

2023 UPDATE

SERBIA



COUNTRY REPORT

Acknowledgements & Methodology

This report was written by Nikola Kovačević, independent expert, 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 Center for Research and Social Development IDEAS and the Council of Refugees and Asylum Seekers. The report was edited by ECRE.

This report draws on authors and the above-enlisted CSOs' experience providing legal 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), Danish Refugee Council (DRC), Psychosocial Innovation Network (PIN) 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 2023, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is managed by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). 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.



This report is part of the Asylum Information Database (AIDA), partially funded by the European Union's Asylum, Migration and Integration Fund (AMIF) and ECRE. The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of the European Commission.



Table of Contents

Glossary & List of Abbreviations.....	6
Statistics.....	8
Overview of the legal framework	11
Overview of main changes since the previous report update	14
Asylum Procedure.....	18
A. General	18
1. Flow chart.....	18
2. Types of procedures	19
3. List of authorities that intervene in each stage of the procedure.....	20
4. Determining authority	22
5. Short overview of the asylum procedure	27
B. Access to the procedure and registration.....	34
1. Access to the territory and push backs	34
2. Registration of the asylum application.....	80
C. Procedures	90
1. Regular procedure.....	90
2. Dublin.....	136
3. Admissibility procedure.....	136
4. Border procedure (border and transit zones).....	137
5. Accelerated procedure.....	137
D. Guarantees for vulnerable groups	138
1. Identification	138
2. Special procedural guarantees	146
3. Use of medical reports	147
4. Legal representation of unaccompanied children.....	148
E. Subsequent applications	151
F. The safe country concepts	153
1. Safe country of origin.....	153
2. Safe third country	154
3. First country of asylum	156
G. Information for asylum seekers and access to NGOs and UNHCR.....	157
H. Differential treatment of specific nationalities in the procedure.....	158
Reception Conditions	160
A. Access and forms of reception conditions	163
1. Criteria and restrictions to access reception conditions	163
2. Forms and levels of material reception conditions.....	164
3. Reduction or withdrawal of reception conditions	165
4. Freedom of movement	165
B. Housing	166

1.	Types of accommodation	166
2.	Conditions in reception facilities	168
C.	Employment and education	179
1.	Access to the labour market.....	179
2.	Access to education	180
D.	Health care	182
E.	Special reception needs for vulnerable groups.....	184
F.	Information for asylum seekers and access to reception centres.....	186
1.	Provision of information on reception.....	186
2.	Access to reception centres by third parties	186
G.	Differential treatment of specific nationalities in reception	187
	Detention of Asylum Seekers	188
A.	General	188
B.	Legal framework of detention.....	190
1.	Grounds for detention	190
2.	Alternatives to detention.....	196
3.	Detention of vulnerable applicants	197
4.	Duration of detention	197
C.	Detention conditions	197
1.	Place of detention	197
2.	Access to detention facilities	202
D.	Procedural safeguards.....	203
1.	Judicial review of the detention order	203
2.	Legal assistance for review of detention	204
E.	Differential treatment of specific nationalities in detention	204
	Content of International Protection	205
A.	Status and residence.....	205
1.	Residence permit.....	205
2.	Civil registration	205
3.	Long-term residence	206
4.	Naturalisation	206
5.	Cessation and review of protection status	206
6.	Withdrawal of protection status	207
B.	Family reunification.....	207
1.	Criteria and conditions.....	207
2.	Status and rights of family members.....	208
C.	Movement and mobility.....	208
1.	Freedom of movement	208
2.	Travel documents	208
D.	Housing	209
E.	Employment and education.....	211
1.	Access to the labour market.....	211

2.	Access to education.....	212
F.	Social welfare.....	213
G.	Health care	214

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
CJEU	Court of Justice of the European Union
Col	Country of origin Information
CSO	Civil Society Organisation
CPT	European Committee for Prevention of Torture
CRC	UN 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 in Hungarian Embassy
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
ICCPR	International Covenant on Civil and Political Rights
IDEAS	Centre for Research and Social Development IDEAS
IDP	Internally displaced person
ISIS	Islamic State of Iraq and Syria
MoI	Ministry of Interior
MoLEVSA	Ministry of Labour, Employments, Veteran and Social Affairs
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 Centre

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 (1)

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 decisions on discontinuing asylum procedure due to absconding are still the most common decisions and that is the reason why, in relation to many nationalities, there are no in-merits decisions.

Applications and granting of protection status at first instance: 2023¹

	Applicants in 2023 (2)	Pending at end of 2023	Total decisions in 2023 (3)	Total in merit decisions (4)	Total rejection (5)	Refugee status	Subsidiary protection	Humanitarian protection (6)
Total	196	N/A	44	42	36	4	2	5 ²

Breakdown by countries of origin of the total numbers

Burundi	34	N/A	14	14	14	0	0	1
Russian Federation	34	N/A	6	5	5	0	0	0
Cuba	27	N/A	4	4	2	2	0	0
Syria	22	N/A	3	3	2	0	1	0
Pakistan	14	N/A	0	0	0	0	0	0
Afghanistan	9	N/A	3	3	3	0	0	0
Tunisia	5	N/A	1	1	1	0	0	0
Armenia	4	N/A	0	0	0	0	0	0
Iran	3	N/A	0	0	0	0	0	2
Iraq	3	N/A	1	1	1	0	0	0

Source: UNHCR Office in Serbia and Ministry of Interior of the Republic of Serbia - Border Police Department - Asylum Office, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹ It is important to note that for the purpose of the 2023 Update to this report, the Asylum Office delivered copies of all decisions rendered in the period from 1 January 2023 and 31 December 2023, which provided the author, for the first time, with the possibility to provide accurate statistical and substantive data and analysis of practice.

² Apart from the above-enlisted nationalities, one person from Guinea received temporary residency on humanitarian grounds, as well as one person from Sudan.

Note 1: statistics on applicants and pending concern people, including children and dependents. The rest of the columns concern number of decisions as that is usually the (only) data available.

Note 2: “Applicants in year” refers to the total number of applicants, and not only to first-time applicants. If data is available only on first-time applicants, specify this in the source.

Note 3: Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.

Note 4: see [Inadmissibility](#).

Note 5: “Rejection” in this column only covers negative decisions on the merit of the application.

Note 6: Temporary residency on humanitarian grounds ('привремени боравак из хуманитарних разлога'), which can be granted for the period ranging from 6 months to 3 years, in line with the Article 61 of the Foreigners Act.

Applications and granting of protection status at first instance: rates for 2023

	Overall rejection rate (2)	In merit protection rate (1)	Refugee rate amongst positive decisions (1)	Subsidiary protection rate amongst positive decisions (1)	Humanitarian protection rate
Total	85%	15%	66.6%	33.3%	100%
Breakdown by countries of origin of the total numbers					
Burundi	100%	0%	0%	0%	0%
Russian Federation	100%	0%	0%	0%	0%
Cuba	50%	50%	100%	0%	0%
Syria	66.6 %	33.3 %	0%	33.3%	0%
Pakistan	100%	0%	0%	0%	0%
Afghanistan	100%	0%	0%	0%	0%
Tunisia	100%	0%	0%	0%	0%
Armenia	0%	0%	0%	0%	0%
Iran	0%	0%	0%	0%	100%
Iraq	100%	0%	0%	0%	0%

Source: UNHCR office in Serbia and Ministry of Interior of the Republic of Serbia - Border Police Department - Asylum Office *Response on the request for the information of public importance of the MoI no. 07-34/24 of 15 April 2024.*

Note 1: these rates are calculated based on in merit decisions only, excluding non in-merit rejections, as well as decision on temporary residency on humanitarian grounds, as it is irrelevant for the assessment of the asylum procedure in the Serbian context.

Note 2: these rates are calculated based on total decisions.

Gender/age breakdown of the total number of persons issued with the certificate on the intention to apply for asylum in the Republic of Serbia: 2023

	Men	Women	Adults	Children	
				Accompanied	Unaccompanied
Number	1,377	277	1,385	239	30
Percentage	83%	17%	84%	14.5%	1.5%

Source: UNHCR Office in Serbia and Ministry of Interior of the Republic of Serbia - Border Police Department - Asylum Office

[Note: The gender breakdown (Men/Women) for asylum applicants was not provided by the Asylum Office in 2023, but only a 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.]

First instance and appeal decision rates: 2023

It should be noted that, during the same year, the first instance and appeal authorities handle different caseloads. Thus, the decisions below do necessarily not concern the same applicants.

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	44	100%	37	100%
Positive decisions	6	15%	/	/
• <i>Refugee status</i>	• 4	• 10%	• 0	• 0%
• <i>Subsidiary protection</i>	• 2	• 5%	• 0	• 0%
• <i>Other</i> ³	• 0	• 0%	• 4	• 11%
Negative decisions	37	85%	33	89%

Source: UNHCR and Asylum Commission response to the request for the information on public importance no. 01/24 of 10 April 2024.

³ Please in brief list other possible 'positive' appeal decisions but that do not directly grant refugee status or subsidiary protection, e.g. decisions that grant the applicant's appeal and send the application back to the first instance authority for a new decision; and add a in text reference to the relevant part of the report.

⁴ These positive decisions do no refer to granting of asylum or subsidiary protection, but to either an upholding of the appeal against the decision of the Asylum Office and referral of the case back to it as the first instance authority or a referral of the case back to the Asylum Office after the complaint against the decision of the Asylum Commission was upheld by the Administrative Court as the third instance authority. It is important to note that for the purpose of the 2023 Update to this report, the Asylum Commission delivered copies of all decisions rendered in the period from 1 January 2023 and 31 December 2023, which provided the author, for the first time, with the possibility to provide accurate statistical and substantive data as well as analysis of practice.

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, 31/2019 and 62/2023	Zakon o strancima Republike Srbije / Закон о странцима	Foreigners Act	https://bit.ly/2SP2aa9 (EN) https://bit.ly/2SUJlee (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 and 115/21	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/2lpydEP (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 and 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/3sDTDFO (SR)</p>
<p>Decree on the Manner of Involving Persons Granted Asylum in Social, Cultural and Economic Life Official Gazette, no. 101/2016 and 56/2018.</p>	<p>Uredba o načinu uključivanja u društveni, kulturni i privredni život lica kojima je odobreno erti na azil / Уредба о начину укључивања у друштвени, културни и привредни живот лица којима је одобрено право на азил</p>	<p>Integration Decree</p>	<p>https://bit.ly/2J5b3rW (SR)</p>

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)
Rulebook on the look and content of the travel document for refugees Official Gazette no. 104/2023	Pravilnik o sadržini i izgledu obrasca putne isprave za izbeglice/ Правилник о садржини и изгледу обрасца путне исправе за избеглице	Rulebook on Refugee Travel Document	https://bit.ly/4e6rDBI SR)

Overview of main changes since the previous report update

The previous version of this report was last published in **May 2023**.

International protection

Asylum procedure

- ❖ **Key statistics on arrivals:** According to the Commissariat for Refugees and Migration (CRM), a total of 108,808 refugees, asylum seekers and migrants resided in asylum and reception centres in Serbia in 2023. However, the methodology for counting new arrivals applied by the CRM cannot be considered as reliable, despite the fact that these numbers are taken as credible and official by the UNHCR office in Serbia and CSOs (see [Informal pushbacks – Arrivals](#)). Thus, these numbers should be taken with caution, but it is undisputable that the number of foreign nationals who irregularly entered Serbia in 2023, mainly from Bulgaria and North Macedonia, can be measured in tens of thousands. Apart from this number, a significant number of Russian, but also Ukrainian citizens continued to arrive to Serbia in 2023, regulating their legal status mainly outside the scope of Asylum Act (see [Annex on Temporary Protection](#)).
- ❖ **Access to the territory - Pushback practices:** Refugees and migrants arriving to Serbia from North Macedonia and Bulgaria still face significant difficulties to access the territory and the asylum procedure. They are subjected to border practices that are a cluster of human rights violations (arbitrary deprivation of liberty, ill-treatment, expulsion without examination of individual circumstances and risks of refoulement and chain refoulement, etc.), applied by the Serbian Border Police which acts with impunity. A total of 37,403 persons were prevented from “entering Serbia illegally” according to the MoI, a number which does not include foreign nationals formally refused entry or readmitted to third countries or countries of origin. Thus, these persons prevented from “entering Serbia illegally” were denied access to the territory and asylum procedure outside the scope of the relevant legal frameworks, i.e. either Asylum or Foreigners Act (see [Informal pushbacks](#)).
- ❖ **Pushbacks from other countries to Serbia:** pushback practices towards Serbia and from neighbouring EU countries continued in 2023 as reported by UNHCR, CSOs, but also state authorities of some of the neighbouring states, such as Hungary which keeps official data records. A total of 100,138 foreign nationals were pushed back from Hungary to Serbia in 2023, and 388,753 in total since 2016, a violation of the procedural limb of the Article 3 of ECHR, but also of Article 4 of Protocol 4 of the ECtHR, both read in conjunction with the Article 13 of ECHR. Removal to Serbia is done without any risk assessment of *refoulement* or *chain refoulement*, meaning people are not granted access to the asylum procedure, accommodation and services (see [Pushbacks towards Serbia and their consequences](#)).
- ❖ **Smuggling activities:** Organised criminal groups continued to operate at border areas with the external borders of the EU, and according to many reports, in cooperation with parts of the state system. Their activities lead to frequent clashes between different smuggling groups which involve use of semi-automatic and automatic weapons, which have led to death and injury. Their presence also represents a risk for refugees and asylum seekers who attempt to cross into the EU countries, or who are returned, officially or unofficially, to Serbia. Their presence was also evident in reception facilities that were operational until the end of the year. These incidents clearly indicate the existence of a link between smuggling groups and certain parts of State institutions (see [Pushbacks towards Serbia and their consequences](#)).
- ❖ **Access to the asylum procedure at the airport:** Access to territory and to the asylum procedure at Belgrade, but also Niš and Kraljevo airports remained a serious concern and practices of refusal of entry and forcible removals of persons in need of international protection (Syrians, Afghanis, Palestinians but also Turkish citizens) continued. Refusal of entry practices continue to

take place in conjunction with arbitrary deprivation of liberty at the transit zone which in many instances (when people are not allowed to obtain legal aid, deprived of their cell phones, or denied the possibility to lodge an appeal against the refusal of entry decisions) may even amount to incommunicado detention (see [Refusal of entry under the Foreigners Act](#)).

- ❖ **Registration and lodging of asylum applications:** Out of 108,808 arrivals recorded, only 1,654 foreign nationals were registered with asylum applications in line with the Article 35 (11) of the Asylum Act, and only 193 lodged first-time asylum applications (see [Registration of the asylum application](#)).
- ❖ **First-instance asylum decisions:** In 2023, the Asylum Office delivered 111 decisions regarding 154 asylum seekers. Of those, 36 decisions regarding 50 asylum seekers rejected the claim on the merits, while 6 decisions granting asylum to 9 asylum seekers were delivered over the same period. The asylum procedure was discontinued in 67 cases regarding 94 applicants, due to their absconding, while in 2 decisions, concerning 2 applicants, subsequent asylum applications were rejected. The rejection rate in 2023 was 85%, while the recognition rate was 15%. The quality of the credibility assessment further deteriorated, impacting applicants from Syria and Afghanistan and SGBV survivors. National security grounds were invoked on 5 occasions as grounds for rejection on the basis of the exclusion clauses (see [Regular procedure - General](#)).
- ❖ **Asylum Commission – the second instance authority:** In 2023, the Asylum Commission rendered 36 decisions regarding 43 persons. It rejected 30 complaints and upheld 4 (which were then sent back to the first instance authority), while in two instances it discontinued the procedure. There were no decisions granting international protection. The cases ruled upon by the Asylum Commission in 2023 related to people of the following nationalities: Burundi (15), Cuba (6), Unknown (4), Afghanistan (3), Iraq (2), Iran (2), Syria (2), Russia (1), Morocco (1), Tunisia (1), Germany (1), North Macedonia (1), Pakistan (1), Bosnia and Herzegovina (1), Bangladesh (1) and Ukraine (1). Overall, stakeholders highlight that that Asylum Commission does not have the necessary human, professional and infrastructural capacity to practice its corrective influence over the Asylum Office (see [Appeal before the Asylum Commission](#)).
- ❖ **Administrative Court – the third instance authority:** In 2023, the Administrative Court delivered 22 decisions regarding 26 persons of the following nationalities: Burundi (7), Afghanistan (5), Unknown (4), Iran (4), Pakistan (2) and 1 from Türkiye, Mali, Ghana and Tunisia. Out of the 22 decisions, 18 complaints regarding 22 persons were rejected, while 3 complaints regarding 3 persons were upheld and 1 case was discontinued (see [Onward appeal \(“complaint”\) before the Administrative Court](#)).
- ❖ **Legal aid:** The quality of legal aid remains low, leading to situations in which lawyers provide poor Country of Information (COI) reports, fail to lodge remedies and adequately prepare asylum seekers for different steps in the asylum procedure. In most of the cases, legal aid is provided by CSOs (see [Legal assistance](#)).

Reception conditions

- ❖ **Reception capacity and conditions:** The Commissariat for Refugees and Migration is in charge of managing the 7 Asylum Centres and 12 Reception Centres (RC). In 2023, a total of 17 asylum and reception centres were operational for at least the part of the year. The Asylum Centre in Bogovađa and the Reception Centre in Bela Palanka - Divljana were not operational.⁵ In most of the reception facilities, the conditions cannot be described as adequate for long stays, while those which can be used for such purpose are in a dilapidated state and require refurbishment. The best conditions were reported in AC Obrenovac and AC Vranje (see [Housing](#)).

⁵ Data obtained from UNHCR office in Serbia and practice-informed observation by IDEAS.

- ❖ **Vulnerability:** Newly arrived foreign nationals do not undergo any kind of vulnerability assessment (see [Special reception needs for vulnerable groups](#)).

Detention of asylum seekers

- ❖ **Freedom of movement/deprivation of liberty:** Asylum seekers are rarely detained in Serbia under the Asylum Act, but many foreign nationals who were detained under the Foreigners Act were in need of international protection. A total of 609 foreign nationals was detained on the grounds set out in the Foreigners Act and only 1 asylum seeker from Afghanistan. Most immigration detainees were arbitrarily detained according to the NPM due to the fact that their detention was imposed for the purpose of forcible removals which could not be facilitated. According to the NPM, the real grounds for their detention was negative security assessments conducted by BIA, which is not envisaged as a ground for detention under Serbia's legal framework (see [Detention of Asylum Seekers](#)).
- ❖ **Detention conditions:** The conditions in all three detention facilities with a total capacity of 310 were described as satisfactory by the NPM (see [Detention conditions](#)).

Content of international protection

- ❖ **Integration – right to work:** Several legislative changes in 2023 have improved the legal framework related to the integration of persons granted asylum. This is primarily related to the amendments to the Foreigners Employment Act. The changes entail that asylum seekers automatically obtain the right to work after six months, while persons granted asylum obtain the right to work when the decision is delivered to them. There is no longer the need to obtain a work permit and pay for the accompanying fees (see [Employment and education](#)).
- ❖ **Integration – right to permanent residency:** Another positive legislative development is that persons granted asylum can now apply for permanent residency after three years from the delivery of the decision. This is the final step towards naturalisation. In general, however, integration of persons granted asylum still largely depends on the assistance of CSOs and international organisations (see [Long-term residence](#)).
- ❖ **Access to education:** recognised refugees as well as asylum seekers have unhindered access to education, but in practice, the language barrier still represents a major problem for children (see [Employment and education](#)).
- ❖ **Travel documents:** following the landmark European Court of Human Rights judgment in the case of *S.E. v. Serbia*, the Minister of Interior finally adopted the bylaw which allows persons granted refugee status to obtain travel documents. The first travel documents were issued in March 2024 (see [Travel documents](#)).
- ❖ **Family reunification:** Family reunification happened rarely in practice, but in the first quarter of 2024, a Burundian national granted refugee status was reunited with his wife (see [Family reunification](#)).

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 includes '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 through the

Decision on Supplementing of the TPD, which was thus extended be valid until 18 March 2024. The same was done in March 2024 and the TPD is now valid until 16 March 2025.

- ❖ **Registration for temporary protection:** Between March 2022 and December 2023, 1,551 people were registered under the TPD. Of that number, 1,485 were Ukrainian nationals, 35 were Russian nationals and 31 were other nationals (China, Latvia, Bosnia and Herzegovina, Belarus, Georgia, Uzbekistan and Armenia). A total of 996 registered individuals were female, while 555 were male. 342 were children. Out of 1,551 registered individuals, a total of 1,482 were granted temporary protection. Between March and December 2023, 746 benefited from extensions of temporary protection. Refugees from Ukraine have unhindered access to Serbian territory, to registration procedures as well as to the procedure for obtaining temporary protection. Given the Ministry of Interior's positive attitude towards refugees from Ukraine, they do not require substantive legal support to access and obtain temporary protection.

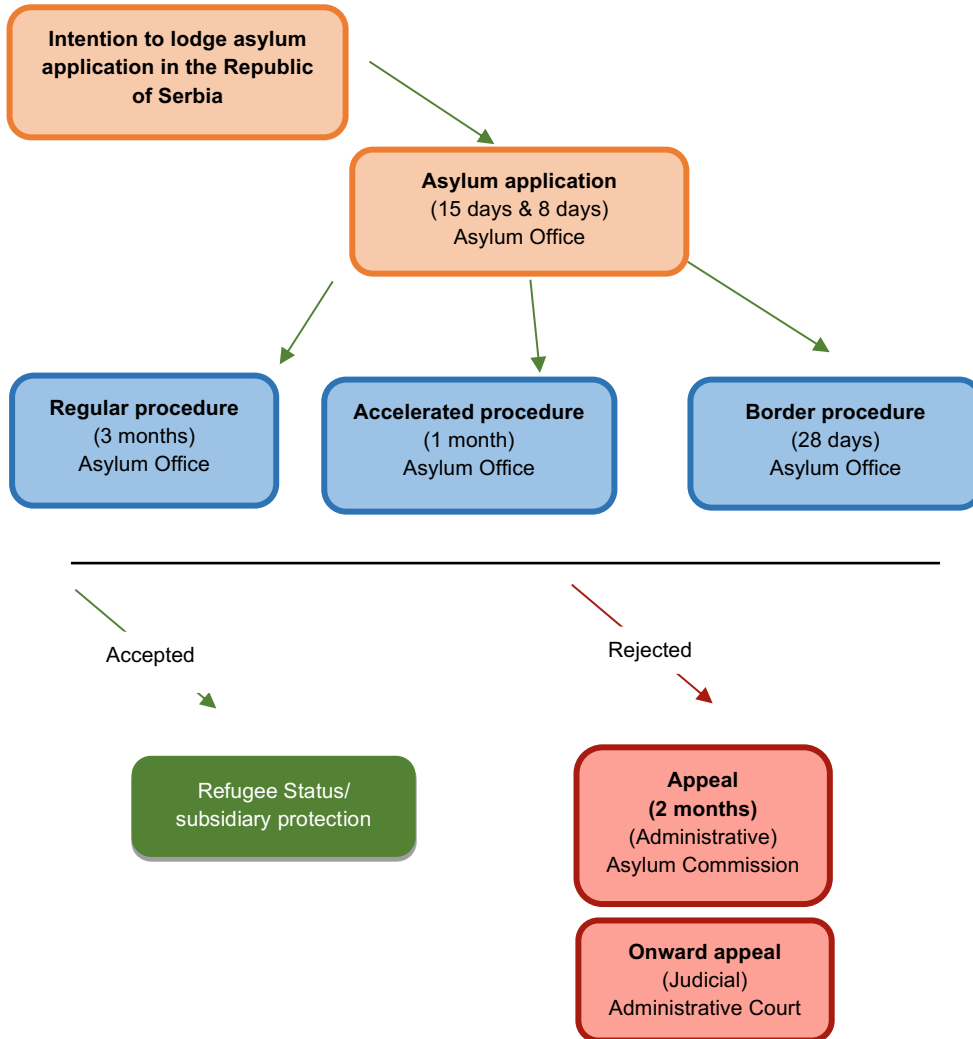
Content of temporary protection

- ❖ **Access to rights:** Beneficiaries of temporary protection are entitled to the same 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 other forms of assistance are mainly provided by CSOs who are funded by the UNHCR and other relevant donors such as the EU.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

1. Which types of procedures exist in your country?
- | | | |
|---|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ⁶ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ⁷ | <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: ⁸ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
2. Are any of the procedures that are foreseen in the law, not being applied in practice?
- | | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|-----------------------------|

The **regular procedure** still represents the most commonly applied procedure and is usually conducted in relation to applicants accommodated in Belgrade, in the Asylum Centre (AC) Krnjača and sometimes AC Obrenovac, 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 for the purpose of conducting regular asylum procedure.⁹ The main reason is serious lack of human capacity within the Asylum Office which is tasked with facilitating the lodging of asylum applications in person and asylum hearings. Another reason is the unreasonable referral system of asylum seekers to remote reception facilities in Serbia where Asylum Office does not go or rarely goes (for further information on this practice and its consequences on asylum seekers' access to asylum procedure, see [Registration – Concerns in practice](#)) despite available places in reception facilities located in Belgrade.

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, the accelerated procedure was not applied.¹⁰

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 (DC) in Plandište and DC in Dimitrovgrad respectively. These facilities became operational in 2023. Still, there were no border procedures conducted in these facilities.

The Ministry of Interior (MoI) had previously explained that a **border/transit zone procedure** at the airport would be conducted after the 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, and the newly established premises are operational but still not considered as suitable for a longer stay due to their size and structure.¹¹ Also, when the number of foreigners refused entry is high, both new and the old detention premises at the airport are put in use.

⁶ For applications likely to be well-founded or made by vulnerable applicants.

⁷ Accelerating the processing of specific caseloads as part of the regular procedure, without reducing procedural guarantees.

⁸ Entailing lower procedural safeguards, whether labelled as “accelerated procedure” in national law or not.

⁹ In 2022, AC in Sjenica and AC in Tutin were visited twice each, while in 2023 only once at the end of the year.

¹⁰ Conclusion based on the basis of the analysis of all first instance decisions delivered for the purpose of drafting this Report.

¹¹ Outlined by the representatives of the Asylum Office at the round table with Border Police that took place in Vrdnik on 28 December 2023.

Thus, the **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.

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 ¹²	Regional Border Centres (RBC) or Border Police Stations (BPS) established within the Border Police Administrations of the Ministry of Interior	Regionalni centri granične policije (RCGP) i stanice granične policije (SGP) / Регионални центри граничне полиције (РЦГП) и станице граничне полиције (СГП)
Registration Certificate	RBC, BPS and Foreigners Units within Police Departments in Serbia	RCGP, SGP i Odeljenje za strance unutar policijskih uprava / РЦГП, СГП и Одељења за странце унутар полицијских управа
Application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Refugee status determination	Asylum Office	Kancelarija za azil / Канцеларија за азил
Appeal procedure <ul style="list-style-type: none"> ❖ First appeal ❖ Onward appeal 	Asylum Commission Administrative Court	Komisija za azil / Комисија за азил Upravni sud / Управни суд
Subsequent application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Constitutional Appeal	Constitutional Court of the Republic of Serbia	Ustavni sud / Уставни суд

Impact of security checks on asylum procedures

In Serbia, **the Security Information Service (BIA)** always conducts security checks and assessments, after which an application for international protection can be rejected based on the exclusion grounds.¹³ This has become the usual practice before the decision granting asylum is officially rendered. The main issue is that a negative decision issued after such assessment does not contain any factual information or evidence which would indicate why the asylum seeker in question represents a national security risk. This further undermines their possibility to challenge such assessment before the Asylum Commission and the Administrative Court, who also keep applicants in the dark on the facts which allegedly indicate their security threat to Serbia.

This practice was applied for the first time 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 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.¹⁴ Eventually, they were granted subsidiary protection. After they were granted subsidiary protection, they decided to withdraw part of the ECtHR application and opted to pursue the case only from the perspective of access to an effective legal remedy (due to the lack of suspensive

¹² Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

¹³ Article 33 (2) Asylum Act.

¹⁴ ECtHR, *A. and Others v. Serbia*, Application No. 37478/16, Decision of 23 May 2024, available at: <https://bit.ly/3V7WW6A>.

effect of the remedy provided) and in relation to the expulsion order rendered on the basis of a negative security assessment which was not provided in the reasoning of the decision.¹⁵ However, the ECtHR was satisfied with the fact that the applicants were allowed to apply for international protection after they were served with the expulsion order which in view of the Court remedied the lack of suspensive effect.¹⁶ Thus, the case was struck out of the ECtHR list in 2024.

Another case, which also refers to an applicant from Libya, was rejected on security grounds in 2019. The case was referred from the first to the second instance body on several occasions and, eventually, the applicant was granted refugee status in February 2022,¹⁷ after the second instance body received a positive security assessment from BIA. The fact that this case was not taken further before international instances can be attributed to the results of the case of *A. and Others* explained above.

In 2022, there were three additional cases in which negative assessments from the BIA were used as grounds for detention of one Kirgizstan¹⁸ and 2 Turkish¹⁹ citizens of Uzbek and Kurdish ethnicity respectively, one of the Turkish citizens also being a member of the Gulen movement.²⁰ All these applicants were rejected on the merits during the asylum procedure, but it is clear that the outcome of their cases was impacted by the negative security assessment of BIA. Another common point to these cases is the fact that they were all fugitives subjected to the extradition procedure. Although all the extradition procedures ultimately ruled in favour of the 'fugitives', protecting them from extradition, their negative security assessments remained. In one of the instances, E.P., a Turkish citizen, whose both asylum application and subsequent asylum applications were rejected was detained and remains in detention as of July 2024 on the basis of the negative security assessment of the BIA. He is facing expulsion to Türkiye under the Foreigners Act as an irregular migrant.²¹ The Kyrgyz national decided to leave Serbia.

In 2023, Asylum Office rejected the asylum applications of 3 more applicants on the grounds of the negative assessments of the BIA (for further elaboration, see [Regular procedure - General](#)).

However, it is important to reiterate that the common feature in the 2022 cases and decisions is the complete disregard of obvious grounds for persecution in the fugitives' countries of origin who are seeking their extradition. This practice has become the rule, despite obvious political backgrounds in most of such cases and failure of requesting States to deliver evidence of the crime allegedly committed by the fugitives. This further 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 (see further information in [Regular procedure - General](#)) and despite the evidence they produce in the asylum procedure. They are simply rejected as an 'unacceptable security risk'.

Thus, the aspiration of the Serbian authorities, embodied through the security assessment of the BIA and the summary rejections in asylum or other residential procedures, accompanied by the security detention practice, depicts the lack of independence of the asylum authorities in politically sensitive cases of people in need of international protection.

¹⁵ 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>.

¹⁶ ECtHR, *A. and Others v. Serbia*, Application No. 37478/16, Decision of 23 May 2024, available at: <https://bit.ly/3V7WW6A>.

¹⁷ Asylum Office, Decision No. 26–1389/17, 2 February 2022.

¹⁸ Radio Free Europe, *Komitet protiv torture UN naložio Srbiji odlaganje izručenja državljanina Kirgiztana, 24 August 2022*, available in Serbian at: <http://bit.ly/3KFW1LR>.

¹⁹ BIRN, *Serbia to Extradite Kurdish Politician to Türkiye over 'Terrorism' Charges*, 31 May 2022, available at: <https://bit.ly/3xY3Ujj> and Amnesty International, *Serbia: Political Activist on Hunger Strike*, available at: <https://bit.ly/4cbeNR4>.

²⁰ Radio Free Europe, *Bez odgovora Ministarstva pravde Srbije o izručenju turskog državljanina*, 31 May 2022, available in Serbian at: <http://bit.ly/41uwlTB>.

²¹ Article 77 Foreigners Act.

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	26	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.²² In its response to the request for the information of public importance, the MoI outlined that the Asylum Office has 28 positions envisaged, and that the current number of employees is 26. In its response, the MoI has failed to deliver the breakdown of positions within the Asylum Office, which is why the table below does not contain clear data as was the case in previous reports.

Asylum Office staff: 2024 (until April)	
Position	Number
Head of the Asylum Office	1
Head of the RSDP Department	1
Head of the Country of Origin Information Department	1
Country of Origin Information Officers	at least 1
Registration Officers in ACs	0
Asylum Officers	at least 9
Administrative Officers	N/A
Translators for English language	N/A
Total	26

Source: MoI, Response to the request for information of public importance of the MoI no. 07-34/24 of 15 April 2024.

In 2023, for almost the entire year, 4 asylum officers were in charge of the asylum procedure and deciding on applications for international protection. In the last quarter, one asylum officer returned from the maternity leave, while 1 more asylum officer started to facilitate asylum interviews. According to the information received by IDEAS through direct communication with UNHCR and the Asylum Office, a total of 9 asylum officers are currently tasked with facilitating asylum procedure as of June 2024.

Asylum officers are in charge of facilitating the lodging of asylum applications in person, asylum interviews 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 interview. The Head of the Asylum Office must further confirm the decision of asylum officers, and the BIA needs to provide positive 'security assessment' as outlined above (see [List of authorities that intervene in each stage of the procedure](#)).

Still, for most of 2023, the capacities of the Asylum Office were low, which was also reflected in the low number of asylum interviews conducted mostly in AC Krnjača in Belgrade. The main consequence of this

²² Article 20 Asylum Act.

understaffing was a low number of first instance decisions and asylum interviews in 2023 (44 decisions and 88 hearings) in comparison to 2022 (70 decisions and 107 hearings), despite the number of applicants dropping from 320 in 2022 to 196 in 2023.

In the 2023 update to this report, because the Asylum Office produced copies of all decisions taken in merits in 2023, it is possible to calculate exactly the length of procedures: for decisions taken in 2023, the first instance asylum procedure lasted 11.6 months on average. This is almost 4 times more than it is prescribed in Article 39 (1) of the Asylum Act. For 2023 decisions, the length of the first instance asylum procedures ranged from 5 to 7 months in most cases,²³ but up to 17, 18 and even 20 and 22 months.²⁴

The low capacity of the Asylum Office is also reflected in the fact that the Asylum Office rarely undertakes evidentiary activities *proprio motu* (expert opinions, witness statements, etc.); this is mainly done by legal representatives. Thus, it is reasonable to repeat the assessment that the current capacities are unsustainable, especially after the influx of Ukrainian refugees who applied for temporary protection.

Thus, if Serbia were to be considered a safe third country to send asylum seekers to for them to receive international protection there, if just a few hundreds of persons in need of international protection were to be returned on a yearly basis based on guarantees that they would be allowed to lodge asylum application, the Asylum Office would collapse due to lack of capacity, even with the 2023/2024 increase in case workers (from 17 in 2022 to 26 as of early 2024, as mentioned above).

Another concerning element is the frequent turnover and unrest within the Asylum Office, which has experienced many changes in high-level staff and directors. 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 MoI. 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 (removed in September 2020) was reinstated, a positive development given the person's experience in the asylum field and her status was confirmed in December 2022. However, at the beginning of 2023, she was replaced again, with a person with lengthy experience in the Border Police Administration and who served on several occasion as Asylum Commission member. However, this person will retire by the end of 2024 and a new Head of the Asylum Office will be appointed again by the end of 2024. These kind of changes undoubtedly contribute to poor efficiency of the first instance authority.

In contrast to its assessment in the 2022 Progress Report, in 2023 the European Commission provided more realistic picture of the capacities of the Asylum Office,²⁵ stating that "it needs to increase its capacity for actual handling of asylum applications".²⁶ It also stated that quality of asylum decisions needs to be further improved through sustainable quality assurance mechanisms and harmonisation of the decision-making process.²⁷ These findings remain valid as of June 2024.

Thus, it is important to reiterate that a significant increase in operational asylum officers is necessary to at least 20 officers to cope in an appropriate and timely manner with the current numbers of applicants. However, a quantitative increase in staff does not improve access to and quality of procedures 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 a complete shift of State policy towards the asylum issue which has never been the case until now, an assessment further corroborated by the fact that the first instance

²³ Asylum Office, Decisions Nos. 26-1888/22 of 3 February 2023 or 26-1552/22 of 26 January 2023.

²⁴ Asylum Office, Decisions Nos. 26- 1562/22 of 14 December 2023 or 26-1682/21 of 2 August 2023.

²⁵ See more in AIDA, *Country Report: Serbia – Update on the year 2022*, May 2023, available [here](#), 25.

²⁶ European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 68.

²⁷ *Ibid.*

asylum procedure could not currently be conducted without the assistance of international Organisations and civil society.

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 a 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.²⁸

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 and 2023 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. Moreover, all the members of the Asylum Commission are selected from different ministries and have regular full-time paid jobs. For their work in the Asylum Commission, they receive 25,000 dinars - 213 EUR (the president of the Commission) and 18,000 dinars - 153 EUR (members of the Commission). Renumeration and mostly the bureaucratic, but also security background of members of the Commission, clearly indicates that this body cannot exercise its corrective role but can only contribute to the lack of effectiveness of the Serbian international protection status assessment procedure. The 2023 practice corroborates this claim.

In April 2024, the Government elected members of the Commission from the following parts of State apparatus:

1. The Head of Commission holds a managerial position within the MoI
2. The Head of the Department for Readmission from the MoI
3. The Officer for Systemic and Legal matters from the MoI
4. A State Secretary from the Ministry of Justice (political position)
5. A Coordinator from the Department of Consular Matters from the Ministry of Foreign Affairs
6. The Head of the Department for General Matters and Management of Human Resources from the Ministry of Health
7. The Head of the Department for Legal Matters from the Commissariat for Refugees and Migration (CRM)
8. The Manager of the Department for Legal and Analytical Matters in the field of Employment and Economical migration from the Ministry of Labour, Employment, Veteran and Social Affairs (MoLEVSA)
9. A Professor from the Police Academy²⁹

The Asylum Commission does not have an office,³⁰ administration, country of origin department nor any other logistical support. Members of the Commission meet several times per year and vote on the proposals made by the rapporteurs designated for every appeal case. They do that outside their regular working hours within their respected ministries, sitting in an office located on the same floor as the Asylum Office within the Ministry of Justice.

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 second instance.³¹ As outlined, this assessment of the CAT proved its continued validity in 2023, given the lack of corrective influence of this body towards the Asylum Office in 2023.

²⁸ Article 21 Asylum Act.

²⁹ Government Decision No. 119-3053/2024 of 11 April 2024.

³⁰ They meet at the Ministry of Interior and on the same floor where Asylum Office is based.

³¹ CAT, *Concluding observations on the third periodic report of Serbia*, 20 December 2021, CAT/C/SRB/CO/3, available at: <https://bit.ly/3MLqTGh>, para. 34 (b).

The Asylum Commission, in most cases, renders decisions in a timely manner, within maximum 3 months (the deadline being 2 months). Still, there are instances in which appeals take much longer.

4.3 Administrative Court – third Instance

The final decisions of the Asylum Commission may be challenged before the Administrative Court.³² 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 despite occasional trainings and study trips.³³

There is no specially designated department comprised of judges with relevant and necessary knowledge and supporting infrastructure such as a Col department. The difficulty which the judges of the Administrative Court face is 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 59 administrative judges in total, covering the entire territory of Serbia.³⁴ As of 31 December 2023, there were 181,220 administrative proceedings pending,³⁵ which clearly shows that the backlog and variety of administrative disputes, together with administrative judges' lack of experience dealing with asylum and migration issues, makes this body ineffective, theoretical and illusory for asylum seekers.

The length of the procedure before the Administrative Court can sometimes be counted in years, which has led, in some instances, to asylum procedures that have lasted more than 4 years.³⁶ In 2023, such cases were also reported, and the length in itself indicates the lack of capacity of this body to deal with complaints of asylum applicants.³⁷

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 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.³⁸

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.³⁹

³² Article 22 Asylum Act.

³³ This conclusion is based on the author's assessment of the quality of the decision-making process for 2023; practice-informed observation of IDEAS; European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 67 and 68 and poor practice analysed in previous AIDA Country Reports on Serbia, available [here](#).

³⁴ The list of judges can be found at the following link: <http://www.up.sud.rs/cirilica/sudije>.

³⁵ Annual Report of the Administrative Court, 9 January 2024, available at: <https://bit.ly/4bhck6J>, 1-2.

³⁶ Administrative Court, Judgment U 12638/18, 20 July 2021; this judgment was rendered with regards to an Iraqi applicant who lodged his asylum application in 2017.

³⁷ Average length of the procedure before the Administrative Court will be outlined in the chapter which covers the practice of this body.

³⁸ Article 5 (1) and (2) Asylum Act.

³⁹ Article 5 (3) Asylum Act.

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 the 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.⁴⁰

There is no State quality assurance control in place and 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 MoI agreed with UNHCR to gradually introduce external control mechanisms, which implies the occasional presence of UNHCR officers at asylum interviews.⁴¹ This was the first step in establishing quality assurance control in partnership with UNHCR. In April 2022, the UNCHR office in Serbia hired a Quality Assurance Officer who has regular meetings with the Administration for Border Police and the Asylum Office and who occasionally attends asylum interviews. Moreover, in 2021, a group of State officials from the asylum authorities, CRM and other relevant institutions, took part in a study visit to Italian asylum authorities facilitated by the UNHCR office in Serbia.⁴² The practice of occasional presence of UNHCR officers during asylum interviews continued in 2023.

EUAA (European Union Asylum Agency) - former EASO, has also been providing support in Serbia since 2016. The support was provided under the second roadmap for cooperation between Serbia and EASO/EUAA 2020-2022, established by the MoI and CRM.⁴³ One of the main focuses with regards to the refugee status determination procedure was on country-of-origin information (Col).⁴⁴ EUAA representatives held a meeting with relevant CSOs recognised as main providers of free legal aid in Serbia in October 2021.⁴⁵ In addition, representatives of the asylum authorities have attended numerous seminars and trainings outside Serbia. However, the support of the EUAA has failed to produce results: inadequate Col assessments continued to be observed in the Asylum Office's practice in 2023, by way of copy-pasting selectively chosen parts of Col reports, which are then taken out of context and not in line with the meaning of such reports, with the sole aim to reject asylum applications⁴⁶ (for further information, see [Regular procedure – General](#))

The third phase of the 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, return management and contingency plan. It is conducted by the UNHCR, IOM, FRONTEX, EU and EUAA.⁴⁷

Regarding the transparency of asylum authorities' work, it is important to outline that the MoI did not provide data to CSOs regarding asylum issues between 2018 and 2021, and the only available data was obtained from legal representatives in asylum procedures and publicly available reports published by other State institutions such as the Ombudsperson or the CRM. However, in 2023 all decisions rendered

⁴⁰ AIDA, *Country Report: Serbia – Update on the year 2021*, May 2022, available [here](#), 87 and 90.

⁴¹ Practice-informed observation of IDEAS, January 2024.

⁴² UNHCR, *UNHCR: Authorities of Italy and Serbia exchange experiences related to refugee protection*, 26 November 2021, available at: <https://bit.ly/3HXnuzD>.

⁴³ EASO and Serbia, *Roadmap for Cooperation EASO – Serbia (2020-2022): Strengthening the asylum and reception systems in line with the Common European Asylum System and EU Standards*, 2020, available [here](#).

⁴⁴ EASO and Serbia, *Roadmap for Cooperation EASO – Serbia (2020-2022): Strengthening the asylum and reception systems in line with the Common European Asylum System and EU Standards*, 2020, available [here](#), 15ff.

⁴⁵ The author of this report attended the meeting.

⁴⁶ Practice-informed observation of IDEAS, January 2024.

⁴⁷ Information provided by the IOM office in Serbia.

by the Asylum Office and Asylum Commission were communicated to the author of this report, accompanied with relevant statistical data on border practices, readmission, refusals of entry and immigration detention.⁴⁸ This data can shed more light on issues related to the access to territory and asylum procedure, but also on practices which imply deprivation of liberty of foreign nationals under the immigration legal framework. Most importantly, it provided the author for the first time with the possibility for comprehensive analysis and the overview of the first instance practice in relation to asylum applications decided in merits.

The Administrative Court continued to be the most transparent and all the judgments rendered in 2023 were also communicated to the author of this Report.⁴⁹ Still, the Asylum Commission, but also the Asylum Office, maintain their opinion that sharing copies of decisions with legal practitioners and researchers would violate the privacy of applicants, meaning that many of the communicated decisions were excessively anonymised.⁵⁰ Nevertheless, it remains progress compared to previous years.

The Asylum Office still provides regular statistical data to UNHCR, but the statistical overview could be significantly improved. For instance, there is no gender or age breakdown when it comes to asylum applicants, nor is there 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– the Asylum Office, this should not be considered 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,⁵¹ 1967 Protocol,⁵² European Convention for the Protection of Human Rights and Fundamental Freedoms,⁵³ UN Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment,⁵⁴ International Covenant on Civil and Political Rights,⁵⁵ International Covenant on Economic, Social and Cultural Rights,⁵⁶ Convention on the Rights of the Child,⁵⁷ Convention on Preventing and Combating Violence against Women and Domestic Violence,⁵⁸ Convention on Action Against Trafficking in Human Beings,⁵⁹ Convention on the Elimination

⁴⁸ Response of the MoI, Border Police Administration on the freedom of information request no. 072/1-32/23-3 of 26 February 2023.

⁴⁹ Administrative Court response to the freedom of information request no. Cu-II-17a 94/22 od 26 February 2023.

⁵⁰ 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.

⁵¹ 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.

⁵² 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.

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ 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/3G0FoSJ>.

⁵⁹ 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,⁶⁰ Convention on the Rights of Persons with Disabilities⁶¹ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁶² and several others.

This further means that persons in need of international protection can address individual complaints/communications/applications to most of the UN and CoE Treaty bodies and that the legal framework and practice related to the field of asylum and migration can be assessed through the other forms of work of these bodies such as monitoring visits, periodic reporting and review, inquiry procedures and others. Also, it is important to note that in September 2023, Serbia ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁶³ while the Optional Protocol to the Convention on the Rights of the Child on a communications procedure is yet to be ratified.⁶⁴ Thus, individuals can now address the Committee on Economic, Social and Cultural Rights (CESCR), but not the Committee on the Rights of the Child (CRC). A11-Initiative for Economic and Social Rights (A11) had been advocating for the ratification of the OPCESCR since 2019,⁶⁵ launching campaigns, but also securing public promises from Ministers of Human Rights⁶⁶ which eventually led to a positive outcome.⁶⁷

5.2 Constitutional Legal Framework

Article 16 of the Constitution of the Republic of Serbia⁶⁸ 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 the 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 accordance 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 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 the 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.

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

⁶⁰ 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/3ucAOxX>, hereinafter: UN CEDAW.

⁶¹ 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>, hereinafter: CRPD.

⁶² 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>.

⁶³ 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.

⁶⁴ 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>.

⁶⁵ 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/3L0Bxca>.

⁶⁶ Insajder, Čomić: *Do kraja godine ratifikacija Opcionog protokola; Čurčić: To bi bila velika stvar za zaštitu ljudskih prava u Srbiji*, 25 February 2022, available in Serbian at: <http://bit.ly/3ZIZpes>.

⁶⁷ A11, *Parliament ratifies the international treaty allowing for enhanced protection of economic and social rights*, 11 September 2023, available at: <https://bit.ly/45BKEZ5>.

⁶⁸ Official Gazette of the Republic of Serbia, nos. 98/2006 and 115/2021.

procedure initiated with the constitutional appeal can be pecuniary and non-pecuniary damage.⁶⁹ Accordingly, the 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.⁷⁰ However, the practice has shown the opposite.⁷¹

The right to refugee status ('utočište') is explicitly enshrined in the Article 57(1) of the Constitution, which reads:

'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 recognises 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.

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.⁷² Article 26 prohibits slavery and other contemporary forms of slavery such as forced labour. And finally, the Constitution also contains provisions which are related to economic and social rights which can be linked to 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 2018.⁷³ Additionally, relevant are the

⁶⁹ Constitutional Court Act, Official Gazette of the Republic of Serbia, nos. 109/2007, 99/2011, 18/2013, 103/2015 and 40/2015, available in Serbian at: <http://bit.ly/2NH0tVm>, Articles 82 to 92.

⁷⁰ On the effectiveness of the Constitutional Court see more in the following chapters.

⁷¹ More about the practice of the Constitutional Court in the following chapters.

⁷² Constitutional Court, Decision No. UŽ 1823/17, Decision of 29 December 2020, available in Serbian at: <http://bit.ly/3fk0aPD>.

⁷³ Official Gazette no. 24/2018.

Foreigners Act,⁷⁴ the General Administrative Procedure Act (GAPA)⁷⁵ and the Administrative Disputes Act (ADA).⁷⁶ 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,⁷⁷ 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).⁷⁸ 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 2019.⁷⁹ Thus, all the law's novelties, except for the border procedure, are generally applied in practice.⁸⁰

5.3.1 Ongoing amendments of the Asylum Act

In 2021, the Government was working towards amending the Asylum Act. The MoI initiated dialogues 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 2023.⁸¹ 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 the intention to lodge an asylum application” who will be entitled to the majority of aspects of the material reception conditions;⁸²
- ❖ 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;
- ❖ recognising subsequent applicants as persons entitled to the same rights as 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;

⁷⁴ Official Gazette no. 24/2018 and 62/2023

⁷⁵ Official Gazette no. 18/2016 and 95/2018.

⁷⁶ Official Gazette no. 111/2009.

⁷⁷ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

⁷⁸ Official Gazette, no. 101/2016 and 56/2018.

⁷⁹ AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 32.

⁸⁰ *Ibid.*, 18-19.

⁸¹ The final proposal of the amendments is available in Serbian language on the following link: <http://bit.ly/3yepU9U>.

⁸² At this moment, only persons who lodged an 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.

Unfortunately, in 2023 all attention was turned to another early Parliamentary elections which took place in December 2023, putting on hold again all legislative activities related to the Asylum Act. In May 2024, the new Government was elected, as well as the new Minister of Interior, and it remains to be seen if, when and in which form the amendments of the Asylum Act will be adopted.

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 lodge an asylum application’ within the Serbian territory or at border crossing point (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.⁸³ 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.⁸⁴ 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.⁸⁵ Afterwards, an asylum officer will conduct the asylum interview.⁸⁶

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.⁸⁷ 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.⁸⁸ Only the expulsion decision creates grounds for forcible removal and potential immigration detention imposed for the purpose of forced removal and in line with the Foreigners Act.

The Asylum Commission has to decide and deliver the second instance decision to the applicant within 60 days of the appeal being lodged.⁸⁹

⁸³ Article 35 Asylum Act.

⁸⁴ *Ibid.*

⁸⁵ Article 36 Asylum Act.

⁸⁶ Article 37 Asylum Act.

⁸⁷ Article 39 Asylum Act.

⁸⁸ Article 74 (1-8) Foreigners Act.

⁸⁹ Article 95 Asylum Act and Article 174 GAPA.

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.⁹⁰ Both remedies have automatic suspensive effect.⁹¹

5.3.3 Constitutional Court procedure

The last instance in the Serbian legal system is the Constitutional Court. 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, as the decision on the interim measure was taken several months after the request was lodged.⁹² This was recognised by the ECtHR which has granted interim measures submitted by Serbian lawyers on at least 10 occasions in the past several years.⁹³

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.⁹⁴ 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
CONCLUDED					
1	UŽ 1286/2012 ⁹⁵	29.03.2012	32 (1) and 57	Automatic application of the safe third country concept	Rejected as unfounded
2	UŽ 5331/2012 ⁹⁶	24.12.2012	22, 36 (2) and 57	Automatic application of the safe third country concept	Rejected as manifestly unfounded
3	UŽ 3548/2013 ⁹⁷	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 ⁹⁸	30.10.2014	32 (1) and 57	Right to a fair trial	Adopted as founded
5	UŽ 4197/2015 ⁹⁹	20.06.2016	39	Right to freedom of movement	Rejected as manifestly unfounded

⁹⁰ Article 96 Asylum Act.

⁹¹ *Ibid.*

⁹² Constitutional Court, Decision No. UŽ 3548/2013, Decision of 19 September 2013, available in Serbian at: <http://bit.ly/3cG4bhy>.

⁹³ 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.

⁹⁴ Constitutional Court, Response to the freedom of information request no. 17/1 of 9 January 2023.

⁹⁵ Available at: <http://bit.ly/3kKVHME>.

⁹⁶ Available at: <http://bit.ly/3ygC4yO>.

⁹⁷ Available at: <http://bit.ly/3cG4bhy>.

⁹⁸ Available at: <http://bit.ly/3F5BmZk>.

⁹⁹ Not available online.

6	UŽ 6006/2016 ¹⁰⁰	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
7	UŽ 8023/2016 ¹⁰¹	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 ¹⁰²	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 1823/17 ¹⁰³	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
PENDING					
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 Tunisia in asylum procedure	Pending

¹⁰⁰ Not available online.

¹⁰¹ Available at: <http://bit.ly/3oeSFND>.

¹⁰² Not available online.

