asylum Act.

³³² Article 35(1) Asylum Act.

³³³ Article 35(2) Asylum Act.

³³⁴ Article 11 Asylum Act.

³³⁵ Article 35(5) Asylum Act

³³⁶ Article 35(12) Asylum Act.

³³⁷ Article 8 Rulebook on Registration.

³³⁸ See also BCHR, Right to Asylum in the Republic of Serbia 2019, 22-24.

citizens of Albania, Benin, Bolivia, Canada, Croatia, Ecuador, Equatorial Guinea, France, UK, Jamaica, Kazakhstan, Myanmar, Mongolia, North Macedonia, Slovakia, Slovenia, Togo and the US.

The registration certificate in Serbia is not considered an asylum application and thus, an individual who possesses one is not considered an asylum seeker, but a person who intends to become one.³³⁹ 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, they are referred to an Asylum Centre or another facility designated for accommodation of asylum seekers, usually other Reception Centres. The foreigner is obliged to report to the facility within 72 hours from the moment of issuance of the registration certificate.³⁴⁰ Transportation costs to reach the facility are not covered. If a foreigner fails, without a justified reason, to report to the Asylum Centre or other facility designated within 72 hours of registration, the regulations on the legal status of foreigners shall apply. Thus, the person will be considered an irregular migrant, which should not be the case for people in need of international protection or who, on the basis of their origin, have a *prima facie* claim.³⁴¹ They then risk being penalised in a misdemeanour proceeding³⁴² and served with an expulsion decision (either a decision on cancellation of residency³⁴³ or return decision³⁴⁴). Still, practice has shown that persons issued with certificates which have 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 their other rights and obligations, in line with Article 56 of the Asylum Act.³⁴⁵ The letter also indicates that a brochure on asylum seekers' rights and obligations is being drafted and that 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.³⁴⁶ According to the information collected from CSOs, the said brochures in languages that asylum seekers understand have not been distributed yet. Hence, it remains unclear how 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. However, the Mol and Asylum Office outlined that leaflets have been distributed to all police departments in Serbia in December 2022. The practice in 2023 will show to which extent potential asylum seekers will benefit from these leaflets and if they will be used in practice.³⁴⁷

There were no obstacles in the registration procedure due to COVID-19 in 2022, as it was the case in 2020.³⁴⁸

1.1.2. 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 expired registration certificate was considered valid and an individual was allowed to submit his or her asylum application.³⁴⁹

³³⁹ Article 2 (1) (4) Asylum Act.

³⁴⁰ Article 35(3) Asylum Act.

³⁴¹ Article 35 (13) Asylum Act.

³⁴² 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.

³⁴³ Article 39 (3) Foreigners Act.

³⁴⁴ Article 77 (1) Foreigners Act.

³⁴⁵ The letter from the Mol-Police Directorate-Border Police Administration No. 26-1991/18.

³⁴⁶ Information provided by the Border Police, 6 December 2018.

³⁴⁷ Information was provided by the Mol at the UNHCR seminar on access to territory that took place in Sremska Kamenica in December 2022.

³⁴⁸ AIDA Country Report Serbia, 2020 Update, March 2021, 35.

³⁴⁹ A Pakistani national represented by independent attorney at law submitted asylum application in December 2020, regardless of the fact that his registration certificate 'expired'.

This possibility exists as long as an asylum application has not been rejected, in which case asylum seeker may lodge a [Subsequent Application](#).³⁵⁰

The above-described approach was that taken by the Asylum Office in all cases except when foreigners receive a decision on cancellation of residency³⁵¹ or a return decision.³⁵² In such situations, it is still not entirely clear whether or not the Asylum Office and Mol consider that these people still have the right to apply for asylum and the practice varies from one case to another. For instance, an unaccompanied child was allowed to submit an asylum application regardless of the fact that he was served with two return decisions.³⁵³ On the other hand, a boy from Afghanistan who was issued with a return decision was not allowed to access the asylum procedure and submit his asylum application.³⁵⁴ There were no recorded instances in 2021 and 2022 where persons with decisions on cancellation of residency or return decisions were denied access to asylum procedure, which is welcome. However, in 2022, DRC and IDEAS witnessed numerous instances in which people were issued expulsion orders for not applying for asylum within the deadline of 23 days, but it remains unclear if they would be allowed to apply for asylum because all these people decided to leave Serbia. In 2022, Klikaktiv reported that people readmitted from Romania were not allowed to register as asylum seekers because they were, upon their return, automatically served with expulsion orders.³⁵⁵

The lack of clarity with regard to access to the asylum procedure for 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 to 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 most police departments in Serbia regarding the issuance of expulsion decisions must be improved so that it includes procedural safeguards against *refoulement*. Accordingly, this procedure should be conducted in a manner that implies that the foreigner is allowed to contest their removal to a third country or to the country of origin with the assistance of a lawyer and interpreter, with the possibility to lodge a remedy for judicial review of the negative first instance decision. This remedy must have 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, decision drafted in a standard template that only contains different personal data, but no rigorous scrutiny of risks of *refoulement* is applied.³⁵⁶

As it has been the case in previous years, the total of 4,181 certificates issued in 2022 does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia since only 320 of them officially lodged an asylum application. 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 these 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 65,328 registration certificates were issued. Out of that number, only 4,020 asylum applications were lodged, which is 0.6% of all foreigners registered in line with the Asylum Act in Serbia.

³⁵⁰ Article 46 Asylum Act.

³⁵¹ Article 39 Foreigners Act.

³⁵² Articles 74 and 77 (1) Foreigners Act.

³⁵³ IDEAS lawyers submitted written asylum application in December 2020.

³⁵⁴ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

³⁵⁵ Klikaktiv, Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border, available at: <https://bit.ly/3yyttru>.

³⁵⁶ 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>.

The correlation between the number 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
2022	4,181	320
Total	653,028	4,020

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 the 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 is to be recognised and entitled to the material reception conditions and these amendments have remained unchanged after the public debate was finalised in February 2022.

It is common practice that persons who genuinely want to apply for asylum are referred to Reception Centres³⁵⁷ instead of Asylum Centres (see section on [Reception Conditions](#)), 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 the AC in Krnjača and Banja Koviljača in 2022. 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 the asylum procedure since the Asylum Office has failed to visit this Centre in 2020³⁵⁸ and 2021. In 2021, Asylum Office facilitated the asylum procedure in Belgrade in more than 90% of the cases by allowing people accommodated in Belgrade to lodge asylum applications in person or by organising asylum hearings. In 2022, AC Sjenica and Turin were visited on two occasions for the purpose of lodging of asylum applications and asylum hearings. However, legal representatives, in most of the cases, 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. Another example of good practice was the fact that CRM was assisting asylum seekers in reception facilities outside Belgrade to fill out asylum applications in writing and to send them via post to the Asylum Office. Afterwards, those who stay long enough are transferred to AC in Krnjača. Due to increased number of written asylum applications in the summer of 2022, the CRM stopped referring written asylum applications to the Asylum Office, for

³⁵⁷ 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.

³⁵⁸ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

two months. However, at the end of 2022, CRM continued with supporting asylum seekers in this process which has basically become a precondition for their transfer to Belgrade where they would reduce the waiting period for the first instance procedure to be conducted.

One of the solutions for this problem would be that all genuine asylum seekers should be placed in the Belgrade asylum centres in **Krnjača** and **Obrenovac (designated as Asylum Centre in 2021)**, which have the capacity to accommodate on an annual basis all persons who are interested in staying in Serbia. The Asylum Office shares these views, however, the CRM has been declining this proposal without providing any reasonable explanation.

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

- ❖ The time period between the issuance of the 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 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.³⁵⁹

One case from January 2022 deserves special attention and is related to a political activist from Bahrein, who was denied access to asylum procedure and extradited to his country of origin despite a request for interim measures lodged by the BCHR and granted by the ECtHR.³⁶⁰ The person had been 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 the asylum procedure, and ignoring of ECtHR's interim measure resembles the case of Cevdet Ayaz, who was extradited to Türkiye despite CAT interim measure and before his asylum procedure was concluded.³⁶¹ The case was communicated to the Government of Serbia in June 2022 and it is pending.³⁶²

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

It is important to reiterate that people expelled or returned from **Hungary, Croatia and Romania** informally or in line with the Readmission Agreement between the EU and the Republic of Serbia on the readmission of persons residing without authorisation³⁶³ 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 CSOs' 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.³⁶⁴ In particular, the denial of access to the 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 a truck or van at the official border crossing. After they are discovered by the Croatian border police and informally surrendered back to the Serbian police, they are automatically taken to the misdemeanour court

³⁵⁹ *Ibid.*

³⁶⁰ *Mohamed v. Serbia*, Application No 4662/22, granted on 21 January 2022.

³⁶¹ BCHR, *Serbia wrongfully extradited Bahraini national despite European Court of Human Rights interim measure*, available at: <https://bit.ly/3LGA8W5>.

³⁶² ECtHR, *Mohamed v. Serbia*, Application No. 4662/22, 4 July 2022, available at: <http://bit.ly/3ynDYO8>.

³⁶³ Available at: <https://bit.ly/2ScFtKK>.

³⁶⁴ See more in AIDA, Country Report Serbia, 2019 Update, May 2020, 29

in **Šid** or **Bačka Palanka** where they are penalised for a misdemeanour of illegal stay or entry and subsequently served with a decision on cancellation of residency or a decision on return.³⁶⁵ 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 migrants³⁶⁶ 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 smugglers in front of the Asylum Centre in **Krnjača**.³⁶⁷ Another case of UASC denied access to the asylum procedure³⁶⁸ upon the return from Hungary is still pending before the ECtHR.³⁶⁹

Similar problems in 2022 were reported by Klikaktiv in relation to people readmitted from Romania reported the following:

‘Over the past years, most of the people on move have not had access to asylum procedure in Serbia. Police stations in the cities on the north of the country, where the majority of people reside and where they are being accepted after the readmission, refuse to register people on the move as asylum seekers and ignore their asylum claims. This practice forces people to turn to smuggling networks where they are at risk of human trafficking and different types of exploitation. Therefore, people who are in need of international protection are forced to stay in one of the transiting camps or in informal settlements run by smugglers, in very poor conditions, without access to basic necessities such as food, heating and clothes.’³⁷⁰

It is necessary that the Asylum Office communicate 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 and that people who are in need of international protection cannot be protected by *refoulement* in the procedures prescribed by Foreigners Act due to the lack of capacity of immigration officers to assess risks of *refoulement*.

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, a request for individual assurances³⁷¹ should be designed in line with possible obstacles being mainly related to access to the asylum procedure. However, taking in consideration the very high dysfunctionality of the child-protection system, USAC should not be returned back to Serbia until the situation significantly improves.³⁷² Considering Serbia as a safe third country in the context of pushbacks or readmissions severely undermines the Article 3 of the ECtHR in its procedural limb. This was corroborated by the ECtHR in its judgment against Hungary which is related to three Syrian refugees expelled back under the automatic presumption that Serbia is a safe third country.³⁷³ The case contains identical findings as in the Grand Chamber judgment *Ilias and Ahmed v. Hungary*.³⁷⁴ The violation of Article 3 in this particular case was related to the lack of assessment on the risks of chain-*refoulement* from Serbia onwards to North Macedonia.

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:

³⁶⁵ Misdemeanor Judgment No. P 65/19 from 14 January 2019.

³⁶⁶ 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.

³⁶⁷ N1, ‘Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda’, 6 June 2019, available (in Serbian) at: <http://bit.ly/2nNtNBA>.

³⁶⁸ See more in AIDA, Country Report Serbia, 2021 Update, May 2021, p. 58

³⁶⁹ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

³⁷⁰ Klikaktiv, Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border, available at: <https://bit.ly/3yyttru>.

³⁷¹ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>, para. 121-122.

³⁷² The cases of M.W. and USAC X. are the most striking examples of this practice.

³⁷³ ECtHR, W.A. and Others v. Hungary, Applications Nos. 64050/16 64558/16 and 66064/16, Judgment of 15 December 2022, available at: <http://bit.ly/427BS2z>.

³⁷⁴ See more at HHC, *Asylum seekers won at the European Court of Human Rights again*, 19 December 2022, available at: <http://bit.ly/428w7ld>.

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

Additional facts, which must be taken in consideration from the aspect of individual assurances which must be obtained before the return to Serbia, are the following:

- ill-treatment committee by the hands of organized criminal groups controlling the border area and reception facilities which are in poor state and which are located in the north of Serbia
- poor, unhygienic and unsafe living conditions in the informal settlement
- acts of extreme right-wing groups who act against impunity.

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 still have effective access to the Detention Centre for Foreigners in Padinska Skela (DC Padinska Skela), one case deserves a special attention and highlights the late reaction of lawyers, but also contentious practice of the Mol 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. Thus, they were denied the possibility to access the asylum procedure or to legally challenge the expulsion decision in a procedure where they would actively participate with the help of a lawyer and an interpreter.³⁷⁵ In 2022, only 4 persons were issued with the registration certificate in DC Padinska Skela out of 272 detainees. Out of 272 detainees, 90 were from Afghanistan and 40 from Syria. A total of 5 Syrians was forcibly removed to Bulgaria, as well as 58 Afghans. Due to the lack of facts surrounding the said cases, it is not possible to assess to which extent safeguards against *refoulement* were respected, but it is clear that these removals were performed on the basis of expulsion orders rendered in a manner which does not take into consideration risks of ill-treatment in the receiving State with rigorous scrutiny, *ex nunc* and *proprio motu*. The fact that several forced removals were monitored by the Ombudsman and NPM does not provide for assurances taking in consideration that this body has never assessed potential instances of human rights violations. In its Report on NPM activities related to monitoring of forced removals the Ombudsman stated the following:

‘None of the foreigners outlined to the NPM team the facts which would indicate a danger that their basic human rights could be threatened in the country to which they are removed. They expressed uncertainty as to further proceedings against them in the country to which they are removed or what would happen if state officials leave them at the border crossing.’

The total number of registration certificates issued in the period 1 January 2022 – 31 December 2022

Month	Total number of registration certificates	Airport	Detention centre in Padinska Skela	Police Departments	Border Area	Asylum Office
January	201	40	0	111	35	15
February	210	37	0	118	52	3

³⁷⁵ 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>.

March	277	39	0	139	78	21
April	387	40	0	240	97	10
May	529	90	0	391	42	6
June	377	39	1	302	30	5
July	672	85	2	360	225	0
August	421	62	0	227	112	20
September	297	93	1	73	108	22
October	294	90	0	158	46	0
November	214	24	0	135	55	0
December	302	50	0	244	8	0
Total	4,181	689	4	2,948	888	102

1.2. Lodging an application

The asylum procedure is initiated by lodging (“submitting”) an application before an authorised asylum officer, on a prescribed form within 15 days of the date of registration.³⁷⁶ If the authorised asylum officer does not enable the person to lodge the application within that deadline, they may themselves fill in the asylum application form within 8 days after the expiry of the 15-day time limit.³⁷⁷ The asylum procedure shall be considered initiated after the lodging of the asylum application form at the Asylum Office.³⁷⁸

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 they will be treated in line with the Foreigners Act, which further means that they could face expulsion to a third country or even the country of origin in case of direct arrival to Serbia.

This solution is questionable 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:

- ❖ The capacities of the Asylum Office are still insufficient to cover the hundreds of cases in which the registration certificate is automatically issued, and the police officer of the Asylum Office is not present in any of the Asylum Centres
- ❖ 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;
- ❖ 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 would 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;
- ❖ 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.
- ❖ 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.

³⁷⁶ Article 36(1) Asylum Act.

³⁷⁷ Article 36(2) Asylum Act.

³⁷⁸ Article 36(3) Asylum Act.

For that reason, it is encouraging that the stance 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.³⁷⁹ The arguments for this approach could be derived from the jurisprudence of the ECtHR and the case *Jabari v. Türkiye* 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.”³⁸⁰ However, it is clear that as long as this kind of provision exists in the Asylum Act, the risk of its strict interpretation will continue to exist, especially if the current policy, which implies a more or less flexible approach towards irregular stay of refugees, changes. Additionally, there are academics who are occasionally hired to conduct trainings for decision-makers in Administrative Law, and who are in favour of a strict interpretation of Article 36.³⁸¹ 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 during the consultations with the Mol in November 2021 and provided a draft of potential solutions.

In 2022, a total of 320 asylum applications were submitted. Out of them, 256 applications were submitted in writing and sent to the Asylum Office, while 66 were lodged directly in person. A total of 2 applications were subsequent applications. Out of a total of 320 first-time asylum applications, 181 were submitted by Burundians, 40 by Cubans, 20 by Russians, 14 by Syrians, 7 by Afghans, 6 by citizens of Guinea-Bissau, India and Ukraine, 5 by Armenians and Tunisians, 4 by Iraqis, 3 by Congolese and Turkish, 2 by Iranians, Polish, Sierra Leoneans and Tanzanians and 1 by citizens of Cameroon, Canada, Croatia, Egypt, Eritrea, Germany, Mexico, Morocco, Myanmar, Slovenia and 1 Stateless person.

As for the subsequent applications, 2 were submitted by 1 Turkish and 1 Kyrgyzstan nationals who have been facing extradition to their countries of origin.

In the second half of 2020, the Asylum Office started to conduct hearings based on the written asylum applications and this has now become a predominant way of initiating the asylum procedure, accepted by CSOs as well who had a practice to wait for the Asylum Office to schedule an application submission in person and in that way contribute to the prolongation of asylum procedure. This means that the lodging of a written asylum application has continued to function in practice as the most common way of initiating the asylum process.

Also, forms for written asylum applications were translated in languages such as Arabic, Farsi, Urdu, and Pashto and were distributed to Asylum and Reception Centres, which means that foreigners can now lodge asylum applications by themselves, with the help of CRM whose staff was responsible for sending applications to the headquarters of the Asylum Office. It remains unclear how many asylum seekers lodged asylum applications by themselves because the Asylum Office does not keep track of such data. According to IDEAS field experience, at least several dozen asylum seekers lodged written asylum applications without the help of legal representatives, but most likely this number can be higher than 50% of all asylum applications lodged in 2022. The question that remains open is if asylum seekers would need support to properly fill in the forms. In the period from October to early December 2022, foreigners were denied the possibility to lodge their applications in writing due to lack of assistance of the CRM.

In 2022 there were no COVID-19 measures which in any way affected lodging of asylum application as it was the case in 2020.³⁸²

Month	Asylum Applications submitted in persons	Written Application	Asylum	Subsequent asylum applications
January	16	26		0

³⁷⁹ See more in AIDA, Country Report: Serbia, Update 2018, March 2019, 25.

³⁸⁰ ECtHR, *Jabari v. Türkiye*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

³⁸¹ AIDA, Country Report, 2019 Update, 31-32.

³⁸² AIDA: Country Report Serbia, 2020 Update, March 2021, 37.

February	5	16	0
March	19	11	0
April	1	2	0
May	5	24	0
June	15	66	0
July	2	43	1
August	0	11	1
September	2	11	0
October	0	12	0
November	1	22	0
December	0	13	0
Total	66	256	2

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 3 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
3. Backlog of pending cases at first instance as of 2022: No data
4. Average length of the first instance procedure in 2021: 8 to 12 months

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.³⁸³ 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.³⁸⁴ 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.³⁸⁵ In 2022 there only 1 case in which the first instance asylum procedure which resulted in a positive decisions was concluded within the 3-month and is related to a Ukrainian family.³⁸⁶ Also, 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 from 2021 is related to the comparison between the *prima facie* not credible application of a Pakistani national, and that of a torture victim from Iran.³⁸⁷ The first one was rejected in exactly 1 month, while the torture victim received international protection after 20 months.³⁸⁸ On the other hand, in 2022, there were several examples of good practice in which sexual and gender based violence survivor (Burundi) was granted refugee status within 106 days (3 month and 14

³⁸³ Article 3 (1), Asylum Act.

³⁸⁴ Article 3 (3), Asylum Act.

³⁸⁵ Article 39(1) Asylum Act.

³⁸⁶ Asylum Office, Decision No. 26-462/22, 15 June 2022.

³⁸⁷ Asylum Office, Decision No. 26-760/21, 20 May 2021.

³⁸⁸ Asylum Office, Decision No. 26-108/20, 27 August 2021.

days),³⁸⁹ UASC from Afghanistan within 4 months,³⁹⁰ LGBTQI+ and AIDS applicant from Cuba within 175 days (almost 6 months).³⁹¹ On the other hand, SGBV survivor from Afghanistan had to wait for exactly a year,³⁹² as well as Syrian mother with two children who waited for 10 months.³⁹³ On the other hand, an UASC from Afghanistan had to wait for 14 months to receive subsidiary protection,³⁹⁴ Congolese women with a child for 14 months³⁹⁵ and another UASC from Afghanistan for 13 months.³⁹⁶

It is possible to extend the time limit for the first instance decision 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.³⁹⁷ 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.³⁹⁸ The applicant shall be informed on the extension. There were no instances in which this deadline was extended which are known to the author of this Report.

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.³⁹⁹ Nevertheless, the decision must be taken no later than 12 months from the date of the application.⁴⁰⁰

Thus, the Asylum Office has a discretionary power to decide on the extension of the time limit for the decision. In 2022, all asylum procedures lasted extensively long without any formal notification on the extension accompanied with the proper reasoning.

Officially, 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 and 2022 which represents a continuation of such practice from 2020 when the state of emergency was in force.⁴⁰¹

As outlined above, only 1 decision was rendered within three months (Ukrainian applicant). Therefore, 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 8 to 12 months on average) which is one of the reasons discouraging asylum seekers from considering Serbia a country of destination. Still, one of the reasons why an average length of asylum procedure was cut for several months is the fact that CSOs and legal representatives have started to lodge asylum applications in writing, which save the resources of the understaffed Asylum Office.

In 2022, 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.⁴⁰²

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;⁴⁰³ (b) a decision to reject the asylum

³⁸⁹ Asylum Office, Decision No. 26-2296/2022, 29 June 2022.

³⁹⁰ Asylum Office, Decision No. 26-730/22, 31 August 2022.

³⁹¹ Asylum Office, Decision No. 26-688/22, 15 September 2022.

³⁹² Asylum Office, Decision No. 26-1635/21, 17 August 2022.

³⁹³ Asylum Office, Decision No. 26-1569/21, 24 June 2022.

³⁹⁴ Asylum Office, Decision No. 26-277/21, 13 July 2022.

³⁹⁵ Asylum Office, Decision No. 26-532/21, 15 August 2022.

³⁹⁶ Asylum Office Decision No. 26-281/21, 10 November 2021.

³⁹⁷ Article 39(2) Asylum Act.

³⁹⁸ Article 39(3) Asylum Act.

³⁹⁹ Article 39(5) Asylum Act.

⁴⁰⁰ Article 39(6) Asylum Act.

⁴⁰¹ AIDA, *Country Report Serbia*, 2020 Update, 38.

⁴⁰² 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.

⁴⁰³ Article 34(1)(1)-(2) Asylum Act.

application;⁴⁰⁴ (c) a decision to discontinue the procedure;⁴⁰⁵ or (d) a decision to dismiss the application as inadmissible.⁴⁰⁶

The Asylum Act contains detailed provisions regarding the grounds for persecution,⁴⁰⁷ *sur place* refugees,⁴⁰⁸ acts of persecution,⁴⁰⁹ actors of persecution,⁴¹⁰ actors of protection in the country of origin,⁴¹¹ the internal flight alternative,⁴¹² and grounds for exclusion.⁴¹³ 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 **Error! Reference source not found.**).⁴¹⁴

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, the asylum officer has the possibility to render a decision in an accelerated procedure.⁴¹⁵ It is further prescribed that, in examining the substance of the asylum application, the Asylum Office shall collect and consider all the relevant facts and circumstances, particularly taking into consideration:

1. the relevant facts and evidence presented by the Applicant, including the information about whether he or she has been or could be exposed to persecution or a risk of suffering serious harm;
2. current reports about the situation in the Applicant's country of origin or habitual residence, and, if necessary, the countries of transit, including the laws and regulations of these countries, and the manner in which they are applied – as contained in various sources provided by international organisations including UNHCR and the European Asylum Support Office (EASO), and other human rights organisations;
3. the position and personal circumstances of the Applicant, including his or her sex and age, in order to assess on those bases whether the procedures and acts to which he or she has been or could be exposed would amount to persecution or serious harm;
4. whether the Applicant's activities since leaving the country of origin were engaged in for the sole purpose of creating the necessary conditions to be granted the right to asylum, so as to assess whether those activities would expose the Applicant to persecution or a risk of serious harm if returned to that country...⁴¹⁶

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 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;

⁴⁰⁴ Article 38(1)(3)-(5) Asylum Act.

⁴⁰⁵ Article 47 Asylum Act.

⁴⁰⁶ Article 42 Asylum Act.

⁴⁰⁷ Article 26 Asylum Act.

⁴⁰⁸ Article 27 Asylum Act.

⁴⁰⁹ Article 28 Asylum Act.

⁴¹⁰ Article 29 Asylum Act.

⁴¹¹ Article 30 Asylum Act.

⁴¹² Article 31 Asylum Act.

⁴¹³ Articles 33 and 34 Asylum Act.

⁴¹⁴ 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/3plP7es>.

⁴¹⁵ Article 40 Asylum Act.

⁴¹⁶ Article 32 Asylum Act.

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 2008-2022

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	Türkiye	Refugee Status	2
2014					
10.	26-2429/13	23.05.2014	Tunis	Refugee Status	1
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
2022					
139.	26-1389/17	x.02.2022	Libya	Refugee Status	1
140.	26-1437/21	31.03.2022	Niger	Subsidiary Protection	1
141.	26-462/22	15.06.2022	Ukraine	Subsidiary Protection	3
142.	26-1569/21	24.06.2022	Syria	Subsidiary Protection	3
143.	26-2296/22	29.06.2022	Burundi	Refugee Status	1
144.	26-346/21	29.06.2022	Cameron	Subsidiary Protection	1
145.	26-277/21	13.07.2022	Afghanistan	Subsidiary Protection	1
146.	26-532/21	15.08.2022	DR Congo	Subsidiary Protection	2
147.	26-1635/21	17.08.2022	Afghanistan	Refugee Status	3
148.	26-463/22	22.08.2022	Ukraine	Refugee Status	1
149.	26-730/22	31.08.2022	Afghanistan	Subsidiary Protection	1
150.	26-688/22	15.09.2022	Cuba	Subsidiary Protection	1
151.	26-1591/22	19.09.2022	Syria	Subsidiary Protection	1
152.	26-1607/18	14.10.2022	Iran	Refugee Status	3
153.	26-1947/21	28.10.2022	Syria	Subsidiary Protection	1
154.	26-281/11	10.11.2022	Afghanistan	Refugee Status	1
155.	26-1177/22	01.12.2022	Syria	Subsidiary Protection	2
156.	26-1236/21	05.12.2022	Syria	Subsidiary Protection	1
157.	26-2135/22	13.12.2022	Syria	Subsidiary Protection	1
158.	x.	x.12.2022	Syria	Subsidiary Protection	1

In the period from 1 April 2008 to 31 December 2022, the asylum authorities in Serbia rendered 158 decisions granting asylum (refugee status or subsidiary protection) to 226 persons from 26 different

countries.⁴¹⁷ A total of 73 decisions was rendered in relation to 117 applicants who received subsidiary protection, while 85 decisions were rendered in relation to 109 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), 2022 (20), 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 (47), Syria (37), Afghanistan (33), Iran (22) and Iraq (16).

Libya

The highest number of applicants who were granted international protection in Serbia originate from Libya – **47 persons** through **19 decisions**. A total of 4 decisions were rendered granting refugee status to 8 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 a moratorium on returns which remains valid as of March 2022.⁴¹⁸ The remaining 4 decisions referred to the risk of persecution on ethnic and political grounds for applicants belonging to the same tribe as Muammar Gaddafi⁴¹⁹ 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.⁴²⁰

In the history of the Serbian asylum system, a total of 65 Libyans applied for asylum, even though 659 were issued with registration certificate, as most of them never applied for asylum. There were no instances in which the applicant from Libya was rejected up to the final decision of the Administrative Court, except in one case where a 5-member family then addressed the ECtHR and was later on granted subsidiary protection.⁴²¹ This case, as well as another which was positively resolved in 2022, were initially rejected on the basis of negative security assessment from BIA.⁴²² 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 **37 Syrians** were granted international protection in Serbia through **29 decisions**. Eight were granted refugee status via 8 decisions while 29 were granted subsidiary protection through 21 decisions. However, a total of 320,320 Syrians was registered in Serbia since 2008, while only 540 lodged asylum application.

⁴¹⁷ The author of this Report has collected 132 out of 158 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 238 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.

⁴¹⁸ E.g. UNHCR, *UNHCR Position on Returns to Libya - Update II*, September 2018, available at: <http://bit.ly/39VMQNz>.

⁴¹⁹ Asylum Office, Decisions Nos. 26-2324/11, 19 December 2012 and 26-2326/11, 20 December 2012.

⁴²⁰ Asylum Office, Decision No. 26-812/16, 29 September 2016.

⁴²¹ 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.

⁴²² Asylum Office, Decision No. 26-1389/17, February 2022.

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 the Serbian asylum system in the period 2008-2018.⁴²³ The vast majority of the applicants whose asylum application was dismissed absconded the asylum procedure, while only 1 remained and his case is currently pending before the ECtHR.⁴²⁴

There were no instances in which a Syrian asylum application was rejected in merits with the final decision, except in 2 cases which were rejected as such in the first instance, in 2021 and 2022. Still, it is safe to assume that Syrians have strong prospects to receive international protection in Serbia at the end of 2022. The author of this report was not able to obtain data of these two cases, but the practice of the Administrative Court and Asylum Commission from 2022 does not indicate that these decisions became final. So, the potential outcome in these cases is either that applicants absconded or their cases were referred back to the Asylum Office after which they received subsidiary protection.

Decisions 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 CoI which were cited in such decisions were UNHCR position papers on returns to Syria⁴²⁵ and EASO now EUAA reports on Syria.⁴²⁶ As for the decisions granting refugee status, they were mainly based on the risk of persecution due to political opinion or draft evasion.⁴²⁷ When it comes to draft evasion, the practice has been contradictory, implying that some applicants were granted refugee status, while other subsidiary protection. This practice continued in 2022.

Afghanistan

Persons in need of international protection from Afghanistan are the second biggest group of persons registered in Serbia (189,737) and the largest group that actually lodged asylum application (960). However, only **33 Afghans** were granted asylum through 22 decisions. The vast majority of Afghan applicants absconded the asylum procedure, as it has been the case with Syrians and Iraqis.

The Asylum Office rendered 14 decisions granting refugee status to 20 Afghans on the basis of the risk of persecution which they faced as: interpreters,⁴²⁸ artists,⁴²⁹ members of police and other security forces,⁴³⁰ persons who worked for US companies,⁴³¹ SGBV survivors who were subjected to harmful traditional practices (honour killing, consequences of having children out of wedlock)⁴³² or persons who faced risks of Taliban recruitment.⁴³³

Also, a total of 7 decisions granting subsidiary protection was rendered in relation to 13 applicants. 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 Taliban.⁴³⁴

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.⁴³⁵ There was only 1 decision in 2021

⁴²³ AIDA, *Country Report Serbia*, Update March 2018, 41-53.

⁴²⁴ *M.H. v. Serbia*, Application No 62410/17, Communicated on 26 October 2018.

⁴²⁵ 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>.

⁴²⁶ E.g. EASO, *EASO Country of Origin Information Report: Syria Security situation (July 2021)*, available at: <https://bit.ly/3HKwasb>.

⁴²⁷ Asylum Office, Decision No. 26-5413/15, 2 March 2016.

⁴²⁸ Asylum Office, Decision No. 26-77/17, 1 August 2017.

