

RIGHT TO ASYLUM IN THE REPUBLIC OF SERBIA 2014



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Acronyms

2012 Right to Asylum Report – *Right to Asylum in the Republic of Serbia 2012*,
Belgrade Centre for Human Rights, Belgrade, 2013

2013 Right to Asylum Report – *Right to Asylum in the Republic of Serbia 2013*,
Belgrade Centre for Human Rights, Belgrade, 2014

AA – Asylum Act

AC – Asylum Centre

BCHR – Belgrade Centre for Human Rights

BPS – Border Police Station

CAT – United Nations Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment
or Punishment

CCS – Constitutional Court of Serbia

Commission – Asylum Commission

Committee – United Nations Committee for Economic, So-
cial and Cultural Rights

CPT – European Committee for the Prevention of Tor-
ture and Inhuman or Degrading Treatment or
Punishment

DRC – Danish Refugee Council

ECHR – Convention for the Protection of Human
Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

EU – European Union

GAPA – General Administrative Procedure Act

IOM – International Organization for Migration

MOI – Ministry of Interior

NGO – Non-Government Organisation

NPM – National Preventive Mechanism against Torture

OPCAT – Optional Protocol to the Convention against
Torture and other Cruel, Inhuman or Degrading
Treatment or Punishment

- PD –Police Directorate
PS –Police Station
PTSD –Post-Traumatic Stress Disorder
RBPC –Regional Border Police Centre
Refugee Convention –UN Convention Relating to the Status of
Refugees of 1951
1967 Protocol –Protocol Relating to the Status of Refugees of
1967
RS –Republic of Serbia
RTS –Radio Television of Serbia
Rulebook on Asylum –Rulebook on the Content and Design of the
Applications and IDs Asylum Application Form and Documents
Issued to Asylum Seekers or People Granted
Asylum or Temporary Protection
Serbia as a Country –*Serbia as a Country of Asylum: Observations on
of Asylum the Situation of Asylum-Seekers and
Beneficiaries of International Protection in
Serbia*, UNHCR, August 2012
UN –United Nations
UNHCR –United Nations High Commissioner for
Refugees

International Sources of Law

United Nations

- UN Convention on the Rights of the Child (*Sl. list SFRJ – Međunarodni ugovori i drugi sporazumi* 15/90 and *Sl. list SRJ – Međunarodni ugovori i drugi sporazumi*, 4/69 and 2/97)
- UN Convention Relating to the Status of Refugees of 1951 (*Sl. list FNRJ – Međunarodni ugovori i drugi sporazumi* 7/60)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Sl. list SFRJ – Međunarodni ugovori i drugi sporazumi* 9/91)
- International Covenant on Civil and Political Rights (*Sl. list SFRJ* 7/71)
- Protocol Relating to the Status of Refugees of 1967 (*Sl. list SFRJ – Međunarodni ugovori i drugi sporazumi* 15/67)

Council of Europe

- European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (*Sl. list SCG – Međunarodni ugovori* 9/03)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, (*Sl. list SCG – Međunarodni ugovori* 9/03)