¹⁰³ Available at: <http://bit.ly/3fk0aPD>.

16	X ¹⁰⁴	2022	25 and 57	Rejecting of LGBTQI+ applicant from Tunisia in asylum procedure	Pending
----	------------------	------	-----------	---	---------

5.4 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 9 communicated cases pending before the ECtHR related to the rights of asylum seekers:

1. *M.H. v. Serbia*;¹⁰⁵
2. *A.K. v. Serbia*;¹⁰⁶
3. *M.W. v. Serbia*;¹⁰⁷
4. *A.H. v. Serbia and North Macedonia and A.H. v. Serbia*;¹⁰⁸
5. *H.G.D. v. Serbia*;¹⁰⁹
6. *O.H. and Others v. Serbia*;¹¹⁰
7. *E.B. v. Serbia and A.A. v. Serbia*;¹¹¹
8. *S.B. and Others v. Serbia*.¹¹²
9. *Mohamed v. Serbia*¹¹³

Also, there is at least 1 complaint pending before the Committee against Torture: *Sulaimanov v. Serbia*.¹¹⁴

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 crossing points

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 crossing points as places where asylum applications can be lodged or registered: this means that persons in need of international protection who successfully access the territory or who are not subjected to pushbacks or any other form of collective expulsion, can

¹⁰⁴ 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.

¹⁰⁵ Application No. 62410/17, 23 October 2017, available at: <https://bit.ly/34MuQHJ>.

¹⁰⁶ Application No. 57188/16, 3 October 2016, available at: <https://bit.ly/3rVFfde>.

¹⁰⁷ Application No. 70923/17, 29 September 2017, available at: <https://bit.ly/3oT00t0>.

¹⁰⁸ Application Nos. 60417/16 79749/16, 19 October and 27 December 2016 respectively, available at: <https://bit.ly/3oVp8dz>.

¹⁰⁹ Application No. 3158/20, 12 December 2019, available at: <https://bit.ly/3HU3uxR>.

¹¹⁰ Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

¹¹¹ Application Nos. 50086/20 50898/20, available at: <https://bit.ly/3GUV4F1>.

¹¹² Application No. 22463/17, 8 February 2017, available at: <https://bit.ly/3JuDPfu>.

¹¹³ Application No. 4662/22, 4 July 2022, available at: <http://bit.ly/3ynDYO8>.

¹¹⁴ 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>.

access asylum procedure regardless of the place of entry – official border crossing points 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 Union¹¹⁵ as well as North Macedonia,¹¹⁶ Albania,¹¹⁷ Montenegro¹¹⁸ and Bosnia and Hercegovina ('Bosnia').¹¹⁹

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.¹²⁰ In 2023 a total of 744 foreigners were readmitted to Serbia from neighbouring countries.¹²¹

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

*'The NPM also wants to point out the difficult implementation of readmissions with North Macedonia. According to the data obtained during the visit, in 2020, 68 requests for readmission of same number of persons were submitted to North Macedonia and all requests were rejected, usually with the 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.'*¹²²

These findings remain valid as of June 2024, as can be seen from the outlined statistical data outlined below, which shows that only 136 foreign nationals were officially readmitted from Serbia to neighbouring States, primarily to Bulgaria.

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 on the merits and who had transited from Serbia. Upon their return, they are to be placed in an "adequate" accommodation, for which Vienna will pay. This agreement is most likely the technical agreement between Serbia and Austria which should serve as foundation for the 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 even

¹¹⁵ Official Gazette no. 103/2007

¹¹⁶ Radio Free Europe, Srbija i Makedonija potpisale sporazum o readmisiji, 4 October 2010, available at: <http://bit.ly/3kl8Od3> [accessed on 26 February 2021].

¹¹⁷ Official Gazette no. 7/2011.

¹¹⁸ Official Gazette no. 13/2013.

¹¹⁹ Radio Free Europe, Srbija i BiH potpisale Sporazum o readmisiji, 5 July 2013, available at: <http://bit.ly/3dSKJ1F> [accessed on 26 February 2021].

¹²⁰ Mol, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available at: <https://bit.ly/3Dtss4r>, 24.

¹²¹ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹²² Ombudsman, Serbia: National Report on the situation of human rights of migrants at the borders, ENNHRI, July 2021, available [here](#), 21.

though it triggered debates in both Austria and Serbia.¹²³ In the opinion of the author of this report, the announcement of the signing of the agreement was more for the domestic political purposes than a realistic prospect for mass returns of irregular foreign nationals to Serbia.

In November 2022, the President of Serbia Aleksandar Vučić, Austria's Chancellor Karl Nehammer and Hungarian Presidency Viktor Orbán signed trilateral agreement with the aim to strengthen Balkans border security policies.¹²⁴ 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.¹²⁵ 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 2023 (see [Informal pushbacks](#)). The terminology used at the press conference completely disregarded the concepts of refugees and asylum seekers and was only based around the notions of 'migrants' and 'illegal migration'.

For the purpose of this 2023 update to the AIDA report, the Mol delivered statistical data on the number of readmissions and returns from and to Serbia. Even though the numbers are quite low,¹²⁶ they should be considered important for the comparative analysis with the number of pushbacks and other forms of collective or individual informal types of expulsions which took place in the same period (see [Informal pushbacks](#)).

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 a procedure in which the acting police officer does not take into consideration potential risks of *refoulement* or *chain-refoulement*, where foreigners, especially those in need of international protection, are denied the effective possibility to contest this decision. Expulsion orders, as well as refusal of entry decisions, are rendered in a bureaucratic manner, on the basis of a template drafted in Serbian Cyrillic. In addition, 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 during the first hours of the arrest, which are also basic safeguards against ill-treatment, including safeguards against *refoulement* as enshrined in Article 83 of the Foreigners Act.¹²⁷ 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 decisions.¹²⁸ Finally, the appeal against an expulsion order does not have an automatic suspensive effect.¹²⁹ In 2023, a total of 8,258 expulsion orders were issued in relation to foreign nationals.

The fact that many expulsion orders were issued to nationals of Syria (2,737) and Afghanistan (1,193), but also Somalia (102) and Palestine (73) and other individuals who might be in need of international

¹²³ Taz, Einfach weitergeschoben: Abgelehnte Geflüchtete will Österreich in serbischen Abschiebezentren unterbringen – und für sie zahlen, 17 April 2020, available (in German) at: <https://bit.ly/2SY8U3c>; Der Standard, Grüne lehnen Abschiebung abgelehnter Flüchtlinge nach Serbien ab, 16 April 2020, available (in German) at: <https://bit.ly/2T0LzOv>.

¹²⁴ Euronews, *Austria, Serbia and Hungary strike migration deal, saying EU measures have failed*, 17 November 2022, available at: <http://bit.ly/3T1LWGk>.

¹²⁵ RTS, *Vučić, Orbán i Nehammer potpisali Memorandum o borbi protiv ilegalnih migracija*, 16 November 2022, available at: <https://bit.ly/3T0VzVG>.

¹²⁶ Especially in comparison to the number of pushbacks from and to Serbia.

¹²⁷ CPT, *Immigration Factsheet*, CPT/Inf(2017)3, available at: <https://bit.ly/3zntMUA>, 2-3.

¹²⁸ *Ibid.*

¹²⁹ Article 80, Foreigners Act.

protection, indicates that at least 50% of foreign nationals are theoretically introduced into the forcible removal regime despite risks that they might face in third countries or even countries of origin (e.g. Türkiye, see [List of authorities that intervene in each stage of the procedure](#)).

Expulsion orders issued in relation to foreign nationals in the period 1 from January 2023 to 31 December 2023 ¹³⁰	
Country	Number
Syria	2,737
Afghanistan	1,193
China	944
Morocco	613
Türkiye	584
Pakistan	178
India	143
Iraq	136
Russian Federation	130
Cuba	126
Somalia	102
Palestine	73
Other	1,299
Total	8,258

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

1.2.1.1 Readmissions from neighbouring countries to Serbia in 2023

There were no readmissions from Albania to Serbia in 2023. In 2023, there were a total of 734 readmissions from neighbouring to Serbia, mostly from Croatia (607). The detailed breakdown by readmitting country, nationality, sex and age is detailed in the following tables.

Readmission from Romania to Serbia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Afghanistan	7	0	0	0	7
India	7	0	0	0	7
Iraq	0	0	1	0	1
Cameroon	1	0	0	0	1
Pakistan	2	0	0	0	2
Syria	1	0	0	0	1
Sudan	1	0	0	0	1
Total	19	0	1	0	20

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹³⁰ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

Readmission from Hungary to Serbia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
China	0	0	3	0	3
Türkiye	2	1	0	0	3
Total	2	1	3	0	6

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Readmission from Croatia to Serbia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Syria	149	30	8	2	189
Türkiye	79	20	15	5	119
China	46	0	32	0	78
Morocco	79	1	1	0	81
Afghanistan	47	3	0	0	50
Cuba	12	2	12	1	27
Egypt	17	0	0	0	17
Pakistan	7	0	0	0	7
Nepal	6	0	0	0	6
Algeria	5	1	0	0	6
Uzbekistan	2	1	1	1	5
India	4	0	0	0	4
Tunisia	3	0	1	0	4
Bangladesh	4	0	0	0	4
Albania	3	0	0	0	3
Others	6	0	1	0	7
Total	469	58	71	9	607

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Readmission from Montenegro to Serbia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Nepal	4	0	0	0	4
Türkiye	1	0	0	0	1
Total	5	0	0	0	5

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Readmission from North Macedonia to Serbia in the period from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Algeria	1	0	0	0	1
Morocco	2	0	0	0	2
Total	3	0	0	0	3

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

Readmission from Bosnia-Herzegovina to Serbia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Afghanistan	39	8	0	0	47
Cuba	9	0	6	0	15
Pakistan	9	0	0	0	9
Morocco	4	0	0	0	4
Nepal	3	0	1	0	4
India	2	0	0	0	2
Others	3	0	0	0	3
Total	69	8	7	0	84

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

Readmission from Bulgaria to Serbia in the period 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Tunisia	2	0	0	0	2
Georgia	1	0	0	0	1
Guinea	1	0	0	0	1
China	1	0	0	0	1
Syria	1	0	0	0	1
Sudan	1	0	0	0	1
Ukraine	1	0	0	0	1
Ethiopia	1	0	0	0	1
Total	9	0	0	0	9

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

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.

In 2023, a total of 870 persons were subjected to the readmission procedure, and most were readmitted to Serbia from Croatia (607). The most represented nationalities were Syria (189), followed by Afghanistan (50). Serbia also returned 130 foreign nationals to Bulgaria, out of which 75 were from Syria and 22 from Afghanistan.

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.¹³¹ 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*. In addition, considering that only one person was issued with a registration certificate at the three Immigration Detention Centres,¹³² it is clear that access to the asylum procedure for persons that are in need of international protection and who are detained for the purpose of forcible removal is highly questionable.

1.2.1.2 Readmission from Serbia to neighbouring countries

Readmission from Serbia to Bulgaria from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Syria	75	0	0	0	75
Afghanistan	22	0	0	0	22
Morocco	17	0	1	0	18
Palestine	5	0	0	0	5
Libya	4	0	0	0	4
Nepal	3	0	0	0	3
Egypt	2	0	0	0	2
Bangladesh	1	0	0	0	1
Total	129	0	1	0	130

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

Readmission from Serbia to Romania from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Nepal	4	0	0	0	4
Total	4	0	0	0	4

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

Readmission from Serbia to North Macedonia from 1 January 2023 to 31 December 2023					
Country	Adult Male	Underage Male	Adult Female	Underage Female	Total
Algeria	1	2	0	0	2
Total	1	1	0	0	2

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

In 2023 Serbia did not readmit foreign nationals to Hungary, Croatia, Bosnia and Herzegovina or Albania.

Given the very low numbers compared to arrivals and pushbacks, 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 and countries which form the external borders of the EU is almost non-existing.

¹³¹ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹³² UNHCR Office in Serbia and Ministry of Interior of the Republic of Serbia - Border Police Department - Asylum Office.

Border policies are mainly based on illegal forms of expulsions which are contrary to the safeguards against *non-refoulement* and the prohibition of collective expulsions.

1.2.2 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,¹³³ unless it is established that there are humanitarian reasons or interest for the Republic of Serbia to grant entry, or if the international commitments of the Republic of Serbia indicate otherwise.¹³⁴ The foreigner can lodge an appeal to the MoI – Border Police Administration against the decision.¹³⁵

In practice, however, 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.¹³⁶ They typically are not able to 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 (the decision on refusal of entry is issued in Serbian and English).¹³⁷ Moreover, they have to pay a fee of 12.470,00 dinars (approx. €105) before they can send the appeal to the Administrative Court.¹³⁸ It remains unclear if foreign nationals are even provided with a pen and paper to draft an appeal, which then has to be translated for the MoI-BPD as the second instance body. 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.¹³⁹ 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.¹⁴⁰ The refusal of entry decision is mainly applied at the airport, as discussed in the next section, but also at the official border crossing points. In 2022 and 2023 the MoI provided a statistical overview of the refusal of entry decisions rendered on the land border crossing points, and which will be outlined in the ensuing parts of this chapter. However, they were mainly applied to 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,¹⁴¹

¹³³ Article 15(2) Foreigners Act.

¹³⁴ Article 15(3) Foreigners Act.

¹³⁵ Article 15(6) Foreigners Act.

¹³⁶ Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>.

¹³⁷ Practice based observation by IDEAS, January 2024.

¹³⁸ Annex 1 to the Rulebook on Refusal of Entry available at: <https://bit.ly/3zaq6KS>.

¹³⁹ Annex 1 Regulation on the Refusal of Entry.

¹⁴⁰ 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, available at: <https://bit.ly/3R270gH>.

¹⁴¹ Article 75(1) Foreigners Act.

specific position of people with disabilities,¹⁴² family unity,¹⁴³ 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.¹⁴⁴ 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 a legal remedy into a language that the foreigner understands or may be reasonably assumed to understand.¹⁴⁵ 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.¹⁴⁶ 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 pushbacks 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 decisions that cannot be effectively challenged before the competent judicial authority since the appeal does not have automatic suspensive effect.¹⁴⁷

The guarantees against *refoulement* that are introduced in the Foreigners Act existed in the Serbian legal framework before this Act came into force.¹⁴⁸ 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).

Refusals of entry in relation to North Macedonia from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	148	North Macedonia
North Macedonia	17	North Macedonia
India	16	North Macedonia
Others	40	North Macedonia
Total	211	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹⁴² Article 75(2) Foreigners Act.

¹⁴³ Article 75(3) Foreigners Act.

¹⁴⁴ Article 75(5) Foreigners Act.

¹⁴⁵ Article 75(6) Foreigners Act.

¹⁴⁶ Article 83(2) Foreigners Act.

¹⁴⁷ ECtHR, *M.A. v. Lithuania*, Application No. 59793/17, 11 December 2018, paras 83-84, available at: <https://bit.ly/40Kz3Er>.

¹⁴⁸ See e.g., the Constitution of the Republic of Serbia and legally binding case law of the ECtHR.

Refusals of entry in relation to Bulgaria from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Syria	132	Bulgaria
Germany	67	Bulgaria
Bulgaria	60	Bulgaria
Nepal	17	Bulgaria
Iraq	2	Bulgaria
Others	110	Bulgaria
Total	388	

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

Refusals of entry in relation to Romania from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Romania	67	Romania
Stateless	20	Romania
Germany	8	Romania
Others	0	Romania
Total	95	

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

Refusals of entry in relation to Hungary from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Germany	66	Hungary
Austria	43	Hungary
Stateless	41	Hungary
Bulgaria	15	Hungary
Türkiye	11	Hungary
Hungary	15	Hungary
Syria	6	Hungary
Others	96	Hungary
Total	293	

Source: Mol, Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.

Refusals of entry in relation to Croatia from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Unknown	73	Croatia
Türkiye	30	Croatia
Stateless	30	Croatia
Germany	25	Croatia
Others	198	Croatia
Total	356	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Refusal of entry in relation to Bosnia and Herzegovina from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	395	Bosnia and Herzegovina
Bosnia and Herzegovina	53	Bosnia and Herzegovina
China	10	Bosnia and Herzegovina
Others	78	Bosnia and Herzegovina
Total	536	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Refusal of entry in relation to Montenegro from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	234	Montenegro
Montenegro	112	Montenegro
Others	55	Montenegro
Total	401	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Refusal of entry at the Belgrade 'Nikola Tesla' from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	681	mainly Türkiye
Cuba	127	N/A
India	76	N/A
Unknown	71	N/A
Germany	56	N/A
Iran	34	N/A
Tunisia	29	N/A
Stateless	28	N/A
Syria	27	N/A
Afghanistan	13	N/A
Others	356	N/A
Total	1,498	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024.*

Refusal of entry at Niš International Airport from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	118	Türkiye
Iran	10	N/A
Stateless	2	N/A
Others	15	N/A
Total	145	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

Refusal of entry at Niš International Airport from 1 January 2023 to 31 December 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	21	Türkiye
Total	21	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

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 and especially in the land border area. Those who might be in need of protection are simply subjected to pushback practices. However, the nationalities of people refused entry at the Belgrade airport (Syria, Afghanistan, Türkiye, Cuba, and others) give serious reasons for concern because the receiving states (mainly Türkiye, but also UAE, Lebanon or Qatar)¹⁴⁹ cannot be as safe for refugees¹⁵⁰ and these people are exposed to both risk of *refoulement* and *chain-refoulement*.¹⁵¹ The data obtained by the Mol provides several interesting and contentious details:

- ❖ More than 100 stateless persons were returned to neighbouring countries, out of which 41 were returned to Hungary which does not provide access to the international protection procedure to foreigners who have not applied through the embassy procedure,¹⁵²
- ❖ 6 Syrians were refused entry and returned to Hungary, which cannot be considered as acceptable as most likely these people were automatically returned back to Serbia.¹⁵³
- ❖ Afghan and Syrian nationals were returned back from Belgrade airport to Türkiye or other countries which is also contentious taking in consideration such countries' return policies to Afghanistan, but also to Syria:¹⁵⁴

¹⁴⁹ Practice-informed observation of IDEAS, January 2024.

¹⁵⁰ None of these three countries are parties to the 1951 Refugee Convention. Re the UAE's treatment of Afghan refugees awaiting resettlement: BBC, *UAE arbitrarily detaining 2,400 Afghan asylum seekers – report*, 16 March 2023 available [here](#) and Infomigrants, *Thousands of Afghans 'in limbo' in United Arab Emirates: Human Rights Watch*, 15 March 2023, available [here](#).

Re Lebanon, see Mixed Migration Centre, *Selective and Strategic indifference: Lebanon's migration and refugee landscape*, 25 January 2024, available [here](#); UNHCR, *Protection Monitoring Findings - Lebanon - 4th Quarter 2023*, 22 March 2024, available [here](#); Amnesty International, *Lebanon: Authorities must halt unlawful deportations of Syrian refugees*, 24 April 2024, available [here](#).

Re Qatar, both both the situation of refugees and the overall human rights situation, especially for women, migrants and LBGTQIA+, see: US Department of State, *2023 Country Reports on Human Rights Practices: Qatar*, available [here](#); Human Rights Watch, *Qatar*, 2019, available [here](#); Amnesty International, 'Qatar: 2023', available [here](#).

¹⁵¹ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹⁵² See AIDA, *Country Report: Hungary – 2023 Update*, July 2024, available [here](#).

¹⁵³ See AIDA, *Country Report: Hungary – 2023 Update*, July 2024, available [here](#).

¹⁵⁴ AP, *Turkish Airlines resumes flights to Afghanistan nearly 3 years after the Taliban captured Kabul*, 21 May 2024, available at: <https://bit.ly/3zjtH9O> and HRW, *Turkey: Hundreds of Refugees Deported to Syria*, 24 October 2022, available at: <https://bit.ly/3zf0BIF>.

- ❖ Refusal of entry from Serbian airports for Turkish nationals, in a manner which cannot be considered as adequate due to the lack of assessments of the risks of *refoulement* is also worrying, especially when taking into consideration the 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.).¹⁵⁵

Following are examples of flawed application of refusal of entry decisions in the period 2019-2023:¹⁵⁶

- ❖ 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 interim measures from the ECtHR in order to prevent the 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.¹⁵⁷ This was the fourth Rule 39 request which was granted, since 2013, with regards to persons arbitrary 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.¹⁵⁸
- ❖ 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 were forced to sleep on the chairs. The mother was automatically served with a decision on refusal of entry and was 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 a 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 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 young child. She was never served her copy of the decision on refusal of entry, but IDEAS subsequently obtained the copies, which stated that she had refused 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.¹⁵⁹
- ❖ On 10 December 2021, IDEAS 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

¹⁵⁵ See the below examples and practice-informed observation by IDEAS and author of this Report.

¹⁵⁶ For individual cases from previous years please see AIDA, *Country Report: Serbia – Update on the year 2022*, May 2023, available [here](#), 44-45.

¹⁵⁷ ECtHR, *Ozen v. Serbia*, Application No. 45794/21, granted on 15 September 2021.

¹⁵⁸ 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.

¹⁵⁹ The author of this Report intervened in the case.

was taken as well and he only managed to enter Serbia thanks to his cousin who was in the Asylum Centre in Krnjača and contacted IDEAS.¹⁶⁰

- ❖ On 10 December 2021, a family of 4 from Burundi arrived at the airport and tried to express their 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 provided with 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.
- ❖ 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 onto 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, 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 the territory and the asylum procedure. In his testimony collected later, he claimed that he addressed the border police in English, but that he was just served with 'some papers' (refusal of entry) which he refused to sign.
- ❖ 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, he was not able to elaborate on the risk of persecution that he faces in Cuba. He was denied access to the territory and the asylum procedure and was forced to sign a refusal of entry decision. Only after IDEAS intervention was he issued with the registration certificate.
- ❖ On 30 May 2022, the ECtHR granted a Rule 39 request in relation to Narin Capan, Turkish journalist of Kurdish origin who fled Türkiye and Kurdistan in Iraq after she was sentenced for spreading terrorist propaganda and after she avoided assassination in Erbil. She spoke excellent English and was clearly outlining to BPSP 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 onto a plane, when the Strasbourg Court issued interim measures.¹⁶¹ In her

¹⁶⁰ *Ibid.*

¹⁶¹ 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>.

testimony, which was recorded for the purpose of procedure before the ECtHR, she explained in details the BPSB *modus operandi* and the manner in which people are forced to sign refusal of entry decisions, without interpretation and access to legal aid and while their arguable claims are ignored. The testimony will be used for the purpose of her arbitrary detention as well and another attempt of forcible removal without any risk assessment regarding *refoulement* being carried out in line with the Article 83 of Foreigners Act.

- ❖ On 9 December 2022, a 3-member family from Iran was refused entry and arbitrarily detained.¹⁶² M.B. and his family fled political persecution and criminal proceedings in which one of the prescribed penalties, in line with Iranian Criminal Code, was the death sentence. The BPSB officers attempted several times to board the family onto a plane, but the family provided physical resistance including in the bus taking them to the plane on a runway, on the 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 a 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 described in details their 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.
- ❖ On 12 February 2024, a woman, claiming to be a SGBV survivor, from DRC was removed to **Türkiye** even though she claimed that she survived rape and other forms of persecution in her country of origin. She tried to apply for asylum at the airport. IDEAS was contacted by the doctor from one of the hospitals in Belgrade, where she was allegedly taken for the purpose of verifying her allegation with the gynaecologist. Due to lack of information on individual data, the Rule 39 request to the ECtHR was declined. The BPSB ignored emails from IDEAS and put the women back on a plane even before the ECtHR decided upon the Rule 39 request. This example perfectly illustrates the *modus operandi* of the BPSB, denying contact with the outside world to people who were (according to the doctors) clearly in distress, practices which eventually lead to denial of access to the territory and the asylum procedure.

In 2023 there were at least 20 interventions at the Belgrade airport performed by IDEAS,¹⁶³ but also BCHR,¹⁶⁴ in which 30 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,¹⁶⁵ but the Mol did not even attempt to identify them.¹⁶⁶ 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 in 2022 and 2023,¹⁶⁷ but the 2023 Report still does not reflect the seriousness of the clandestine and unpredictable practice of BPSB based on the author's field experience. The UN Human Rights Committee published the following findings and issued very specific recommendations applicable to the flawed practice of BPSB:

¹⁶² ECtHR, *Moazen and Others v. Serbia*, Application No. 56318/22, Request for Interim Measure granted on 9 May 2022.

¹⁶³ A total of 11 interventions in relation to 14 persons originating from Cuba, Pakistan and India, Practice-informed observation by IDEAS.

¹⁶⁴ BCHR, *Right to Asylum in the Republic of Serbia-January - October 2023*, 2024, available at: <https://bit.ly/3RFhbHS>, 32-33.

¹⁶⁵ Serbia does not have a law according to which stateless people are treated through specially designed procedures.

¹⁶⁶ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

¹⁶⁷ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 63 and see also European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 68.

'32. [...] the Committee is concerned by reports failure to provide access to asylum procedures for persons refused entry at international airports and their subsequent *de facto* detention in airport transit zones [...]

33. The State party should ensure respect for the principle of non-refoulement by ensuring that:

(a) asylum-seekers and any persons in need of international protection are not [...] expelled or to a country in which there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant;

(b) Asylum-seekers receive information about their right to seek asylum in a language they understand [...]

(c) Asylum-seekers have effective access to an appeal process that is in line with international standards, including ensuring that the lodging of appeals has a suspensive effect on [...] expulsion;

(d) All relevant officials, including border guards, receive adequate training on international standards, including the principle of *non-refoulement* [...] ¹⁶⁸

Still, the number of refusal of entry decisions in 2023 significantly decreased after Serbia (starting from December 2022) re-introduced visa regimes for citizens of Burundi, Cuba, India, Tunisia and other countries from which asylum seekers were coming in previous years.¹⁶⁹ Thus, the decrease in numbers of decisions does not mean that the practice has improved.

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 Centres should have among their staff 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 the 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, should dispel any existing doubts on the flawed practices of border authorities. Relevant standards of the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment (CPT) include that detaining authority should serve foreign nationals deprived of their liberty with multi-lingual forms which outlines their rights, obligations and applicable procedures in a language which the foreigner understands.¹⁷⁰

It is also worth mentioning that in light of the recent ECtHR judgment in *M.A. v. Lithuania*,¹⁷¹ 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*,¹⁷² or *A.B. and Others v. Poland*, further confirms the above-highlighted necessity.¹⁷³ The findings

¹⁶⁸ HRC, *Concluding observations on the fourth periodic report of Serbia**, 3 May 2024, CCPR/C/SRB/CO/4, available at: <https://bit.ly/3W1s0qn>, paras. 32-33.

¹⁶⁹ European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 69-70.

¹⁷⁰ CPT, *Immigration detention*, CPT/Inf (2017)3, March 2017, available at: <https://bit.ly/3sL4rWK>.

¹⁷¹ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

¹⁷² ECtHR, *A.I. and Others v. Poland*, Application No. 39028/17, Judgment of 14 November 2022, EDAL, available at: <http://bit.ly/3l67o0m>.

¹⁷³ ECtHR, *A.B. and Others v. Poland*, Application No. 42907/17, Judgment of 14 November 2022, EDAL, available at: <https://bit.ly/3l67o0m>.

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 2023. 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 liberty¹⁷⁴ according to both the subjective and objective criteria of the ECtHR and contrary to material and procedural norms of the Serbian Police Act;¹⁷⁵
- ❖ arbitrary deprivation of liberty without individual custody record;¹⁷⁶
- ❖ denial of access to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination;¹⁷⁷
- ❖ 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 in writing and verbally;¹⁷⁸
- ❖ denial of access to asylum procedure or other residential procedure;¹⁷⁹
- ❖ 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, stripping, verbal abuse (threatening, swearing, etc.) etc.;¹⁸⁰
- ❖ forcible removal without examination of individual circumstances of each person or outside any legal procedure;¹⁸¹
- ❖ lack of assessment on any risks of *refoulement* and *chain-refoulement*¹⁸² 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.¹⁸³

¹⁷⁴ ECtHR, *Creangă v. Romania*, Application No. 29226/03, Judgment of 23 February 2012, available at: <https://bit.ly/3BjU8bl>, para. 84.

¹⁷⁵ ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, available at: <https://bit.ly/3tS73Al>, para. 95; *Z.A. and Others v. Russia*, Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment of 21 November 2019 [GC], EDAL, available at: <https://bit.ly/3JB0Hdu>, para. 138, 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.

¹⁷⁶ CPT, *The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders*, Extract from the 32nd General report of the CPT Published on 30 March 2023, CPT/Inf (2023) 7 - part, available at: <https://rm.coe.int/1680aabe68>, para. 26.

¹⁷⁷ CPT, Extract from the 2nd General Report [CPT/Inf (92) 3], p. 6, para. 36, available at: <https://bit.ly/3GVD4KU>.

¹⁷⁸ ECtHR, *Khlaifia and Others v. Italy*, App. Nos. 16483/12, Judgment of 15 December 2016, EDAL, available at: <https://bit.ly/2BojevU>, para. 92.

¹⁷⁹ 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.

¹⁸⁰ ECHR, Article 3.

¹⁸¹ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>, para. 59.

¹⁸² ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

¹⁸³ The issue of pushbacks and various forms and layers of human rights violations was addressed by different bodies for the protection of human rights. See, *inter alia*, 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/3QKc4oq>, paras. 69-107 and Special Rapporteur on the 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>. <https://bit.ly/46kqDF3>

The COVID-19 pandemic did not lead to imposing additional restrictive and contentious border policies in 2023 as it was the case in 2020.¹⁸⁴ 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.¹⁸⁵ However, the practice of collective expulsions continued, regardless of the pandemic circumstances.¹⁸⁶

The Status Agreement on border management cooperation between the European Union and Serbia entered into force in June 2021, and in June 2024 was followed by the Agreement on Operational Cooperation in border management.¹⁸⁷ 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.¹⁸⁸ The FRONTEX officers are dispatched on the border with Bulgaria. As of June 2024, the author of this report is not aware of allegations of human rights violations made against FRONTEX officers.

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

1.3.1.1 Arrivals

The number of arrivals to Serbia remains 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 in line with Foreigners or Asylum Act. Thus, they are not introduced into the database with fingerprints and 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.¹⁸⁹
- ❖ It is not clear if the FRONTEX data on the number of irregular crossings to the EU from the Western-Balkan countries also includes 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 2020.¹⁹⁰ 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

¹⁸⁴ AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 19.

¹⁸⁵ 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/46kqDF3>, pp. 18-19. hereinafter: *Hod po žici*. See, also, AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 19 and AIDA, *Country Report: Serbia – Update on the year 2021*, May 2022, 37.

¹⁸⁶ *Ibid.*, pp. 33-34.

¹⁸⁷ European Commission, *EU signs agreement with Serbia to strengthen migration and border management cooperation*, 25 June 2024, available at: <https://bit.ly/4cyPYyA>.

¹⁸⁸ Frontex, *Frontex expands presence in Western Balkans with operation in Serbia*, 16 June 2021, available at: <https://bit.ly/3H2aG9X>.

¹⁸⁹ Precisely, this might lead to a situation in which CRM registers one person in 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.

¹⁹⁰ This data is extracted from UNHCR data portal, available: <https://bit.ly/3rYbS9O>.

UNHCR.¹⁹¹ 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).¹⁹²

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 registered as new arrivals in 2021.¹⁹³ This number almost doubled in 2022, reaching 119,670. Additionally, in 2022, FRONTEX detected 145,600 cases of irregular border crossings into the EU from Serbia and Bosnia, mainly from, Afghanistan, Türkiye, Burundi, India and Tunisia.¹⁹⁴

In 2023, according to FRONTEX, the number of crossings reached 99,068 and the majority of foreign nationals originated from Syria, Türkiye and Afghanistan:

'The number of irregular border crossings at the EU's external border in 2023 reached a total of approximately 380,000, driven by a rise in arrivals via the Mediterranean region, according to preliminary calculations by Frontex. This marks the highest level since 2016 and constitutes a 17% increase from the figures in 2022, indicating a consistent upward trend over the past three years. The Central Mediterranean was the most active migratory route into the EU, accounting for two out of every five irregular crossings (41%) in 2023, followed by the Western Balkans (26%) and Eastern Mediterranean (16%).'¹⁹⁵

According to Frontex's information, numbers of irregular border crossings correspond 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.¹⁹⁶ The word 'repeated' was not used in the 2022 Report, but it is reasonable to assume that the 2022 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.

In 2023 Progress Report, the European Commission outlined the following:

'Serbian authorities have established solid cooperation links with the European Border and Coast Guard Agency (Frontex). The joint operation with the Serbian border police at the Serbian-Bulgarian border that started in 2021 was extended to include the Serbian-Hungarian border. The aim of this cooperation is to control irregular immigration flows, to tackle cross-border crime and to strengthen European cooperation. Progress has been made in the negotiations on the new status agreement between the EU and Serbia. Its conclusion will, in line with the new mandate of Frontex, enable

¹⁹¹ European Commission, *Serbia 2021 Report*, 19 October 2021, SWD(2021) 288 final, available at: <https://bit.ly/3Byi8lQ>, 49.

¹⁹² *Ibid.*

¹⁹³ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

¹⁹⁴ '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.' 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/49H2Ba4>.

¹⁹⁵ FRONTEX, *Significant rise in irregular border crossings in 2023, highest since 2016*, 26 January 2024, available at: <https://bit.ly/4cHNbDr>.

¹⁹⁶ *Ibid.*

deployment also at third-country borders, such as at the border with North Macedonia. Based on the Police Cooperation Convention for Southeast Europe (PCC SEE), the Ministry of the Interior established a cooperation with all neighbouring countries.

Joint patrols with neighbouring countries are ongoing with Hungary, North Macedonia and Romania. Information exchange takes place through joint contact centres. Serbia receives capacity building and border management assistance from EU Member States.¹⁹⁷

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 capacity of the Border Police Administration.

The above conclusion can also be drawn from figures published in 2023 and especially given the discrepancy between UNHCR monthly numbers of arrivals which in total amount to 87,252 compared to numbers provided by the CRM, who state that the number of arrivals in 2023 was 108,808. Still, UNHCR reports do not contain data for August. Thus, in order for CRM numbers (108,808 arrivals) to match the UNHCR's, around 21,556 different foreign nationals should have resided in reception facilities in August 2023. In conclusion, it is reasonable to consider that the number of arrivals was around 100,000 persons.

The number of arrivals per month was as follows:

Observed Arrivals in the period 2019-2023							
Month	Arrivals 2019		Arrivals 2020		Arrivals 2021	Arrivals 2022	Arrivals 2023
	UNHCR	CRM	UNHCR	CRM	UNHCR and CRM	UNHCR and CRM	UNHCR and CRM
January	629	/	1,700	/	3,180	2,644	5,957
February	819	/	2,633	/	2,273	3,236	3,782
March	1760	/	1,649	/	3,832	1,238	6,477
April	1,826	/	583	/	4,344	6,132	4,144
May	2,512	/	270	/	3,182	8,019	7,506
June	2,366	/	2,108	/	4,111	10,039	10,083
July	2,726	/	3,197	/	5,762	13,425	13,571
August	3,673	/	4,146	/	7,101	17,997	Missing data
September	3,686	/	2,981	/	8,978	19,345	13,036
October	4,123	/	2,703	/	6,570	14,519	9,223
November	3,871	/	2,022	/	6,027	11,916	8,532
December	1,713	/	1,011	/	4,978	11,160	5,391
Total	29,704	10,145	25,003	63,408	60,338	119,670	108,808 (missing August)

Source: Data provided by the UNHCR office in Serbia.

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 recognised 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.

¹⁹⁷ European Commission, *Serbia 2023 Report*, SWD (2023) 695 final, 8 November 2023, available [here](#), 71.

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.'¹⁹⁸

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.¹⁹⁹ 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 Tunisia (2,787 in total in 2022) were refused entry. The free visa regime with Cuba and Türkiye, as well as with Russia.

The new visa policy resulted in a complete stop in arrivals of the above-outlined nationalities. In 2023 the European Commission highlighted that:

'In October 2022, the Serbian government decided to abolish the visa exemptions for Tunisia and Burundi nationals, and, in December 2022, this was likewise decided for Guinea Bissau, India, Cuba and Bolivia. The President of India visited Serbia in June 2023 and a visa simplification mechanism was announced. In June 2023, the President of Cuba visited Serbia and an agreement on a visa-free regime for holders of official and diplomatic passports was signed.'²⁰⁰

In addition to the 119,670 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.²⁰¹ According to the Commissariat for Refugees and Migration (CRM), more than 148,000 Ukrainian refugees were recorded passing through Serbia in 2022, out of which around 26,000 were granted temporary residency, while 1,231 were granted temporary protection.²⁰² The remaining continued their journey predominantly towards EU countries. In June 2023, it was reported that around 370,000 Russian citizens have resided in Serbia since February 2022, but this does not mean that all of them remained.²⁰³ In August 2023, it was reported that around 36,500 Ukrainian citizens resided in Serbia.²⁰⁴

1.3.1.2 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 at the hands of border authorities. In 2023, the presence of civil society organisations at the borders with **North Macedonia**, **Bulgaria** and **Montenegro** continued to be limited.²⁰⁵ 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 many recent reports on pushbacks and collective expulsions committed by Serbian border authorities at the green border with **Bulgaria** and **Montenegro**. This does not exclude a very high probability that such practice still exists. It only indicates that the presence of

¹⁹⁸ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 64.

¹⁹⁹ 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>.

²⁰⁰ European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 70.

²⁰¹ 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>.

²⁰² Dijalog.net, *Kroz Srbiju prošlo 148.000 državljana Ukrajine, a 26.000 prijavilo boravište*, 24 February 2023, available at: <http://bit.ly/3YKcYDr>.

²⁰³ Bloomberg Adria, *Deset najzastupljenijih biznisa Rusa u Srbiji*, 26 June 2024, available at: <https://bit.ly/3LmXdYd>.

²⁰⁴ 021 Portal, *U Srbiji se trenutno nalazi više od 43.000 Ukrajinaca*, 31 August 2023, <https://bit.ly/3L0Mb1e>.

²⁰⁵ More than 95% of persons in need of international protection are entering Serbia from these three countries.

CSOs at these borders has essentially ceased to exist. Official statistics of the MoI indicate that collective expulsions are still carried out towards Bulgaria, as can be seen from the data delivered by the MoI but also from an 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.'²⁰⁶

BVMN reported one instance of pushback to Bulgaria in January 2024 when the Police took clothes, shoes and other belongings from a man from Morocco and smashed his phone. Afterwards, he and other people from his group were kicked, punched and pepper sprayed, and ultimately returned to Bulgaria.²⁰⁷

What is important to highlight is that instances of pushbacks are portrayed by Serbian authorities as situations in which refugees, asylum seekers and migrants are deterred from attempting to cross the border after they realise that border patrols of Serbia are on the other side. However, the argumentation of the MoI that refugees and migrants are discouraged from irregular crossings when they encounter border police is misleading and is the long standing position repeated since 2016, when mixed patrols of army and police were introduced with the aim 'to suppress illegal migration'.²⁰⁸ 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.²⁰⁹ 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 2020.²¹⁰ 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 the family saved.²¹¹ 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 2015²¹² and 2021,²¹³ while the Human Rights Committee outlined that all pushback allegations should be promptly, thoroughly and independently investigated and perpetrators, if found guilty, punished appropriately.²¹⁴

In a 2022 report, Klikaktiv Reports emphasises that:

'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.'²¹⁵

²⁰⁶ Ombudsman, Serbia: National Report on the situation of human rights of migrants at the borders, ENNHRI, July 2021, available [here](#), 21.

²⁰⁷ BVMN, *They were beating us severely, as if they were beating animals*, available at: <https://bit.ly/3zmNpBt>.

²⁰⁸ AIDA, *Country Report: Serbia – Update on the year 2016*, February 2017, available [here](#), 15 and 19.

²⁰⁹ RTS, *Migrantsko proleće*, 29 March 2017, 12:40, available at: <https://bit.ly/3sQtUdq>.

²¹⁰ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

²¹¹ N1, "Patrola vojske i policije ostavila migrante da umru u šumi", 19 December 2016, available in Serbian at: <https://bit.ly/34SBIZA>.

²¹² CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15, available at: <https://bit.ly/3ujDBFX>.

²¹³ CAT, *Concluding observations on the third periodic report of Serbia**, 20 December 2021, CAT/C/SRB/CO/3, para. 34(e), available at: <https://bit.ly/3MLqTGH>.

²¹⁴ HRC, *Concluding observations on the fourth periodic report of Serbia**, 3 May 2024, CCPR/C/SRB/CO/4, available at: <https://bit.ly/3W1s0qn>, para. 33.

²¹⁵ Klikaktiv, *The Third Quarterly Report in 2022 (July-August-September)*, available at: <https://bit.ly/3Ld2pFU>, 20.

Klikaktiv reported the following in 2023:

'In December 2023, people on the move also reported that they were pushed-back from the Serbian territory back to Bulgaria and that they were victims of police violence during these actions. The cases of push-backs from the Serbian territory were also happening in the past but they were rarely violent. Towards the end of December, Klikaktiv spoke to two men from Syria who claimed to be pushed-back from Serbian territory back to Bulgaria. According to their testimony, they crossed from Bulgaria to Serbia via river Timok (for the 15km of its run the River Timok is a natural border between two countries) in a rubber boat, but the Serbian police caught them and confiscated the boat. The police officers then forced them into a freezing river and they had to swim back to the Bulgarian shore'.²¹⁶

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.²¹⁷ The very fact that this data was included in Progress Report but without critical observation is concerning and should be criticised. Moreover, the fact that issues related to pushback operations on North Macedonian and Bulgarian border have never been critically reflected in the Progress Report clearly indicates that such practice, which clearly undermines access to territory and asylum procedure, is not of the European Commission's concern. The 2021 data was likely obtained by the Mol, which keeps this kind of records but does not always disclose it publicly. In the past, these numbers were usually disclosed by State officials in the context of assuring the public that Serbia is successfully combating organised crime, smuggling, human trafficking and illegal migration.²¹⁸

However, and for the first time, in its response to the request for the information on public importance, the Mol stated that in 2023, a total of 37,403 'illegal entries' were prevented.²¹⁹ This number does not include foreign nationals who were refused entry or were readmitted to one of the neighbouring countries. Thus, it is safe to assume that many of these prevented illegal entries implied unlawful and in most of the cases collective expulsions to neighbouring States. Lastly, the author does not exclude that significant number of refugees and migrants were deterred by very appearance of border police patrols.

The border with North Macedonia

In 2023, the presence of civil society organisations at the border with **North Macedonia** continued to be limited.²²⁰ However, UNHCR and its partners continued to occasionally report on incidents involving pushbacks and other forms of collective expulsions to North Macedonia.²²¹ APC also published a report containing allegations and statistics on pushbacks to North Macedonia in the first six months of 2021,²²² but it appears that their activities on this border have become limited in the past period.²²³ Klikaktiv highlighted that towards the end of 2023, people on the move started reporting push-backs from Serbian territory back to Bulgaria/ North Macedonia more frequently and in many cases, these push-backs also involved use of violence.²²⁴

²¹⁶ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 15.

²¹⁷ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 61.

²¹⁸ See, e.g. , Government of the Republic of Serbia, *Меморандум о сарадњи Србије, Мађарске и Аустрије у борби против илегалних миграција*, 16 November 2022, available in Serbian at: <https://bit.ly/3SLf8U8>.

²¹⁹ Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

²²⁰ More than 95% of persons in need of international protection are entering Serbia from three countries, including North Macedonia.

²²¹ INDIGO acts as an implementing partner of UNHCR at the south of Serbia.

²²² APC, *Migracije na jugu srbije*, 29 December 2021, available at: <https://bit.ly/33xTxHm>.

²²³ There were not publicly available reports on the APC's website: <http://www.apc-cza.org/en/>.

²²⁴ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 12.

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 barbed wire for the purpose of fencing asylum and reception centres.²²⁵ 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.²²⁶ Soon after the announcement of the public procurement, an online Portal *Direktno* announced that the Government of Serbia was planning to build a barbed wire fence at its borders with **Northern Macedonia** and **Bulgaria**.²²⁷ 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**.²²⁸ 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.²²⁹ In August 2020, *the Radio Free Europe* reported that Serbia had built a fence alongside the border with **North Macedonia**.²³⁰ 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.²³¹

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 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 in-creased 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.'²³²

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.²³³ 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* 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.²³⁴

²²⁵ Ministry of Defence – Public Procurement, *Material for Building the Barbed Wire 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].

²²⁶ 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].

²²⁷ *Direktno*, *Srbija zbog migranata diže zid prema Bugarskoj i Makedoniji!*, 10 June 2020, available at: <https://bit.ly/3gdzOgS> [accessed on 10 January 2021].

²²⁸ Most probably in line with Article 3 (a) of the Decree on the State of Emergency.

²²⁹ Radio Free Europe, *Ministarstvo odbrane Srbije obustavilo kupovinu žilet-žice*, 20 May 2020, available at: <https://bit.ly/31Ax3ll> [accessed on 10 January 2021].

²³⁰ 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].

²³¹ Bojana Lekić, *Pushback and Dangerous Games*, Brendon Production, at 36:14, available at: <https://bit.ly/368FJkK>.

²³² Klikaktiv, *The Second Quarterly Report in 2022 (April-May-June)*, available at: <http://bit.ly/3yx2dcX>, pp. 7-8.

²³³ Right to a lawyer, right to inform a third person on their situation and whereabouts and right to an independent medical examination.

²³⁴ ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84.

According to UNHCR, at least 773 refugees and migrants were pushed back to **North Macedonia** in 2019, 977 in 2020, 210 in 2021, 576 in 2022 and 59 in 2023. 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 and 2023

UNHCR data on pushbacks to North Macedonia 2019-2023					
	2019	2020	2021	2022	2023
January	78	74	0	4	23
February	87	150	31	8	33
March	96	112	2	6	3
April	35	9	7	85	0
May	49	9	22	20	0
June	19	88	5	6	0
July	59	10	21	2	0
August	28	154	46	301	0
September	159	142	14	6	0
October	67	159	57	0	0
November	90	30	0	103	0
December	6	40	5	35	0
Total	773	977	210²³⁵	576²³⁶	59

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 the Macedonian village of **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**.²³⁷ The group addressed several NGOs, including BVMN, BCHR and IDEAS.²³⁸ The case was later on referred to the Ombudsman by the BCHR.²³⁹ 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.²⁴⁰ However, the body never tried to collect testimony from these people, even though they managed to return to Serbia after several

²³⁵ UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

²³⁶ *Ibid.*

²³⁷ BVMN, *Pushed-back from a Camp in Serbia to N. Macedonia, and then to Greece*, 3 April 2020, available at: <https://bit.ly/2SRhfWJ>.

²³⁸ 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/46kqDF3>, p. 34.

²³⁹ 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.

²⁴⁰ Ombudsman, Recommendation No. 4232/127/2020, 7 October 2020, available in Serbian at: <http://bit.ly/36nVVPp>.

weeks and the Ombudsman was aware of their whereabouts.²⁴¹ This case displays a similar pattern as the case of collective expulsion reported by the APC in 2019.²⁴²

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**.²⁴³ Two other reports were published in October 2020 outlining that refugees and migrants were taken respectively from AC **Tutin**,²⁴⁴ and the town **Preševo**,²⁴⁵ to the green border area with North Macedonia close to **Miratovac** village. APC reported pushbacks to **North Macedonia** in November 2020.²⁴⁶ All these 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.²⁴⁷

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 [...]
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.

²⁴¹ 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.

²⁴² AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 19-20.

²⁴³ 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>.

²⁴⁴ 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>.

²⁴⁵ 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>.

²⁴⁶ APC Twitter, available at: <https://bit.ly/3tnylGK>.

²⁴⁷ Protection Rights at Borders, *Pushing Back Responsibility*, April 2021, available at: <https://bit.ly/3RMSZmP>, 7.

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.²⁴⁸

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 2021.²⁴⁹

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.²⁵⁰

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.²⁵¹ In June 2020, it was published in the media that up to June 2020, 532 migrants had been prevented from 'illegally' crossing the border.²⁵² 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.²⁵³ 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 [Serbia] stated they had been pushed back by the Serbian police back to North Macedonia, with no physical violence committed during the pushback.'²⁵⁴

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

'During 2019, a total of 20,221 people were prevented from attempting to cross the state border illegally, of which 4,990 were caught trying to cross the state border illegally, while 15,231 people gave up after being spotted by the state border security authorities, while in 2020, a total of 38,226 persons were prevented, of which 22,572 were directly prevented from attempting to cross the state border illegally, while 15,654 were the results of preventive action by the state border security authorities.'²⁵⁵

²⁴⁸ Ombudsman, *Serbia: National Report on the situation of human rights of migrants at the borders*, ENNHRI, July 2021, available [here](#), 21.

²⁴⁹ AIDA, *Country Report: Serbia – Update on the year 2018*, March 2019, available [here](#), 16.

²⁵⁰ APC, *Migracije na jugu Srbije*, 29 December 2021, available at: <https://bit.ly/33xTxHm>, 2.

²⁵¹ AIDA, *Country Report: Serbia – Update on the year 2018*, March 2019, available [here](#), 16-18 and AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 20-21.

²⁵² Blic, *Migranti i među lubenicama: carinici otkrili 532 "ilegalca", samo juče sprečeno 45 da uđe u Srbiju*, 18 June 2020, available in Serbian at: <https://bit.ly/3h1ly1f> [accessed on 10 January 2021].

²⁵³ Ombudsman, *Serbia: National Report on the situation of human rights of migrants at the borders*, ENNHRI, July 2021, available [here](#), 21.

²⁵⁴ Klikaktiv, *The Third Quarterly Report in 2022 (July-August-September)*, available at: <https://bit.ly/3Ld2pFU>, 15.

²⁵⁵ Mol, *Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година*, June 2021, available in Serbian at: <https://bit.ly/3Dtss4r>, 10.

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.²⁵⁶ He did not disclose such numbers in relation to arrivals from Bulgaria.

On 16 February 2024, IDEAS's legal team was in contact with two men from Syria who were transported to the North Macedonian border. They called the IDEAS hotline and video call was established at the moment they were apprehended by Serbian border police - two officers in civilian clothes and two uniform police officer who arrived with the police van. They were talking in English asking for asylum, but the line was cut off and they were boarded to the back of the van. On the road from the vicinity of Preševo town where they were deprived of their liberty, to the green border area in Miratovac field, close to the North Macedonian village Lojane, they continuously sent GPS locations. Afterwards, they were ordered to leave towards North Macedonia and the police dogs were released at them. Contact was then lost.²⁵⁷

On 22 February 2022, the group of stripped refugees and migrants were video recorded while walking on the highway towards Reception Centre in Tabanovci in North Macedonia. According to their testimonies, as well as testimonies collected from foreign nationals who managed to enter Serbia, Serbian police arrested several dozens of nationals of Syria and Iraq. One group was taken to the police facility in the vicinity of border with North Macedonia where they were allegedly ill-treated: kicks, slaps, punches, hitting with belts and riffle butts. Others, who were captured right after they crossed the border were also ill-treated in similar manner, stripped and ordered to go back to North Macedonia. Several testimonies were collected by MYLA in North Macedonia and CSOs in Serbia and which contain pictures of bruised bodies.²⁵⁸

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.' What is clear is that these people are not issued a decision on refusal of entry,²⁵⁹ which is the formal way to prevent someone from unlawfully entering Serbia.

²⁵⁶ YouTube, Вучић: Предузимамо важне мере за сигурност наших грађана, 15 December 2022, available at: <http://bit.ly/3l6xtwi>.

²⁵⁷ IDEAS internal report, 16/17 February 2024 and WhatsApp correspondence from 16 February 2024.

²⁵⁸ Guardian, *Videos show migrants stripped of clothing in freezing temperatures at Serbian border*, 22 February 2024, available at: <https://bit.ly/3XIsPFG>.

²⁵⁹ Article 15 Foreigners Act.

Number of persons prevented from 'illegally crossing the border' (data extracted from the statements of the state officials and official reports of the Mol)

Year	Number of persons denied access to the territory
2016	(at least) 18,000 ²⁶⁰
2017	(at least) 21,000 ²⁶¹
2018	(at least) 23,000 ²⁶²
2019	20,221 ²⁶³
2020	38,226 ²⁶⁴
2021	14,806
2022	45,965 (until 15 December 2022 from North Macedonia)
2023	37,403
Total	(at least) 264,586

In this year's response, the Mol delivered the following data:

Reginal Border Centre	No, of prevented 'illegal entries'
North Macedonia	26,301
Bulgaria	13,414
Hungary	16
Bosnia and Hercegovina	31
Croatia	45
BPS Belgrade (Belgrade airport)	197
Romania	38
Montenegro	33
BPS Kraljevo (Kraljevo airport)	17
BPS Niš (Niš airport)	11
Total	37,403

To conclude, it is clear that denial of access to the territory represents the State policy which has remained unchanged in 2023. This practice is most prominent at the borders with North Macedonia (26,301) and Bulgaria (13,414), but from the Mol response it can be seen that in addition to the refusal of entry practice as a form of forcible removal governed by the Foreigners Act, there is the practice of informal returns, outside the scope of Foreigners Act is applied at airports, but also in relation to the countries which are considered to be exit points from Serbia to the EU (such as Hungary).