⁴²⁹ Asylum Office, Decision No. 26-78/17, 10 January 2018.

⁴³⁰ Asylum Office, Decision No. 26-81/17, 16 April 2018.

⁴³¹ Asylum Office, Decision No. 26-1239/17, 10 January 2018.

⁴³² Asylum Office, Decision No. 26-1635/21, 17 August 2022.

⁴³³ Asylum Office Decisions Nos. 26-784/18, 20 November 2019 and 26-1403/19, 11 December 2019.

⁴³⁴ Asylum Office Decisions Nos. 26-652/16, 17 June 2016, 26-2643/17, 30 January 2019, 26-2474/19, 15 October 2020, 26-1084/20, 7 June 2021, 26-277/21, 13 July 2022, 26-730/22, 31 August 2022 and 26-281/11, 10 November 2022.

⁴³⁵ AIDA, *Country Report Serbia*, Update March 2020, pp. 41 and 43.

in which the Taliban rule and general situation in Afghanistan was declared as grounds for subsidiary protection.⁴³⁶ In 2022, there were 3 such decisions rendered in relation 3 three UASC (2 subsidiary protections and 1 refugee status), as well as two decision granting refugee status to a three member family from Afghanistan due to SGBV grounds and further risk of SGBV, but in which the Taliban rule was also taken into account.⁴³⁷

Iraq

A total of 11 decisions granting international protection was rendered in relation to **16 Iraqi nationals**. Through 5 decisions 8 persons were granted subsidiary protection as Sunni Muslims who faced arbitrary violence in post US invasion Iraq,⁴³⁸ during the Islamic State of Iraq and Syria (ISIS) control of area around Mosul⁴³⁹ and in post-ISIS period.⁴⁴⁰ Iraqis granted refugee status faced risk of forcible military recruitment,⁴⁴¹ were directly targeted as Sunni Muslims⁴⁴² or were victims of sexual and gender-based violence (SGBV).⁴⁴³

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 failed to challenge the automatic application of the STCC before the ECtHR which would potentially have provided a durable solution for the applicant.⁴⁴⁴ 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 16 decisions encompassing **22 persons**. A total of 20 applicants received refugee status through 13 decisions and the grounds were mainly of religious nature – conversion from Islam to Christianity.⁴⁴⁵ There were instances in which victims of torture who opposed the Iranian political system received refugee status,⁴⁴⁶ as well as LGBTQI+ persons⁴⁴⁷ and social activists.⁴⁴⁸ One human rights activist⁴⁴⁹ and 1 UASC received subsidiary protection.⁴⁵⁰ Since 2008, a total of 14,651 Iranians were registered, while only 350 lodged asylum application.

The vast majority of asylum applications based on religious reasons (conversion) were rejected in merits and became final and executive. These decisions represent a shift in practice which from the onset was in almost all instances positive, but due to the increased number as applicants who converted from Islam to Christianity, the Asylum Office raised the bar of credibility which produced inconsistent practice.

⁴³⁶ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

⁴³⁷ Asylum Office, Decisions Nos. 26-277/21, 13 July 2022, 26-730/22, 31 August 2022 and 26-281/11, 10 November 2022 and 26-1635/21, 17 August 2022.

⁴³⁸ Asylum Office, Decision No. 26-766/08, 4 February 2009.

⁴³⁹ Asylum Office, Decisions Nos. 26-2879/15, 11 September 2015 and 26-2149/16, 26 December 2016.

⁴⁴⁰ Asylum Office, Decision No. 26-2047/17, 21 March 2019.

⁴⁴¹ Asylum Office, Decision No. 26-2348/17, 28 January 2019.

⁴⁴² Asylum Office, Decision No. 26-5266/15, 26 March 2015.

⁴⁴³ Asylum Office, Decision No. 26-1601/20, 30 August 2021.

⁴⁴⁴ Administrative Court, Judgment U 6060/18, 4 October 2018.

⁴⁴⁵ 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.

⁴⁴⁶ Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁴⁴⁷ Asylum Office, Decisions Nos. 26-1605/18, 15 March 2019 and 26-2467/17, 15 January 2020.

⁴⁴⁸ Asylum Office, Decision No. 26-1607/18, 14 August 2022.

⁴⁴⁹ Asylum Commission, Decision No. AŽ 16/19, 2. September 2019.

⁴⁵⁰ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

Ukraine

Only 22 Ukrainians were registered in the period 2014-2022 and all of them lodged asylum application and **15 were granted asylum**. Eight Ukrainian applicants received subsidiary protection through 4 decisions, and 7 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.

In March 2022, 4 Ukrainian applicants lodged asylum application to the Asylum Office (1 family of 3 and 1 journalist) and they were all granted asylum – subsidiary protection to the family due to the state of general insecurity⁴⁵¹ and 1 refugee status to the journalist who reported on war crimes allegedly committed by Ukrainian authorities.⁴⁵²

Burundi

A total of 1,165 Burundians were registered in line with the Asylum Act, and 259 of them lodged asylum application in the period 2017-2022. The increase in the number of Burundian applicants can be connected with the free visa regime that Serbia has introduced for Burundian citizens, and which was cancelled in December 2022 after the pressure from the EU.

Still, only **9 Burundians** were granted protection through 7 decisions. A total of 8 Burundians were granted refugee status through 6 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 216 Cubans were registered in line with the Asylum Act, while 97 of them lodged asylum application since the onset of the 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, while 1 Cuban LGBTQI+ applicant with serious medical condition received subsidiary protection in 2022.⁴⁵³

Somalia

A total of 66,476 Somalis 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 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 Türkiye** who received refugee status in 2013. A woman from **Cameroon** and her daughter were granted refugee status as survivors of SGBV, as well as Cameroonian persons with a disability,⁴⁵⁴ 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

⁴⁵¹ Asylum Office, Decision No. 26-462/22, 15 June 2022.

⁴⁵² Asylum Office, Decision No. 26-463/22, 22 August 2022.

⁴⁵³ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁴⁵⁴ Asylum Office, Decision No. 26-346/21, 29 June 2022.

protection was granted to the applicant from **Mali** in 2020.⁴⁵⁵ Refugee status was granted to a **Coptic Christian 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. In 2022, a boy from Niger was granted subsidiary protection who fled the state of general insecurity caused by Boko Haram movement,⁴⁵⁶ as well as mother and daughter from **DR Congo** who escaped the situation of arbitrary violence in her village.⁴⁵⁷

	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	4	8	19	47
2.	Syria	21	29	8	8	29	37
3.	Afghanistan	7	13	14	20	22	33
4.	Iran	2	2	14	20	16	22
5.	Iraq	5	8	6	8	11	16
6.	Ukraine	4	8	7	7	11	15
7.	Burundi	1	1	6	8	7	9
8.	Cuba	1	1	5	7	6	8
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.	Türkiye	0	0	1	2	1	2
15.	Cameroon	1	1	1	2	2	3
16.	Nigeria	1	1	1	1	2	2
17.	Stateless	0	0	2	2	2	2
18.	DR Congo	1	2	0	0	1	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
26.	Niger	0	0	1	1	1	1
	Total	73	117	85	109	158	226

Particular grounds for international protection, contradicting practices and different trends

Out of the total of 158 decisions rendered by Asylum Office (155) and Asylum Commission (3), it can be said with certainty that the recognition rate in Serbia would have been much higher if not for the automatic application of the STCC in the period 2008-2018.⁴⁵⁸

On other hand, among 158 decisions, excellent examples of good practice can be observed. In the history of the Serbian asylum system, asylum authorities have granted asylum on almost all grounds envisaged

⁴⁵⁵ Child-soldier case.

⁴⁵⁶ Asylum Office, Decision No. 26–1437/21, 31 March 2022.

⁴⁵⁷ Asylum Office, Decision No. 26-532/21, 15 August 2022.

⁴⁵⁸ AIDA, *Country Report Serbia*, Update March 2018, 41-53.

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:

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

LGBTQI+

When it comes to LGBTQI+ applicants, the first ever-positive decision was granted to a Turkish gay couple in 2013.⁴⁵⁹ 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 Iran⁴⁶⁰ and 3 lesbians from Chechnya.⁴⁶¹

However, in the same period, several contentious decisions highlight the inconsistency in assessing LGBTQI+ claims by asylum authorities in Serbia. One decision referred to a transgender man from Bosnia whose asylum application was also rejected in the Netherlands.⁴⁶² 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.⁴⁶³ 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 and resettled her to another country.⁴⁶⁴ In 2021, there were two decisions in which application from a gay man from Iran was rejected as unfounded,⁴⁶⁵ as well as application from a gay man from Bangladesh.⁴⁶⁶ The threshold set in these two cases represents a dangerous precedent when it comes to LGBTQI+ claims.⁴⁶⁷ In both decisions, the Asylum Office outlined that if applicants were to act discretely in terms of their sexual orientation, they would not have been subjected to persecution. Also, the acts of violence, but also threats, to which both applicants were subjected were not of sufficient level of seriousness according to the Asylum Office. In 2022, there were several more decisions regarding the rejection of LGBTQI+ applicants whose cases continued from 2021 (applicants from Tunisia, Bangladesh and Iran), 1 case in 2022 of an applicant from Morocco.⁴⁶⁸

One Cuban citizen was granted subsidiary protection as an LGBTQI+ applicant in 2022, but the positive outcome was not solely based on the discrimination which he had encountered in Cuba, but also on the basis of his serious illness.⁴⁶⁹

Victims of SGBV

The practice of asylum authorities when it comes to the survivors of SGBV, but also persons at risk 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-

⁴⁵⁹ Asylum Office, Decision No.26-1280/13, 25 December 2013.

⁴⁶⁰ Asylum Office, Decisions No. 26-1605-18, 15 March 2019 and 26-2467/17, 15 January 2020.

⁴⁶¹ Asylum Office, Decisions Nos. 26-1216/18, 26-1217/18 and 26-1218/18, 12 February 2019.

⁴⁶² Asylum Office, Decision No. 26-2347/19, 8 June 2020.

⁴⁶³ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁴⁶⁴ Asylum Office, Decision No. 26-1592/18, 20 November 2019 and see also, AIDA, *Country Report Serbia*, Update March 2019, 37.

⁴⁶⁵ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

⁴⁶⁶ Asylum Office, Decision No. 26-404/12, 4 November 2021.

⁴⁶⁷ See more in the Chapter on 2021 practice of the Asylum Office.

⁴⁶⁸ The author did not manage to see the copy of this decision.

⁴⁶⁹ Asylum Office, Decision No. 26-688/22, 15 September 2022.

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 had 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 had sex before marriage, then killing her mother because she did not take good care of her daughter.⁴⁷⁰

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 Office's lack of capacity to establish gender sensitive approach in admissibility procedure.⁴⁷¹ The Asylum Office's decision was also confirmed by the Asylum Commission and the woman eventually was resettled by UNHCR office in Serbia and received refugee status in France.⁴⁷²

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.⁴⁷³ 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 woman from Cameroon was not examined with the same 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 never had the opportunity to apply for asylum at one of the airports in Italy which Serbia considered as the safe third country.⁴⁷⁴

A very high burden of proof for the risk of gender-based violence was established in the case of Ms. Y from Iran,⁴⁷⁵ and Ms. Z from Burundi in 2021.⁴⁷⁶ Ms. Y is a women rights activist whose asylum application was rejected on multiple occasions on the grounds that she has allegedly failed to provide evidence that the threats that she has received would materialize. Even the 2022 events in Iran were disregarded by asylum authorities. On the other hand, a high quality decision was rendered in relation to an Iraqi woman and her daughter who received refugee status as SGBV survivor who was forcibly married to her cousin when she was only 15 years old.⁴⁷⁷ A very good decision was rendered in 2022 to a survivor of SGBV from Burundi in which the Asylum Office for the first time took in consideration the Istanbul Protocol Report lodged by legal representatives with the findings of the multidisciplinary team consisted of forensic medical expert, psychiatrist and gynaecologist.⁴⁷⁸

What can be concluded when it comes to the burden of proof in SGBV applications, but also many other types of cases, is that Asylum Office would more or less always grant international protection to those individuals who had already survived acts of persecution (attacks, rape, detention, judicial persecution). On the other hand, where applicants were forced to leave their countries of origin due to risks of persecution which had not materialized, the requirements are set insurmountably high. In other words, it appears that asylum authorities often require that the applicants have to experience and survive the act of persecution in order to prove the credibility of their claims, while leaving the country of origin without such experience would rarely result in positive decision. What is also typical for these kinds of decisions is selective citations of the relevant Col in which only parts of these sources which indicate positive developments (with for example gay people in Iran or women's rights in other country) are outlined in the

⁴⁷⁰ Asylum Office, Decision No. 26-286/16, 26 October 2016.

⁴⁷¹ Asylum Office, Decision No. 26-1667/17, 25 December 2017.

⁴⁷² Asylum Commission, Decision No. AŽ 2/18, 25 January 2018.

⁴⁷³ Asylum Office, Decision No. 26-536/16, 16 December 2016.

⁴⁷⁴ Asylum Office, Decision No. 3109/16, 18 December 2017.

⁴⁷⁵ Asylum Office, Decision No. 26-1672/19, 29 January 2021.

⁴⁷⁶ Asylum Office, Decision No. 26-3136/19, 26 November 2020.

⁴⁷⁷ Asylum Office, Decision No. 26-1601/20, 30 August 2021

⁴⁷⁸ Asylum Office, Decision No. 26-2296/22, 29 June 2022.

negative decision, while those sources who indicate towards the risk are neglected. This also reflects the lack of capacity of asylum authorities to apply the standard of *in dubio pro reo*.

UASC

Since the establishment of the Serbian asylum system, only 16 UASC received international protection in Serbia. The first child was a girl from Nigeria who was also recognised as a survivor of human trafficking which occurred in her country of origin and which was assessed as an act of persecution.⁴⁷⁹ The second UASC who received subsidiary protection was a boy from Afghanistan who avoided forced recruitment by Taliban.⁴⁸⁰ 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 in the same year (2019).⁴⁸¹ In both of these cases the Asylum Office applied the standard of a 'buffer age period,' which is a remarkable example of good practice and which is related to children who turned 18 during the course of the asylum procedure.⁴⁸²

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.⁴⁸³ A child soldier from Palestine (proclaimed as stateless), received refugee status after it was determined that he had been forcibly recruited in the conflict in Syria.⁴⁸⁴ A similar case was resolved for an UASC from Afghanistan who fled Taliban recruitment as well.⁴⁸⁵ A boy from Iran who converted from Islam to Christianity was granted subsidiary protection, even though all other Iranian converts were granted refugee status.⁴⁸⁶

Another boy from Afghanistan who fled customary family dispute and revenge killing was granted subsidiary protection in 2020.⁴⁸⁷ An Afghan boy who suffered severe injuries in a car accident in Serbia and remained in induced coma was granted subsidiary protection in 2021.⁴⁸⁸ And finally, the last UASC from 2021 who was granted a refugee status was a boy from Pakistan who was recognised as a victim of human trafficking and who was granted refugee status in 2021 on the basis of labour and sexual exploitation.⁴⁸⁹

In 2022, 2 boys from Afghanistan were granted subsidiary protection⁴⁹⁰ due to the risks of arbitrary violence originating from the acts of the Taliban, while 1 boy from Afghanistan received refugee status for the same reasons.⁴⁹¹ Siblings from Syria (brother and sister) were also granted subsidiary protection,⁴⁹² as well as the boy from Niger who fled the situation of arbitrary violence connected to the operations conducted by the Boko Haram group.⁴⁹³

Apart from these 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.⁴⁹⁴

⁴⁷⁹ Asylum Office, Decision No. 26-329/18, 28 December 2018.

⁴⁸⁰ Asylum Office, Decision No. 26-2643/17, 30 January 2019.

⁴⁸¹ Asylum Office, Decision No. 26-2348/17, 28 January 2019.

⁴⁸² UNGA, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, para. 28.

⁴⁸³ Asylum Office, Decision No. 26-784/18, 20 November 2019.

⁴⁸⁴ Asylum Office, Decision No. 26-218/19, 20 February 2020.

⁴⁸⁵ Asylum Office, Decision No. 26-2573/19, 15 October 2020.

⁴⁸⁶ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

⁴⁸⁷ Asylum Office, Decision No. 26-2474/19, 15 October 2020.

⁴⁸⁸ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

⁴⁸⁹ Asylum Office, Decision No. 26-3064/19, 14 September 2019.

⁴⁹⁰ Asylum Office, Decision Nos. 26-277/21, 13 July 2022 and 26-730/22, 31 August 2022.

⁴⁹¹ Asylum Office, Decision No. 26-281/11, 10 November 2022.

⁴⁹² Asylum Office, Decision No. 26-1177/22, 1 December 2022.

⁴⁹³ Asylum Office, Decision No. 26-1437/21, 31 March 2022.

⁴⁹⁴ 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.

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.⁴⁹⁵ Thus, there were instances in which draft evaders were granted refugee status⁴⁹⁶ and instances in which the same category received subsidiary protection.⁴⁹⁷ 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 2017-2018,⁴⁹⁸ the first refugee status was granted to a man from Kazakhstan, who converted to Christianity.⁴⁹⁹ The second person was a man from Iran who was granted refugee status in 2016 for the same reasons.⁵⁰⁰ And then, in the period 2018 – 2020, the Asylum Office granted refugee status on the said grounds on at least 7 occasions.⁵⁰¹

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 and 2022, 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.⁵⁰² Since 2017, the Asylum Office has rendered the following decisions:⁵⁰³

First instance decisions by the Asylum Office: 2017-2022						
Type of decision	2017	2018	2019	2020	2021	2022
Grant of asylum	6	17	26	19	12	20
Rejection on the merits	11	23	54	51	39	46
Dismissal as inadmissible	47	38	10	2	4	0
Rejected subsequent applications	0	0	0	0	6	2
Rejected the request for age assessment	0	0	0	0	2	0
Discontinuation	112	128	133	89	51	180 ⁵⁰⁴

⁴⁹⁵ 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>.

⁴⁹⁶ Asylum Office, Decision No. 26-5413/15, 2 March 2016.

⁴⁹⁷ Asylum Office, Decisions Nos. 26-4062/15, 8 January 2016, 26-2489/17, 1 June 2018 and 26-1731/18, 16 September 2019.

⁴⁹⁸ See more in AIDA, *Country Report Serbia*, Update March 2018, 18.

⁴⁹⁹ Asylum Office, Decision No. 26-4906/5, 9 December 2015.

⁵⁰⁰ Asylum Office, Decision No. 26-1051/16, 13 September 2016.

⁵⁰¹ 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.

⁵⁰² See more in AIDA, *Country Report Serbia*, Update March 2020, 44.

⁵⁰³ 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.

⁵⁰⁴ It is important to note that this number is not 100% accurate because of the way in which Asylum Office keeps the statistics. Namely, available data shows that there were 258 decisions discontinuing asylum procedure of 258 applicants. This is simply not possible because one decision, and especially in relation to Burundian applicants who arrived to Serbia as families, encompasses 2, 3, 4 or even 5 persons. The method that the

Total	176	206	223	161	114	248
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Asylum Office practice in 2022

Protection was granted to citizens of the following countries in 2022:

Countries of origin of persons granted refugee status / subsidiary protection: 2022		
Country	Granted refugee status	Granted subsidiary protection
Burundi	1	0
Afghanistan	4	2
Syria	0	10
Ukraine	1	3
DR Congo	0	2
Iran	3	0
Cuba	0	1
Cameroon	0	1
Libya	1	0
Niger	0	1
Total	10	20

Source: Asylum Office and UNCHR office in Serbia.

In 2022, the Asylum Office delivered 248 decisions regarding 352 asylum seekers. Out of that number, 48 decisions regarding 62 asylum seekers were rejected in merits, while 20 decisions granting asylum to 30 asylum seekers were delivered in the same period. Asylum procedure was discontinued in 180 cases regarding 258 applicants, due to their absconding, while in 2 instances subsequent asylum applications were declined in relation to 2 applicants. There were no inadmissibility decisions or other decisions which are appropriate for the analysis of the effectiveness of the work of the first instance authority,

The first conclusion that can be drawn from these figures is that the total number of decisions has increased significantly in comparison to previous years. The total number of decisions increased by 117% in comparison to 2021 and is the highest for the past 5 years. 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 72% of all decisions rendered in 2022. Around 1% of decisions concerned rejections of subsequent applications, while there were no inadmissibility decisions.

In 2022, it can be said that 68 merits decisions, rendered in relation to 92 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 68 decisions were rendered in relation to 92 asylum seekers from: Burundi (27), Syria (11), Cuba (11), Afghanistan (6), DR Congo (5), Iran (5), Ukraine (4); Türkiye (3), Guinee Bissau (3), Morocco (2), Iraq (2), Poland (2), Cameroon (2) and 1 from Pakistan, Gambia, Libya, Bangladesh, Bulgaria, Niger, Tunis, Bosnia and Herzegovina, North Macedonia and Russia.

When it comes to decisions rendered on the merits, it can be concluded that rejection rate in 2022 was 71%, while the recognition rate was 29%. This represents 8% increase in recognition in comparison to

author of this report applied is the deduction of 30% of the total number of applicants and in relation to decisions. Thus, this number should be observed as the highest possible, even though it is most likely lower.

2021.⁵⁰⁵ In total, international protection was granted through 20 decisions (29%) encompassing 30 persons. Of these, refugee status was granted through 6 decisions and to citizens of Afghanistan (4), Iran (3) Ukraine (1), Libya (1) and Burundi (1). The remaining 10 decisions were related to subsidiary protection: Syria (10), Ukraine (3), DR Congo (2), Afghanistan (2), Cuba (1), Cameroon (1) and Niger (1)

Most of the decisions were rendered in 2022 in relation to citizens of **Burundi** – 14 regarding 27 applicants. Out of that, only 1 decision was positive, granting refugee status to SGBV survivor,⁵⁰⁶ while all other were rejected in merits, including the one LGBTQI+ applicant.⁵⁰⁷ The second highest number of decisions was related to citizens of Cuba – 10 decisions rendered in relation to 11 applicants, out of which there was only 1 positive decision granting subsidiary protection to LGBTQI+ applicant with serious medical conditions. What is common for almost all Burundian and Cuban applications is that they were all based on allegations on the risks due to political turmoil in their respective States. The vast majority of Cubans have based their claims on the opposition to the Cuban Government and 2021 protests, while the vast majority of Burundians claimed ethnic persecution as Tutsi minority and affiliation with opposition parties. Thus, rejection rate for the most common asylum seekers from Cuba and Burundi was more than 90% in 2022.

The third largest group of applicants are originating from Syria – 8 decisions rendered in relation to 11 clients, out of which everyone received subsidiary protection except one applicant who was rejected in merits. However, this is not the final decision. Recognition rate for Syrians was 87%,

All applicants from Afghanistan were granted refugee status or subsidiary protection and there were no negative decisions, meaning that the recognition rate for Afghans was 100% in 2022. A total of 4 Afghans received refugee status through two decisions and 2 UASCs received subsidiary protection through two decisions. The 100% recognition rate was obvious in relation to 4 Ukrainians who received international protection through 2 decisions, and the same goes for 1 citizen of Libya and 1 UASC from Niger who both received refugee status and subsidiary protection respectively.

There were 4 decisions rendered in relation to 5 citizens of DR Congo, out of which 1 was positive (two persons), and 3 were negative. Similar numbers were detected in relation to nationals of Iran where 3 of them received refugee status (1 decision), while two were rejected in merits, out of which one was a woman at risk of SGBV whose case will be explained below.

As it has been the case in previous years, a total of 3 Turkish nationals were rejected in merits (3 decision) even though their claims were based on political persecution. It is still impossible to obtain international protection as a Turkish citizen who flees ethnic (Kurdish) and political persecution,

In 2022, Asylum Office rejected in merits asylum applications of individuals coming from Russia, North Macedonia, Bosnia and Hercegovina, Tunis (accelerated procedure), Bulgaria, Gambia, Pakistan, as well as two citizens of Poland (1 decision) and Morocco (2 decisions) and 3 citizens of Guinea Bissau (3 decisions rendered in accelerated procedure). Taking in consideration countries of origin, it is reasonable to assume that these decisions were well-founded, except in the case of Moroccan LGBTQI applicant whose case represent the continuation of a negative trend of LGBTQI+ applicants, accompanied with another negative decision of gay man from Bangladesh who was rejected in merits for the second time. Thus, recognition rate for these nationalities was 0%, which can also be said for two negative decisions rendered in relation to two Iraqi applicants.

The quality of the decision-making process in 2022 can be considered as slightly improved to 2021.⁵⁰⁸ The Asylum Office rendered 20 decisions in relation to 30 applicants granting them asylum. In those cases where the Asylum Office granted refugee status or subsidiary protection the following can be observed:

⁵⁰⁵ AIDA, *Country Report Serbia*, 2020 Update, 40.

⁵⁰⁶ Asylum Office, Decision No. 26-2296/22, 29 June 2022.

⁵⁰⁷ Asylum Office, Decision NO. 26-1515/19, 25 May 2022

⁵⁰⁸ AIDA, *Country Report Serbia*, Update May 2022, 76-79.

- 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, and in some cases even more concrete cases which correspond to individual circumstances of the applicant;
- In several cases the Asylum Office adequately took into consideration the psychological assessment provided by CSO PIN and CSO IAN when examining the credibility of applicant's statement;
- In 5 cases, the Asylum Office adequately took into consideration the best interest of a child assessment (BID) provided by the Social Welfare Centre (SWC) and rendered well-reasoned decisions containing child specific considerations and invoking Articles 10 and 17 which provides for special procedural guarantees for vulnerable applicants such as UASC and the principle of the best interest of a child;
- The safe third country concept was not applied in any of the said decisions and the reasoning of each decision sometimes 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 Istanbul Protocol containing medical, psychiatric, and other expert findings were taken into consideration, as well as medical documentation of seriously ill persons. These submissions were taken on board during the assessment of the acts of persecution which have already taken place, as well as risks which might arise due to lack of medical treatment and care of seriously ill or persons who suffer from serious forms of disabilities.

The Asylum Office rendered 7 decisions granting subsidiary protection to 10 Syrians.⁵⁰⁹ As it was the case last year 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 has ceased to exist in 2021 and continued in 2022, and there are now two instances in which Syrians were rejected in merits. Still, the said case is still pending, and it is reasonable to assume that this decision will not become final. In all of the 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,⁵¹⁰ 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.⁵¹¹ Nevertheless, the number of Syrian applicants in Serbia remains low, but the practice positive. It is important to note that one of the decisions related to a brother and sister from Syria, who were as UASCs granted subsidiary protection and took in consideration the BID report from the Centre for Social Work (CSW).⁵¹² What is common for all of the decisions is the fact that Syria is still considered as a country in which acts of arbitrary violence occur and where general insecurity in the post-conflict society prevails.

In February 2022, the Asylum Office granted refugee status to the Libyan citizen after more than 5 years in which, due to the negative security assessment from BIA, his application was rejected on several occasions. He was granted refugee status as a person affiliated with the former Gadhafi regime.⁵¹³ This decision further contributes to the positive practice when it comes to Libyan applicants, especially those

⁵⁰⁹ Asylum Office, Decisions Nos. 26-1569/21, 24 June 2022, 26-1591/22, 19 September 2022, 26-1947/22, 28 October, 2022, 26-1177/22, 1 December 2022, 26-1236/21, 5 December 2022, 26-2135/22, 13 December 2022 and X., December 2022

⁵¹⁰ 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.

⁵¹¹ 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>.

⁵¹² Asylum Office, Decision No. 26-1177/22, 1 December 2022.

⁵¹³ Asylum Office, Decision No. 26-1389/17, February 2022.

who have already had a tie with Serbia and who in the vast majority of cases were granted international protection as *sur place* refugees. On another note, this case perfectly illustrates how an arbitrary assessment of BIA can affect the case and prolong it unreasonably.

In March 2022, UASC from Niger was granted subsidiary protection due to state of insecurity caused by Jihadists and members of the Boko Haram movement in which his father and two brothers were killed and his house was burned to the ground during one such attack.⁵¹⁴ The Asylum Office took into consideration BID provided by CSW.

In June and August 2022, one 3-member family from Ukraine and 1 Ukrainian journalist were granted subsidiary protection and refugee status respectively. Apart from taking in consideration the well-documented situation of general insecurity in Ukraine, in the case of the journalist, the Asylum Office has found the risk of persecution from the Ukrainian Government due to her reporting on human rights violations committed by Ukrainian forces.⁵¹⁵ What is fair to mention is the fact that these two applications were treated with priority and were resolved faster than those made by applicants from Syria and Afghanistan. This kind of practice is contentious, taking in consideration that Ukrainians are also entitled to the much simpler and shorter procedure embodied through temporary protection where the Asylum Office does not have to facilitate hearings and draft several page long decisions with reasoning. There were several other applications made by CSOs on behalf of Ukrainian nationals which will produce the same consequences which are nothing but unequal treatment in comparison to all other applicants and un-pragmatic resolution for the legal status of people fleeing Ukraine.

An extraordinary decision was rendered in relation to an SGBV survivor from Burundi whose individual circumstances were analysed by the group of forensic experts and in line with the new version of the Istanbul Protocol⁵¹⁶ which was taken as key evidence that the applicant survived rape and attempted murder. What is also important to note is the fact that this case lasted slightly longer than 3 months, which should be praised. Also, the Asylum Office found persecution on both ethnic (Tutsi) and political grounds (member of the opposition party). On the other hand, this case is a perfect example on how the Asylum Office is prone to resort to positive decisions when it comes to Burundian citizens who survived different acts of persecution, while in situations where applicants outline such risks which they avoided after fleeing the country, the outcome is usually rejection of application in merits. To make it more simpler, if the applicant in this case had been lucky enough to avoid SGBV act of persecution and flees to Serbia, it is highly likely that she would have been rejected.

At the end of June 2022, the Asylum Office granted subsidiary protection to a Cameroonian man who suffers from serious disability and who requires physical assistance in his everyday life. The credibility of his claim was assessed from the perspective of his physical and medical condition and it has been determined that he would be subjected to inhumane and degrading treatment due to the lack of support of his condition in his country of origin.⁵¹⁷ This decision represents the continuation of a good practice which started in November 2016 when an Iraqi man suffering from serious psychiatric condition was granted subsidiary protection,⁵¹⁸ and which was continued with decisions on subsidiary protection of Nigerian and Bangladeshi men who are paraplegic and quadriplegic respectively.⁵¹⁹ Another similar decision was rendered in relation to the Afghan UASC who also became immobile in a car accident. The state of insecurity in his country was described as strongly and negatively affecting the health-care system without prospect of him receiving necessary aid.⁵²⁰ And finally, serious medical condition and the lack of appropriate therapy for AIDS in Cuba was also used as the grounds for subsidiary protection of a LGBTQI+ applicant who was also discriminated against in his country of origin. This applicant was granted

⁵¹⁴ See more in Right to Asylum 2022, p. 95 and 96.

⁵¹⁵ Asylum Office, Decisions Nos. 26-462/22, 15 June 2022 and 26-463/22, 22 August 2022.

⁵¹⁶ OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition)*, New York, available at: <https://bit.ly/3PdEc27>.

⁵¹⁷ Asylum Office, Decision No. 26-246/21, 29 June 2022.

⁵¹⁸ Asylum Office, Decision No. 26-2149/16, 26 December 2016.

⁵¹⁹ Asylum Office, Decision No. 26-5044-15, 25 December 2017 and 26-4370-15, 27 December 2017.