Regulations of the Republic of Serbia

- Act on the Basis of the Education System (*Sl. glasnik RS* 72/09 and 52/11).
- Administrative Dispute Act (*Sl. glasnik RS* 111/09)
- Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation (*Sl. glasnik RS (Međunarodni ugovori)* 103/07)
- Aliens Act (*Sl. glasnik RS* 97/08)
- Asylum Act (*Sl. glasnik RS* 109/07)
- Constitution of the Republic of Serbia (*Sl. glasnik RS* 83/06)
- Constitutional Court Act (*Sl. glasnik RS* 109/07, 99/11 and 18/13 – Constitutional Court Decision)
- Criminal Code (*Sl. glasnik RS*, 85/05, 88/05 - corr, 107/05 - corr, 72/09, 111/09, 121/12 and 104/13).
- Employment of Foreign Nationals Act (*Sl. list SFRJ* 11/78 and 64/89, *Sl. list SRJ* 42/92, 24/94 and 28/96 and *Sl. glasnik RS* 101/05)
- General Administrative Procedure Act (*Sl. list SRJ* 33/97, 31/01 and *Sl. glasnik RS* 30/10).
- High Education Act (*Sl. glasnik RS* 76/05, 100/07 – authentic interpretation, 97/08 and 44/10, 93/12 and 89/13)
- Instructions on the Submission and Approval of Applications for Employing Foreign Nationals (*Sl. list SFRJ* 51/81 and *Sl. list SCG* 1/03 – Constitutional Charter)
- Instructions on Treatment of Persons Taken into and Held in Custody (*Sl. glasnik RS* 101/05, 63/09 – Constitutional Court Decision and 92/11)
- Migration Management Act, *Sl. glasnik RS* 107/12
- Misdemeanour Act (*Sl. glasnik RS* 101/05, 116/08 and 111/09)
- Police Act (*Sl. glasnik RS* 101/2005 and 63/09)
- Primary School Act (*Sl. glasnik RS* 50/92, 53/93, 67/93, 48/94, 66/94 – Constitutional Court Decision, 22/02, 62/2009 – other law, 101/05 – other law and 72/09 – other law)
- Republic of Serbia Government Decision on the List of Safe Countries of Origin and Safe Third Countries (*Sl. glasnik RS* 67/09)

- Republic of Serbia Government Ruling Appointing the Asylum Commission Chairperson and Members No. 119/6141 of 20 September 2012
- RS Government Conclusion 05 Ref No 019-340/13 of 24 January 2013
- RS Government Conclusion 05 Ref No 031-10248/13-1 of 28 November 2013
- RS Government Decision Establishing the Bogovada Asylum Centre 05 Ref No 02-3732/11 (*Sl. glasnik RS* 34/11)
- RS Government Decision on the Network of Social Protection Institutions (*Sl. glasnik RS* 51/08).
- Rulebook on Accommodation and Basic Living Conditions in Asylum Centres (*Sl. glasnik RS* 31/08)
- Rulebook on Asylum Centre House Rules (*Sl. glasnik RS* 31/08).
- Rulebook on Issuance of Work Permits to Aliens and Stateless Persons (*Sl. glasnik RS*, 22/10)
- Rulebook on Medical Examinations of Asylum Seekers on Admission in Asylum Centres (*Sl. glasnik RS* 93/08)
- Rulebook on Records of People Accommodated in the Asylum Centres (*Sl. glasnik RS* 31/08)
- Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum (*Sl. glasnik RS* 44/08)
- Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection (*Sl. glasnik RS* 53/08)
- Secondary School Act (*Sl. glasnik RS* 50/92, 53/93, 67/93, 48/94, 24/96, 23/02, 25/02 - corr, 62/03 – other law, 64/03 – corr. of other law, 101/05 – other law, 72/09 – other law and 55/13 – other law)
- Social Protection Act (*Sl. glasnik RS* 24/11)
- State Border Protection Act, *Sl. glasnik RS* 97/08

Court Decisions

European Court of Human Rights

- *Amuur v. France*, App. No. 17/1995/523/609, judgment of 25 June 1996
- *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, Grand Chamber judgment of 23 February 2012
- *Loizidou v. Turkey*, App. No. 15318/89, judgment of 18 December 1996
- *M.S.S. v. Belgium and Greece*, App. No. 30696/09, Grand Chamber judgment of 21 January 2011

Administrative Court of the Republic of Serbia

- Judgment No. 1 U 540/13 of 20 March 2014.
- Judgment No. 23 U 3831/12 of 11 October 2012.
- Judgment No. 4 U 9049/14 of 1 September 2014.
- Judgment No. 1 U. 9050/14 of 16 September 2014.
- Judgment No. 10 U 6404/12 of 7 March 2014.
- Judgment No. 15 U 8867/13 of 30 January 2014.
- Judgment No. 19 U 539/13 of 23 February 2014.
- Judgment No. 7 U 3834/12 of 7 February 2014.
- Judgment No. 8 U 18705/13 of 21 February 2014.

Constitutional Court of the Republic of Serbia

- Constitutional Appeal Decision UŽ-3458/2013 of 19 November 2013.
- Constitutional Appeal Decision UŽ-1286/2012 of 29 March 2012.
- Constitutional Appeal Decision UŽ-5331/2012 of 28 December 2012.