²⁶⁰ Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

²⁶¹ 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>.

²⁶² Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EoIHol>.

²⁶³ 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>.

²⁶⁴ 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.

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, but also findings of the HRC from the end of 2024.²⁶⁵ This data represents a 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 already back in 2017 when it expressed its concerns related to “collective and violent” denial of access to territory.²⁶⁶ These concerns have also been shared by the CAT²⁶⁷ and Amnesty International,²⁶⁸ while UNHCR had reported this problem for the first time in 2012.²⁶⁹ 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.’²⁷⁰ To 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’.²⁷¹

Almost similar findings were outlined in 2024 Concluding observations of the HCR:

[...] 32. [...] the Committee is concerned by reports of failures to ensure effective access to asylum procedures, including: alleged pushbacks and ill-treatment at land borders; failure to provide access to asylum procedures for persons refused entry at international airports and their subsequent *de facto* detention in airport transit zones;

[...] (d) All relevant officials, including border guards, receive adequate training on international standards, including the principle of *non-refoulement*, and that all allegations of pushbacks and ill-treatment are promptly, thoroughly and independently investigated and perpetrators, if found guilty, are punished appropriately;²⁷²

In 2021, the Constitutional Court (CC) confirmed that illegal border practices have been a state practice.²⁷³ This decision is the first official recognition that relevant State authorities denied access to the territory and asylum procedure and carried out collective expulsions.²⁷⁴ On 29 December 2020, the CC adopted the constitutional appeal submitted by 17 refugees from Afghanistan who complained to have been

²⁶⁵ HRC, *Concluding observations on the fourth periodic report of Serbia**, 3 May 2024, CCPR/C/SRB/CO/4, available at: <https://bit.ly/3XFyfRT>, paras. 32-33.

²⁶⁶ HRC, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3, available at: <https://bit.ly/46njRy9>, para. 32,

²⁶⁷ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15, available at: <https://bit.ly/3uj15La>.

²⁶⁸ Amnesty International, *Europe’s Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary*, July 2015, available at: <https://bit.ly/1dLK66T>, pp. 31-34.

²⁶⁹ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

²⁷⁰ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2*, para 15, available at: <https://bit.ly/3uj15La>.

²⁷¹ 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.

²⁷² HRC, *Concluding observations on the fourth periodic report of Serbia**, 3 May 2024, CCPR/C/SRB/CO/4, available at: <https://bit.ly/3XFyfRT>, paras. 32-33.

²⁷³ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

²⁷⁴ AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 21.

collectively expelled to **Bulgaria** in February 2017.²⁷⁵ 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.²⁷⁶ 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)²⁷⁷ 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 in the basement amounted to inhumane and degrading treatment, stating that a period of 12 hours is not lengthy enough to reach the threshold of Article 25 of the Constitution (Article 3 of ECHR).²⁷⁸ 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*,²⁷⁹ *Hirsi Jamaa*²⁸⁰ and *Georgia v. Russia*,²⁸¹ 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.²⁸²

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).²⁸³ 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 issued. 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*.²⁸⁴

²⁷⁵ Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

²⁷⁶ DW, *Serbia: Court confirms illegal pushbacks into the EU*, 22 January 2021, available at: <http://bit.ly/3699fH8>.

²⁷⁷ Which corresponds to Article 5 (4) of ECHR.

²⁷⁸ Which will be further examined by the ECtHR, *O.H. and Others v. Serbia*, Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

²⁷⁹ ECtHR, *Čonka v. Belgium*, Application no 51564/99, Judgment of 5 February 2002, available at: <http://bit.ly/2YJEZ1y>.

²⁸⁰ ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R5G6Em>.

²⁸¹ ECtHR, *Georgia v Russia*, Application no 13255/07, Judgment of 3 July 2014, EDAL, available at: <https://bit.ly/49BWp3b>.

²⁸² Insajder, "Odluka Ustavnog suda potvrda da se migranti proteruju iz Srbije", 22 January 2021, available in Serbian at: <http://bit.ly/39Wgl2U> [accessed on 24 January 2021].

²⁸³ ECtHR, *O.H. and Others v. Serbia*, Application No. 57185/17, 1 August 2017, available at: <https://bit.ly/3JyPhXo>.

²⁸⁴ 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.

1.4 Pushbacks towards Serbia and their 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.²⁸⁵

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.²⁸⁶ 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 Herzegovina.

The will to reach an EU country 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.²⁸⁷ Apart from food, water and a roof over their heads, refugees, asylum seekers and migrants stay in reception centres sleep in conditions that can only be described as inhumane and degrading due to overcrowding, lack of privacy, poor hygiene, insecurity and others. On the other hand, even more appalling conditions are inevitable in the informal settlements where there is no access to the most basic needs, especially during the hot summer or cold winter days. According to the APC, between 2,000 and 3,000 refugees and migrants were residing in informal settlements every day in 2021.²⁸⁸ In 2022, Klikaktiv and BVMN regularly reported on the appalling conditions which people on the move experience.²⁸⁹ The same reports were published in relation to 2023 where Klikaktiv reported:

'In 2023, the Klikaktiv team visited 33 squats out of 42 squats which were identified through the Klikaktiv's work from 2019 until the end of 2023. The number of new squats alongside the border area continued to increase, having in mind that at the end of 2022 Kliaktiv had identified 31 squats in total. The squats that Klikaktiv visited in 2023 have accommodated on average 100 people on the move at all times: in some squats there can be from 30 to up to 600 refugees and migrants. People on the move in the squats tend to group themselves along the lines of nationality, both by location (so one can find a squat with just Afghan or just Syrian refugees) or within the same squat (such as an abandoned factory near Subotica, in the vicinity of border with Hungary where our team spoke with people on the move from: Morocco, Tunisia, Afghanistan, Pakistan, India, Syria, Iraq, Egypt and others).²⁹⁰

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. Serbia does not have the capacity to address basic needs of refugees, asylum seekers and migrants staying in border area, nor does it have the capacity to establish the system which can handle hundreds of informal returns from Romania, Hungary and Croatia outside readmission procedures or any other formal cooperation.

²⁸⁵ International Aid Network (IAN), Documenting ill-treatment and collective expulsions of refugees and migrants, January 2019, available at: <https://bit.ly/2T8kEI5>.

²⁸⁶ European Commission, *Serbia: Progress Report*, SWD(2022) 338 final 12 October 2022, available at: <https://bit.ly/3LedaYB>, 48.

²⁸⁷ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 19.

²⁸⁸ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available in Serbi at: <https://bit.ly/3ui6HW5>, 1-4.

²⁸⁹ See for example BVMN, *Violence Within State Border: Serbia*, 26 September 2022, available at: <https://bit.ly/3Fi3ys6>.

²⁹⁰ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 19.

Moreover, refugees and migrants used to resort to more dangerous ways to cross the borders, including digging undergrounds tunnel with the aim to cross to Hungary.²⁹¹

One of the consequences of illegal border polices, very often explained as a 'necessity' in the combat against organised crime, irregular migration, human trafficking and smuggling, was the increased number of operations from organised smuggling groups.²⁹² The state of affairs on the field indicates the failure of such approach.

In 2022, according to the work of investigative journalist Saša Dragojlo from BIRN, organised smuggling groups are comprised 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).²⁹³ A day after BIRN's 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, organised criminal groups intended to discover journalist sources.²⁹⁴ Similar incidents occurred in the small town Horgoš, located at the very border with Hungary, when a 20-year-old man was shot from by an automatic weapon (Kalashnikov).²⁹⁵ The next day, police raids were conducted and the MoI informed the public that weapons such as guns, automatic rifles and knives were seized.²⁹⁶ 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, who covered the work of another smuggling group on the border with Hungary governed by a Moroccan national under the alias of 'the king of Horgoš', Mohamad Tetuania, who metaphorically formed the State of Harabu.²⁹⁷ The Documentary provides testimonies of the operations of smuggling groups, ill-treatment they inflict on refugees and migrants who are not able to pay for services, the scheme and prices of 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 organised smuggling groups in which foreigners have to pay to stay in State-established camps, in which people who do not abide by informal rules are expelled from the camp or physically ill-treated. Also, the Documentary analyses 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 local population also imply that armed clashes have been happening on a daily basis, but were not publicised, until the July.²⁹⁸

These, and many other media stories would always trigger reaction from the MoI, which would carry out 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.²⁹⁹ This kind of treatment undoubtedly amounts to a degrading one, but it bears the deeper consequences of 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. The Minister

²⁹¹ FRA, *Migration: Key fundamental rights concerns, Bulletin 1 for 2021*, available at: <https://bit.ly/3ApVld2>, 10.

²⁹² Firstst, *LIVE: Austria's Nehammer Briefs Media With Orban, Vucic Following Discussion on Illegal Immigration*, 7 July 2023, available at: <https://bit.ly/3XNbiMy>.

²⁹³ BIRN, *With Police Connections, Serbian-Syrian Translator Turned People-Smuggler*, 22 June 2022, available at: <https://bit.ly/3A9SBqf>.

²⁹⁴ BIRN, *Shootings, Stabbing Reported Near Serbian Migrant Camp*, 24 June 2022, available at: <https://bit.ly/3l4f17l>.

²⁹⁵ Infomigrants, *Serbia: Man shot in border town clash between migrants and smugglers*, 28 November 2022, available at: <https://bit.ly/3yAIYR4>.

²⁹⁶ Reuters, *Serbian police find 600 migrants after shootout near Hungarian border*, 28 November 2022, available at: <http://bit.ly/3JBdm2W>.

²⁹⁷ N1, *'Bellow the surface – the Network'*, Ksenija Pavkov, 20 February 2023, available at: <http://bit.ly/3YH2epp>.

²⁹⁸ *Ibid.*

²⁹⁹ YouTube, *Ministar Vulin-Subotica akciji usmerena na suzbijanju krivičnih dela i prekršaja koje čine migranti*, 14 July 2022, available at: <https://bit.ly/3TahUjO>.

of Police at that time, Aleksandar Vulin, formed 'the special task force for combating crimes committed by migrants'.³⁰⁰

All these events, taken cumulatively, further incited actions from right-wing groups such as Citizens Patrols (Narodne patrolne),³⁰¹ Levijatan,³⁰² but also opposition parties such as Dveri.³⁰³ 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.³⁰⁴ 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 Patrola ("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 Patrola has become increasingly well-known for organizing patrolling vigilante groups in a growing number of cities in the country.'³⁰⁵

In June and October 2023, more shootings were reported in the vicinity of Horgoš town. In an armed fight in October 2023 3 persons were killed and one was wounded. All of them were foreign nationals who allegedly belonged to organised criminal groups involved in smuggling.³⁰⁶ The reports from Saša Dragojlo continued, indicating that organised criminal groups were supplied with rifles by Albanian criminal clans.³⁰⁷ The article shows pictures of armed persons from Morocco, Afghanistan and how they pose and smile, including in front but also on the top of Serbian Border Police vehicles, corroborating further suspicions that at least members of border police were involved in illegal activities revolving around smuggling. In January 2024, it was reported that Alen Dayoub Basil was deprived of his liberty and charged with numerous criminal offences including human smuggling.³⁰⁸ These investigative journalism articles also clearly indicate that there could be a strong link between transnational criminal groups involved in smuggling and other illegal activities with some parts of Serbian authorities, but to the date of the conclusion of this Report relevant prosecutorial authorities have remained silent.³⁰⁹

After the October shootings, the police facilitated actions in which hundreds of refugees and migrants were deprived of their liberty and persecuted for the misdemeanour of illegal entry or illegal stay on Serbian soil.³¹⁰ Most of them were sentenced to short terms prison sentences (between 10 and 30 days)

³⁰⁰ *Ibid.*

³⁰¹ YouTube, *Narodna patrola razgovara sa Ahmedom*, 27 March 2022, available at: <https://bit.ly/3TemAFh>.

³⁰² YouTube, *Pavle Bihali o odnosu prema migrantima*, 23. November 2020, available at: <http://bit.ly/3T9aoWe>.

³⁰³ YouTube, *Boško Obradović Migranti stvorili autonomnu oblast u AP Vojvodini*, 23 November 2022, available at: <https://bit.ly/427HbPF>.

³⁰⁴ Insajder, *Postupci u tužilaštvu protiv Narodnih patrola i dalje bez epiloga*, 11 January 2023, available at: <http://bit.ly/3ywQvyT>.

³⁰⁵ BVMN, *Violence within State Border: Serbia*, available at: <https://bit.ly/4eMnfZ6>.

³⁰⁶ RSE, *Uhapšena šestorica migranata posle pucnjave u Horgošu*, 27 October 2023, available at: <https://bit.ly/45Orhfo>.

³⁰⁷ BIRN, *Albanian-Supplied AKs Fuel Violence on Refugee Route through Serbia*, 4 September 2023, available at: <https://bit.ly/45OrC1E>.

³⁰⁸ BIRN, *Serbian Police Translator, Named in BIRN Report, Held for People-Smuggling*, 16 January 2024, available at: <https://bit.ly/45KhqXO>.

³⁰⁹ *Ibid.*

³¹⁰ Practice-informed observation of IDEAS, January 2024.

and transferred to penitentiary institutions all around Serbia. Also, all reception facilities were closed for several weeks, depriving in that way all foreign nationals who were not asylum seekers of their liberty.³¹¹ The regime to which they were subjected is reminiscent of the regime introduced during the COVID-19 lockdown when people were deprived of their liberty without individual and reasoned decision against which they can lodge remedy to the judicial body and where they were deprived of the possibility to access legal aid.³¹² CSOs in Serbia have received higher number of distress calls from families of people who were apprehended and were missing from several days to several weeks - serving their prison sentence or being detained in one of the reception facilities.³¹³ This form of behaviour can only be described as arbitrary and contrary to the right to liberty and security.³¹⁴

Hundreds of refugees and migrants who stayed in informal settlements in the north were transferred to southern asylum and reception centres. Eventually, RCs in Principovci, Adaševci, Kikinda, Sombor and Subotica were closed, and they remained closed as of June 2024.³¹⁵

In 2023, Serbian police organised frequent transfers of people staying in appalling conditions in border areas to the Reception Centre in Preševo, especially during the winter times,³¹⁶ 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, which means that people typically come back to the same locations from which they were removed.

BVMN outlined in its December 2021 report the following:

- '[...] As stated in previous monthly reports, large-scale operations in the North were carried out several times this winter. These evictions are notoriously ineffective in tackling smuggling networks, and rather sometimes contribute to reshaping smuggling routes or, at a smaller scale, the distribution of individuals in a given space. [...] As witnessed by members of our team on the field, an overwhelming number of individuals tend to come back to locations they were evicted 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.'³¹⁷

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).'³¹⁸

³¹¹ Practice-informed observation of IDEAS, January 2024.

³¹² See more in IDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 122-126.

³¹³ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 20-21.

³¹⁴ *Ibid.*, 9-10.

³¹⁵ The number of residents in the enlisted reception facilities was zero in the second half of December, information provided by the UNHCR office in Serbia, but see also BVMN, *Illegla pushback and border violence reports, period December 2023-January 2024*, available at: <https://bit.ly/3VP538v>, 21-23.

³¹⁶ Večernje Novosti, *МИГРАНТИ ПРЕБАЧЕНИ СА СЕБЕРА НА ЈУГ: Више од 300 избеглица транспортовано из Сомбора у Прешево*, 4 February 2021, available at: <https://bit.ly/36ql0uF>; see also, Tweet from APC, available at: <https://bit.ly/36k5v8x>.

³¹⁷ BVMN, *Balkan Region – January 2022*, available at: <https://bit.ly/3sQqmrD>, 4.

³¹⁸ Klikaktiv, *The Third Quarterly Report in 2022 (July-August-September)*, available at: <https://bit.ly/3Ld2pFU>, 12 and 13.

In 2023 Klikaktiv reported:

'The actions of the police from the end of October are not a new thing, they show a well known pattern in which the government of Serbia managed the response to armed conflicts between organised criminal groups of smugglers: responding with mass police raids of all people on the move indiscriminately, with populist media coverage and anti-migrant statements from high-ranking officials. What has changed compared to some previous periods is the expansion of the scope of action, from the northern and eastern borders and the area of Pirot, and the duration of these actions, which have been extended until the end of 2023, to a greater or lesser extent. During police raids, all refugees found in squats were transferred to some of the reception centers within the country.'³¹⁹

In October 2023, BVMN outlined the following:

'This month, the situation for people on the move in Northern Serbia has become increasingly difficult. On October 28th, the Serbian Minister of the Interior, Bratislav Gašić, held a press conference announcing a sweeping military and policing campaign focusing on Northern Serbia. This so-called "special operation" brings together police units from Serbia and Hungary, and includes the involvement of heavily armed Serbian Gendarmerie special military units. During the televised press conference, Gašić stated that the special operation will not stop "until the last perpetrator of any criminal act, causing any incidents, shootings and everything, is removed from the territory of Subotica, Kikinda, and Sombor." The public facing reason for the special operation was a shooting that took place on October 27th in the area of Horgoš resulting in the deaths of three people. The shooting is reported to have occurred between rival smuggling groups - there have been multiple shootings in the past few months, the previous deadly one in the area reported a month prior. This recent event has been heavily utilised by the Serbian Government to carry out actions against people on the move. The upcoming elections can be understood as another motive for this special operation. Serbian president Aleksandar Vučić set up a snap parliamentary election for December 17th, 2023, the third such vote in Serbia in the past four years. With the idea to re-consolidate power in the wake of the formation of the 'Serbia against Violence' alliance - stemming from the movement in response to a pair of deadly school shootings in May, in Belgrade. It is inferred that the policing actions in the north are part of the PR for Vučić's SNS party campaign, aligning with rhetoric across local and national news which frequently describe all displaced people in Serbia as being part of violent criminal groups. Within the special operation, people were forcibly removed from temporary informal living sites and transferred to official reception and transit centers (RTC's), which are under the control of the Commissariat for Refugees and Migration. The conditions of Serbia's RTC's are well documented to be commonly overcrowded, unsanitary and well below the standards reported within the joint UNHCR and Serbia's Commissariat for Refugees monthly site profiles. Since the announcement of the special operation, all known temporary informal living sites were repeatedly and violently evicted. Despite involving multiple violations of rights, this style of eviction is not rare along the northern border - as detailed in the October 2023 Balkan Regional Report. However, what is new within the special policing operation is the frequency and effectiveness of evictions.'³²⁰

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

- ❖ Ill-treatment committed by trans-national organised criminal groups controlling the border area and reception facilities.
- ❖ Poor, unhygienic and unsafe living conditions in the informal settlements

³¹⁹ Klikaktiv, *From migration to criminalization - growing oppressive treatment against people on the move in Serbia, Annual report for the year 2023*, May 2024, available at: <https://bit.ly/3VGpzYH>, 9.

³²⁰ BVMN, *Illegal pushback and border violence reports*, November 2023, available at: <https://bit.ly/3TRdfnwpp>, 6-7.

- ❖ 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.³²¹ 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). In 2023, this number decreased to 1,730: Hungary (1,596), Croatia (60), Bosnia Herzegovina (48) and Romania (26).

UNHCR statistics on pushbacks to Serbia in 2023³²²

Month	Bosnia and Herzegovina	Croatia	Hungary	Romania
January	0	0	107	3
February	0	0	168	0
March	0	12	137	0
April	0	13	48	0
May	0	7	30	0
June	0	0	22	0
July	0	15	141	0
August	0	0	0	0
September	0	0	566	23
October	48	0	329	0
November	0	13	48	0
December	0	0	0	0
Total	48	60	1,596	26

Klikaktiv reported the following:

'Out of 8.438 Klikaktiv's beneficiaries throughout the year 2023, 1.622 of them reported to be pushed-back at least once. Most of the push-backs were happening from the Hungarian territory back to the Serbian territory, since this was the most active border in 2023. However, people on the move continued reporting push-backs from the Croatian border and to a smaller extent also the push-backs from the Romanian border. Most of those push-backs involved severe forms of physical and psychological violence (beatings with police batons, kicks while wearing heavy police boots, slaps, dog bites, different forms of humiliation, curses, etc.). People on the move were never able to apply for asylum, even when they expressed their intention to seek asylum and were in need of international protection.'

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,³²³ 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.³²⁴

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

³²¹ The entire statistical data has been provided by UNHCR office in Serbia.

³²² UNHCR data portal, available at: <https://bit.ly/3rYbS9O>.

³²³ APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3vQqzMY>.

³²⁴ *Ibid.*

1.4.1 Pushbacks from Hungary to Serbia and Embassy Procedure

Since the contentious changes in the Hungarian legal framework in the period 2015-2020,³²⁵ including the legalisation of a practice which is considered to be in violation of the prohibition of collective expulsions, the Hungarian authorities have reported that 388,753 refugees, asylum seekers and migrants were expelled back to Serbia. Due to such practice, but also Hungary's failure to comply with a judgement of the Court of Justice of the European Union (CJEU),³²⁶ FRONTEX suspended its operational activities in Hungary.³²⁷ Moreover and due to the failure to comply with the judgment, Hungary was ordered to pay a lump sum of 200 million euros and a penalty payment of 1 million euros per day of delay for failure to comply with the CJEU judgment.³²⁸

In 2020, BVMN published 3 testimonies encompassing 30 people who were pushed back from **Hungary** to **Serbia**.³²⁹ 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.³³⁰ The same trend continued in 2022, when BVMN compiled 77 reports encompassing 1,337 persons who were pushed back from Hungary.³³¹ In 2023, BVMB compiled 36 reports containing testimonies related to violent pushbacks of 613 persons on the move.³³²

APC reported that over 300 people attempted to cross the border with Hungary every day in the first 6 months of 2021.³³³ 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.'³³⁴

Particularly worrying examples of push-back practices from Hungary to Serbia are related to individuals who had never been in Serbia beforehand. There are probably dozens of cases of foreigners subjected to such practice. The first such case was recorded in 2016.³³⁵ In April 2021, a SGBV survivor who arrived from Senegal to Budapest airport was expelled to Serbia.³³⁶ In September 2021, an Afghan student in Hungary was expelled to Serbia.³³⁷ 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.³³⁸ One such case resulted in Hungary being found responsible by the Strasbourg Court for expelling to Serbia a Kurdish UASC who was expelled from Austria to Hungary and then by Hungarian authorities to Serbia, even though he had never been in Serbia before.³³⁹

³²⁵ See AIDA, *Country report: Hungary, Updates on the years 2016-2020*, available [here](#).

³²⁶ CJEU, Case C-808/18, 17 December 2020, available at: <https://bit.ly/3MNe8uR>.

³²⁷ FRA, *Migration: Key fundamental rights concerns*, Bulletin 2 for 2021, available at: <https://bit.ly/3BwONyt>, 6.

³²⁸ CJEU, *Asylum policy: Hungary is ordered to pay a lump sum of 200 million euros and a penalty payment of 1 million euros per day of delay for failure to comply with a judgment of the Court of Justice*, press release, 13 June 2024, available at: <https://bit.ly/45KWPCG>.

³²⁹ The testimonies are available at: <https://borderviolence.eu/testimonies/>.

³³⁰ BVMN, Testimony Database, available at: <https://bit.ly/3Jvnhjs>.

³³¹ *Ibid.*

³³² BVMN, Testimonies, 1 January 2023-31 December 2023, available at: <https://bit.ly/3QldJg1>.

³³³ APC, Pushbacks - January -Jun 2021, 8 December 2021, available at: <https://bit.ly/3uqMGwo>, 6.

³³⁴ Tweet from APC, 2 December 2021, available in Serbian at: <https://bit.ly/3gWxyx1>.

³³⁵ HHC, World Refugee Day – 1 out of 40,000: Karox, 20 June 2020, available at: <https://bit.ly/3h2z0Oe>.

³³⁶ BCHR, Mađarska - ovde se ne traži azil, 16 November 2021, available at: <https://bit.ly/3JDXSbj>.

³³⁷ 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>.

³³⁸ The author of this Report acts as her legal representative.

³³⁹ ECtHR, *K.P. v. Hungary*, Application No. 82479/17, Judgment of 18 January 2024, available at: <https://bit.ly/4dfbjOS>.

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**.³⁴⁰ 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 ('Dol').³⁴¹ 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 an appointment. Only a 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 Dol. 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 in Hungary. The problems that were detected are the following:

- ❖ Dol forms are in English, which represents a serious obstacle for most of the applicants
- ❖ filling out of the Dol forms requires at least basic knowledge of refugee and asylum law
- ❖ many of the applicants do not know how to use emails and how to communicate with the Consulate in order to schedule the Dol appointment or to lodge the Dol 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 the basis of which an applicant will be invited to submit the Dol as opposed to another, which creates distress and conflicts among applicants who are aware of each other's 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
- ❖ applicants 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 Dol 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 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 ECHR in the case of *Shahzad v. Hungary*.³⁴² 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 an expulsion of collective nature contrary to Article 4 of Protocol 4.³⁴³ An identical Judgment as *Shahzad* was rendered in the case of *H.K. v. Hungary*.³⁴⁴ Also, three more applications lodged against Hungary were upheld by the court in the case of *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.³⁴⁵ In October

³⁴⁰ ECRE, *Hungary: New Law on the Lodging of Asylum Applications at Embassies*, 19 June 2020, available at: <http://bit.ly/2MRn0mX>.

³⁴¹ Available at: <https://bit.ly/3jyD2h>.

³⁴² ECtHR, *Shahzad v. Hungary*, Application No 12625/17, Judgment of 8 July 2021, available at: <https://bit.ly/3BwQH1U>.

³⁴³ *Ibid.*, para. 67.

³⁴⁴ ECtHR, *H.K. v. Hungary*, Application No. 18531/17, Judgment of 22 September 2022, available at: <http://bit.ly/3LhVaMI>.

³⁴⁵ 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>.

2023, another judgment of the Strasbourg Court found a violation of the Article 4 of Protocol 4, but also of the procedural limb of Article 3 of ECHR.³⁴⁶

Official statistics on pushbacks from Hungary to Serbia 2016-2023	
Year	Number of people pushed back
2016	8,466
2017	9,259
2018	4,151
2019	11,101
2020	25,603
2021	71,470
2022	158,565
2023	100,138
Total	388,753

Source: Hungarian Ministry of Interior official data.

As it can be seen from the table above, the Hungarian immigration authorities have been transparent about 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 Mol, only 6 foreigners were officially readmitted from Hungary to Serbia in 2023 (see [Hindering of access through legal ways – Readmission](#)).

1.4.2 Pushbacks from Romania to Serbia

Due to increasing violence at the Croatian border and taking into consideration that the Hungarian barbwire fence carries significant risk to the life and physical integrity of people, 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 dropped to 1,326. In 2023, UNHCR reported only 26 pushbacks from Romania.

In 2021, Frontex initiated a joint operation with the Romanian Border Police aimed at preventing and combating irregular migration at the EU border with Serbia.³⁴⁷ Moreover, the European Commission reported that:

'Based on the Police Cooperation Convention for Southeast Europe (PCC SEE), the Ministry of the Interior [of Serbia) established a cooperation with all neighbouring countries. Joint patrols with neighbouring countries are ongoing with Hungary, North Macedonia and Romania. Information exchange takes place through joint contact centres. Serbia receives capacity building and border management assistance from EU Member States.'³⁴⁸

In March 2023, Romania started implementing a six-month pilot project initiated by the European Commission, particularly focused on the land border with Serbia which is "considered of critical importance" by the Commission. This included common patrols with Serbian authorities, deployment of Frontex, etc. In October, at the end of the 6-month pilot, the European Commission reported³⁴⁹ "solid

³⁴⁶ *S.S. and Others v. Hungary*, Application Nos. 56417/19 44245/20, Judgment of 12 October 2023, available at: <https://bit.ly/4fAyrbK>.

³⁴⁷ FRA, *Migration: Key fundamental rights concerns*, Bulletin 3 for 2021, available at: <https://bit.ly/41yNuLz>, 9.

³⁴⁸ European Commission, *Serbia: Progress Report*, SWD (2023) 695 final, 8 November 2023, available at: <https://bit.ly/4bRUaJU>, 71.

³⁴⁹ European Commission, *Reporting on progress made the Pilot Project for fast asylum and return procedures with Romania*, October 2023, available [here](#).

results” and “best practices identified”, notably, the joint patrol missions, joint “ad hoc” patrols: and general international cooperation and information sharing with Serbia.

At a public event, an official from the Ministry of Internal Affairs described the pilot as enabling Romanian authorities to identify groups of migrants approaching the Serbian-Romanian border and thus to notify Serbian authorities “long before they reach the border”. According to him, the Serbian authorities then have an obligation to intervene, and manage to do so most of the time. These preventive activities contribute to reducing “illegal” flows. Given the “positive achievements” according to the Commission, continued cooperation in the framework of the pilot project was decided.³⁵⁰

BVMN published 3 testimonies referring to 67 persons who were pushed back from Romania in 2020.³⁵¹ 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.³⁵² In 2022, BVMN reported 17 pushback testimonies encompassing 126 persons.³⁵³ In 2023, there were no BVMN reports on such practice.

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 pushback practice represents an official state policy in Romania as well.³⁵⁴ The total number of persons who were ‘prevented from entering’ from Serbia is almost 75,000.³⁵⁵

And finally, it is interesting to note that in 2021 1,243 persons were officially readmitted to Serbia from Romania,³⁵⁶ while Kikaktiv published the analysis in which it described individual cases in which people returned to Serbia were denied access to the asylum procedure.³⁵⁷ In 2023, only 20 people were officially readmitted to Serbia.

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 2018-2023	
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
2023	At least 26
Total	At least 18,444

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

³⁵⁰ For detailed information see AIDA, *Country Report: Romania – Update on the year 2023*, July 2024, available [here](#).

³⁵¹ The testimonies are available at: <https://bit.ly/3sTBq6z>.

³⁵² BVMN, Testimony Database, available at: <https://bit.ly/3Jvnhjs>.

³⁵³ *Ibid.*

³⁵⁴ FRA, *Migration: Key Fundamental Rights Concerns*, available at: <https://bit.ly/3BwONyt>.

³⁵⁵ *Ibid.*

³⁵⁶ Information provided by the Mol.

³⁵⁷ Klikaktiv, *Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border*, available at: <https://bit.ly/3yyttru>.

1.4.3 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 pushback policies and presented several testimonies from refugees collectively expelled from **Croatia**.³⁵⁸

In 2020, BVMN published 9 testimonies involving 93 people who were pushed back from **Croatia**,³⁵⁹ and APC also reported on a case of collective expulsions which included severe forms of violence.³⁶⁰ 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 **Batrovac**, only in their underwear. Beating, shooting, breaking of phones and seizing money is an everyday practice of the Croatian police.'³⁶¹

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.³⁶² One of the testimonies of APC's report reads:

'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 [...]'³⁶³

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.³⁶⁴ In 2022, only 7 testimonies encompassing 41 persons were recorded by the BVMN, which further indicates that this route has been less frequent.³⁶⁵ In 2023, BVMN published 8 testimonies regarding 31 persons who were pushed-back to Serbia, which also included instances of physical and psychological ill-treatment.³⁶⁶

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

³⁵⁸ 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/49Dpdsb>. The aim of these Guidelines is to contribute to a better documentation of pushback cases and to provide guidance on how to conduct strategic litigation before international bodies for the protection of human rights.

³⁵⁹ The testimonies are available at: <https://bit.ly/2KJPezk>.

³⁶⁰ APC Twitter, available in Serbian at: <https://bit.ly/3oNZJ2L>; <https://bit.ly/39NKFxH> and <https://bit.ly/3avBZex>.

³⁶¹ APC Twitter, available in Serbian at: <https://bit.ly/3jhWXkZ>.

³⁶² APC, *Report on pushbacks on the northern borders of Serbia in 2021*, 8 December 2021, available at: <https://bit.ly/3GalhAh>, 9.

³⁶³ *Ibid.*, 9.

³⁶⁴ BVMN, Testimony Database, available at: <https://borderviolence.eu/testimonies/>.

³⁶⁵ *Ibid.*

³⁶⁶ BVMN, Testimony Database, available at: <https://borderviolence.eu/testimonies/>.

effective exercise of the applicants' right to an individual application by restricting access to their lawyer among other issues.³⁶⁷

In March 2021, a Kurdish political activist was denied access to the 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 to the Croatian authorities in December 2021.³⁶⁸

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 2021 report.³⁶⁹

UNHCR statistics on pushbacks from Croatia to Serbia in 2021	
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
2023	At least 60
Total	At least 12,812

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

1.5 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 2023.³⁷⁰ In the period 2021-2022, an increasing number of ill-treatment allegations were made by 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 Tunisia and India were cancelled and when BPSB was issuing hundreds of refusal of entry decisions per week, which was the reason why NPM conducted the visit.³⁷¹ 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 (see [Refusal of entry under the Foreigners Act](#)). The number of reported incidents dropped in 2023, but as did the number of arrivals from countries for which visa regime was changed (Burundi, Cuba, Tunisia, etc.).

In 2021, BPSB issued 146 certificates of intention to submit an asylum application ('registration certificate'). This is a significant increase in comparison to 2020, when only 44 certificates were issued and 2019, when 69 persons were registered by the BPSB.³⁷² 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. In 2023, this number reached 519.

³⁶⁷ ECtHR, *M.H. and Others v. Croatia*, Application Nos 15670/18 43115/18, Judgment of 18 November 2021, available at: <https://bit.ly/3LO77b5>.

³⁶⁸ ECtHR, *Y.K. v. Croatia*, Application No. 38776/21, lodged on 24 July 2021, available at: <https://bit.ly/3sSP0YT>.

³⁶⁹ 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, available at: <https://bit.ly/3ICJEbS>.

³⁷⁰ AIDA, *Country Report: Serbia – Update on the year 2018*, March 2019, available [here](#), 18-20 and AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 26.

³⁷⁰ AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 22.

³⁷¹ NPM, *НПМ у ненајављеној посети Аеродрому „Никола Тесла“, проверавао услове боравка*, 22 November 2022, available at: <https://bit.ly/3RSGJl0>.

³⁷² AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 22.

Even though the number of issued certificates in 2023 is measured in hundreds, the practice of BPSB remained unpredictable, inconsistent and deprived of any clear criteria.³⁷³ In fact, BPSB continued with contentious practices including one consisting of the following steps and in relation to certain nationalities who arrive mainly from Türkiye:³⁷⁴

1. the police wait at the exit of the plane with decisions on refusal of entry forms already filled out 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, without knowing what they contain;
3. their cell phones and passports are frequently taken away and the personal details from the passport are filled out on the decisions on refusal of entry;
4. if the flight immediately flies back to Istanbul or other destination, foreigners can be boarded back onto the plane, threatened with the use of force;
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 young 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 forced 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;³⁷⁵
- ❖ lack of capacity of BPSB officers to recognise 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 their 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.³⁷⁶ 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 a 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,

³⁷³ Practice based observation of IDEAS, March 2024.

³⁷⁴ This pattern of behaviour was drawn on the basis of 27 interviews which the author of this report has conducted with Burundians nationals who managed to access Serbian territory, but also interviews with other foreign nationals who continued to arrive via Belgrade airport asking for the assistance.

³⁷⁵ Article 15 Foreigners Act.

³⁷⁶ Article 13(2) Foreigners Act.

which means that they cannot properly inform them on said rights, including the right to apply for asylum.³⁷⁷

The critical consequence of this flawed practice is that people who might be in need of international protection could be denied access to the 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*.³⁷⁸ More precisely, since the new Foreigners Act entered into force in October 2018, foreigners are issued a decision on refusal of entry in a procedure that lacks any guarantees against *refoulement*,³⁷⁹ without the possibility to use services of a lawyer and an interpreter, and to lodge an appeal with a suspensive effect.³⁸⁰

In June 2019, the Constitutional Court (CC) dismissed as manifestly unfounded constitutional appeal submitted on behalf of Iranian refugee H.D.³⁸¹ In November 2016, H.D. was detained at the 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,³⁸² in line with the criteria established in the jurisprudence of the ECtHR.³⁸³ 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 a deprivation of liberty in the applicant's case,³⁸⁴ using the subjective and objective criteria,³⁸⁵ such as the type, duration, effects and manner of implementation of the measure in question.³⁸⁶ It disregarded completely the fact that 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 was being applied to 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.³⁸⁷ The case was communicated to the Government of Serbia on 12 July 2021 and the questions 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?

³⁷⁷ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15, available at: <https://bit.ly/3uj15La>.

³⁷⁸ ECtHR, *Gebremedhin (Gaberamadhien) v France*, Application No. 25389/05, Judgment of 26 April 2007, EDAL, available at: <http://bit.ly/2RwU82a>, paras 66-67.

³⁷⁹ Article 15 Foreigners Act.

³⁸⁰ See by analogy ECtHR, *M.A. v. Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <https://bit.ly/2txDq72>, paras 83-84, see also CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, CAT/C/SRB/CO/2, para 15, available at: <https://bit.ly/3uj15La>.

³⁸¹ Constitutional Court, Constitutional appeal no 9440/16, Decision of 13 June 2019.

³⁸² Article 27 Constitution.

³⁸³ 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>.

³⁸⁴ ECtHR, *Nolan and K. v. Russia*, Application No. 2512/04, Judgment of 12 February 2009, EDAL, available at: <http://bit.ly/36NVsdx>, para. 96.

³⁸⁵ 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.

³⁸⁶ ECtHR, *Amuur v. France*, Application no 19776/92, Judgment of 25 June 1996, EDAL, available at: <http://bit.ly/2TayPpz>, para. 42.

³⁸⁷ ECtHR, *Arons v. Serbia*, Application no 65457/16, Decision on Interim Measures of 24 November 2016.

There is no available data on the number of decisions on refusal of entry issued 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 entitled 'Migration Profile of the Republic of Serbia'.³⁸⁸ According to reports, Mol refused entry to 6,096 foreigners in 2018, 5,214 in 2019 and 3,866 in 2020. In 2022, the BPSB issued the record of 8,682 refusal of entry decisions, while Border Police Station at Niš airport issued 229 decisions. In 2023, BPSB issued 1,498 refusal of entry decisions mainly in relation to Turkish citizens, but also nationals of Iran (34), stateless persons (28), Syria (27) and Afghanistan (13).

Refusal of entry decisions issued in 2023		
Nationality	Number of Persons	Country of Removal
Türkiye	681	mainly Türkiye
Cuba	127	N/A
India	76	N/A
Unknown	71	N/A
Germany	56	N/A
Iran	34	N/A
Tunisia	29	N/A
Stateless	28	N/A
Syria	27	N/A
Afghanistan	13	N/A
Others	356	N/A
Total	1,498	

Source: Mol, *Response on the request for the information of public importance of the Mol no. 07-34/24 of 15 April 2024*.

During 2023, 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 Mol 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. This means that 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 the asylum seekers who contacted CSOs are allowed to enter Serbia after the phone call or an email sent by CSOs lawyers. At the same time, not all persons who are denied access to the territory at the airport are provided with legal counselling since not all of them speak English, nor do they all have access to phones or internet. Accordingly, very often, the people 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.³⁸⁹ 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 are able 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.

³⁸⁸ CRM, *Migration Profile of the Republic of Serbia*, available at: <https://bit.ly/3H0ILah>.

³⁸⁹ European Commission, *Progress Report: Serbia*, 6 October 2020, SWD (2020) 352 final, available at: <https://bit.ly/2YaPjPJ>, 48-49.

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 multi-lingual 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,³⁹⁰ 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

2.1 Expression of the intention to seek asylum and registration

2.1.1 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.³⁹¹ 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,³⁹² including in places such as prisons, the Detention Centres 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.³⁹³ Unaccompanied children cannot express the intention to seek asylum until a social welfare centre appoints a temporary legal guardian.³⁹⁴

³⁹⁰ ECtHR, *Chahal v. United Kingdom*, Application No 22414/93, Judgment of 15 November 1996, EDAL, available at: <https://bit.ly/2U22cYJ>, para 73.

³⁹¹ Article 4(1) Asylum Act.

³⁹² Article 35(1) Asylum Act.

³⁹³ Article 35(2) Asylum Act.

³⁹⁴ Article 11 Asylum Act.

An authorised police officer shall photograph and fingerprint the person (identification),³⁹⁵ 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').³⁹⁶ The manner and the procedure of registration, as well as the content of the registration certificate are defined in the Rulebook on Registration.³⁹⁷ 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.³⁹⁸ Registration certificates issued to foreigners who expressed their 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 almost never 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 misunderstandings related to the rights and obligations specified therein.³⁹⁹ 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 citizens of Albania, Benin, Bolivia, Canada, Croatia, Ecuador, Equatorial Guinea, France, UK, Jamaica, Kazakhstan, Myanmar, Mongolia, North Macedonia, Slovakia, Slovenia, Togo and the US.⁴⁰⁰

In 2023, the Mol issued 1,654 registration certificates to the citizens of Syria (444), Afghanistan (188), India (120), Morocco (120), Iran (97), Pakistan (81), Iraq (78), Cuba (75), Tunisia (56), Burundi (42), Russian Federation (42), Egypt (37), DRC (35), Palestine (30), Türkiye (28), Sierra Leona (25), Congo (13), Mongolia (9), Algeria (8), Cameroon (8), China (8), Nepal (8), Croatia (6), Nigeria (6), Romania (6), Somalia (5), Bangladesh (5), Jamaica (5), Armenia (4), BiH (4), Bulgaria (4), Guinea (4), Kyrgyzstan (4), Libya (4), Sudan (4), Ecuador (3), Ethiopia (3), Lebanon (3), Moldova (3), Senegal (3), Uzbekistan (3), USA (3), Togo (2) and 1 registration certificate to citizens of Azerbaijan, Benin, Brazil, Canada, Eritrea,

³⁹⁵ Article 35(5) Asylum Act

³⁹⁶ Article 35(12) Asylum Act.

³⁹⁷ 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, available in Serbian at: <https://bit.ly/2U3A3AE>.

³⁹⁸ Article 8 Rulebook on Registration.

³⁹⁹ See also BCHR, *Right to Asylum in the Republic of Serbia 2019, 2020*, available at: <https://bit.ly/46mtBJ0>, 22-24.

⁴⁰⁰ Data delivered by UNHCR office in Serbia.

Gambia, Ghana, Germany, Greece, Kazakhstan, Mexico, North Macedonia, South Sudan, Sweden, Tanzania, Uganda, Ukraine and Zambia.⁴⁰¹

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.⁴⁰² 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.⁴⁰³ 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.⁴⁰⁴ They then risk being penalised in a misdemeanour proceeding⁴⁰⁵ and served with an expulsion decision (either a decision on cancellation of residency⁴⁰⁶ or return decision⁴⁰⁷). 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.⁴⁰⁸ Brochures in languages that asylum seekers understand have allegedly been distributed in all police departments in Serbia and contain information on rights, responsibilities and steps in asylum procedure. It is not possible to corroborate or infirm this information for the entire territory, however per NGO experience asylum seekers registered in Belgrade Police Department - Administration for Foreigners do not receive any kind of brochure, as well as asylum seekers registered at the airport. This is all the more important as at least half of registration certificates are issued in Belgrade Police Department and by BPSB Belgrade (519 at Belgrade airport).⁴⁰⁹

2.1.2 Concerns in practice⁴¹⁰

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 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.⁴¹¹ This possibility exists as long as an asylum application has not been rejected, in which case, asylum seeker may lodge a **Subsequent Application**.⁴¹²

401 *Ibid.*

402 Article 2 (1) (4) Asylum Act.

403 Article 35(3) Asylum Act.

404 Article 35 (13) Asylum Act.

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

406 Article 39 (3) Foreigners Act.

407 Article 77 (1) Foreigners Act.

408 This was claimed in the letter from the Mol-Police Directorate-Border Police Administration No. 26-1991/18 sent to the BCHR in 2021.

409 Practice-informed observation of IDEAS, January 2024.

410 Practice-informed observation of IDEAS, January 2024.

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

412 Article 46 Asylum Act.

The above-described approach was that taken by the Asylum Office in all cases except when foreigners receive a decision on cancellation of residency⁴¹³ or a return decision.⁴¹⁴ 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.⁴¹⁵ 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.⁴¹⁶ 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 have been allowed to apply for asylum because they all subsequently left 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.⁴¹⁷ In December 2023, Police Station in Preševo refused to register a Syrian national who was declared as national security threat. He had to be moved to AC Obrenovac and registered in the Department for Foreigners in Belgrade with the assistance of IDEAS.

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 emphasise 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.⁴¹⁸

As it has been the case in previous years, the total of 1,654 certificates issued in 2022 does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia since only 196 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 they genuinely want to remain in Serbia.

Since 2009, a total of 65,328 registration certificates were issued. Out of those, only 4,216 asylum applications were lodged, which is 0.6% of all foreigners registered in accordance with the Asylum Act in Serbia.

⁴¹³ Article 39 Foreigners Act.

⁴¹⁴ Articles 74 and 77 (1) Foreigners Act.

⁴¹⁵ IDEAS lawyers submitted a written asylum application in December 2020.

⁴¹⁶ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019.

⁴¹⁷ Klikaktiv, Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border, available at: <https://bit.ly/3yyttru>.

⁴¹⁸ 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 2009-2023		
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
2023	1,654	196
Total	654,682	4,216

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 who are provided with a registration certificate, 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 lacks legal certainty with regards to their status. The first draft of Amendments to the Asylum Act contained a provision under which this category is to be recognised and entitled to material reception conditions and these amendments have remained unchanged after the public debate was finalised in February 2022. The amendments are still pending due to another Parliamentary elections.

It is common practice that persons who genuinely want to apply for asylum are referred to Reception Centres⁴¹⁹ 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 AC in Krnjača, AC Sjenica, AC Tutin or AC Obrenovac in 2023.

This process can sometimes last for few 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 2020⁴²⁰ and 2021, while in 2022 and 2023 it visited this facility, as well as AC Sjenica only a few times.

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 asylum applications and conducting asylum hearings. In 2023, this happened only once and at the end of the year. Thus, in more than 90% of cases, the asylum procedure was facilitated in AC Krnjača.

However, legal representatives, in most cases, successfully managed to negotiate with CRM and the Asylum Office that asylum seekers be placed in AC Krnjača regardless of the reception facility to which

⁴¹⁹ 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.

⁴²⁰ APC, *Azilni postupak nedostižan za izbeglice*, 27 November 2020, available at: <https://bit.ly/39BgZnj>.

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 two months. However, at the end of 2022, CRM continued 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. This practice continued in 2023 and it is reasonable to assume that more than half of 196 asylum applications were lodged by asylum seekers themselves.

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.⁴²¹

One case from January 2022 deserves special attention and is related to a political activist from Bahrein, who was denied access to the asylum procedure and extradited to his country of origin despite a request for interim measures lodged by the BCHR and granted by the ECtHR.⁴²² 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.⁴²³ The case was communicated to the Government of Serbia in June 2022 and is still pending.⁴²⁴

2.1.3 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 authorisation can face obstacles 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'

⁴²¹ *Ibid.*

⁴²² *Mohamed v. Serbia*, Application No 4662/22, granted on 21 January 2022.

⁴²³ BCHR, *Serbia wrongfully extradited Bahraini national despite European Court of Human Rights interim measure*, available at: <https://bit.ly/3LGA8W5>.

⁴²⁴ ECtHR, *Mohamed v. Serbia*, Application No. 4662/22, 4 July 2022, available at: <http://bit.ly/3ynDYO8>.

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.⁴²⁵ 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 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.⁴²⁶ 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 migrants 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**.⁴²⁷ Another case of UASC denied access to the asylum procedure⁴²⁸ upon the return from Hungary is still pending before the ECtHR.⁴²⁹

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

‘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.’⁴³⁰

It is necessary that the Asylum Office communicates 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 against *refoulement* in the procedures prescribed by the Foreigners Act due to the lack of capacity of immigration officers to assess such risk.

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 their previous legal status in Serbia. Moreover, individual assurances⁴³¹ should be requested in relation to possible obstacles to access to the asylum procedure. However, taking into consideration the very high dysfunctionality of the child-protection system, USAC should not be returned back to Serbia until the situation significantly improves.⁴³² Considering Serbia as a safe third country in the context of pushbacks or readmissions severely undermines 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.⁴³³ The case contains identical findings as in the Grand Chamber judgment *Ilias and Ahmed v. Hungary*.⁴³⁴ The violation of Article 3 in this particular case

⁴²⁵ See more in AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 29.

⁴²⁶ Misdemeanor Judgment No. P 65/19 from 14 January 2019.

⁴²⁷ N1, ‘Ubijen migrant koji je bio osumnjičen za ubistvo Avganistanca u centru Beograda’, 6 June 2019, available in Serbian at: <https://bit.ly/45MbA8l>.

⁴²⁸ See more in AIDA, *Country Report: Serbia – Update on the year 2021*, May 2022, 58.

⁴²⁹ ECtHR, *M.W. v. Serbia*, Application No 70923/17, communicated on 26 March 2019, available at: <https://bit.ly/3R54mH5>.

⁴³⁰ Klikaktiv, *Formalizing Pushbacks – The use of readmission agreements in pushback operations at the Serbian-Romanian border*, January 2023, available at: <https://bit.ly/3yyttru>.

⁴³¹ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>, para. 121-122.

⁴³² The cases of *M.W.* and *USAC X.* are the most striking examples of this practice, respectively available at: <https://bit.ly/3R54mH5> and *X.*

⁴³³ 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>.

⁴³⁴ See more at HHC, ‘Asylum seekers won at the European Court of Human Rights again’, 19 December 2022, available at: <http://bit.ly/428w7ld>.

was related to the lack of assessment of the risks of chain-*refoulement* from Serbia to North Macedonia. Another judgment which corroborates these findings is the case of *S.S. and Others v. Hungary*.⁴³⁵

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 as:

- ❖ what kind of status has the individual enjoyed in Serbia (asylum seeker, irregular migrant or other);
- ❖ taking into consideration the determined status, the assurances should contain strong guarantees that the individual will not be referred to the misdemeanour proceeding and will not be issued with any form of expulsion orders;
- ❖ returnee will be issued with a 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 into consideration from the aspect of individual assurances which must be obtained before the return to Serbia, are the following:

- ❖ ill-treatment committed by the hands of organised 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 settlements
- ❖ 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 MoI 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.⁴³⁶

In 2022, only 4 persons were issued with the registration certificate in DC Padinska Skela out of 272 detainees. Out of all the 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 a lack of information on the facts surrounding these 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*.⁴³⁷ The fact that several forced removals were monitored by the Ombudsman and NPM does not provide assurances, considering that this body has never assessed potential instances of human rights violations.

⁴³⁵ Applications Nos. 56417/19 and 44245/20, Judgment of 12 October 2023, available at: <https://bit.ly/3xQlhpl>.

⁴³⁶ The Ombudsman, *Тим Заштитника грађана у обављању послова НПМ обавио надзор над принудним удаљењем иранске породице у Бугарску*, 3 September 2020.

⁴³⁷ Data provided by the UNHCR office in Serbia.

The total number of registration certificates issued in the period 1 January 2022 – 31 December 2023

Month	Total number of registration certificates	Airport	Detention centres	Police Departments	Border Area	Asylum Office
January	136	59	0	75	2	0
February	55	24	0	28	3	0
March	166	65	0	69	32	0
April	83	19	0	55	9	0
May	110	33	0	27	50	0
June	155	46	1	30	77	1
July	142	66	0	33	42	1
August	228	55	0	65	108	0
September	182	94	0	33	55	0
October	166	33	0	60	73	0
November	150	13	0	127	10	0
December	81	12	0	67	2	0
Total	1,654	529	1	669	463	2

2.2 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.⁴³⁸ If the authorised asylum officer does not enable the person to lodge the application within that deadline, they may themselves out in the asylum application form within 8 days after the expiry of the 15-day time limit.⁴³⁹ The asylum procedure shall be considered initiated after the lodging of the asylum application form at the Asylum Office.⁴⁴⁰

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 accordance 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 highlight:

- ❖ 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 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 issue 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;

⁴³⁸ Article 36(1) Asylum Act.

⁴³⁹ Article 36(2) Asylum Act.

⁴⁴⁰ Article 36(3) Asylum Act.

- ❖ 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.

For that reason, it is encouraging that the stance of the Asylum Office still shows a 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.⁴⁴¹ 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.”⁴⁴² 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 36.⁴⁴³ For that reason, amending 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 provisions 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.