⁵²⁰ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

subsidiary protection in less than 6 months and this case undoubtedly reflects the standing of the ECtHR in cases *D. v. the United Kingdom*,⁵²¹ but also *Paposhvili v. Belgium*.⁵²²

In 2022, a total of 3 UASCs from Afghanistan were granted asylum. The first decision was rendered in July 2022, when an Afghan boy was granted subsidiary protection on the basis of the state of general insecurity in Afghanistan.⁵²³ This decision represents the continuation of the well-established practice in those cases in which applicants turn 18 during the course of the asylum procedure and where the standard of the buffer-age period was applied again.⁵²⁴ However, this case lasted for almost 18 months. The second decision was rendered in August 2022 and in a bit less than 4 months since the asylum application was submitted in writing and accompanied with BID. Again, the main reason for such decisions was the situation in Afghanistan which has arisen in the aftermath of the Taliban regaining power.⁵²⁵ And finally, in November 2022, the Asylum Office has granted refugee status to Tajik UASC from Afghanistan who fled persecution from the militant Islamic groups affiliated with the Islamic State. The case lasted for 13 months. In all three cases Asylum Office took in consideration the best interest determination decision (BID), drafted by the relevant centre for social work. What is also important to note is that in 2022 there were no Afghan applications rejected in merits, which is a good sign.

In August 2022, a mother and son from DR Congo were granted subsidiary protection due to state of general insecurity in applicant's village which arose from political turmoil. Thus, the state of general insecurity supported by the relevant country of origin information was used as the grounds for the credibility assessment, which can be described as an example of good practice.⁵²⁶

And finally, in October 2022, the three-member family from Iran was granted refugee status after more than 4 years in which the case was examined by all three instances and was referred to lower instances on several occasions. The main question of these asylum applications were online actions of one of the applicants in which he criticized the Iranian system, strict Sharia rules and other segments of Iranian societies. An entire set of online threats ensued, and the applicants also outlined the risk of criminal persecution which can result in long term prisons sentences, but also arbitrary detention, ill-treatment and other acts of persecution.⁵²⁷

What is common for most of the cases in which the 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, even though there were exceptional cases which were concluded in the period from 6 to 8 months, and even shorter in the case of Ukrainians and SGBV survivor from Burundi. This is completely unacceptable for the most vulnerable applicants such as UASC, SGBV survivors and survivors of human trafficking. At the same time, the excessive length of asylum procedure for applicants coming from Syria or Afghanistan also lacks proper justification, taking in consideration the clarity of the situation in these countries, as well as the position of UNHCR on returns to these countries, or EUAA 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;

⁵²¹ ECtHR, *D. v. the United Kingdom*, Application No. 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

⁵²² ECtHR, *Paposhvili v. Belgium*, Application No. 41738/10, Judgment of 13 December 2016, EDAL, available at: <https://bit.ly/2YtHcyE>.

⁵²³ Asylum Office, Decision No. 26-277/21, 13 July 2022.

⁵²⁴ Asylum Office, Decision No. 26-2643/17, 30 January 2019.

⁵²⁵ Asylum Office, Decision No. 26-730/22, 31 August 2022.

⁵²⁶ Asylum Office, Decision No. 26-532/21, 15 August 2022.

⁵²⁷ Asylum Office, Decision No. 26-1607/18, 14 October 2022.

- 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 (individual or general) submitted by the applicant and the legal representative are taken into consideration, and the substance of the decision lacks an explanation as why these arguments are not deemed as credible, especially in decisions on rejection.
- the burden of proof for certain applicants, especially those coming from Burundi and Cuba, has been established to high, undermining the principle of *in dubio pro reo*.

In 2022, the Asylum Office rendered 48 decisions rejecting 62 persons in merits. First of all, it is important to outline that each year the Asylum Office delivers decisions in relation to applicants whose claims are *prima facie* not founded. The first instance authority has rejected in the regular procedure citizens of Russia, North Macedonia, Bosnia and Hercegovina, Bulgaria, Gambia, Cameroon, Pakistan and Poland (1 decision 2 persons).⁵²⁸ Also, in accelerated procedure, Asylum Office rejected in merits 3 applicants from Guinea Bissau,⁵²⁹ as well as one applicant from Tunisia and 1 applicant from Cuba.⁵³⁰ The vast majority of these applicants left Serbia after they received first instance decisions and have never tried to challenge the outcome of their procedure. The same can be said for three decisions rejecting in merits citizens of DR Congo⁵³¹ and 1 citizen of Morocco. Even though it was not possible to obtain the copies of all decisions, the author of this report is familiar with the fact that all of these applicants were accommodated in AC in Krnjača where the legal aid providers decided not to take their cases due to complete lack of credibility. Thus, in 17 out of 48 cases rejected in merits it can be safely assumed that these decisions were well founded.

In 2022, the Asylum Office rejected 3 Turkish applicants in merits confirming that it is basically impossible to obtain international protection for nationals fleeing this country. However, the February decisions is related to the persons who wanted to avoid extradition for a petty crime and not for political offence or other reasons which could indicate the risk of persecution. Thus, it is safe to say that one of these three decisions is justified and that the conclusion of the Asylum Office was correct – avoiding or procrastinating extradition.⁵³² One of the cases was related to the member of the Gulenist movement, while the other one on the case of Ecevit Piroglu. Both cases resulted in procedures before CAT and both applicants are facing extradition to Türkiye.⁵³³

In 2022, a total of 8 decisions rejecting asylum applications encompassing 9 applicants originating from Cuba were delivered in regular procedure. One of the decisions is related to the case of Cuban mother and daughter whose husband has already been rejected in merits and whose asylum application was rejected for the second time in 2022.⁵³⁴ According to the BCHR, the risks of political persecution have not been examined adequately.⁵³⁵ As for the other Cuban applications, it was not possible to obtain the copies of decisions, but in the vast majority of cases, Cuban applicants were claiming risks of persecution on political grounds and due to their participation in 11 July 2021 protests. The Asylum Office has established that mere participation in the protests does not provide sufficient grounds for a positive decision, which can be taken as a reasonable standing, especially taking in consideration the fact that more prominent political activists from Cuba have received refugee status in the first quarter of 2023.⁵³⁶ In other words, and as the previous practice has showed, Cuban political activists do not have problem to obtain international protection in Serbia in cases where they genuinely face risk of political persecution which arose from their active participation in anti-governmental actions. In the remaining 6 out of 7 decisions the information provided by the Asylum Commission indicates that applicants have not challenged with the appeal the first instance decision, which safely lead us to the conclusion that their claims were not credible.

⁵²⁸ A total of 7 decisions.

⁵²⁹ Asylum Office, Decision. Nos. 26-249/22, 26-250/22 and 26-254/22, 15 March 2022.

⁵³⁰ A total of 5 decisions.

⁵³¹ Asylum Office, Decision No. 26-1887/22, 13 December 2022

⁵³² Asylum Office, Decision No. 26-1359/21, 4 February 2022.

⁵³³ See more in the following parts of the Report.

⁵³⁴ Asylum Office, Decision No. 26-2619/19, 16 March 2022.

⁵³⁵ Right to Asylum 2022, p. 54.

⁵³⁶ Asylum Office, Decisions Nos. 26-1043/22, 6 February 2023 and 26-132/22, 20 February 2022.

The negative practice when it comes to applicants who claim their persecution on the grounds of their sexual orientation has continued in 2022. Namely, apart from one LGBTQI+ applicant from Cuba who received subsidiary protection, but who also has a serious medical condition, all other LGBTQI+ applicants were rejected in merits. Thus, and even though the Asylum Office rendered excellent decisions in relation to LGBTQI applicants in the past, the past four years have shown that LGBTQI+ asylum seekers fleeing from a country in which they are criminalised or discriminated against have no prospect of success, unless they survived serious acts of persecution. In other words, the risk of persecution is solely assessed from the perspective of past experience which, if it is not based on actual physical attack, arrest, detention or any other harmful practice, would most likely lead to negative decisions.

The case of Mr. X. from Bangladesh, who left his country of origin because of his sexual orientation, but also religious beliefs (atheist) was rejected again in February 2022.⁵³⁷ The case was referred back from the Administrative Court to the first instance authority. The applicant was targeted by an extremist student organisation, which further led to him being forced to quit his studies. He was not able to address the Bangladeshi authorities for protection due to discriminatory legal framework which penalizes LGBTQI+ people. He was also raped, and his boyfriend committed suicide,⁵³⁸ but it is not clear from the available sources if he was subjected to expert assessments for the purpose of the asylum procedure. Another decision is related to another long-lasting case of a gay man from Burundi, whose asylum claim was initially dismissed on the basis that Uganda was the first asylum country.⁵³⁹ After his case was referred back to the first instance, his asylum application was rejected in merits.⁵⁴⁰ It is important to outline that Burundi also criminalises same sex partnerships.⁵⁴¹ And finally, in December 2022, a Moroccan gay man was rejected in merits, but since the author of the report had not access to a copy of the decision, it is not possible to elaborate more on its reasoning. What can be safely said is that same-sex sexual activity is prohibited under the Moroccan Penal Code of 1962, which criminalises 'lewd or unnatural acts'.⁵⁴²

It is also worth mentioning again the case of the 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.⁵⁴³ This, as well as numerous Col reports were declined as relevant evidence by the Asylum Office. The still pending case of a gay man from Iran who was raped, abused and who was questioned by the police as a suspect for committing a criminal offence which implies sexual acts between men is also noteworthy. The applicant, in his procedure, 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 from 2021 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 still 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 the 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.⁵⁴⁴ They were not addressed in the reasoning of the decision and this case is today pending before the Administrative Court with limited prospect of success.

In two other, separate decisions from 2020,⁵⁴⁵ 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 was openly declared as gay. However, the Asylum Office disregarded

⁵³⁷ Country Report: Serbia, 2021 Update, p. 82.

⁵³⁸ 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.

⁵³⁹ Asylum Office, Decision No. 26-1515/19, 13 August 2020.

⁵⁴⁰ Asylum Office, Decision No. 26-1515/19, 25 May 2022.

⁵⁴¹ Human Dignity Trust, *Burundi*, available at: <http://bit.ly/40Aydc4>.

⁵⁴² Human Dignity Trust, *Morocco*, available at: <http://bit.ly/40oPKUK>.

⁵⁴³ Asylum Office, Decision No. 26-81/20, 13 January 2021.

⁵⁴⁴ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

⁵⁴⁵ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

the fact that the Tunisian legal framework still allows ‘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 were 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 the 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, undoubtedly amounts to persecution. Both of these cases were taken to the Strasbourg Court by applicant’s legal representatives.⁵⁴⁶

Thus, the decisions rendered in 2020, 2021 and 2022 indicated that the Asylum Office has been departing from a very decent practice with regards to LGBTIQ+ applicants established back in 2013, when a Turkish gay couple was granted refugee status due to systemic discrimination and violence faced in different places of residency.⁵⁴⁷ 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 regarding a transgender applicant from Iran rendered in 2019,⁵⁴⁸ the practice of the first instance authority regarding LGBTIQ+ claims appear to have seriously deteriorated in the past few years. Thus, the recognition rate of LGBTIQ+ applicants in 2022 was 25%, and one positive decision is primarily based on medical grounds (serious illness) and then on LGBTIQ+ part of the claim which was taken into consideration.

The practice with regards to Burundian applicants who were the majority in the past year both in terms of asylum applications, but also decisions rendered in merits cannot be assessed as satisfying. First of all, it is fair to say that the free-visa regime has triggered mixed migration influx of Burundians, coming directly to Belgrade airport. This also means that a significant number of Burundian applicants made unfounded claims which were aimed at legalising their stay in Serbia. However, Burundi is a country which has an extremely poor human rights record and in which ethnic minority Tutsi has been persecuted in various different ways, which among many include enforced disappearance, torture and other forms of ill-treatment, arbitrary detention, *incommunicado*, killings, different acts of sexual violence, etc.⁵⁴⁹ One of the vulnerable groups are also members of opposition parties, but also their family members, journalists, NGO workers, etc. The existence of risks of these categories has been determined in many positive decisions, first one dating back from 2017.⁵⁵⁰ The reasoning and evidence taken as credible in these decisions serves as an example of good practice, but in many other cases that was not the case and there was an almost completely contradictory interpretation of risks.

In January 2022, a five-member family which did not have a legal representative was rejected in merits. The women claimed risk of political persecution affiliated with the alleged disappearance of her husband. Her claims were assessed as not credible.⁵⁵¹ In June 2022, Mr. E.X. was rejected in merits even though he has provided an entire set of individual evidence to the Asylum Office which indicated to his political and ethnic persecution (member of the opposition party and ethnic Tutsi). He submitted his opposition party membership card, letters from his former employer, letter from several members of political party to which he belonged, as well as witness letter of his neighbour on problems that he has faced with the paramilitary group Imbonerakure and official authorities. Without trying to question any of the witnesses, and without providing substantive reasoning why this individual evidence was not declared as credible, the Asylum Office rejected E.X. in merits.⁵⁵² The similar case was reported in September 2022, when the

⁵⁴⁶ Right to Asylum 2022, pp. 64-66.

⁵⁴⁷ Asylum Office, Decision No. 26-1280/13, 25 December 2013.

⁵⁴⁸ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁵⁴⁹ See for example: Human Rights Watch, *We Will Beat You to Correct You – Abuses Ahead of Burundi’s Constitutional Referendum*, 18 May 2022, available at: <https://bit.ly/3yxa4bT> or OHCHR, *Oral briefing of the Commission of Inquiry on Burundi*, 23 September 2021, available at: <https://bit.ly/3QLcNUs>.

⁵⁵⁰ Asylum Office, Decisions Nos. 26-2434/16, 20 September 2017; 26-218/19, 20 February 2020; 26-1615/19, 18 June 2022 and 26-536/19, 14 May 2022.

⁵⁵¹ Asylum Office, Decision No. 26-896/21, 14 January 2022.

⁵⁵² Asylum Office, Decision No. 26-1197/2021, 7 June 2022.

Asylum Office rejected to take in consideration the possibility of testimony of distinguished human rights activist from Burundi who offered to corroborate allegations made by the applicants on the risks of persecution which arose from his actions as journalist.⁵⁵³ In both of these decisions the Asylum Office selectively cited Col which outline positive developments in Burundi, while Col lodged by legal representatives was summarily disregarded without any detailed reasoning. In other words, these two decisions are typical examples of unacceptably high burden of proof set out by the Asylum Office, selective citation of relevant Col and attitude which implies that asylum seekers from certain country will be assessed as credible only if they had suffered and survived serious act of persecution, while the genuine risk of such act which is substantiated will be declared as non-credible. These two decisions, as well as several others, represent a perfect example of asylum officers lack of capacity or maybe even willingness to apply the principle of *in-dubio pro reo*.

Similar decision was rendered in relation to a young woman from Burundi who was diagnosed with an entire set of psychological disorders which, according to her testimony, were results of serious forms of ill-treatment (including sexual) which were the reason why she fled her country of origin. The psychologist in her case did not exclude that the symptoms being displayed could have arisen from such treatment. However, and due to unclear claims during the course of asylum hearing, she was rejected. The lack of individual evidence in this case was apparent, but what will remain as the most striking segment of this case is the capacity of this individual to repeatedly provide specific details of the alleged ill-treatment. In other words, there was no physical evidence which could prove whatever or not that ill-treatment has taken place and vice-versa, but only a psychological report which indicates that such possibility was quite high. The described acts of ill-treatment correspond to numerous Col reports, but once again, the opportunity to grant international protection in cases where there is doubt was missed again.⁵⁵⁴ This also means that lack of *in dubio pro reo* application is dangerous and could have irreparable consequences on applicants who, due to circumstances of their case, simply cannot offer individual evidence.

If we compare the above-described decisions with just several others, and in which Asylum Office granted asylum to citizens of Burundi, it can be easily seen that all the applicants have survived the most flagrant forms of human rights violations. However, there were also instances in which the risks which did not materialized in a concrete act of persecution were assessed as credible on the basis of Col and the context of individual, but with no major evidence. Thus, the only conclusion that can be drawn is that practice of Asylum Office in the case of Burundian applicants is inconsistent and contradicting, even though it cannot be claimed that there were negatively resolved asylum applications which were lawful and realistic.

In January 2022, one Iraqi applicant was rejected in merits and his case was concluded later one after he decided to withdraw his asylum application. It was not possible to obtain the copy of his decision and assess the quality of the decision making process.⁵⁵⁵ Another Iraqi applicant was rejected in December 2022.

In April 2022, for the second time, the Asylum Office rejected a social activist for women rights from Iran.⁵⁵⁶ In her application, she outlined that she has opposed to wear hijab, that she wanted to be work in modelling business, that she was arrested on several occasions etc. Even if the 2021 decisions can be taken as justified due to the insufficient lack of individual evidence (which is highly unlikely in this case), the recent events which took place in Iran undoubtedly qualify these kind of applications as founded.⁵⁵⁷ This decision represents a negative continuation of the practice regarding SGBV cases from Iran. 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 Col submissions created a strong and credible asylum claim.⁵⁵⁸ Before this decision, the Asylum Office applied on two occasions the safe

⁵⁵³ Asylum Office, Decision No. 26-73/22, 29 September 2022.

⁵⁵⁴ Asylum Office, Decision No. 26-75/22, 22 November 2022.

⁵⁵⁵ Asylum Office, Decision No. 26-2065/19, 24 January 2022.

⁵⁵⁶ Asylum Office, Decision No. 1672/19, 1 April 2023.

⁵⁵⁷ Olga Korobova, *Žene u Iranu-Kada marama postane oružije*, available at: <http://bit.ly/40kSGSx>.

⁵⁵⁸ Asylum Office, Decision No. 26-148/18, 27 December 2019.

third country concept in relation to **Türkiye**. After both decisions were overturned by the Asylum Commission, the 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 scars from the alleged violence, forensic medical examination was never conducted by either the Asylum Office or one of several legal representatives.

One decision from the end of 2020 which was related to a SGBV survivor and her two children from Türkiye also goes in favour of the general assessment that practice with regards to SGBV applicants varies and is unpredictable.⁵⁵⁹ BCHR also observed the negative practice of the Asylum Office as regards a victim of genital mutilation from Somalia.⁵⁶⁰ What represents an additional aggravating circumstance is the fact that the lawyer in the case of Somali applicant failed to lodge a complaint within the 15-day deadline. This has led to the dismissal of the 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.⁵⁶¹

1.2. Prioritised examination and fast-track processing

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

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The interview in the regular procedure is regulated by Article 37 of the Asylum Act. The interview should take place at the earliest time possible. More specifically, the interview must be conducted within the period of 3 months during which Asylum Office has to render and deliver to the applicant and their legal representatives the first instance decision. The applicant is interviewed about all the facts and circumstances relevant to deciding on their application and particularly to establish their identity, the grounds for their asylum application, and their travel routes after leaving the country of origin or habitual residence, and whether the asylum seeker had previously sought asylum in any other country.⁵⁶²

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.⁵⁶³ In the situation 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 due 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.⁵⁶⁴ However, although prescribed that they must

⁵⁵⁹ Asylum Office, Decision No. 26-1073/20, 1 December 2020.

⁵⁶⁰ Asylum Office, Decision No. 26-1599/19, 13 October 2020, see also: BCHR, *Right to Asylum in the Republic of Serbia 2021*, p.114.

⁵⁶¹ Asylum Commission, Decision No. AŽ 51/20, 24 December 2020.

⁵⁶² Article 37(1) Asylum Act.

⁵⁶³ Article 37(2) Asylum Act.

⁵⁶⁴ Article 37(12) Asylum Act.

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:⁵⁶⁵

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 their control. In this case it is possible for the applicant or a member of their family to adduce evidence and give statements relevant to deciding on their asylum application.⁵⁶⁶ 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.⁵⁶⁷ He was granted subsidiary protection;
3. The admissibility of a [Subsequent Application](#) is being assessed.

An applicant is entitled to request that an interview be conducted by a person of a specific gender. The same rule applies to interpreters.⁵⁶⁸ 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-19 circumstances, this period was extended for several months in 2020, and remained very long in 2021, but also 2022. A 4-member Afghan family who lodged their asylum applications on 30 August 2021 and had their asylum interview in 7 July 2022. Single mother with two children from Syria lodged their asylum application in August 2021, and were interviewed in February 2022. There were also examples of good practice in which Burundian SGBV survivor lodged asylum application on 15 March, was interviewed on 27 April and was granted refugee status 29 June 2022.⁵⁶⁹

The Asylum Office conducted 106 interviews in 2022, which is significantly higher than the number of interviews in 2020 (84) and 2021 (85), but is still lower than the number of interviews from 2019 (178). The reason for the low number in 2020 can be attributed to COVID-19 which suspended this stage of the 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 and it is good that the number of hearings increased in 2022. It is also important to note that 1 witness was questioned, while motion for questioning of another witness was declined in June 2022. In general, it is clear that the Asylum Office tends not to question witnesses proposed by the applicants and their legal representatives.

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 the asylum procedure were interviewed via the Skype application, in line with Article 111 of GAPA which provides for such a possibility. One case has been concluded due to absconding of the applicant,⁵⁷⁰ while the other one resulted in a positive decision regarding an UASC from Iran.⁵⁷¹ No major problems were recorded with regards to video conferencing, but it is clear that this practice is rarely applied and it is yet to be seen whether problems will arise in the future.

The total number of asylum hearings in the period 2019-2022

Month	Number of hearings in 2019	Number of hearings in 2020	Number of hearings in 2021	Number of hearings in 2022
January	16	5	8	6
February	32	20	7	9

⁵⁶⁵ Article 37(10) Asylum Act.

⁵⁶⁶ Article 37(11) Asylum Act.

⁵⁶⁷ Asylum Office, Decision No. 26-1084-20, 7 June 2021.

⁵⁶⁸ Article 16 (2) Asylum Act.

⁵⁶⁹ Asylum Office, Decision No. 26-246/21, 29 June 2022.

⁵⁷⁰ Asylum Office, Case File No. 26-2534/17, 7 May 2021.

⁵⁷¹ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

March	16	9	2	10
April	26	0	5	14
May	12	0	15	6
June	3	3	14	5
July	9	1	11	8
August	6	1	0	4
September	19	8	0	18
October	17	23	9	1
November	8	7	1	22
December	14	7	13	4
Total	178	84	85	106

1.3.1. Interpretation

An applicant who does not understand the official language of the asylum procedure shall be provided free interpretation services into their native language, or a language that they can understand, including the use of sign language and the availability of Braille materials.⁵⁷²

The costs of interpretation are covered by UNHCR, and the interpreters are hired from their list. The list underwent a thorough review in 2022. The review was based on feedback received from CSOs, but also the Asylum Office which uses. The interpreters are available for the following languages: English (1), Farsi (10), Arabic (9), Russian (7), French (7), Turkish (5), Kurdish (3), Bulgarian (2), Spanish (2), Chinese (2), Urdu (2), German (2), Greek (2), Georgian (2), Bulgarian (2) and Kirundi (2) and Ukrainian (2). One interpreter is also available for each of the following languages: Armenian, Chinese, Hindu, Hungarian, Italian, Macedonian Portuguese, Pashto, Polish, Romanian and Swahili.

When it comes to the practice, there were several instances in which CSO lawyers decided to halt the interview since it was that the interpreters were incompetent and that they could not establish effective communication with the applicants. Afterwards, the CSO requested their removal from the list, which was done by the UNHCR. 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,⁵⁷³ and the decision was upheld by the Asylum Commission.⁵⁷⁴ 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. In 2022, an incompetent interpreter for the Spanish language was removed after the series of inadequate and imprecise interpretations in Cuban applications.⁵⁷⁵

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.⁵⁷⁶ The asylum seekers' legal representatives are entitled to ask additional questions to ensure comprehensive establishment of the facts of the case.

The minutes are read by the legal representative and asylum seeker before they are printed out and signed jointly with the acting asylum officer. It is also possible to make clarifications and corrections, but also to raise issues of disagreement and complaint on the acting asylum officer.

⁵⁷² Article 13 Asylum Act.

⁵⁷³ Asylum Office, Decision No. 932/19, 30 September 2019.

⁵⁷⁴ Asylum Commission, Decision No. AŽ 38/19, 3 December 2019.

⁵⁷⁵ Asylum hearing in the case 26-688/22, 24 June 2022.

⁵⁷⁶ Article 63 GAPA.

The original copies of the minutes are surrendered to the applicant and their legal representative right after the conclusion of the hearing. There were no instances in which it was reported that minutes from the asylum hearing were inconsistent with the content of the hearing.

The interview is not electronically recorded either by audio or video means.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?
 Yes No
❖ If yes, is it Judicial Administrative
❖ If yes, is it automatically suspensive Yes Some grounds No
2. Average processing time for the appeal body to make a decision: 2-3 months

1.4.1. Appeal before the Asylum Commission

Appeals against Asylum Office decisions are reviewed by the Asylum Commission, a body comprising nine members appointed to four-year terms in office by the Government.⁵⁷⁷ Asylum Commission members 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.⁵⁷⁸ 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 for whom it can be assumed that he possesses knowledge on human rights. Still, it is clear, and the practice of this body since the beginning of the asylum system in Serbia has shown, that members of the Asylum Commission are simply not qualified to apply IRL and IHRL and that their knowledge mainly lies in the field of Administrative Law. And yes, the asylum procedure is the administrative type of procedure, but it requires the capacity of decision makers to conduct assessments of the risks of *refoulement ex nunc*, *proprio motu* and with rigorous scrutiny, to conduct interviews with vulnerable applicants and to apply the principle of *in dubio pro reo*. None of these features have been reflected in the 15 year old practice of the Asylum Commission.

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.⁵⁷⁹ 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.⁵⁸⁰

New facts and evidence may be presented in the appeal, but the appellant is obliged to explain why they did not present them in the first instance procedure.⁵⁸¹ This provision is often relied on in second instance decisions when applicants, mainly due to poor quality work by their legal representatives, invoke or provide new evidence which they had failed to provide in the course of the first instance procedure. The Asylum Commission appears to be very rigorous in examining new facts and evidence in the appeal stage and limits the scope of its work to the framework established in the asylum application and during the asylum hearing before the Asylum Office. This is especially unfavourable for legally incompetent

⁵⁷⁷ Article 21(1)-(2) Asylum Act.

⁵⁷⁸ Article 21(3) Asylum Act.

⁵⁷⁹ Article 95 Asylum Act and Articles 151 and 153 GAPA.

⁵⁸⁰ Article 158 GAPA.

⁵⁸¹ Article 159 (2).

applicants who initiate the asylum procedure by themselves. 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 practice has shown that this is rarely the case.

The appeal must be submitted to the Asylum Office in a sufficient number of copies for the Asylum Commission and the opposing party.⁵⁸² 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 authorised person. If the Asylum Office determines any of the above-enlisted deficiencies, an appeal will be dismissed.⁵⁸³ Against such decision, appeal is also possible, but the practice has shown little prospect of success.

According to the author's knowledge, there were two instances in which appeal against the first instance decisions were not timely lodged, which was the reason why the appeal was dismissed by the Asylum Office. Later on, legal representatives tried to justify untimely lodged appeal before the Asylum Commission,⁵⁸⁴ and also Administrative Court,⁵⁸⁵ but without a success. Both decisions became final and the SGBV survivor from Somalia and the applicant from Burundi were denied of the possibility to have their cases examined in merits.

Also, the GAPA envisages that the Asylum Office might uphold the appeal without referring the case to the Asylum Commission if it determines that arguments from the appeal are founded⁵⁸⁶ and render a new decision which annuls the initial decisions and contains a new one. It is also possible that the Asylum Office supplements the procedure with additional asylum interviews or other evidentiary activity which it deems necessary.⁵⁸⁷ However, there was not a single case in the practice of the Asylum Office in which this legal avenue has been used.

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 the arguments, facts and evidence outlined in the appeal.⁵⁸⁸ What is important to note is that the response of the Asylum Office is not delivered to the applicant and/or his legal representatives, but the summary of response is only outlined in the reasoning of the Asylum Commission. In this way, the applicants is not able to provide additional views and standings on the Asylum Office's response.

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.⁵⁸⁹ 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.⁵⁹⁰ 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 in 2020, the Asylum Commission delivered more decisions than in 2019. The main reason for this is because the Asylum Commission has never held hearings in order to directly determine the facts.⁵⁹¹ However, it is welcome that, in the vast majority of cases, this body has been rendering decisions within two to three months in 2021 and 2022. This is definitely the positive development and should be praised.

⁵⁸² Article 160 GAPA.

⁵⁸³ 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.

⁵⁸⁴ Asylum Commission, Decisions Nos. AŽ 51/20, 24 December 2020 and AŽ 32/21, 7 February 2022.

⁵⁸⁵ Administrative Court, Judgments Nos. U 3775/21, 3 March 2022 and U 19541/22, 14 October 2022.

⁵⁸⁶ Article 165 (1) GAPA.

⁵⁸⁷ Article 165 (2) GAPA.

⁵⁸⁸ Article 166 GAPA.

⁵⁸⁹ Article 174 GAPA.

⁵⁹⁰ Article 19 Administrative Disputes Act.

⁵⁹¹ *Hod po žici*, p. 53.

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.⁵⁹² 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.⁵⁹³ In the event it does not reject the appeal,⁵⁹⁴ the Asylum Commission may itself decide on the administrative matter.⁵⁹⁵ It may also set aside the impugned ruling and order the first instance authority to re-examine the matter, when it finds that the shortcomings of the first instance procedure will be eliminated more rapidly and economically by the Asylum Office.⁵⁹⁶ 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**,⁵⁹⁷ **Libya**,⁵⁹⁸ and **Iran**.⁵⁹⁹

Statistical Overview of Asylum Commission practice 2009-2022

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
2022	36	5	0	0	3	44
Total	261	144	5	6	18	434

Asylum Commission Practice in 2022

In 2022 the Asylum Commission took 44 decisions regarding 59 persons, which is a significant decrease in comparison to 2021 when 74 decisions were rendered regarding 80 persons. This can be attributed to the lower number of lodged appeals. Of these, first instance decisions dismissing or rejecting asylum applications were upheld in 36 cases, while in only 3 cases the appeals were upheld, and the cases were referred back to the Asylum Office for further consideration. Also, an additional 2 decisions quashing the first instance decision after the judgment of the Administrative Court in which the onward appeals were upheld. An additional three decisions were rendered abolishing the first instance decisions of the Asylum Office – 2 decisions on temporary protection and 1 decision on subsidiary protection. As was the case in 2021, in 2022 the Asylum Commission did not render any positive decisions, i.e. it did not grant international protection.

⁵⁹² Article 165 GAPA.

⁵⁹³ Article 165(2)-(3) GAPA.

⁵⁹⁴ Article 170 GAPA.

⁵⁹⁵ Article 171(5) GAPA.

⁵⁹⁶ Article 173(3) GAPA.

⁵⁹⁷ Asylum Commission, Decision AŽ 25/09, 23 April 2010.

⁵⁹⁸ Asylum Commission, Decision AŽ 06/16, 12 April 2016.

⁵⁹⁹ Asylum Commission, Decision AŽ X, 2 September 2019.

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. In several analysed decisions, the Commission summarily rejected the 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.⁶⁰⁰ 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, 2021 and 2022, which was not the case in previous years, only a few decisions from 2022 will be briefly analysed below, in light of the cases which were outlined in the previous updates of this AIDA report. The nationalities encompassed in these decisions in 2022 are the following: Burundi (16), Iran (9), Türkiye (3), Guinea Bissau (3), Syria (2), Cuba (2), Ukraine (2), Pakistan (2), Iraq (2), Afghanistan (1), Bosnia and Hercegovina (1), Tunisia (1), Morocco (1), Poland (1), Guinea (1), Cameroon (1) and Kyrgyzstan (1). The analysis will also include short reflection on certain decisions from 2021. Thus, the following paragraphs will reflect on the available practice of the Asylum Commission from 2021 and 2022.