Preface

With the support of the United Nations High Commissioner for Refugees (UNHCR) Office in Belgrade, the Belgrade Centre for Human Rights (BCHR) has since 2012 been implementing a project aiming to provide legal aid to asylum seekers, improve the asylum-related regulations and practices of the state authorities and propose new, adequate solutions for the identified problems. The BCHR in 2014 also focused on raising awareness of asylum-related issues among the general public and the state authorities. Furthermore, it continued its successful cooperation with the UNHCR and the Judicial Academy in Belgrade and conducted training of misdemeanour judges in Serbia in international standards on the protection of the asylum seekers' human rights.

Serbia continued facing increased mixed migration trends in 2014. The reasons for the influx of aliens are not easy to classify. They include a large number of potential refugees, people coming from refugee producing countries (e.g. Syria, Afghanistan, Eritrea, Somalia, etc.), which calls for additional efforts by the competent authorities to identify various categories of migrants. Mixed migration trends are present throughout the Western Balkans and the civil society in the region has lobbied for the establishment of a network of NGOs focusing on asylum and migrations.¹ The BCHR in late 2014 published the first regional NGO report on the asylum systems² and organised a meeting in Belgrade that was attended also by UNHCR's partners in South-East Europe and representatives of international organisations.

The Protector of Citizens involved himself more actively in monitoring the situation in the field of asylum in 2014 via the National Preventive Mechanism against Torture (NPM), with the aim of ensuring the lawfulness of actions by the competent authorities. The Protector of Citizens conducted a six-month survey, during which he monitored the implementation of his Recommendations No. 75-6/14 of 10 February 2014³ addressed to the Ministry of Interior (MOI) and the Commis-

- 1 The regional approach to the asylum issue was initially launched by UNHCR and the International Organization for Migration (IOM), which organised a round table in Vienna in December 2013 entitled *Refugee Protection and International Migration in the Western Balkans* with a view to supporting Western Balkan states in building protection sensitive systems. All Balkan countries that participated in the round table called for the more active involvement of non-government organisations and closer cooperation with them.
- 2 *An NGO Perspective on the State of Asylum in the Region of Southeastern Europe*, (Belgrade Centre for Human Rights, December 2014), available at http://www.azil.rs/doc/State_of_Asylym_FINAL.pdf.
- 3 The Recommendations regard treatment of asylum seekers and aliens without identification documents and are available in Serbian at http://www.ombudsman.rs/index.php/lang-sr_YU/2012-02-07-14-03-33/3190-2014-02-14-08-47-05.

sariat for Refugees and Migrations. During the survey, the NPM and the BCHR (in its capacity of NPM member) made 30 visits to institutions charged with treatment of aliens and assessed their capacities to implement the Recommendations. The NPM will publish its recommendations monitoring report in 2015.

A very large number of people sought asylum in Serbia in 2014 - 16,490, or three times more than in 2013. Three new provisional Asylum Centres were opened. The Ministry of Interior in 2013 formed a Project Group, mandated with reviewing and analysing the legislation and the situation in the field of asylum and issuing proposals based on which a new asylum law would be drafted. The Project Group invited the civil sector and international organisations to actively involve themselves in addressing the problems in the asylum system. It, unfortunately, stopped working after the March 2014 parliamentary elections. One still cannot qualify the asylum system in Serbia as efficient or the situation in this area as satisfactory. Although the number of asylum seekers has been growing continuously, the capacities of the relevant authorities have not been raised. The Asylum Act remains unchanged, despite the endeavours to improve it by entrusting the MOI Project Group with amending it. Practice has shown that there are many legal lacunae and ambiguities additionally hindering the procedure for obtaining international protection because the circumstances have changed significantly since the Asylum Act was adopted. Of the 28,295 people, who have expressed the intention to seek asylum in Serbia since 2008 (when the Asylum Act came into force), only six have been granted refugee status and 12 subsidiary protection.