In 2023, a total of 196 asylum applications were lodged. 187 were in writing, 6 were lodged before asylum officers and 3 applications were subsequent. Out of total first-time asylum applications, 34 were originating from Burundi 27, Russia 26, from Cuba, 22 from Syria, 14 from Pakistan, 9 from Pakistan, 5 from Romania and Tunisia, 4 from Armenia, 3 from China, Croatia, India, Iran, Iraq, Jamaica and USA; 2 from BiH, Somalia and Türkiye; and 1 from Algeria, Egypt, Greece Germany, Guinea, Libya, Moldova, Mexico, Nigeria, Slovakia, Palestine, Tanzania and Ukraine.

As for subsequent applications, they were submitted by nationals of Brazil, Bulgaria and Russia.

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 out 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.

⁴⁴¹ See more in AIDA, *Country Report: Serbia – Update on the year 2018*, March 2019, available [here](#), 25.

⁴⁴² ECtHR, *Jabari v. Türkiye*, Application No 40035/98, Judgment of 11 July 2000, EDAL, available at: <https://bit.ly/2Sj0D71>, para 40.

⁴⁴³ AIDA, *Country Report: Serbia, Update on the year 2019*, May 2020, available [here](#), 31-32.

There were no such instances in 2023 and it is reasonable to assume that more than 50% of asylum applications were lodged by asylum seekers themselves.

In 2023, there were no COVID-19 measures which in any way affected the possibility to lodge asylum application as it was the case in 2020.⁴⁴⁴

Month	Asylum Applications submitted in person	Written Asylum Application	Subsequent asylum applications
January	0	20	1
February	0	20	1
March	1	18	0
April	0	31	0
May	0	17	0
June	3	16	0
July	0	6	0
August	1	5	0
September	0	10	0
October	1	14	0
November	0	16	0
December	0	14	1
Total	6	187	3

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.⁴⁴⁵ 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.⁴⁴⁶ Additionally, the third instance procedure before the Administrative Court is also governed by the Administrative Disputes Act (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.⁴⁴⁷

⁴⁴⁴ AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 37.

⁴⁴⁵ Article 3 (1), Asylum Act.

⁴⁴⁶ Article 3 (3), Asylum Act.

⁴⁴⁷ Article 39(1) Asylum Act.

In 2022, there was only 1 case in which the first instance asylum procedure which resulted in a positive decision was concluded within the 3-month and is related to a Ukrainian family.⁴⁴⁸ 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.⁴⁴⁹ The first one was rejected in exactly 1 month, while the torture victim received international protection after 20 months.⁴⁵⁰ On the other hand, in 2022, there were several examples of good practice in which a sexual and gender based violence survivor from Burundi was granted refugee status within 106 days (3 month and 14 days),⁴⁵¹ UASC from Afghanistan within 4 months,⁴⁵² LGBTQI+ and AIDS applicant from Cuba within 175 days (almost 6 months).⁴⁵³ On the other hand, SGBV survivor from Afghanistan had to wait for exactly a year,⁴⁵⁴ as well as Syrian mother with two children who waited for 10 months.⁴⁵⁵ On the other hand, an UASC from Afghanistan had to wait for 14 months to receive subsidiary protection,⁴⁵⁶ a Congolese woman with a child for 14 months⁴⁵⁷ and another UASC from Afghanistan for 13 months.⁴⁵⁸

In 2023, there were only two instances in which the Asylum Office rendered the first instance decision within the prescribed deadline and in relation to *prima facie* non-credible cases of a German (1 month)⁴⁵⁹ and Bosnian nationals (2 months).⁴⁶⁰ On the other hand, there were cases in which the Asylum Office rendered the 1st instance decision after 22,⁴⁶¹ 21,⁴⁶² 20,⁴⁶³ 19⁴⁶⁴ and 17⁴⁶⁵ months, which is significantly longer than maximum prescribed period of 12 months which can be applied only in exceptional circumstances. Moreover, out of 42 decisions which were rendered in merits and excluding the additional two messages in which asylum was granted to newborn babies of parents whose parents had already had their refugee status and subsidiary protection recognized, a total of 19 first instance decisions were rendered after 12+ months, which represents 47% of all asylum procedures decided for the first time in the first instance.

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.⁴⁶⁶ 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.⁴⁶⁷ The applicant shall be informed of the extension. There were no instances in which this deadline was extended which are known to the author of this Report in 2022, but in 2023, there was one case in which the deadline was extended officially for additional 3 months, even though the decision on the extension was only taken after 13 months from the start of the procedure.⁴⁶⁸

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

⁴⁴⁸ Asylum Office, Decision No. 26-462/22, 15 June 2022.

⁴⁴⁹ Asylum Office, Decision No. 26-760/21, 20 May 2021.

⁴⁵⁰ Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁴⁵¹ Asylum Office, Decision No. 26-2296/2022, 29 June 2022.

⁴⁵² Asylum Office, Decision No. 26-730/22, 31 August 2022.

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

⁴⁵⁴ Asylum Office, Decision No. 26-1635/21, 17 August 2022.

⁴⁵⁵ Asylum Office, Decision No. 26-1569/21, 24 June 2022.

⁴⁵⁶ Asylum Office, Decision No. 26-277/21, 13 July 2022.

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

⁴⁵⁸ Asylum Office Decision No. 26-281/21, 10 November 2021.

⁴⁵⁹ Asylum Office, Decision No. 26-898/23, 9 June 2023.

⁴⁶⁰ Asylum Office, Decision No. 26-311/23, 16 March 2023.

⁴⁶¹ Asylum Office, Decision No. 26-546/22, 23 February 2023 and 16-1682/21, 2 August 2023.

⁴⁶² Asylum Office, Decision No. 26-1277/21, 11 July 2023.

⁴⁶³ Asylum Office, Decision No. 26-545/22, 7 November 2023.

⁴⁶⁴ Asylum Office, Decision No. 26-1602/21, 7 April 2023.

⁴⁶⁵ Asylum Office, Decision No. 26-1654/22, 9 November 2023.

⁴⁶⁶ Article 39(2) Asylum Act.

⁴⁶⁷ Article 39(3) Asylum Act.

⁴⁶⁸ Asylum Office Decision No. 26-2728/22, 22 December 2023.

every 3 months.⁴⁶⁹ Nevertheless, the decision must be taken no later than 12 months from the date of the application.⁴⁷⁰

Thus, the Asylum Office has a discretionary power to decide on the extension of the time limit for the decision. Still, in 2023, all asylum procedures lasted for lengthy periods of time without any formal notification on the extension accompanied with the proper reasoning, as it can be seen from the above-outlined examples.

In other words, the first instance procedure still lasts unreasonably long (on average 11.5 months) which is one of the reasons discouraging asylum seekers from considering Serbia a country of destination.

In 2022, CSOs in Serbia did not lodge appeals complaining about the lack of response by the administration to the Asylum Commission and excessive length of first instance procedures, as it was the case in 2020 when APC and BCHR submitted more than 10 appeals. The situation remained unchanged in 2023.

In March 2022, the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that Serbia ensures compliance with the statutory deadlines of the asylum procedure.⁴⁷¹

The first instance procedure before the Asylum Office may be completed by: (a) a decision to uphold the application and grant refugee status or subsidiary protection;⁴⁷² (b) a decision to reject the asylum application;⁴⁷³ (c) a decision to discontinue the procedure;⁴⁷⁴ or (d) a decision to dismiss the application as inadmissible.⁴⁷⁵

The Asylum Act contains detailed provisions regarding the grounds for persecution,⁴⁷⁶ *sur place* refugees,⁴⁷⁷ acts of persecution,⁴⁷⁸ actors of persecution,⁴⁷⁹ actors of protection in the country of origin,⁴⁸⁰ the internal flight alternative,⁴⁸¹ and grounds for exclusion.⁴⁸² 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.⁴⁸³

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, to 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 issue a decision in an accelerated procedure.⁴⁸⁴ 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;

⁴⁶⁹ Article 39(5) Asylum Act.

⁴⁷⁰ Article 39(6) Asylum Act.

⁴⁷¹ CESCR, *Concluding observations on the third periodic report of Serbia*, 4 March 2022, E/C.12/SRB/CO/3, available at: <https://bit.ly/47AhcCo>, paras. 32-33.

⁴⁷² Article 34(1)(1)-(2) Asylum Act.

⁴⁷³ Article 38(1)(3)-(5) Asylum Act.

⁴⁷⁴ Article 47 Asylum Act.

⁴⁷⁵ Article 42 Asylum Act.

⁴⁷⁶ Article 26 Asylum Act.

⁴⁷⁷ Article 27 Asylum Act.

⁴⁷⁸ Article 28 Asylum Act.

⁴⁷⁹ Article 29 Asylum Act.

⁴⁸⁰ Article 30 Asylum Act.

⁴⁸¹ Article 31 Asylum Act.

⁴⁸² Articles 33 and 34 Asylum Act.

⁴⁸³ UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <https://bit.ly/3pIP7es>.

⁴⁸⁴ Article 40 Asylum Act.

2. current reports about the situation in the Applicant's country of origin or habitual residence, and, if necessary, the countries of transit, including the laws and regulations of these countries, and the manner in which they are applied – as contained in various sources provided by international organisations including UNHCR and the European Union Asylum Agency (EUAA), 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...⁴⁸⁵

In addition, 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;
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 2008-2023

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

⁴⁸⁵ Article 32 Asylum Act.

2013					
9.	26-1280/13	25.12.2013	Türkiye	Refugee Status	2
2014					
10.	26-2429/13	23.05.2014	Tunisia	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.	26-151/15	31.12.2015	Syria	Subsidiary Protection	1
30.	26-5792/14	03.08.2015	Libya	Subsidiary Protection	1
31.	26-5794/14	03.08.2015	Libya	Subsidiary Protection	1
32.	26-5793/14	05.08.2015	Libya	Subsidiary Protection	1
33.	26-4099/15	07.08.2015	Libya	Subsidiary Protection	4
34.	26-3886/15	09.09.2015	Lebanon	Refugee Status	1
35.	26-2879/15	11.09.2015	Iraq	Subsidiary Protection	1
36.	26-4099/15	07.10.2015	Libya	Subsidiary Protection	1
37.	26-4906/5	09.12.2015	Kazakhstan	Refugee Status	1
38.	X.	31.12.2015	Syria	Subsidiary Protection	1
2016					
39.	26-4062/15	08.01.2016	Syria	Subsidiary Protection	1
40.	26-4747/15	10.02.2016	Ukraine	Subsidiary Protection	1
41.	26-5626/15	01.03.2016	Sudan	Refugee Status	1
42.	26-5413/15	02.03.2016	Syria	Refugee Status	1
43.	26-223/16	08.03.2016	Afghanistan	Refugee Status	1
44.	26-5629/15	08.03.2016	Sudan	Refugee Status	1
45.	26-5625/15	14.03.2016	Sudan	Refugee Status	1
46.	26-4133/15	22.03.2016	Ukraine	Subsidiary Protection	3
47.	26-5047/15	11.04.2016	Sudan	Refugee Status	1
48.	AŽ-06/16	12.04.2015	Libya	Subsidiary Protection	2
49.	26-652/16	17.06.2016	Afghanistan	Subsidiary Protection	5

50.	26-423/16	27.06.2016	Cuba	Refugee Status	1
51.	26-425/16	04.07.2016	Cuba	Refugee Status	1
52.	26-424/16	04.07.2016	Cuba	Refugee Status	1
53.	26-4568/16	12.07.2016	Libya	Subsidiary Protection	1
54.	26-11/16	04.08.2016	Cuba	Refugee Status	1
55.	26-1051/16	13.09.2016	Iran	Refugee Status	1
56.	26-812/16	29.09.2016	Libya	Refugee Status	5
57.	26-5618/15	01.12.2016	Libya	Subsidiary Protection	5
58.	26-536/16	16.12.2016	Cameroon	Refugee Status	2
59.	26-2149/16	26.12.2016	Iraq	Subsidiary Protection	1
2017					
60.	26-926/16	21.07.2017	Syria	Refugee Status	1
61.	26-77/17	01.08.2017	Afghanistan	Refugee Status	1
62.	26-2434/16	20.09.2017	Burundi	Refugee Status	1
63.	26-331/15	21.09.2017	Ukraine	Subsidiary Protection	1
64.	26-5489/15	21.09.2017	Libya	Subsidiary Protection	9
65.	26-5044/15	25.12.2017	Bangladesh	Subsidiary Protection	1
66.	26-4370/15	27.12.2017	Nigeria	Subsidiary Protection	1
2018					
67.	26-1239/17	10.01.2018	Afghanistan	Refugee Status	1
68.	26-78/17	10.01.2018	Afghanistan	Refugee Status	1
69.	26-1083/18	26.01.2018	Iran	Refugee Status	1
70.	26-4568/15	11.02.2018	Somalia	Subsidiary Protection	1
71.	26-881/17	10.04.2018	Afghanistan	Refugee Status	1
72.	26-81/17	16.04.2018	Afghanistan	Refugee Status	1
73.	26-2152/17	16.04.2018	Afghanistan	Refugee Status	1
74.	26-1223/17	20.04.2018	Pakistan	Subsidiary Protection	1
75.	26-430/17	23.04.2018	Iran	Refugee Status	1
76.	26-2489/17	01.06.2018	Syria	Subsidiary Protection	1
77.	26-222/15	15.06.2018	Libya	Subsidiary Protection	5
78.	26-1695/17	15.06.2018	Libya	Subsidiary Protection	5
79.	26-1081/17	04.07.2018	Iran	Refugee Status	1
80.	26-2554/17	19.07.2018	Iran	Refugee Status	1
81.	26-187/18	01.11.2018	Iran	Refugee Status	1
82.	26-329/18	28.12.2018	Nigeria	Refugee Status	1
2019					
83.	26-1351/18	14.01.2019	Libya	Subsidiary Protection	1
84.	26-1352/18	14.01.2019	Libya	Subsidiary Protection	1
85.	26-2348/17	28.01.2019	Iraq	Refugee Status	1
86.	26-2643/17	30.01.2019	Afghanistan	Subsidiary Protection	1
87.	26-1395/18	05.02.2019	Iran	Refugee Status	3
88.	26-1216/18	12.02.2019	Russia	Refugee Status	1
89.	26-1217/18	12.02.2019	Russia	Refugee Status	1
90.	26-1218/18	12.02.2019	Russia	Refugee Status	1
91.	26-1260/18	13.03.2019	Cuba	Refugee Status	3

92.	26-176/18	15.03.2019	Syria	Subsidiary Protection	3
93.	26-1605/18	15.03.2019	Iran	Refugee Status	1
94.	26-2047/17	21.03.2019	Iraq	Subsidiary Protection	4
95.	26-1141/18	05.04.2019	Iran	Refugee Status	1
96.	26-1731/18	08.05.2019	Syria	Subsidiary Protection	1
97.	26-787/19	29.05.2019	Afghanistan	Refugee Status	1
98.	AŽ X	02.09.2019	Iran	Subsidiary Protection	1
99.	26-2050/17	12.09.2019	China	Refugee Status	1
100.	26-3638/15	16.09.2019	Syria	Subsidiary Protection	1
101.	26-784/18	20.11.2019	Afghanistan	Refugee Status	1
102.	26-1403/19	11.12.2019	Afghanistan	Refugee Status	1
103.	26-1719/18	11.12.2019	Syria	Subsidiary Protection	1
104.	X	2019	Libya	Subsidiary Protection	1
105.	X	2019	Pakistan	Subsidiary Protection	1
106.	X	2019	Pakistan	Subsidiary Protection	1
107.	X	2019	Syria	Subsidiary Protection	1
108.	X	2019	Afghanistan	Refugee Status	1
2020					
109.	26-2467/17	15.01.2020	Iran	Refugee Status	1
110.	26-1437/17	13.02.2020	Afghanistan	Refugee Status	1
111.	26-218/19	20.02.2020	Stateless	Refugee Status	1
112.	26-2328/19	20.02.2020	Burundi	Refugee Status	2
113.	X	February	Iran	Refugee Status	3
114.	26-1435/18	16.06.2020	Iran	Refugee Status	1
115.	26-1615/19	18.06.2020	Burundi	Refugee Status	2
116.	X	June	Somalia	Subsidiary Protection	1
117.	26-1451/12	June	Syria	Subsidiary Protection	1
118.	26-2063/17	10.08.2020	Stateless	Refugee Status	1
119.	X	August	Mali	Subsidiary Protection	1
120.	X	August	Somali	Subsidiary Protection	1
121.	26-1516/19	15.10.2020	Afghanistan	Refugee Status	1
122.	26-2474/19	15.10.2020	Afghanistan	Subsidiary Protection	1
123.	26-1271/19	15.10.2020	Iran	Subsidiary Protection	1
124.	26-57/20	23.10.2020	Syria	Subsidiary Protection	3
125.	X	2019	Afghanistan	Refugee Status	5
126.	26-1433/12	x.11.2020	Syria	Refugee Status	1
127.	X.	x.12.2020	Iraq	Refugee Status	1
2021					
128.	X.	x.04.2021	Iraq	Refugee Status	1
129.	X.	x.04.2021	Libya	Subsidiary Protection	1
130.	26-536/19	14.05.2021	Burundi	Subsidiary Protection	1
131.	26-1357/20	21.05.2021	Somalia	Subsidiary Protection	1
132.	26-1084/20	07.06.2021	Afghanistan	Subsidiary Protection	1
133.	26-1337/20	29.06.2021	Burundi	Refugee Status	1
134.	26-103/20	30.06.2021	Burundi	Refugee Status	1

135.	26-1376/20	12.07.2021	Syria	Subsidiary Protection	2
136.	26-108/20	27.08.2021	Iran	Refugee Status	1
137.	26-1601/20	30.08.2021	Iraq	Refugee Status	2
138.	3064/19	14.09.2021	Pakistan	Refugee Status	1
139.	26-2964/21	x.12.2021	Syria	Subsidiary Protection	1
2022					
140.	26-1389/17	02.02.2022	Libya	Refugee Status	1
141.	26-1437/21	31.03.2022	Niger	Subsidiary Protection	1
142.	26-462/22	15.06.2022	Ukraine	Subsidiary Protection	3
143.	26-1569/21	24.06.2022	Syria	Subsidiary Protection	3
144.	26-2296/22	29.06.2022	Burundi	Refugee Status	1
145.	26-346/21	29.06.2022	Cameron	Subsidiary Protection	1
146.	26-277/21	13.07.2022	Afghanistan	Subsidiary Protection	1
147.	26-532/21	15.08.2022	DR Congo	Subsidiary Protection	2
148.	26-1635/21	17.08.2022	Afghanistan	Refugee Status	3
149.	26-463/22	22.08.2022	Ukraine	Refugee Status	1
150.	26-730/22	31.08.2022	Afghanistan	Subsidiary Protection	1
151.	26-688/22	15.09.2022	Cuba	Subsidiary Protection	1
152.	26-1591/22	19.09.2022	Syria	Subsidiary Protection	1
153.	26-1607/18	14.10.2022	Iran	Refugee Status	3
154.	26-1947/21	28.10.2022	Syria	Subsidiary Protection	1
155.	26-281/11	10.11.2022	Afghanistan	Refugee Status	1
156.	26-1177/22	01.12.2022	Syria	Subsidiary Protection	2
157.	26-1236/21	05.12.2022	Syria	Subsidiary Protection	1
158.	26-2135/22	13.12.2022	Syria	Subsidiary Protection	1
159.	26-1593/22	13.12.2022	Syria	Subsidiary Protection	1
2023					
160.	26-1959/21	05.01.2023	Syria	Subsidiary Protection	1
161.	26-1043/22	06.02.2023	Cuba	Refugee Status	1
162.	26-132/22	20.02.2023	Cuba	Refugee Status	4
163.	26-532/21	05.07.2023	DRC	Subsidiary Protection	1
164.	26-103/21	24.07.2023	Burundi	Refugee Status	1
165.	26-1562/22	14.12.2023	India	Refugee Status	1

In the period from 1 April 2008 to 31 December 2023, the asylum authorities in Serbia rendered 165 decisions granting asylum (refugee status or subsidiary protection) to 236 persons from 27 different countries.⁴⁸⁶ A total of 74 decisions was rendered in relation to 118 applicants who received subsidiary

⁴⁸⁶ The author of this Report has collected 155 out of 165 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 245 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.

protection, while 91 decisions were rendered in relation to 118 applicants who were granted refugee status.

The highest number of decisions was rendered in 2019 (26), and then in the following order: 2015 (25), 2016 (21), 2022 (20), 2020 (19), 2018 (16), 2021 (12), 2017 (7), 2023 (6), 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 (38), 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 issued granting refugee status to 8 Libyans. On the other hand, 15 decisions granting subsidiary protection were issued 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 2022.⁴⁸⁷ The remaining 4 decisions referred to the risk of persecution on ethnic and political grounds for applicants belonging to the same tribe as Muammar Gaddafi⁴⁸⁸ 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.⁴⁸⁹

In the history of the Serbian asylum system, a total of 66 Libyans applied for asylum, even though 663 were issued a 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.⁴⁹⁰ This case, as well as another which was positively resolved in 2022, were initially rejected on the basis of negative security assessment from BIA.⁴⁹¹ Still, it can be safely assumed that, if provided with adequate legal support, applicants from Libya had decent chances to obtain international protection in Serbia during the peak of the civil war.

Syria

A total of **39 Syrians** were granted international protection in Serbia through **32 decisions**. Eight were granted refugee status via 8 decisions while 32 were granted subsidiary protection through 24 decisions. However, a total of 320,764 Syrians was registered in Serbia since 2008, while only 562 lodged asylum application.

The vast majority of Syrians absconded before the first instance decision was issued, 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 2008-2018.⁴⁹² 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.⁴⁹³

There were no instances in which a Syrian asylum application was rejected on the 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

⁴⁸⁷ E.g., UNHCR, UNHCR Position on Returns to Libya - Update II, September 2018, available at: <http://bit.ly/39VMQNz>.

⁴⁸⁸ Asylum Office, Decisions Nos. 26-2324/11, 19 December 2012 and 26-2326/11, 20 December 2012.

⁴⁸⁹ Asylum Office, Decision No. 26-812/16, 29 September 2016.

⁴⁹⁰ 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.

⁴⁹¹ Asylum Office, Decision No. 26-1389/17, February 2022.

⁴⁹² AIDA, Country Report Serbia, Update March 2018, 41-53.

⁴⁹³ M.H. v. Serbia, Application No 62410/17, Communicated on 26 October 2018.

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 Syria⁴⁹⁴ and EUAA reports on Syria.⁴⁹⁵ Decisions granting refugee status were mainly based on the risk of persecution due to political opinion or draft evasion.⁴⁹⁶ When it comes to draft evasion, the practice has been contradictory, meaning that some applicants were granted refugee status, others subsidiary protection. This practice continued in 2022. In 2023, the applications of 2 Syrian nationals were rejected, one of them on the basis of being considered as the national security risk.⁴⁹⁷

Afghanistan

Persons in need of international protection from Afghanistan are the second biggest group of persons registered in Serbia (189,925) and the largest group that actually lodged asylum application (969). 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 issued 16 decisions granting refugee status to 22 Afghans on the basis of the risk of persecution which they faced as: interpreters,⁴⁹⁸ artists,⁴⁹⁹ members of police and other security forces,⁵⁰⁰ persons who worked for US companies,⁵⁰¹ SGBV survivors who were subjected to harmful traditional practices (honour killing, consequences of having children out of wedlock)⁵⁰² or persons who faced risks of Taliban recruitment.⁵⁰³

Also, a total of 6 decisions granting subsidiary protection was issued in relation to 10 applicants. Subsidiary protection was granted to individuals who belonged to vulnerable categories such as UASC or families with young children who faced the state of general insecurity and arbitrary violence from Taliban.⁵⁰⁴

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.⁵⁰⁵ There was only 1 decision in 2021 in which the Taliban rule and general situation in Afghanistan was declared as grounds for subsidiary protection.⁵⁰⁶ In 2022, there were 3 such decisions issued in relation 3 three UASC (2 subsidiary protections and 1 refugee status), as well as two decisions 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.⁵⁰⁷ However, in 2023, three asylum applications were rejected in merits and no

⁴⁹⁴ 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>.

⁴⁹⁵ E.g., EASO, EASO Country of Origin Information Report: Syria Security situation (July 2021), available at: <https://bit.ly/3HKwasb>.

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

⁴⁹⁷ Asylum Office, Decision No. 1441/17, 20 March 2024.

⁴⁹⁸ Asylum Office, Decision No. 26-77/17, 1 August 2017.

⁴⁹⁹ Asylum Office, Decision No. 26-78/17, 10 January 2018.

⁵⁰⁰ Asylum Office, Decision No. 26-81/17, 16 April 2018.

⁵⁰¹ Asylum Office, Decision No. 26-1239/17, 10 January 2018.

⁵⁰² Asylum Office, Decision No. 26-1635/21, 17 August 2022.

⁵⁰³ Asylum Office Decisions Nos. 26-784/18, 20 November 2019 and 26-1403/19, 11 December 2019.

⁵⁰⁴ 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.

⁵⁰⁵ AIDA, *Country Report Serbia*, Update March 2020, pp. 41 and 43.

⁵⁰⁶ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

⁵⁰⁷ 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.

positive decisions were taken.⁵⁰⁸ The first applicant was rejected on the national security grounds, while the other two were rejected in merits.

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,⁵⁰⁹ during the Islamic State of Iraq and Syria (ISIS) control of area around Mosul⁵¹⁰ and in post-ISIS period.⁵¹¹ Iraqis granted refugee status faced risk of forcible military recruitment,⁵¹² were directly targeted as Sunni Muslims⁵¹³ or were victims of sexual and gender-based violence (SGBV).⁵¹⁴

It is noteworthy to say that 82,828 Iraqi were registered in Serbia since 2008 and that only 295 lodged an asylum application. As it was the case with Syrians, the vast majority of them absconded before the first instance decision was issued, or afterwards, after they were subjected to the practice of the STCC. In one instance, the STCC was applied through a 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.⁵¹⁵ 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 an Iraqi asylum application was rejected on the 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.⁵¹⁶ There were instances in which victims of torture who opposed the Iranian political system received refugee status,⁵¹⁷ as well as LGBTQI+ persons⁵¹⁸ and social activists.⁵¹⁹ One human rights activist⁵²⁰ and 1 UASC received subsidiary protection.⁵²¹ Since 2008, a total of 14,748 Iranians were registered, while only 353 lodged an asylum application.

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

Ukraine

Only 22 Ukrainians were registered in the period 2014-2023 and all of them lodged an asylum application and **15 were granted asylum**. Eight Ukrainian applicants received subsidiary protection through 4

⁵⁰⁸ Asylum Office, Decision Nos. 26-2276/21, 27 January 2023, 26-50/22, 3 February 2023 and 26-1922/21, 8 February 2023.

⁵⁰⁹ Asylum Office, Decision No. 26-766/08, 4 February 2009.

⁵¹⁰ Asylum Office, Decisions Nos. 26-2879/15, 11 September 2015 and 26-2149/16, 26 December 2016.

⁵¹¹ Asylum Office, Decision No. 26-2047/17, 21 March 2019.

⁵¹² Asylum Office, Decision No. 26-2348/17, 28 January 2019.

⁵¹³ Asylum Office, Decision No. 26-5266/15, 26 March 2015.

⁵¹⁴ Asylum Office, Decision No. 26-1601/20, 30 August 2021.

⁵¹⁵ Administrative Court, Judgment U 6060/18, 4 October 2018.

⁵¹⁶ 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.

⁵¹⁷ Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁵¹⁸ Asylum Office, Decisions Nos. 26-1605/18, 15 March 2019 and 26-2467/17, 15 January 2020.

⁵¹⁹ Asylum Office, Decision No. 26-1607/18, 14 August 2022.

⁵²⁰ Asylum Commission, Decision No. AŽ 16/19, 2. September 2019.

⁵²¹ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

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 applications with the Asylum Office (1 family of 3 and 1 journalist) and were all granted asylum – subsidiary protection to the family due to the state of general insecurity⁵²² and 1 refugee status to the journalist who reported on war crimes allegedly committed by Ukrainian authorities.⁵²³ In 2023, only 1 Ukrainian national applied for asylum and he was rejected on the basis of the national security grounds.⁵²⁴

Burundi

A total of 1,207 Burundians were registered in line with the Asylum Act, and 293 of them lodged an asylum application in the period 2017-2023. 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 pressure from the EU.

Still, only **10 Burundians** were granted protection through 8 decisions. A total of 9 Burundians were granted refugee status through 7 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 291 Cubans were registered in line with the Asylum Act, while 124 of them lodged an asylum application since the onset of the Serbian asylum system. Only **12** of them received refugee status through 7 decisions and on the basis of the political persecution which they faced as political activists opposed to the Government, while 1 Cuban LGBTIQ+ applicant with serious medical condition received subsidiary protection in 2022.⁵²⁵ In 2023, two high profile political activists from Cuba, involved in the protests in the period November 2021 - 11 July 2022, were granted refugee status, one of them with the rest of his family.⁵²⁶

Somalia

A total of 66,481 Somalis were registered in line with the Asylum Act, while only 338 of them lodged asylum applications. Subsidiary protection was granted to **5 individuals**, 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. An **LGBT couple from Türkiye** 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,⁵²⁷ 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 **Palestinians** were recognized as refugees and victims of forced military recruitment in Syria. One applicant from **Bangladesh** who is quadriplegic was granted subsidiary protection. The same protection was granted to

⁵²² Asylum Office, Decision No. 26-462/22, 15 June 2022.

⁵²³ Asylum Office, Decision No. 26-463/22, 22 August 2022.

⁵²⁴ Asylum Office, Decision No. 26-2736/22, 29 June 2023.

⁵²⁵ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁵²⁶ Asylum Office, Decisions Nos. 26-1043/22, 6 February 2023 and 26-132/22, 20 February 2023.

⁵²⁷ Asylum Office, Decision No. 26-346/21, 29 June 2022.

an applicant from **Mali** in 2020.⁵²⁸ Refugee status was granted to a **Coptic Christians from Egypt** on the basis of religious persecution, as well as to **Chinese Uyghurs, Kazakh Christians and Tunisian Christians** on the same grounds. A man from **Lebanon** escaped political persecution from Hezbollah and received refugee status, as well as a **South Sudanese** who belonged to the opposition. In 2022, a boy from Niger was granted subsidiary protection after he fled the state of general insecurity caused by the Boko Haram movement,⁵²⁹ as well as a mother and her daughter from **DR Congo**, who escaped the situation of arbitrary violence in her village and whose later born daughter (in Serbia), was also granted refugee status.⁵³⁰ In 2023, a survivor of trafficking in human beings belonging to the specific social groups Hijras in India, was granted refugee status in the decision, which also outlines her vulnerability as transgender woman and survivor of SGBV and this decision should be considered as landmark.⁵³¹

Breakdown of positive decisions, nationalities of applicants and type of protection for the period 2008-2023

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	24	32	8	8	32	40
3.	Afghanistan	6	10	16	22	22	32
4.	Iran	2	2	14	20	16	22
5.	Iraq	4	7	6	8	10	15
6.	Ukraine	4	8	7	7	11	15
7.	Cuba	1	1	7	12	8	13
8.	Burundi	1	1	7	9	8	10
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.	DR Congo	2	3	0	0	2	3
17.	Nigeria	1	1	1	1	2	2
18.	Stateless	0	0	2	2	2	2
19.	Mali	1	1	0	0	1	1
20.	Egypt	0	0	1	1	1	1
21.	Tunisia	0	0	1	1	1	1
22.	Lebanon	0	0	1	1	1	1
23.	Kazakhstan	0	0	1	1	1	1
24.	Bangladesh	1	1	0	0	1	1
25.	China	0	0	1	1	1	1
26.	South Sudan	0	0	1	1	1	1
27.	Niger	0	0	1	1	1	1
28.	India	0	0	1	1	1	1
Total		74	118	91	118	165	236

⁵²⁸ Child-soldier case.

⁵²⁹ Asylum Office, Decision No. 26-1437/21, 31 March 2022.

⁵³⁰ Asylum Office, Decisions Nos. 26-532/21, 15 August 2022 and 26-532/21, 5 July 2023.

⁵³¹ Asylum Office, Decision No. 26-1562/22, 14 December 2023.

Particular grounds for international protection, contradicting practices and different trends

On other hand, among 165 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 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 2013.⁵³² 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 Iran⁵³³ and 3 lesbians from Chechnya.⁵³⁴

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.⁵³⁵ 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 to be 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 a prison sentence of up to 5 years.⁵³⁶ 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.⁵³⁷ In 2021, there were two decisions in which application from a gay men, respectively from Iran⁵³⁸ and Bangladesh,⁵³⁹ were rejected as unfounded. The threshold set in these two cases represents a dangerous precedent when it comes to LGBTQI+ claims.⁵⁴⁰ In both decisions, the Asylum Office considered that the applicants would not have been subjected to persecution if they had acted discretely with regards to their sexual orientation. Also, the acts of violence and 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 rejecting LGBTQI+-related asylum claims applicants, whose cases continued from 2021 (applicants from Tunisia, Bangladesh and Iran) and 1 case in 2022 of an applicant from Morocco.⁵⁴¹

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.⁵⁴² In 2023, the Asylum Office rendered the landmark decision on LGBTQI+, SGBV and survivor of trafficking in human beings on the member of the hijra movement from India.⁵⁴³

⁵³² Asylum Office, Decision No.26-1280/13, 25 December 2013.

⁵³³ Asylum Office, Decisions No. 26-1605-18, 15 March 2019 and 26-2467/17, 15 January 2020.

⁵³⁴ Asylum Office, Decisions Nos. 26-1216/18, 26-1217/18 and 26-1218/18, 12 February 2019.

⁵³⁵ Asylum Office, Decision No. 26-2347/19, 8 June 2020.

⁵³⁶ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁵³⁷ Asylum Office, Decision No. 26-1592/18, 20 November 2019 and see also, AIDA, Country Report Serbia, Update March 2019, 37.

⁵³⁸ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

⁵³⁹ Asylum Office, Decision No. 26-404/12, 4 November 2021.

⁵⁴⁰ See more in the Chapter on the 2021 practice of the Asylum Office.

⁵⁴¹ The author did not manage to see the copy of this decision.

⁵⁴² Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁵⁴³ Asylum Office, Decision No. 26-1562/22, 14 December 2023.

Victims of SGBV

The practice of the 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 on the merits. Namely, during the hearing, M.G. unequivocally expressed her well-founded fear of persecution by Chechens (including her family members), who threatened her because she 'lost her virginity out of wedlock' and because she was pregnant at the time of leaving Russia. In addition, the mere fact that the asylum seeker 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.⁵⁴⁴

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 a gender-sensitive approach in the admissibility procedure.⁵⁴⁵ 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.⁵⁴⁶

A case which represents an example of good practice is that of N., a woman with a young child from Cameroon who escaped an arranged marriage and whose asylum application was assessed as credible through individual circumstances which she put forward and relevant Col.⁵⁴⁷ This was the first ever case in which an applicant was qualified as a member of a particular social group – persons at risk of SGBV, which manifested through the risk of forced marriage. On the contrary, a case of another women 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.⁵⁴⁸

A very high burden of proof for the risk of gender-based violence was established in the case of Ms. Y from Iran,⁵⁴⁹ and Ms. Z from Burundi in 2021.⁵⁵⁰ Ms. Y is a women rights activist whose asylum application was rejected on multiple occasions on the grounds that she 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 issued in relation to an Iraqi woman and her daughter who received refugee status as a SGBV survivor who was forcibly married to her cousin when she was only 15 years old.⁵⁵¹ A very good decision was issued in 2022 to a survivor of SGBV from Burundi, in which the Asylum Office for the first time took into consideration the Istanbul Protocol Report lodged by legal representatives with the findings of the multidisciplinary team comprised of a forensic medical expert, a psychiatrist and a gynaecologist.⁵⁵²

In 2023, the practice with regards to SGBV survivors deteriorated to the extent that all female applicants who claimed sexual violence and provided medical documentation, forensic medical opinions drafted in

⁵⁴⁴ Asylum Office, Decision No. 26-286/16, 26 October 2016.

⁵⁴⁵ Asylum Office, Decision No. 26-1667/17, 25 December 2017.

⁵⁴⁶ Asylum Commission, Decision No. AŽ 2/18, 25 January 2018.

⁵⁴⁷ Asylum Office, Decision No. 26-536/16, 16 December 2016.

⁵⁴⁸ Asylum Office, Decision No. 3109/16, 18 December 2017.

⁵⁴⁹ Asylum Office, Decision No. 26-1672/19, 29 January 2021.

⁵⁵⁰ Asylum Office, Decision No. 26-3136/19, 26 November 2020.

⁵⁵¹ Asylum Office, Decision No. 26-1601/20, 30 August 2021

⁵⁵² Asylum Office, Decision No. 26-2296/22, 29 June 2022.

line with the Istanbul protocol and other evidence which imply automatic application of the *in dubio pro reo principle* were rejected. All applicants were from Burundi.⁵⁵³

What can be concluded when it comes to the burden of proof in SGBV applications, but also many other types of cases, is that the Asylum Office has shifted its practice in 2023 and refuses to grant international protection to those individuals who had already survived acts of persecution (attacks, rape, detention, judicial persecution), which was not the case in the past. 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 the asylum authorities have raised the burden of proof to such a level that applicants who to experienced and survived the act of persecution in order to cannot prove the credibility of their claims even with medical and psychosocial evidence. 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 negative decision, while those sources which corroborate alleged risks are neglected. This also reflects the lack of capacity of the 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.⁵⁵⁴ The second UASC who received subsidiary protection was a boy from Afghanistan who fled forced recruitment by the Taliban.⁵⁵⁵ The same decision was issued 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).⁵⁵⁶ 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.⁵⁵⁷

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.⁵⁵⁸ 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.⁵⁵⁹ A similar case was resolved for an UASC from Afghanistan who fled Taliban recruitment as well.⁵⁶⁰ A boy from Iran who converted from Islam to Christianity was granted subsidiary protection, even though all other Iranian converts were granted refugee status.⁵⁶¹

Another boy from Afghanistan who fled customary family disputes and revenge killing was granted subsidiary protection in 2020.⁵⁶² An Afghan boy who suffered severe injuries in a car accident in Serbia and remained in an induced coma was granted subsidiary protection in 2021.⁵⁶³ 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.⁵⁶⁴

In 2022, 2 boys from Afghanistan were granted subsidiary protection⁵⁶⁵ due to the risks of arbitrary violence originating from the acts of the Taliban, while 1 boy from Afghanistan received refugee status for

⁵⁵³ Asylum Office, Decisions Nos. 26-1632/22, 13 April 2023 and 14 July 2024 (rejected twice), 26-1119/22, 10 August 2023, 26-1682/21 2 August 2023 and 26-2985/22, 19 December 2023.

⁵⁵⁴ Asylum Office, Decision No. 26-329/18, 28 December 2018.

⁵⁵⁵ Asylum Office, Decision No. 26-2643/17, 30 January 2019.

⁵⁵⁶ Asylum Office, Decision No. 26- 2348/17, 28 January 2019.

⁵⁵⁷ UNGA, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, para. 28.

⁵⁵⁸ Asylum Office, Decision No. 26-784/18, 20 November 2019.

⁵⁵⁹ Asylum Office, Decision No. 26-218/19, 20 February 2020.

⁵⁶⁰ Asylum Office, Decision No. 26-2573/19, 15 October 2020.

⁵⁶¹ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

⁵⁶² Asylum Office, Decision No. 26-2474/19, 15 October 2020.

⁵⁶³ Asylum Office, Decision No. 26-1084/20, 7 June 2021.

⁵⁶⁴ Asylum Office, Decision No. 26-3064/19, 14 September 2019.

⁵⁶⁵ Asylum Office, Decision Nos. 26-277/21, 13 July 2022 and 26-730/22, 31 August 2022.

the same reasons.⁵⁶⁶ Siblings from Syria (brother and sister) were also granted subsidiary protection,⁵⁶⁷ as well as a boy from Niger who fled the situation of arbitrary violence connected to the operations conducted by the Boko Haram group.⁵⁶⁸

Apart from these positive decisions, there have been a handful of cases in which UASC's applications were rejected on the merits even though their asylum claims were similar or identical to the above-described. In all these cases, the 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.⁵⁶⁹

In 2023, there were no decisions related to UASC applicants.

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 either fighting sides. The reasoning of the Asylum Office decisions always outlined such individual circumstances, but in the end granted 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.⁵⁷⁰ Thus, there were instances in which draft evaders were granted refugee status⁵⁷¹ and instances in which the same category received subsidiary protection.⁵⁷² The same examples can be seen in the practice towards UASC who fled Taliban recruitments described above.

In 2023, there were two decisions⁵⁷³ related to Russian citizens whose claim was based on the risk of forcible recruitment and who were rejected in merits and through decisions which have completely failed to take into account relevant COI such as the one published by the EUAA.⁵⁷⁴

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 2017-2018,⁵⁷⁵ the first refugee status was granted in 2015 to a man from Kazakhstan, who converted to Christianity.⁵⁷⁶ The second person was a man from Iran who was granted refugee status in 2016 for the same reasons.⁵⁷⁷ In the period 2018-2020, the Asylum Office granted refugee status on said ground on at least 7 occasions.⁵⁷⁸ There were no decisions related to Iranian converts in 2023.

However, in the same period, dozens of other Iranian applicants who put forward the same claims with identical or similar evidence, were rejected on the merits. The number of persons who received international protection on these grounds slowly decreased and, in 2021 and 2022, not a single Iranian was granted refugee status on religious grounds. Thus, it is clear that the threshold for Iranian converts

⁵⁶⁶ Asylum Office, Decision No. 26-281/11, 10 November 2022.

⁵⁶⁷ Asylum Office, Decision No. 26-1177/22, 1 December 2022.

⁵⁶⁸ Asylum Office, Decision No. 26-1437/21, 31 March 2022.

⁵⁶⁹ 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, p.43.

⁵⁷⁰ 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>.

⁵⁷¹ Asylum Office, Decision No. 26-5413/15, 2 March 2016.

⁵⁷² Asylum Office, Decisions Nos. 26-4062/15, 8 January 2016, 26-2489/17, 1 June 2018 and 26-1731/18, 16 September 2019.

⁵⁷³ Asylum Office, Decision Nos. 26-2862/22, 4 December 2023 and 26-2882/22, 28 November 2023.

⁵⁷⁴ EUAA, *The Russian Federation-Military Service*, December 2022, available at: <https://bit.ly/3Y7E7nb>.

⁵⁷⁵ See more in AIDA, Country Report Serbia, Update March 2018, p. 18.

⁵⁷⁶ Asylum Office, Decision No. 26-4906/5, 9 December 2015.

⁵⁷⁷ Asylum Office, Decision No. 26-1051/16, 13 September 2016.

⁵⁷⁸ 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.

has significantly increased and that it is not reasonable to expect that in the future these claims will have prospect of success.⁵⁷⁹

Since 2017, the Asylum Office has issued the following decisions:⁵⁸⁰

First instance decisions by the Asylum Office: 2017-2022							
Type of decision	2017	2018	2019	2020	2021	2022	2023
Grant of asylum	6	17	26	19	12	20	6
Rejection on the merits	11	23	54	51	39	46	36
Dismissal as inadmissible	47	38	10	2	4	0	0
Rejected subsequent applications	0	0	0	0	6	2	2
Rejected the request for age assessment	0	0	0	0	2	0	0
Discontinuation	112	128	133	89	51	180 ⁵⁸¹	67
Total	176	206	223	161	114	248	111

Asylum Office practice in 2023

Protection was granted to citizens of the following countries in 2023:

Countries of origin of persons granted refugee status / subsidiary protection: 2023		
Country	Granted refugee status	Granted subsidiary protection
Burundi	1	0
Cuba	5	0
DR Congo	0	1
India	1	0
Syria	0	1
Total	7	2

Source: Asylum Office and UNCHR office in Serbia.

In 2023, the Asylum Office delivered 111 decisions regarding 154 asylum seekers. Out of that number, 36 decisions regarding 50/55⁵⁸² asylum seekers were rejected in merits, while 6 decisions granting asylum to 9 asylum seekers were delivered in the same period. The asylum procedure was discontinued in 67 cases regarding 94 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.

⁵⁷⁹ See more in AIDA, *Country Report Serbia*, Update March 2020, p. 44.

⁵⁸⁰ 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.

⁵⁸¹ 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 the 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 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.

⁵⁸² The official statistic shows 54 but one family from Burundi was rejected twice; Asylum Office, Decisions Nos. 26-1632/22, 13 April 2023 and 14 July 2024 (rejected twice).

The first conclusion that can be drawn from these figures is that the total number of decisions has decreased significantly in comparison to previous years. The total number of decisions decreased by 223% in comparison to 2023 and is the lowest in 5 years. Still, the trend from previous years has continued and the vast majority of applicants decided to abscond from the asylum procedure before the decision in the first instance was issued. This represents a total of 60% of all decisions rendered in 2023. Around 2% of decisions concerned rejections of subsequent applications, while there were no inadmissibility decisions.

In 2023, it can be said that 42 merits decisions, issued in relation to 59 asylum seekers can be considered as relevant for analysis and better understanding of the quality and effectiveness of the asylum procedure, the practice with regards to certain nationalities, the grounds for persecution and the origin of the applicants. These 42 decisions were rendered in relation to asylum seekers from: Burundi (22),⁵⁸³ Russia (10), Cuba (8), Syria (3), Afghanistan (3), Congo (2), and 1 from Iraq, Tunisia, Algeria, Bangladesh, Kazakhstan, Türkiye, India, Brazil, BiH, Ukraine and Germany.

When it comes to decisions issued on the merits, it can be concluded that the rejection rate in 2023 was 85%, while the recognition rate was 15%. This represents a 14% decrease in recognition in comparison to 2022.⁵⁸⁴ In total, international protection was granted through 6 decisions (15%) encompassing 9 persons. Of these, refugee status was granted through 4 decisions and to citizens of Cuba (5), India (1) and Burundi (1). The remaining 2 decisions were related to subsidiary protection granted to citizens of Syria (1) and Congo (1).

Most of the decisions were issued in 2023 in relation to citizens of **Burundi** – 14 regarding 22 applicants. Only 1 of those decisions was positive, granting refugee status to a baby boy born in the family in which father was granted refugee status,⁵⁸⁵ but whose mother was rejected in merits in the same year.⁵⁸⁶ whereas all other were rejected on the merits, including several SGBV survivors with medical and psychosocial evidence of rape and other forms of sexual violence.⁵⁸⁷ Having in mind that the boy was granted refugee status only because of his father, it is fair to claim that recognition rate for Burundian nationals is 0%.

The second highest number of decisions was issued in relation to 10 citizens of Russia who were all rejected in merits through 5 decisions. The third highest number of decisions was related to citizens of Cuba – 4 decisions rendered in relation to 8 applicants. In two decisions, Asylum Office granted asylum to high profile political activists and the rest of the family of one of the applicants, while the other three applicants (2 decision), also claimed political persecution but those claims were assessed as non-credible. Still, recognition rate for applicants from Cuba is 50%, while for applicants from Russia 0%.

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 to the 2021 protests, while the vast majority of Burundians claimed ethnic persecution as Tutsi minority and affiliation with opposition parties.

All Afghan applicants were rejected in merits - 3 persons through three decisions, out of which one of them was considered as a national security risk, while out of three Syrian applicants, one was granted subsidiary protection while two of them were rejected as a national security risk as well. Thus, recognition rate for Afghans was 0% in 2023, while for Syrians was 33%. This kind of practice is one of the reasons why the recognition rate in general dropped in 2023.

⁵⁸³ One 5-member family was rejected twice and the official numbers show 27 Burundian nationals who were rejected.

⁵⁸⁴ AIDA, *Country Report Serbia, 2022 Update*, pp. 99-100.

⁵⁸⁵ Asylum Office, Decision No. 26-103/21, 24 July 2023.

⁵⁸⁶ Asylum Office, Decision No. 26-1682/21, 2 August 2023.

⁵⁸⁷ Asylum Office, Decisions Nos. 26-1632/22, 13 April 2023 and 14 July 2024 (rejected twice), 26-1119/22, 10 August 2023, 26-1682/21 2 August 2023 and 26-2985/22, 19 December 2023.

As for other nationalities, all of them were rejected except for the newborn baby girl from Congo whose mother has already enjoyed subsidiary protection and transgender female applicants from India. Thus, asylum application was rejected in relation to prima facie non credible applicants from Bangladesh, Germany, Bosnia and Hercegovina and Algeria, but also in relation to citizens of Iraq and Tunisia who had outlined more concrete problems in their countries of origin but which were not considered credible. One citizen of Ukraine, woman from Kazakhstan and Citizen of Brazil were also rejected as national security risks, being in extradition procedure in parallel. This means that a total of 6 negative decisions were rendered on the basis of negative security assessment of BiA. The negative practice with regards to citizens of Türkiye who claim political persecution continued and 1 applicant was rejected in merits, claiming to be the member of HDP-the strongest opposition party in Türkiye.

Overview of the Asylum Office decisions in 2023

No.	No. of Decision	Country of Origin	Date of decision	No. of persons	Outcome	Remark	Length (months)
1.	26-1959/21	Syria	5 January 2023	1	Subsidiary protection	State of general insecurity	6
2.	26-1914/22	Iraq	18 January 2023	1	Rejected	Persecution from ISIS and PKK	11
3.	26-1552/22	Tunisia	26 January 2023	1	Rejected	Political persecution	6
4.	26-2276/21	Afghanistan	27 January 2023	1	Rejected	National security risk	13
5.	26-1637/20	Bulgaria	31 January 2023	1	Subsequent asylum application dismissed	Political persecution	N/A
6.	26-1888/22	DR Congo	3 February 2023	1	Rejected	Family dispute	7
7.	26-50/22	Afghanistan	3 February 2023	1	Rejected	Former employee of the Government and risk of Taliban persecution	11
8.	26-1043/22	Cuba	6 February 2023	1	Refugee Status	Political persecution	10
9.	26-1922/21	Afghanistan	8 February 2023	1	Rejected	Former employee of the Government and risk of Taliban persecution	14
10.	26-1245/22	Burundi	17 February 2023	4	Rejected	Political persecution	9
11.	26-1245/22	Burundi	17 February 2023	1	Rejected	Political persecution	17
12.	26-132/22	Cuba	20 February 2023	4	Refugee status	Political persecution	13
13.	26-1441/17	Syria	20 March 2023	1	Rejected	National security risk	N/A
14.	26-1602/21	Algeria	7 April 2023	1	Rejected	Religious persecution	19
15.	26-1632/22	Burundi	13 April 2023	5	Rejected	Political persecution and SGBV	10
16.	26-2970/22	Burundi	13 April 2023	1	Rejected	Political persecution	5

17.	26-311/23	Bosnia and Herzegovina	22 May 2023	1	Rejected	Prima facie incredible	2
18.	26-2443/22	Cuba	22 May 2023	2	Rejected	Political persecution	7
19.	26-2983/22	Burundi	7 June 2023	1	Rejected	Political persecution	7
20.	26-2886/22	Russia	7 June 2023	1	Rejected	Prima facie incredible	6
21.	26-2736/22	Ukraine	29 June 2023	1	Rejected	National security risk and extradition	7
22.	26-532/21	Congo	5 July 2023	1	Refugee status	Newborn baby	N/A
23.	26-898/23	Germany	6 July 2023	1	Rejected	Prima facie incredible	1
24.	26-1277/21	Bangladesh	11 July 2023	1	Rejected	Prima facie incredible	21
25.	26-1632/22	Burundi	14 July 2023	5	Rejected	Rejected for the second time - political persecution and SGBV	N/A
26.	26-103/21	Burundi	24 July 2023	1	Refugee status	Newborn baby	N/A
27.	26-1682/21	Burundi	2 August 2023	1	Rejected	Political persecution, SGBV and violation of family unity in relation to the case 26-103/21	22
28.	26-1119/22	Burundi	10 August 2023	1	Rejected	SGBV	14
29.	26-2907/22	Cuba	30 August 2023	1	Rejected	Political persecution - not credible	9
30.	26-1045/23	Brazil	5 October 2023	1	Rejected	National security risk, political persecution and extradition	8
31.	26-2832/22	Burundi	19 October 2023	3	Rejected	Political persecution	8
32.	26-1529/18	Russia	27 October 2023	1	Subsequent asylum application dismissed	Religious persecution	N/A
33.	26-1425/23	Kazakhstan	6 November 2023	1	Rejected	Rejected due to the crime applicant committed and extradition	15
34.	26-545/22	Türkiye	7 November 2023	1	Rejected	Political persecution	20
35.	26-1654/22	Russia	9 November 2023	3	Rejected	Religious persecution	17

36.	26-2882/22	Russia	28 November 2023	1	Rejected	Draft evasion	12
37.	X.	Syria	November 2023	1	Rejected	National security risk	N/A
38.	26-2862/22	Russia	4 December 2023	1	Rejected	Draft evasion and anti-war sentiment	12
39.	26-3100/22	Burundi	5 December 2023	1	Rejected	Political persecution	12
40.	26-546/22	Burundi	8 December 2023	1	Rejected	Political persecution	22
41.	26-2165/22	Burundi	13 December 2023	1	Rejected	Political persecution	18
42.	26-1562/22	India	14 December 2023	1	Refugee status	SGBV, LGBTQI+ and survivor of trafficking in human beings	18
43.	26-2985/22	Burundi	19 December 2023	1	Rejected	Political persecution and SGBV	13
44.	26-2728/22	Russia	22 December 2023	1	Rejected	Prima facie non credible	13

The quality of the decision-making process in 2023 can be considered to have significantly deteriorated compared to 2022.⁵⁸⁸ The Asylum Office rendered only 6 decisions in relation to 9 applicants, granting them asylum, and two out of six decisions were related to new-born babies whose parents already enjoyed international protection in Serbia. Still, in those cases where the Asylum Office granted refugee status or subsidiary protection, the following can be observed:

- ❖ The Asylum Office was, in the reasoning of its decisions, clearly taking into consideration the fact that legal representatives were submitting written submissions indicating individual and general risks of persecution or other serious harm in countries of origin or third countries. These submissions contained data on individual circumstances and facts, but also findings compiled in credible reports published by UNHCR, EUAA, 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 an 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;

⁵⁸⁸ AIDA, Country Report Serbia, 2022 Update May, pp. 100-101.