On 18 January 2021, the 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.⁶⁰¹

In February 2021, Asylum Commission rejected an appeal of a Burundian citizen of Tutsi ethnic background who claimed that his ethnicity was a reason for persecution.⁶⁰² The Asylum Commission determined that Col reports are not sufficient to prove the risk of persecution.

On 8 March 2021, the 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. A letter from the applicant's mother, as well as relevant Col were not found to be sufficient for granting of asylum.⁶⁰³ 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 2019,⁶⁰⁴ 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.⁶⁰⁵ 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.⁶⁰⁶ Another decision from July 2021 refers to the subsequent asylum application of Iranian converts from Islam to Christianity who also attempted to provide additional evidence in their subsequent application, but without success. Their appeal against the decision dismissing their subsequent asylum application was rejected as unfounded.⁶⁰⁷ However, in the same month, the 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.⁶⁰⁸

⁶⁰⁰ Article 5 (3) GAPA.

⁶⁰¹ Asylum Commission, Decision No. AŽ 55/20. 18 January 2021.

⁶⁰² 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.

⁶⁰³ Asylum Commission, Decision No. AŽ 04/21, 8 March 2021.

⁶⁰⁴ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁶⁰⁵ Asylum Commission, Decision No. AŽ 44/19, 30 January 2020.

⁶⁰⁶ Asylum Commission, Decision No. AŽ 02/21, 17 March 2021.

⁶⁰⁷ Asylum Commission, Decision No. AŽ 19/20, 5 July 2021.

⁶⁰⁸ Asylum Commission, Decision No. AŽ 46/20, 17. March 2021.

On 15 April 2021, the Asylum Commission referred the case of an Iranian family back to the first instance authority after the Administrative Court upheld the complaint.⁶⁰⁹ 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 again⁶¹⁰ and this decision was confirmed by Asylum Commission again.⁶¹¹ 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.⁶¹² 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.⁶¹³

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.⁶¹⁴

In July 2021, Asylum Commission rendered one contentious decision rejecting an applicant's asylum application. Namely, additional evidence which was submitted after the first instance decision was declared as unfounded. The Commission stated that applicant had enough time to provide all of the evidence during the course of the first instance procedure, and thus, refused 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 refusing to assess the new evidence, the 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 the legal representative. Inadequate work of legal representatives should not be taken as a reason to deny an applicant the possibility to have his case examined thoroughly.⁶¹⁵ However, it appears that the 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.⁶¹⁶

Also, on 14 July 2021, the appeal of the applicant from Türkiye who belongs to the Gulenist movement was rejected as unfounded.⁶¹⁷ This decision further corroborates evidence that asylum authorities are under strong political influence which implies that Turkish political dissidents and other categories facing systemic persecution in this country cannot obtain international protection. Accordingly, asylum procedure as the three-step process for the assessment of risks of *refoulement* can only be considered theoretical and illusory for applicants who face genuine risk of persecution in Türkiye. In September 2021, the Asylum Commission rejected an appeal of a Turkish citizen who attempted to avoid extradition by applying for asylum. His case was not credible according to the allegations outlined in the reasoning of the second and third instance decision.⁶¹⁸ Thus, this decision can be described as well-founded, but not as a sign of improved practice with regards to Turkish applicants.

In August 2021, the Asylum Commission confirmed the Asylum Office first instance decision on dismissing subsequent asylum application of the three-member Bulgarian family, whose case has been dealt by the asylum authorities for years.⁶¹⁹

In September 2021, the 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.⁶²⁰ An appeal was upheld after the Commission obtained from BIA a positive

⁶⁰⁹ Asylum Commission, Decision No. 06/19, 5 April 2021.

⁶¹⁰ Asylum Office, Decision No. 26–1382/18, 20 July 2021.

⁶¹¹ Asylum Commission, Decision No. AŽ-47/20, 5 July 2021.

⁶¹² Asylum Commission, Decision No. AŽ 8/21, 26 April 2021.

⁶¹³ BCHR, *Right to Asylum in the Republic of Serbia 2021*, p. 55.

⁶¹⁴ Asylum Commission, Decision No. 41/20, 31 May 2021.

⁶¹⁵ Asylum Commission, Decision No. 47/20, 5 July 2021.

⁶¹⁶ BCHR, *Right to Asylum in the Republic of Serbia 2021*, 52-63.

⁶¹⁷ Asylum Commission, Decision No. AŽ 16/21, 14 July 2021.

⁶¹⁸ Asylum Commission, Decision AŽ-06/22, 10 May 2022.

⁶¹⁹ Asylum Commission, Decision AŽ 14/19, 9 August 2021.

⁶²⁰ Asylum Commission, AŽ-29/19, 23 September 2021.

security assessment, even though this assessment was different in January 2021 when asylum application was rejected.⁶²¹ 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. In October 2021, the Asylum Commission rejected the appeal of the four member family from Jordan as unfounded.⁶²²

In February 2022, the Asylum Commission rejected the appeal lodged against the Asylum Office decisions dismissing the case due to untimely submission of the appeal.⁶²³ In the same month, the Asylum Commission rejected in merits the appeal of the Iraqi citizen whose case was discontinued by the Administrative Court later on.⁶²⁴ As outlined above, the Asylum Commission rejected the appeal of a legal representative who untimely lodged an appeal against the decision on rejecting his client (Burundi) in merits.⁶²⁵

In May 2022, Asylum Commission rejected the appeal of Cuban nationals whose case has already been outlined above.⁶²⁶ According to the BCHR, both first and second instance authority have failed to assess evidence of political actions of the applicants and to, through the application of the principle in *dubio pro reo*, grant international protection. This case, alongside the case of Iranian SGBV applicant reflects the systemic problem of an extremely, and for asylum procedure inadequate, high burden of proof which goes beyond likelihood, reaching sometimes the standard of 'beyond reasonable doubt'.

In June 2022, Asylum Commission rendered one of the most contentions decisions related to an already outlined case of woman from Iran who opposes strict Sharia rules on hijab and in general on practices which severely undermine women's rights.⁶²⁷ This further corroborates negative practice when it comes to SGBV applicants claiming asylum in Serbia and clearly indicates that lack of the second instance authority to establish the corrective influence of the Asylum Office.⁶²⁸

In August 2022, the Asylum Commission rejected the appeal of Ukrainian national whose request for temporary protection was rejected on the basis of the negative security assessment of BIA which was not delivered to his legal representatives. This case will be examined in details in the separate part of 2022 AIDA report dedicated to Ukrainian refugees.⁶²⁹

One of the appeals which were upheld related to the Syrian national whose asylum procedure was discontinued, but then successfully challenged by his legal representatives before the Commission.⁶³⁰ In the same month, the Asylum Commission took a different stand in similar case of discontinuation of Burundian national.⁶³¹ Both contradicting decisions were rendered in September 2022.

It is also important to outline that many appeals rejected in merits of the Asylum Commission were lodged by manifestly unfounded applicants, such as those from Guinea Bissau, Pakistan, Bosnia and Hercegovina, Poland and Cameroon, as well as some of the applicants from Cuba and Burundi. As outlined in the overview of the practice of the Asylum Office, many applicants rejected in the first instance had manifestly unfounded claims and were not provided with free legal aid by NGOs in AC Krnjača due to the lack of capacities of legal representatives to represent every person interested to lodge asylum application in Serbia.

⁶²¹ Asylum Office, Decision No. 26–1389/17, 19 January 2021, see also BCHR, *Right to Asylum in the Republic of Serbia 2021*, 55.

⁶²² Asylum Commission, Decision No. AŽ 24/21, 11 October 2021.

⁶²³ Asylum Commission, Decision No. AŽ 32/21, 7 February 2022.

⁶²⁴ Asylum Commission, Decision No. AŽ 04/22, 22 February 2022.

⁶²⁵ Asylum Commission, Decision No. AŽ 32/21, 7 February 2022.

⁶²⁶ Asylum Commission, Decision No. AŽ-41/20, 10 May 2022.

⁶²⁷ Asylum Commission, Decision No. AŽ 8/21, 27 June 2022.

⁶²⁸ The case was described in details in the part where the practice of the Asylum Office is analysed.

⁶²⁹ Asylum Commission, Decision No. AŽ 20/22, 12 August 2022.

⁶³⁰ Asylum Commission, Decision NO. AŽ 23/22, 7 September 2022, see also *Right to Asylum 2022*, p. 52.

⁶³¹ Asylum Commission, Decision No. AŽ 21/22, 27 September 2022, see also *Right to Asylum 2022*, p. 52-53.

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, but the case files have shown that all judges of the Administrative Court can find themselves in the situation to decide on asylum complaints.

At several conferences and roundtables that took place in in the past several years, judges from the Administrative Court have been highlighting the problem of understaffing, lack of knowledge of international refugee law and international human rights law (mainly the relevant jurisprudence of the ECtHR) and have repeatedly outlined the need of for relevant national and international organisations (NGOs and UNHCR) to facilitate more training and workshops regarding asylum and migration law.⁶³² 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 training on credibility assessment which included judges from the Administrative Court, while in 2022 judges were taken for study visits to Italy. It is also reasonable to assume that judges are also invited to take part in trainings organised under the auspices of the EU accession.

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

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

According to the Asylum Act, the initiation of an administrative dispute has an automatic suspensive effect.⁶³³

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 the corrective role of the Administrative Court in relation to the first and second instance authorities is basically non-existing. As was the case in 2021, the year 2022 was the year in which the Court failed to deliver a judgment which could have positively affected the practice of lower instances (see below).

Usually, it takes approximately at least 8 months for the Administrative Court to deliver its judgment, but there were instances in which the judgment was pending for a year or even several years.⁶³⁴

⁶³² 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.

⁶³³ Article 96 Asylum Act.

⁶³⁴ Administrative Court, Judgments U 10233/19, 13 May 2020, U 1803/18, 6 January 2022 and U 3950/18, 24 January 2022.

Statistical Overview of the Administrative Court Practice 2009-2022

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
2022	20	1	0	2	23
Total	155	43	8	12	218

Administrative Court Practice in 2022

No.	Case file No.	Date of judgment	Country of origin	No. of persons	Outcome	Type of issue
1.	U 19000/21	05.01. 2022	Iran	2	Rejected	Subsequent application of Iranian converted from Islam to Christianity
2.	U 1803/18	06.01.2022	Afghanistan	1	Rejected	STCC Bulgaria
3.	U 2113/20	12.01.2022	Iran	4	Rejected	Arab minority in Iran
4.	U 20811/11	21.01.2022	Türkiye	1	Rejected	Political persecution – Gulenist movement
5.	U 3950/18	24.01.2022	Syria	1	Rejected	STCC North Macedonia
6.	U 8549/20	02.02.2022	Iran	4	Rejected	STCC Bulgaria
7.	U 20811/21	31.01.2022	Tunisia	1	Rejected	LGBTQI+ persecution
8.	U 4730/21	10.02.2022	Libya	1	Upheld	General insecurity and arbitrary violence
9.	U 3975/20	24.02.2022	Iran	4	Rejected	Political persecution
10.	U 3775/021	03.03.2022	Somalia	1	Rejected	Untimely appeal of the

						legal representative
11.	U 1468/21	01.04.2022	Pakistan	1	Rejected	Ethnic persecution of Hindu minority in Pakistan
12.	U 22107/21	09.05.2022	Bulgaria	3	Rejected	Political persecution
13.	U 24542/20	27.05.2022	Tunisia	1	Rejected	LGBTQI+ persecution
14.	U 4758/20	08.06.2022	Iran	1	Rejected	Ethnic persecution of Azeri minority
15.	U 476/2020,	15. 06.2022	Cuba	1	Upheld	Cuba – political persecution
16.	U 35085/21	23.06.2022	Jordan	4	Rejected	Ethnic persecution
17.	U 5338/20	20.07.2022	Iran	1	Rejected	SGBV
18.	U 191978/17	22.07.2022	N/A	1	Upheld	STCC Bulgaria
19.	U 15562/20	09.09.2022	Iran	1	Rejected	Political persecution
20.	U 16464/2022	09.09.2022	Iran	1	Discontinued	X.
21.	U 20256/19	16.09.2022	Iran	1	Rejected	Arab minority in Iran
22.	U 19541/22	14.10.2022	Burundi	1	Rejected	Untimely appeal of the legal representative
23.	U 14113/22	17.11.2022	BiH	1	Rejected	Manifestly unfounded
24.	U 11333/22	17.11.2022	Libya	1	Rejected	STCC - Egypt
25.	U 10654/20	24.11.2022	Syria	1	Upheld	Discontinuation
26.	U 31740/22	20.12.2022	Türkiye	1	Rejected	Manifestly unfounded
Total	DECISIONS: 26		PERSONS: 41			

In 2022, the Administrative Court delivered 26 decisions regarding 41 persons from the following nationalities: Iran (19), Jordan (4), Bulgaria (3), Türkiye (2), Tunis (2), Syria (2), Libya (2) and 1 from BiH, Pakistan, Burundi, Cuba, Somalia, Afghanistan and 1 unknown country. Out of that, 21 complaints were rejected encompassing 36 persons, while 4 complaints were upheld in relation to 4 persons and 1 case was discontinued.

In January 2022, a Turkish citizen who belongs to Gulenist movement was rejected in merits. In other words, the Administrative Court has once again confirmed the practice in which political dissidents from Türkiye, members of the Gulenist movement, journalists and other persons perceived as opponents to the Government and labelled as terrorists, do not stand a chance to obtain international protection in Serbia.⁶³⁵ In 2021, another Turkish applicant was rejected with the final judgment of the Administrative Court.⁶³⁶ The case referred to a man who was also in extradition proceedings. He claimed that he would face persecution in Türkiye because of his Kurdish ethnic origin. There are several other cases pending before the Administrative Court which are related to Turkish applicants who are also facing extradition to their country of origin. Another Turkish citizen was rejected in December 2022, but his case cannot be

⁶³⁵ Administrative Court, Judgment U 20811/11, 21 January 2022.

⁶³⁶ Administrative Court, U 21427/21, 26 October 2021.

considered as credible, but as an attempt to avoid extradition to Türkiye for charges which cannot be considered as politically motivated or staged.⁶³⁷

In January 2022, the Administrative Court rejected the complaint related to the subsequent application of Iranian converts from Islam to Christianity, confirming that these types of application have had limited prospect of success in the past several years.⁶³⁸ Identical outcome occurred in January 2021.⁶³⁹

In 2021, the Administrative Court rendered a judgment rejecting an alleged SGBV survivor from Ghana, who, according to the legal representative, might also be the victim of human trafficking.⁶⁴⁰ From the reasoning of the judgment, it cannot be seen if the asylum authorities and the applicant have provided all the necessary evidence based on the multidisciplinary approach. Thus, there are no expert opinions of the Centre 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 a gay man from Congo was rejected with the final judgment of the Court, confirming a 100% rejection rate of LGBTQI applicants in 2021.⁶⁴¹ This trend continued in 2022, when two gay man from Tunis were rejected with final decisions of the Administrative Court. Both of them invoked risks of persecution on the basis of their well-known sexual orientation which had already caused them problems with authorities (they were arrested and ill-treated by the police) which can also be manifested through criminal persecution due to incrimination of the same sex-partnerships.⁶⁴² The outcome of these two cases can also be attributed to the lack of coordination between legal representatives who have failed to outline that both applicants arrived together to Serbia as a couple.⁶⁴³ Both cases also resulted in applications to the ECtHR.⁶⁴⁴

What perfectly depicts a complete lack of the capacity of the Administrative Court to be considered as an effective legal avenue which can uphold safeguards against *refoulement* and impose corrective guidelines on the lower instances are several judgments in which the automatic application of the STCC, which had plagued Serbian asylum system in the past, was confirmed.⁶⁴⁵ All of these complaints were lodged several years ago, such as the complaint of an Afghan national who initiated third instance procedure in January 2018 claiming that Bulgaria cannot be considered as safe in his particular case. The Administrative Court rejected the complaint as unfounded, reviving the automatic application of the STCC, but also procrastinating third instance asylum procedure of the applicant to 4 years.⁶⁴⁶ Identical judgment was rendered in February 2022 in relation to 4 member Iranian family.⁶⁴⁷ An identical outcome was provided in the judgment rendered in the same month and in relation to Syrian applicant who had also been the victim of the automatic application of the STCC, but in relation to North Macedonia. His case also lasted for almost 4 years before the Administrative Court.⁶⁴⁸ And finally, automatic application of the STCC occurred in relation to Libyan applicant who spent some time in Egypt before applying for asylum in Serbia.⁶⁴⁹ In none of these cases the Administrative Court has determined that there was complete lack of assurances that applicants would, after spending years in Serbia, be allowed to access territory of

⁶³⁷ Administrative Court, U 31740/22, 20 December 2022.

⁶³⁸ Administrative Court, Judgment U U 19000/21, 5 January 2022.

⁶³⁹ Administrative Court, Judgment, U 11006/20, 28 January 2021.

⁶⁴⁰ Administrative Court, Judgment U 22906/18, 25 November 2021.

⁶⁴¹ Administrative Court, Judgment U 8080/21, 7 December 2021.

⁶⁴² Administrative Court, Judgments U U 20811/21, 31 January 2022 and U 24542/20, 27 May 2022.

⁶⁴³ See also, AIDA, Country Report Serbia, 2021 Update, p. 81.

⁶⁴⁴ See more in Right to Asylum 2022, pp. 59-61.

⁶⁴⁵ See more in Country Report Serbia, Update 2018, pp. 41-52.

⁶⁴⁶ Administrative Court, Judgment U 1803/18, 6 January 2022.

⁶⁴⁷ Administrative Court, Judgment U –U 8549/20, 2 February 2022.

⁶⁴⁸ Administrative Court, Judgment U 3950/18, 24 January 2022.

⁶⁴⁹ Administrative Court, Judgment U 11333/22, 17 November 2022.

countries proclaimed as safe, their asylum systems, adequate reception conditions and other necessary requirements.

The Administrative Court also rejected as unfounded complaints of applicants who claimed persecution on the basis of their Arab ethnicity in Iran. So far, members of Arab minority have never managed to obtain international protection in Serbia, as it can be seen from previous AIDA reports.⁶⁵⁰ The same can be said with regards to Azeri minority in Iran whose claim was also rejected with the final decision of the Administrative Court,⁶⁵¹ Another Iranian who claimed political persecution due to his criticism of Iranian system, but also his religion (atheist), was rejected with the final judgment of the Court.⁶⁵² The same outcome occurred in the case of a 4 member Iranian family who claimed problems with Sepah, but failed to produce credible evidence.⁶⁵³

The Court also confirmed decisions rejecting asylum applications in merit of applicants from Bulgaria,⁶⁵⁴ Bosnia and Hercegovina⁶⁵⁵ and Jordan.⁶⁵⁶ Also, the Court rejected complaints of unconscionable legal representatives who had failed to lodge appeals against first instance decisions in time, which have led to the dismissal of their clients' cases and denial of the possibility to this people to have their cases examined in merits. One case is related to an already mentioned SGBV survivor from Somalia,⁶⁵⁷ while the other one to the applicant from Burundi.⁶⁵⁸

When it comes to positive practice, two cases are worth mentioning because in both cases the Administrative Court was not satisfied with the evidentiary activities and evidence assessment by the Asylum Office and Asylum Commission. The first case is related to alleged political activist from Cuba whose role in the July 2021 protests was not determined as clear, and which was the reason why the complaint was upheld and the case referred back to the lower instance authorities.⁶⁵⁹ The second case reflects one of the rare positive aspects of the practice of the Administrative Court and which is related to applicants from Libya, when their cases are decided in merits. Namely, the Administrative Court has found that lower instance authorities have not determined to which extent in applicant's country of origin is there a risk of arbitrary violence.⁶⁶⁰

⁶⁵⁰ Administrative Court, Judgments U 2113/20, 12 January 2022 and U 20256/19, 16 September 2022.

⁶⁵¹ Administrative Court, Judgment U 4758/20, 8 June 2022.

⁶⁵² Administrative Court, Judgment U 15562/20, 29 September 2022.

⁶⁵³ Administrative Court, Judgment U 3975/20, 24 February 2022.

⁶⁵⁴ Administrative Court, Judgment U 22107/21, 9 May 2022.

⁶⁵⁵ Administrative Court, Judgment U U 14113/22, 17 November 2022.

⁶⁵⁶ Administrative Court, Judgment U 35085/21, 23 June 2022.

⁶⁵⁷ Administrative Court, Judgment U 3775/021, 3 March 2022.

⁶⁵⁸ Administrative Court, Judgment U 19541/22, 14 October 2022.

⁶⁵⁹ Administrative Court, Judgment 476/2020, 15 June 2022.

⁶⁶⁰ Administrative Court, Judgment 4730/21, 10 February 2022.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

On 1 October 2019, the Free Legal Aid Act (FLA) came into force. The right to free legal aid is explicitly guaranteed to asylum seekers,⁶⁶¹ refugees and persons granted subsidiary protection.⁶⁶² However, the Free Legal Aid Fee Schedule Regulation (FLA Regulation)⁶⁶³ 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. So far, not a single asylum seeker has used State funded free legal aid,⁶⁶⁴ but in the course of 2022, 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 the Serbian asylum system in general, but also the quality of the decision-making process of the first and the second instance authority. In more than 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.⁶⁶⁵ 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 and the main donors are UNHCR, EU and other donors. 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 2022 only 5 civil society organisations (CSO) were providing legal aid in Serbia: APC, BCHR, and IDEAS, Humanitarian Centre for Tolerance and Integration (HCIT) and KlikAktiv. The total number of active lawyers in these CSOs is between 13 and 15, out of which many are also tasked with other project activities or are hired part-time.⁶⁶⁶ Other, non-CSOs lawyers, occasionally provide legal aid. All of these CSOs are based in **Belgrade**, except for HCIT which

⁶⁶¹ Article 4 (2-6) FLA.

⁶⁶² Article 4 (2-7) FLA.

⁶⁶³ Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), Official Gazette of the RS No. 74/2019.

⁶⁶⁴ This conclusion is drawn from the fact that legal representatives in all Administrative Court judgments were CSOs.

⁶⁶⁵ Article 56(3)-(4) Asylum Act.

⁶⁶⁶ BCHR has 5 lawyers who are solely providing legal aid to asylum seekers, HCIT 2, IDEAS 1, and APC does not have more than 3.

is based in **Novi Sad**, but will cease to provide legal aid in 2023. Thus, their presence in asylum and reception centres located in the south or east is rare,⁶⁶⁷ and refugees and asylum seekers are not only forced to wait for weeks or months to access asylum procedure and lodge asylum applications, but also to wait for initial legal advice by a competent lawyer.

Given that in 2022 the approximate number of persons likely in need of international protection was at least 65% of the total migrant population who entered Serbia and received registration certificates (around 4,020), 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, 2022 was the year in which at least 50% of asylum seekers either failed to lodge their asylum application or lodged their asylum applications in writing by themselves, and without legal support. The fact that asylum seekers, mainly from Burundi, decided to lodge asylum applications by themselves, is the reason why there was an increase in the total number of asylum applications in writing.

The second reason is the fact that most of legal representatives from respective CSOs have between 1 to 3 years of experience,⁶⁶⁸ 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.⁶⁶⁹ 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 and in previous reports, but also decisions outlined in the 2022 Report, show that applicants who had strong asylum claims were not adequately prepared for their hearing and, for instance, provided more detailed statements to their psychologist than to their lawyer. The contradictory statements in the asylum hearing which ensued was the reason why the Asylum office rejected their claims.⁶⁷⁰ Another example is the lack of coordination in preparation for the asylum hearing of a Tunisian gay couple.⁶⁷¹ These flaws are mainly due to the lawyers' lack of experience and knowledge of the asylum field which raises serious concerns. Several applicants decided to abscond during the asylum procedure due to the 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 the violence to which he was subjected in the social care home. His legal representative was not aware of this fact, even though the violence was reported to him by the boy.⁶⁷² The other UASC had only had a half an hour meeting with two different legal representatives within a year and decided to abscond to Bosnia.⁶⁷³ He attempted to lodge a subsequent application, but was unsuccessful and eventually decided to abscond from Serbia.⁶⁷⁴ Specific issues in relation to the provision of legal assistance include a lack of assessment of COI information and individual circumstances,⁶⁷⁵ lack of thorough preparations of clients for their personal interview and failure to conduct evidentiary activities such as medical expert opinion.⁶⁷⁶ In 2022, two attorneys at law, who also acted as legal representatives in extradition proceeding failed to prepare one Turkish and one Kyrgyzstan citizen for their asylum hearings, and were not capable to fill out asylum application form. The representative of Kyrgyzstan

⁶⁶⁷ Once to two times per month.

⁶⁶⁸ Some of them less than a year and without previous training and experience in the field of asylum and migration.

⁶⁶⁹ 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.

⁶⁷⁰ Asylum Office, Decision No. 26-378/19, 11 February 2020.

⁶⁷¹ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁶⁷² 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.

⁶⁷³ The boy decided to return to Serbia and, with the help of IDEAS lawyers, submitted subsequent application.

⁶⁷⁴ Asylum Office, Decision No. 26-3229/19.

⁶⁷⁵ 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.

⁶⁷⁶ Asylum Office, Decision No. 26-2177/19, 20 August 2020.

cancelled him power of attorney right before the hearing, while attorney of Turkish applicant failed to lodge the complaint to Administrative Court.

Family D. from Iran outlined that they signed the power of attorney 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 the lodging of the asylum application in person, and that their preparation with the lawyer for the asylum interview lasted several hours and only a few days before the hearing in August 2019. The Col report attached to this application after the interview outlined more facts than those provided to the Asylum Office orally. In the practice of the Serbian asylum authorities, the impression that an asylum officer gets at the hearing is crucial and usually a determining factor for a positive decision. And *vice versa*, applicants who are not capable to go into details during the interview face the risk of being rejected at first instance, and chances of remedying such outcome are extremely low. In the same case, the legal representative has failed to gather additional evidence, such as the decision to grant refugee status in the Netherlands of the brother of one of the applicants or his written testimony. The family attempted to lodge a subsequent asylum application submitting additional evidence, but the stance of asylum authorities was that they should have done it in the initial asylum procedure.⁶⁷⁷ Thus, in this particular case, the flaws can be found in the work of both the legal representatives and the 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 one of a total of 2 cases where refugees were granted asylum in Hungary since summer 2020. Thus, their claim was strong enough for the deteriorating and basically non-existing asylum system in Hungary, but not good enough for the Serbian asylum authorities. In 2023, the three-member family was granted refugee status after several years of being in asylum procedure and rejected in merits on multiple occasions. One of the reasons for such outcome is the fact that legal representative failed to deliver individual evidence timely in the first instance procedure, which was one of the reasons why their application was rejected. Only after the Administrative Court ordered that this evidence must be take into consideration, the applicants were granted refugee status. Thus, if the legal representative had been delivered at the early stage of the first instance procedure, Iranian family would not have to go through several year legal ordeal.⁶⁷⁸

The following cases from 2018-2022 also contain examples of poor legal representation:

- UASC A.A.'s 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 failed to provide the mother's written testimony of the persecution that the boy faced by the Taliban.⁶⁷⁹ His case is still pending before the Administrative Court with minimum chances of success.
- Family X. from Iran stated that they have not established any communication with their legal representative and their 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.⁶⁸⁰
- In 2021, a woman from Cameroon was assessed by one of the CSOs as a non-credible case. It turned out that she was an active case of human trafficking and was later on granted the status of a victim of human trafficking.⁶⁸¹
- A similar case was recorded at the end of 2021, when a woman from Cameroon, a suspected victim of human trafficking and a victim of SGBV, was told that she does not have a case.⁶⁸²

⁶⁷⁷ *Ibid.*

⁶⁷⁸ Asylum Office, Decision No. 26-1607/18, 14 October 2022.

⁶⁷⁹ Asylum Office, Decision No. 26-932/19, 30 September 2019.

⁶⁸⁰ Asylum Office, Decision No. 26-1831/18, 30 July 2020.

⁶⁸¹ The applicant lodged her asylum application in March 2022.

⁶⁸² She lodged her application in March 2022.

- In November 2021, the Asylum Office discontinued the asylum procedure of a 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 2021.⁶⁸³ Still, she was assessed as a not credible 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 entailed 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 2021.⁶⁸⁴
- An identical case was recorded in 2021, where a 5-member family from Afghanistan lodged an 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 the security situation in Herat, girl-specific risks for the 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 their 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.⁶⁸⁵
- One 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 traumatised people were let down by individuals who are not capable to follow statutory deadlines and perform the roles of legal representatives.⁶⁸⁶
- A similar case occurred in 2022 when the legal representative has failed to lodge an appeal against the first instance decision in which Burundian applicant was rejected.
- A Cuban LGBTQI+ applicant with a serious medical condition was initially told by one of the legal aid providers that his case is not credible for asylum, but due to his persistence and finding of another representative, he was granted subsidiary protection in the end.⁶⁸⁷

It is reasonable to assume that there are plenty more cases such as the ones enlisted above.⁶⁸⁸ These cases clearly indicate that the number of applicants would have been higher if not for the restrictive and shallow approach some 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 recognition rate, in a system such as Serbia, 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 the 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 the asylum authorities, it is also important to conduct an analysis of all stages through which beneficiaries go 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 violations of the *non-refoulement* principle. The poor quality of legal assistance by CSOs is particularly patent in cases where access to territory and asylum procedure is at stake. Even though thousands of pushbacks to

⁶⁸³ Asylum Office, Decision No. 26-1601/20, 30 August 2021

⁶⁸⁴ Asylum Office, Decision No. 26-876/21, 10 November 2021.

⁶⁸⁵ Asylum Office, Decision No. 26-1791/21, 9 March 2021.

⁶⁸⁶ Asylum Office, Decision No. 26-1599/19, 22 November 2019 and AŽ 51/20, 24 December 2020.

⁶⁸⁷ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁶⁸⁸ 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 the Serbian asylum system.

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.⁶⁸⁹ 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.

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 training on CoE and UN standards regarding International Refugee and International Human Rights Law. The recruitment procedures should be designed, but also 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 assistance.

2. Dublin

Serbia does not participate in the Dublin system. For information related to be persons sent back to Serbia based on pushbacks or readmission agreements, please see [Access to asylum procedure for persons expelled/returned from neighbouring States](#).

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:⁶⁹⁰

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

Rules on interview, appeal and legal assistance are the same as in the [Regular Procedure](#), with the exception of appeals against the inadmissibility of a subsequent application which must be lodged within 8 days before the Asylum Commission.⁶⁹¹

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](#);⁶⁹²
2. The application is a [Subsequent Application](#).⁶⁹³

⁶⁸⁹ 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>

⁶⁹⁰ Article 42(1) and (3) Asylum Act.

⁶⁹¹ Article 42(4) Asylum Act.

⁶⁹² *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

⁶⁹³ Article 41(1) Asylum Act.

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.⁶⁹⁴ 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.⁶⁹⁵ This has not happened in practice so far.

The deadline for the Asylum Office to take a decision is 28 days from the lodging of the asylum application.⁶⁹⁶ In case the deadline is not met, the asylum seeker shall be allowed to enter the territory of Serbia in order for the regular procedure to be conducted.⁶⁹⁷

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.⁶⁹⁸

The border procedure was not used in the course of 2022 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. The planned reconstruction of Belgrade Airport have been finalised but the premises provided still do not meet the criteria for the longer stay.⁶⁹⁹

5. Accelerated procedure

The Asylum Act provides an accelerated procedure, which can be conducted where the applicant:⁷⁰⁰

- ❖ Has presented only facts that are irrelevant to the merits of the application;
- ❖ 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;
- ❖ 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;
- ❖ 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;
- ❖ Has lodged a [Subsequent Application](#) that is admissible;
- ❖ 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;
- ❖ Presents a threat to national security or public order; or
- ❖ 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.⁷⁰¹ The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.⁷⁰² 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.⁷⁰³

⁶⁹⁴ Article 41(2) Asylum Act.