The Serbian asylum procedure is still inefficient and unfair. There is no plan for the integration of people granted asylum in Serbia's society. This is one of the reasons why many asylum seekers do not perceive Serbia as a country of refuge, but only as a country in which they will stay temporarily, until they organise their journey to one of the EU member states. On the other hand, the competent authorities have frequently voiced the view that Serbia is merely a "stopover" for the asylum seekers, thus justifying their lack of efforts to improve the asylum system and ensure a life of dignity and security for the refugees and asylum seekers.

The following report is the third annual BCHR report on the situation in the field of asylum in the Republic of Serbia. It presents the information the BCHR obtained in its work with asylum seekers and on asylum issues and the data it obtained from the competent institutions, international organisations, other NGOs and the media. It focuses less on the analysis of the legal framework and institutes established under the valid regulations⁴ and more on the practices of the competent authorities.

The Report was prepared by Pavle Kilibarda, Nikola Kovačević, Lena Petrović, Sonja Tošković and Jovana Stopić, with the assistance of Jelena Dobrić, Maša Vukčević and Vesna Jovanović.

Belgrade, March 2015

4 The 2012 and 2013 *Right to Asylum Reports* analyse the regulations in greater detail.

Overview of the Competent Institutions in the Asylum System

Ministry of Interior

Asylum Unit – The first-instance asylum procedure is within the remit of the Asylum Unit⁵, which is in charge of: registration (identification, photographing and fingerprinting), issuance of IDs to asylum seekers and persons granted asylum, filing of oral asylum applications for the record, interviewing asylum seekers, rendering first-instance decisions on asylum applications, approving asylum seekers’ accommodation outside asylum centres, rendering decisions terminating refugee protection, setting deadlines within which the aliens are to leave the territory of Serbia, rendering decisions on the asylum seekers’ family reunion applications and on applications for travel documents by persons granted asylum. The Asylum Unit staffing is insufficient to ensure the timely and efficient implementation of the procedure.⁶

Aliens Department – Under the AA, aliens may express their intention to seek asylum orally or in writing before a competent MOI officer during a border check when entering the Republic of Serbia, or within its territory.⁷ Therefore, aliens may express the intention to seek asylum at the border and in all police directorates in Serbia, before officers of the Aliens Department of the MOI Border Police Directorate. The competent Aliens Department officers register the expressed intentions of the aliens and issue them certificates thereof.

Asylum Commission

Appeals of Asylum Unit decisions are reviewed by the Asylum Commission, comprising nine members appointed to four-year terms in office by the Government.⁸ Asylum seekers are also entitled to file appeals on grounds of “silence of the administration”, in the event the first-instance authority failed to render a ruling within two months from the day the procedure was initiated. The Asylum Act does not lay down precise criteria for the appointment of the Commission members.

5 The Asylum Office envisaged under the Asylum Act was not established by the end of 2014, wherefore the first-instance asylum procedure was conducted by the Asylum Unit within the Aliens Department of the MOI Border Police Directorate.

6 According to the information BCHR’s legal team obtained whilst extending legal aid to asylum seekers in Serbia, the Asylum Unit is staffed by seven officers who conduct the asylum procedure.

7 Article 22, AA.

8 Article 20, AA.

Administrative Court

Asylum seekers may initiate administrative disputes before the Administrative Court challenging the final decisions of the Asylum Commission and its failure to rule on their appeals within the legal deadline.⁹ The Administrative Court does not have a department or panel specialised for reviewing asylum cases.

Commissariat for Refugees and Migrations

Pending the final decisions on their applications, asylum seekers shall be provided with accommodation and basic living conditions in asylum centres operating within the Commissariat for Refugees and Migrations.¹⁰ The Commissariat shall keep record of persons accommodated in the centres.¹¹ Asylum seekers were accommodated in asylum centres in Banja Koviljača, Bogovada, Obrenovac, Sjenica, Tutin and Krnjača in 2014. The Commissariat is also charged with the accommodation and integration of persons granted the right to refuge or subsidiary protection,¹² and proposing integration plans to the RS Government.