- ❖ The safe third country concept was not applied in any of these 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.
- ❖ It also took into account the decision of the Centre for the Protection of the Survivors of Trafficking in human beings on granting refugee status to a human trafficking survivor.

The Asylum Office issued 2 decisions granting refugee status to 5 Cubans - 1 individual who - as a member of Archipelago, organized 11 July protests; and 1 family in which the father is well known political activist from the political party UMPACO.⁵⁸⁹ Both applicants provided extensive individual evidence which was taken on board and both decisions should be considered as examples of good practice.

In 2023, two out of 3 Syrians whose cases were decided in merits were rejected, both on the national security grounds. None of the decisions, in their reasoning, contained a description of the facts leading to such a decision which would allow the applicants to dispute this assessment.⁵⁹⁰ Until 2021, all Syrian applicants examined on the merits were recognised protection, but the practice stopped since then. There are now four instances in which Syrians were rejected on the merits. All their cases are still pending before higher instances. 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,⁵⁹¹ or the current stance of the ECtHR when it comes to the risks of treatment contrary to Article 2 and 3 of ECHR in case of removal to Syria.⁵⁹² This remained unchanged in the January 2023 decision in which 1 national of Syria was granted subsidiary protection.⁵⁹³ 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 granted subsidiary protection as UASCs and benefitted from a BID report from the Centre for Social Work (CSW).⁵⁹⁴ 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 July 2022, the Asylum Office granted subsidiary protection to a new born baby whose mother (DR Congo) already enjoyed such protection.⁵⁹⁵ The same was done in relation to a new-born baby boy who was granted refugee status in in the same month and on the basis of his father's refugee status.⁵⁹⁶ However, and what is hard to explain is that his mother, who separately applied for asylum, was not granted refugee status on the grounds of family unity but was rejected two weeks after.⁵⁹⁷

A positive decision was issued in relation to an SGBV and human trafficking survivor who is also a transgender woman who belonged to the Hijra community where she was subjected to sexual and labour exploitation.⁵⁹⁸ The applicant was subjected to years of exploitation and before the final decision on her application, she was also granted the status of survivor of human trafficking by the CHTV which was also submitted as an evidence of persecution. This decision represents an example of extraordinary practice

⁵⁸⁹ Asylum Office, Decisions Nos. 26-1043/22, 6 February 2023 and 26-132/22, 20 February 2023.

⁵⁹⁰ Asylum Office, Decision No. 26-1441/17, 20 March 2023 and November 2023 decision which is the only decision which was not delivered to the author of this Report.

⁵⁹¹ UNHCR, International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V, 3 November 2017, available at: <http://bit.ly/3or74Vq>, p. 70.

⁵⁹² 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>.

⁵⁹³ Asylum Office, Decision No. 26-1959/21, 5 January 2023.

⁵⁹⁴ Asylum Office, Decision No. 26-1177/22, 1 December 2022.

⁵⁹⁵ Asylum Office, Decision No. 26-532/21, 5 July 2023.

⁵⁹⁶ Asylum Office, Decision No. 26-103/21, 24 July 2023.

⁵⁹⁷ Asylum Office, Decision No. 26-1682/21, 2 August 2023.

⁵⁹⁸ Asylum Office, Decision No. 26-1562/22, 14 December 2023.

and indicates the capacity of the Asylum Office to decide upon more complex cases. Unfortunately, this kind of practice was not reflected in other SGBV cases.

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 on average. 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 into 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, the 2023 practice indicates that the quality of the credibility assessment deteriorated significantly and there are many serious concerns which indicate that the Serbian asylum procedure should not be considered as fair and efficient, and in most of the cases from 2023 it was 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;
- ❖ extensive length of the first instance asylum procedure which has a discouraging effect on applicant's will to remain in Serbia;
- ❖ the inconsistent quality of the decision-making process 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 too high, undermining the principle of *in dubio pro reo* and especially in relation to SGBV survivors.
- ❖ disregarding psychosocial reports, medical evidence but also Istanbul Protocol reports drafted in some of the cases.

In 2023, the Asylum Office issued 36 decisions rejecting 50 persons on the 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,⁵⁹⁹ Cuba,⁶⁰⁰ Germany,⁶⁰¹ DR Congo,⁶⁰² Kazakhstan,⁶⁰³ Bosnia and Hercegovina,⁶⁰⁴ Algeria,⁶⁰⁵ and Bangladesh.⁶⁰⁶ Lack of credibility can be determined also in the case of an Iraqi applicant who claimed risks of ISIS and PKK in Iraqi part of Kurdistan,⁶⁰⁷ without providing sufficient evidence, as well as Tunisian applicant who claimed political persecution but also failing to deliver individual evidence.⁶⁰⁸

Thus, it should be outlined that in 13 out of 36 decisions Asylum Office rightfully concluded that the above-mentioned applicants did not meet the requirements to be granted international protection.

In 2022, the Asylum Office rejected 3 Turkish applicants on the merits, confirming that it is basically impossible to obtain international protection for nationals fleeing this country. However, a decision issued in February related to a person who wanted to avoid extradition for a petty crime, as opposed to a political

⁵⁹⁹ Asylum Office, Decisions Nos. 26-2886/22, 26-1654/22, 9 November 2023 and 26-2728/22, 22 December 2023.

⁶⁰⁰ Asylum Office, Decisions Nos. 26-2443/22, 22 Ma 2023 and 26-2907/22, 30 August 2022.

⁶⁰¹ Asylum Office, Decision No. 26-898/23, 6 July 2023.

⁶⁰² Asylum Office, Decision No. 26-1888/22, 3 February 2023.

⁶⁰³ Asylum Office, Decision No. 26-1425/23, 6 November 2023

⁶⁰⁴ Asylum Office, Decision No. 26-311/23, 22 May 2023.

⁶⁰⁵ Asylum Office, Decision No. 26-1602/21, 7 April 2023.

⁶⁰⁶ Asylum Office, Decision No. 26-1277/21, 11 July 2023.

⁶⁰⁷ Asylum Office, Decision No. 26-1914/22, 18 January 2023.

⁶⁰⁸ Asylum Office, Decision No. 26-1552/22, 26 January 2023.

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.⁶⁰⁹ 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.⁶¹⁰ In 2023, Asylum Office rejected the asylum application of a member of HDP party, contributing further to the practice which indicates that Turkish nationals who claim political persecution cannot obtain international protection in Serbia.⁶¹¹

The practice with regards to Burundian applicants who were the majority in the past year both in terms of asylum applications and decisions rendered on the merits also presented elements of concern. It should be mentioned 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 the Tutsi ethnic minority has been persecuted in numerous ways, including through enforced disappearances, torture and other forms of ill-treatments, arbitrary detentions, *incommunicado*, killings, different acts of sexual violence, etc.⁶¹² 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 to 2017.⁶¹³ 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 family composed of five people (mother and 4 children) who did not have a legal representative was rejected on the merits. The claim was based on the mother's risk of political persecution linked to the alleged disappearance of her husband. Her claims were assessed as not credible.⁶¹⁴ In June 2022, Mr. E.X. was rejected on the merits even though he had provided an entire set of individual evidence to the Asylum Office which testified 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 a witness letter from 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. on the merits.⁶¹⁵ A similar case was reported in September 2022, when the Asylum Office rejected to take into 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.⁶¹⁶ 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 the 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 have suffered and survived serious act of persecution, while the genuine and substantiated risk of such act will be declared non-credible. These two decisions, as well as several others, represent an example of cases in which asylum officers have not correctly applied the principle of *in-dubio pro reo*.

A similar decision was issued in relation to a young woman from Burundi who was diagnosed with several psychological disorders which, according to her testimony, were results of serious forms of ill-treatment

⁶⁰⁹ Asylum Office, Decision No. 26-1359/21, 4 February 2022.

⁶¹⁰ See more in the following parts of the Report.

⁶¹¹ Asylum Office, Decision No. 26-545/22, 7 November 2023.

⁶¹² 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>.

⁶¹³ 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.

⁶¹⁴ Asylum Office, Decision No. 26-896/21, 14 January 2022.

⁶¹⁵ Asylum Office, Decision No. 26-1197/2021, 7 June 2022.

⁶¹⁶ Asylum Office, Decision No. 26-73/22, 29 September 2022.

(including sexual) which prompted her fleeing her country of origin. The psychologist following her case did not exclude that the symptoms displayed could have arisen from such treatment. However, and due to unclear claims during the course of asylum hearing, her application was rejected. Despite the lack of individual evidence to substantiate her claim, the applicant repeatedly provided specific details of the alleged ill-treatment. In other words, there was no physical evidence which could either prove or rebut the alleged ill-treatment, except for a psychological report indicating that such possibility was quite high. The described acts of ill-treatment correspond to numerous COI reports, but once again, the opportunity to grant international protection in cases where there is doubt was missed again.⁶¹⁷ 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, cannot offer individual evidence.

If we compare the above-described decisions with several others, in which the Asylum Office granted asylum to citizens of Burundi, it can be easily seen that the practice has shifted. . In other instances, the Asylum Office granted refugee status to nationals from Burundi who had faced serious human rights violations or recognised there was a risk of persecution even if it had not materialised through concrete acts, based on available COI and on an assessment regarding the personal characteristics of the asylum seeker, even when evidence was lacking. This is not the case anymore.

In 2023, 14 decisions rejecting asylum applications concerning 22 applicants originating from Burundi were delivered. What is important to note is that credibility assessment in these decisions was conducted to a very limited extent. All these decisions cited identical COI such as UNHCR factsheets on repatriation to Burundi which are not Col. This kind of approach indicates the clear pattern of complete disregarding of the responsibility to individually assess each and every asylum claim. Namely, out of 14 decisions, the following cases were beyond any doubt rejected unfoundedly, and especially taking into account the principle *in dubio pro reo*: 1) a rape survivor who arrived with her family to Serbia and who was rejected twice even though she provided medical evidence from Burundi;⁶¹⁸ 2) a rape survivor who provided medical documentation from her country of origin, together with a psychological and Istanbul Protocol report which corroborated her claim (she was later on granted refugee status in Belgium);⁶¹⁹ 3) a rape survivor who provided medical documentation from Burundi and whose lawyers also provided psychiatric and psychological reports which also corroborated her claim.⁶²⁰ Another woman from Burundi also claimed SGBV and provided evidence of imprisonment. The most striking circumstance in this case was the fact that she gave a birth to a baby boy who was granted refugee status on the basis of his father's status, but she was not included in this decision. This represents the flagrant violation of the principle of family unity.⁶²¹ Regardless, by citing the above-outlined UNHCR factsheets, Asylum Office resorted to unusual practice which implies citation of the Home Office Guidance which is related to UK travellers to Burundi and instruction what they should do if they become victims of rape or sexual assault.⁶²² This source describes the legal framework of Burundi but does not provide any information on its effectiveness, which is the fact that must be taken into account in line with Article 30 and 32 of the Asylum Act. This source cannot be considered as Col and the fact that Asylum Office simply cites this source indicate the aspiration of this body to reject Burundian applicants at any cost. On the other hand, the latest Col on Burundi contained in three credible UN sources published in 2023 are simply disregarded - Human Rights Committee,⁶²³ Committee against Torture⁶²⁴ and the Special Rapporteur on the Human Rights situation in Burundi.⁶²⁵ Thus, these 5 decisions represent extremely bad examples of practice which clearly

⁶¹⁷ Asylum Office, Decision No. 26-75/22, 22 November 2022.

⁶¹⁸ Asylum Office, Decision No. 26-1632/22, 13 April 2023 and 14 July 2023.

⁶¹⁹ Asylum Office, Decision No. 26-1119/22, 10 August 2023

⁶²⁰ Asylum Office, Decision No. 26-2985/22, 19 December 2023.

⁶²¹ Asylum Office, Decision No. 1682/21, 2 August 2023.

⁶²² UK Home Office, Burundi: information for victims of rape and sexual assault, 23 November 2022, available at: <https://bit.ly/3zLdrOQ>.

⁶²³ HRC, *Concluding observations on the third periodic report of Burundi**, CCPR/C/BDI/CO/3, 29 August 2023, available at: <https://bit.ly/46hLFpC>.

⁶²⁴ CAT, *Concluding observations on the third periodic report of Burundi**, CAT/C/BDI/CO/3, 11 December 2023, available at: <https://bit.ly/3LwYtPa>.

⁶²⁵ Special Rapporteur on the situation of human rights in Burundi, *Situation of human rights in Burundi - Report of the Special Rapporteur on the situation of human rights in Burundi, Fortuné Gaetan Zongo, A/HRC/54/56*, 11 August 2023, available at: <https://bit.ly/4d76bv9>.

indicates the poor credibility assessment of the Asylum Office and poor work of the Col department within this body.

While discussing the evaluation of cases of SGBV survivors, it is important to also mention relevant cases from previous years. In April 2022, for the second time, the Asylum Office rejected a social activist for women rights from Iran.⁶²⁶ In her application, she explained, inter alia, that she refused to wear the hijab, that she wanted to work in the modelling business and that she was arrested on several occasions. Even if the 2021 decisions can be taken as justified due to the insufficient lack of individual evidence, although highly unlikely in this case, the recent events which took place in Iran undoubtedly qualify these kind of applications as founded.⁶²⁷ 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.⁶²⁸ Before this decision, the Asylum Office applied on two occasions the safe third country concept in relation to **Türkiye**. After both decisions were overturned by the Asylum Commission, the Asylum Office decided to reject application on the merits. The 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 concerned an 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.⁶²⁹ BCHR also observed the negative practice of the Asylum Office as regards a victim of genital mutilation from Somalia.⁶³⁰ 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.⁶³¹

Several more decisions related to applicants from Burundi deserve special attention. In one of the cases, the applicant provided clear and individual evidence on his involvement in the CSO *Focode* who started the campaign *Ndondenza* dealing with enforced disappearances, several witness statements and relevant reports, but was rejected alongside the rest of his family and despite Col which went into his favour.⁶³² Similar cases were recorded with regards to the members of opposition parties CNL and MSD, but also activists and journalists.⁶³³

Of course, from the case files of several other Burundian applicants, it can be seen that their credibility lacked, but the assessment implied the same pattern as the one observed in the above-described.⁶³⁴ To conclude, in 8 out of 14 negative decision the Asylum Office did not grant international protection to applicants from Burundi even though the combined assessment of the Col and individual circumstances and evidence provided such opportunity in the opinion of the author.

When it comes nationals of Russia, two cases deserve special attention and not necessarily because the applicants have highly credible claims, but mainly due to the fact that the Col assessment has been

⁶²⁶ Asylum Office, Decision No. 1672/19, 1 April 2023.

⁶²⁷ Olga Korobova, *Žene u Iranu-Kada marama postane oružije*, available at: <http://bit.ly/40kSGSx>.

⁶²⁸ Asylum Office, Decision No. 26-148/18, 27 December 2019.

⁶²⁹ Asylum Office, Decision No. 26-1073/20, 1 December 2020.

⁶³⁰ Asylum Office, Decision No. 26-1599/19, 13 October 2020, see also: BCHR, *Right to Asylum in the Republic of Serbia 2021*, available at: <https://bit.ly/3R6evTB>, p.114.

⁶³¹ Asylum Commission, Decision No. AŽ 51/20, 24 December 2020.

⁶³² Asylum Office, Decision No. 26-1245/22, 17 February 2023.

⁶³³ Asylum Office, Decisions Nos. 26-1245/22, 17 February 2023; 26-546/22, 8 December 2023 and 26-2165/22, 13 December 2023.

⁶³⁴ Asylum Office, Decisions Nos. 26-2983/22, 7 June 2023; 26-2970/22, 13 April 2023; 26-2832/22, 19 October 2023 and 26-3100/22, 5 December 2023.

inadequate. Namely, in both cases, applicants claimed risk of military recruitment. The most credible Col report was published by the EUAA, but the Asylum Office failed to even mention the report in its reasoning, citing only several media reports which do not even discuss the legal framework, but also the practice of military recruitment.⁶³⁵

In 2022, 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 on the merits. Thus, and even though the Asylum Office rendered positive decisions in relation to LGBTQI+ applicants in the past, the past five 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 2022.⁶³⁶ 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 a discriminatory legal framework which penalizes LGBTQI+ people. He was also raped, and his boyfriend committed suicide,⁶³⁷ 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.⁶³⁸ After his case was referred back to the first instance, his asylum application was rejected in merits.⁶³⁹ It is important to note that Burundi also criminalises same sex partnerships.⁶⁴⁰ And finally, in December 2022, a Moroccan gay man was rejected on the merits, but since the author of the report did not have 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'.⁶⁴¹

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 said incidents.⁶⁴² This, as well as numerous Col reports were declined as relevant evidence by the Asylum Office. The 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, especially because his asylum claim was rejected with a final decision of the Administrative Court in 2023.⁶⁴³ 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 into consideration the Criminal Code of Iran, individual problems that the applicants faced and relevant Col. This decision is still a perfect example of how the first instance authority in some cases can cite Col which goes in favour of negative decisions, 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 into consideration *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.⁶⁴⁴

⁶³⁵ Asylum Office, Decisions Nos. 26-2862/22, 4 December 2023 and 26-2882/22, 28 November 2023.

⁶³⁶ AIDA, Country Report: Serbia, 2021 Update, p. 82.

⁶³⁷ 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.

⁶³⁸ Asylum Office, Decision No. 26-1515/19, 13 August 2020.

⁶³⁹ Asylum Office, Decision No. 26-1515/19, 25 May 2022.

⁶⁴⁰ Human Dignity Trust, Burundi, available at: <http://bit.ly/40Aydc4>.

⁶⁴¹ Human Dignity Trust, Morocco, available at: <http://bit.ly/40oPKUK>.

⁶⁴² Asylum Office, Decision No. 26-81/20, 13 January 2021.

⁶⁴³ Administrative Court Judgment U 16351/22, 11 May 2023.

⁶⁴⁴ Asylum Office, Decision No. 26-1284/20, 1 December 2021.

In two other, separate decisions from 2020,⁶⁴⁵ which concerned a gay couple from **Tunisia**, the first instance authority rejected their applications as unfounded, considering that the state of human rights of LGBTIQ+ in Tunisia has been significantly improving throughout the years, emphasizing the fact that even one of the presidential candidates openly declared to be gay. However, the Asylum Office disregarded 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 a 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 in 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 and they are yet to be communicated.⁶⁴⁶

Thus, the decisions issued in 2020, 2021, 2022 and 2023 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.⁶⁴⁷ 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 2019,⁶⁴⁸ 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.

It is also important to note that rejection rate of Afghan nationals who claimed that they were working or were affiliated with family members who used to work for State authorities before Taliban return to power was of 100% in 2023. Two applications were rejected due to lack of credibility indicating that Asylum Office deterred from previous practice but also from the UNHCR moratorium on returns to Afghanistan.⁶⁴⁹

In 2023, national security grounds were invoked in the cases of 2 Syrian nationals,⁶⁵⁰ 1 Afghan applicant⁶⁵¹ and applicant from Ukraine,⁶⁵² as well as applicants from Brazil.⁶⁵³ The common feature of all decisions is that reasoning of such decisions does not contain any elements of facts which could potentially indicate reasons why the BIA declared the applicants to be a national security threat. When it comes to applicants from Ukraine and Brazil, they were both in extradition procedure as well. This practice is concerning, as it undermines the possibility to access an effective remedy for applicants who receive a negative security assessment, while the number of decisions (5) in comparison to previous years has increased.

1.2 Prioritised examination and fast-track processing

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

⁶⁴⁵ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁶⁴⁶ BCHR, Right to Asylum in the Republic of Serbia 2022, available at: <https://bit.ly/3F4yJXE>, pp. 64-66.

⁶⁴⁷ Asylum Office, Decision No. 26-1280/13, 25 December 2013.

⁶⁴⁸ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁶⁴⁹ Asylum Office, Decision Nos. 26-1922/21, 8 February 2023 and 26-50/22, 25 January 2023.

⁶⁵⁰ Asylum Office, Decision No. 26-1441/17, 20 March 2023, while the other decision related to Syrian national is the only one which was not delivered.

⁶⁵¹ Asylum Office, Decision No. 2276/21, 27 January 2023.

⁶⁵² Asylum Office, Decision No. 26-2736/22, 29 June 2023.

⁶⁵³ Asylum Office, Decision No. 26-1045/23, 5 October 2023.

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 the Asylum Office has to issue 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.⁶⁵⁴

An authorised officer of the Asylum Office may interview the applicant on more than one occasion in order to establish the facts.⁶⁵⁵ 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.⁶⁵⁶ However, although prescribed that they must undergo the necessary training before engaging in the process, it remains unclear whether this training can provide such officers with the sufficient level of knowledge as required for interviewing applicants given the specific characteristics of the asylum procedure. This possibility has never been applied in practice.

All interviews are conducted individually (especially in cases of families) by a person of same the gender as the applicant, and excluding young children who are formally included in their parents' applications. During the interviews with UASC, social workers or temporary guardians are always present. In practice, asylum officers are rarely prepared for the interviews, including in relation to relevant Col (which is later on displayed in the reasoning of decisions), failing first of all to properly identify and address vulnerabilities. This means that legal representation at first instance is still crucial, as lawyers usually inform asylum officers of existing vulnerabilities and of potential traumatic reactions during the interview are announced. There were also instances in which asylum hearings were postponed due to poor mental health state affecting some of the most vulnerable applicants.⁶⁵⁷

The Asylum Act also specifies three situations in which the asylum interview may be omitted.⁶⁵⁸

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

⁶⁵⁴ Article 37(1) Asylum Act.

⁶⁵⁵ Article 37(2) Asylum Act.

⁶⁵⁶ Article 37(12) Asylum Act.

⁶⁵⁷ Information provided by IDEAS.

⁶⁵⁸ Article 37(10) Asylum Act.

evidence and give statements relevant to deciding on their asylum application.⁶⁵⁹ This option was applied for the first time in 2021 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.⁶⁶⁰ He was granted subsidiary protection;

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

As previously mentioned, an applicant is entitled to request that an interview be conducted by a person of a specific gender. The same rule applies to interpreters.⁶⁶¹ 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 and 2022. A 4-member Afghan family who lodged their asylum applications on 30 August 2021 had their asylum interview in 7 July 2022. A 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 an asylum application on 15 March, was interviewed on 27 April and was granted refugee status 29 June 2022.⁶⁶² In 2023, asylum interviews rarely took place before the expiry of three-months deadline, unless it is clear that asylum application is *prima facie* not credible (see the Table above on the overview of the Asylum Office practice in 2023).

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). In 2023, a total of 88 interviews were conducted. 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, no similar reason could justify the low number of interviews conducted in 2021. Positively, an increase was observed in 2022, but in 2023 the number of asylum hearings dropped once more. It is also important to note that 1 witness was questioned, while a request to question another witness was declined in June 2022. In 2023, even though some of the applicants provided witness statements in writing, offering also for the witnesses to be questioned in person or online, the Asylum Office did not avail itself of this possibility, and disregarded the credibility of witness statements in the reasoning of negative decision.⁶⁶³ 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 preventive 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 the applicant's absconding,⁶⁶⁴ while the other one resulted in a positive decision regarding a UASC from Iran.⁶⁶⁵ 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.

⁶⁵⁹ Article 37(11) Asylum Act.

⁶⁶⁰ Asylum Office, Decision No. 26-1084-20, 7 June 2021.

⁶⁶¹ Article 16 (2) Asylum Act.

⁶⁶² Asylum Office, Decision No. 26-246/21, 29 June 2022.

⁶⁶³ See for example Asylum Office, Decision No. 26-132/22, 13 April 2023.

⁶⁶⁴ Asylum Office, Case File No. 26-2534/17, 7 May 2021.

⁶⁶⁵ Asylum Office, Decision No. 26-1271/19, 15 October 2020.

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	Number of hearings in 2022
January	16	5	8	6	2
February	32	20	7	9	7
March	16	9	2	10	14
April	26	0	5	14	6
May	12	0	15	6	6
June	3	3	14	5	2
July	9	1	11	8	4
August	6	1	0	4	2
September	19	8	0	18	15
October	17	23	9	1	6
November	8	7	1	22	15
December	14	7	13	4	9
Total	178	84	85	106	88

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 Braille materials.⁶⁶⁶

The costs of interpretation are covered by UNHCR, and the interpreters are hired from their list. The list underwent a thorough review in 2022 and it remained almost unchanged in 2023. The review was based on feedback received from both CSOs and the Asylum Office. 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 because of the interpreters' incompetence and inability to 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,⁶⁶⁷ and the decision was upheld by the Asylum Commission.⁶⁶⁸ It remains to be seen if flaws in interpretation will be taken into 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 Spanish was removed after a series of inadequate and imprecise interpretations in Cuban applications.⁶⁶⁹ There were no instances in which interpreters were removed from the list in 2023.

⁶⁶⁶ Article 13 Asylum Act.

⁶⁶⁷ Asylum Office, Decision No. 932/19, 30 September 2019.

⁶⁶⁸ Asylum Commission, Decision No. AŽ 38/19, 3 December 2019.

⁶⁶⁹ Asylum hearing in the case 26-688/22, 24 June 2022.

1.3.2 Recording and report

At the end of the interview, the records are signed by the asylum seeker, their legal representative, the interpreter and the official leading the interview.⁶⁷⁰ 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.

The original copies of the minutes are surrendered to the applicant and their legal representative upon 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 by either 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.⁶⁷¹ 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.⁶⁷² 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 international refugee law and international human rights law and that their knowledge mainly lies in the field of Administrative Law. Although the asylum procedure is administrative by nature, 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-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.⁶⁷³ The first instance decision may be challenged for the following reasons which are relevant for the 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;

⁶⁷⁰ Article 63 GAPA.

⁶⁷¹ Article 21(1)-(2) Asylum Act.

⁶⁷² Article 21(3) Asylum Act.

⁶⁷³ Article 95 Asylum Act and Articles 151 and 153 GAPA.

- 4) flawed conclusion derived from the established factual grounds;
- 5) violation of the rules of the administrative procedure.⁶⁷⁴

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.⁶⁷⁵ 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 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.⁶⁷⁶ The Asylum Office then examines if an appeal is timely, allowed in accordance 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.⁶⁷⁷ 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 their untimely lodging of the appeal before the Asylum Commission,⁶⁷⁸ and also Administrative Court,⁶⁷⁹ but without a success. Both decisions became final and the SGBV survivor from Somalia and the applicant from Burundi were denied the possibility to have their cases examined on the 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 founded⁶⁸⁰ and issue 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.⁶⁸¹ 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.⁶⁸² 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 applicant is not able to provide additional views and arguments vis-à-vis 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 issued within 60 days.⁶⁸³ Under the Administrative Disputes Act, a claim against "administrative silence" may be filed with the Administrative Court in the

⁶⁷⁴ Article 158 GAPA.

⁶⁷⁵ Article 159 (2).

⁶⁷⁶ Article 160 GAPA.

⁶⁷⁷ This was the case with the application of an alleged SGBV survivor from Somalia who claimed that she had 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.

⁶⁷⁸ Asylum Commission, Decisions Nos. AŽ 51/20, 24 December 2020 and AŽ 32/21, 7 February 2022.

⁶⁷⁹ Administrative Court, Judgments Nos. U 3775/21, 3 March 2022 and U 19541/22, 14 October 2022.

⁶⁸⁰ Article 165 (1) GAPA.

⁶⁸¹ Article 165 (2) GAPA.

⁶⁸² Article 166 GAPA.

⁶⁸³ Article 174 GAPA.

event the Asylum Commission fails to issue 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.⁶⁸⁴ 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 issue 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 did not hold hearings in order to directly determine the facts during this period.⁶⁸⁵ However, it is welcome that, in the vast majority of cases, the Commission issued its decisions within two to three months in 2021 and 2022. This is definitely a positive development and should be praised. It is not possible to make an accurate assessment of the length of the procedure before the Commission due to the anonymization of delivered decisions, but in many cases in which IDEAS lawyers acted as legal representatives the decision was rendered within 2 to 3 months.

When the Asylum Commission receives the appeal, it may issue 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.⁶⁸⁶ 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.⁶⁸⁷ In the event it does not reject the appeal,⁶⁸⁸ the Asylum Commission may itself decide on the administrative matter.⁶⁸⁹ 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.⁶⁹⁰ 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**,⁶⁹¹ **Libya**,⁶⁹² and **Iran**.⁶⁹³

Statistical Overview of Asylum Commission practice 2009-2023

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

⁶⁸⁴ Article 19 Administrative Disputes Act.

⁶⁸⁵ 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/46kqDF3>, p. 53.

⁶⁸⁶ Article 165 GAPA.

⁶⁸⁷ Article 165(2)-(3) GAPA.

⁶⁸⁸ Article 170 GAPA.

⁶⁸⁹ Article 171(5) GAPA.

⁶⁹⁰ Article 173(3) GAPA.

⁶⁹¹ Asylum Commission, Decision AŽ 25/09, 23 April 2010.

⁶⁹² Asylum Commission, Decision AŽ 06/16, 12 April 2016.

⁶⁹³ Asylum Commission, Decision AŽ X, 2 September 2019.

2022	36	5	0	0	3	44
2023	30	4	0	2	0	36
Total	261	144	5	8	18	434

Asylum Commission Practice in 2023

In 2022 the Asylum Commission took 36 decisions regarding 43 persons, which is a decrease in comparison to 2022 when 44 decisions were rendered regarding 59 persons. This can be attributed to the lower number of lodged appeals. Of these, first instance decisions dismissing, discontinuing or rejecting asylum applications were upheld in 31 cases, while in only 1 case the appeal was upheld, and the case was referred back to the Asylum Office for the purpose of preservation of family unity. Also, an additional 3 decisions quashing the first instance decision after the judgment of the Administrative Court in which the onward appeals were upheld. Two additional decisions were rendered discontinuing asylum procedure. As was the case in 2021 and 2022, in 2023 the Asylum Commission did not render any positive decisions, i.e. it did not grant international protection.

One of the major concerns regarding the Asylum Commission's practice relates to the failure to individually and separately assess all allegations included in the applicant's appeal. In many of the 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.⁶⁹⁴ There are no traces of Col assessment in second instance decisions. Instead, the Asylum Commission relies on the Col assessment of the Asylum Office, which has proved to be contentious in many cases, especially in relation to nationals of Burundi. Moreover, reasonings of Asylum Commission decisions do not contain clear reflection of each and every argument and grounds outlined in the appeal, but simple reference in bullet points and then summary and cumulative rejection of all arguments. This means that the Commission does not have any corrective influence on the practice of the Asylum Office.

In 2023, the Asylum Commission shared the copies of all of the decisions rendered in 2023. However, the level of anonymisation prevented the author of this report from determining many crucial facts related to the length of the second instance procedure, case file number, date of decision but also in some of the cases nationality of the applicants. The anonymisation also covered important facts related to the credibility of claims and the manner in which they were assessed through reasoning. Nationalities in many decisions were determined on the basis of careful reading of decisions and connections made with Asylum Office decisions described above. Still, even this was not possible in several instances. The following nationalities were the subject of the Asylum Commission practice in 2023: Burundi (15),⁶⁹⁵ Cuba (6), Unknown (4), Afghanistan (3), Iraq (2), Iran (2), Syria (2), Russia (1), Morocco (1), Tunisia (1), Germany (1), North Macedonia (1), Pakistan (1), Bosnia and Herzegovina (1), Bangladesh (1) and Ukraine (1).

Thus, and on the basis of the available data, it can be concluded that in the following decisions of the Asylum Commission in 2023 confirmed founded decisions of the Asylum Office which were either mentioned in the above chapter on the practice of this body as adequate, or can be safely assumed (due to country of origin and basic facts outlined in the decision), that such decisions were justified:

- ❖ 3 decisions related to 4 applicants from Cuba;
- ❖ 7 decisions rendered in relation to 7 persons who are citizens of Russia,⁶⁹⁶ Tunisia,⁶⁹⁷ Germany,⁶⁹⁸ North Macedonia, Bosnia and Herzegovina⁶⁹⁹ and Bangladesh.⁷⁰⁰

⁶⁹⁴ Article 5 (3) GAPA.

⁶⁹⁵ Officially, the number of persons from Burundi whose case was decided in 2023 is 20, but Asylum Commission decided twice in relation to a 5-members family (AŽ 15/23, upheld on 10 July 2023, and then rejected on 17 November 2023).

⁶⁹⁶ Asylum Commission, Decision No. AŽ 21/23, 10 August 2023.

⁶⁹⁷ Linked to: Asylum Office, Decision No. 26- 1552/22, 26 January 2023.

⁶⁹⁸ Linked to: Asylum Office, Decision No. 26- 898/23, 6 July 2023.

⁶⁹⁹ Linked to: Asylum Office, Decision No. 26-311/23, 22 May 2023.

⁷⁰⁰ Asylum Commission, Decision No. AŽ 20/23, 23 October 2023.

As for the rest of decisions, it is important to note that 3 appeals were upheld after the Administrative Court upheld the complaints of citizens of Syria and Pakistan (related to discontinuation of asylum procedure) and person of unknown nationality in relation to who the Administrative Court has ordered the Asylum Commission to apply the new Asylum Act. It is not possible to outline case file numbers as well as date of the appeals, and it is also not possible to assess the facts relevant for the credibility because the legal issues were of procedural nature.

Also, 4 appeals which were related to discontinuation of asylum procedure were rejected and in relation to two citizens of Cuba and two persons of unknown nationality.

Out of the remaining 19 decisions, two which are worth mentioning are related to a Burundian family which based their asylum claim on an act of SGBV to which the mother was subjected, and provided evidence to the Asylum Office, but the reason why the appeal was upheld was because another child was born in Serbia after the family lodged asylum application. After the newborn child was included in another but identical decision of the Asylum Office, Asylum Commission rejected the appeal.⁷⁰¹ This means that there was no appeal upheld in 2023 by the Asylum Commission in which the credibility assessment of the Asylum Office was scrutinized. This further means that the practice of the Asylum Office in relation to Burundian citizens, and which was described above as inadequate and lacking individualized assessment, has been supported by the Asylum Commission, including in highly credible cases of political activists, CSO workers and members of the opposition parties.⁷⁰²

Another LGBTQI+ applicant's appeal was rejected in 2023 and with regards to the risk of persecution in Morocco. This represents a continuation of the practice from previous years. 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.⁷⁰³ 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 2019,⁷⁰⁴ 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.⁷⁰⁵ 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.

In 2023, the Asylum Commission rejected appeal of another Iranian convert from Islam to Christianity, as happened in similar cases in previous years. This is also a continuation of the practice from the previous years. On 17 March 2021, Asylum Commission rejected 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.⁷⁰⁶ 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.⁷⁰⁷

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.⁷⁰⁸ An appeal was upheld after the Commission obtained from BIA a positive

⁷⁰¹ Asylum Commission, Decisions Nos AŽ 15/23, upheld on 10 July 2023, and then rejected on 17 November 2023.

⁷⁰² Asylum Commission, Decision Nos. AŽ 11/23, 5 May 2023 and AŽ 11/23, 5 May 2023.

⁷⁰³ Asylum Commission, Decision No. AŽ 04/21, 8 March 2021.

⁷⁰⁴ Asylum Office, Decision No. 26-1592/18, 20 November 2019.

⁷⁰⁵ Asylum Commission, Decision No. AŽ 44/19, 30 January 2020.

⁷⁰⁶ Asylum Commission, Decision No. AŽ 02/21, 17 March 2021.

⁷⁰⁷ Asylum Commission, Decision No. AŽ 19/20, 5 July 2021.

⁷⁰⁸ Asylum Commission, AŽ-29/19, 23 September 2021.

security assessment, even though this assessment was different in January 2021 when asylum application was rejected.⁷⁰⁹ 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.⁷¹⁰ However, in 2023, the Asylum Commission rejected an appeal related to national of Afghanistan whose asylum application had been rejected on national security grounds.⁷¹¹ Similar decision was rendered in 2022 when, the Asylum Commission rejected the appeal of a 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 is examined in details in the separate part of the 2022 AIDA report dedicated to Ukrainian refugees.⁷¹²

In June 2022, the Asylum Commission issued one of its most contentious decisions in the case, already mentioned above, of woman from Iran who opposes strict Sharia rules on hijab and in general on practices which severely undermine women's rights.⁷¹³ This decision further corroborates the existence of a negative practice towards 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.⁷¹⁴ The case was referred back to the Asylum Commission due to procedural reasons by the Administrative Court, but the Asylum Commission rejected applicant's appeal again.

Asylum Commission also rejected the appeals of Afghan nationals who claimed to be persecuted by Taliban's and due to their affiliation with former state authorities of Afghanistan.⁷¹⁵ It further rejected appeals of Iraqi nationals, but due to extensive anonymization it is not possible to provide additional details on the cases.

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 seized of asylum cases.

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 for relevant national and international organisations (NGOs and UNHCR) to facilitate more training and workshops regarding asylum and migration law.⁷¹⁶ The first training was facilitated by the UNHCR in 2019, but the training planned for 2020 was postponed due to COVID-19. In December 2021, the UNHCR facilitated a 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:

⁷⁰⁹ Asylum Office, Decision No. 26–1389/17, 19 January 2021, see also BCHR, *Right to Asylum in the Republic of Serbia 2021*, p. 55.

⁷¹⁰ Asylum Commission, Decision No. AŽ 24/21, 11 October 2021.

⁷¹¹ Linked to: Asylum Office, Decision No. 26-2276/21, 27 January 2023.

⁷¹² Asylum Commission, Decision No. AŽ 20/22, 12 August 2022.

⁷¹³ Asylum Commission, Decision No. AŽ 8/21, 27 June 2022.

⁷¹⁴ The case was described in details in the part where the practice of the Asylum Office is analysed.

⁷¹⁵ Linked to: Asylum Office, Decisions Nos. 26-50/22, 3 February 2023 and 26-1922/21, 8 February 2023.

⁷¹⁶ 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.

- ❖ 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 objective for which the authority 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.⁷¹⁷

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. In 2023, as it was the case in 2022, and 2021, 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.⁷¹⁸

Statistical Overview of the Administrative Court Practice 2009-2023

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
2023					22
Total	155	43	8	12	218

⁷¹⁷ Article 96 Asylum Act.

⁷¹⁸ Administrative Court, Judgments U 10233/19, 13 May 2020, U 1803/18, 6 January 2022 and U 3950/18, 24 January 2022.

Administrative Court Practice in 2023

No.	Case file No.	Date of judgment	Country of origin	No. of persons	Outcome	Type of issue
1.	U 30261-22	17.02.2023	Tunisia	1	Rejected	Political persecution
2.	U 35075/22	24.02.2023	Iran	1	Upheld	SGBV - procedural reasons
3.	U 17425/21	01.03.2023	Burundi	1	Rejection	Political persecution
4.	U 1775/20	02.03.2023	Ghana	1	Rejection	LGBTQI+
5.	U 8418/20	17.03.2023	Unknown	1	Discontinuation	N/A
6.	U 1709/23	04.04.2023	Burundi	1	Rejection	Political persecution
7.	U 8234/19	12.04.2023	Pakistan	1	Rejection	STCC
8.	U 4508/21	21.04.2023	Mali	1	Rejection	Subsidiary protection v. refugee status
9.	U 17777/22	09.05.2023	Türkiye	1	Upheld	Application of the new Asylum Act
10.	U 16351/22	11.05.2023	Iran	1	Rejected	LGBTQI+
11.	U 3641/21	12.05.2023	Burundi	1	Rejection	Political persecution
12.	U 14095/20	13.06.2023	Afghanistan	1	Rejection	Pakistan as a country of habitual residence
13.	U 10104/20	12.06.2023	Pakistan	1	Rejection	Application of the new Asylum Act
14.	U 3268/20	26.07.2023	Afghanistan	1	Rejection	UASC and Taliban persecution
15.	U 13937/20	28.07.2023	Iran	2	Rejection	Religious persecution - conversion from Islam to Christianity
16.	U 18713/20	21.09.2023	Burundi	4	Rejection	Political persecution
17.	U 12907/19	21.09.2023	Unknown	1	Rejection	STCC
18.	U 5863/23	16.10.2023	Afghanistan	1	Rejection	Taliban persecution
19.	U 1701/21	03.11.2023	Unknown	1	Rejection	Discontinuation
20.	U 15156/18	16.11.2023	Afghanistan	1	Rejection	Taliban persecution
21.	U 7828/23	16.11.2023	Afghanistan	1	Rejection	National security grounds
22.	U 449/21	17.11.2023	Unknown	1	Upheld	Health care reasons
TOTAL	DECISIONS: 22		PERSONS: 26			

In 2023, the Administrative Court delivered 22 decisions regarding 26 persons from the following nationalities: Burundi (7), Afghanistan (5), Unknown (4), Iran (4), Pakistan (2) and 1 from Türkiye, Mali,

Ghana and Tunisia. Out of the total, 18 complaints regarding 22 persons were rejected, while 3 complaints regarding 3 persons were upheld and 1 case was discontinued.

Most of the complaints filed by Burundian applicants (4 judgments in relation to 7 persons) were rejected. It should be recalled that there are several issues regarding the decisions of the Asylum Office and Commission (see prior). Yet, it seems there is no corrective influence of the Administrative Court in relation to the poor credibility assessment conducted by the Asylum Office and in relation to the applicants from Burundi who are subjected to the similar patterns of rejections regardless of the differences in their individual circumstances. All the judgments rendered in relation to Burundian national were delivered in relation to complaints lodged in 2020 and 2021, except one,⁷¹⁹ meaning that the procedure before the Court lasted between two and three years which is excessively long.

Similar conclusion can be drawn in relation to Afghan nationals. In all the judgments it can be seen that UNHCR position paper on returns to Afghanistan which contains moratorium has been completely ignored, but also that new circumstances which arose after August 2021 and return of Taliban were not taken into account *proprio motu* and *ex nunc* and in 3 procedures in which Afghan nationals applied for asylum before that. In the remaining two procedures, Administrative Court acted more effectively, deciding upon the appeals within 6 months, but confirming second instance decisions of the Asylum Commission, including in relation to an Afghan national who was declared as a national security threat.⁷²⁰ In the later judgment, the Administrative Court confirmed the flawed practice of lower instance authorities which is based on the simple invocation of the national security grounds without outlining a single fact which would allow the applicant to challenge such assessment.⁷²¹

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.⁷²² In 2021, another Turkish applicant was rejected with the final judgment of the Administrative Court.⁷²³ 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 considered as credible, but as an attempt to avoid extradition to Türkiye for charges which cannot be considered as politically motivated or staged.⁷²⁴

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.⁷²⁵ Identical outcome occurred in January 2021.⁷²⁶ There were no decisions on subsequent asylum applications in 2023.

In 2021, the Administrative Court rendered a judgment rejecting an alleged SGBV survivor from Ghana, who, according to the legal representative, might also have been the victim of human trafficking.⁷²⁷ From the reasoning of the judgment, which is insufficiently motivated on the matter, it is impossible to conclude whether the asylum authorities and the applicant 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

⁷¹⁹ Administrative Court, Judgment U 1709/23, 4 April 2023.

⁷²⁰ Administrative Court, Judgments U 15156/18, 16 November 2023; U 3268/20, 26 July 2023 and U 14095/20, 13 June 2023.

⁷²¹ Administrative Court, Judgment U U 7828/23, 16 November 2023.

⁷²² Administrative Court, Judgment U 20811/11, 21 January 2022.

⁷²³ Administrative Court, U 21427/21, 26 October 2021.

⁷²⁴ Administrative Court, U 31740/22, 20 December 2022.

⁷²⁵ Administrative Court, Judgment U U 19000/21, 5 January 2022.

⁷²⁶ Administrative Court, Judgment, U 11006/20, 28 January 2021.

⁷²⁷ Administrative Court, Judgment U 22906/18, 25 November 2021.

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. In 2023, there were no major decisions related to SGBV survivors.

The practice with regards to LGBTQI+ applicants remained unchanged, and the Administrative Court rejected the complaints of gay man from Iran⁷²⁸ and Ghana,⁷²⁹ confirming the negative practice from previous years, including the case of a gay man from Congo which was rejected with the final judgment of the Court, confirming a 100% rejection rate of LGBTQI applicants in 2021.⁷³⁰ This trend continued in 2022, when the cases of two gay men from Tunisia 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.⁷³¹ 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.⁷³² Both cases also resulted in applications to the ECtHR.⁷³³

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.⁷³⁴ 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.⁷³⁵ Identical judgment was rendered in February 2022 in relation to 4 member Iranian family.⁷³⁶ 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.⁷³⁷ 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.⁷³⁸ 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 countries proclaimed as safe, their asylum systems, adequate reception conditions and other necessary requirements. In 2023, additional two judgments confirming the flawed and automatic application of the safe third country were delivered and in relation to a person of unknown nationality (excessive anonymization)⁷³⁹ and national of Pakistan.⁷⁴⁰ Both procedures lasted for almost 4 years.

The only three judgments which uphold complaints of the applicants from Iran, Türkiye and unknown country were related to procedural, but not substantive issues - application of the new Asylum Act from 2018.⁷⁴¹

In 2022, 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

⁷²⁸ Administrative Court, Judgment U 16351/22, 11 May 2023.

⁷²⁹ Administrative Court, Judgment U 1775/20, 20 March 2023.

⁷³⁰ Administrative Court, Judgment U 8080/21, 7 December 2021.

⁷³¹ Administrative Court, Judgments U U 20811/21, 31 January 2022 and U 24542/20, 27 May 2022.

⁷³² See also, AIDA, Country Report Serbia, 2021 Update, p. 81.

⁷³³ See more in Right to Asylum 2022, pp. 59-61.

⁷³⁴ See more in Country Report Serbia, Update 2018, pp. 41-52.

⁷³⁵ Administrative Court, Judgment U 1803/18, 6 January 2022.

⁷³⁶ Administrative Court, Judgment U –U 8549/20, 2 February 2022.

⁷³⁷ Administrative Court, Judgment U 3950/18, 24 January 2022.

⁷³⁸ Administrative Court, Judgment U 11333/22, 17 November 2022.

⁷³⁹ Administrative Court, Judgment U 12907/19, 21 September 2023.

⁷⁴⁰ Administrative Court, Judgment U U 8234/19, 12 April 2023.

⁷⁴¹ See the Table above.

managed to obtain international protection in Serbia, as it can be seen from previous AIDA reports.⁷⁴² 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,⁷⁴³ 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.⁷⁴⁴ The same outcome occurred in the case of a 4 member Iranian family who claimed problems with Sepah, but failed to produce credible evidence.⁷⁴⁵

1.5 Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
------------------------------	--	--

 - ❖ Does free legal assistance cover:

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

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

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
------------------------------	--	--

 - ❖ Does free legal assistance cover

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

On 1 October 2019, the Free Legal Aid Act (FLA) came into force. The right to free legal aid is explicitly guaranteed to asylum seekers,⁷⁴⁶ refugees and persons granted subsidiary protection.⁷⁴⁷ However, the Free Legal Aid Fee Schedule Regulation (FLA Regulation)⁷⁴⁸ 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,⁷⁴⁹ but in the course of 2022 and 2023, 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 into 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 reached 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 the 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. This means that most of the expertise comes from persons who act as legal representatives on behalf of CSOs, while attorneys at law are rarely interested to provide legal assistance in asylum procedure. 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.⁷⁵⁰ 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

⁷⁴² Administrative Court, Judgments U 2113/20, 12 January 2022 and U 20256/19, 16 September 2022.

⁷⁴³ Administrative Court, Judgment U 4758/20, 8 June 2022.

⁷⁴⁴ Administrative Court, Judgment U 15562/20, 29 September 2022.

⁷⁴⁵ Administrative Court, Judgment U 3975/20, 24 February 2022.

⁷⁴⁶ Article 4 (2-6) FLA.

⁷⁴⁷ Article 4 (2-7) FLA.

⁷⁴⁸ Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), Official Gazette of the RS No. 74/2019.

⁷⁴⁹ This conclusion is drawn from the fact that legal representatives in all Administrative Court judgments were CSOs.

⁷⁵⁰ Article 56(3)-(4) Asylum Act.

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 a public service, 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 2023 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.⁷⁵¹ Other, non-CSOs lawyers, occasionally provide legal aid. All of these CSOs are based in **Belgrade**, except for HCIT which is based in **Novi Sad**, but ceased to provide legal aid in 2023. Thus, their presence in asylum and reception centres located in the south or east is rare,⁷⁵² 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, in 2022, at least 50% of asylum seekers either failed to lodge their asylum application or lodged it 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 legal representatives from respective CSOs have between 1 to 3 years of experience,⁷⁵³ 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.⁷⁵⁴ 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.⁷⁵⁵ Another example is the lack of coordination in preparation for the asylum hearing of a Tunisian gay couple.⁷⁵⁶ 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 UASC applicant 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 the fact that he absconded, even though the violence was reported to him by the boy.⁷⁵⁷ The other UASC had only had a half an hour meeting with two different legal

⁷⁵¹ BCHR had 5 lawyers who were solely providing legal aid to asylum seekers, HCIT 2, IDEAS 1, and APC does not have more than 3.

⁷⁵² Once to two times per month.

⁷⁵³ Some of them less than a year and without previous training and experience in the field of asylum and migration.

⁷⁵⁴ 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.

⁷⁵⁵ Asylum Office, Decision No. 26-378/19, 11 February 2020.

⁷⁵⁶ Asylum Office, Decision No. 26-2038/19, 30 July 2020 and 26-2039/19, 17 August 2020.

⁷⁵⁷ 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.

representatives within a year and decided to abscond to Bosnia.⁷⁵⁸ Since he was not able to cross to Croatia, he came back to Serbia and attempted to lodge a subsequent application, but was unsuccessful and eventually decided to abscond from Serbia.⁷⁵⁹ Specific issues in relation to the provision of legal assistance include a lack of assessment of Col information and individual circumstances, lack of thorough preparations of clients for their personal interview and failure to conduct evidentiary activities such as medical expert opinion.⁷⁶⁰ 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 the applicant from Kyrgyzstan cancelled his power of attorney right before the hearing, while the attorney of the Turkish applicant failed to lodge the complaint to Administrative Court.

Family D. from Iran explained that they signed a power of attorney in November 2018 and only met their lawyer again in December 2018 prior to the submission of their 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 give sufficient 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.⁷⁶¹ 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 the asylum procedure and rejected on the merits on multiple occasions. One of the reasons for such outcome is the fact that the 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 taken into consideration, the applicants were granted refugee status. Thus, if the evidence had been delivered at an earlier stage of the first instance procedure, the Iranian family would not have had to go through several years of legal ordeal.⁷⁶²

The following cases from 2018-2023 also contain examples of poor legal representation:

- ❖ UASC A.A.'s application was rejected as unfounded even though he explained 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.⁷⁶³ 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 abovementioned case of family D. granted asylum in Hungary.⁷⁶⁴

⁷⁵⁸ The boy decided to return to Serbia and, with the help of IDEAS lawyers, submitted a subsequent application.

⁷⁵⁹ Asylum Office, Decision No. 26-3229/19.

⁷⁶⁰ Asylum Office, Decision No. 26-2177/19, 20 August 2020.

⁷⁶¹ *Ibid.*

⁷⁶² Asylum Office, Decision No. 26-1607/18, 14 October 2022.

⁷⁶³ Asylum Office, Decision No. 26-932/19, 30 September 2019.

⁷⁶⁴ Asylum Office, Decision No. 26-1831/18, 30 July 2020.