⁶⁹⁵ Article 41(3) Asylum Act.

⁶⁹⁶ Article 41(5) Asylum Act.

⁶⁹⁷ Article 41(6) Asylum Act.

⁶⁹⁸ Article 41(7) Asylum Act.

⁶⁹⁹ The Ombudsman, *Представници компаније Belgrade Airport у посети Заштитнику грађана*, 16 December 2020, available at: <http://bit.ly/36thCNU>.

⁷⁰⁰ Article 40(1) Asylum Act.

⁷⁰¹ Article 40(2) Asylum Act.

⁷⁰² Article 40(3) Asylum Act.

⁷⁰³ Article 40(5) Asylum Act.

In 2022, the Asylum Office applied an accelerated procedure on three occasions.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Special Procedural Guarantees

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 or survivors of trafficking in human beings, 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.⁷⁰⁴

However, it remains unclear how in practice and in which kind of specific procedure relevant asylum authorities are conducting vulnerability assessments, what kind of decision do they render and how they design special and individualised programmes for meeting the special needs of the above-enlisted categories in different contexts (accommodation, provision of psycho-social support, provision of medical support, in asylum or integration procedure, etc.).

1.1. Screening of vulnerability

Article 17 of the Asylum Act envisages that the procedure for identifying the personal circumstances of a person is carried out by the 'competent authorities on a continuous basis' and at the earliest reasonable time after the initiation of the asylum procedure, or the expression of the intention to submit an asylum application at the border or in the transit zone.⁷⁰⁵

As already outlined, it is still not entirely clear in which form the Asylum Office, Asylum Commission or Administrative Court determines that an asylum seeker is in need of special procedural guarantees. It is also not clear how and when does CRM start the vulnerability assessment for special reception guarantees. Accordingly, the practice has shown that vulnerability assessments for the purpose of procedural or reception guarantees have never been conducted through a special procedure or through a separate decision which is rendered in some sort of procedure. It is also not clear if the CRM has any role in that regards, and in relation to reception guarantees, but the practice has shown that many vulnerable applicants have never benefitted from special reception guarantees.

What can be safely claimed is the fact is that the Asylum Office has been so far the only asylum authority which highlighted vulnerabilities of certain applicants in the reasoning of its decisions. In almost all decisions related to UASCs, the first instance authority explicitly stated that special procedural and reception guarantees were secured in UASC's cases since they were appointed a legal guardian, a legal representative and were accommodated in social care institution designated for children.⁷⁰⁶ This practice has remained unchanged in all of the UASC cases which were positively decided in 2022.

⁷⁰⁴ Article 17(1) and (2) Asylum Act.

⁷⁰⁵ Article 17(3) Asylum Act.

⁷⁰⁶ 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.

And indeed, accommodation of children in specialised social care institutions reflects special reception guarantees, while the appointment of the temporary legal guardian provides for the additional procedural security in asylum, but also other procedures. In all of these decisions, Asylum Office invoked Article 10 of the Asylum Act (best interest of a child principle) and Article 17 (special procedural guarantees).

Also, it has become undisputable since 2020, and in some of the cases even earlier,⁷⁰⁷ that certain types of vulnerabilities should be, and in practice are, identified by other state institutions, but also CSOs. Identification of such vulnerabilities is done through different forms such as decisions, reports, findings or expert opinions. Asylum authorities have been taking these into consideration during the decision-making process, which so far has been the case predominately with regards to UASCs, but also other vulnerable applicants:

1. UASC - 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). This decision contains description of different vulnerabilities which the temporary legal guardian, but also the case worker within the competent Social Welfare Centre, have determined.
2. Victims or survivors of trafficking in human beings - decision on granting the status of the survivor of the trafficking in human beings which is conducted by the Government's Centre for Human Trafficking Victims' Protection (CHTV) and which contains relevant segments of applicants vulnerability.
3. Sexual and gender-based violence report (SGBV report) – is only drafted and provided by the SGBV officer at the Dutch Refugee Council, Ms. Bojana Balević, which basically means that this kind of vulnerability assessment is conducted by one of the CSOs, not a state institution.
4. Psychological reports – drafted and provided by CSOs PIN and IAN and which are frequently cited in positive decisions. This also means that psychological reports are provided mainly by CSOs.
5. Psychiatric reports – drafted and provided by psychiatrists hired by PIN or IAN, and in rare situations by the State psychiatrist. The later one are usually provided in the form which is not suitable for the asylum authorities because very often they only contain the diagnosis and therapy, but not the causal link between the traumatic event which could amount to persecution and the symptoms which are being displayed or determined by the psychiatrist. This is not the case if CSO providing legal aid have funds for psychiatrists who are trained to provide reports in line with the Istanbul Protocol.
6. Medical reports – provided by different medical institutions and professionals which can also be used to flag the vulnerability of applicants to the asylum authorities and which was the case in several positive decisions.
7. Forensic medical reports – usually drafted and provided by forensic experts with extensive experience with torture survivors, but also the practice has shown that medical experts opinion were provided by psychiatrists, gynaecologist s(rape survivors) and infectious disease specialist (for HIV+ applicants)

As for the screening of the needs in terms of the special reception guarantees, it is safe to say that such screening does not exist, nor when the vulnerability is determined, special reception conditions are not provided for anyone except potentially for survivors of human trafficking and women at the imminent risk of SGBV (placed in CSO Atina's safe house), and also those UASC who decided to apply for asylum. For all other categories, they are offered with regular accommodation unless they are not suffering for medical condition so serious that their health can significantly deteriorate or life can be threatened if not accommodated in medical institution.

Regardless of the type of vulnerability, the common feature of all kinds of screening mechanisms is that they largely depend on the work of and referrals made by different CSOs, but are in many cases

⁷⁰⁷ For instance, Asylum Office, Decisions No. 4329/18, 26 December 2017 – person with the status of the victim of trafficking in human beings.

conducted in cooperation with different state institutions. Thus, the State support system can be described as partially effective with regards to UASCs and survivors of human trafficking, and strongly dependant on limited resources of CSOs who assist UASC, survivors of trafficking in human beings, victims of SGBV, persons with health and mental issues, torture survivors, etc.

It should be also borne 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 or the support for these persons does not exist. However, the past several years has shown some improvements in the joint work of state institutions and CSOs.

Unaccompanied and separated children

UASCs who decide 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.⁷⁰⁸ 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.⁷⁰⁹ 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.⁷¹⁰ Also, the Asylum Act stipulates that all activities carried out with the child must be in accordance with the best interests of the child.⁷¹¹

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**.⁷¹² 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.⁷¹³ 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).⁷¹⁴ According to the UNHCR, 973 UASC were recorded entering Serbian territory in 2022, but only 82 of them were issued with the registration certificate, and only 4 effectively lodged an application for international protection.⁷¹⁵ Out of the 82 children with a registration certificate, almost all received a more detailed support, while at least 25 underwent best interest assessments (BIA).⁷¹⁶ Thus, substantial support was provided to less than 3% of all recorded UASC. BID decisions were rendered in 8 instances, and in relation to UASC who applied for asylum or temporary residence on humanitarian grounds.

⁷⁰⁸ Article 6 (1) Family Law.

⁷⁰⁹ Article 26 and 35 Social Protection Act.

⁷¹⁰ Article 30 and 32 Rulebook on the Work of Centre for Social Work

⁷¹¹ Article 10 Asylum Act.

⁷¹² Article 48 Rulebook on the Work of Centre for Social Work.

⁷¹³ Only 20 in 2019, and for the purpose of asylum procedure.

⁷¹⁴ Only 20 in 2019, and for the purpose of asylum procedure.

⁷¹⁵ UNHCR statistic are available at: <https://bit.ly/2LkIrZY>.

⁷¹⁶ 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.

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 2022, CHTV identified only 3 persons who belong to the refugee population as a survivor of human trafficking – three women from Uganda, Cameroon and Burundi.⁷¹⁷ Still, in the vast majority of cases, CSOs are the ones who report alleged cases of human trafficking. According to Astra (a CSO specialised in providing assistance to the victims), Serbia does not have an official procedure for the victim's identification.⁷¹⁸

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.⁷¹⁹ The CHTV then renders a **decision on the recognised 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 the asylum procedure is usually conducted by the Psychosocial Innovation Network (PIN) and IAN (implementing partner of UNHCR in 2022). In 2022, PIN and IAN identified, assisted, counselled and further referred several dozen asylum seekers, refugees and migrants. Several dozen psychological assessments was lodged to the Asylum Office for the purpose of asylum procedure, and upon the request of legal representatives.

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%.⁷²⁰ Similar findings are repeated almost every year.⁷²¹

As a response to the identified needs, standards for mental health protection of refugees, asylum seekers, and migrants in Serbia are defined in the *Guidance for protection and improvement of the mental health of refugees, asylum seekers and migrants in Serbia*⁷²², 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.⁷²³ The four layers of screening are yet to take place in practice.

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

⁷¹⁷ CHTV, *Annual Statistical Report*, available at: <https://bit.ly/3xXcCp4D>.

⁷¹⁸ Report on Trafficking in Persons: Serbia 2019, letter to US State Department, Astra (20 June 2019), available (in Serbian) at: <http://bit.ly/3bVYqJl>.

⁷¹⁹ Article 62 Social Protection Act.

⁷²⁰ 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.

⁷²¹ PIN, *Mental Health and Wellbeing of Refugees and Asylum Seekers in Serbia 2022 Research Report*, available at: <https://bit.ly/41ERZUY>.

⁷²² 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>.

⁷²³ *Ibid.*

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. In 2022, a total of 4 Istanbul Protocol Reports were drafted and submitted to the Asylum Office in relation to the individuals who were subjected to different forms of ill-treatment, as well as one psychological support for the transgender person from Cuba which was produced by the clinical psychologist for transgender persons.

Persons at risk of SGBV and SGBV survivors

In 2022, 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 2022 outside asylum procedure. Additionally, DRC established the first Women Safe Space inside Asylum Centre in **Krnjača**. The space was used by 3 organisations (DRC, ADRA and Atina) where they conducted activities raising awareness on women rights and provided direct assistance to the beneficiaries. Community based protection has been integral part of DRC field activities and therefore DRC trained three female asylum seekers to be gender focal points in AC Krnjača. In 2022, DRC has identified 23 survivors of SGBV who had the status of asylum seekers, produced 7 SGBV reports and contributed to the positive decision of two applicants – 1 from Burundi and 1 from Afghanistan.

When it comes to the response of the competent 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 the asylum procedure, negative decisions rendered without SGBV safeguards, as well as challenges with regards to inclusion and integration (employment, housing, child care, etc) accompanied by pressure from their families in their countries of origin, have been a driving force for the majority of the SGBV survivors to continue their 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 basic needs.

It is important to mention that the 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 another case, which involved rape, the survivor lived with an abusive partner and escaped from them, but was later on raped on the way to Europe. Furthermore, the 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 with regard to their culture and origin prevail in many facilities, affecting the timely reactions to SGBV.

The majority of SGBV incidents in centres happened during late evening hours or weekends, when specialised organisations or institutions like social welfare centres were not present.⁷²⁴ The response usually depends on the knowledge and beliefs of persons who are on duty in reception facilities. In almost

⁷²⁴ According to the CRM, 10 cases of domestic violence were reported to the Public Prosecutor Office.

all cases the police was informed, but practice shows that further prosecution still depends on the willingness of the survivor to testify even though it is not mandatory by 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 an SGBV case, SWC is obliged to conduct the interview with the 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 they understand. According to DRC experience, in almost all cases the survivors were not informed about the plans and measures prescribed by SWC.⁷²⁵

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 the asylum authorities have recognised an 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.'⁷²⁶

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,⁷²⁷ it is not prescribed how the age would be established, leaving it up to the competent authorities to arbitrarily ascertain the age of persons lacking personal documents from the country of origin. On 16 September 2020, IDEAS 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.⁷²⁸

According to the current legal framework, the MoI and the social protection system are primarily responsible for protecting the rights of unaccompanied and separated children in the Serbian asylum system, but the health care system also plays a significant role. In line with the MoI 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 the mainland), the police officer is obliged to determine whether there is an urgent need for provision of health care⁷²⁹ and if so, the police officer is obliged to contact the competent health-care services.⁷³⁰ Also, a UASC identified at the border shall not be served with a decision on refusal of entry but will receive a decision granting them entry.⁷³¹

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 a photograph, or exceptionally, based on the statement of the person whose identity has been verified.⁷³² Regarding UASC who do not have identification documents, and if the identity cannot be verified in another way, the identity will be

⁷²⁵ All the data on the work with SGBV asylum seekers was provided by the DRC Protection Team.

⁷²⁶ Article 2 Asylum Act.

⁷²⁷ Article 35(6) Asylum Act.

⁷²⁸ Ministry of Justice, Legal Opinion No. 011-00-125/2020-05, 16 September 2020.

⁷²⁹ Page 20 SoP.

⁷³⁰ *Ibid.*

⁷³¹ Article 15 Foreigners Act.

⁷³² Article 76 Police Act.

determined by using data from forensic records, applying methods and using means of criminal tactics and forensics, medical or other appropriate expertise.⁷³³ It is not clear what kind of tests and forensic analysis is implied through this provision because that kind of age assessment has never been performed. In order to establish their identity, the child can be brought to the official premises of the police.⁷³⁴ The police officer is obliged to inform the child, when bringing them, about the reasons for bringing them, their right to inform family or other persons of their choice and other rights of persons deprived of liberty and in a language that the child understands.⁷³⁵

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 they have a document.⁷³⁶ This report should be then submitted to the competent Centre for Social Work (CSW) in order for a child to be taken over by the social-care system.⁷³⁷ A police officer shall contact a representative of the CSW without 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 the 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 973 children recorded in 2022, only 82 were registered, 4 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 the 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 UASC 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 2022⁷³⁸ and in general, 2022 was the year in which only few UASC applied for asylum – only 4. 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 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.⁷³⁹ 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 the Asylum Act, the 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 seeker's 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.⁷⁴⁰ On 4 April 2018, the Ministry of Labour, Employment, veteran

⁷³³ Article 77 Police Act.

⁷³⁴ Article 12 (2) Rulebook on Police Powers.

⁷³⁵ Article 85 Police Act.

⁷³⁶ Which is usually not the case taking in consideration that the cast majority of children are UASC.

⁷³⁷ Article 12 (2) Rulebook on Police Powers.

⁷³⁸ All the information was obtained from IDEAS.

⁷³⁹ 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.

⁷⁴⁰ There is no record that an age assessment procedure has ever been conducted in line with the Family Act.

and Social Affairs adopted the Instruction on Procedures of Social Work Centres⁷⁴¹ which envisages that the field social worker is in charge for identifying and coordinating support to UASC as long as the child is not put under the jurisdiction of professional social worker.⁷⁴²

Still, the identification of unaccompanied minors continues to be done on the spot by officials (most often police officers) and CSO employees, establishing first contact with potential asylum seekers. The SWC are understaffed and they usually react when the MoI or CSO inform them of a UASC'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.⁷⁴³ The Committee on the Rights of the Child,⁷⁴⁴ and the Human Rights Committee,⁷⁴⁵ 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 the other case, a boy from Guinea, has been finally appointed with a temporary guardian and was granted temporary residency on humanitarian grounds. 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 UASC 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 to two boys –from 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 invoked the practice of the CRC and its General Comments.⁷⁴⁶ However, both of these requests were rejected as unfounded by both Asylum Office⁷⁴⁷ and Asylum Commission.⁷⁴⁸ The children eventually left Serbia and these cases were discontinued.

⁷⁴¹ 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.

⁷⁴² Section II, para. 2 of the Instruction on Procedure of Social Work Centres.

⁷⁴³ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 97-98.

⁷⁴⁴ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, 56-57.

⁷⁴⁵ HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, para. 32-33.

⁷⁴⁶ 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.

⁷⁴⁷ Asylum Office, Decisions Nos. 26-3229/19, 21 May 2021 and 26-11/21, 13 April 2021.

⁷⁴⁸ Asylum Commission, Decision No. AŽ 09/21, 5 July 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.⁷⁴⁹

In 2022 there were 10 decisions in which members of particularly vulnerable groups were granted asylum. However, in most of the cases their asylum procedure did not differ from any other procedure. Moreover, the length of the procedure can be described as extensive. However, it is important to note that in these decisions the Asylum Office took into consideration the vulnerability of the applicants' in terms of their age, state of health, gender or psychological state.⁷⁵⁰ Also, there were several procedures which lasted between 3 to 8 months, which is more acceptable than the cases which lasted for more than 1 year.

No.	Case No.	Date of Asylum Application	Date of Decision	Country of Origin	Type of protection	Length of procedure	Vulnerability
1.	26-1437/21	April 2021	31.03.2022	Niger	Subsidiary Protection	11 months	UASC
2.	26-1569/21	23.08.2021	24.06.2022	Syria	Subsidiary Protection	10 months	Single mother with children at risk of SGBV
3.	26-2296/22	15.03.2021	29.06.2022	Burundi	Refugee Status	3,5 months	Survivor of SGBV
4.	26-346/21	24.02.2021	29.06.2022	Cameron	Subsidiary Protection	14 months	Serious physical disability
5.	26-277/21	12.02.2021	13.07.2022	Afghanistan	Subsidiary Protection	15	UASC
6.	26-1635/21	31.08.2021	17.08.2022	Afghanistan	Refugee Status	11,5 months	Survivor of SGBV and her family
7.	26-730/22	28.02.2022	31.08.2022	Afghanistan	Subsidiary Protection	6 months	UASC
8.	26-688/22	24.03.2022	15.09.2022	Cuba	Subsidiary Protection	7 months 13 months	LGBTQI+ and HIV+
9.	26-281/11	20.10.2021	10.11.2022	Afghanistan	Refugee Status	13 months	UASC
10.	26-1177/22	April 2022	01.12.2022	Syria	Subsidiary Protection	8 months	UASC

⁷⁴⁹ Article 15 Asylum Act.

⁷⁵⁰ The most important decisions regarding vulnerable applicants are analysed in the Chapter C.1. – Asylum Practice in 2021.

National law further foresees the exemption of unaccompanied children from accelerated and border procedures.⁷⁵¹

3. Use of medical reports

Indicators: Use of medical reports

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

Medical or psychological reports may be used in order to substantiate asylum claims; as is prescribed by the General Administrative Procedure Act.⁷⁵² 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 2022 the Asylum Office did not submit any request to PIN or IAN, 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 their statement. On the other hand, there were several cases in which the Asylum Office, but also the second and the third instance authorities failed to take into consideration the 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.⁷⁵³

The second time the Asylum Office directly took into consideration the state of health of the applicants was in December 2017, when one Nigerian⁷⁵⁴ and one Bangladeshi⁷⁵⁵ nationals were granted subsidiary protection due to paraplegia and quadriplegia respectively. In both of the said decisions the Asylum Office took into consideration the 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.⁷⁵⁶

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 recognised as a victim of human trafficking.⁷⁵⁷ 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,⁷⁵⁸ as well as the BID,⁷⁵⁹ while the report of the psychiatrist was taken in consideration in the case of Uyghur applicant from China who is a torture victim.⁷⁶⁰ This practice continued in 2021 and in cases of Afghan⁷⁶¹ and Pakistani⁷⁶² UASC, Iranian torture victim⁷⁶³ and two torture victims

⁷⁵¹ Articles 40(4) and 41(4) Asylum Act.

⁷⁵² 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.

⁷⁵³ ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

⁷⁵⁴ Asylum Office, Decision No. 26-4370/15, 27 December 2017.

⁷⁵⁵ Asylum Office, Decision No. 26-5044/15, 25 December 2017.

⁷⁵⁶ Asylum Office, Decision No. 26-222/15, 3 July 2018.

⁷⁵⁷ Asylum Office, Decision No. 26-329/18, 28 December 2019.

⁷⁵⁸ Asylum Office, Decisions Nos. 26-2348/17, 28 January 2019; 26-2643/17, 30 January 2019; 26-1605/18, 15 March 2019.

⁷⁵⁹ Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

⁷⁶⁰ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

⁷⁶¹ Asylum Office, Decision No. 26-1084/20, 7 June 2021

⁷⁶² Asylum Office, Decision No. 26-3064/19, 14 September 2019.

⁷⁶³ Asylum Office, Decision No. 26-108/20, 27 August 2021.

from Burundi.⁷⁶⁴ An Afghan applicant received subsidiary protection due to inability to receive medical 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. The Asylum Office closely examined forensic medical reports from two Burundian applicants, as well as a psychological report lodged by torture victim from Iran.

In 2022, the Asylum Office took in consideration Istanbul Protocol report drafted in relation to an SGBV survivor from Burundi,⁷⁶⁵ as well as SGBV survivor from Afghanistan.⁷⁶⁶ Both of these cases also contained SGBV reports from DRC and psychological reports from PIN or IAN. All reports were provided by legal representatives. Also, every UASC's legal representative lodged BID. Medical report was also used in the case of Cuban applicant⁷⁶⁷ and the Asylum Office made a reference to relevant ECtHR jurisprudence which is related to the risks of inhumane and degrading treatment due to the lack of adequate health care.⁷⁶⁸

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 slightly higher number of children, including unaccompanied and separated children in particular, was registered in the course of 2022 and at the same time the number of genuine asylum seekers out of this population remains low. In total, 82 UASC were issued with the registration certificate (compared to 60 in 2019). However, only 4 of them submitted asylum application.

In the history of the Serbian asylum system, only 16 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

⁷⁶⁴ Asylum Office, Decisions Nos. 26-1337/20, 29 June 2021 and 26-103/20, 30 June 2021.

⁷⁶⁵ Asylum Office, Decision No. 26-2296/22, 29 June 2022.

⁷⁶⁶ Asylum Office, Decision No. 26-1635/21, 17 August 2022.

⁷⁶⁷ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁷⁶⁸ E.g. ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

					treatment in country of origin
10.	26-3064/19	14 September 2019	Pakistan	Refugee Status	Human Trafficking – Sexual and Labour Exploitation
11.	26-1437/21	31 March 2022	Niger	Subsidiary Protection	State of general insecurity – Boko Haram
12.	26-277/21	13 July 2022	Afghanistan	Subsidiary Protection	State of general insecurity caused by Taliban
13.	26-1635/21	17 August 2022	Afghanistan	Refugee Status	Ethnic persecution
14.	26-730/22	31 August 2022	Afghanistan	Subsidiary Protection	State of general insecurity caused by Taliban
15.	26-1177/22	1 December 2022	Syria ⁷⁶⁹	Subsidiary Protection	State if general insecurity in Syria

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.⁷⁷⁰

The Asylum Act explicitly prescribes the principle of the best interests of the child. Accordingly, when assessing the best interests of the child, the competent authorities must take into account the well-being, social development and background, their views depending on their age and maturity, the principle of family unity and the need to provide assistance, particularly it is if suspected that the child might be a victim of human trafficking, a victim of family violence or other forms of gender-based violence.⁷⁷¹

The guardianship for an unaccompanied child is governed by the Family Act that prescribes conditions and rules for the 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 and 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.⁷⁷²

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 their asylum application.⁷⁷³ The police cannot register an unaccompanied child who has expressed the wish to seek asylum in absence of a temporary guardian.⁷⁷⁴

The temporary guardian must be present with the child in all the procedures before the state authorities and represent their 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

⁷⁶⁹ Brother and sister.

⁷⁷⁰ 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.

⁷⁷¹ Article 10(2) Asylum Act.

⁷⁷² Articles 125 and 126 Family Act.

⁷⁷³ Article 12 Asylum Act.

⁷⁷⁴ Article 11 Asylum Act.

interest of a child put into their guardianship, and a person who due to different reasons cannot be expected to properly perform the activities of a guardian.⁷⁷⁵

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.⁷⁷⁶ For instance, it was a frequent situation that one guardian was appointed for dozens of UASC making it impossible for them to develop a meaningful and trusting relationship with the children notwithstanding their enormous efforts and motivation.⁷⁷⁷ Thus, only those children who apply for asylum are provided with the possibility to establish a deeper connection with the multidisciplinary team which involves a legal representative, a temporary legal guardian and a 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.

It is worth mentioning that a special instruction was issued by the Government which stipulates that field social workers inform the territorially competent guardianship authority immediately upon the information or direct knowledge about an unaccompanied child.⁷⁷⁸ The next step is the urgent appointment of a temporary guardian to the child.

In 2022, **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 the asylum procedure, (except in one case where the procedure lasted for 6 months), interviews and the 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.⁷⁷⁹

⁷⁷⁵ Article 128 Asylum Act.

⁷⁷⁶ 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.

⁷⁷⁷ That was the case in AC in Bogovadja, which was designated for the accommodation of UASC in 2020, as well as AC in Sjenica.

⁷⁷⁸ 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.

⁷⁷⁹ 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.

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 they can provide evidence that the circumstances relevant to recognising their right to asylum have changed substantially or if they can provide any evidence that they did not present in the previous procedure due to justified reasons.'⁷⁸⁰ 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.⁷⁸¹ The applicant must provide all the above and bring forward evidence in a comprehensible manner.⁷⁸² 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.⁷⁸³

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.⁷⁸⁴

In 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.⁷⁸⁵ 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. The same practice continued in 2022 when two subsequent asylum applications were rejected as unfounded.

Two decisions from 2021 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 the 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 an 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 a legal representative is an additional argument that goes in favour of their position that there is no justification for not bringing that up in the initial procedure.⁷⁸⁶

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 was never 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:

⁷⁸⁰ Article 46(1) Asylum Act.

⁷⁸¹ *Ibid.*

⁷⁸² Article 46(2) Asylum Act.

⁷⁸³ Article 46(3) Asylum Act.

⁷⁸⁴ Article 46(4), (5) and (6) Asylum Act.

⁷⁸⁵ ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

⁷⁸⁶ Asylum Office, Decision No. 26-2404/18, 7 June 2021.

- he was in mental distress due to the COVID-19 pandemic as an extremely vulnerable and traumatized applicant who suffered from Albinism. A 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 the Asylum Office 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.

The arguments of the Pakistani subsequent applicant were rejected and the essence of the reasoning was that he had legal representatives who should have ensured that he outlined all the evidence. Also, the argument that his case has never been examined in merits, but simply discontinued was 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.⁷⁸⁷

Additional two decisions from 2022 can be outlined as similar to those from 2021, but with an element of the national security assessment of BIA. Namely, in both of the cases applicants did not enjoy adequate legal support by incompetent attorneys at law in their initial asylum procedure and in both cases their asylum procedures were discontinued.

In the case of Turkish Political activist,⁷⁸⁸ the applicant failed to underline an entire set of crucial evidence which indicate his political persecution in Türkiye. His lawyer was unable to fill out a very simple asylum application form, he did not prepare him for the hearing while in extradition detention, nor he did Col research and submitted the Col report. In the end, after asylum application was rejected as well as the appeal, the lawyer failed to lodge complaint to the Administrative Court and the case was discontinued.

In another case of Kyrgyz national,⁷⁸⁹ the applicant was also in extradition detention and before his asylum hearing, his lawyer cancelled the power of attorney. When realized that he does not have legal representative, and in the context of asylum hearing conducted in extradition detention, the applicant refused to take part in the hearing due to distress. This was also the reason why his asylum procedure was discontinued.

Both applicants, with the help of their new legal representatives, decided to lodge subsequent asylum application outlining now in details with an entire set of facts which were not put forward in their past procedures, but also some new facts which arose in the meantime. As it was the case in subsequent asylum procedure of the Pakistani boy, the Asylum Office outlined the following.

1. the facts outlined were not new
2. the fact that applicants had legal representatives in previous asylum procedure was taken as a safeguard that applicants were able to outline all the crucial facts, but there was not assessment of their competence and commitment
3. the incompetence of legal representatives was not considered at all as the argument for subsequent application.

In the case of Kyrgyz national, where the first instance procedure was concluded before the first instance decision was rendered, it is clear that Asylum Office has never taken in consideration a single fact which could indicate to the persecution but declared that the facts outline in subsequent asylum application were insufficient. In other words, Asylum Office denied the applicant the possibility for his case to be examined in merits.

⁷⁸⁷ Asylum Office, Decision No. 26-3229/19, 21 May 2021.

⁷⁸⁸ Asylum Office, Decision No. 26-1247/21, 30 August 2022.

⁷⁸⁹ Asylum Office, Decision No. 26-2052/21, 23 August 2022.

Decisions on rejection of subsequent asylum applications were confirmed by the Asylum Commission⁷⁹⁰ and both cases are currently pending before the Administrative Court. What is also common for these two cases is that CAT has imposed interim measures to the Government of Serbia.

There were no instances in which applicants who had been returned to their countries of origin came back to Serbia and lodged subsequent applications. Applicants who lodge subsequent applications are considered to be asylum seekers and are entitled to material reception conditions.

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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Does national legislation allow for the use of “first country of asylum” concept?	<input checked="" type="checkbox"/> Yes	<input 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.⁷⁹¹ 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 their individual case.

In 2021, the Asylum Office dismissed 4 asylum applications 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 below described concepts they referred. In 2022, there were no such decisions.

1. Safe country of origin

A country shall be considered as a safe country of origin where, on the basis of the legal situation, the application of the law, and the general political circumstances, it is clear that there are no acts of persecution in the sense of Article 1 of the Refugee Convention, nor of risk of treatment contrary to absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment.⁷⁹² The assessment of safety is conducted in line with the following criteria:

- ❖ The relevant laws and regulations of the country, and the manner in which they are applied;
- ❖ 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;
- ❖ Observance of the *non-refoulement* principle;
- ❖ Application of effective legal remedies.⁷⁹³

The Asylum Act explicitly recognises that the safe country of origin assessment implies the use of information from sources such as EUAA, 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 a case by case basis.⁷⁹⁴

⁷⁹⁰ Asylum Commission, Decision Nos. AŽ 24/22, 12 October 2022 and AŽ 27/21, 7 November 2022.

⁷⁹¹ Article 43-45 Asylum Act.

⁷⁹² Article 44 Asylum Act.

⁷⁹³ Article 44 (1) Asylum Act.

⁷⁹⁴ Article 44 (2) and (5) Asylum Act.

However, it is prescribed that the Government shall determine a List of Safe Countries of Origin, on the proposal of the Ministry of Foreign Affairs which can be revised as needed, taking into account the above enlisted criteria,⁷⁹⁵ as well as ‘the views of the competent authorities specified by this Law.’⁷⁹⁶ 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 their case.⁷⁹⁷ This list is yet to be adopted.

The safe country of origin concept was applied only once in practice so far and in relation to the citizen of **Montenegro**.⁷⁹⁸ This decision was confirmed during the course of 2019 by both the Asylum Commission⁷⁹⁹ and the Administrative Court.⁸⁰⁰ No decisions relying on the safe country of origin concept were rendered in 2020, 2021 and 2022 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.⁸⁰¹ Throughout the years, the asylum authorities automatically relied on the Safe Countries List denying *prima facie* refugees the possibility for their asylum claim to be decided in merits.⁸⁰² Moreover, this practice was equally damaging for the applicants who did not have *prima facie* claims regarding their country of origin, but had an arguable claim⁸⁰³ 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 at the time of updating of this Report.⁸⁰⁴ 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. In 2022, there were no STCC decisions.

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.⁸⁰⁵

⁷⁹⁵ Article 44 (3) Asylum Act.

⁷⁹⁶ Article 44 (4) Asylum Act.

⁷⁹⁷ Article 44 (6) Asylum Act.

⁷⁹⁸ Asylum Office, Decision No. 26-1720/18, 21 December 2018.

⁷⁹⁹ Asylum Commission, Decision AŽ 2/19, 1 March 2019.

⁸⁰⁰ Administrative Court, Judgment U 5037/19, 12 June 2019.