Social Work Centres

Social Work Centres, as the guardianship authorities, appoint guardians for unaccompanied underage asylum seekers and persons deprived of legal capacity without legal representatives before they apply for asylum. Under the AA, the guardians must attend the asylum interviews.¹³

Misdemeanour Courts

Pursuant to the Refugee Convention, the AA guarantees that no asylum seeker shall be held liable for illegal entry or presence in the Republic of Serbia provided that they apply for asylum without delay and provide a valid explanation for their illegal entry or presence;¹⁴ this provision ensures unhindered access to the asylum procedure. Proceedings before misdemeanour courts for illegal entry¹⁵ or presence in Serbia¹⁶ may be discontinued in the event the court establishes that the defendant is seeking asylum in Serbia.

9 Article 15, GAPA.

10 Article 21, AA.

11 Article 64, AA.

12 Articles 15 and 16, Migration Management Act.

13 Article 16, AA.

14 Article 8, AA.

15 Article 65(1), State Border Protection Act.

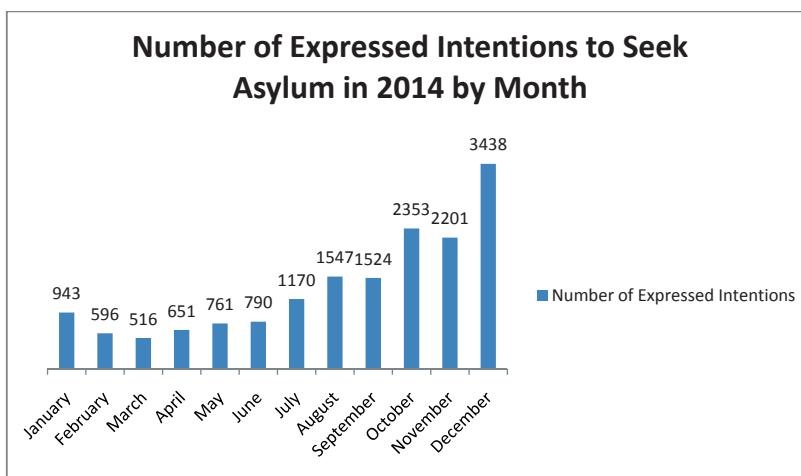
16 Article 85, Aliens Act.

Statistics

All statistical data on first-instance asylum procedures and procedures before the Asylum Commission were obtained from the UNHCR Belgrade Office and the MOI in response to BCHR's request for access to information of public importance.¹⁷ The data on the accommodation of asylum seekers were provided by the Commissariat for Refugees and Migrations.¹⁸

Statistics on the Number of Expressed Intentions to Seek Asylum

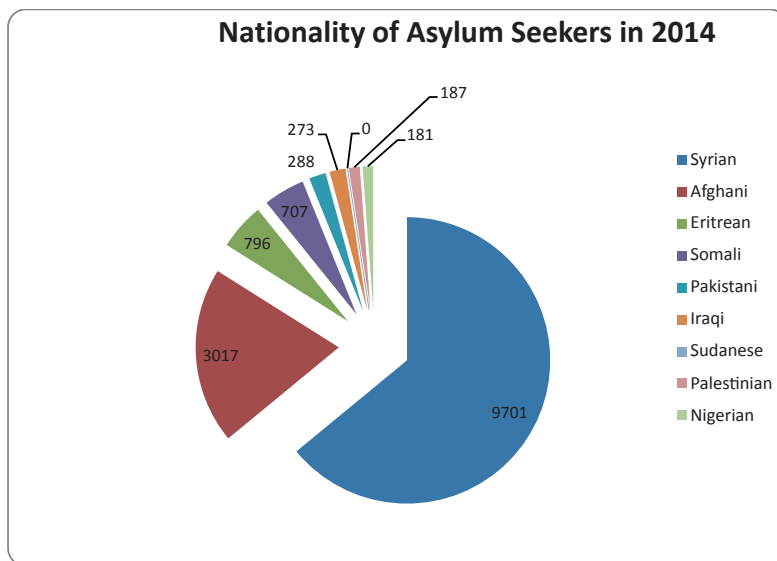
A total of 16,490 people expressed the intention to seek asylum from 1 January to 31 December 2014. Of them, 1,563 were unaccompanied minors (1,478 boys and 85 girls). The intention to seek asylum was expressed by 943 people in January, 596 people in February, 516 people in March, 651 people in April, 761 people in May, 790 people in June, 1,170 people in July, 1,547 people in August, 1,524 people in September, 2,353 people in October, 2,201 people in November and 3,448 people in December 2014.