- ❖ 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.⁷⁶⁵
- ❖ 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.⁷⁶⁶
- ❖ 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 abovementioned women from Iraq who was granted refugee status on the basis of SGBV in 2021.⁷⁶⁷ Still, she was assessed as a non-credible case after a 1 hour long interview during 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 2021.⁷⁶⁸
- ❖ 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 the COVID-19 pandemic.⁷⁶⁹
- ❖ 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 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.⁷⁷⁰
- ❖ A similar case occurred in 2022 when the legal representative failed to lodge an appeal against the first instance decision rejecting a Burundian applicant.
- ❖ 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 eventually granted subsidiary protection.⁷⁷¹
- ❖ In October 2023, in the case of the applicant from Brazil who was in extradition detention, his attorney at law failed to lodge the complaint against the Asylum Office decision rejecting his application on the national security grounds.⁷⁷²
- ❖ In November 2023, another attorney at law also failed to lodge a complaint against Asylum Office decision on rejecting of asylum application of woman from Kazakhstan who was also in extradition detention from where she applied for asylum.⁷⁷³

⁷⁶⁵ The applicant lodged her asylum application in March 2022.

⁷⁶⁶ The applicant lodged her asylum application in March 2022.

⁷⁶⁷ Asylum Office, Decision No. 26-1601/20, 30 August 2021

⁷⁶⁸ Asylum Office, Decision No. 26-876/21, 10 November 2021.

⁷⁶⁹ Asylum Office, Decision No. 26-1791/21, 9 March 2021.

⁷⁷⁰ Asylum Office, Decision No. 26-1599/19, 22 November 2019 and AŽ 51/20, 24 December 2020.

⁷⁷¹ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁷⁷² Asylum Office, Decision No. 26-1045/23, 5 October 2023.

⁷⁷³ Asylum Office, Decision No. 26-1425/23, 6 November 2023.

It is reasonable to assume that several more cases of a similar nature might go unreported.⁷⁷⁴ These cases clearly indicate that the number of applicants, but also of positive decisions might 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's, 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 a proactive approach is necessary. 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 rely on 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 pushbacks and the risk of violations of the *non-refoulement* principle. The poor quality of legal assistance is particularly evident in cases where access to the territory and asylum procedure is at stake. Even though thousands of pushbacks to **North Macedonia** were recorded, there was no attempt to legally challenge such practice. There is only one case litigated by the APC concerning an informal expulsion from Belgrade to North Macedonia.⁷⁷⁵ It appears, however, 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. This can be explained by lack of capacity, but also lack of funding.

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 persons sent back to Serbia as a result of 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:⁷⁷⁶

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.⁷⁷⁷

⁷⁷⁴ 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.

⁷⁷⁵ 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>

⁷⁷⁶ Article 42(1) and (3) Asylum Act.

⁷⁷⁷ Article 42(4) Asylum Act.

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. There were no such cases in 2022 and 2023.

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 point, 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](#);⁷⁷⁸
2. The application is a [Subsequent Application](#).⁷⁷⁹

The representatives of the organisations providing legal aid, as well as UNHCR, are guaranteed effective access to border crossings points, or transit zones in airports or inland ports in accordance with the state border protection regulations.⁷⁸⁰ 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.⁷⁸¹ 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.⁷⁸² 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.⁷⁸³

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.⁷⁸⁴

The border procedure was not used in the course of 2022 and 2023 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 has been finalised, but the premises provided still do not meet the criteria for the longer stay.⁷⁸⁵

5. Accelerated procedure

The Asylum Act provides an accelerated procedure, which can be conducted where the applicant:⁷⁸⁶

- ❖ 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;

⁷⁷⁸ *Ibid*, citing Article 38(1)(5) which refers *inter alia* to Article 40.

⁷⁷⁹ Article 41(1) Asylum Act.

⁷⁸⁰ Article 41(2) Asylum Act.

⁷⁸¹ Article 41(3) Asylum Act.

⁷⁸² Article 41(5) Asylum Act.

⁷⁸³ Article 41(6) Asylum Act.

⁷⁸⁴ Article 41(7) Asylum Act.

⁷⁸⁵ The Ombudsman, Представници компаније Belgrade Airport у посети Заштитнику грађана, 16 December 2020, no longer available as of 30 June 2024.

⁷⁸⁶ Article 40(1) Asylum Act.

- ❖ 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.⁷⁸⁷ The Asylum Office shall inform the applicant that the application is to be processed in the accelerated procedure.⁷⁸⁸ 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.⁷⁸⁹

In 2022, the Asylum Office applied an accelerated procedure on three occasions. It was not applied in 2023.

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 of applicants 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.⁷⁹⁰

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 issue and how they design special and individualised programmes for meeting the special needs of the above-listed categories in different contexts (accommodation, provision of psycho-social support, provision of medical support, in asylum or integration procedure, etc.).

⁷⁸⁷ Article 40(2) Asylum Act.

⁷⁸⁸ Article 40(3) Asylum Act.

⁷⁸⁹ Article 40(5) Asylum Act.

⁷⁹⁰ Article 17(1) and (2) Asylum Act.

1.1 Screening of vulnerability

Article 17 of the Asylum Act envisages that the procedure for identifying the personal circumstances of a person is carried out by the 'competent authorities on a continuous basis' and at the earliest reasonable time after the initiation of the asylum procedure, or the expression of the intention to submit an asylum application at the border or in the transit zone.⁷⁹¹

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 issued 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.

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.⁷⁹² This practice has remained unchanged in all of the UASC cases which were positively decided in 2022. In 2023, there were no decisions related to UASCs.

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, the 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,⁷⁹³ 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. 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 a form which is not

⁷⁹¹ Article 17(3) Asylum Act.

⁷⁹² 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.

⁷⁹³ For instance, Asylum Office, Decisions No. 4329/18, 26 December 2017 – person with the status of the victim of trafficking in human beings.

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 the 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, gynaecologists (for 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. Even 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 provided with regular accommodation unless they are not suffering from medical conditions that are so serious that their health can significantly deteriorate or life can be threatened if not accommodated in a 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 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 the 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 channelled through the 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 not at all. 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 (BID) 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 provides that everyone is obliged to be guided by the best interests of the child in all activities concerning the child.⁷⁹⁴ 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.⁷⁹⁵ 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.⁷⁹⁶ Also, the Asylum Act provides that all activities carried out with the child must be in accordance with the best interests of the child.⁷⁹⁷

⁷⁹⁴ Article 6 (1) Family Law.

⁷⁹⁵ Article 26 and 35 Social Protection Act.

⁷⁹⁶ Article 30 and 32 Rulebook on the Work of Centre for Social Work

⁷⁹⁷ Article 10 Asylum Act.

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 a UASC, the caseworker shall instantly initiate **the procedure of the case management** which starts with the official activity which is called **initial assessment**.⁷⁹⁸ 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.⁷⁹⁹ 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 an 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).⁸⁰⁰ 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.⁸⁰¹ Out of the 82 children with a registration certificate, almost all received a more detailed support, and at least 25 underwent best interest assessments (BIA).⁸⁰² Thus, substantial support was provided to less than 3% of all recorded UASC. BID decisions were issued in 8 instances, and in relation to UASC who applied for asylum or temporary residence on humanitarian grounds. The situation remained unchanged in 2023, when 761 UASC entered Serbia and resided mainly in RC Šid, while only 30 was registered and not a single UASC lodged asylum application in 2023. Thus, there were no BID decisions in 2023.

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 belonged to the refugee population as survivors of human trafficking – 3 women from Uganda, Cameroon and Burundi.⁸⁰³ Still, in the vast majority of cases, CSOs are the ones who report alleged cases of human trafficking. In 2023, CHTV identified 6 foreign nationals as survivors of trafficking in human beings originating from: India (3), Ukraine (1), Iran (1) and Pakistan (1).⁸⁰⁴

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 care for 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.⁸⁰⁵ The CHTV then issues a **decision on the recognised status of the victim of human trafficking** which is then used during the course of asylum procedure. In 2023, one person belonging to Hijra community in India was recognized as survivor of human trafficking and was granted refugee status of those grounds, as well as on the grounds of sexual orientation and SGBV.⁸⁰⁶

In 2023, GRETA recommended that the Serbian authorities take further measures to strengthen prevention of human trafficking through social, economic and other measures for vulnerable groups, including members of the Roma community, migrants and asylum seekers.⁸⁰⁷ GRETA also highlighted that the Serbian authorities should take further steps to ensure that all victims of trafficking are identified

⁷⁹⁸ Article 48 Rulebook on the Work of Centre for Social Work.

⁷⁹⁹ Only 20 in 2019, and for the purpose of asylum procedure.

⁸⁰⁰ Only 20 in 2019, and for the purpose of asylum procedure.

⁸⁰¹ UNHCR statistics are available at: <https://bit.ly/2LklrZY>.

⁸⁰² 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.

⁸⁰³ CHTV, *Annual Statistical Report*, available at: <https://bit.ly/3xCcp4D>.

⁸⁰⁴ CHTV, *Annual Statistical Report for 2023*, available at: <https://bit.ly/4cOcFPD>.

⁸⁰⁵ Article 62 Social Protection Act.

⁸⁰⁶ Asylum Office, Decision No. 26-1562/22, 14 December 2023.

⁸⁰⁷ GRETA, *Evaluation Report Serbia*, 16 June 2023, available at: <https://bit.ly/4ciaeE5>, para. 198.

as such and can benefit from the assistance and protection measures contained in the Convention, in particular by:

- ❖ encouraging law enforcement officials, social workers, asylum officials, and other relevant actors to adopt a more proactive approach and increase their outreach work to detect victims of human trafficking for different forms of exploitation.
- ❖ increasing the involvement of specialised NGOs in the identification of victims of trafficking and strengthening multi-disciplinary co-operation between all relevant partners;
- ❖ paying increased attention to detecting and identifying victims of trafficking among migrants and asylum seekers;
- ❖ providing sufficient staff and resources to the Centre for the Protection of Victims of Trafficking to enable it to carry out timely identification of victims of trafficking.⁸⁰⁸

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 and 2023, PIN and IAN identified, assisted, counselled and further referred several dozen asylum seekers, refugees and migrants. Only few psychological assessments were lodged with 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 post-traumatic stress disorder-related difficulties ranged from 19% to 28%.⁸⁰⁹ Similar findings are repeated almost every year.⁸¹⁰

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*⁸¹¹, 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.⁸¹² 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 protection of refugees and migrants in Serbia, as well as the 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 2023, only 1 Istanbul Protocol Reports were drafted and submitted to the Asylum Office

⁸⁰⁸ Ibid, para. 210.

⁸⁰⁹ 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. PIN, *Mental Health and Wellbeing of Refugees and Asylum Seekers in Serbia 2022 Research Report*, available at: <https://bit.ly/41ERZUY>.

⁸¹¹ Svetozarević, S., Vukčević, Marković, M., Pejušković, B., & Simonović, P., *Guidance for protection and improvement of mental health of refugees, asylum seekers and migrants in republic of Serbia*, 2019, available at: <https://bit.ly/3r7wBEZ>.

⁸¹² Ibid.

in relation to an individual from Burundi who was subjected to different forms sexual violence, but also reports from more narrowly specialized psychosocial workers. According to the content of first instance decisions, in several cases legal representatives lodged psychological reports, while Asylum Office did not request any assessment.

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' populations. This organisation was the only one who provided legal assistance to the refugees and asylum seekers in cases of SGBV in 2022 outside the asylum procedure. Additionally, DRC established the first Women Safe Space inside the 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 an 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. There is no available data for 2023.

CRM who is in charge of asylum and reception centres does not provide any kind of vulnerability assessment upon arrival, including in relation to SGBV survivors. 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 rejection decisions 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.'⁸¹³

Although the Asylum Act prescribes that children for whom it can be determined reliably and unambiguously that they are under 14 years of age shall not be fingerprinted at registration,⁸¹⁴ it is not prescribed how the age is to be established, leaving it up to the competent authorities to arbitrarily ascertain the age of persons lacking personal documents from their country of origin. On 16 September 2020, IDEAS received a legal opinion from the Ministry of Justice, as per which Serbia does not have an age assessment procedure in its legal framework.⁸¹⁵

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 care⁸¹⁶ and if so, the police officer is obliged to contact the competent health-care services.⁸¹⁷ 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.⁸¹⁸

⁸¹³ Article 2 Asylum Act.

⁸¹⁴ Article 35(6) Asylum Act.

⁸¹⁵ Ministry of Justice, Legal Opinion No. 011-00-125/2020-05, 16 September 2020.

⁸¹⁶ Page 20 SoP.

⁸¹⁷ *Ibid.*

⁸¹⁸ Article 15 Foreigners Act.

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 is being verified.⁸¹⁹ Regarding UASC who do not have identification documents, and if the identity cannot be verified in another way, the identity will be determined using data from forensic records, applying methods and using means of “criminal tactics” and forensics, medical or other appropriate expertise.⁸²⁰ 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.⁸²¹ The police officer is obliged to inform the child about the reasons for their presence at the police premises, 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.⁸²²

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.⁸²³ 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.⁸²⁴ A police officer shall contact a representative of the CSW without delay, if there is a reasonable suspicion that the person concerned 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 2022⁸²⁵ and in general, in 2022, only 4 UASC applied for asylum. Thus, the age is determined on the basis of the statement of a child. What is also a concerning practice is that MoI 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.⁸²⁶ Thus, if a child who is 17 arrives in Serbia in 2021, his date of birth would be set at 1 January 2004. This means that a person under the age of 18 could be treated as adult before coming of age, 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 mentioned 31 December of the given year as birth date.

To reiterate, there is no proper or developed method for ascertaining an asylum seeker's age, meaning that the asylum seeker's word and the official's personal observations are the only criteria for identifying

⁸¹⁹ Article 76 Police Act.

⁸²⁰ Article 77 Police Act.

⁸²¹ Article 12 (2) Rulebook on Police Powers.

⁸²² Article 85 Police Act.

⁸²³ Which is usually not the case taking in consideration that the vast majority of children are UASC.

⁸²⁴ Article 12 (2) Rulebook on Police Powers.

⁸²⁵ All the information was obtained from IDEAS.

⁸²⁶ CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <https://bit.ly/2KIs2S5>.

minors in the greatest number of cases.⁸²⁷ On 4 April 2018, the Ministry of Labour, Employment, veteran and Social Affairs adopted the Instruction on Procedures of Social Work Centres⁸²⁸ 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 care of a professional social worker.⁸²⁹

Still, the identification of unaccompanied minors continues to be done on the spot by officials (most often police officers) and CSO employees, establishing first contact with potential asylum seekers. The SWC are understaffed and they usually react when the Mol or CSO inform them of a UASC's presence within 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.⁸³⁰ The Committee on the Rights of the Child,⁸³¹ and the Human Rights Committee,⁸³² underlined these problems as well.

During 2021, there were two cases in which the age assessment was a problem. One case concerned an **Afghan** boy who suffers from a serious psychiatric condition and who was shortly deprived of legal guardianship, on the basis of flawed assessment of his age. IDEAS and PIN intervened and the boy was later placed under temporary guardianship and submitted his asylum application with the help of IDEAS multidisciplinary team. In the other case, a boy from Guinea at some point stated that he was adult in order to remain in the AC Krnjača, even though it was clear that he was underage. He was deprived of legal guardianship due to this statement. The reappointment of the legal guardian took months but eventually this was resolved and he 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 with 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.⁸³³ However, both of these requests were rejected as unfounded by both the Asylum Office⁸³⁴ and Asylum Commission.⁸³⁵ The children eventually left Serbia and their cases were discontinued.

⁸²⁷ There is no record that an age assessment procedure has ever been conducted in line with the Family Act.
⁸²⁸ 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.

⁸²⁹ Section II, para. 2 of the Instruction on Procedure of Social Work Centres.

⁸³⁰ BCHR, *Right to Asylum in the Republic of Serbia 2019*, 97-98.

⁸³¹ CRC, *Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, CRC/C/SRB/CO/2-3, pp. 56-57.

⁸³² HRC, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, available at: <https://bit.ly/3T8zneH>, paras. 32-33.

⁸³³ 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, available at: <https://bit.ly/2KIs2S5>.

⁸³⁴ Asylum Office, Decisions Nos. 26-3229/19, 21 May 2021 and 26-11/21, 13 April 2021.

⁸³⁵ 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.⁸³⁶

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.⁸³⁷ 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. In 2023, there was only one case – previously mentioned – related to an Indian national who was granted refugee status.

Overview of the cases in which vulnerability was taken into account in positive decisions of the Asylum Office in the period 2021-2023

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 months13 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

⁸³⁶ Article 15 Asylum Act.

⁸³⁷ The most important decisions regarding vulnerable applicants are analysed in the Chapter C.1. – Asylum Practice in 2021.

11.	26-1562/22	10 June 2022	14 December 2023	India	Refugee Status	18 months	Survivor of SGBV and human trafficking and LGBTQI+
-----	------------	--------------	------------------	-------	----------------	-----------	--

National law further foresees the exemption of unaccompanied children from accelerated and border procedures.⁸³⁸

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.⁸³⁹ The number of decisions in which Asylum Office refers in the reasoning of its decisions to medical and psychological reports has increased. In the vast majority of cases, the legal representatives are the ones who are hiring forensic, psychiatric or psychological experts in order to support their client's claims. Still, in 2022 and 2023 the Asylum Office did not submit any request to PIN or IAN, but there were several of cases in which lawyers provided such reports.

The Asylum Office has continued to issue decisions in which medical and/or psychological reports were used with the 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.⁸⁴⁰

The second time the Asylum Office directly took into consideration the state of health of an applicant was in December 2017, when one Nigerian⁸⁴¹ and one Bangladeshi⁸⁴² nationals were granted subsidiary protection due to paraplegia and quadriplegia, respectively. In both cases, the Asylum Office took into consideration the ECtHR principles established in *D. v. United Kingdom* which were invoked by their legal representative.

Also, in December 2018, the Asylum Office explicitly cited Article 17 of the Asylum Act and took into consideration that an unaccompanied girl from Nigeria was recognised as a victim of human trafficking.⁸⁴³ 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 into consideration in several more decisions,⁸⁴⁴ as well as the BID,⁸⁴⁵ while the report of the psychiatrist was taken into consideration in the case of Uyghur applicant from China who is a torture victim.⁸⁴⁶ This practice continued

⁸³⁸ Articles 40(4) and 41(4) Asylum Act.

⁸³⁹ 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.

⁸⁴⁰ ECtHR, *D. v. UK*, Application No 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

⁸⁴¹ Asylum Office, Decision No. 26-4370/15, 27 December 2017.

⁸⁴² Asylum Office, Decision No. 26-5044/15, 25 December 2017.

⁸⁴³ Asylum Office, Decision No. 26-329/18, 28 December 2019.

⁸⁴⁴ Asylum Office, Decisions Nos. 26-2348/17, 28 January 2019; 26-2643/17, 30 January 2019; 26-1605/18, 15 March 2019.

⁸⁴⁵ Asylum Office, Decision Nos. 26-2348/17, 28 January 2019 and 26-784/18, 20 November 2019.

⁸⁴⁶ Asylum Office, Decision No. 26-2050/17, 12 September 2019.

in 2021 and in cases of Afghan⁸⁴⁷ and Pakistani⁸⁴⁸ UASC, Iranian torture victim⁸⁴⁹ and two torture victims from Burundi.⁸⁵⁰ 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 into consideration an Istanbul Protocol report drafted in relation to an SGBV survivor from Burundi,⁸⁵¹ as well as SGBV survivor from Afghanistan.⁸⁵² 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. A medical report was also used in the case of a Cuban applicant⁸⁵³ 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.⁸⁵⁴

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 2023, at least 761 UASCs entered Serbia, but only 27 of them were registered while the others left Serbia: Syria (10), Afghanistan (8), Egypt (3), Tanzania (1), Iraq (1), India (1), Türkiye (1), Pakistan (1) and Sierra Leona (1). None of them lodged asylum application in 2023.

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

⁸⁴⁷ Asylum Office, Decision No. 26-1084/20, 7 June 2021

⁸⁴⁸ Asylum Office, Decision No. 26–3064/19, 14 September 2019.

⁸⁴⁹ Asylum Office, Decision No. 26-108/20, 27 August 2021.

⁸⁵⁰ Asylum Office, Decisions Nos. 26-1337/20, 29 June 2021 and 26-103/20, 30 June 2021.

⁸⁵¹ Asylum Office, Decision No. 26-2296/22, 29 June 2022.

⁸⁵² Asylum Office, Decision No. 26-1635/21, 17 August 2022.

⁸⁵³ Asylum Office, Decision No. 26-688/22, 15 September 2022.

⁸⁵⁴ E.g., ECtHR, *D. v. UK*, Application No. 30240/96, Judgment of 2 May 1997, EDAL, available at: <http://bit.ly/37TOAEN>.

7.	26-1271/19	15 October 2020	Iran	Subsidiary Protection	Conversion from Islam to Christianity
8.	26-2474/19	15 October 2020	Afghanistan	Subsidiary Protection	Honour killing arising from the family dispute
9.	26-1084/20	7 June 2021	Afghanistan	Subsidiary Protection	Medical condition and the lack of medical treatment in country of origin
10.	26-3064/19	14 September 2019	Pakistan	Refugee Status	Human Trafficking – Sexual and Labour Exploitation
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 ⁸⁵⁵	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.⁸⁵⁶

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.⁸⁵⁷

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.⁸⁵⁸

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.⁸⁵⁹ The police cannot register an unaccompanied child who has expressed the wish to seek asylum in the absence of a temporary guardian.⁸⁶⁰

⁸⁵⁵ Brother and sister.

⁸⁵⁶ 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, available at: <https://bit.ly/3T8zneH>, paras 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, available at: <https://bit.ly/46njRy9>, paras. 32-33.

⁸⁵⁷ Article 10(2) Asylum Act.

⁸⁵⁸ Articles 125 and 126 Family Act.

⁸⁵⁹ Article 12 Asylum Act.

⁸⁶⁰ Article 11 Asylum Act.

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 go against the best interest of a child put under their guardianship, and a person who due to different reasons cannot be expected to properly perform the activities of a guardian.⁸⁶¹

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.⁸⁶² For instance, it was a frequent situation that one guardian was appointed to dozens of UASC, making it impossible for them to develop a meaningful and trusting relationship with the children notwithstanding their enormous efforts and motivation.⁸⁶³ 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 other necessary 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.⁸⁶⁴ The next step is the urgent appointment of a temporary guardian to the child.

In 2022, **BCHR** and **IDEAS** 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 International Child Law (ICL) were thoroughly taken into 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 ICL standards. Since there were no decisions in relation to UASCs in 2023, it is not possible to provide an updated assessment.

In March 2022, CESCRC recommended that Serbia provides 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.⁸⁶⁵ Similar recommendation was issued by the Human Rights Committee.⁸⁶⁶

⁸⁶¹ Article 128 Asylum Act.

⁸⁶² Human Rights Committee, Human Rights Committee, *Concluding observations on the third periodic report of Serbia*, 10 April 2017, CCPR/C/SRB/CO/3, available at: <https://bit.ly/46njRy9>, paras 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, paras 56-57. See also BCHR, *Situation of Unaccompanied and Separated Children in Serbia*, 2017, available at: <https://bit.ly/3SQ0LOM>, paras 22 and 39.

⁸⁶³ That was the case in AC in Bogovadja, which was designated for the accommodation of UASC in 2020, as well as AC in Sjenica.

⁸⁶⁴ 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.

⁸⁶⁵ CESCRC, *Concluding observations on the third periodic report of Serbia*, 4 March 2022, E/C.12/SRB/CO/3, available at: <https://bit.ly/47AhcCo>, paras. 32-33.

⁸⁶⁶ HRC, *Concluding observations on the fourth periodic report of Serbia**, CCPR/C/SRB/CO/4, 3 May 2024, available at: <https://bit.ly/3zSmiyo>, paras. 32-33.

E. Subsequent applications

Indicators: Subsequent Applications

Does the law provide for a specific procedure for subsequent applications? Yes No

Is a removal order suspended during the examination of a first subsequent application?

At first instance Yes No

At the appeal stage Yes No

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.⁸⁶⁷

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.⁸⁶⁸ The applicant must provide all the above and bring forward evidence in a comprehensible manner.⁸⁶⁹ 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.⁸⁷⁰

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 issued within 15 days from the date of the application.⁸⁷¹

What is important to note is that, since the institute of subsequent asylum application has been introduced in the Asylum Act from 2018, not a single applicant successfully lodged it.

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.⁸⁷² 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. In 2023, 3 subsequent asylum applications from applicants from Bulgaria, Afghanistan and Russia were rejected. The Afghan applicant absconded, the Bulgarian applicant was considered as non-credible *prima facie* as she had returned to Bulgaria prior to lodging her subsequent asylum application to obtain a new passport, even though she claimed to face 'risk for her life'.⁸⁷³

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

⁸⁶⁷ Article 46(1) Asylum Act.

⁸⁶⁸ Ibid.

⁸⁶⁹ Article 46(2) Asylum Act.

⁸⁷⁰ Article 46(3) Asylum Act.

⁸⁷¹ Article 46(4), (5) and (6) Asylum Act.

⁸⁷² ECtHR, *A. and Others v. Serbia*, Application No 37478/16, Communicated on 12 December 2017.

⁸⁷³ Asylum Office, Decision No. 26-1637/20, 31 January 2023.

Christianity) in the first case referred to the fact that they failed to outline new evidence because they were not aware of such possibility. The impugned 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 emphasized 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.⁸⁷⁴ The second case gives serious reasons for concern as 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 the will to apply for asylum again. However, his subsequent application was rejected, without taking into account the motivations he presented. The essence of the reasoning behind the reject decision 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 on the 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.⁸⁷⁵ The unfortunate outcome is that both the Iranian family and Pakistani UASC left Serbia and it is not possible to assess how the higher instance authorities would have decided in these cases.

In 2022, two similar cases, this time also involving a national security assessment by BIA, were discontinued because they were not provided with adequate legal support in their initial asylum procedure.

In a 2022 case of Turkish Political activist,⁸⁷⁶ the applicant failed to underline an entire set of crucial evidence which indicate his political persecution in Türkiye. His lawyer failed to fill out the asylum application form. He did not prepare the applicant for the hearing while in extradition detention either, nor did he conduct Col research and submitted the Col report. After asylum application and the ensuing appeal were rejected, the lawyer failed to lodge a complaint to the Administrative Court and the case was discontinued.

In another case from 2022, a legal representative cancelled the power of attorney granted to him by a Kyrgyz national who was in extradition detention, before his asylum hearing. When realizing that he did not have legal representative the distressed applicant refused to take part in his asylum hearing, which was conducted in extradition detention. As a result, his asylum procedure was discontinued.⁸⁷⁷

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.

- ❖ the facts outlined were not new
- ❖ 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
- ❖ the incompetence of legal representatives was not considered at all as the argument for subsequent application.

In the case of the Kyrgyz national, where the first instance procedure was concluded before the first instance decision was issued, it is clear that the Asylum Office never took into consideration a single fact which corroborated his alleged persecution and, instead, declared that the facts set forth in the subsequent asylum application were insufficient. In other words, the Asylum Office denied the applicant of the possibility to have his case examined on the merits.

⁸⁷⁴ Asylum Office, Decision No. 26-2404/18, 7 June 2021.

⁸⁷⁵ Asylum Office, Decision No. 26-3229/19, 21 May 2021.

⁸⁷⁶ Asylum Office, Decision No. 26-1247/21, 30 August 2022.

⁸⁷⁷ Asylum Office, Decision No. 26-2052/21, 23 August 2022.

The decisions rejecting their subsequent asylum applications were confirmed by the Asylum Commission⁸⁷⁸. It is worth mentioning that, in both cases, the CAT indicated interim measures to the Government of Serbia. Both measures were lifted after their extraditions were rejected by Serbian Courts. While the complaint presented by the Kyrgyz national to the Administrative Court of is still pending; on 12 January 2024, the complaint from the Turkish national was instead rejected.⁸⁷⁹

As for 2023, it is worth mentioning that the circumstances which arose with regards to Russian aggression on Ukraine were not consider as new circumstances in the subsequent application of Russian national who never claimed his anti-war sentiment and risk of mobilization in his initial asylum procedure. The Asylum Office claimed that he did not provide any evidence which would corroborate such claims, but the question that remains open is if this assessment was supposed to be done during the examination of the admissibility of subsequent asylum application, or in the newly reopened asylum procedure.⁸⁸⁰

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.⁸⁸¹

The application of the safe third country and the first country of asylum concept may lead to an asylum application being declared as inadmissible by the Asylum Office, although asylum seekers may be able to prove that the country in question is not safe in their individual case. As for the safe country of origin concept, the Asylum Office may reject asylum application in merits and under the Article 40 of the Asylum Act which governs accelerated procedure.

In 2021, the Asylum Office dismissed 4 asylum applications of citizens of Iran (1), Pakistan (1), Libya (1) and Burundi (1). 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 and 2023, there were no such decisions which can be described as positive and having in mind that most of asylum seekers arrive to Serbia from North Macedonia and Bulgaria, often outlining different flawed practices to which they were subjected.

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 any risk of treatment contrary to the absolute prohibition of torture and other cruel, inhumane and degrading treatment or punishment which

⁸⁷⁸ Asylum Commission, Decision Nos. AŽ 24/22, 12 October 2022 and AŽ 27/21, 7 November 2022.

⁸⁷⁹ Administrative Court, Judgment U 80/23, 12 January 2024.

⁸⁸⁰ Asylum Office, Decision No. 26-1529/18, 27 October 2023.

⁸⁸¹ Article 43-45 Asylum Act.

can be qualified as irreparable and serious harm.⁸⁸² 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 ICCPR and the UN CAT;
- ❖ Observance of the *non-refoulement* principle;
- ❖ Application of effective legal remedies.⁸⁸³

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.⁸⁸⁴

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-listed criteria,⁸⁸⁵ as well as ‘the views of the competent authorities specified by this Law.’⁸⁸⁶ 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.⁸⁸⁷ 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 a citizen of **Montenegro**.⁸⁸⁸ This decision was confirmed during the course of 2019 by both the Asylum Commission⁸⁸⁹ and the Administrative Court.⁸⁹⁰ No decisions relying on the safe country of origin concept were issued in 2020, 2021, 2022 and 2023 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 establishment⁸⁹¹ and was severely scrutinized by many relevant international actors and bodies.⁸⁹² 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 on the merits.⁸⁹³ 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 claim⁸⁹⁴ in terms of 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 designated as “safe” in the asylum procedure. In the previous Asylum Act, which has not been in force since 1 October 2018, the safe third country concept was poorly governed and automatically applied on the basis of the list of the said list drafted by the Government.

⁸⁸² Article 44 Asylum Act.

⁸⁸³ Article 44 (1) Asylum Act.

⁸⁸⁴ Article 44 (2) and (5) Asylum Act.

⁸⁸⁵ Article 44 (3) Asylum Act.

⁸⁸⁶ Article 44 (4) Asylum Act.

⁸⁸⁷ Article 44 (6) Asylum Act.

⁸⁸⁸ Asylum Office, Decision No. 26-1720/18, 21 December 2018.

⁸⁸⁹ Asylum Commission, Decision AŽ 2/19, 1 March 2019.

⁸⁹⁰ Administrative Court, Judgment U 5037/19, 12 June 2019.

⁸⁹¹ AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 57-58.

⁸⁹² Including UNHCR, CAT, CERD, CCPR, Amnesty International and national civil society organizations, see the detailed analysis of this flawed practice in the AIDA, *Country Report: Serbia – Update on the year 2018*, March 2019, available [here](#), 41-53.

⁸⁹³ 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.

⁸⁹⁴ 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.

Although the new law significantly improves the framework of the safe third country concept, there are still ambiguities that may limit 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 protection from *refoulement*, which includes access to an efficient asylum procedure.⁸⁹⁵ 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 there.⁸⁹⁶ The new approach of the Asylum Act is better than the previous one, as it requires 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 applicants will be informed in due time about the application of the safe third country concept so they can have the possibility to challenge it. It may be reasonable to assume that the information should be provided by the authorities before the interview, when the asylum seeker would outline facts and circumstances which could indicate that safety in the country in which he resided previously. This assumption is supported through the content of Article 37 of Asylum Act, which provides 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 applicants had previously sought asylum in any other country. However, so far it is not possible to make remarks on the implementation of the new norm.

Also, and 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.’

Another provision which might be relevant for the application of the safe third country concept is Article 17 of the Asylum Act, which refers to specific personal circumstances. These circumstances have to be taken into account during the decision-making process and as a part of vulnerable individual's right to enjoy special procedural and reception guarantees. Specific circumstances exist if the applicant is a child, including unaccompanied or separated children, person with disabilities, elderly person, single parent with underage children, survivors of human trafficking, severely ill person, a person with mental disorder and persons who survived torture and other forms of ill-treatment, survivors of sexual and gender-based violence. By analogy and following a logical interpretation of the above provision, it is evident that a person falling within one of the above categories must be granted 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.

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.

⁸⁹⁵ Article 45(1) Asylum Act.

⁸⁹⁶ Article 45(2) Asylum Act.

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 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.

Since the Asylum Act came into force on 1 October 2018, the safe third country concept has been rarely applied. Basically, in 2020, the Asylum Office almost completely 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. Apart from legislative changes, another 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.⁸⁹⁷

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 and 2023, there were no STCC decisions.

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 where the applicant 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.⁸⁹⁸

The applicant is entitled to challenge the application of the concept of first country of asylum in relation to their specific circumstances.⁸⁹⁹

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,⁹⁰⁰ but the author of this report cannot say with certainty if this concept was applied in 2021.

In the first case, 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.⁹⁰¹ 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.⁹⁰²

⁸⁹⁷ 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.

⁸⁹⁸ Article 43(1) Asylum Act.

⁸⁹⁹ Article 43(2) Asylum Act.

⁹⁰⁰ Asylum Office Decision No. 26-1515/19 of 13 August 2020.

⁹⁰¹ BCHR, *Right to Asylum in the Republic of Serbia - Periodic Report for July-September 2020*, available at: <https://bit.ly/46pjYtd>, 22-23.

⁹⁰² See more in, BCHR, *Right to Asylum in the Republic of Serbia 2021*, available at: <https://bit.ly/3Gdazu0>, 60.

The second case concerns a client of APC, whose asylum application was dismissed because he was granted UNHCR refugee mandate status in Türkiye. All three instances held that Türkiye should be considered as first country of asylum, even though the protection was granted by UNHCR.⁹⁰³

In 2022 and 2023, 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.⁹⁰⁴

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 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 into 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 most of the foreigners go directly to reception facilities in Belgrade or in border areas with EU countries (at least until November 2023). Thus, in most instances, they tend to avoid initial reception facilities, but also police departments in which they could be registered and potentially provided with legal information.

Thus, most of the information is provided in reception facilities in Belgrade, although many CSOs and international organizations also distribute information leaflets in all other reception facilities and outside official reception facilities. Basically, UNHCR, IOM and around 5 CSOs have designed their own leaflets and posters, which are multilingual, adapted to the special needs of children or other vulnerable categories and others.

However, the fact that only 193 out of 108,808⁹⁰⁵ foreigners recorded entering Serbia decided to apply might also be in part due to issues regarding the quality of information provision and legal orientation. Nevertheless, most people on the route through Serbia already have their migratory project, with a country of destination in mind, which might be one of the main drivers not to stay. All information sessions came down to the distribution to technical information and leaflets and group counselling which apparently yielded no results in 2023.

⁹⁰³ Administrative Court, Judgment U 13967/20, 13 November 2020.

⁹⁰⁴ Article 56(1) Asylum Act.

⁹⁰⁵ Information obtained from CRM.

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. However, these leaflets have also yielded limited results having in mind that the number of asylum applicants in 2023 was on a record low level.

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, it is unclear to which extent they are 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 right to apply for asylum. This conclusion is drawn from the relevant legal framework and the Rulebook on Police Powers which governs the provision of information to persons deprived of their liberty and which does not explicitly prescribe the responsibility of acting police officers to inform detained foreign nationals of their right to apply for asylum.⁹⁰⁶

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?⁹⁰⁷ Yes No

In principle, there is no differential treatment of asylum seekers coming from different countries and the challenges of the national asylum system equally affects almost all foreign nationals who seek international protection in Serbia. In general, the quality of the credibility assessments realised in 2023 significantly deteriorated, to the point of risking affecting the overall effectiveness of the asylum system.

However, in the past there have been several cases in which certain nationalities or persons claiming specific grounds were easily recognized as refugees by the Asylum Office. More recently, however, it became impossible to obtain international protection on identical or similar grounds. These trends have been observed in the past 16 years, and were characterised by large groups of nationals from the same countries who had been applying for asylum due to flexible visa regimes with their countries of origin (Iran and Burundi) or close ties which implied cooperation in the field of education (e.g. Libyans).

For instance, Iranian converts from Islam to Christianity were granted refugee protection without major problems in the period 2016-2019, while afterwards it became impossible to be recognized on those grounds. To put it in more simple words, the same people who were granted refugee status on the basis of their conversion from Islam to Christianity in the period 2016-2019, would likely see their asylum applications rejected as unfounded in the present. Something similar can be outlined in relation to Tutsi political activists from Burundi or people perceived to be politically active against the major ruling party in this country. They were able to obtain international protection quite easily in the period 2017-2019, after which the restrictive approach was gradually increasing (as the number of applicants was increasing), to the moment in which in 2023, it was impossible to obtain asylum for people claiming political (political opposition) and ethnic persecution (Tutsi) in Burundi. Regardless of the quality of evidence provided (which sometimes includes forensic medical examinations, witness statements, corroborative Col), Burundian nationals are currently rejected when seeking asylum in Serbia, which is a shift in practice, the reason for which is not evident when taking into account the previous practice. It should be highlighted that this shift occurred at the same time as Serbia introduced a visa regime for Burundian nationals, in April 2023.

⁹⁰⁶ Rulebook on Police Powers, Official Gazette no. 41/2019 i 93/2022, available in Serbian at: <https://bit.ly/2JOilH1>.

⁹⁰⁷ Whether under the “safe country of origin” concept or otherwise.

It is also important to note that based on current practice, Turkish nationals, who could be political activists, journalists, academics, members of Fetullah Gulen movement, activists of Kurdish origin and others have no prospect of receiving international protection.

In 2022, and for the first time in the history of the Serbian asylum system, temporary protection has been introduced as a form of international protection for refugees fleeing Ukraine. This can only be described as differential treatment and in relation to more than million Syrians who transited through Serbia in 2015/2016 but the temporary protection system was not triggered.

Since the entry into force of the Asylum Act in 2008, the asylum authorities in Serbia have issued 165 decisions granting asylum (refugee status of subsidiary protection) to 234 persons from 28 different countries,⁹⁰⁸ including from Libya (47), Syria (39), Afghanistan (33), Iran (20), Iraq (16), Ukraine (15), Cuba (13), Burundi (10), Sudan (5), Somalia (5), Pakistan (4), Ethiopia (3), Russia (3), Cameroon (3), DR Congo (3), Nigeria (2), Türkiye (2), Stateless (2), Egypt (1), Tunisia (1), South Sudan (1), Lebanon (1), Kazakhstan (1), Bangladesh (1), China (1), Mali (1), Niger (1) and India (1)

For detailed information on the practice regarding each nationality, please see [Regular Procedure – General](#).

⁹⁰⁸ The author of this Report has collected 153 out of 165 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, the official number of persons who received international protection in Serbia is 248. 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 are entitled to a refugee status. The Asylum Commission or Administrative Court upheld appeals and onward appeals respectively and sent the case back to the Asylum Office. However, the Asylum Office issued the same decision, granting subsidiary protection, with regards to the same persons. The lawyers appealed again. There were instances in which 1 person received 3 decisions on subsidiary protection in the period of 7 years and was eventually granted refugee status. 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 3 decisions regarding 3 applicants.

Reception Conditions

Short overview of the reception system

The Commissariat for Refugees and Migration (CRM) is in charge of governing asylum and reception centres in Serbia.⁹⁰⁹ There are 7 Asylum Centres (AC) and 12 Reception Centres (RC) which can be put in use for accommodation of refugees, asylum seekers and other categories of people on the move. What is important to note is that most of these facilities were established in 2015/2016 with significant financial support provided to Serbia from the EU, but also by international organisations such as the UNHCR and IOM, individual countries/embassies and agencies. The main purpose of these facilities was temporary accommodation of hundreds of thousands of persons who transited through Serbia in 2015/2016. For that reasons, the structure and materials available in the reception facilities are mostly designed for a short-term stay.

In 2023, a total of 17 asylum and reception centres were operational for entire or at least the part of the year. Asylum Centre in Bogovađa and Reception Centre in Bela Palanka - Divljana were not operational.⁹¹⁰

Even though the official data of the CRM indicated that total capacities of all reception facilities were 8,155 in 2022, in 2023, the capacities outlined show more realistic picture - 5,625, plus additional 500 beds which can be secured in AC Bogovađa and RC Divljana. Thus, around 6,125 beds can be secured if needed.⁹¹¹ In saying that, the reception capacity is mostly measured in terms of available beds and not in accordance with certain standards, for instance, EUAA Guidelines,⁹¹² or other standards developed by other bodies such as CPT,⁹¹³ or the CESCR.⁹¹⁴

It remains unclear why capacity fluctuates every year, but it is important to outline that no entity has ever performed an independent, non-biased, impartial, thorough and objective assessment of reception conditions in Serbia and in relation to various human rights criteria which imply adequate housing, safety, privacy, hygiene, food, medical assistance, safeguards for vulnerable groups, access to other services, etc. Only after this assessment realistic and human rights-based capacities can be determined and they are significantly lower the official one.

Year	Asylum Centres	Reception Centres	Total
2021	3,050	3,155	6,205
2022	3,050	5,105	8,155
2023	3,050	3,075	6,125

Additionally, during the COVID-19 lockdown in 2020,⁹¹⁵ two additional emergency shelters in **Miratovac** and **Morović** were established but they have not been operational since 2021, and it is reasonable to assume that such establishments will not be used in the future.⁹¹⁶ In any case, 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 from March to May 2020. Two categories of people were

⁹⁰⁹ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁹¹⁰ Data obtained from UNHCR office in Serbia and practice-informed observation by IDEAS.

⁹¹¹ Dana obtained by the UNHCR office in Serbia.

⁹¹² EASO, *EASO Guidance on reception conditions: operational standards and indicators*, September 2016, available at: <http://bit.ly/3j1XabQ>.

⁹¹³ 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>, paras. 103-105.

⁹¹⁴ 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>.

⁹¹⁵ 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.

⁹¹⁶ *Ibid.*, 4 and 5.

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 were used in many other reception facilities, including in **Adaševci**, **Sombor**, **Principovci**, **Subotica** and **Kikinda**.

During 2023, **AC Krnjača** was mostly accommodating vulnerable applicants who were under Article 35 of the Asylum Act: families with small children, persons with disabilities, persons with health and psychosocial needs, LGBTQI+ applicants, SGBV survivors and others. **AC Obrenovac**⁹¹⁷ accommodate single males, but most of them were not willing to apply for asylum. Since the beginning of November 2023, **AC Tutin** and **AC Sjenica** have been hosting majority of registered individuals, including also asylum seekers who lodged their asylum applications in writing. As of 20 April 2022, **AC Vranje**⁹¹⁸ accommodated on average 40 to 70 refugees from Ukraine. **AC Bogovađa** was not operational, while **AC Banja Koviljača** reopened in August 2023, hosting several dozens of foreigners on average, but who are not willing to apply for asylum.⁹¹⁹

It is also worth reiterating that the asylum procedure is conducted only in asylum centres, in 2023 mainly in **AC Krnjača** and sometimes in **AC Obrenovac**. Other asylum centres were visited once or twice by the Asylum Office in 2023, meaning that people accommodated in other asylum facilities do not have effective access to asylum hearing, but they can only lodge asylum application in writing. This contributes to an extensive length of the first instance asylum procedure.

On the other hand, RCs in **Adaševci**, **Sombor**, **Principovci**, **Šid**, **Kikinda**, **Subotica** and other facilities located closer to borders with **Romania**, **Croatia** or **Hungary** had more fluctuations in terms of the number of people present until November 2023 and more flexible policies on entering and exiting the premises, as dozens or even hundreds of refugees and migrants were attempting to irregularly cross to the EU on a daily basis and those who are unsuccessful would simply come back. Accommodation in these facilities does not require registration certificates and these are usually large-scale facilities designed for a short-term stay in tents or other improvised shelters. **RC Pirot**, **RC Bosilegrad** and **RC Dimitrovgrad** are located at the entry points from Bulgaria, while **RC Preševo** and **RC Bujanovac** are located on south, in the vicinity of the border with North Macedonia.

Only **RC Dimitrovgrad** has a reception capacity that is below 100 beds but was not operational for most of the year. In 2022, CRM designated **RC Šid** for accommodation of UASC and the situation remained unchanged in 2023. No single collective facility, including **RC Šid**, meets child-specific standards. Reception facilities in **Subotica**, **Kikinda**, **Sombor**, **Adaševci** have been completely closed in the period November-December 2023.⁹²⁰

What is also important to note is the fact that until November 2023, on a daily basis, several hundred and sometimes even more than a thousand 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. Every once in a while, police operation would be facilitated, and they were transferred by the police forces to **RC Preševo** and other reception facilities.⁹²¹ In the period December 2023, the number of people staying in the informal settlements significantly decreased due to transfer operations of the Serbian MoI which were triggered by yet another armed clash between smuggling groups in which several persons was killed and wounded.⁹²² This also created a situation in which most of the reception facilities

⁹¹⁷ Decision of the Government of the Republic of Serbia, no. 02–5650/2021, available at: <https://bit.ly/3nqLK4Z>.
⁹¹⁸ Ibid.

⁹¹⁹ Information obtained from CRM, UNHCR and through the field work of IDEAS.

⁹²⁰ BVMN, *Illegal pushbacks and border violence reports*, Monthly Reports November and December 2023, available at: <https://bit.ly/3UbbbrHG>.

⁹²¹ BVMN, *Illegal pushbacks and border violence reports, Balkan Region – January 2022*, available at: <https://bit.ly/41wUjNI>, 5; *Illegal pushbacks and border violence reports, Balkan Region – February 2022*, available at: <https://bit.ly/3ocpoaK>, 9; *Illegal pushbacks and border violence reports, Balkan Region – April 2022*, available at: <https://bit.ly/3ME6jba>, 12-13 and *Illegal pushbacks and border violence reports, Balkan Region – July 2022*, available at: <https://bit.ly/3UzJx6B>, 9-10.

⁹²² BVMN, *Illegal Pushbacks and Border Violence Reports Balkan Region - November 2023*, available at: <https://bit.ly/3A4NEhm>, 7-8.

were locked up for several weeks, leading to arbitrary detention of people on the move.⁹²³ In other words, as during the COVID-19 crisis, most of the reception facilities were turned into *de facto* detention facilities.⁹²⁴

In a 2022 press statement, the Government declared 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.'⁹²⁵ 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.⁹²⁶ Out of €160 million provided before the signing of the new agreement in October 2022, €130 million was designated for migration management and for the prevention of illegal migration, while €30 million were allocated to border security.⁹²⁷ It remains unclear 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 may be in need of international protection.

One of the major issues in 2023 was the fact that most of the registered foreigners were referred to **AC Sjenica** and **AC Tutin**, two asylum centres in which applicants' asylum procedure cannot be conducted, as they generally do not organise asylum interviews. Namely, in 2023, the Asylum Office visited these two facilities only once,⁹²⁸ even though several dozen persons lodged their asylum applications in writing. In comparison to the last year, CRM and Mol did not allow transfers from these two centres to **AC Krnjača** or **AC Obrenovac** where Asylum Office can organise asylum interviews, unless people belonged to one of the vulnerable categories (SGBV or LGBTQI+ for instance), when they are allowed to move to **AC Krnjača**.

According to the Asylum Act, a foreigner obtains the status of asylum seeker only after having lodged an asylum application.⁹²⁹ 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.⁹³⁰ Accordingly, even though the vast majority of foreigners were accommodated in asylum and reception centres in the course of 2023, 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.

Only 196 out of 108,808 foreigners detected by the CRM were officially entitled to stay in reception facilities, as they lodged asylum application or subsequent asylum application. This represents a continuation of the trend observed in previous years, which implies that the vast majority of persons in need of international protection who have been transiting through the territory of Serbia since 2008 have been in a legal *limbo*, deprived of any status, but provided with their minimum existential needs in Serbia. Their stay in Asylum and Reception Centres was tolerated – rather 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, as it 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 most of the material reception conditions.⁹³¹ The election of the new Government in May 2024 can potentially bring those amendments to the Parliament's agenda.

Asylum seekers who are granted asylum are entitled to stay in asylum centres up to one year after their decision on asylum became final or if they are provided with financial support they have to leave from the

⁹²³ Radio slobodna Evropa, Stotine srpskih policajaca na granici sa Mađarskom nakon pucnjave u kojoj su ubijena tri migranta, 28 October 2023, available at: <https://bit.ly/3TMWYA7>.

⁹²⁴ See more in AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 74-77.

⁹²⁵ The Government of the Republic Serbia, Press Statement, EU to help Serbia prevent illegal migration, 7 October 2022, available at: <https://bit.ly/41w4qli>.

⁹²⁶ Ibid.

⁹²⁷ Ibid.

⁹²⁸ Information obtained from IDEAS field officers.

⁹²⁹ Article 2 (1) (4) Asylum Act.

⁹³⁰ Article 48 Asylum Act.

⁹³¹ The amendments to the Asylum Act are available in Serbian on the following link: <https://bit.ly/3yepU9U>.

moment the support is granted.⁹³² In practice, most of these people already leave on their private address when they receive a positive decision.

Finally, and taking into consideration the fact that there is no vulnerability assessment upon admission to reception facilities and of the newly arrived foreigners, many vulnerable foreign nationals remain unidentified. And even if they are identified, in most of the cases their stay in reception facilities is no different than stay of less vulnerable categories of people on the move.

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 to provide material reception conditions to asylum seekers and persons granted asylum in Serbia.⁹³³

In the course of the asylum procedure, asylum seekers are entitled to be accommodated in one of the 7 Asylum Centres or other designated facility established for that purpose,⁹³⁴ which consist of 12 Reception Centres.

Persons issued with a registration certificate by the Mol are expected to present themselves at the reception facility indicated in the certificate (the name of the facility is introduced in the registration certificate) from where they can lodge their asylum application. The CRM shall confirm reception of the applicant with a mention to that end in the registration certificate.⁹³⁵

It can be said with certainty that at least several dozen foreigners lodged asylum application with the assistance of the CRM.⁹³⁶

As already outlined, the majority of reception centres accommodate foreigners 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 only tolerated by the CRM. For instance, many people who were staying in the Western camps (**Adaševci**, **Šid** and **Principovci**) or Northern camps (**Subotica**, **Sombor** or **Kikinda**) were not registered, or their certificates have expired, but they were attempting to cross the border with **Croatia**, **Hungary** or **Romania** on a daily basis. Their legal status was unregulated, and for that reason, they can be subject to different arbitrary practices such as denial of access to the reception centre during

⁹³² Article 61 Asylum Act.

⁹³³ Article 23 Asylum Act; Chapters II and III Migration Management Act.

⁹³⁴ Article 51(1) Asylum Act.

⁹³⁵ Article 35(12) Asylum Act.

⁹³⁶ Information obtained through the field work of IDEAS legal officers.

the night or denial of access to food or even medical care. Additionally, there was a significant number of persons residing in the informal settlements in **Belgrade** and at the border areas with **Croatia, Hungary and Romania**. Many of them are UASC.⁹³⁷ They slept in tents or abandoned facilities, deprived of their minimum existential needs and are frequently raided by the MoI and then transferred to reception centres in the south of Serbia. However, since winter 2023, most of these settlements have been destroyed by Serbia security forces and the north of country now barely has any foreign nationals.⁹³⁸

In principle, every foreigner has the possibility to be accommodated in one of the reception facilities. Also those who did not wish to lodge an application in Serbia and instead wished to attempt to crossing into Croatia, Hungary and Romania were usually allowed to reside in the Reception Centres close to the border with said countries. UASC are all placed in **Šid** Asylum Centre, although they may briefly stay in other centres, as detailed below.

If the asylum seeker has the financial means to do so, they may stay outside the reception facilities at their own cost, and exclusively with the 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 the 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.⁹³⁹ 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.⁹⁴⁰ On 31 December 2022, 80 asylum seekers were residing in private accommodation, while this data is not available for 2023. In 2023, 81 UASCs were accommodated in RC Šid.⁹⁴¹

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 3 November 2023 (in original currency and in €): 11,445.00 RSD / 97 €

Asylum seekers staying in centres have the right to material reception conditions including accommodation, food, clothing and a cash allowance.⁹⁴² Since 2018, the new Asylum Act provides for the possibility of a cash allowance for personal needs.⁹⁴³ However, cash allowances have rarely been granted according to the author's knowledge, and such practice was reported by beneficiaries of AC in **Krnjača** in 2022 only few times, while in 2023 no allowance was granted.⁹⁴⁴ They explained that cash assistance of around 4,000 dinars (EUR 34) was monthly provided to families and vulnerable applicants, usually those with serious medical conditions.