⁸⁰¹ AIDA, Country Report Serbia, 2020 Update, May 2020, p. 57-58.

⁸⁰² 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.

⁸⁰³ 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.

⁸⁰⁴ 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.

⁸⁰⁵ Article 45(1) Asylum Act.

Interpreting the Asylum Act as a whole, it follows from Article 32 that the Asylum Office collects and considers all the relevant facts, evidence and circumstances when deciding on the merits of the asylum application as well as on the assessment of a certain third country as “safe”. Under ‘facts, evidence and circumstances’ it considers ‘current reports about the situation in... countries of transit [of the applicant], including the laws and regulations of these countries and the manner in which they are applied – as contained in various sources provided by international organizations including UNHCR and the European Asylum Support Office... and other human rights organisations.’

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

In establishing conditions for the 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 they could seek asylum in that country.⁸⁰⁶ 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 them 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 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 their country of origin or habitual residence, and whether they 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 their 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 are 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 this will 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, the key issue relating to every forcible removal procedure. The issues that remain after the beginning of the 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

⁸⁰⁶ Article 45(2) Asylum Act.

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 them.

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 they 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.⁸⁰⁷

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to their specific circumstances.⁸⁰⁸

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,⁸⁰⁹ but the author of this report cannot say 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.⁸¹⁰ The 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.⁸¹¹

Another case concerns the client of APC whose asylum application was dismissed because he was granted UNHCR refugee mandate status in Türkiye. All three instances took a stance that Türkiye should be considered as first country of asylum, even though the protection was granted by UNHCR.⁸¹²

In 2022, there were no decisions in which asylum authorities invoked first country of asylum concept.

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

Indicators: Information on the Procedure

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

A foreigner who has expressed their intention to seek asylum in Serbia, as well as a person who lodged their asylum application shall have the right to be informed about their rights and obligations throughout the asylum procedure.⁸¹³

The provision of relevant information, as well as something which can be considered as legal orientation is a primary task of the State and relevant police stations and police departments in which foreigners who

⁸⁰⁷ Article 43(1) Asylum Act.

⁸⁰⁸ Article 43(2) Asylum Act.

⁸⁰⁹ Asylum Office Decision No. 26-1515/19 of 13 August 2020.

⁸¹⁰ BCHR, Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020, 22-23.

⁸¹¹ See more in, BCHR, *Right to Asylum in the Republic of Serbia 2021*, 60.

⁸¹² Administrative Court, Judgment U 13967/20, 13 November 2020.

⁸¹³ Article 56(1) Asylum Act.

might be in need of international protection should be the first line of information provision. Still, the reality has shown that information for refugees and migrants is provided by an entire set of state and non-state actors.

The main entry points to Serbia are from North Macedonia on the south and Bulgaria on the east. For that reason, and especially with regards to people coming from North Macedonia, the first place where persons in need of international protection can receive information is the RC in Preševo. However, and taking in consideration the fact that Serbia is facilitating pushback operations, it would be highly unlikely that refugees and asylum seekers would consider border police departments as places where they could obtain information on the asylum procedure in Serbia.

Another reality in practice is that the most of the foreigners go directly to reception facilities in Belgrade or in border areas with EU countries. Thus, in most of the instances they tend to avoid initial reception facilities, but also police departments in which they could be registered, but also provided with adequate legal information.

Thus, most of the information is provided in reception facilities in Belgrade, which does not exclude that many CSOs and international organizations are distributing leaflets in all other reception facilities, but also on the field. Basically, UNHCR, IOM and probably more than 10 CSOs have designed their own leaflets and posters which are multilingual, adapted to special needs of children or other vulnerable categories and others.

However, the fact that only 320 out of around 120,00 foreigners who were noticed in Serbia decided to apply for asylum indicates a problem of the quality of information provision and legal orientation. Basically, all info sessions came down to the distribution to technical information and leaflets.

Police departments around Serbia tasked with issuing the registration certificates have started to provide information through state developed leaflets. According to the information provided by the members of the Asylum Office, these leaflets were distributed to all police departments in January 2023. The time will tell to which extent these leaflets will increase the number of people who wish to apply for asylum

As for persons in need of international protection who are detained by police forces on the grounds of their irregular stay in border areas, if not pushed back, the question that remains open is to which extent are they provided with access to rights of persons deprived of their liberty. CSOs, as well as UNHCR do not have access to these people, nor these people in practice are provided with the information on their possibility to apply for asylum. This conclusion is drawn from the relevant legal framework and the Rulebook on Police Powers which governs the provision on information of persons deprived of their liberty does not explicitly prescribe the responsibility of acting police officers to inform detained foreign nationals on their right to apply for asylum.⁸¹⁴

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
2. Are applications from specific nationalities considered manifestly unfounded?⁸¹⁵ Yes No

Until 2022, there had been no *a priori* difference in the treatment of asylum seekers based on their nationality in terms of the asylum procedure. However, in 2022, and for the first time in the history of the Serbian asylum procedure, temporary protection has been introduced as a form of international protection, and for refugees fleeing Ukraine.

Since the entry into force of the Asylum Act in 2008, the asylum authorities in Serbia have rendered 158 decisions granting asylum (refugee status of subsidiary protection) to 226 persons from 26 different

⁸¹⁴ Rulebook on Police Powers, Official Gazette no. 41/2019 i 93/2022, available in Serbian at: <https://bit.ly/2JOiIh1>.

⁸¹⁵ Whether under the “safe country of origin” concept or otherwise.

countries⁸¹⁶ including from Libya (47), Syria (37), Afghanistan (33), Iran (22), Iraq (16), Ukraine (15), Burundi (9), Cuba (8), Sudan (5), Somalia (5), Pakistan (4), Ethiopia (3), Russia (3), Cameroon (3), Nigeria (2) Türkiye (2), Stateless (2) Lebanon (1), Egypt (1), South Sudan (1), Bangladesh (1), Tunisia (1), Kazakhstan (1), Mali (1), Niger (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 **Ukrainian** asylum applicants who had priority in asylum procedure. It is also important to note that Turkish political activists, mainly of Kurdish origin, stand no chance to receive international protection and that political, but also influence of BIA implies that refugees from this country should avoid Serbia at any cost.

For detailed information on the practice regarding each nationality, please see [Regular Procedure – General](#).

⁸¹⁶ The author of this Report has collected 135 out of 158 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 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.

Short overview of the reception system

The Commissariat for Refugees and Migration (CRM) is in charge of governing asylum and reception centres in Serbia.⁸¹⁷ 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 people on the move in 2022.

According to CRM, in 2022 the total capacity of the 19 asylum and reception centres increased from 5,915 to 8,155 beds. Accordingly, the reception capacity is mostly measured in terms of available beds and not in accordance with certain standards, for instance, EUAA Guidelines,⁸¹⁸ or other standards developed by other bodies such as CPT,⁸¹⁹ or the CESCR.⁸²⁰

Most of the facilities are collective accommodation centres or even a large-scale type since only RC **Dimitrovgrad** has reception capacity below 100 beds. Thus, realistic capacity of both Asylum and Reception Centres would be between 3,000 to 3500 places to be used for longer stays, in view of the need to meet existing standards in terms of dignified and safe accommodation. When it comes to the Asylum Centres, maximum available capacity is 2,000 places. Still, it is hard to give a clear picture on the realistic reception capacities which are in line with the relevant human rights standards since not a single independent entity has ever conducted non-biased, impartial and thorough monitoring of reception facilities. Also, the living conditions can vary depending on the number of persons accommodated.

What is important to note is the fact that since 2015, significant financial resources were provided to Serbia from the EU. This does not include the resources provided by international organisations such as the UNHCR or IOM, but also individual countries and agencies. The significant proportion of these resources was used for the establishment of the reception centres network and material reception conditions, as well as the expansion of the capacities of the CRM.

In the Government's press statement from October 2022, it was outlined that 'since the start of the migrant crisis in 2015 until today, including the grant agreement worth €36 million signed today, the EU has helped Serbia with €200 million for strengthening institutional capacity for migration management.'⁸²¹ It was further highlighted that since 2015, more than 1.5 million refugees and migrants passed through Serbia and over 10 million overnight stays were made.⁸²² Out of 160 million EUR provided before the signing of the new agreement in October 2022, €130 million was designated for migration management and for prevention of illegal migration, while €30 million for border security.⁸²³ The question that remains opens is how these resources were spent taking in consideration that at least 40% of reception facilities are not adapted for the longer stay of people who might be in need of international protection.

Additionally, during the COVID-19 lockdown in 2020,⁸²⁴ two additional emergency shelters in **Miratovac** and **Morović** were established but they were not operational in 2021 and 2022, and it is reasonable to

⁸¹⁷ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁸¹⁸ EASO, *EASO guidance on reception conditions: operational standards and indicators*, September 2016, available at: <http://bit.ly/3j1XabQ>.

⁸¹⁹ 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.

⁸²⁰ 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>.

⁸²¹ The Government of Serbia, EU to help Serbia prevent illegal migration, 7 October 2022, available at: <https://bit.ly/41w4qli>.

⁸²² *Ibid.*

⁸²³ *Ibid.*

⁸²⁴ 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.

assume that such establishments will not be used in the future.⁸²⁵ Still, it is important to remain aware that 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 tent facilities are also the feature of many reception facilities such as those in **Adaševci**, **Sombor**, **Principovci**, **Subotica** and **Kikinda**.

It is also worth reiterating that the asylum procedure is conducted only in asylum centres, and mainly in AC **Krnjača**. The asylum procedure was conducted in AC **Tutin** and AC **Sjenica** only a handful of times (3 in total), while there were no such cases recorded in other asylum and especially not in reception centres. .

The foreigners who are issued with registration certificates and referred to the 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 the asylum procedure (in 2022 it was mainly AC Krnjača). More than 100 foreigners lodged by themselves written asylum applications from the Reception Centres or asylum centres to which the Asylum Office did not go, after which they were transferred to AC Krnjača. However, there were also instances in which genuine asylum seekers decided not to go to remote asylum centres knowing that they would not have prospect of having their asylum procedure conducted swiftly, but also because they were not able to cover the costs of transportation to remote centres such as those in Tutin or Sjenica.

In 2022, CRM designated RC Šid for accommodation of UASC. No single collective facility, including RC Šid, meets child-specific standards. It should be noted, however, that in 2022 RC Šid was not overcrowded, and hygiene levels were acceptable. In 2021, AC Banja Koviljača was closed for the purpose of refurbishment and was not opened in 2022.

RC Obrenovac and RC Vranje were officially turned into Asylum Centres in 2021 since they underwent refurbishment.⁸²⁶ As of 20 April 2022, AC Vranje accommodated on average 70 refugees from Ukraine. It is also important to note that for the most of 2022 AC Bogovađa was not operational, as well as RC Bela Palanka (Divljana) and Dimitrovgrad.

According to the Asylum Act, a foreigner obtains the status of asylum seeker only after they lodge an asylum application.⁸²⁷ Prior to that, persons issued with registration certificates are not considered to be asylum seekers and thus are not entitled to rights and obligations envisaged in the Asylum Act, which encompass the right to accommodation.⁸²⁸ Accordingly, even though the vast majority of foreigners were accommodated in asylum and reception centres in the course of 2022, they were not explicitly entitled to it under the Asylum Act, the 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 have been 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 final draft of Amendments to the Asylum Act intends to remedy this situation and recognises a new category of persons in need of international protection – persons issued with the registration certificate who did not lodge an asylum application and who will be afforded with the most of the material reception conditions.⁸²⁹

⁸²⁵ Ibid., 4 and 5.

⁸²⁶ Decision of the Government of the Republic of Serbia, no. 02–5650/2021, available at: <https://bit.ly/3nqLK4Z>.

⁸²⁷ Article 2 (1) (4) Asylum Act.

⁸²⁸ Article 48 Asylum Act.

⁸²⁹ The amendments to the Asylum Act are available in Serbian on the following link: <https://bit.ly/3yepU9U>.

In practice, foreigners issued with registration certificates are referred to one of the asylum or reception centres stated in the registration certificate (see **Error! Reference source not found.**). Accordingly, only 4,181 foreigners were officially referred to one of 16 functional accommodation facilities in 2022, while the remaining 186,489 foreigners whose presence in asylum or reception centres was recorded by the UNHCR and CRM were allowed to reside in reception facilities without any legal status. It should be also borne in mind that some of the people who were issued with registration certificates in previous years have also resided in reception facilities.⁸³⁰

AC **Krnjača**, AC **Obrenovac**, AC **Sjenica** and AC **Tutin** 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, and then are registered within in the following days or weeks. 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.⁸³¹

What is also important to note is the fact that, for most of 2022, on a daily basis, several hundred and sometimes even more than 1,000 refugees and migrants were accommodated in informal settlements in the border areas with Hungary, Croatia and Romania, from where they were trying to cross to the EU, but from where they were also frequently transferred by the police forces.⁸³² This was the case for the most of 2022. In the period November – December the number of people staying in the informal settlements was significantly decreased due to transfer operations of the Serbian MoI.⁸³³ According to KlikAktiv, in the border with the EU countries, there were 31 different squats accommodating on average around 100 persons.⁸³⁴

⁸³⁰ Many of them have resided in asylum or reception centres for more than a year or two.

⁸³¹ Article 61 Asylum Act.

⁸³² BVMN, *Illegal pushbacks and border violence reports, Balkan Region – January 2022*, available at: <https://bit.ly/41wUjNI>, p. 5; *Illegal pushbacks and border violence reports, Balkan Region – February 2022*, available at: <https://bit.ly/3ocpoaK>, p. 9; *Illegal pushbacks and border violence reports, Balkan Region – April 2022*, available at: <https://bit.ly/3ME6jbA>, pp. 12-13 and *Illegal pushbacks and border violence reports, Balkan Region – July 2022*, available at: <https://bit.ly/3UzJx6B>, pp. 9-10.

⁸³³ BVMN, *Illegal Pushbacks and Border Violence Reports Balkan Region - November 2022*, available at: <https://bit.ly/3A4NEhm>, p. 7-8.

⁸³⁴ Klikaktiv, *More People, More Police and Less Safety*, available at: <https://bit.ly/3L2vp2K>, 15.

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 |
| ❖ Dublin 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 |
| ❖ Border 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 type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
- | | | |
|---------------------------------------|---|--|
| ❖ Accommodation | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Social assistance and emergency aid | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

The CRM is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.⁸³⁵

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.⁸³⁶ These other facilities are other 12 Reception Centres. However, it is important to note that AC in Banja Koviljača and AC Bogovađa, as well as CRC Dimitrovgrad were not operational during 2022 (see [Types of Accommodation](#)).⁸³⁷

Persons issued with a registration certificate are expected to present themselves at the centre indicated via a central mechanism between the Mol 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.⁸³⁸

Similarly, as in 2021, in 2022 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 an 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](#)). One of the ways asylum seekers were pushing for their transfer from RCs to ACs was lodging of written asylum applications with the help of Commissariat.

In the vast majority of reception centres there were persons who were not issued registration certificates, and who do not 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

⁸³⁵ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁸³⁶ Article 51(1) Asylum Act.

⁸³⁷ RC Dimitrovgrad was not operational during 2020.

⁸³⁸ Article 35(12) Asylum Act.

are UASC.⁸³⁹ They sleep in tents or abandoned facilities deprived of the existential minimum and are frequently raided by the MoI and then transferred to reception centres in the south of Serbia.

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 **Šid** Asylum Centre although may briefly stay in other centres, as detailed below.

If the asylum seeker possesses their own financial assets, they may stay outside the reception facilities at their own cost, and exclusively with prior consent of the Asylum Office, which shall be given after the asylum application has been lodged. The current legal framework does not contain any provision on the obligation of asylum seekers to disclose their resources to Serbian asylum authorities. 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.⁸⁴⁰ 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 their ID card as their place of residence. The living conditions in many Asylum and Reception centres are unsatisfactory. On 31 December 2022, 80 asylum seekers were residing in private accommodation, while 62 UASCs were accommodated in RC Šid, RC Preševo and AC Tutin.⁸⁴¹

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 2022 (in original currency and in €): 10.385,00 RSD / 88 €

Asylum seekers staying in centres have the right to material reception conditions including accommodation, food, clothing and a cash allowance.⁸⁴² The new Asylum Act introduced in 2018 the possibility of a cash allowance for personal needs.⁸⁴³ However, cash allowance has been granted rarely according to the author's knowledge, and such practice was reported by beneficiaries of AC in Krnjača in 2022 several times. They outlined that cash assistance of around 4,000 dinars (34 EUR) was monthly provided to families and vulnerable applicants who are usually applicants who have serious medical conditions. It was not possible to determine how many cash allowances were distributed in 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.⁸⁴⁴ 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 they and the members of their 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:⁸⁴⁵

- Single adult: RSD 10,385,00 (88.8 EUR)
- Family member: RSD 5,193,00 (44,38 EUR)
- Minor child: RSD 3,116,00 (27 EUR)

⁸³⁹ UNHCR Statistical Report for 10 January 2021 highlighted that 1,354 persons were spotted in informal settlements, but see also Klikaktiv, More People, More Police and Less Safety, available at: <https://bit.ly/3L2vp2K>, p. 15.

⁸⁴⁰ Article 50(8) Asylum Act.

⁸⁴¹ UNHCR Statistical Report for December 2022.

⁸⁴² Article 50(1) Asylum Act and the Rulebook on social allowances for persons seeking or granted asylum, Official Gazette, no. 12/2020, available at: <https://bit.ly/3MNLEik>.

⁸⁴³ Article 50(2) Asylum Act.

⁸⁴⁴ Article 53 Asylum Act.

⁸⁴⁵ Decision on nominal amounts of social assistance no. 115/2022-56 21 October 2022, available at: <https://bit.ly/43xAuap>.

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 the asylum seeker or a person granted asylum and other supporting evidence. The procedure itself is conducted in line with the GAPA provisions. The conditions for exercise of the right to monthly allowance are reviewed *ex officio* once a year. However, the monthly amount received from the Social Welfare Centre is very limited and generally insufficient in order to maintain a dignified existence. There have not been instances in which social allowances were granted to asylum seekers accommodated at private address, while it is not clear how many persons granted asylum enjoyed this right since the beginning of the Serbian asylum system.

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 law provide for the possibility to withdraw material reception conditions? Yes No

Material reception conditions may be reduced or withdrawn if the asylum seeker possesses their own financial assets or if they start to receive income from employment sufficient to cover material reception conditions, as well as if they misuse the allowance received.⁸⁴⁶

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.⁸⁴⁷ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.⁸⁴⁸

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

Material reception conditions may be reduced or withdrawn if the asylum seeker possesses their own financial assets or if they start to receive income from employment sufficient to cover material reception conditions, as well as if they misuse the allowance received.⁸⁴⁹

A decision on reduction or withdrawal of material reception conditions shall be rendered by the CRM and can be challenged before the Asylum Office.⁸⁵⁰ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.⁸⁵¹

⁸⁴⁶ Article 50(4) Asylum Act.

⁸⁴⁷ Article 50(5) and (6) Asylum Act.

⁸⁴⁸ Article 50(7) Asylum Act.

⁸⁴⁹ Article 50(4) Asylum Act.

⁸⁵⁰ Article 50(5) and (6) Asylum Act.

⁸⁵¹ Article 50(7) Asylum Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ⁸⁵²	19
❖ Asylum Centres	7
❖ Reception Centres	12
2. Total number of places in the reception centres:	8,155
❖ Asylum Centres	3,050
❖ Reception Centres	5,105
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.⁸⁵³ The work of Asylum Centres and Reception Centres is managed by the Commissariat.⁸⁵⁴

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 2021.⁸⁵⁵ These kind of data was not provided to UNHCR partners in 2022. 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 2022 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.

⁸⁵² Both permanent and for first arrivals.

⁸⁵³ Article 51(2) and (3) Asylum Act.

⁸⁵⁴ Article 51(4) Asylum Act.

⁸⁵⁵ UNHCR Statistical Reports for 10 June 2021 and 19 December 2021.

1.1. Asylum Centres

There were 6 active Asylum Centres in Serbia in 2022 and one inactive:

Asylum Centre	Capacity
Banja Koviljača	120
Bogovađa	200
Tutin	230
Sjenica	350
Krnjača	1,000
Vranje	150
Obrenovac	1,000
Total	3,050

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 3050. 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 2022⁸⁵⁶ but it is clear that realistic and dignified conditions for AC in Krnjača and AC Obrenovac are 40 to 50% less than the official number provided by the CRM.

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 Palnaka** ('Divljana').

In 2022, the respective capacities of the temporary reception centres were as follows:

Temporary reception centre	Border location	Capacity
Preševo	North Macedonia	1100
Bujanovac	North Macedonia	255
Sombor	Croatia	380
Principovac	Croatia	470
Adaševci	Croatia	1000
Subotica	Hungary	220
Bela Palanka (Divljana)	Bulgaria	300
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	110
Pirot	Bulgaria	190
Kikinda	Romania	570

⁸⁵⁶ Except during the COVID-19 lockdown.

Šid	Croatia	380
Total		5,105

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.⁸⁵⁷

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.⁸⁵⁸ AC Banja Koviljača was closed for refurbishing for most of 2021 and for the whole of 2022. In the following paragraphs, the living conditions, regime of life and available services in different reception facilities in Serbia will be outlined. The vast majority of descriptions are provided by relevant CSOs who are conducting regular visits to asylum and reception centres.

All the Asylum Centres are open, but for “night quiet” 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.

⁸⁵⁷ 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>.

⁸⁵⁸ *A11 Analysis on Detention of Foreigners during the State of Emergency*, 4-6.

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

A room has been designated for legal counsel and associations providing legal counselling to asylum-seekers. Translators are present on a daily basis, while legal aid is provided by APC, BCHR and HCIT. The 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 the AC was opened, only a medical technician is present in the centre. The practice remained unchanged in so 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. 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. Still, it remains unclear why this asylum centre remains non-operational.

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 in late 2021 as a family centre as well, 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 the employees occurred,⁸⁵⁹ 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 the UASC who were praying arose after on the employees accidentally stepped on the prayer rug. This led to a protest by the UASC and a CRM employee was forced to kiss the prayer rug. 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.⁸⁶⁰ This kind of measure was applied several dozen UASC and this act was

⁸⁵⁹ 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]

⁸⁶⁰ NPM, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, 16 June 2020, available at: <https://bit.ly/2NLYwRc>, 25.

praised by the Ombudsman,⁸⁶¹ which gives another reason for concern because informal forms of punishment which imply transferring of children to poor living conditions is in clear contradiction with the best interest of a child principle. In 2022, it accommodated mostly UASC until late December 2022, when all UASCs were transferred to RC Šid, while AC Bogovađa remained almost empty.

In June 2020, a video appeared showing members of private security ill-treating children in their rooms. The video shows one of the security officers yelling and slapping boys who allegedly did not want to go to sleep. This video became viral and triggered reactions by almost all state institutions and CSOs, and BCHR submitted a criminal complaint.⁸⁶² The Ombudsman issued a recommendation failing to qualify such acts as at least inhumane and degrading and simply indicating that CRM had failed to timely inform Mol and the competent public prosecutor.⁸⁶³ 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 the Ombudsman's reaction to the December incident, when a group of boys forced an employee to kiss the prayer rug on which she accidentally stepped on, 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 the Public Prosecutor who, in the case of misbehaving boys, ordered pre-trial detention, while in the case of the private actors who ill-treated children just opened a pre-investigative procedure.

There were no noteworthy incidents recorded in 2021 and 2022.

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, an 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 2022, 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 and 2022. One of the main reasons for such state of affairs is the fact that most of UASCs do not want to remain in Serbia. A 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 the doctor from Lajkovac Health Care Center was visiting the AC as 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, the 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

⁸⁶¹ 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].

⁸⁶² Mondo, JEZIV SNIMAK iz Bogovađe: Obezbeđenje TUČE DETE MIGRANTA! (VIDEO), available at: <http://bit.ly/3pQuu8B> [accessed on 1 February 2021].

⁸⁶³ 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].

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 the lack of interpreters, which causes difficulties for doctors when it comes to the communication with patients. Psychological counselling is provided by PIN and Group 484.

It is important to highlight that AC **Bogovađa** does not meet the standards for accommodation of UASC. The reason for this mainly lies in the fact that the Social Welfare Centre in **Lajkovac** does not have sufficient capacity to provide adequate support to all UASC, but only to those who have resided in Centre for more than 6 months, and those who wish to apply for asylum (two boys from **Afghanistan** in 2020 and 2 boys in 2022). 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 2022, mainly due to the fact that AC was not overcrowded. Still, children were not satisfied with the location of the camp. At the end of December, this AC accommodated less than 10 persons and this trend remained in the first quarter of 2023.

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.

As a new 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 failed to conduct asylum procedure in AC **Tutin**, meaning that asylum seekers there do not have effective access to asylum procedure.⁸⁶⁴

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 regarding 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 twice a week 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 of 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 poses particular difficulties for the NGOs and Asylum Office. An average of 100 persons per day stayed in this centre in the course of 2020.

⁸⁶⁴ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

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 families are always accommodated together.

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

The AC in **Sjenica** was mostly used for UASC accommodation during the 2020 but in 2021 it was mainly empty, accommodating between 10 and 20 beneficiaries who required medical attention. In 2022, AC Sjenica hosted less than 80 resident on average and the fluctuation was high. The living conditions could be described as inadequate in the old part of the factory, while significant improvements were made during 2019 when the 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 and 2022 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, 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. The 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 and 2022.⁸⁶⁵

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.

⁸⁶⁵ See more in AIDA, Country Report Serbia, 2021 Update, March 2020, p. 84.

At the beginning of 2023, the AC Krnjača was designated for vulnerable beneficiaries such as single women, LGBTQI+ persons, families with small children, but also asylum seekers from Russia. All single male persons were transferred to AC Obrenovac. This transfer was conducted unannounced, producing disturbance among residents. Still, this reception facility do not meet the requirements for the placement of the most vulnerable asylum seekers. On 3 January 2023, AC Krnjača accommodated 328 persons mainly from Burundi, while that number in early April 2023 was 172 with around 70 Burundians and 30 Russians.

In May 2017, the 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. The living conditions in the AC Vranje are of the highest standards and this facility was completely refurbished and equipped with new furniture for Ukrainian refugees. In January 2023, AC in Vranje accommodated 83 refugees from Ukraine.

Another reception centre for the accommodation of a larger number of refugees and asylum seekers 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 capacities in 2020 and 2021 were estimated by the CRM on 650 persons. Still, this number was not realistic and it is clear that RC Obrenovac should not host more than 400 persons at that time. 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. The presence of organised 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 in 2022. However, at the end 2021, detailed reconstruction of the facility had started and in the last quarter of 2022, the capacities of this AC have extended to 1000 beds. This number is not realistic, but newly refurbished areas are clean, provide privacy and smaller rooms, in combination with old bigger dormitories with 10 to 15 beds. The conditions in most of the areas in AC are satisfactory.

The number of foreigners accommodated in asylum centres and reception centres on 19 December 2022 were the following:

Asylum Centre	Capacity	Number of residents on 26 September 2022	Number of residents on 3 January 2023	Overcrowding rate
Banja Koviljača	120	0	0	0 %
Bogovađa	200	106	106	0 %
Tutin	230	159	123	0 %
Sjenica	350	12	70	0 %
Krnjača	1000	377	300	0 %
Obrenovac	1000	826	826	0 %
Vranje	230	74	83	0 %
Total	2,440		1,292	

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia was significantly higher in 2022 and in comparison

to 2021, but the last quarter of 2022 implied significant drop in arrivals, and thus in the number of people accommodated in RCs.⁸⁶⁶ 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 the 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** (1100 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 3 January 2023 768 persons were accommodated there, while that number in April 2023 was 1,511. 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 collective sleeping premises, 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.⁸⁶⁷ In general, RC Preševo cannot be considered as suitable accommodation for persons in need of international protection and its realistic capacities that could meet relevant housing standards are significantly lower than 1,100, which is the official number.

Bujanovac (255 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 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 2021 and 2022.

The reception centre in **Sombor** (380 places) was opened in 2015 in the warehouse of a military complex close to the border with Croatia. The centre's capacity was increased in comparison to 2021 when it was officially 120 to 160 places. However, RC **Sombor** was 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.⁸⁶⁸ It is reasonable to assume that longer stays 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.⁸⁶⁹ On 20 June 2021, 636 persons were accommodated in this RC. APC reported appalling conditions on several occasions.⁸⁷⁰ On 19 December 2021, overcrowding rate in this RC was 580%. On 26 September 2022, 768 persons was accommodated in this RC, while on 3 January 2023, this number was significantly reduced to 384. RC in Sombor is the facility known to be run by organised criminal groups involved in smuggling with dozens of security incidents, poor living conditions, lack of privacy and in general lack of necessary requirements for the respect of human dignity. See section on [Access to the Territory](#).

⁸⁶⁶ An average number of refugees and migrants residing in Serbia was between 7,000 to 8,500 on a daily basis in the first 9 months, after which this number dropped to 3500 to 5,000 persons, inside and outside reception facilities.

⁸⁶⁷ APC Twitter, available at: <https://bit.ly/3uaRMcx>.

⁸⁶⁸ APC Twitter, available at: <https://bit.ly/3tfQTy2>.

⁸⁶⁹ SolInfor.org, *Više od 850 izbeglica u somborskom centru*, 18 January 2021, available at: <http://bit.ly/2MHtK6S>.

⁸⁷⁰ APC Twitter, available at: <https://bit.ly/37Q88zX>.

Additional centres function in **Principovac** (220 places), **Adaševci** (1000 places), and **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. A similar trend continued in 2022, when the number of residents was never above 250. 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%. In September 2022, it accommodated 1,243 persons, but in the last quarter, the numbers finally dropped to acceptable rate of 195 persons accommodated in solid building outside the rap-holes. The reason for significant drop can be related to the general drop of arrivals in the last quarter of 2022.

The continuous overcrowding in these two centres has led to foreigners being crammed inside huge tents ('rap-holes') with limited or no heating during the winter, with access to a limited number of toilets and showers, where hygiene was on an extraordinary low level and where foreigners complained of live 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 2m² 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.'⁸⁷¹

NPM recommended that all of the rap-holes be put out of use and that overcrowding in the solid building 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 of people 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 realisation 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

⁸⁷¹ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 14.

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.⁸⁷²

‘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.⁸⁷³

These testimonies were repeated in 2021 and 2022, when several dozen beneficiaries reported physical violence committed by the employees of CRM and private security,⁸⁷⁴ but the situation was less intense in the last quarter of 2022 when the numbers significantly dropped.

During the 2020 COVID-19 lockdown, at that time RC **Obrenovac**, which has been operating as an Asylum Centre 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 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 there was an unpleasant odour that was a combination of moisture, mould 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.⁸⁷⁵

⁸⁷² The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 26-27.

⁸⁷³ *Ibid.*, 26.

⁸⁷⁴ N1, N1 u centru Adaševci: Izbeglice se žale na uslove i nasilje, uprava negira, 9 February 2022, available at: <https://bit.ly/3ilvKhB>.

⁸⁷⁵ *Ibid.*, 7.

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.⁸⁷⁶ 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,⁸⁷⁷ 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** (220 places) was opened in 2015 at the height of the refugee and migrant movement into Hungary. The centre remained open. 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.⁸⁷⁸ The RC Subotica was overcrowded throughout 2021 and 2022. In June 2021, it hosted 162 persons, while in September 2022, 431 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 the persons accommodated Kikinda and Subotica used to be on the waiting list for entry to Hungary.