17 MOI letter No. 6 – 11/15 of 27 January 2015.

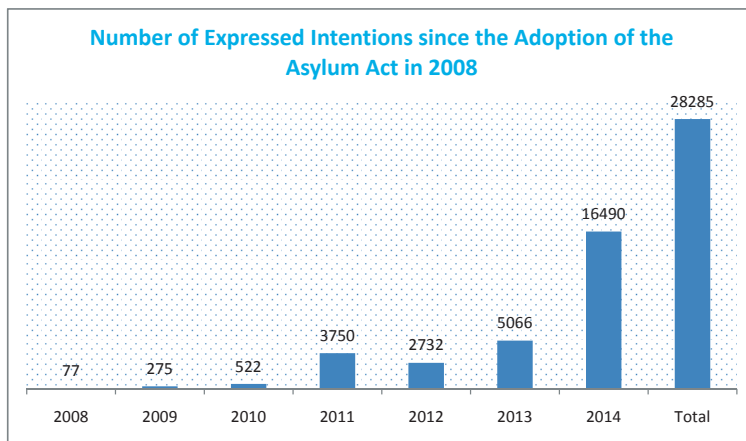
18 Reply of the Commissariat for Refugees and Migrations No. 019 -701/1-2015 to BCHR's request for access to information of public importance of 2 March 2015.

Breakdown of the aliens who expressed the intention to seek asylum in 2014 by country of origin: Syria – 9,701, Afghanistan - 3,017, Eritrea - 796, Somalia - 707, Pakistan - 288, Iraq - 273, Sudan - 231, Palestine - 187, Nigeria - 181, Mali - 171, Ghana 157, Bangladesh - 108, Iran - 85, Congo - 68, Gambia - 58, Cameroon - 53, Ivory Coast - 48, DR of Congo - 31, Sierra Leone - 30, Comoros - 30, Yemen – 21, Guinea - 24, Senegal - 25, India - 21, Rwanda - 18, Algeria and Libya – 16 each, Tunis -10, Morocco and Mauritius - 7, Egypt - 5, Burkina Faso - 2, Togo and Uganda – 14 each, Cuba - 13, Central African Republic - 9, Ukraine - 7, Sri Lanka and Ethiopia – 6 each, Liberia - 4, Macedonia and Saudi Arabia - 3 each, France and South African Republic – 2 each, and Chad, Russia, Tanzania, Benin, Bosnia and Herzegovina, Nigeria, the Czech Republic, Myanmar and Albania – 1 from each.



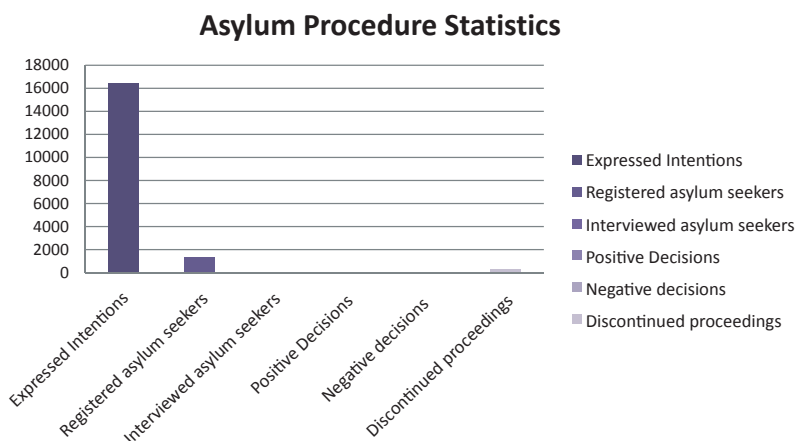
MOI records show that eight people expressed the intention to seek asylum at Belgrade airport Nikola Tesla, while, according to BCHR’s records, 12 people expressed the intention to seek asylum at the airport. Twenty-four people expressed the intention to seek asylum at the Padinska Skela Aliens Shelter, 15,739 foreign nationals did so in the regional police directorates and 715 at the border.