Persons seeking asylum and accommodated at an Asylum or a Reception Centre do not have the right to access social welfare. This remains a possibility for persons staying in private accommodation.⁹⁴⁵ 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 the establishment

⁹³⁷ UNHCR Statistical Report for 10 January 2021 highlighted that 1,354 persons were accounted for in informal settlements. On the other hand, Klikaktiv suggests this number likely approaches 3,100 instead. See Klikaktiv, *More People, More Police and Less Safety*, Annual Report 2022, available at: <https://bit.ly/3L2vp2K>, 15.

⁹³⁸ BVMN, *Illegal pushbacks and border violence reports*, Monthly Reports November and December 2023, but see also other reports which describe the life in the informal settlements available at: <https://bit.ly/3TRdfnw>.

⁹³⁹ Article 50(8) Asylum Act.

⁹⁴⁰ Practice-informed observation IDEAS, January 2024.

⁹⁴¹ Information obtained from the UNHCR office in Belgrade on 15 March 2024.

⁹⁴² 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>.

⁹⁴³ Article 50(2) Asylum Act.

⁹⁴⁴ Information received through the CRM response on IDEAS request for the information of public importance no. 019-827/1-2024 on 25 April 2024.

⁹⁴⁵ Article 53 Asylum Act.

of the amount of social allowance. The Decision on Social Assistance sets out the following monthly amounts:⁹⁴⁶

- ❖ Single adult: RSD 11,445.00 (€97)
- ❖ Family member: RSD 5,723.00 (€48)
- ❖ Minor child: RSD 3,434.00 (€29)

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 which mainly revolves around the monthly incomes and the fact that the applicant has to prove that he does not have any income, or their income is lower than the available social allowance. Additional requirement is the certificate of unemployment issued by NES. 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 and it is not clear how many persons granted asylum enjoyed this right since the beginning of the Serbian asylum system.

There have not been any reports regarding difficulties in accessing public funds (local, national or EU funds) which could have hampered on limited the provision of reception conditions.

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 and which is sufficient to cover material reception conditions, as well as if they misuse the allowance received.⁹⁴⁷

A decision on reduction or withdrawal of material reception conditions shall be issued by the CRM and can be challenged before the Asylum Office.⁹⁴⁸ If a decision has been made to reduce or withdraw the cash allowance, the appeal will not have a suspensive effect.⁹⁴⁹

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

All asylum seekers have right to move freely on the territory of the Republic of Serbia, regardless of the reception facility to which they are referred.⁹⁵⁰ There is no official scheme on where asylum seekers would be referred, but it is clear that MoI and CRM communicate on the availability of spaces in different asylum centres. Still, since the end of 2023, all registered persons are referred to AC in Sjenica and AC in Tutin,

⁹⁴⁶ Decision on nominal amounts of social assistance no. 401-00-00260/12/2023-09 31 October 2023, available at: <https://bit.ly/4cKarRT>.

⁹⁴⁷ Article 50(4) Asylum Act.

⁹⁴⁸ Article 50(5) and (6) Asylum Act.

⁹⁴⁹ Article 50(7) Asylum Act.

⁹⁵⁰ Article 48 (1)(8) Asylum Act.

while AC Obrenovac and AC Krnjača which are the closest to the headquarters of the Asylum Office remain almost completely empty.

Provision of material conditions is not subject to actual residence in a specific place and there are no individual decisions in that regards and thus no possibility to appeal the placement in a specific asylum centre. Still, it is clear that referral to AC Sjenica and AC Tutin limit the possibility of asylum seekers to find employment taking in consideration that the most developed area in Serbia is Belgrade area. This kind of practice further discourages asylum seekers from remaining in Serbia.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ⁹⁵¹	19
❖ Asylum Centres	7
❖ Reception Centres	12
2. Total number of places in the reception centres:	6,125
❖ Asylum Centres	3,050
❖ Reception Centres	3,075
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 Government decision.⁹⁵² The work of Asylum Centres and Reception Centres is managed by the Commissariat.⁹⁵³

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. 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.

One of the issues that remained in 2023 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 temporary shelter where they would stay before leaving to one of the EU countries. Still, in 2023, most of the registered persons were referred to AC Sjenica or AC Tutin. The problem that remains is the fact that Asylum Office rarely conducts visits to these facilities and close to no asylum hearing is held there. This is one of the reasons why asylum see.

⁹⁵¹ Both permanent and for first arrivals.

⁹⁵² Article 51(2) and (3) Asylum Act.

⁹⁵³ Article 51(4) Asylum Act.

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 a permanent centre *per se*; 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 3,050. 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 2022,⁹⁵⁴ but it is clear that, to ensure dignified conditions for AC in **Krnjača** and AC **Obrenovac**, capacity should be around 40 to 50% less than the official number provided by the CRM. If the centres AC Obrenovac and AC Krnjača had to accommodate 1,000 persons (as their maximum official capacity would allow), there would be significantly negative consequences in terms of overcrowding, lack of privacy and security, deterioration of hygiene and other aspects of life in collective accommodation would arise.

1.2 Temporary reception centres

In the second half of 2015, the Government opened 12 temporary reception centres in order to provide emergency reception conditions for persons who were irregularly entering Serbia and transiting towards their preferred destination countries in the European Union.

These centres are: **Preševo**, **Bujanovac**, **Pirot**, **Dimitrovgrad**, **Bosilegrad**, **Šid**, **Principovac**, **Adaševci**, **Sombor**, **Subotica**, **Kikinda** and **Bela Palanka** ('Divljana').

In 2023, the respective capacities of the temporary reception centres were as follows:

Temporary reception centre	Border location	Capacity
Preševo	North Macedonia	650
Bujanovac	North Macedonia	255
Sombor	Croatia	300
Principovac	Croatia	200
Adaševci	Croatia	320
Subotica	Hungary	220
Bela Palanka (Divljana)	Bulgaria	300
Dimitrovgrad	Bulgaria	90
Bosilegrad	Bulgaria	110
Pirot	Bulgaria	190

⁹⁵⁴ Except during the COVID-19 lockdown.

Kikinda	Romania	300
Šid	Croatia	140
Total		3,075

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
4. Are single women and men accommodated separately? Yes No
 In some occasions

Overcrowding, lack of privacy and poor hygiene have been just some of the reported issues in the previous years. These deficiencies were already highlighted in the 2017 report of the Council of Europe Special Representative of the Secretary General on migration and refugees who emphasized that standards of accommodation in both Asylum and Reception Centres could potentially raise issues under Article 3 ECHR.⁹⁵⁵ However, and due to the shorter stay in Serbia which is, according to the CRM, around 12 days, the reception facilities in general were not overcrowded in 2023 and most of the reception facilities which have used tents decided to take them out of use. Thus, apart from the dilapidated and worn-out state of most of the facilities, the above-outlined issues have been compensated by the lower number of beneficiaries. On another note, same issues would arise if the number of people increases again.

2.1 Conditions in asylum centres

The conditions in the Asylum Centres vary from one to the other, with those prevailing in the centres in **Banja Koviljača** and **Bogovađa** being arguably of the highest quality AC Banja Koviljača was closed for refurbishing for most of 2021 and for the whole of 2022, and became operational at the end of 2023, but was put out of use again in late January 2024. Thus, two asylum centres in which conditions are the most appropriate were not operational in 2023.

In the following paragraphs, the living conditions, regime of life and available services in different reception facilities in Serbia will be outlined. Most 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 the recording of incoming asylum seekers.

Asylum Centre in Banja Koviljača

AC **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 of the highest quality, especially after the refurbishment. The centre operates an open regime and the living conditions in it are satisfactory: families with children and persons

⁹⁵⁵ 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>.

with special needs are prioritised in terms of accommodation, with single women residing in separate rooms from single men. Asylum seekers accommodated there usually do not have many negative remarks concerning the reception conditions.

The centre in Banja Koviljača has three floors with eleven rooms each, and there are eight showers and eight toilets on each of the floors. The centre has a TV room and a children corner where various creative workshops and activities are organised every day. Measures are taken for the 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 its own heating system and it does not depend on the external heat supply. Asylum seekers are provided meals three times a day, and the meals are specially adjusted to their religious and health needs.

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

A room has been designated for legal counsel and associations providing legal counselling to asylum-seekers. Interpreters are present on a daily basis and legal aid is provided by APC, BCHR and IDEAS. However, the asylum procedure has not been conducted by the Asylum Office in the period December 2023 – January 2024 when this facility was briefly operational. On 17 December 2023, it accommodated 44 persons, while that number dropped to 28 on 31 December 2023.⁹⁵⁶

In said period, there have not been any complaints regarding access to services (e.g. health care) and which could have been reported to UNHCR and its partners, but also other CSOs. It remains to be seen to which extent will AC Banja Koviljača will be used in the future since it used to be a place in which asylum procedure was facilitated swiftly and most of the relevant services were available to beneficiaries.⁹⁵⁷ As outlined in the previous Update, when the number of asylum seekers was under 100, this Asylum Center provided excellent living conditions.⁹⁵⁸

Asylum Centre in Bogovađa

AC **Bogovađa** is a Red Cross facility that has been used for the accommodation of asylum seekers since 2011 with an overall capacity of 200. The capacity can be extended up to maximum 280 beds (which was done during COVID-19 lockdown). 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 a 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 while for other necessities asylum seekers had to go to the closest town called Lajkovac. This also meant that they had to pay for the taxi or to walk for around two hours in order to get to the city centre. This is also why many of them were dissatisfied when referred to this AC and why the fluctuations in the numbers of people the centre hosted was quite significant, as people did not wish to remain in the centre for long periods of time. Thus, the biggest deficiency of this centre is its remote location.

The conditions in this Asylum Centre have substantially improved since the main building was renovated in 2018. The centre has central heating and an adequate number of bathrooms, though they are shared by both men and women. The meals are regular, three times a day, and are served in the common dining room and are adapted to religious and health care needs of residents.

The AC does not have a fence around it; it has video surveillance, and security staff used to be present when the AC was still open. Within the AC premises are several separate buildings for different purposes, one of which is used by the AC management, doctors, the Asylum Office inspectors (which were used at

⁹⁵⁶ Information obtained from the UNHCR office in Belgrade on 15 March 2024.

⁹⁵⁷ See more in AIDA, *Country Report: Serbia – Update on the year 2022*, May 2023, available [here](#), 157-158.

⁹⁵⁸ Ibid.

the time when Asylum Office was regularly visiting the facility), and the Red Cross staff. The largest building is used for asylum seeker accommodation. Another facility is used by charity organisations, such as Caritas, to carry out their activities. There is a children's playground in the courtyard.

A medical team used to be present in the centre every working day. However, the full-time employed doctor resigned in 2021 and was not replaced. As a result, nurses were providing primary healthcare in the period 2021-2022, while the doctor from Lajkovac Health Care Center was visiting the AC as necessary. In case healthcare needs could not have been addressed within the AC healthcare centre, the asylum seekers had been 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 used to be conducted several days after arrival by available medical staff. Access to healthcare services outside the AC was also impeded by the lack of transportation means and drivers as well as the lack of interpreters to assist doctors communicating with their patients. Psychological counselling used to be provided by PIN and Group 484.

In the second half of 2020, an Asylum Office police officer was deployed to AC Bogovađa for the purpose of registering the UASCs who wish to express the intention to seek asylum and to issue registration certificates and identity cards for asylum seekers. However, the registration officer was not present in AC Bogovađa in 2021 and 2022. As a result, unaccompanied children who wished to apply for asylum had to be transported to Police Station Lajkovac. During 2020 and 2021, the vast majority of children residing in this Centre was unregistered and lodging of asylum application or hearings did not resume after the COVID-19 lockdown. The same situation was recorded in 2022.

During 2018, around 110 persons on average were residing in the centre. Families from Afghanistan and Iran represented the majority of residents in 2019. Single women 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 full capacity most of the time. During 2021, after one barrack in AC Krnjača was designated for UASC, half of AC Bogovađa capacity was repurposed for asylum seekers from Cuba. In 2022, the AC was gradually used less and less, and it was finally closed in 2023.

There are several incidents which were related to the potential ill-treatment of residents of Bogovađa and which have never been resolved in terms of individual responsibility of alleged perpetrators who were employed in the AC. In December 2020, following an incident between the children and the employees,⁹⁵⁹ almost half of its population was transferred to RC Preševo, even though this facility is not designated for UASC. The conflict arose when an employee of the centre accidentally stepped on the prayer rug when children were praying. A protest by the UASC ensued and a CRM employee was forced to kiss the prayer rug, while the children recorded her and published the video. The fact that dozens of UASC were subsequently transferred to RC Preševo gives serious reasons for concern, considering that, in 2020, CRM and Mol were frequently transferring, as 'disciplinary measure', 'problematic' foreigners to reception centres where living conditions can be even described as inhumane and degrading.⁹⁶⁰ The transfer was praised by the Ombudsman,⁹⁶¹ which gives another reason for concern because informal forms of punishment, in the form of transferring children to poor living conditions is in clear contradiction with the best interest of the child principle.

In June 2020, a video appeared showing private security staff 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.⁹⁶² 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

⁹⁵⁹ N1, Zaštitnik građana traži podatke o incidentu sa migrantima u Bogovađi, 24 December 2020, available in Serbian at: <http://bit.ly/39A2Tmg>.

⁹⁶⁰ NPM, Извештај о посетама прихватним центрима у Обреновцу и Адашевцима, 16 June 2020, available at <https://bit.ly/3UuvmQv>, 25.

⁹⁶¹ The Ombudsman, Недовољно обезбеђење Центра за азил у Боговађи, део миграната пребачен у Прешево, available in Serbian at: <http://bit.ly/3aCLSav>.

⁹⁶² Mondo, JEZIV SNIMAK iz Bogovađe: Obezbeđenje TUČE DETE MIGRANTA! (VIDEO), available in Serbian at: <http://bit.ly/3pQuu8B>.

the competent public prosecutor.⁹⁶³ This once again showed that the Ombudsman (excluding the NPM department) is reluctant to properly assess cases of human rights violations of refugees and migrants.

This reaction of the Ombudsman is in clear contrast to his much more severe position vis-à-vis the December incident. Same can be said about the Public Prosecutor who, in the case of the UASCs, ordered pre-trial detention, while in the case of the private actors who ill-treated them, he merely opened a pre-investigative procedure.

Asylum Centre in Tutin

AC **Tutin** opened in January 2014 in the 'Dalas' former furniture factory. It was located there until March 2018, when a new accommodation facility for asylum seekers was opened in **Velje Polje**, four kilometres away from downtown Tutin, and 295 km away from Belgrade. Officially, the centre can accommodate 230 persons.

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 the Asylum Office is severely hindered due to unfavourable weather conditions. Namely, the AC in Tutin is located at Plateau where winter is long and harsh and snow frequently blocks the road, which prevents access to the camp for several weeks or even months. Since 2020, the Asylum Office failed to regularly conduct the asylum procedure-related activities, which means that asylum seekers there have not had effective access to the asylum procedure.⁹⁶⁴ The situation remained unchanged in 2023.

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 site, measures are taken to allocate accommodation spaces in accordance with ethnic affiliation, to the extent that accommodation capacities allow. The principle of family unity is respected, and the families are always placed together in 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. AC Tutin 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 and health care needs. The CRM facilitates different workshops and activities within the children's corner, but also for the adults (sewing, hairdressing). Interpreters are provided by different CSOs including Sigma, CRPC and IOM,

The new building has an outpatient clinic with a doctor present twice. In addition, a nurse and interpreters 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.

In 2023, AC Tutin was operational from January to March 2023 and then it was closed until the end of July. After it was reopened, it functioned normally until the end of October in terms of the number of residents. However, and after the CRM and MoI decided to transfer all asylum seekers to AC Sjenica and AC Tutin, AC Tutin has become overcrowded hosting between 250 and 330 residents in the period of November-December. On the other hand, Asylum Office visited this facility only in December 2023.

Asylum Centre in Sjenica

AC **Sjenica** was set up as a temporary centre in the former Hotel Berlin, in the town of Sjenica, to accommodate an increased number of asylum-seekers in Serbia in August 2013. In March 2017, the former textile factory Vesna was added to the Asylum Centre. The old Hotel Berlin, with inadequate

⁹⁶³ The Ombudsman, Заштитник грађана тражи да МУП Србије утврди све околности физичког злостављања малолетних миграната, 23 June 2020, available in Serbian at: <http://bit.ly/2YAvK3C>.

⁹⁶⁴ APC, Azilni postupak nedostižan za izbeglice, 27 November 2020, available in Serbian at: <https://bit.ly/39BgZnj>.

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. Its reception capacity is of 250 persons, accommodated in 27 rooms. It is approximately 250 km away from Belgrade and the underdeveloped road infrastructure poses particular difficulties for the NGOs and the Asylum Office.

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.

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.

In 2020, AC **Sjenica** was mainly used to accommodate UASCs but was mostly empty in 2021, with the exception of between 10 and 20 beneficiaries who required medical attention. In 2022, AC Sjenica hosted less than 80 residents on average and the turnover 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. 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. Between January and August 2023, AC Sjenica hosted between 40 and 200 residents on average. The centre was overcrowded in August (390 residents on 13 August 2023) and in the period ranging between November and December (from 360 to 452 residents). This is also the consequence of the decision of Serbian authorities to refer asylum seekers to this Center or AC Tutin. For that reason, those people who are referred there face difficulty to have their asylum procedure facilitated effectively, which is also one of the reasons why many of them decide to abscond asylum procedure.

Asylum Centre in Krnjača

AC **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 officially host 1,000 persons making it –the biggest asylum centre for accommodation of asylum seekers in Serbia. In practice, however, the AC's actual and realistic capacity is of approximately 500 to 600 residents, when taking into consideration other standards including privacy, safety, overcrowding and hygiene.

The conditions in the centre partially improved after the 2017 renovation of the older barracks. However, video surveillance was installed but the number of security staff is inadequate. Asylum seekers also often report 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. Still, the fact that large number of people come and go has led to the situation in which most of the barracks are in dilapidated state, including the toilets and showers.⁹⁶⁵

Free health care is 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 interpreters and CRM representatives. The lack of interpreters can sometimes 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 had to transfer applicants to the hospital themselves.

⁹⁶⁵ Observed by IDEAS legal representatives during regular visits.

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 observes the principle of family unity when allocating accommodation places to residents. There is a direct bus line, connecting the AC 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 willingness to apply for asylum in Serbia.

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 2020⁹⁶⁶ were rare in 2021 and 2022. Still, and due to the fact that AC Krnjača host vulnerable applicants, including LGBTQI+ applicants, many incidents have been reported in 2023 which implied that residents belonging to this category have been physically assaulted and constantly psychologically abused (offended, mocked and verbally bullied) by the residents of the nearby informal settlement. The most severe incidents were reported to the Police, but the ill-treatment continued and the abusers continue to act with impunity. In 2023, there was a serious physical altercation between the group of Russian asylum seekers and inhabitants of the informal settlement which led to physical injuries.⁹⁶⁷ Many asylum seekers have clearly outlined that they are afraid to walk to AC during night.

As outlined, at the beginning of 2023, the AC Krnjača was designated for vulnerable individuals such as single women, LGBTQI+ persons, families with young 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 does not meet the requirements for the placement of the most vulnerable asylum seekers for the above outlined reasons and general conditions clearly indicate that special reception guarantees are not respected. 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 the period between May and end of October, the numbers varied between 133 and 203, while during November more than 700 persons was accommodated there. This number dropped to 415 and then 290 on the 31 December 2024.

Asylum Centre in Vranje

In May 2017, the Reception Centre in **Vranje** (220 places) opened, in a motel at the entrance of the town. The conditions in Vranje may be described as very positive 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, while this number at the end of the year was around 50. Also, official capacities for 2023, and according to the CRM data was reduced to 150 which is more reasonable.

Asylum Centre in Obrenovac

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. Soon after, the centre was designated 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 to be 650 persons by the CRM. 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

⁹⁶⁶ See more in AIDA, *Country Report: Serbia – Update on the year 2020*, March 2021, available [here](#), 84.

⁹⁶⁷ Observed by IDEAS legal representatives during regular visits to AC Krnjača and reported to IDEAS by its clients.

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 an Asylum Centre but no official activities of the Asylum Office were reported in 2022. However, at the end 2021, detailed reconstruction of the facility started and in the last quarter of 2022, the capacities of this AC had extended to 1000 beds. As previously mentioned, the capacity of the centres should be lower, 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 the AC are satisfactory. In 2023, AC Obrenovac hosted between 340 and 950 residents.

During the 2020 COVID-19 lockdown, RC **Obrenovac**, which has been operating as an Asylum Centre since June 2021, hosted 1,063 foreigners, most of whom were accommodated in military tents, without heating, electricity and sanitary facilities.⁹⁶⁸

The number of foreigners accommodated in asylum centres and reception centres on 31 December 2023 were the following:

Asylum Centre	Capacity	Number of residents on 4 June 2023	Number of residents on 31 December 2023	Overcrowding rate
Banja Koviljača	120	0	28	0%
Bogovađa	200	0	0	0%
Tutin	230	0	249	8%
Sjenica	350	31	364	3%
Krnjača	1000	153	290	0%
Obrenovac	1000	631	407	0%
Vranje	150	65	46	0%
Total	3,050		1,292	

2.2. Conditions in temporary reception facilities

As already outlined, the number of refugees and migrants arriving in Serbia was significantly higher in 2022 in comparison to 2021, but the last quarter of 2022 saw a significant drop in arrivals, and thus in the number of people accommodated in RCs.⁹⁶⁹ In 2023, the number of arrivals was 108,808, and according to the CRM.

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.

Reception centres on the South of the country

The reception ('one-stop') centre in **Preševo** (1,100 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.

⁹⁶⁸ See more in AIDA, *Country Report: Serbia – Update on the year 2022*, May 2023, available [here](#), 165.

⁹⁶⁹ 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 of 2022, after which this number dropped to 3500 to 5,000 persons, inside and outside reception facilities.

On 3 January 2023, 768 persons were accommodated there, while that number in April 2022 was 1,511. During the COVID-19 lockdown, the highest recorded number was 1,501. In the period from 5 November 2023 until 31 December 2023 the number of residents varied from 727 to 290. It is important to highlight that RC **Preševo** is mainly built for short-term stays and is comprised of collective sleeping premises, with several dozen bunk beds and without the possibility to enjoy the right to privacy. 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 1,000, which is the official number.

Also, it is important to note that the geographical location of RC in Preševo is easy for identification, registration and vulnerability assessment of newly arrived foreign nationals because is located close to the border with North Macedonia, a main entry point into Serbia. However, vulnerability assessments are not conducted in practice, leaving this facility to be the place where people would spend several days and would move on with their journey.

RC **Bujanovac** (255 places) in Southern Serbia opened in October 2016, in a former automotive battery factory lying along the Belgrade-Skopje highway. The reception conditions may be described as satisfying, especially when the number of residents is lower than the official capacity. RC Bujanovac was not operational for most of 2021 and 2022, but was fully operational in 2023. Its occupation varied from 100 in January to 452 in November 2023 and remained overcrowded until the end of the year.

Reception Centres on the north of the country

The reception centre in **Sombor** (380 places) opened in 2015, in the warehouse of a military complex close to the border with Croatia. The centre's capacity was increased to 160 places, in comparison to the 120 places available in 2021. On 19 December 2021, the overcrowding rate in this RC was 580%. On 26 September 2022, 768 persons were accommodated in this RC, while on 3 January 2023, this number significantly decreased to 384. In 2023, its official capacity was of 300 places and it hosted between 220 and almost 400 until November 2023 when it was official closed.

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 its failure to meet the requirements for the respect of human dignity (see section on [Access to the Territory](#)). In March 2023, a part of RC Sombor which was consisted of tents burned down.⁹⁷⁰

It is also important to note that RC Sombor was one of the most overcrowded RCs during 2020, accommodating 537 refugees and migrants during the COVID-19 lockdown. 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.⁹⁷¹ It is reasonable to assume that longer stays in such conditions, especially during the COVID-19 lockdown, amounted to inhumane and degrading treatment.

Additional centres function in **Principovac** (220 places), **Adaševci** (1000 places), and **Šid** municipality, close to the Croatian border. In 2022 at RC **Principovci** did not reach more than 250 people, while that number in 2023 varied from several dozen to 316. In September 2022, RC **Adaševci** accommodated 1,243 persons, but in the last quarter of the year, the numbers dropped to 195 persons, all accommodated in solid building outside the rubb halls.⁹⁷² The drop-in number of residents mirrors that of general arrivals at that period. However, in 2023, RC Adaševci hosted several dozen to 929 foreign nationals in conditions which have been identical to those described by the NPM in the following chapter. RC Adasevci was closed in December 2023 and it remains like that until the conclusion of this report.

⁹⁷⁰ RTV, U požaru izgoreo objekat u Prihvatnom centru u Somboru, 2 March 2023, available at: <https://bit.ly/4ahzTvD>.

⁹⁷¹ APC Twitter, available at: <https://bit.ly/3tfQTy2>.

⁹⁷² Rubb halls are big tent constructions used to accommodate up to 100 foreign nationals.

The continuous overcrowding in RC Adaševci has led to foreigners being crammed inside huge tents ('rub-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 rub halls 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 rubb hall 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 rubb hall 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.'⁹⁷³

NPM recommended that all of the rubb halls 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. The fact that RC Adaševci was closed can be considered as a good decision having in mind that unacceptable living conditions have been reported in this facility from the day it was opened.

RC **Principovci** and RC **Adaševci** are considered to be the most unsecure RCs with a very high turnover 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 reporting violence committed by the camp employees. The Ombudsman stated in the Report that:

'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 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.'⁹⁷⁴

'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

⁹⁷³ The Ombudsman, Извештај о посетама прихватним центрима у Обреновцу и Адашевцима, June 2020, available in Serbian at: <http://bit.ly/3j6eL2w>, 14.

⁹⁷⁴ The Ombudsman, Извештај о посетама прихватним центрима у Обреновцу и Адашевцима, June 2020, available in Serbian at: <http://bit.ly/3j6eL2w>, 26-27.

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.⁹⁷⁵

These testimonies were repeated in 2021 and 2022, when several dozen beneficiaries reported physical violence committed by the employees of CRM and private security,⁹⁷⁶ but the situation was less intense in the last quarter of 2022 when the number of residents significantly dropped. Similar cases were not reported in 2023.

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. Residents are accommodated in group container rooms which do not guarantee privacy or the possibility to maintain hygiene. There were instances of attacks and stabbing reported by beneficiaries who resided there, as well as attacks from the local population.⁹⁷⁷ The RC Subotica was overcrowded in 2022, when it illustratively hosted 431 persons in September. In 2023, the highest recorded number of residents was 248. In November 2023, RC Subotica was closed.

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.⁹⁷⁸ 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.

The highest number of residents was recorded in August 2023, when 172 foreign nationals were accommodated there. RC Kikinda was closed in November 2023.

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 **Dimitrovgrad** was not operational in 2021 and 2022, while RC Pirot and RC Bela Palanka reopened but no overcrowding was recorded. In 2023, RC Dimitrovgrad became operational at the end of the year hosting between 40 and 75 residents, while RC Pirot was overcrowded for the most of the year hosting in July around 350 persons, mainly from Morocco. RC Bosilegrad was opened for most of the year offering the best living conditions in refurbished building with separate 4 to 8 bunk beds per room. It was briefly overcrowded in November 2023.

In general, the 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 the aim to provide a short-term stay not exceeding 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 the 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.

⁹⁷⁵ Ibid., p. 26.

⁹⁷⁶ N1, N1 u centru Adaševci: Izbeglice se žale na uslove i nasilje, uprava negira, 9 February 2022, available in Serbian at: <https://bit.ly/3ilvKhB>.

⁹⁷⁷ APC Twitter, available at: <https://bit.ly/3ioXFgC>.

⁹⁷⁸ AIDA, *Country Report: Hungary – Update on the year 2018*, March 2019, available [here](#), 18.

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 conducted for the purpose of legal counselling. Thus, thematic visits aimed at thoroughly documenting and reporting on the living conditions in the Reception Centres should be prioritised in the future. This is important for several reasons. First of all, the official narrative in the past was 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.⁹⁷⁹ And finally, more detailed data on the current state of 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, when one applies the standards of the EUAA and other human rights standards.

Reception centre	Official Capacity	Number of residents on 13 August 2023	Overcrowding rate	Number of residents on 31 January 2023	Overcrowding rate
Preševo	650	683	105%	580	0%
Bujanovac	255	122	0%	132	0%
Sombor	300	238	0%	0	0 %
Principovac	200	75	0%	288	0%
Adaševci	320	367	114%	0	0 %
Subotica	220	212	0%	0	0 %
Bela Palanka	280	0	0%	0	0%
Dimitrovgrad	90	0	0%	41	0%
Bosilegrad	110	106	0%	80	0 %
Pirot	190	358	188%	133	0%
Kikinda	300	123	0%	0	0 %
Šid	140	75	0%	81	0 %

⁹⁷⁹ ECtHR, *Tarakhel v. Switzerland*, Application no. 29217/12, Judgment of 4 November 2014, EDAL, available at: <http://bit.ly/2RvQipS>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?
❖ 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.⁹⁸⁰ Only after the Employment of Foreigners Act (EFA) was adopted at the end of 2014 were asylum seekers recognised as members of a specific category of foreigners entitled to obtain a work permit.⁹⁸¹ EFA was amended in July 2023, introducing more favourable for access to labour market. The novelties imply that access to labour market to asylum seekers is now allowed after 6 months of lodging of the asylum application. Also, it is not necessary anymore to request working permit, but the right to work can be automatically enjoyed after the expiry of the 6 months deadline.⁹⁸²

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market.⁹⁸³

Asylum seekers whose asylum applications have not been decided upon through no fault of their own within 6 months of being lodged have the right to be issued a work permit valid for as long as the asylum procedure is ongoing.⁹⁸⁴ Thus, the entire process is simplified and more favourable for asylum seekers and the only remaining problem remains the time necessary for registration and the 15+8 days deadline to lodge asylum application.⁹⁸⁵ Still, it is not necessary to extend the working permit every six months which makes the life of asylum seekers easier.

Another benefit of the 2023 amendments of EFA imply that it is not necessary anymore to lodge request to the National Employment Service (NES), to pay the fee and to wait, sometimes extensively for the issuance of the working permit.

The only remaining documents that asylum seekers require, and which are mainly obtained with the help of CSOs who are providing legal assistance and from the Asylum Office are:

1. Certificate of lodging of the asylum application
2. Personal number of a foreigner

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

⁹⁸⁰ A11, *Precondition for Integration*, February 2021, available at: <https://bit.ly/2ZYXZcS>, 14-16 and 55.

⁹⁸¹ Article 2 (1) (9) Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014, 113/2017, 50/2018, 31/2019 and 62/2023.

⁹⁸² This has been done through the amendments of Article 3 of the EFA.

⁹⁸³ Article 57 Asylum Act.

⁹⁸⁴ Article 3 EFA.

⁹⁸⁵ See more in AIDA, *Country Report: Serbia – Update on the year 2022, May 2023*, available [here](#), 168.

evident and discouraging effect on their aspiration to stay in Serbia. In 2023, especially in the last quarter, most of the asylum seekers have been referred to AC Sjenica and AC Tutin.

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

- ❖ There is no specialised State authority providing support to access the labour market.
- ❖ There is no regulation governing the manner in which support to access the labour market would be provided,
- ❖ The right to work is not exercised in practice with institutional support, but only with the support of the CSOs that are UNHCR partners.⁹⁸⁶

Another issue is the fact that asylum seekers in general are not recognized as persons who are entitled to any kind of support, including the support in learning Serbian language. Thus, language barrier limits the opportunities in the job market.

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.⁹⁸⁷

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

Pre-school education is not possible for asylum-seeking children, but only for those children who are granted asylum, which will potentially be changed with new amendments to the Asylum Act.⁹⁸⁸ These amendments can be expected in 2024 (but have not been adopted as of July 2024).

Asylum seekers have the right to free primary and secondary education regardless of their age.⁹⁸⁹

The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,⁹⁹⁰ with relevant issues also regulated by the Primary School Act,⁹⁹¹ the Secondary School Act⁹⁹² and the High Education Act.⁹⁹³ These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas.

As already outlined, asylum seekers are not entitled to receive pre-elementary school education.⁹⁹⁴ Also, the Integration Decree does not foresee any kind of support to asylum-seeking children in their preparation for enrolling in elementary school. These children are mainly supported by CSOs and international

⁹⁸⁶ A11, Precondition for Integration, February 2021, available at: <https://bit.ly/2ZYXZcS>, pp. 55-58.

⁹⁸⁷ BCHR, *Right to Asylum in the Republic of Serbia – Periodic Report July-September 2020*, available at: <https://bit.ly/46pjYtd>, p. 41.

⁹⁸⁸ Article 27 of the draft Amendments to the Asylum Act, available at: <https://bit.ly/3yepU9U>.

⁹⁸⁹ Article 55(1) Asylum Act.

⁹⁹⁰ 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.

⁹⁹¹ 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.

⁹⁹² 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.

⁹⁹³ 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.

⁹⁹⁴ Article 48 Asylum Act.

organisations, but it is also important to note that CRM also provides its assistance, even though they are not legally obliged.

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.⁹⁹⁵ Access to education for children shall be secured immediately and, at the latest, within three months from the date of their asylum application.⁹⁹⁶

With joint efforts from 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 a 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 CRM, only 10 asylum seeking children were introduced in the Serbian educational system.⁹⁹⁷ Still, this number probably reflects those children accommodated in ACs, and especially Krnjača camp, but other asylum seeking children staying in private accommodations have enrolled in schools in the municipalities where they live. In 2023, only 14 asylum seeking children in AC Krnjača were official enrolled into elementary schools, while no UASC was enrolled into school in RC Šid.

It is also important to note that there are no specifically designed programs for the preparation facilitated by the State, but that in AC Krnjača, Save the Children was facilitating preparation for those few children who are willing to attend elementary and secondary schools in 2023. Those asylum seekers who are eligible for the university education can be supported by the UNHCR through the DAFI scholarship. Currently, 6 refugees are enrolled into this program, out of which 2 have the status of an asylum seekers.⁹⁹⁸

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.⁹⁹⁹ In 2022, several diplomas were recognized by the ENRIC/NARIC centre for one asylum seekers from Burundi represented by IDEAS. In 2023 4 asylum seekers had their diplomas recognized, and it is reasonable to assume that this number is higher due to the fact that APC and BCHR are providing this type of support as well.

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 the majority of children do not attend schools regularly, due to problems in communication, but also frequent absence from asylum centres and eventual decision to leave Serbia.

⁹⁹⁵ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

⁹⁹⁶ Article 55(2) Asylum Act.

⁹⁹⁷ CRM, Response to the request for the information of public importance np. 019-27/2-2023, 9 March 2023.

⁹⁹⁸ See more at: UNHCR Serbia, Osnajivanje izbeglica kroz visoko obrazovanje - UNHCR Serbia, YouTube, 31 January 2024, available at: <https://bit.ly/3UAtICB>.

⁹⁹⁹ More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

There are no limitations in accessing education system of Serbia, and apart from language barrier and lack of institutional support in preparation for enrolment, there have not been major problems reported. The lack of state support is for now covered by CSOs, UNHCR and Save the Children.

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 an equal right to health care in relation to Serbian citizens, in accordance with the regulations governing health care for foreign nationals.¹⁰⁰⁰ 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.¹⁰⁰¹

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 examinations shall be conducted by medical doctors at the healthcare services within ACs and RCs¹⁰⁰², and in practice, where certain service cannot be provided asylum seekers are transported to the outside medical facilities, usually with the assistance of the CRM and DRC. The examination includes anamnesis (infectious and non-infectious diseases, inoculation status), an general check-up and other diagnostic examinations.¹⁰⁰³

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.¹⁰⁰⁴

In practice, asylum seekers and persons granted asylum have relatively unimpeded access to the national healthcare system in an equal manner to Serbian nationals, including for primary and secondary care, but also referrals to specialist examinations. The costs of healthcare for asylum seekers and persons granted asylum are always covered by the Ministry of Health which also receives financial support from EU.¹⁰⁰⁵ It remains unclear if all the services are solely covered by the EU, especially because there were instances in which medical treatments which were expensive were not covered during the gaps in funding.¹⁰⁰⁶ This was in particularly worrying for the HIV patients and other people with rare diseases which require more expensive and continuous therapy.¹⁰⁰⁷

¹⁰⁰⁰ Article 54 Asylum Act.

¹⁰⁰¹ Article 54(3) Asylum Act.

¹⁰⁰² Article 2 Rulebook on medical examinations.

¹⁰⁰³ Article 3 Rulebook on medical examinations.

¹⁰⁰⁴ Article 4 Rulebook on medical examinations.

¹⁰⁰⁵ The Government of the Republic Serbia, Press Statement, EU to help Serbia prevent illegal migration, 7 October 2022, available at: <https://bit.ly/41w4qli>.

¹⁰⁰⁶ Practice-informed observation by IDEAS, 2022-2023.

¹⁰⁰⁷ Ibid.

However, the Health Care Act (HCA),¹⁰⁰⁸ as well as the Health Insurance Act (HIA),¹⁰⁰⁹ are not harmonized with the Asylum Act. Particularly, the right to healthcare although prescribed to every person, is provided on the basis of the health insurance.¹⁰¹⁰

Thus, and in cases in which asylum seekers were not able to obtain more expensive medical assistance, 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 healthcare insurance by themselves, and in that way secure adequate therapy.¹⁰¹¹

In reality, not all staff of the 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, inclusion in the health insurance system requires a monthly contribution from its beneficiaries. That amount in 2023 was 4,134.73 dinars (around 37 Euros).¹⁰¹² This is an obstacle, since asylum seekers are not able to work in the first 6 months, and they do not receive financial support. Thus, for the inclusion in the health insurance system, they have to rely only on the financial help of international organisations or CSOs who so far have been able to cover the cost due to a low number of asylum seekers in general, and even lower number of persons who require more expensive therapy. This especially represents a problem for people who suffer from chronic diseases and need of constant or expensive therapy.¹⁰¹³

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, especially if they live on the private address, because they are not issued with healthcare cards, nor are they introduced into healthcare records in local medical centres. The health care centres which cover the area where AC Krnjača is located are more familiar with the notion of asylum seekers as beneficiaries of health care. On the other hand, most of other health care centres are not familiar with this and asylum seekers often require to be escorted by lawyer or cultural mediator. There are no indications that this practice will change.

The problems from 2022 were resolved in the same way as in 2023, and all asylum seekers who were seriously ill (e.g., HIV) were assisted by IDEAS legal team in order to access health care insurance, in cooperation with the Republic fund for Health Insurance, and with financial support from UNHCR. In 2023, 6 asylum seekers were enjoying mandatory health care insurance for therapies for AIDS.

With regards to mental healthcare 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*,¹⁰¹⁴ which was adopted by the Ministry of Health and the Commissariat for Refugees and Migration. This Guidance provides 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.¹⁰¹⁵ Still, and in practice, psychological support is provided by CSOs, such as PIN, IAN, but also other NGOs such as APC. Their psychosocial workers regularly visit asylum centres, as well RC in Šid. Psychosocial support is also provided by the IOM. Special assistance

¹⁰⁰⁸ Official Gazette no. 25/19.

¹⁰⁰⁹ 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.

¹⁰¹⁰ Ibid. 3

¹⁰¹¹ Article 17, HIA.

¹⁰¹² The current amount of fee for the introduction in the mandatory health care insurance can be found on the following link: <https://bit.ly/3Wd0t0A3>.

¹⁰¹³ As outlined, that was the case with several asylum seekers suffering from AIDS.

¹⁰¹⁴ Svetozarević, S., Vukčević, M., Pejušković, B., & Simonović, P. (2019), *Guidance for protection and improvement of mental health of refugees, asylum seekers and migrants in republic of Serbia*, available at: <https://bit.ly/3r7wBEZ>.

¹⁰¹⁵ Ibid.

to SGBV survivors is provided by DRC, while ATINA supports survivors of trafficking in human beings, and in coordination with local social welfare centres.

What is important to note is the fact that asylum seekers with psychiatrist issues who require institutionalization are not provided with such opportunity. Namely, in 2023 several asylum seekers were assessed by CSO psychologist and psychiatrists as eligible for institutional care within psychiatric clinics, but these facilities decided not to allow them hospitalization. Thus, in Asylum Center in Krnjača and RC in Bujanovac, there are several individuals who pose threat at least to themselves, but also to others.¹⁰¹⁶

The Republic of Serbia among the first countries in the world to allow refugees, asylum seekers and migrants to receive, under the same conditions as the local population, Covid-19 vaccines.¹⁰¹⁷ 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.

In line with Article 17 of the Asylum Act, asylum seekers who fall under vulnerable categories are entitled to special reception guarantees, which also implies health care needs should be properly addressed. In general, it is possible to access gender-sensitive health care opportunities, meaning that female doctors provide health care services to female asylum seekers. There were no reports which indicate that pregnant women, children or other vulnerable asylum seekers were deprived of specific health care services. IAN provides support to survivors of torture and other forms of ill-treatment, but only when these people are identified as asylum seekers.

However, it is important to note that there is no systematically designed vulnerability assessment for vulnerable foreign nationals when they arrive to reception facilities, and thus, it is impossible to determine to which extent vulnerable categories are identified and referred to support networks of state institutions and CSOs. Usually, identification of vulnerable refugees and asylum seekers is conducted in relation to those individuals who are willing to apply for asylum, while those who stay for shorter periods of time in the country go undetected.

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

Due attention shall be given to applicants' sex and age, status as a person requiring special procedural and/or reception guarantees, as well as family unity, upon placement in a reception facility.¹⁰¹⁸

The Asylum Act defines the specific guarantees that should be granted during the asylum procedure and in relation to reception conditions of asylum seekers with specific needs, including children, 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.¹⁰¹⁹ However, these provisions are only applicable to asylum seekers,¹⁰²⁰ and not to all foreign nationals who arrive to reception facilities and whose number, according to the CRM, has reached 108,808 in 2023. Thus, legal framework clearly neglects the responsibility of the State to conduct different forms of

¹⁰¹⁶ Practice-informed observation by IDEAS, 2022-2023 which were related to several highly vulnerable asylum seekers who are prone to self-harming, violent episodes and alcoholism.

¹⁰¹⁷ WHO, *Refugees and migrants hosted in Serbian reception centres get their COVID-19 vaccine doses*, 12 May 2021, available at: <https://bit.ly/40PxXHI>.

¹⁰¹⁸ Article 50 (3) Asylum Act.

¹⁰¹⁹ Article 17 Asylum Act.

¹⁰²⁰ Who have to lodge asylum applications in line with Article 36 of the Asylum Act, after which they become entitled to rights of asylum seekers enshrined in Article 48.

vulnerability assessment and in line with the indicators which are relevant for survivors of trafficking in human beings, torture survivors, elderly and other above-outlined categories.

On the other hand and in practice, none of the 196 asylum seekers from 2023 underwent any kind of vulnerability assessment nor were reception conditions adapted to their special needs.¹⁰²¹ Even though the representatives of the CRM would claim that every person has an individual vulnerability assessment form, none of the vulnerable clients of IDEAS have ever been provided with such assessment, nor the conditions in which seriously vulnerable applicants are being held respond to their special needs.

In 2023, and for the most of the 2023, vulnerable foreign nationals were placed in AC Krnjača: LGBTQI+, SGBV survivors, single women, families with small children and people with healthcare and psychosocial needs. However, throughout 2023, this facility also hosted dozens and even hundreds of single men from different countries who were mixed with vulnerable population. This meant that LGBTQI+ foreign nationals were placed together with other single males or families with anti-LGBTQI+ attitude, that women, including those who survived SGBV, would share facilities with single males, including showers and toilets. Also, AC Krnjača has been in dilapidated state for some time now, meaning that many of the showers and toilets were broken, leading to even more people using the same facilities. Thus, AC Krnjača does host the most vulnerable persons, but on the other hand, they are also kept in dilapidated conditions.

There is no vulnerability screening of newly arrived foreign nationals 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. Thus, there are no questionnaires nor other instruments which are designed and used for the purpose of vulnerability assessment.

Also, most vulnerabilities are determined in relation to those persons who are willing to apply for asylum and who undergo detailed interviews with their legal representatives and are then referred to different support services. Thus, unless persons are identified in a situation of immediately identifiable vulnerability (e.g. survivors of trafficking in human beings who escaped the traffickers or who were in clear situation of distress), most of the vulnerable people on the move will not be detected as such by CRM employees. Asylum seekers who, due to their vulnerability, are not transferred to a hospital or the safe house for survivors of trafficking in human beings or SGBV, have then only the option to remain in reception facilities in accommodation identical to accommodation provided to non-vulnerable residents.

This means, for example, that 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, including rape victims, are accommodated with men in barracks; or seriously injured people are accommodated in barracks which are not designed for their special needs. This practice is an additional reason why vulnerable people also decide to abscond from the asylum procedure and leave Serbia.

The Asylum Act envisages that material conditions of reception of UASC 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.¹⁰²² In 2020 and 2021, AC **Sjenica** and AC **Bogovada** were designated for UASC, and from 2022, RC Šid. Since most unaccompanied minors reaching Serbia are not willing to apply for asylum, nor they are registered in line with the Article 35 of the Asylum Act, they are all accommodated in RC Šid since 2022 and there is no assessment of their special needs.

On the other hand, of the few children who are willing to apply for asylum are usually placed in the house of the Jesuit Refugee Service or one of the social welfare institutions such as Institute for Education of Children and Youth in Belgrade and the Institute for Education of Youth in Niš, and the Children Home "Jovan Jovanović Zmaj" at the Institute for Protection of Infants, Children and Youth in Belgrade, while

¹⁰²¹ See more in IDEAS, Assessing the reception conditions of LGBTQI+ asylum seekers and refugees in Serbia: Identifying challenges and proposing recommendations and Recognition and Reception: Advancing Support for SGBV Refugees and Asylum Seekers in Serbia, Upcoming.

¹⁰²² Article 53 Asylum Act.

specialised foster care is also an option.¹⁰²³ Since the end of 2015, UASC have been accommodated in institutions in **Belgrade** and **Niš**. These facilities are also used to accommodate minors who are Serbian nationals– primarily underage offenders and are therefore neither specifically-tailored to the needs of foreign nationals, nor particularly suitable for their housing. Regardless, UASC in these facilities are kept separated from other groups, and overall reception conditions are considerably better than those in asylum centres, although a chronic lack of interpreters for various languages spoken by children 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.

However, it is clear that the vast majority of reception facilities do not meet adequate standards. While in 2022 RC **Šid** was established for the same purpose, to host minors. None of these centres, taking into consideration their remote location and lack of available social services, can be considered to be in line with child-specific standards (see more in [Conditions in Asylum Centres](#))

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,¹⁰²⁴ as well as about NGOs providing free legal aid¹⁰²⁵ (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. In all operational reception facilities officers of UNHCR and IOM are providing additional information on rights and responsibilities, while CSOs who are providing legal aid conduct individual and group legal counselling and orientation.

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.¹⁰²⁶

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 1 day1 beforehand by e-mail as well as submit scans of their identity documents. There have not been reported problems on access to reception facilities by third parties.

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

¹⁰²³ Practice-informed observation by IDEAS, 2022-2023.

¹⁰²⁴ Article 56(2) Asylum Act.

¹⁰²⁵ Article 56(3) and (4) Asylum Act.

¹⁰²⁶ AIDA, *Country Report: Serbia – Update on the year 2021, May 2022*, available [here](#), 144-145.

mandate.¹⁰²⁷ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.¹⁰²⁸ 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 terms of reception based on asylum seekers' nationality, except in the case of Ukrainian refugees who are obviously afforded special reception conditions in AC **Vranje**, which was refurbished solely for the purpose of their accommodation. Even though such response should be praised, it obviously testifies to an unequal treatment of non-European persons in need of international protection.

¹⁰²⁷ Article 5 Asylum Act.
¹⁰²⁸ Article 12 Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2023 :	2
2. Number of asylum seekers in detention at the end of 2023 :	0
3. Number of foreign nationals detained in 2023	609
4. Number of detention centres:	3
5. Total capacity of detention centres:	310 ¹⁰²⁹

The possibility of placing asylum seekers in detention in Serbia is prescribed by the Asylum Act.¹⁰³⁰ Detention of asylum seekers represents the form of administrative detention which can also be imposed by the MoI-Border Police Department (BPD) and in relation to foreign nationals who were qualified as irregular migrants, but who can often be in need of international protection (they do not wish to apply for asylum in Serbia).¹⁰³¹ Since Serbia has not been the destination country for most of its refugee population, 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 a strong political component and is qualified as a national security case.¹⁰³² For that reason, the practice of the Asylum Office, as detaining authority, can be described as positive in the vast majority of cases, and in general, Serbia does not have a problem of detention of 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. In 2023, only 1 Afghan national was detained, while one Turkish national was detained by the MoI-BPD, even though, he should have been detained by the Asylum Office and in line with the Asylum Act as he had lodged a subsequent asylum application.¹⁰³³

Asylum seekers are detained in Detention Centre for Foreigners in **Padinska Skela (DC Padinska Skela) a municipality in Belgrade**. 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** is 110 places,¹⁰³⁴ whereas the capacities of DC **Plandište** and DC **Dimitrovgrad** are of 100 places each.¹⁰³⁵ Thus, overall detention capacity is of 310 beds.¹⁰³⁶

To reiterate instances in which asylum seekers are detained are extremely rare, and this attitude of the 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

¹⁰²⁹ Response on the request for the information of public importance no. 07-34/24 received on 15 April 2024.

¹⁰³⁰ Article 77 Asylum Act.

¹⁰³¹ Article 87 Foreigners Act.

¹⁰³² Examples will be described in the following parts of this Chapter.

¹⁰³³ Administration for Foreigners, Decision No. 26-13/22, 14 July 2022.

¹⁰³⁴ It was expanded after the reconstruction which was finalised in 2022.

¹⁰³⁵ See more in, MoI, Izveštaj o sprovođenju Strategije suprotstavljanja iregularnim migracijama za period 2018-2020. godina, available at: <https://bit.ly/4dzBxKX>, 14.

¹⁰³⁶ Response on the request for the information of public importance no. 07-34/24 received on 15 April 2024.

allowed access to the asylum procedure and in general enjoy their rights as persons deprived of their liberty, which are fundamental safeguards against ill-treatment, including *refoulement*.¹⁰³⁷

It is important to note that the immigration detention of individuals declared as irregular foreigners is based on the existence of an expulsion order, issued in line with Article 74 (2) of the Foreigners Act. The expulsion order is issued by immigration police officers from various police departments in Serbia and who are not trained to assess the risks of *refoulement* within the meaning of Article 83 of the Foreigners Act. Thus, decisions on expulsion are issued without the assessment of the objective and individual circumstances of a foreigners and the assessment of expected treatment in third countries or countries of origin. This practice is contentious considering that more than 71% of all detainees in 2023 were nationals of Afghanistan and Syria and, therefore, have *prima facie* claim, while almost 80% can also be considered to be in need of international protection since detainees originated from Palestine, Somalia, Türkiye, Iraq, etc.¹⁰³⁸

Not a single foreigner detained was issued with the registration certificate in 2021. In 2022, only 4 persons were issued a registration certificate at DC **Padinska Skela**, while no foreigners who might be in need of international protection (e.g., from Syria or Afghanistan) were registered as asylum seekers at DC **Plandište** and DC **Dimitrovgrad**. In 2023, 1 foreign national was registered in immigration detention in line with the Article 35 of the Asylum Act.

Thus, in the future, it will be important to address the issue of access to the asylum procedure for detained persons who might be in need of international protection and who are detained for the purpose of forcible removal to their country of origin or third countries.

In 2018, the MoI stopped providing statistical data on the number of detainees qualified as irregular migrants,¹⁰³⁹ but provided the author with the requested data for the purpose of the 2022 Update of this report. This positive practice continued in 2023 and this Report contains comprehensive statistical data for all three detention centres.

And finally, when it comes to the placement of foreign national in immigration detention, 3 reports on the visits to all three facilities published by the NPM in 2023 shed more light on immigration detention practice in Serbia. Namely, in all three reports, the NPM noticed the practice in which immigration detention was ordered on the grounds of facilitation of forcible removal, but in reality, in many of such cases, forcible removal was impossible to execute. For that reason, NPM clearly outlined that immigration detention should not be used in relation to those individuals who are marked as 'unacceptable security risk' and who are suspected of having committed criminal offence or misdemeanour.¹⁰⁴⁰ Detention under these premises was assessed by the NPM as unlawful and arbitrary.¹⁰⁴¹

Persons who are likely to be in need of international protection can be detained on various other grounds. These include being convicted for irregular entry or stay in Serbia without having invoked the benefits of

¹⁰³⁷ 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. See, CPT, *Immigration detention*, March 2017, CPT/Inf(2017)3, available at: <https://bit.ly/3Li4Xzd>, 2.