Both of these centres were overcrowded during the year, many people were placed in tents, the hygiene was at a disturbingly low level and it appears that living conditions were identical to those which were recorded by NPM in relation to RCs **Adaševci** and **Obrenovac**. For instance, during the COVID-19 lockdown, RC **Kikinda** hosted 660 refugees and migrants. The number remained unchanged on 10 January 2021, while on 6 June 2021, it hosted 884 persons. Only 216 beneficiaries were accommodated in Kikinda in September 2022.

In mid-2016, the authorities of Serbia opened an additional three centres in **Dimitrovgrad** (90), **Bosilegrad** (110) and **Pirot** (190) 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, ageing 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 the overcrowding of these facilities, and on 10 January 2021, the number of reported people staying in these centres was far below their capacities. Moreover, RC in **Dimitrovgrad** was not operational in 2021 and 2022, while RC Pirot and RC Bela Palanka reopened but no overcrowding was recorded.

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, as the border policies of neighbouring countries changed, and the time of stay in Serbia increased from several days to several weeks or months, the living conditions in RCs deteriorated. For that reason, arguably the living conditions in the 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.

⁸⁷⁶ *Hod po žici*, 80-89.

⁸⁷⁷ *Ibid.*

⁸⁷⁸ APC Twitter, available at: <https://bit.ly/3ioXFgC>.

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.⁸⁷⁹ Namely, the recommendations of the World Health Organization,⁸⁸⁰ but also the CPT principles⁸⁸¹ which were applicable during the lockdown, indicated that States should undertake measures to reduce overcrowding in all places of deprivation of liberty.⁸⁸² 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 had been epidemiologically contentious.

What is also important to note is the fact that every year capacities of different reception facilities are officially changed, even though major reconstructions were not undertaken. The criteria used by CRM when officially increasing or decreasing the official capacities are not clear, except for the one relating to the number of beds available.

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, 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 8,200 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.⁸⁸³ And finally, 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 50% lower than the official number, if we apply the standards of the EUAA and other human rights standards.

Reception centre	Official Capacity	Number of residents on 26 September 2022	Overcrowding rate	Number of residents on 3 January 2023	Overcrowding rate
Preševo	1,100	1,511	137%	768	0%
Bujanovac	55	0	0%	100	0%
Sombor	380	768	202%	385	102 %
Principovac	470	249	0%	316	0%
Adaševci	1000	1,243	124%	195	0 %
Subotica	220	431	195%	216	0 %
Bela Palanka	300	0	0%	25	0%
Dimitrovgrad	90	0	0%	0	0%
Bosilegrad	110	19	0%	91	0 %
Pirot	190	0	0%	190	0%
Kikinda	570	300	0%	123	0 %

⁸⁷⁹ The Ombudsman, *Извештај о посетама прихватним центрима у Обреновцу и Адашевцима*, June 2020, available at: <http://bit.ly/3j6eL2w>, 23.

⁸⁸⁰ 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>.

⁸⁸¹ 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,

⁸⁸² *A11 Analysis on Detention of Foreigners during the State of Emergency*, 22-24.

⁸⁸³ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>.

Šid	380	111	0%	60	0 %
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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?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9 months |
| 2. Does the law allow access to employment only following a labour market test? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
n/a |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
n/a |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Asylum seekers did not have the right to work when the old Asylum Act was in force.⁸⁸⁴ Only after the Employment of Foreigners Act was adopted at the end of 2014, asylum seekers were recognised as members of a specific category of foreigners entitled to obtain the work permit.⁸⁸⁵

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market.⁸⁸⁶

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.⁸⁸⁷ That provision is highly disputable considering that persons who genuinely want to apply for asylum have to wait for some time to get registered, and then to lodge asylum application on the 23^d day after they were registered. Those who have legal representatives sometimes wait for even longer before their written asylum application is prepared. . For persons residing in Reception Centres this period is even longer since they have to be relocated to one of the Asylum Centres where the Asylum Office conducts the asylum procedure.

However, this period can be shortened through the wider use of written asylum applications, which was recorded throughout 2021 and 2022. Nevertheless, the practice has shown in 2022 that the time it takes the National Employment Service (NES) 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 issued to asylum seekers is valid for less than 6 months. This severely impacts asylum seekers' opportunities on the job market. Overall, the 9-month period has a 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).⁸⁸⁸ In 2022, the amendments on the Employment of Foreigners Act envisage that this period will be shortened to 6 months and these amendments are currently in the Parliament and are expected to be adopted in the first half of 2023.⁸⁸⁹

⁸⁸⁴ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, p. 14-16 and 55.

⁸⁸⁵ Article 2 (1) (9) Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014

⁸⁸⁶ Article 57 Asylum Act.

⁸⁸⁷ Article 13 Employment of Foreigners Act.

⁸⁸⁸ 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

⁸⁸⁹ The proposed amendments are available in Serbian language on the following link: <https://bit.ly/40ce0ZJ>.

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 Permits⁸⁹⁰ 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 seekers need to fill in the application form, pay the administrative fee and submit a certified copy of their 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 the support of CSOs. The fee is 14,360 dinars (around 121 EUR)⁸⁹¹ plus the fee for lodging the request for a working permit which is around 330.00 dinars (around 3 EUR). Still, there is a possibility of exemption from paying expenses in special cases provided for in the GAPA,⁸⁹² 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,⁸⁹³ BCHR, HCIT, KlikAktiv, CPRC and IDEAS, with the assistance of UNHCR, have been assisting asylum seekers in obtaining work permits.⁸⁹⁴ In other words, the vast majority of asylum seekers would never be able to obtain working permits without financial and administrative support of CSOs. For instance, the working permit forms are in Serbian language and Cyrillic letters, which is an unsurmountable obstacle for asylum seekers.

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.⁸⁹⁵

Taking into consideration that asylum seekers are in reports grouped under the same category as persons granted subsidiary protection, but also victims of human trafficking, it is not possible to determine the exact number of asylum seekers issued with work permits in the period from 2016 to 2021. The first working permit to an asylum seeker was issued in 2017. From 2016 to 31 October 2020, a total of 470 personal working permits were issued for the territory of AC **Krnjača**, AC **Banja Koviljača** and AC **Bogovađa** and to foreigners who belong to the special category.⁸⁹⁶ 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 record. Also, NES does not keep records on the number of asylum seekers who are actually employed.

The NES delivered accurate data on the number of asylum seekers issued working permits in 2022. A total of 81 working permits were issued to asylum seekers in the given period, out of which 78 are asylum

⁸⁹⁰ Official Gazette no. 63/18, 56/19.

⁸⁹¹ Law on Administrative Fees, Fee No. 205, available at: <https://bit.ly/3kXBe0P>.

⁸⁹² Article 89 GAPA.

⁸⁹³ APC, APC/CZA panel u Beogradu „Pristup zapošljavanju izbeglicama i azilantima. u Srbiji: iskustva, izazovi i naučne lekcije”, 6 December 2019, available at: <https://bit.ly/2MMGCZA>.

⁸⁹⁴ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, 39-40.

⁸⁹⁵ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 55-58.

⁸⁹⁶ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 32-33.

seekers accommodated in Belgrade and 3 asylum seekers accommodated in Novi Sad. There were no working permits issued to asylum seekers in other areas where asylum centres are located, such as Novi Pazar (AC Sjenica and AC Tutin are located in this municipality) or Lajkovac (AC Bogovađa).

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 2023, 205 asylum seekers who lodged their asylum application in the period from January to June 2022 are entitled to work. However, not all of these 205 persons are adults and it is reasonable to assume that many of them have decided to abscond the procedure. Thus, it can be safely assumed that, until the end of March 2023, less than 100 asylum seekers from 2022 were entitled to work, but that only 78 of them obtained working permits. On the other hand, it is also reasonable to assume that there are several dozen asylum seekers whose cases are pending from 2021 or 2020 and who are also entitled to work and who applied for their extension. Thus, it can be safely estimated that the number of asylum seekers who are entitled to work is a bit more than 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 versions of their diplomas and documentation from their country of origin and most frequently, there is no real possibility to obtain them.⁸⁹⁷

The COVID-19 pandemic deprived asylum seekers accommodated in Asylum or Reception Centres of work, as well as the 2020 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.⁸⁹⁸ 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 |

Pre-school education is not possible for asylum seeking children, but only for those children granted asylum, which will potentially be changed with the new amendments to the Asylum Act.⁸⁹⁹

Asylum seekers have the right to free primary and secondary education regardless of their age.⁹⁰⁰

The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,⁹⁰¹ with relevant issues also regulated by the Primary School Act,⁹⁰² the Secondary School Act⁹⁰³ and the High Education Act.⁹⁰⁴ These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas.

⁸⁹⁷ BCHR, Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020, 41.

⁸⁹⁸ *Ibid*, 39.

⁸⁹⁹ Article 27 of the draft Amendments to the Asylum Act, available at: <https://bit.ly/3yepU9U>.

⁹⁰⁰ Article 55(1) Asylum Act.

⁹⁰¹ 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.

⁹⁰² 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.

⁹⁰³ 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.

⁹⁰⁴ 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.

As already outlined, asylum seekers are not entitled to receive pre-elementary school education.⁹⁰⁵ 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 organisations, but it is also important to note the assistance provided by CRM to asylum seeking children enrolling into 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.⁹⁰⁶ Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.⁹⁰⁷

With joint efforts of the Ministry of Education, Science and Technological Development, Save the Children, UNICEF, CRM and other international and non-governmental organisations, all asylum-seeking children were provided with the opportunity to be included in mainstream education in the academic year 2017/2018 in line with the regulations governing mandatory attendance of primary schools for all 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 lessons they do not understand. An additional challenge is the lack of interest of many parents in educational activities, as they are certain their stay in Serbia is only temporary. This trend continued during 2022. According to the CRM, only 10 asylum seeking children were introduced in educational system of Serbia.⁹⁰⁸ Still, this number probably reflects those children accommodated in ACs, and especially Krnjača camp, but other asylum seeking children staying on the private address have enrolled into schools in municipalities where they live. Still, it is clear that the number of asylum seeking children remains low in 2022.

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.⁹⁰⁹ In 2022, several diplomas were recognized by the ENRIC/NARIC centre for one asylum seekers from Burundi represented by IDEAS.

Primary and secondary education is available to all the children residing in **Krnjača, Tutin, Sjenica** and **Banja Koviljača**. Primary school is also available for children in **Bogovađa**, but UASC would usually leave the AC before they adapt to the school programme. UASC accommodated in Šid do not attend school due to their short-term stay. 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 and final decision to leave Serbia.

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.

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

⁹⁰⁵ Article 48 Asylum Act.

⁹⁰⁶ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

⁹⁰⁷ Article 55(2) Asylum Act.

⁹⁰⁸ CRM, Response to the request for the information of public importance np. 019-27/2-2023, 9 March 2023.

⁹⁰⁹ More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

into universities for the first time – one asylum seeker from Afghanistan and 3 refugees from Afghanistan, Burundi and Libya. All four of them were supported by the UNHCR DAFI program. Another girl from Iraq enrolled into Belgrade School of Applied Health Science in 2022.

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?
n/a

The Asylum Act foresees that asylum seekers shall have equal rights to health care, in accordance with the regulations governing health care for aliens.⁹¹⁰ 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.⁹¹¹

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.⁹¹² The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an objective check-up and other diagnostic examinations.⁹¹³

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.⁹¹⁴

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 and when it comes to primary and secondary care, but also referrals to specialist examination. The costs of health care for asylum seekers and persons granted asylum are always covered by the Ministry of Health which also enjoys support of the EU and its funds. However Health Care Act (HCA),⁹¹⁵ as well as the Health Insurance Act (HIA),⁹¹⁶ are not harmonized with the Asylum Act. Particularly, the right to health care although prescribed to every person, is provided on the basis of the health insurance⁹¹⁷. Thus, in order for an asylum seeker to obtain medical assistance which is not covered by the EU funds, they must be included in the health insurance system which must be paid. The HIA envisages possibility of asylum seekers, qualified as foreigners, to pay health care insurance by themselves, and in that way secure adequate therapy.⁹¹⁸

In reality, not all employed staff of Republic Fund of Health Insurance is familiar with this legal possibility and thus, a different approach exists within different organizational units of this institution. Besides,

⁹¹⁰ Article 54 Asylum Act.

⁹¹¹ Article 54(3) Asylum Act.

⁹¹² Article 2 Rulebook on medical examinations.

⁹¹³ Article 3 Rulebook on medical examinations.

⁹¹⁴ Article 4 Rulebook on medical examinations.

⁹¹⁵ Official Gazette no. 25/19.

⁹¹⁶ 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.

⁹¹⁷ *Ibid.* 3

⁹¹⁸ Article 17, HIA.

inclusion in the health insurance system requires a monthly contribution by the person. That amount in 2022 was 3,607.57 dinars (around 30e). This is an obstacle, since asylum seekers are not able to work in the first nine months, and they do not receive financial support. Thus, for the inclusion in the health insurance system, they can rely only on the financial help of international organisations or CSOs. This especially represents a problem for people who suffer from chronic diseases and need of constant or expensive therapy.⁹¹⁹

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 primary medical treatment. Still, even those people who lodged asylum applications 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.

What was determined to be the most contentious problem in 2022 was the fact that, due to the lack of EU funding, the financial means which are designated for expensive therapies ceased to exist. This has led to the situation in which seriously ill-asylum seekers (for instance, those who are HIV+) were deprived of the possibility to take therapy. IDEAS legal team, in cooperation with the Republic fund for Health Insurance, and financial support of the UNHCR introduced the applicant into to the health care insurance scheme through the legal provisions of the Health Insurance Act which were interpreted in favour of persons who have the status of asylum seekers.

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*,⁹²⁰ 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 be available throughout the public healthcare system, while civil society organisations would fill in the gaps in line with identified needs.⁹²¹

The COVID-19 lockdown led to a high rate of overcrowding which contradicted recommendations of WHO and CPT (see **Error! Reference source not found.**).

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 the local population, Covid-19 vaccines.⁹²² 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 for vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

⁹¹⁹ That was the case with several asylum seekers suffering from AIDS.

⁹²⁰ 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>.

⁹²¹ *Ibid.*

⁹²² WHO, *Refugees and migrants hosted in Serbian reception centres get their COVID-19 vaccine doses*, 12 May 2021, available at: <https://bit.ly/3jZUsFb>.

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.⁹²³

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.⁹²⁴ 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 the accommodation of asylum seekers until the final decision on the asylum application is taken.⁹²⁵ However, it is clear that the vast majority of reception facilities do not meet adequate standards. In 2020 and 2021, AC **Sjenica** and AC **Bogovađa** were designated for UASC while in 2022 RC Šid was established for the same purpose. 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.

Alternative accommodation for children can be provided in social welfare institutions such as the Institute for Education of Children and Youth in Belgrade and the Institute for Education of Youth in Niš, and Children Home "Jovan Jovanović Zmaj" at the Institute for Protection of Infants, Children and Youth in Belgrade, while specialised foster care is also an option.⁹²⁶ 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. At the end of December 2022, 26 children were accommodated in social welfare institutions in Belgrade and Niš which have total capacity of 74 places.

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.

What is important to highlight is the fact that there is no vulnerability screening of newly arrived asylum seekers in the asylum or reception centres. The vulnerabilities are usually determined in the most obvious cases or when CSOs working in reception facilities flag certain cases to the authorities. Still, as outlined in the chapter on the screening of the vulnerability, the fact that relevant authorities are aware of certain vulnerability will not change much in the reception conditions of an asylum seeker. Thus, those asylum seekers who due to their vulnerability are not transferred to hospital or the safe house for survivors of trafficking in human beings or SGBV, will remain in reception facilities in accommodation identical to accommodation provided to non-vulnerable residents. Thus, LGBTQI+ people in AC Krnjača and in other facilities are accommodated together with homophobic residents who often resort to verbal abuse and sometimes even physical; survivors of SGBV are accommodate with men in barracks (including the rape victims), or seriously injured people are accommodated in barracks which re not designed for their special

⁹²³ Article 50(3) Asylum Act.

⁹²⁴ Article 17 Asylum Act.

⁹²⁵ Article 53 Asylum Act.

⁹²⁶ See more in BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 61-66.

needs. This state of affairs is an additional reason why vulnerable people also decide to abscond asylum procedure and leave Serbia.

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 their asylum application,⁹²⁷ as well as about NGOs providing free legal aid.⁹²⁸ (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 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 **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 the measures taken by the Government of Serbia. The Guidelines on preventive measures were also translated to Arabic, Farsi, Urdu, Pashto, English and French and were publicly displayed in all facilities. However, the overcrowding rate in almost all reception facilities, accompanied with the lack of hygiene and privacy, created an extremely risky situation considering WHO recommendations.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

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

UNHCR has unrestricted access to all reception facilities in Serbia, including both asylum centres and provisional reception centres. National authorities are obliged to cooperate with UNHCR in line with its mandate.⁹²⁹ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.⁹³⁰ 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, except in the case of Ukrainian refugees who are obviously afforded with special reception conditions in AC Vranje which was refurbished solely for the purpose of their accommodation. Even though such response should be praised, such treatment obviously indicates to the unequal treatment of non-European persons in need of international protection.

⁹²⁷ Article 56(2) Asylum Act.

⁹²⁸ Article 56(3) and (4) Asylum Act.

⁹²⁹ Article 5 Asylum Act.

⁹³⁰ Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2022 :	5
2. Number of asylum seekers in detention at the end of 2022 :	0
3. Number of detention centres:	3
4. Total capacity of detention centres:	310

The possibility of placing asylum seekers in detention in Serbia is prescribed by the Asylum Act. Detention of asylum seekers represents the form of administrative detention which can also be imposed by the Mol in relation to foreign nationals who were qualified as irregular migrants, but who can often be in need of international protection. In other words, and since Serbia has not been the destination country for most of the refugees, it is a common practice that, for instance, Afghans or Syrians, who do not wish to apply for asylum, are detained as irregular migrants and for the purpose of their forcible removal to Bulgaria.

On the other hand, asylum seekers are rarely detained, and their detention is frequently short, unless the case has strong political component and is qualified as a national security case.⁹³¹ For that reason, it is fair to say that practice of the Asylum Office as detaining authority can be described as positive in the vast majority of cases, and that in general, Serbia does not have a problem of detention of refugees and asylum seekers. In 2021 the Asylum Office did not resort to such measure, while in 2022 only 5 asylum seekers were detained and they were from Syria (3), Iran and Kyrgyzstan.

Asylum seekers are detained in the long-standing Detention Centre for Foreigners in **Padinska Skela (DC Padinska Skela)**. In addition, in 2021, a new centre was opened in **Dimitrovgrad (DC Dimitrovgrad)**, at the green border with **Bulgaria**, and it became fully operational in 2022. In 2022, another detention centre in Plandište (DC Plandište), was opened and is located close to the border with Romania.

The total capacities of DC Padinska Skela are 110 places,⁹³² while, the capacities of DC Plandište and DC Dimitrovgrad are 100 places each.⁹³³ Thus, their total capacities are 310 persons.

Since there are no available reports on the conditions and regime of life in the two newly opened centres, it is not possible to determine if these capacities are realistic and in line with the immigration detention human rights standards, such as those outlined in the CPT practice or other CoE or UN standards.⁹³⁴

To reiterate, it is fair to say that the instances in which asylum seekers are detained are extremely rare, and this attitude of Serbian asylum authorities should be praised. However, the question that remains open, and which has not been addressed sufficiently by the bodies which have regular access to immigration detention (such as the Ombudsman and NPM) is to which extent are foreign nationals detained under the Foreigners Act allowed to access asylum procedure and in general enjoy their rights of persons deprived of their liberty which are fundamental for safeguards against ill-treatment, including *refoulement*.⁹³⁵

What is also important to note is that immigration detention of foreigners declared as irregular is based on the existence of an expulsion order, delivered in line with the Article 74 (2). The expulsion order is

⁹³¹ Examples will be described in the following parts of this Chapter.

⁹³² It was expanded after the reconstruction which was finalised in 2022.

⁹³³ See more in, Mol, Izveštaj o sprovođenju Strategije suprotstavljanja iregularnim migracijama za period 2018-2020. godina, available at: <https://bit.ly/3H8FSaz>, p. 14,

⁹³⁴ CPT, Immigration detention [Factsheet], March 2017, CPT/Inf(2017)3, available at: <https://bit.ly/3Li4Xzd>.

⁹³⁵ CPT has outlined that detained irregular migrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or third party of one's choice about the detention measure. The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid, CPT, Immigration detention [Factsheet], p.2.

rendered by immigration police officers from various police departments in Serbia and who are not trained to assess the risks of refoulement in line with the Article 83 of the Foreigners Act. Thus, decision on expulsion is rendered without the assessment of objective and individual circumstances of a foreigners, which can be described as quite contentious having in mind that almost 70% of all detainees were from Afghanistan and Syria and by virtue of their origin they had *prima facie* claim.

Not a single foreigner detained was issued with the registration certificate in 2021, while only 4 of them were issued with registration certificates in 2022 in DC Padinska Skela. There were no instances in which detained foreigners who might be in need of international protection (e.g. from Syria or Afghanistan), were registered as asylum seekers in DC Plandište and DC Dimitrovgrad.

Thus, in the future, it will be important to address the issue of access to asylum procedure of detained refugees who do not wish to apply for asylum in Serbia and are detained for the purpose of forcible removal to their country of origin or third countries. They are detained on the grounds set in the Foreigners Act, mainly for the purpose of forcible removal.⁹³⁶ The MoI, who stopped providing statistical data in 2018 on the number of detainees qualified as irregular migrants,⁹³⁷ but for the purpose of the 2022 Update, it provided yearly statistics.

Overall, persons who are likely to be in need of international protection can be detained on various other 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](#)).

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

1.1. Detention of asylum seekers

An asylum seeker can be detained by a decision of the Asylum Office, when it is necessary to:⁹³⁸

- ❖ Establish their identity or nationality;
- ❖ Establish material facts and circumstances underlying their asylum application, which cannot be established without the restriction of movement, particularly if there is a risk of absconding;⁹³⁹

⁹³⁶ Articles 87 and 88 Foreigners Act.

⁹³⁷ However, according to 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 Türkiye (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.

⁹³⁸ Article 77(1) Asylum Act.

⁹³⁹ 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.

- ❖ Ensure their presence in the course of the asylum procedure, if there are reasonable grounds to believe that their asylum application was submitted with a view to avoiding deportation;
- ❖ Ensure the protection of security of the Republic of Serbia and public order in accordance with the law;
- ❖ Decide, in the course of the procedure, whether they have a right to enter the territory of the Republic of Serbia.

Asylum seekers can be also detained in 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.⁹⁴⁰

In practice, the Asylum Office rarely orders the detention of asylum seekers. Not a single detention order was issued in 2021 on those grounds, but there were four detention decisions in 2022d plus another one which was related to the subsequent asylum applicant from Türkiye who was detained as irregular migrant by the MoI and not Asylum Office. What binds these two cases is the fact that they were both subjected to the extradition to their countries of origin, that they applied for asylum but were represented by incompetent attorneys at law, that they were assessed as the national security threat by BIA and that their forcible removal cases are being examined by the CAT who issued interim measures.

Case of immigration detention of E.P.

The case of E.P., Turkish political dissident accused of terrorism in Türkiye, who has been facing extradition to his country of origin for almost two years, was detained in DC Padinska Skela for the maximum period of 6 months by the MoI.⁹⁴¹ What is interesting in this case is the fact that he was not detained by the Asylum Office, even though he has the status of an asylum seekers (he lodged subsequent application), but as irregular migrant who was served with the expulsion order in line with the Article 74 (2).⁹⁴²

The biggest problem in this particular case is the fact that Mr. E.P. is in extradition procedure, which is still ongoing, despite the fact that the CAT has issued an interim measure indicating to the Government of Serbia to refrain from sending Mr. E.P. back to Türkiye until the end of the procedure before the Committee.⁹⁴³ He was deprived of his liberty in June 2021 and was ordered with the extradition detention which, according to the Law on Mutual Legal Assistance in Criminal Matters (LMLAC),⁹⁴⁴ cannot last longer than 1 year. Since the maximum length of his detention expired in June 2022, he was supposed to be released and imposed with a measure alternative to extradition detention which is identical measure as the pre-trial detention. And he did when the Higher Court in Belgrade imposed the measure of prohibition a place of residence on the territory of Belgrade, which is the measure which limits the right to freedom of movement and does not imply deprivation of liberty. Still, he was placed in DC Padinska Skela, which, in line with the subjective and objective criteria of the Strasbourg Court is nothing but the measure of deprivation of liberty. Moreover, only the MoI – Department for Foreigners or Asylum Office - can detain foreign nationals in DC Padinska Skela and under the provisions of either Foreigner or Asylum Act. In other words, LMLAC, nor the Criminal Procedure Code⁹⁴⁵ as *lex generalis*, are not providing for the possibility for a foreign national to be detained in immigration detention facilities. Accordingly, Mr. E.P. was detained arbitrarily, which was later on determined by the Appellate Court in Belgrade, which squashed the decision.⁹⁴⁶

Instead of releasing Mr. E.P., as a person whose legal status is being decided by the judicial extradition authorities, the Ministry of Interior, without conducting any kind of assessment of the risks of *refoulement*,

⁹⁴⁰ Article 58(1)(3) and (7) Asylum Act.

⁹⁴¹ MoI, Decision on immigration detention no. 26-13/22, 14 July 2022, extended on 14 October 2022.

⁹⁴² MoI, Expulsion Decision no. 26-1712/22, 14 July 2022.

⁹⁴³ CAT, Piroglu v. Serbia, Communication No. 1130/2022, 2 June 2022.

⁹⁴⁴ Official Gazette, no. 20/2009, available in Serbian at: <https://bit.ly/325Z8kN>, Article 22.

⁹⁴⁵ Official Gazette, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – *decision of the CC and 62/2021 – decision of the CC*.

⁹⁴⁶ Appellate Court in Belgrade, Decision No. Kre. 8/22, 5 October 2022.

issued an expulsion order in line with the Article of Foreigners Act, outlining that Mr. E.P. represents the threat to national security and that he should be removed instantly. This decision created the grounds for immigration detention in DC Padinska Skela, and on the same day, the decision on detention was delivered.

What was also worrying argumentation is the fact that decision on immigration detention was rendered on the basis of the negative security assessment of BIA. Thus, the Mol has just highlighted that Mr. E.P. represents the threat to national security. Immigration detention was challenged before the Administrative Court, but this body rejected the complaint also simply relying on the BIA security assessment.⁹⁴⁷

Case of immigration detention of A.S.

The case of Mr. A.S. is almost identical to the case of E.P. He has also been in the extradition procedure and his extradition detention expired, after which he was detained in DC Padinska Skela. As E.P., he also lodged subsequent asylum application, and his placement in DC Padinska Skela was also based on the security assessment of BIA. The only difference in this particular case is the fact that he was detained on the basis of the decision delivered by the Asylum Office⁹⁴⁸ Without any reasoning, the Asylum Office simply invoked negative security assessment.

What is also different in then the case of Mr. E.P. is the authority which examines the legality of immigration detention – Higher Court in Belgrade. A.S.'s legal representatives lodged the appeal against decision on detention and extension of detention, invoking the jurisprudence of the ECtHR in the case of *Muhammad and Muhammad v. Romania*⁹⁴⁹ where the Court outlined that hiding of all the relevant facts which are related to security assessment denies the applicant of the possibility to challenge the assessment.

Mr. A.M. was released after maximum of 6 months of immigration detention and was moved to the AC Obrenovac, while the Higher Court in Belgrade has never decided on the appeals.

What is common for both cases is that they represent the most flagrant form of arbitrary administrative detention which is unlawfully used for the purpose of extradition procedure and where the applicants.

Also, 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 Asylum Act introduced a [Border Procedure](#). Thus, the applicant could be detained under these circumstances if adequate accommodation and subsistence can be provided.⁹⁵⁰ However, since there are no adequate facilities located in border areas or in the transit zone, the border procedure has not yet been applied.

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

In spite of the fact that the Asylum Office rarely enacts decisions putting asylum seekers in 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'.⁹⁵¹ However, this concerns persons who do not express the intention

⁹⁴⁷ Administrative Court, Judgment no. U 44363/22, 2 December 2022.

⁹⁴⁸ Asylum Office, Decision No. 26-2052/21, 16 September 2022, extended on 15 December 2022.

⁹⁴⁹ Application No. 80982/12, Judgment of 15 October 2020, EDAL, available at: <https://bit.ly/3MNcTN5>.

⁹⁵⁰ Article 44(1)(1) Asylum Act.

⁹⁵¹ Articles 87 and 88 Foreigners Act.

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 where there is a 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.⁹⁵² The valid reasons for this form of detention exist if a foreigner:

- ❖ Does not have documents to establish their identity;
- ❖ Does not cooperate in the return procedure and is interfering with their return;
- ❖ Has not departed from the Republic of Serbia voluntarily;
- ❖ Has not cooperated in the procedure of establishing identity or citizenship, or has given false or contradictory information;
- ❖ Is using or has used false or forged documents;
- ❖ Has attempted to enter or has already entered into the Republic of Serbia illegally;
- ❖ Has not fulfilled his obligations derived from the order on mandatory stay in a particular place;
- ❖ Does not have any relatives or social ties in the Republic of Serbia;
- ❖ 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 a forcible removal procedure. Thus, the individual should have access to procedural safeguards in the context of expulsion,⁹⁵³ which is not the case at the moment. The current practice implies stereotypical issuance of a decision on cancellation of residency,⁹⁵⁴ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.⁹⁵⁵ 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,⁹⁵⁶ or the expulsion decision,⁹⁵⁷ does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.⁹⁵⁸ 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*.

Total number of detainees in DC Padinska Skela in the period 1 January 2022 – 31 December 2022

Country of Origin	Number of detainees
Afghanistan	90
India	56
Syria	40
Türkiye	36
Tunisia	22
Iraq	7
Russia	4
Vietnam	3
Morocco	2

⁹⁵² 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.

⁹⁵³ Article 1 Protocol 7 ECHR.

⁹⁵⁴ Article 39 Foreigners Act.

⁹⁵⁵ Article 74 Foreigners Act.

⁹⁵⁶ Article 39(7) Foreigners Act.

⁹⁵⁷ Article 80(3) Foreigners Act.

⁹⁵⁸ Articles 80(3) and 83 Foreigners Act.

China, Pakistan, Algeria, Bulgaria, Egypt, Iran, Italia, Kyrgyzstan, Senegal, Sierra Leone, Somalia and Spain	1 each country – total 12
Total: 272	

In 2022, a total of 272 foreign nationals were detained for the purpose of forcible removal in DC Padinska Skelal. Out of that number, 90 of them were from Afghanistan, 40 from Syria but also several foreigners originating from Türkiye, Iraq, Somalia and other countries in which detainees could face *refoulement*, especially if there is a possibility of the direct return to such countries (Türkiye for instance). Out of the above number of detained foreign nationals, 111 of them was removed via plane, 61 of them was readmitted to Bulgaria, while 16 of them was introduced in the assisted voluntary return (AVR) program conducted in the cooperation with the IOM. As for the rest, it is reasonable to assume that some of them were still detained at the moment this Report was concluded, but also that some of them were released due to the lack of possibility of return, such as one citizen of Türkiye⁹⁵⁹ and one Kyrgyzstan⁹⁶⁰ national who were protected by interim measures indicated by the CAT.

Total number of detainees in DC Dimitrovgrad in the period 1 January 2022 – 31 December 2022

Country of Origin	Number of detainees
Afghanistan	103
Syria	90
India	14
Türkiye	14
Tunisia	9
Iraq	7
Egypt	3
Pakistan	3
Morocco	1
Palestine	1
Total: 245	

Out of the above number of detained foreigners, 15 of them were forcibly removed via plane, while 114 of them were readmitted to Bulgaria, predominately citizens of Afghanistan. A total of 13 Indian citizens was returned though the AVR. As already outlined, it is not possible to determine if these people had the possibility to outline risks of *refoulement* in Bulgaria, not the risks of *chain-refoulement*, if they were allowed to access asylum procedure, legal aid, or if they had the possibility to challenge their forcible removal with the remedy that has automatic suspensive effect. What is known for certain is that no one was registered as an asylum seeker.