A total of 28,285 people expressed the intention to seek asylum in Serbia since the Asylum Act came into force: 77 in 2008, 275 in 2009, 522 in 2010, 3,132 in 2011, 2,723 in 2012, 5,066 in 2013 and 16,490 in 2014.



Asylum Procedure Statistics

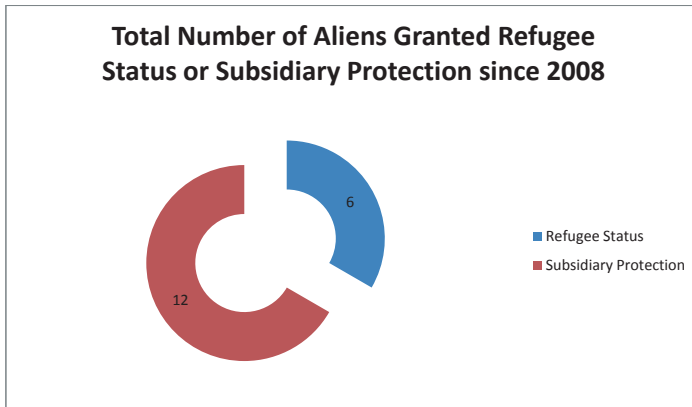
In 2014, the Asylum Unit registered 1,350 people, received 388 asylum applications and interviewed only 18 asylum seekers. The Unit upheld six asylum applications, dismissed 12 applications and discontinued proceedings regarding 307 applications. The Asylum Commission received 13 appeals of Asylum Unit decisions in the same period – it upheld two appeals and overturned the first-instance rulings and rejected seven appeals as ill-founded. The Commission was reviewing four appeals at the time this report was finalised.



The Asylum Commission received seven appeals challenging the silence of the administration and it ordered the Asylum Unit to rule on the applications

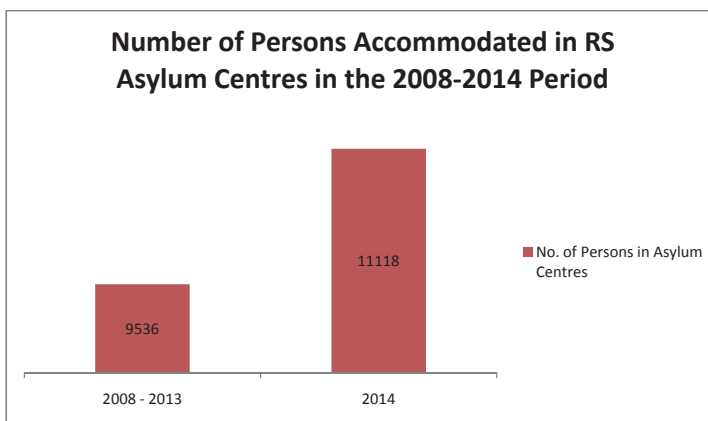
within 30 days. Of them, the Asylum Unit upheld three asylum applications, dismissed two applications and discontinued the review of two of them.

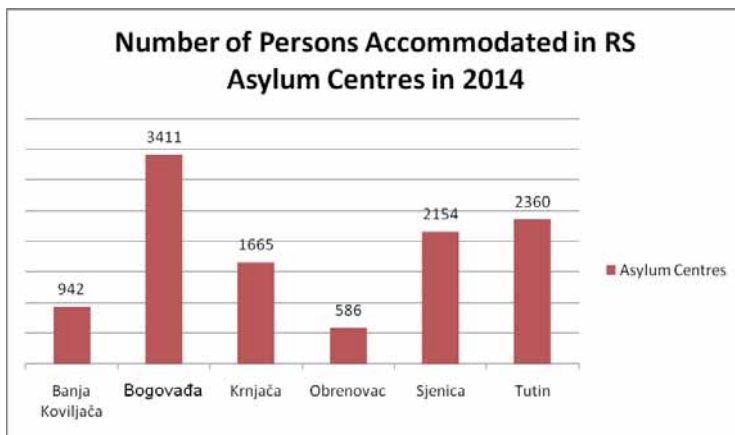
Serbia's authorities granted refugee status to six and subsidiary protection to 12 people altogether, from 1 April 2008, when the Asylum Act came into force, until 31 December 2014.