¹⁰³⁸ Response on the request for the information of public importance no. 07-34/24 received on 15 April 2024.

¹⁰³⁹ However, in its reports, the Ombudsman determined 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, 3 Iranians and 1 Iraqi to Bulgaria.

¹⁰⁴⁰ NPM, Извештај о посети Прихватилишту за странце у Падинској Скели, no. 22900, 12 September 2023, available at: <https://bit.ly/3K0Etnr>, 12.; Извештај о посети Прихватилишту за странце у Пландишту, no. 370, 9 January 2024, available at: <https://bit.ly/3wCECu2>, 13; Извештај о посети Прихватилишту за странце у Димитровграду, no. 7681, 31 March 2023, available at: <https://bit.ly/4bJCgIR>, 12-13.

¹⁰⁴¹ Ibid.

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: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never
3. Are asylum seekers detained during a Dublin procedure in practice? Not applicable

1.1 Detention of asylum seekers

An asylum seeker can be detained by a decision of the Asylum Office, when it is necessary to:¹⁰⁴²

- ❖ Establish their identity or nationality;
- ❖ Establish material facts and circumstances relevant to their asylum application, which cannot be established without the restriction of movement, particularly if there is a risk of absconding;¹⁰⁴³
- ❖ 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.¹⁰⁴⁴

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 2022 plus another one which was related to the subsequent asylum application of a Turkish national who was detained as irregular migrant by the MoI and not Asylum Office. The two cases are similar because they were both subjected to extradition proceedings to their countries of origin, they applied for asylum but did not receive appropriate legal assistance from their representative, they were assessed as national security threats by BIA and their forcible removal are being examined by the CAT, which also issued interim measures. The case of Mr. E.P., Turkish national has to be considered as a case of arbitrary detention since he was not detained under the Asylum Act, but under the Foreigners Act even though his subsequent asylum application was pending.¹⁰⁴⁵

¹⁰⁴² Article 77(1) Asylum Act.

¹⁰⁴³ 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.

¹⁰⁴⁴ Article 58(1)(3) and (7) Asylum Act.

¹⁰⁴⁵ Administration for Foreigners, Decision No. 26-13/22, 14 July 2022.

Case of immigration detention of E.P.

E.P. is a Turkish political dissident accused of being a member of a terrorist organization in Türkiye, who was facing extradition to his country of origin for almost two years. He was detained in DC **Padinska Skela** for the maximum period of 6 months by the Mol.¹⁰⁴⁶ Interestingly, he was not detained by the Asylum Office, even though he lodged a subsequent applicant and, thus, has the status of an asylum seekers. Instead, he was detained as irregular migrant and was served with an expulsion order in accordance with Article 74 (2).¹⁰⁴⁷ The Appellate Court in Belgrade rejected his extradition due to the lack of evidence which was not provided by Turkish authorities.

The contentious element of E.P.'s case was related to the fact that he was detained in DC Padinska Skela even though at that time, his extradition procedure was pending. Also, at that time the CAT issued an interim measure indicating to the Government of Serbia to refrain from sending him back to Türkiye until the end of the procedure before the Committee.¹⁰⁴⁸ He was deprived of his liberty in June 2021 and was placed in extradition detention which, according to the Law on Mutual Legal Assistance in Criminal Matters (LMLAC),¹⁰⁴⁹ cannot last longer than 1 year. Since the maximum length of his detention expired in June 2022, he was supposed to be released and placed under a measure alternative to extradition detention. The Higher Court of Belgrade therefore adopted a measure imposing a specific place of residence on the territory of Belgrade, which is a measure limiting the right to freedom of movement but does not constitute a deprivation of liberty according to the law, but is a typical example of limitation of freedom of movement. Nevertheless, he was placed in DC **Padinska Skela**, which, according to the subjective and objective criteria established by the ECtHR,¹⁰⁵⁰ amounts to a measure of deprivation of liberty. Moreover, only the Mol – Department for Foreigners or Asylum Office - can detain foreign nationals in DC Padinska Skela and under the provisions of either the Foreigner Act or the Asylum Act. In other words, neither LMLAC nor the Criminal Procedure Code,¹⁰⁵¹ as *lex generalis*, provide for the possibility for a foreign national to be detained in immigration detention facilities. Accordingly, E.P. was detained arbitrarily, which was subsequently confirmed by the Appellate Court of Belgrade, which quashed the decision.¹⁰⁵²

Instead of releasing E.P., as a person whose legal status is being decided by the judicial extradition authorities, the Mol issued an expulsion order under the provisions of the Foreigners Act, without conducting any kind of assessment of the risks of *refoulement* in line with the Article 83 of the Foreigners Act, and arguing that E.P. represented a 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, but failed to outline any relevant fact related to the assessment conducted which could allow his legal representatives to dispute such assessment and thus, dispute legality and legitimacy of his detention. The Administrative Court rejected a complaint against E.P.'s immigration detention, also simply relying on the BIA security assessment.¹⁰⁵³ He was released after 6 months.

¹⁰⁴⁶ Mol, Decision on immigration detention no. 26-13/22, 14 July 2022, extended on 14 October 2022.

¹⁰⁴⁷ Mol, Expulsion Decision no. 26-1712/22, 14 July 2022.

¹⁰⁴⁸ CAT, Piroglu v. Serbia, Communication No. 1130/2022, 2 June 2022.

¹⁰⁴⁹ Official Gazette, no. 20/2009, available in Serbian at: <https://bit.ly/325Z8kN>, Article 22.

¹⁰⁵⁰ ECtHR, Guzzardi v. Italy, Application No 7367/76, Judgment of 6 November 1980, available at: <https://bit.ly/3tS73Al>, para. 95; Z.A. and Others v. Russia, Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment of 21 November 2019 [GC], EDAL, available at: <https://bit.ly/3JB0Hdu>, para. 138, 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.

¹⁰⁵¹ 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.

¹⁰⁵² Appellate Court in Belgrade, Decision No. Kre. 8/22, 5 October 2022.

¹⁰⁵³ Administrative Court, Judgment no. U 44363/22, 2 December 2022.

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 a subsequent asylum application, and his placement in DC Padinska Skela was also based on the security assessment of BIA. The only difference is that he was detained on the basis of the decision delivered by the Asylum Office¹⁰⁵⁴ Without any reasoning, the Asylum Office simply invoked the negative BIA security assessment.

A.S.'s legal representatives seized the Higher Court of Belgrade of an appeal against the decision on detention and the extension of the detention, invoking the jurisprudence of the ECtHR in the case of *Muhammad and Muhammad v. Romania*,¹⁰⁵⁵ in which the Court outlined that hiding all of the relevant facts are related to a security assessment denies the applicant of the possibility to challenge the it.

A.S. was released after the maximum period of 6 months and was transferred to AC **Obrenovac**. The Higher Court of Belgrade never decided on his appeal.

Both cases embody the most flagrant form of arbitrary administrative detention, which is unlawfully used for the purpose of extradition procedures and where the applicants are detained under the national security grounds, but without being informed of the reasoning behind the decision, which would allow them to dispute both their detention and expulsion order.

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.¹⁰⁵⁶ However, since there are no adequate facilities located in border areas or in the transit zones, 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

Individuals in need of international protection may be at risk of detention in a number of situations, despite the fact that the Asylum Office rarely resorts to such practices.

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 if they do not possess valid travel documents, or 'in other cases prescribed by the law'.¹⁰⁵⁷ However, this concerns persons who do not express the intention to seek asylum in Serbia, as persons who have done so come under the regime foreseen by the Asylum Act explained above.

Article 87 of the Foreigners Act provides that a foreigner who is in a return procedure can be detained for the purpose of preparing the return or executing the 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 the forcible removal or will attempt to avoid or interfere with the preparations of the return or removal.¹⁰⁵⁸ This form of detention may be ordered if a foreigner:

- ❖ Does not have documents to establish their identity;
- ❖ Does not cooperate in the return procedure and is interfering with their return;

¹⁰⁵⁴ Asylum Office, Decision No. 26-2052/21, 16 September 2022, extended on 15 December 2022.

¹⁰⁵⁵ Application No. 80982/12, Judgment of 15 October 2020, EDAL, available at: <https://bit.ly/3MNcTN5>.

¹⁰⁵⁶ Article 44(1)(1) Asylum Act.

¹⁰⁵⁷ Articles 87 and 88 Foreigners Act.

¹⁰⁵⁸ 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.

- ❖ Has not departed from the Republic of Serbia voluntarily;
- ❖ Has not cooperated in the procedure for establishing their 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,¹⁰⁵⁹ which is not the case at the moment. The current practice entails the stereotypical issuance of a decision on cancellation of residency,¹⁰⁶⁰ or an expulsion decision in case a foreigner does not have any legal grounds to reside in Serbia.¹⁰⁶¹ 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,¹⁰⁶² or the expulsion decision,¹⁰⁶³ does not have a suspensive effect. The appeal against the expulsion decision could have a suspensive effect if there is a risk of *refoulement*.¹⁰⁶⁴ 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 the circumstances of the 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 from 1 January 2023 to 31 December 2023	
Country of Origin	Number of detainees
Afghanistan	50
Morocco	16
Syria	13
Pakistan	10
India	4
Bosnia and Hercegovina	3
Iraq	3
Russian Federation	3
Tunisia	3
Algeria	2
Bangladesh	2
Portugal	2
Türkiye	2
Austria, Azerbaijan, Belarus, Croatia, Libya, Germany, Palestine, North Macedonia, USA and Somalia	1 from each country
Total	123 (including 3 women)

Source: Response on the request for the information of public importance no. 07-34/24 received on 15 April 2024.

In 2022, a total of 272 foreign nationals were detained in DC **Padinska Skelal** for the purpose of forcible removal. Out of that number, 90 were from Afghanistan, 40 from Syria, and others originating from

¹⁰⁵⁹ Article 1 Protocol 7 ECHR.

¹⁰⁶⁰ Article 39 Foreigners Act.

¹⁰⁶¹ Article 74 Foreigners Act.

¹⁰⁶² Article 39(7) Foreigners Act.

¹⁰⁶³ Article 80(3) Foreigners Act.

¹⁰⁶⁴ Articles 80(3) and 83 Foreigners Act.

Türkiye, Iraq, Somalia and other countries in which detainees could face *refoulement*, especially if there is a possibility of a direct return to such countries (Türkiye for instance). Out of the above number of detained foreign nationals, 111 of them were removed via plane, 61 of them was readmitted to Bulgaria, while 16 of them were channelled through the assisted voluntary return (AVR) program conducted in cooperation with the IOM.

In 2023, 123 foreign nationals were detained in DC Padinska Skela. The majority of detainees were from Syria (50) and Morocco (16). It is reasonable to assume that some of the remaining detainees are still in detention at the time of writing of this report, while some of them were returned to Bulgaria under the readmission agreement or their country of origin. The Mol did not provide data on the number of foreigners who were forcibly removed to third countries or countries of origin from DC Padinska Skela, but it is also reasonable to assume that out of 130 individuals who were readmitted to Bulgaria in 2023, some of them were detained in DC Padinska Skela. Also, it is also highly likely that some of them were directly removed to their country of origin, which can be corroborated by the statement of the NPM who monitored the return of Indian and Pakistani nationals to their countries of origin in July 2023.¹⁰⁶⁵ On the other hand, others were released due to lack of possibility of for their return, which was the case for one citizen of Türkiye¹⁰⁶⁶ and one Kyrgyzstan¹⁰⁶⁷ national.

Total number of detainees in DC Dimitrovgrad from 1 January 2023 to 31 December 2023	
Country of Origin	Number of detainees
Syria	178
Afghanistan	79
Morocco	33
Pakistan	15
Palestine	7
Egypt	4
Türkiye	7
Algeria, Bangladesh, Bulgaria, France, Iraq and Germany	1 from each country
Total	333

Source: Response on the request for the information of public importance no. 07-34/24 received on 15 April 2024.

In 2022, 245 foreign nationals were detained in DC Dimitrovgrad and 15 of them were forcibly removed by plane, while 114 were readmitted to Bulgaria, predominately citizens of Afghanistan. A total of 13 Indian citizens was returned though the AVR with the support of the IOM. As already outlined, it is not possible to determine if these people had the possibility to argue a risk of *refoulement* and *chain-refoulement* in Bulgaria, if they were allowed to access the asylum procedure, legal aid, or if they had the possibility to challenge their forced removal through a remedy that has automatic suspensive effect. What is known for certain is that none was registered as an asylum seeker.

In 2023, 333 persons were detained in DC Dimitrovgrad, most of them originating from Syria (178) and Afghanistan (79). According to the readmission data, a total of 130 foreign nationals were readmitted to Bulgaria, and it is reasonable to assume that most of them were detained in the DC Dimitrovgrad. In 2023, NPM monitored forcible removal of 15 Syrians to Bulgaria, but details of this operation were not published on its website.¹⁰⁶⁸

¹⁰⁶⁵ NPM, НПМ обавио надзор над принудним удаљењем два страна држављанина, 26 July 2023, available at: <https://bit.ly/3QRljD1>.

¹⁰⁶⁶ CAT, Piroglu v. Serbia, Communication No. 1130/2022, 2 June 2022. See also Balkan Insight, Serbia Ignores Calls to Free Kurdish Politician on Hunger Strike, 29 July 2022, available at: <https://bit.ly/3PtXgaP>.

¹⁰⁶⁷ CAT, Sulaimanov v. Serbia, Communication No. 1145/2022, 10 August 2022. See also Danas, CAT zatražio od Srbije da se uzdrži od izručenja državljanina Kirgistanu, 24 August 2022, available in Serbian at: <http://bit.ly/3L6gzZe>.

¹⁰⁶⁸ NPM, НПМ обавио два надзора над принудним удаљењима држављана Сирије, available at: <https://bit.ly/4biqANq>.

Total number of detainees in DC Plandište from 1 January 2023 to 31 December 2023	
Country of Origin	Number of detainees
Syria	57
Afghanistan	51
Pakistan	8
Morocco	8
Türkiye	6
India	4
Nepal	4
Bangladesh	3
Egypt	3
Palestine	3
Iraq	3
Libya	1
Russia Federation	1
Total	153

In 2022, out of the 57 foreigners detained at DC **Plandište**, 14 were forcibly removed to Romania. The same questions regarding their effective access to remedies against forcible removal and expulsion exist in their case.

In 2023, a total of 153 foreign nationals were detained in DC Plandište, out of which Syrians (57) and Afghans (51) were the majority. There is no data on the outcome of such detention, but according to the findings of the Ombudsman, immigration detention in Serbia is frequently applied on persons who are assessed as an 'unacceptable security risk'. NPM notes that such grounds are not envisaged in the Foreigners Act and that immigration detention of those foreigners who are suspected of committing crimes and misdemeanours is unlawful and arbitrary

Additionally, another problematic, widespread, practice consists in convicting persons coming from refugee-producing countries for irregular entry or stay, in contravention 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 that these persons are made aware of their rights and understand the proceedings, including the right to seek asylum in Serbia.¹⁰⁶⁹

In general, it appears 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 but who do not wish to apply for asylum could be subjected to immigration detention.

¹⁰⁶⁹ See more in AIDA, *Country Report: Serbia – Update on the year 2021, May 2022*, available [here](#), 25.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law? Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other
2. Are alternatives to detention used in practice? Yes No

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

- ❖ Prohibition on leaving the Asylum Centre, a particular address, or a designated area;¹⁰⁷⁰
- ❖ Obligation to report at specified times to the regional police department, or police station, depending on the place of residence;¹⁰⁷¹
- ❖ Temporary seizure of a travel document.¹⁰⁷²

The above-stated measures can last as long as there are [Grounds for Detention](#) under Article 87 of the Asylum Act and for a period not longer than 3 months, which can exceptionally be extended for an additional 3 months. An asylum seeker who has violated residence or reporting obligations can be detained in the Detention Centre for Foreigners.¹⁰⁷³ 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, including in 2023. 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 issued in 2023 did not motivate the reasons for which alternatives to detention were not applied.

Alternatives to detention is also possible in line with Article 93 of Foreigners Act. This provision enables the MoI to issue a decision imposing mandatory stay in a particular place (mandatory stay) if the foreign national would hinder to the possibilities for competent authority for to execute the forcible removal. It is also provided that such a measure is to be taken in compliance with the principle of proportionality, taking into consideration whether the mandatory stay is the less intrusive measure for the foreign national concerned.

Mandatory stay may be approved for a period of up to one year and may be extended for an additional year, depending on the persistence of the reasons for which the mandatory stay is ordered. A foreign national under a measure of mandatory stay, must remain 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, the competent authority may issue a decision approving that the foreigner temporarily leaves the place of mandatory stay. If a foreign national obstructs his forced removal or does not respect the schedule of reporting, he can be detained in an immigration detention facility. It is possible to challenge this decision before the MoI as the second instance, and before the Administrative Court as the third instance. A foreigner under the measure of mandatory stay and who has no travel document shall be issued a temporary identity card.

¹⁰⁷⁰ Article 78(1)(1) Asylum Act.

¹⁰⁷¹ Article 78(1)(2) Asylum Act.

¹⁰⁷² Article 78(1)(5) Asylum Act.

¹⁰⁷³ Article 79 Asylum Act.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

The Asylum Act envisages that a person with specific circumstances and needs, as prescribed in Article 17, can be detained exclusively if it has been established, based on an individual assessment, that such measure is appropriate, taking into account their personal circumstances and needs, and particularly their health condition.¹⁰⁷⁴ This category includes minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking, severely ill persons, persons with mental disorders, and persons who were subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as women who were victims of female genital mutilation. So far, families and UASC have never been detained during the course of asylum procedure.

In December 2019, two UASC from **Afghanistan** were detained on security grounds,¹⁰⁷⁵ 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 and 2023.

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 Office¹⁰⁷⁶ 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.¹⁰⁷⁷

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

Persons who seek asylum in Serbia may be detained in the Detention Centre in **Padinska Skela**, Belgrade, which can host up to 110 persons. DC **Plandišće** and DC **Dimitrovgrad** can host up to 100 persons.

¹⁰⁷⁴ Article 80 Asylum Act.

¹⁰⁷⁵ Information provided by CSO IDEAS.

¹⁰⁷⁶ Article 78(2) and (3) Asylum Act.

¹⁰⁷⁷ Article 88 Foreigners Act.

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

In 2023, the NPM visited all three immigration detention centres and published comprehensive reports which provide detailed description of admission processes, (lack of) health care and vulnerability screening, living conditions, regime of life, access to rights of persons deprived of their liberty and other aspects of foreign nationals' stay in immigration detention. All information from this Chapter is extracted from these Reports. The author of this Report would like to praise NPM for their comprehensive analysis of immigration detention facilities in Serbia.¹⁰⁷⁸ It is also important to outline that most of the findings are related to foreign nationals detained under the Foreigners Act and for the purpose of forcible removal, but who could be in need of international protection and who might face risks of *refoulement* or *chain-refoulement* in third countries or countries of origin and for whom access to asylum should be safeguarded.

Detention Centre in Padinska Skela

Living conditions and regime of life

DC Padinska Skela is a one-story building which comprises the admission part - where police inspection premises are located - and the accommodation part which is divided into two wings of the building. Both wings have five rooms each and each wing has common area which is considered to be the leisure and dining room, which also has toilets and bathrooms. Also, each wing has a small outdoor area. Due to the ongoing reconstruction, only one wing was operational in 2023, while dormitories in the other wing which is under the reconstruction are used only when the number of detainees increases.

All bedrooms are of the same size, and they measure 21 m² and they are intended to accommodate of 5 persons. Each person has at least 4,1 m² and if we take that into account, official capacities of the DC Padinska Skela should be maximum 55 persons. All rooms have large windows with metal bars, which are wide enough and suitable for natural ventilation. Both natural and artificial lights are satisfactory. light. Each dormitory has a separate sanitary area, which is around 1.5 m² and which is consisted of a stool and a sink. NPM reported poor conditions of sanitary facilities in dormitories and common areas.

Each room has 5 beds, a larger closet with shelves for the storage of personal belongings, groceries, as well as a table with several chairs or benches. The beds are equipped with mattresses and sheets, and which are washed once a week. Still, NPM reported the issue of bed bugs.

The hygiene of the dormitories and other rooms is maintained daily and the Shelter provides them with the means to this end. Hot water is available all the time, and foreigners who do not have means for maintaining personal hygiene receive them upon verbal request. Smoking is allowed in the outdoor area and in the common area.

¹⁰⁷⁸ NPM, Извештај о посети Прихватилишту за странце у Падинској Скели, no. 22900, 12 September 2023, available at: <https://bit.ly/3K0Etrr>; Извештај о посети Прихватилишту за странце у Пландишту, no. 370, 9 January 2024, available at: <https://bit.ly/3wCECu2>; Извештај о посети Прихватилишту за странце у Димитровграду, no. 7681, 31 March 2023, available at: <https://bit.ly/4bJCgIR>.

The open-door regime exists during most of the day, except between 14:00 - 17:00. During the evening, all detainees are locked up in their rooms. The common area has several larger tables and chairs and a television with cable television. The room has several windows, air conditioning and proper artificial lighting.

Small outdoor areas are fenced off and consists of two benches and two fountains. A smaller roof can provide protection from the weather precipitation.

Food is served three times a day. Cooked food is provided, and all three meals are caloric, and are adapted to the religious beliefs. Fresh fruits and vegetables are included in the diet every day, and milk and other dairy products at least 3 times a week. Foreigners are also provided with bottled water. Meals are served in the dining room, except for dinner, which is served in the dormitories. The shelter does not have a canteen in its structure, but there is a possibility to order groceries from police officers and with the money they deposit.

Admission, health care, vulnerably screening and grounds for detention

Upon arrival, all foreign nationals are introduced in the admission record which contains personal data: name, date of birth and citizenship, as well as data related to detention in DC, date and grounds for detention, case file number of the expulsion and detention order and which organizational within the MoI-BDA rendered such decision and transferred the individual to the DC. Every foreigner also has a personal file where the above-outlined decisions are kept.

Immediately after the admission, police officers perform an examination of the foreigner and his personal belongings. The certificate on the personal belongings which are confiscated (mobile phones, money, documents, etc.) is issued to every foreigner. Every newly admitted foreign national is provided with the set of clean sheets. They are then served with the leaflet of rights of persons deprived of their liberty in drafted in line with the Criminal Procedure Code, but not with the leaflet which contains an adequate list of their rights and responsibilities as immigration detainees, as well as the applicable procedures such as expulsion and asylum procedure.

According to the available documentation that NPM has analysed, a significant number of foreign nationals were detained on the grounds of national security reasons and with additional reasoning containing the quote that their stay in Serbia is aimed at 'committing criminal offences'. NPM outlined that this cannot be the grounds for deprivation of liberty, especially because their forcible removal was not realistic. Thus, most of the foreign nationals were arbitrarily deprived of their liberty according to the NPM and the records have shown that most of them have been released after the maximum of 180 days.

Another flagrant example of arbitrary deprivation of liberty was observed by the NPM and related to the detention of a foreign national whose extradition procedure was ongoing and who was imposed with the measure of prohibition of leaving the place of residency, which is a measure related to limitation of the right to freedom of movement, and not limitation of the right to liberty and security. In this way, the person concerned remained in the DC Padinska Skela for more than 8 months.

There is no health care screening nor vulnerability assessment upon admission which has been a long-lasting recommendation of the NPM.

Detention Centre in Plandište

DC Plandište is a metal container one-story building, which consists of a large central corridor that runs along its entire length, with rooms on both sides. Its total capacity is 12 rooms on 1 side and 10 rooms on the other. Rooms for detained foreign nationals are of the same size and identically equipped - 13 m² - two bunk beds which are equipped with mattresses and sheets. Each room has air conditioners, while during the winter period mobile heaters are provided. In addition, there are lockers for personal belongings.

All bedrooms have large windows, which are with the outer sides fenced with metal bars, allowing for sufficient fresh air inflow and natural light. Artificial lighting is also appropriate. Bed linen is changed weekly. Hygiene in the rooms was at a good level and the rooms are cleaned daily.

There are no toilets or bathrooms in the rooms, but there are four shared ones. Sanitary shower units and rooms are in a very bad condition and hygiene is not satisfactory according to the NPM. The glass above the sink was broken. One of the biggest issues reported are taps and showers that are broken so that they can hardly be used. Detained foreign nationals are allowed to use showers every day and according to the NPM reports, hygienic packages are distributed to everyone who does not have means to afford them. Smoking in the dormitories is not allowed.

DC Plandište also has common area which is around 55 m² equipped with tables, chairs and air conditioning, TV and sink with a fountain. This room also serves as dining room and is connected through the window with the room from which they are served meals. Multiple windows enable an adequate flow of natural lighting and fresh air. The room has air conditioners and artificial lighting is appropriate.

The space for staying in the fresh air is a concrete area of about 65 m² and it can be accessed from one room that is not used for the accommodation of foreigners and is fenced off with three sides. This space is available to foreigners every day for no less than two hours, but mostly, if the weather conditions allow it, they can stay outside as long as they want during the day. The space is equipped with several benches, there are no props for physical education exercise, nor other facilities, nor canopies for shelter from atmospheric precipitation.

Meals for detainees are provided from a local restaurant that delivers them meals three times per day, and on the basis of a pre-arranged weekly menu. Menus are available only in Serbian language. Bottled water is regularly provided. Fruit and vegetables are part of the diet. Bearing in mind that most of the foreigners who are detained are Muslims, care is taken to ensure that meals are in accordance with religious beliefs.

The detention facility has its own kitchen, which is mainly used for sharing meals, as well as for preparing of hot drinks. Dining is in the living room, with the possibility of exception when it is also allowed in rooms, for example during fasting. There is no canteen in the facility but there is a possibility for foreigners to receive packages with the desired food items.

Admission, health care, vulnerably screening and grounds for detention

A record is kept of all detained foreigners (Foreigner's Book), in which they have their personal data: name, date of birth and citizenship, as well as data related to detention and expulsion. Immediately after admission, police officers perform an examination of the foreigner and his personal belongings which are confiscated and deposited in specially designated storage and foreigners are issued certificates. Afterwards, they are provided with clean bed linen and allocated to one of the dormitories. They are also served with the document setting out their rights and responsibilities in line with the Criminal Procedure Code, and thus are not informed on all the rights and obligations which are related to their immigration status, including the right to apply for asylum. House rules are available on all the relevant languages. They are not employed interpreters.

For most of the foreigners, they are detained for the purpose of forcible removal, but in most of the cases, as noted by the NPM, there was no prospect of removal and thus, their detention was assessed as arbitrary. Since DC Plandište has become operational, not a single foreign national was forcibly removed and what happened in the end is that all of them are released after the expiry of the maximum 180 days. NPM criticized the fact that immigration detention was used as a measure against those foreign nationals for whom BIA made a negative security assessment.

There is no medical screening nor any other type of vulnerability assessment.

Detention Center in Dimitrovgrad

Living conditions and regime of life

DC Dimitrovgrad is container one-story building, which consists of a larger central corridor with rooms from both sides. There are 24 dormitories in total which are of the same size with the surface area of about 15.6 m² and with the capacity for 4 people. Each one has two bunk beds and two larger cupboards for storing personal belongings. Beds are equipped with new mattresses and complete bedding, which was clean during the NPM visit. Each dormitory has large windows with the metal bars, and which allows sufficient flow of fresh air and natural light. Artificial lighting is also suitable, and in each dormitory, there is an air conditioner. The dormitories assessed by the NPM were considered to be in good condition. The common area is around 60m² also serves as a dining room and due to the open door policy, it is available to all detainees throughout the day. The area is about 60 m² and is equipped with tables and chairs, TV and two sinks with water taps. This room also air-condition and has several windows with bars.

The facility also has 4 shared toilets/bathrooms, with sufficient sanitary facilities (a total of 8 shower cabins and toilets and 10 sinks each), which were found to be clean and in good condition. Hot water is available at all times, and personal maintenance is provided. Foreigners also receive hygiene kits for personal hygiene and they are also provided with the powder for manual washing of personal laundry, which can be done in shared toilets. There are no washing machines. Smoking is allowed in the common area.

The outdoor area is made of concrete walls and is fenced off and is around 50 m². The area is completely unequipped.

Meals are distributed from the nearby restaurant three times per day and they are in line with religious needs of detainees and contains also vegetables and fruits. Potable tap water is available, but bottled water is also provided. There is no canteen, but several times per week police officers, with the money deposited to the accounts of detainees purchase from the lists they provide.

Admission, health care, vulnerably screening and grounds for detention

The admission is facilitated in the same manner as in DC Padinska Skela and DC Plandište, meaning that newly arrived foreigners are introduced in the central register which contains personal data and case files related to their expulsion and detention. After they are searched, their personal belongings such as cell phones, money and other prohibited objects are confiscated after which detainees are issued with a certificate. They are also issued with the document in writing detailing the rights of criminal suspects and in line with the Criminal Procedure Code. Rights and responsibilities, as well as the information which is related to expulsion and detention procedure and other applicable procedures, including the asylum, is not provided, which was criticized by the NPM.

NPM again observed that significant number of detainees is arbitrarily detained, meaning that their forcible removal is not possible, and that the grounds are again based on the security assessment of BIA. This was again qualified as unacceptable practice by the NPM.

There is no health care screening or any kind of vulnerability assessment screening, nor there are interpreters available.

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 UN Special Rapporteur on 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.’¹⁰⁷⁹

The newly established premises at the Nikola Tesla airport are still not considered as suitable for the conduct of the asylum procedure. There are no reports which describe the conditions in 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.¹⁰⁸⁰ NGOs specialised in asylum and migration issues are also entitled to have access to all persons who enjoy the status of asylum seeker.¹⁰⁸¹ 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.¹⁰⁸² CSOs in general have the possibility to access the Detention Centre in **Padisnka Skela**, but was rarely went 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. One may wonder whether more detainees would be willing to apply for asylum if the Mol allowed free visits and therefore unhindered access for lawyers able to provide legal information and counselling.

According to the NPM¹⁰⁸³ lawyers and CSOs have unhindered access to immigration detention facilities, a remark that can be corroborated by the author of this Report. Each detention facility has designated area for confidential talk with the possibility for visual monitoring.

¹⁰⁷⁹ Special Rapporteur on Torture, *Visit to Serbia and Kosovo - 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, available at: <https://bit.ly/47OzTm7>, para. 48.

¹⁰⁸⁰ Articles 5(2), 14, 36(5), 41(3) and 56(4) Asylum Act.

¹⁰⁸¹ Articles 36(5), 41(2), 56(3) and (4) Asylum Act.

¹⁰⁸² Article 41(3) Asylum Act.

¹⁰⁸³ NPM, Извештај о посети Прихватилишту за странце у Падинској Скели, no. 22900, 12 September 2023, available at: <https://bit.ly/3K0Etrr>; Извештај о посети Прихватилишту за странце у Пландишту, no. 370, 9 January 2024, available at: <https://bit.ly/3wCECu2>; Извештај о посети Прихватилишту за странце у Димитровграду, no. 7681, 31 March 2023, available at: <https://bit.ly/4bJCgIR>.

NPM noted a positive development in relation to providing access to legal aid for detainees, in particular as detainees are now provided with the list of lawyers drafted by the Bar Chamber. However, unless they applied for asylum (when CSOs can provide free legal aid), foreign nationals have to pay for the services, meaning that those who do not have financial means, are deprived of the possibility to enjoy legal assistance in their expulsion or detention procedure. NPM is of the opinion that Free Legal Aid Act should be amended in that regards.

There is no medical staff in any of the DCs and foreigners who have health care concerns are transported to local clinics. This practice has been criticized by the NPM.

UNHCR and IOM have regular access to detention facilities in line with their mandates.

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

Applicants can challenge their detention before the competent Higher Court within 8 days from the delivery of the detention decision.¹⁰⁸⁴ The appeal against the Asylum Office's detention decision does not have suspensive effect.¹⁰⁸⁵

Since the decision is drafted in Serbian, and foreigners often do not have legal counsel, there is no real possibility to challenge detention decisions.

In 2022, one applicant from Kyrgyzstan tried to challenge his detention on security grounds before the Higher Court of Belgrade, but the court never decided upon the appeal. It is unclear why the lawmaker has made Higher Courts competent to examine the lawfulness of administrative detention decisions, instead of 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 provides 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 which is not respected in practice, as outlined in the Table below.

The practice of the Administrative Court with regards to the complaints lodged against decisions on immigration detention in the period 1 January 2023 – 31 December 2023						
No.	No. of Judgment	Date of complaint	Date of Judgment	Outcome	Nationality	No. of persons
1.	U 1674/23	2 March 2023	27 March 2023	Upheld	Türkiye	1
2.	U 1676/23	2 March 2023	19 March 2023	Upheld	N/A	1
3.	U 3633/23	26 April 2023	22 May 2023	Rejected	N/A	1
4.	U 4216/23	4 May 2023	29 May 2023	Upheld	N/A	1
5.	U 13151/22	24 March 2022	14 June 2023	Upheld	N/A	1
6.	U 4939/23	22 May 2023	19 June 2023	Upheld	N/A	1
7.	U 5429/23	30 May 2023	4 July 2023	Upheld	N/A	1

¹⁰⁸⁴ Article 78(5) Asylum Act.

¹⁰⁸⁵ Article 78(6) Asylum Act.

8.	U 5979/23	14 June 2023	7 July 2023	Upheld	N/A	1
9.	U 6925/23	7 July 2023	25 July 2023	Rejected	N/A	1
10.	U 7337/23	18 July 2023	7 August 2023	Rejected	N/A	1
11.	U 6926/23	7 July 2023	11 August 2923	Rejected	N/A	1
12.	U 6794/23	5 July 2023	29 August 2023	Upheld	N/A	1

In 2023, a total of 12 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 despite the Administrative Courts having upheld the complaints, it referred the case back to the Mol unit which rendered the decision on detention, which in turn did not release the detainees involved, but referred the case back to the Mol unit which rendered the decision on detention. This essentially means that even if the complaint is upheld, detainees remain in detention.

What can also be seen from the above listed practice is that less only 12 foreign nationals¹⁰⁸⁶ detained under the provisions of the Foreigners Act challenged their detention. This basically means that less than 2% of immigration detainees challenged their detention in 2023.

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 their liberty, specifying the duration of such 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 (see [refusals of entry](#)).

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.¹⁰⁸⁷

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.

¹⁰⁸⁶ In three instances foreign nationals complained twice – once against the decision on detention and the other time against the decision on extension of detention.

¹⁰⁸⁷ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, available at: <https://bit.ly/3uj15La>, para 14.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

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

Despite their right to permanent residence under the Asylum Act,¹⁰⁸⁸ recognised refugees are not issued a separate document certifying this right, 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 asylum.¹⁰⁸⁹

ID cards for persons granted refugee status are valid for a period of five years, while ID cards for persons granted subsidiary protection are valid for a period of one year.

The content of this document is simple and the ID card is a laminated 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 directly contain the EBS, which has to be requested to the Asylum Office. This further causes bureaucratic obstacles for enjoying other rights such as obtaining a work permit, opening bank accounts and other every day needs which can be met only with 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 in 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, except for children who are provided with birth certificate upon birth in Serbia.

¹⁰⁸⁸ Article 60 Asylum Act.

¹⁰⁸⁹ 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.¹⁰⁹⁰ The conditions, the procedure and other issues relevant to their naturalisation shall be defined by the Government on a proposal by CRM.¹⁰⁹¹ Until 2023, the Citizenship Act¹⁰⁹² and Foreigners Act were not harmonised with the Asylum Act. For that reason, the issue of naturalisation was one of the questions put forward by the Committee on Economic, Social and Cultural Rights in 2019.¹⁰⁹³ Thus, none of these two acts recognised foreigners granted asylum as persons who are entitled to acquire Serbian citizenship. The relevant amendments of the Foreigners Act were adopted in 2023 changing the situation.

The amended Foreigners Act introduced the new provision which allows persons granted asylum to apply for permanent residency which is the final step before the possibility for obtaining citizenship. Namely, the Article 68a of the Foreigners Act prescribes that permanent residence will be granted to a foreigner who has resided in Serbia continuously for more than three years on the basis of the approved right to asylum. The conditions for applying for permanent residency are simple and they are basically related to the expiry of the three year period. General requirements from the Article 70 of the Foreigners Act are not imposed on persons granted asylum. First decisions on permanent residency have been granted in the first quarter of 2024.¹⁰⁹⁴

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;

¹⁰⁹⁰ Article 71(1) Asylum Act.

¹⁰⁹¹ Article 71(2) Asylum Act.

¹⁰⁹² Official Gazette no. 135/04, 90/7 and 24/18.

¹⁰⁹³ CESCR, *List of Issues in relation to the third periodic report of Serbia**, 12 November 2019, E/C.12/SRB/Q/3, para. 12.

¹⁰⁹⁴ Practice-informed observation by IDEAS.

- ❖ 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 has been granted protection have ceased to exist;

When considering these criteria, 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 former habitual residence.¹⁰⁹⁵ 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 adopt 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 being 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.¹⁰⁹⁶

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.¹⁰⁹⁷ None among the CSO which provide free legal aid to asylum seekers have reported such practice in 2023.¹⁰⁹⁸

6. Withdrawal of protection status

To the knowledge of CSOs providing legal assistance, withdrawal was not applied in practice in 2023.

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.¹⁰⁹⁹ 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

¹⁰⁹⁵ Article 81(4), (5) and (6) Asylum Act.

¹⁰⁹⁶ Article 82 Asylum Act.

¹⁰⁹⁷ Article 83 Asylum Act.

¹⁰⁹⁸ Information obtained in December 2020 from APC, BCHR, BCMHA, HCIT and IDEAS.

¹⁰⁹⁹ Articles 70(1) and 9(2) Asylum Act.

similar circumstances.¹¹⁰⁰ A family member for whom there exist grounds to be excluded from asylum shall not have the right to family reunification.¹¹⁰¹

The family reunification procedure is also regulated by the Foreigners Act. The Foreigners Act explicitly recognises that that family members of persons granted asylum have to apply for a visa at the diplomatic-consular representation of the Republic of Serbia in the country of origin or third country. They also have to provide evidence of their family tie with a person granted asylum in Serbia. Those people granted visas to arrive to Serbia will be granted temporary residency for the purpose of family reunification, in line with the Article 55 of Foreigners Act.

The general requirements for the any kind of temporary residency are the following:

- ❖ Valid travel document
- ❖ Evidence of means for subsistence during the planned stay
- ❖ Registered address of residence in the Republic of Serbia
- ❖ Evidence of health insurance during the planned stay (around 300 EUR per year)
- ❖ 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, one of APC's clients from **Afghanistan** was reunited with his wife and 5 children who were transferred from **Afghanistan** to the consulate of Serbia in **New Delhi, India**.¹¹⁰² 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. In 2024, a Burundian national granted asylum was reunited with his wife.

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 asylum. According to the Foreigners Act, this entails the status based on the temporary residency which also entails the possibility to obtain foreigners ID card.¹¹⁰³

C. Movement and mobility

1. Freedom of movement

Refugees have equal rights to free movement as foreigners permanently residing in Serbia.¹¹⁰⁴ Since most of the persons granted asylum in Serbia live in private accommodations, 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.

2. Travel documents

The Asylum Act envisages that the Minister of Interior will 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

¹¹⁰⁰ Article 2(2) and (12) Asylum Act.

¹¹⁰¹ Article 70(4) Asylum Act.

¹¹⁰² APC, Prvi slučaj spajanja porodice izbeglice u Srbiji, 20 July 2020, available at: <http://bit.ly/2YCpEzC>.

¹¹⁰³ Article 102 Foreigners Act.

¹¹⁰⁴ Article 62 Asylum Act.

the Act.¹¹⁰⁵ However, for more than 15 years this bylaw had not been adopted. Several legal procedures on the domestic level were initiated, including before the Constitutional Court of Serbia.

The Constitutional Court dismissed the appeals 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.¹¹⁰⁶

Due to this legal vacuum, refugees' freedom of movement was 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.

After the ECtHR's landmark judgment, the bylaw has been finally adopted, and after the Strasbourg Court has found a violation of the Article 2 of Protocol 2.¹¹⁰⁷ On 17 November 2023, the Minister of Interior adopted the Rulebook on the look and content of the travel document for refugees.¹¹⁰⁸ In March 2023, the first travel document was issued to the refugee from Kazakhstan.¹¹⁰⁹

The Asylum Act also envisages that, in exceptional cases of 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.¹¹¹⁰ This provision is yet to be applied. An Afghan refugee with subsidiary protection was issued with the travel document in May 2024.¹¹¹¹

Thus, after 15 years, Serbia has finally resolved the issue of the refugee travel documents, and it is reasonable to assume that all individuals granted refugee status have obtained their travel documents by the time this Report was concluded.

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.¹¹¹² 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.¹¹¹³ 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.

There are no longer stay options or other specialised accommodation for vulnerable groups or young people who have recently turned 18.

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

¹¹⁰⁵ Article 101 Asylum Act.

¹¹⁰⁶ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

¹¹⁰⁷ ECtHR, S.E. v. Serbia, Application No. 61365/16, Judgment of 11 July 2023.

¹¹⁰⁸ Official Gazette no. 104/2023, available at: <https://bit.ly/4e6rDBI>.

¹¹⁰⁹ Government of Serbia, Урочена прва путна исправа за избеглице, 27 March 2024.

¹¹¹⁰ Article 91(3) Asylum Act.

¹¹¹¹ IDEAS acted as a legal representative.

¹¹¹² Article 23 Asylum Act.

¹¹¹³ Official Gazette no. 63/15 and 56/18, hereinafter: Accommodation Decree.

accommodation.¹¹¹⁴ 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 assistance¹¹¹⁵ which is around 34,000 dinars (around 285 EUR), which is not sufficient to secure accommodation in Belgrade for instance (see below).

Also, it is possible that persons granted asylum could be allowed to stay in Asylum Centres for longer than one year, but this is more an issue of tolerated stay than a legal possibility. Nevertheless, all persons granted asylum prior to 2021 have moved to private accommodation. According to a 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.¹¹¹⁶ The total number of persons granted asylum until the end of 2023 is 236, but according to UNHCR data, only a bit more than 100 persons have been provided with integration support during that period. This basically means that around half of those who were 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.¹¹¹⁷ 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 provides 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 lose the right to temporary accommodation assistance.¹¹¹⁸

There are several obstacles in obtaining and enjoying State-funded support 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.¹¹¹⁹ Another challenge identified in practice concerns the necessity of paying a fee to receive a certificate (the signed statement of the beneficiary validated by the Public Notary) that he or she does not receive any income or only receives occasional income from working, a private enterprise, movable property or real estate or from other sources,¹¹²⁰ 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 provided with monthly support. This is because the 14 people who were granted asylum in 2022 were either employed or they enjoyed financial assistance from CSOs or UNHCR. In 2023, only 2 persons granted asylum received this kind of support.¹¹²¹

An additional problem is that more than 200,000 Russian citizens arrived in Serbia after the conflict in Ukraine started, which created a turbulence in the real estate market and a 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.

¹¹¹⁴ Article 2 (1) Integration Decree.

¹¹¹⁵ Article 9 (1) Integration Decree.

¹¹¹⁶ A11, Precondition for Integration, February 2021, available at: <https://bit.ly/2ZYXZcS>, 31-32.

¹¹¹⁷ Mostly Libyans and several Syrians and Iraqis.

¹¹¹⁸ Article 59 (4) Asylum Act.

¹¹¹⁹ Article 10 Integration Decree.

¹¹²⁰ Ibid.

¹¹²¹ CRM Response to the request for the information on public importance no. 019-827/1-2024 of 29 April 2024.

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.¹¹²² The Asylum Act guarantees equality in the rights and obligations of persons granted refugee status with those of persons granted subsidiary protection.¹¹²³ 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. In 2023, the CRM to design integration plans. The total number of plans designed was 53 and in relation to the individuals granted asylum in the period 2019-2023.¹¹²⁴

What is also a positive legislative development in 2023 is the amendment of the EFA which simplified access to labour market and abolished the issuance of working permits. Right to work now is guaranteed now for every asylum seeker after the expiry of 6 months only with the certificate of asylum request being submitted by the Asylum Office in a simple procedure, alongside EBS number certificate.¹¹²⁵ The same is valid for people granted asylum who need to obtain EBS number certificate as well as the certificate of being granted asylum. Refugees and asylum seekers do not need to pay for fees anymore.¹¹²⁶

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.¹¹²⁷

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.¹¹²⁸ 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, in contravention of the relevant provisions of the Integration Decree.¹¹²⁹

¹¹²² Article 65 Asylum Act.

¹¹²³ Article 59 Asylum Act.

¹¹²⁴ CRM Response to the request for the information on public importance no. 019-827/1-2024 of 29 April 2024.

¹¹²⁵ Article 3 (3) Employment of Foreigners Act.

¹¹²⁶ See more in AIDA, *Country Report: Serbia – Update on the year 2022*, May 2023, available [here](#), 195-196.

¹¹²⁷ Article 59 Asylum Act.

¹¹²⁸ National Employment Strategy of the Republic of Serbia for 2011-2020, Official Gazette no. 37/11.

¹¹²⁹ Article 7 of the Integration Decree.

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.¹¹³⁰ Specific degrees of education are regulated by the Law on Primary Education,¹¹³¹ the Law on Secondary Education,¹¹³² and the Law on Higher Education.¹¹³³

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.¹¹³⁴ The Asylum Act also guarantees the right to education of asylum seekers and persons granted asylum.¹¹³⁵ A person granted asylum is entitled to preschool, primary, secondary and higher education under the same conditions as citizens of Serbia.¹¹³⁶ 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.¹¹³⁷ Secondary education is also free of charge, but is not mandatory.

The Integration Decree foresees assistance by the Commissariat for Refugees and Migrations to persons recognised as refugees to enter the educational system.¹¹³⁸ 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 to have foreign degrees recognised, learning support and financial support to engage in extracurricular activities.¹¹³⁹ However, the Government's Decision failed to recognise persons seeking or granted asylum as a category entitled to free of charge textbooks.¹¹⁴⁰ Thus, the Integration Decree is not harmonised with the Government's Decision governing free of charge textbooks.

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.¹¹⁴¹ If refugee children have proof of prior education, enrolment is made according to their age and level of education completed.¹¹⁴² 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.¹¹⁴³ 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.¹¹⁴⁴

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.¹¹⁴⁵ However, the problem regarding

¹¹³⁰ Official Gazette, no. 88/17 and 27/18.

¹¹³¹ Official Gazette, no. 55/13, 101/17 and 27/18.

¹¹³² Official Gazette, no. 55/13, 101/17 and 27/18.

¹¹³³ Official Gazette, no. 88/17, 27/18 – other laws and 73/18.

¹¹³⁴ Article 3(5) Law on Basics of the Education System.

¹¹³⁵ Articles 55 and 64 Asylum Act.

¹¹³⁶ Article 64 Asylum Act.

¹¹³⁷ Article 55 (2) Asylum Act.

¹¹³⁸ Article 2(4) Integration Decree.

¹¹³⁹ Article 6 Integration Decree.

¹¹⁴⁰ 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.

¹¹⁴¹ Ministry of Education, Science and Technological Development Instruction No. 601-00-00042/17-2018 of May 2017.

¹¹⁴² Ibid, 1-2.

¹¹⁴³ Ibid, 2.

¹¹⁴⁴ Ibid, 3.

¹¹⁴⁵ BCHR, *The Right to Asylum in the Republic of Serbia 2018*, available at: <https://bit.ly/3SUYj92>, 87-88.

validation is that refugees must cover the costs of this process themselves. For now, the costs of validation are covered by NGOs.¹¹⁴⁶

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 with 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.¹¹⁴⁷ 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, which is done in practice.

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. In practice, language courses are not always facilitated timely.

Concerning the study of Serbian culture, history and constitutional order, persons recognised as refugees are provided with 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 arrange new or additional ones.¹¹⁴⁸

The conclusion that can be made is that access to education is more or less adequately guaranteed in the legal framework, but an entire set of problems still exists in practice. The UN Committee on the Elimination of Racial Discrimination (CERD) urged Serbia to facilitate more effective inclusion of children, including migrants, in primary education.¹¹⁴⁹

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.¹¹⁵⁰ The outcomes of this project are yet to be seen in 2022, but there were at least 4 foreign diplomas recognised in 2022. The practice remained unchanged, but only 1 foreign diploma was recognized in 2023.¹¹⁵¹

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.¹¹⁵² The Social Welfare Act (SWA) defines social welfare as an organised social activity in the common interest, which 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.¹¹⁵³ The Act also defines Serbian citizens as beneficiaries of social welfare, but states

¹¹⁴⁶ BCHR, *The Right to Asylum in the Republic of Serbia 2019*, available at: <https://bit.ly/3uxBOWX>, 178.

¹¹⁴⁷ Article 4 Integration Decree.

¹¹⁴⁸ Article 5 Integration Decree.

¹¹⁴⁹ 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), available at: <https://bit.ly/3MXhk7e>.

¹¹⁵⁰ More on the European Qualification Passport see on the following link: <https://bit.ly/3wy8gOC>.

¹¹⁵¹ CRM Response to the request for the information on public importance no. 019-827/1-2024 of 29 April 2024.

¹¹⁵² Article 52 and 67 Asylum Act.

¹¹⁵³ Article 2 Social Welfare Act, Official Gazette no. 24/2011.

that foreigners and stateless persons may also receive social welfare in line with the law and international agreements.¹¹⁵⁴ This right is exercised through the provision of social protection services and material support.¹¹⁵⁵ 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).¹¹⁵⁶

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 one lower than the threshold required by the Rulebook.¹¹⁵⁷ Therefore, this Rulebook only provides social welfare to persons residing in private accommodation, which is counterintuitive, as persons staying in such accommodation usually those less reliant on 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.¹¹⁵⁸ 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.¹¹⁵⁹ One of the problems identified in practice is the extensive length of the procedure to be granted social welfare.¹¹⁶⁰

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

As of March 2022, the highest possible amount of social welfare benefits that may be received 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. The amount of money which can be received on these grounds remained unchanged in 2023.

Apart from the housing support by the CRM provided to 1 persons granted asylum in 2023, there are no records which indicate that refugees or asylum seekers were granted social welfare support.¹¹⁶¹

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.¹¹⁶² Additionally, foreigners' health care is also governed by the Health Care Act (HCA)¹¹⁶³ and the Health Insurance Act (HIA)¹¹⁶⁴ as well as the Rulebook on the Terms and Procedure for Exercising the Right to Compulsory Health Insurance (RHI).¹¹⁶⁵ HCA stipulates that refugees and asylum seekers are entitled to health care under equal terms as Serbian nationals.¹¹⁶⁶ All persons granted asylum had unhindered access to COVID-19 vaccines and PCR and other forms of testing.

¹¹⁵⁴ Article 6 SWA.

¹¹⁵⁵ Article 4 (2) SWA.

¹¹⁵⁶ Rulebook on Social Welfare for Persons Seeking or Granted Asylum, Official Gazette no. 44/2008.

¹¹⁵⁷ Ibid, Article 3.

¹¹⁵⁸ Ibid, Article 8.

¹¹⁵⁹ Ibid, Article 9.

¹¹⁶⁰ BCHR, Right to Asylum in the Republic of Serbia 2019, pp. 181-182, available at: <https://bit.ly/3uxBOWX>.

¹¹⁶¹ CRM Response to the request for the information on public importance no. 019-827/1-2024 of 29 April 2024.

¹¹⁶² Article 63 Asylum Act.

¹¹⁶³ Official Gazette no. 25/19.

¹¹⁶⁴ 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.

¹¹⁶⁵ Official Gazette no. 10/10, 18/10 – correction, 46/10, 52/10 – correction, 80/10, 60/11 – Constitutional Court Decision, and 1/13.

¹¹⁶⁶ Article 236, para. 1, and Article 239 of the Law on Health Care.

HIA and RHI do not specify further the rights of refugees other than those from former **Yugoslavian** republics. Thus, the HIA does not recognise the refugees and asylum seekers referred to in the Asylum Act as a separate category of beneficiaries for insurance purposes.¹¹⁶⁷ The same conclusion can be drawn in relation to the Serbian Health Insurance Fund.¹¹⁶⁸ Hence, asylum seekers and persons granted asylum are not entitled to compulsory health insurance and issuance of health insurance cards.¹¹⁶⁹ 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.¹¹⁷⁰

¹¹⁶⁷ Article 11 HIA.

¹¹⁶⁸ Exercising the Right to Compulsory Health Insurance, Serbian Health Insurance Fund, Belgrade, May 2015, available in Serbian at: <http://bit.ly/33amche>.

¹¹⁶⁹ Article 25 HIA; see more in BCHR, Right to Asylum in the Republic of Serbia 2019, available at: <https://bit.ly/3uxBOWX>, 184-185.

¹¹⁷⁰ BCHR, *Right to Asylum in the Republic of Serbia 2019*, available at: <https://bit.ly/3uxBOWX>, 185-187.