Total number of detainees in DC Plandište in the period 1 January 2022 – 31 December 2022

Country of Origin	Number of detainees
Afghanistan	22
Morocco	6
Syria	5
Vietnam	4
Tunisia	3
Nepal	3
Iraq	2

⁹⁵⁹ CAT, Piroglu v. Serbia, Communication No. 1130/2022, 2 June 2022, see more at Balkan Insight, *Serbia Ignores Calls to Free Kurdish Politician on Hunger Strike*, 29 July 2022, available at: <https://bit.ly/3PtXgaP>.

⁹⁶⁰ CAT, Sulaimanov v. Serbia, Communication No. 1145/2022, 10 August 2022, see more at Danas, *CAT zatražio od Srbije da se uzdrži od izručenja državljanina Kirgistanu*, 24 August 2022, available at: <http://bit.ly/3L6gzZe>.

Palestine	2
Türkiye	2
India	2
Egypt	2
Sudan	2
Pakistan	1
Libya	1
Total: 57 (56 male and 1 female)	

Out of the above-enlisted number of detained foreigners in the DC Plandište, a total of 14 of them were forcibly removed to Romania. Identical questions with regards to effective access to remedies against forcible removal and expulsion can be outlined here.

Additionally, another problematic practice 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.⁹⁶¹

In general, it can be safely assumed that relevant state authorities of Serbia rarely resort to measures of deprivation of liberty of persons that are in need of international protection who enjoy the status of asylum seekers, while on the other hand, persons who are likely in need of international protection who do not wish to apply for asylum could be subjected to immigration detention.

2. Alternatives to detention

Indicators: Alternatives to Detention

- Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
 - Other
- 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:

- ❖ Prohibition on leaving the Asylum Centre, a particular address, or a designated area;⁹⁶²
- ❖ Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;⁹⁶³
- ❖ Temporary seizure of a travel document.⁹⁶⁴

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

⁹⁶¹ See more in AIDA, Country Report: Serbia, 2021 Update, p. 149.

⁹⁶² Article 78(1)(1) Asylum Act.

⁹⁶³ Article 78(1)(2) Asylum Act.

⁹⁶⁴ Article 78(1)(5) Asylum Act.

Centre for Foreigners.⁹⁶⁵ 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 2022. 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. Still, those detention decisions which were rendered in 2022 did not contain in its reasoning why alternatives to detention in these particular cases were not applied instead of detention.

Alternatives to detention is also possible in line with the Foreigners Act and Article 93. This provision outlines that Mol can render a decision imposing mandatory stay in a particular place (mandatory stay) if the foreign national will not be available to the competent authority for the execution of forcible removal. It is also outlined that assessment needs to be based on the proportionality principle in terms of mandatory stay as less intrusive measure for the foreign national in case.

Mandatory stay may be approved for a period of up to one year and may be extended to the same period of time, depending on the existence of reasons for which the mandatory stay is ordered. A foreign national foreigner who has been imposed with the mandatory stay, must stay at a particular address and report to the competent authority in accordance with the schedule stated in the decision on mandatory stay. When there are valid reasons for this, the competent authority may issue a decision approving that the foreigner temporarily leaves the place of mandatory stay. If foreign national disrupts forced removal or does not respect the schedule of reporting, he can be detained in immigration detention facility. It is possible to challenge this decisions before the Mol as the second instance, and before the Administrative Court as the third instance. A foreigner imposed with the measure of mandatory stay and who has no travel document shall be issued a temporary identity card.

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 their personal circumstances and needs, and particularly their health condition.⁹⁶⁶ 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 UASC from **Afghanistan** were detained on security grounds,⁹⁶⁷ 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. There were no recorded cases of vulnerable applicants, such as UASC, being detained in 2022.

⁹⁶⁵ Article 79 Asylum Act.

⁹⁶⁶ Article 80 Asylum Act.

⁹⁶⁷ Information provided by CSO IDEAS.

4. Duration of detention

Indicators: Duration of Detention

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

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 Office⁹⁶⁸ 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.⁹⁶⁹

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|---|-----------------------------|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Persons who seek asylum in Serbia may be detained in the Detention Centre in **Padinska Skela**, Belgrade, which can host up to 110 persons. DC Plandište and DC Dimitrovgrad can host up to 100 persons.

Foreigners who are sanctioned for the misdemeanour of unlawful border crossing or irregular stay on Serbian territory are detained in 28 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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

2.1. Overall conditions

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.⁹⁷⁰ 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.

⁹⁶⁸ Article 78(2) and (3) Asylum Act.

⁹⁶⁹ Article 88 Foreigners Act.

⁹⁷⁰ However, in practice, it is rare that families are detained during the course of asylum procedure. Not a single case has been reported in the past couple of years.

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

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 new detention centres in **Dimitrovgrad and Plandište**.

2.2. Conditions in penitentiary facilities

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

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

2.3. Conditions in transit zones

The airport transit premises have a size of 80m² and are equipped with 25 sofas and some blankets. There are no adequate conditions for sleeping and the ventilation is unsatisfactory. The foreigners are locked up all day long. The toilet is located within the premises and is in an acceptable condition.

In 2019, the Special Rapporteur for Torture described material conditions as inadequate for the purposes of detention. The main shortcomings are described as follows:

‘The material conditions in this room were inadequate for the purposes of detention, the main shortcomings being the absence of beds and heating, deplorable hygienic and sanitary conditions and constant artificial lighting. When tested, the tap water was not running, the premises visibly had not been cleaned for an extended period of time and all seven persons who were held there were obliged to spend the night sitting in armchairs. However, they had all received meals provided by the airport police.’⁹⁷¹

The newly established premises at the Nikola Tesla airport are still not considered as suitable for facilitation of asylum procedure. There are no reports which describe the look of the new detention rooms.

3. Access to detention facilities

Indicators: Access to Detention Facilities

- | | | | |
|--|------------------------------|---|-----------------------------|
| 1. Is access to detention centres allowed to | | | |
| ❖ Lawyers: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

UNHCR has unimpeded access to all persons under its mandate, including in detention.⁹⁷² NGOs specialised in asylum and migration issues are also entitled to have access to all persons who enjoy the

⁹⁷¹ 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.

⁹⁷² Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

status of asylum seeker.⁹⁷³ Access to asylum seekers detained at the airport could be restricted, when that is necessary to protect national security and ensure public order in the Republic of Serbia.⁹⁷⁴ CSOs in general have the possibility to access the Detention Centre in **Padisnka Skela**, but was rarely done in 2022 due to lack of interest of detainees to apply for asylum. Usually, the visits are conducted upon invitation of the management, and when a foreigner expresses their intention to apply for asylum.⁹⁷⁵ The question that remains open is if the higher number of detainees would be willing to apply for asylum if open visits would be allowed by the MoI. Open visits would imply unhindered access to lawyers who would provide legal information and counselling.

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? n/a

The applicant can challenge their detention before the competent Higher Court within 8 days from the delivery of the decision.⁹⁷⁶ The appeal against the Asylum Office's detention decision does not have suspensive effect.⁹⁷⁷

Since the decision is drafted in Serbian language, and if the foreigner does not have legal counsel (which is quite often the case), there is no real possibility to challenge it.

What is important to outline is that in 2022, one applicant from Kyrgyzstan tried to challenge his detention on security grounds before the Higher Court in Belgrade, but this body has never decided upon these appeals. The question that remains open is why the lawmaker has designated Higher Court as an authority which should examine the lawfulness of administrative detention, and not the Administrative Court.

As for the appeals against immigration detention imposed by the MoI and in relation to foreign nationals detained under the Foreigners Act, the competent body is the Administrative Court. Article 90 stipulates that a complaint against a decision on immigration detention or extension of immigration detention can be lodged within 8 days of the day of delivery of the decision, but the complaint will not have a suspensive effect. The Administrative Court shall decide on the complaint within 15 days.

The practice of the Administrative Court with regards to the complaints lodged against decisions on immigration detention in the period 1 January 2022 – 31 December 2022						
No.	No. of Judgment	Date of complaint	Date of Judgment	Outcome	Nationality	No. of persons
1.	U 17848/21	20 August 2022	14 February 2022	Dismissed	/	1
2.	U 17638/22	20 April 2022	30 June 2022	Rejected	/	1
3.	U 29073/22	12 July 2022	8 August 2022	Upheld	/	1
4.	U 30050/22	27 May 2022	15 August 2022	Upheld	/	1
5.	U 30051/22	27 May 2022	19 August 2022	Upheld	/	1

⁹⁷³ Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

⁹⁷⁴ Article 41(3) Asylum Act.

⁹⁷⁵ BCHR conducted 8 visits to Detention Center in 2020.

⁹⁷⁶ Article 78(5) Asylum Act.

⁹⁷⁷ Article 78(6) Asylum Act.

6.	U 22849/22	27 May 2022	19 August 2022	Upheld	/	1
7.	U 37652/22	1 September 2022	20 September 2022	Upheld	/	1
8.	U 41651/22	5 October 2022	17 October 2022	Rejected	/	1
9.	U 41170	19 September 2022	18 October 2022	Upheld	/	1
10.	U 40549/22	13 September 2022	20 October 2022	Upheld	/	1
11.	U 40539	13 September 2022	20 October 2022	Upheld	/	1
12.	U 30056	22 July 2022	28 October 2022	Rejected	/	1
13.	U 42901/22	28 September 2022	10 November 2022	Rejected	/	1
14.	U 42900/22	28 September 2022	14 November 2022	Rejected	/	1
15.	U 46314/22	25 October 2022	22 November 2022	Upheld	/	1
16.	U 443630/22	20 October 2022	2 December 2022	Upheld	/	1
17.	U 46315/22	25 October 2022	7 December 2022	Upheld	/	1
18.	U 41852/22	23 September 2022	7 December 2022	Upheld	/	1
19.	U 42899/22	28 September 2022	12 December 2022	Dismissed	/	1

In 2022, a total of 19 complaints were lodged against decisions on immigration detention or decision on extension of immigration detention. The majority of complains were upheld, but what is important to outline is that in none of the said decisions the Administrative Court did not order the release of a detainee, but referred the case back to the Mol unit which rendered the decision on detention.

What can also be seen from the above enlisted practice is that less than 15 foreign nationals⁹⁷⁸ detained under the provisions of the Foreigners Act challenged their detention. This basically means that less than 3% of immigration detainees challenged their detention in 2022.

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 to challenge 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 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.⁹⁷⁹

⁹⁷⁸ In three instances foreign nationals complained twice – once against the decision on detention and the other time against the decision on extension of detention.

⁹⁷⁹ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 14.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

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

Given that there have not been many decisions placing asylum seekers in detention at the Detention Centre for Foreigners, it is impossible to form a clear picture of the current state of affairs in this field. What can be seen from the Administrative Court case files is that detention has been extended in several cases to the maximum of 6 months, but also that only handful of complaints were lodged in general against immigration detention imposed under the Foreigners Act.

E. Differential treatment of specific nationalities in detention

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

A. Status and residence

1. Residence permit

Indicators: Residence Permit

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

Despite their right to permanent residence under the Asylum Act,⁹⁸⁰ 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 per 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.⁹⁸¹

ID cards for persons granted refugee status are valid for the period of five years, while ID cards for persons granted subsidiary protection is valid for the period of one year.

The content of this document is simple and the ID card is a plasticised document containing a photo of the person, its surname and first name, gender, date and place of birth, country of origin, address, as well as the document number and date of issue and expiration. The document is filled out by hand by an Asylum Office official and the only proof that the document has been issued by a state administration body is a stamp of the Ministry of Interior.

ID cards that are issued to asylum seekers and persons granted asylum create an entire set of everyday obstacles. The first problem is that this document cannot prove the identity and the legal status of refugees. While ID cards issued to Serbian citizens and foreigners granted temporary or permanent residency contain unique personal number of the citizen (JBMG) or foreigner's registration number (EBS), this document, due to lack of its biometric features does not contain any of these data. Thus, the current ID card for asylum seekers and refugees does not contain the EBS, which further causes bureaucratic obstacles for enjoying other rights such as obtaining working permit, opening of bank accounts and other every day needs which can be met only with the additional documentation issued by the Asylum Office, such as the confirmation on obtaining international protection in Serbia or EBS confirmation document.

Many institutions and the staff of these institutions are not familiar with ID cards which causes problems in local health care institutions, public notaries, sports facilities, educational institutions, supermarkets, and employers on the labour market. There have been instances in which the police officers were questioning the validity of ID cards during the routine checks.

Accordingly, plastic ID cards are the reason why refugees and asylum seekers face discrimination on almost every step of their struggle with the public or private administrations.

2. Civil registration

Currently, there is no data on civil registration for beneficiaries of international protection in Serbia, unless when the child is born and is issued with the birth certificate.

⁹⁸⁰ Article 60 Asylum Act.

⁹⁸¹ Article 90 Asylum Act.

3. Long-term residence

The Long-Term Residence Directive is not applicable in Serbia, and the Serbian legal framework does not recognise the institution 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.⁹⁸² The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal of CRM.⁹⁸³ However, the Citizenship Act⁹⁸⁴ and Foreigners Act are not harmonised with the Asylum Act. Thus, none of these two acts recognise 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 2019.⁹⁸⁵

5. Cessation and review of protection status

Indicators: Cessation

- | | |
|---|--|
| 1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? | N/A |
| 2. Does the law provide for an appeal against the first instance decision in the cessation procedure? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Do beneficiaries have access to free legal assistance at first instance in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> With difficulty <input type="checkbox"/> No |

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

- ❖ Has voluntarily re-availed him or herself of the protection of their country of origin;
- ❖ Having lost their nationality, has re-acquired it;
- ❖ Has acquired a new nationality, and thus enjoys the protection of the country of their new nationality;
- ❖ Has voluntarily re-established him or herself in the country which they left or outside which they remained owing to fear of persecution or harassment;
- ❖ Can no longer continue to refuse to avail him or herself of the protection of their country of origin or habitual residence, because the circumstances in connection with which they have 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 them to make a 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 themselves of the protection of the country of origin or the country of

⁹⁸² Article 71(1) Asylum Act.

⁹⁸³ Article 71(2) Asylum Act.

⁹⁸⁴ Official Gazette no. 135/04, 90/7 and 24/18.

⁹⁸⁵ CESCR, *List of Issues in relation to the third periodic report of Serbia**, 12 November 2019, E/C.12/SRB/Q/3, para. 12.

former habitual residence.⁹⁸⁶ Even though cessation 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, after they were informed by the Asylum Office about the grounds for cessation, to invoke compelling reasons arising out of previous serious harm for refusing to avail themselves of the protection of the country of origin or the country of former residence.⁹⁸⁷

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.⁹⁸⁸ Not a single CSO which provide free legal aid to asylum seekers have reported such practice.⁹⁸⁹

6. Withdrawal of protection status

To the knowledge of CSOs providing legal assistance, withdrawal has never been applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

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

A beneficiary of international protection has the right to reunification with their family members.⁹⁹⁰ 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.⁹⁹¹ A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.⁹⁹²

The family reunification procedure is also regulated by the Foreigners Act. Foreigners Act explicitly recognises that that family members of persons granted asylum have to apply for visa in the diplomatic-consular representation of the Republic of Serbia in the country of origin or third country. They also have to provide the evidence on their family tie with a person granted asylum in Serbia. Those people granted

⁹⁸⁶ Article 81(4), (5) and (6) Asylum Act.

⁹⁸⁷ Article 82 Asylum Act.

⁹⁸⁸ Article 83 Asylum Act.

⁹⁸⁹ Information obtained in December 2020 from APC, BCHR, BCMHA, HCIT and IDEAS.

⁹⁹⁰ Articles 70(1) and 9(2) Asylum Act.

⁹⁹¹ Article 2(2) and (12) Asylum Act.

⁹⁹² Article 70(4) Asylum Act.

visas to arrive to Serbia will be granted temporary residency for the purpose of family reunification and in line with the Article 55 of Foreigners Act.

The general requirements for the any kind of temporary residency are the following:

- 1) Valid travel document
- 2) Evidence of means for subsistence during the planned stay
- 3) Registered address of residence in the Republic of Serbia
- 4) Evidence of health insurance during the planned stay (around 300 EUR per year)
- 5) Proof of payment of the prescribed administrative fee (around 135 EUR)

The Foreigners Act prescribes that the family reunification is related to the so called 'nuclear family' which covers: spouses, civil partners, their minor children born in or out of wedlock, minor adopted children or minor stepchildren, who have not married.

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**.⁹⁹³ The family reunification procedure lasted 10 months, but this case should be observed as a model to learn from for all future cases. Still, when the family arrived to Serbia they applied for asylum and were granted refugee status.

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. According to the Foreigners Act, this implies the status based on the temporary residency which also implies the possibility to obtain foreigners ID card.⁹⁹⁴

C. Movement and mobility

1. Freedom of movement

Refugees have equal rights to free movement as permanently residing foreigners in Serbia.⁹⁹⁵ 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 fate of all other refugees, asylum seekers and migrants who were detained from 15 March to 7 May 2020 (see also **Error! Reference source not found.**).

2. Travel documents

The Asylum Act envisages that the Minister of Interior 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.⁹⁹⁶ 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 before the Constitutional Court in 2015. A constitutional appeal was filed in 2014 as well for the same reasons for other BCHR clients.

⁹⁹³ APC, *Prvi slučaj spajanja porodice izbeglice u Srbiji*, 20 July 2020, available at: <http://bit.ly/2YCpEzC>.

⁹⁹⁴ Article 102 Foreigners Act.

⁹⁹⁵ Article 62 Asylum Act.

⁹⁹⁶ Article 101 Asylum Act.

The Constitutional Court dismissed the constitutional appeal on 20 June 2016, stating that the subject of a constitutional appeal cannot be a failure to adopt a general legal act, but only the individual act as it is prescribed by Article 170 of the Constitution.⁹⁹⁷ This reasoning remains unclear since the consequences embodied throughout illegal and unjustified limitation of freedom of movement were reflected upon individuals. The impossibility to receive 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.⁹⁹⁸

The Asylum Act also envisages that, in 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.⁹⁹⁹ This provision is yet to be applied.

In 2022, there were two public debates on the amendments to the Asylum Act which contain provisions on the refugee travel document which contain clarifications of the travel document provisions and which, if adopted, would not require the adoption of the bylaw but the Asylum Act itself would represent grounds for issuing of travel document.¹⁰⁰⁰

D. Housing

Indicators: Housing

- | | |
|---|------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 1 year |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2022: | At least 4 |

The Commissariat for Refugees and Migration is responsible for ensuring temporary accommodation for persons who have been granted international protection.¹⁰⁰¹ 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.¹⁰⁰² The Decree defines the manner of granting accommodation to beneficiaries of asylum, including the conditions that need to be met in order to receive accommodation, the priorities to be respected when doing so, as well as the conditions of housing.

Accommodation is granted to individual beneficiaries together with their families if they have a final decision granting asylum which is not older than one year at the time of the request and if they do not possess sufficient financial resources to find accommodation on their own. The CRM may provide them with housing for temporary use or financial assistance which is used to cover the costs of temporary accommodation.¹⁰⁰³ 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 assistance¹⁰⁰⁴ which is around 34,000 dinars (around 285 EUR).

⁹⁹⁷ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

⁹⁹⁸ ECtHR, *Seraj Eddin v. Serbia*, Application No 61365/16, Communicated to the Government on 23 February 2018.

⁹⁹⁹ Article 91(3) Asylum Act.

¹⁰⁰⁰ Available at: <https://bit.ly/3yepU9U>, Article 39.

¹⁰⁰¹ Article 23 Asylum Act.

¹⁰⁰² Official Gazette no. 63/15 and 56/18, hereinafter: Accommodation Decree.

¹⁰⁰³ Article 2 (1) Integration Decree.

¹⁰⁰⁴ Article 9 (1) Integration Decree.

Also, it is possible that persons granted asylum could be allowed to stay in Asylum Centres for longer than 1 year, but this is more an issue of tolerated stay than the legal possibility. 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.¹⁰⁰⁵ The total number of persons granted asylum until the end of 2022 is 226, but according to the records of the UNHCR in terms of the people being provided with the integration support, this number is around 100 persons. This basically means that around half of persons granted asylum have left Serbia. Additionally, a significant number of them already have enough resources for accommodation and a very high level of integration since they are *sur place* refugees who have lived on different grounds in Serbia for years.¹⁰⁰⁶ Thus, it is reasonable to assume that only a handful of persons granted asylum are eligible for the State funded accommodation.

In order to apply for the financial assistance, refugees are obliged to attend 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 they stop attending Serbian classes without a justified reason, they would lose the right to temporary accommodation assistance.¹⁰⁰⁷

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 their income does not exceed 20% of the minimum Republic of Serbia wage for the previous month, the value of the financial assistance is equal to the established Serbian 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.¹⁰⁰⁸ Another challenge identified in practice concerns the necessity of paying a fee to receive 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 sources¹⁰⁰⁹ and that they are 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, while in 2022, only 4 persons granted asylum were granted monthly support. The reason for this lies in the fact that the 14 people granted asylum were either employed or they enjoyed financial assistance from CSOs or UNHCR.

What represents an additional problem is the fact that more than 200,000 Russian citizens arrived to Serbia after the conflict in Ukraine started, which created a turbulence in the real estate market and sharp increase in rents. In Belgrade, it is basically impossible to rent an apartment for less than 500 EU (around 57,000 dinars), which basically means that financial support of CRM is insufficient to cover the costs of rent.

¹⁰⁰⁵ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 31-32.

¹⁰⁰⁶ Mostly Libyans and several Syrians and Iraqis.

¹⁰⁰⁷ Article 59 (4) Asylum Act.

¹⁰⁰⁸ Article 10 Integration Decree.

¹⁰⁰⁹ *Ibid.*

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.¹⁰¹⁰ The Asylum Act guarantees equality in the rights and obligations of persons granted refugee status with those of persons granted subsidiary protection,¹⁰¹¹ 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.¹⁰¹² 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. Still, the CRM has not produced a single integration plan in 2022. The assistance should include help 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.¹⁰¹³

The NES is tasked with issuing personal work permits which further allows refugees free employment, self-employment and the right to unemployment insurance.¹⁰¹⁴ This further provides foreigners who have been granted asylum unimpeded access to the labour market. The Rulebook on Work Permits¹⁰¹⁵ 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 their identity card and a certified copy of the decision granting asylum, but also the verified statement that they do not have any informal incomes and employment. 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.¹⁰¹⁶ 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 Mol.

Another problem that exists implies that beneficiaries have to pay administrative fees 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 fees. 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.¹⁰¹⁷ The fee is 14,360 dinars (around 121 EUR)¹⁰¹⁸ plus the fee for lodging the request for working permits which is around

¹⁰¹⁰ Article 65 Asylum Act.

¹⁰¹¹ Article 59 Asylum Act.

¹⁰¹² Article 13(6) Employment of Foreigners Act.

¹⁰¹³ Article 7 Integration Decree.

¹⁰¹⁴ Article 12 EFA.

¹⁰¹⁵ Official Gazette no. 63/18, 56/19.

¹⁰¹⁶ Article 9 GAPA.

¹⁰¹⁷ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 170-171.

¹⁰¹⁸ Law on Administrative Fees, Fee No. 205, available at: <https://bit.ly/3kXBe0P>.

330.00 dinars (around 3 EUR). There is a possibility of exemption from paying these expenses in special cases provided for in the GAPA,¹⁰¹⁹ but in practice it applies only to persons who are staying in ACs or RCs.

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 their subsistence or the subsistence of their family or if provided for in a ratified international treaty.¹⁰²⁰ 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, under 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 in 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 them the right to asylum or stops attending such courses, they 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.¹⁰²¹

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.¹⁰²² 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 borne in mind that support to access 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.¹⁰²³

According to the Analysis published by A11 and taking into 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 unable to work due to their health condition.¹⁰²⁴ 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

¹⁰¹⁹ Article 89 GAPA.

¹⁰²⁰ Article 89 GAPA.

¹⁰²¹ Article 59 Asylum Act.

¹⁰²² National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

¹⁰²³ Article 7 of the Integration Decree.

¹⁰²⁴ A11, *Precondition for Integration*, February 2021, p. 31-32 and UNHCR statistics.

the total number of persons granted asylum and present in the country 57.¹⁰²⁵ There is no record on the employment of refugees in the Republic of Serbia for 2022, and there were no other comprehensive surveys conducted by CSOs on the employment rate of persons granted asylum who remained in the country.

In the period from 1 April 2008 to 31 December 2022, the asylum authorities in Serbia rendered 158 decisions granting asylum (refugee status of subsidiary protection) to 262 persons from 26 different countries.¹⁰²⁶ A total of 73 decisions was rendered in relation to 117 applicants who received subsidiary protection, while 85 decisions were rendered in relation to 109 applicants who were granted refugee status.

In 2022, a total of 23 persons granted asylum were issued with working permits and only 6 to persons granted refugee status. Together with asylum seekers, a total of 110 working permits was issued in 2022.

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.¹⁰²⁷ Specific degrees of education are regulated by the Law on Primary Education,¹⁰²⁸ the Law on Secondary Education,¹⁰²⁹ and the Law on Higher Education.¹⁰³⁰

Under the Law on Basics of the Education System, foreign nationals, stateless persons and persons applying for citizenship shall have a right to education on an equal footing and in the same manner as Serbian nationals.¹⁰³¹ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.¹⁰³² A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.¹⁰³³ 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 the asylum application.¹⁰³⁴ 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.¹⁰³⁵ 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

¹⁰²⁵ Ibid.

¹⁰²⁶ 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.

¹⁰²⁷ Official Gazette, no. 88/17 and 27/18.

¹⁰²⁸ Official Gazette, no. 55/13, 101/17 and 27/18.

¹⁰²⁹ Official Gazette, no. 55/13, 101/17 and 27/18.

¹⁰³⁰ Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

¹⁰³¹ Article 3(5) Law on Basics of the Education System.

¹⁰³² Articles 55 and 64 Asylum Act.

¹⁰³³ Article 64 Asylum Act.

¹⁰³⁴ Article 55 (2) Asylum Act.

¹⁰³⁵ Article 2(4) Integration Decree.

extracurricular activities.¹⁰³⁶ However, the Government's Decision failed to recognise persons seeking or granted asylum as a category entitled to free of charge textbooks.¹⁰³⁷ Thus, the Integration Decree is not harmonised 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.¹⁰³⁸ If the refugee children have proof of prior education, enrolment is made according to their age and level of education completed.¹⁰³⁹ On the other hand, if they do not have any proof of prior education, enrolment is based on a test which aims to assess their level of knowledge.¹⁰⁴⁰ For each student, the school is required to develop a Support Plan that should include an adaptation and stress management programme, an intensive Serbian language programme, an individualised teaching activities programme, and an extracurricular activities programme.¹⁰⁴¹

The alignment of rights to higher education represents a novelty because refugees before could access higher education only under the conditions applicable to all other foreign citizens, including regarding school fees. Although the issue of the validation of foreign diplomas potentially concerns all recognised refugees, still their validation is most wanted in the sectors where employment is conditioned by the possession of an adequate license such as medicine or law practice.¹⁰⁴² However, the problem regarding 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.¹⁰⁴³

The Integration Decree also foresees Serbian language courses and courses of Serbian history, culture and constitutional order for persons recognised as refugees. The 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.¹⁰⁴⁴ 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.¹⁰⁴⁵

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

¹⁰³⁶ Article 6 Integration Decree.

¹⁰³⁷ 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.

¹⁰³⁸ Ministry of Education, Science and Technological Development Instruction No. 601-00–00042/17–2018 of May 2017.

¹⁰³⁹ *Ibid.*, 1-2.

¹⁰⁴⁰ *Ibid.* 2.

¹⁰⁴¹ *Ibid.*, 3.

¹⁰⁴² BCHR, *The Right to Asylum in the Republic of Serbia 2018*, 87-88.

¹⁰⁴³ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, 178,

¹⁰⁴⁴ Article 4 Integration Decree.

¹⁰⁴⁵ 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.¹⁰⁴⁶

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 joined the Council of Europe project of the European Qualification Passport for Refugees.¹⁰⁴⁷ The outcomes of this project are yet to be seen in 2022, but there were at least 4 foreign diplomas recognised 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.¹⁰⁴⁸ 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.¹⁰⁴⁹ 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.¹⁰⁵⁰ This right is exercised through the provision of social protection services and material support.¹⁰⁵¹ 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).¹⁰⁵²

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.¹⁰⁵³ 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.¹⁰⁵⁴ Once granted, the conditions for benefitting 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.¹⁰⁵⁵ One of the problems identified in practice is the extensive length of the procedure to be granted social welfare.¹⁰⁵⁶

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.

¹⁰⁴⁶ 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).

¹⁰⁴⁷ More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

¹⁰⁴⁸ Article 52 and 67 Asylum Act.

¹⁰⁴⁹ Article 2 Social Welfare Act, Official Gazette no. 24/2011.

¹⁰⁵⁰ Article 6 SWA.

¹⁰⁵¹ Article 4 (2) SWA.

¹⁰⁵² Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

¹⁰⁵³ *Ibid*, Article 3.

¹⁰⁵⁴ *Ibid*, Article 8.

¹⁰⁵⁵ *Ibid*, Article 9.

¹⁰⁵⁶ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 181-182.

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. Apart from the housing support by the CRM provided to 4 persons granted asylum in 2022, there are no records which indicate that refugees or asylum seekers were granted social welfare support.

G. Health care

The Asylum Act prescribes that the right to healthcare is guaranteed to all persons granted asylum and that all the costs of health care are covered by the State.¹⁰⁵⁷ Additionally, foreigners' health care is also governed by the Health Care Act (HCA)¹⁰⁵⁸ and the Health Insurance Act (HIA)¹⁰⁵⁹ as well as the Rulebook on the Terms and Procedure for Exercising the Right to Compulsory Health Insurance (RHI).¹⁰⁶⁰ HCA stipulates that refugees and asylum seekers are entitled to health care under equal terms as Serbian nationals.¹⁰⁶¹ 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.¹⁰⁶² The same conclusion can be drawn in relation to the Serbian Health Insurance Fund.¹⁰⁶³ Hence, asylum seekers and persons granted asylum are not entitled to compulsory health insurance and issuance of health insurance cards.¹⁰⁶⁴ They can obtain them only if they pay 3,607 dinars per month (a bit more than 300 EUR on annual basis). Of course, employed persons granted asylum obtain health care insurance from their employers, but the problem arises mainly for those refugees who are unofficially unemployed, but also asylum seekers who are not allowed to work for the first 9 months after they applied for asylum. 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.¹⁰⁶⁵

¹⁰⁵⁷ Article 63 Asylum Act.

¹⁰⁵⁸ Official Gazette no. 25/19.

¹⁰⁵⁹ 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.

¹⁰⁶⁰ Official Gazette no. 10/10, 18/10 – correction, 46/10, 52/10 – correction, 80/10, 60/11 – Constitutional Court Decision, and 1/13.

¹⁰⁶¹ Article 236, para. 1, and Article 239 of the Law on Health Care.

¹⁰⁶² Article 11 HIA.

¹⁰⁶³ Exercising the Right to Compulsory Health Insurance, Serbian Health Insurance Fund, Belgrade, May 2015, available (in Serbian) at: <http://bit.ly/33amche>.

¹⁰⁶⁴ Article 25 HIA; see more in BCHR, *Right to Asylum in the Republic of Serbia* 2019, 184-185.

¹⁰⁶⁵ BCHR, *Right to Asylum in the Republic of Serbia* 2019, 185-187.