Statistics on Accommodation of Asylum Seekers

A total of 9,536 people stayed in the asylum centres from 2008 to early 2014. The asylum centres accommodated 11,118 people in 2014 alone, i.e. more than over the previous five years together. Herewith a breakdown of the asylum seekers accommodated in Serbia's Asylum Centres in 2014: 942 in the Banja Koviljača AC, 3,411 in the Bogovađa AC, 1,665 in Krnjača AC (PIM), 586 in the Obrenovac AC (Hotel Sava Tent), 2,154 in the Sjenica AC (Hotel Berlin) and 2,360 in the Tutin AC.





Asylum Procedure

Serbia is bound by numerous universal and regional international human rights protection treaties directly or indirectly relevant to protecting the rights of asylum seekers, notably: the 1951 UN Convention Relating to the Status of Refugees of 1951 (hereinafter: the Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees (hereinafter: the 1967 Protocol), the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child.¹⁹

The Constitution of the Republic of Serbia guarantees the right to refuge.²⁰ The asylum procedure, rights and obligations of asylum seekers, refugees and people granted subsidiary protection are governed in detail by the 2007 Asylum Act, which came into force on 1 April 2008. The General Administrative Procedure Act (GAPA) applies subsidiarily in the asylum procedure, while the reviews of claims filed with the Administrative Court are conducted in accordance with the Administrative Dispute Act.

Access to Serbia's Territory and the Asylum Procedure

An alien must be in the jurisdiction of the competent authorities of a specific state to be able to apply for asylum or express the intention to seek asylum.²¹ Aliens usually access the asylum procedure by entering the territory of a state (lawfully or unlawfully) and expressing the intention to seek asylum or applying for asylum before the representatives of the authorities of that state. Aliens may, however, find themselves under the jurisdiction of the authorities of a specific state even though they are outside its formal borders.²² In other words, aliens may express the intention to seek asylum in no man's land between two

19 More on the internal legal framework in the *2013 Right to Asylum Report*, pp. 19 -20.

20 Article 57(1).

21 Usually MOI officers.

22 More on the jurisdiction of the state authorities of a specific state and the states' individual liability for the actions of their authorities in: Guy S. Goodwin-Gil and Jane McAdam, *The Refugee in International Law - Third Edition*, (Oxford University Press, 2011), p. 245.

states, in the airport transit zones²³ and any other places effectively controlled by the authorities of a specific state.

Under the Asylum Act, aliens may express the intention to seek asylum orally or in writing to competent MOI officials at a border checkpoint of the Republic of Serbia or within its territory.²⁴ The aliens shall be registered and under the obligation to report to the authorised officers of the Asylum Office or one of the asylum centres within the following 72 hours.²⁵ Registration entails issuance of a certificate of the expressed intention to seek asylum²⁶, the content of which is specified in the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection (hereinafter: Rulebook on Asylum Applications and IDs). The Rulebook provides for the issuance of three copies of the certificates: one is given to the alien, one is forwarded to the Asylum Office without delay and the third is filed in the MOI unit that issued it. These legal provisions should be interpreted in accordance with the above criteria for establishing state jurisdiction.

Every refugee is, initially, also an asylum-seeker until a specific state renders a decision on his or her asylum application.²⁷ Therefore, to protect refugees, asylum-seekers must be treated on the assumption that they may be refugees until their status has been determined.²⁸

Most of the aliens who can reasonably be assumed to be refugees²⁹ enter Serbia illegally and the failure to recognise their intentions to seek asylum may result in their treatment as irregular migrants and forced deportation from Serbia, without the opportunity to obtain refugee status or subsidiary protection, which may result in the violation of the principle of *non-refoulement*.³⁰

During its work with the officers of the competent authorities, the BCHR gained the impression that they often assumed that the aliens seeking asylum in

23 More in ECtHR's judgment in the case of *Amuur v. France*, App. No. 19776/92, of 25 June 1996.

24 Article 22(1), AA.

25 Article 22(2), AA.

26 Article 23(2), AA.

27 "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee." *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (UNHCR, Geneva, 2011), para. 28, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4f33c8d92>.

28 "Note on International Protection", (UNHCR, 31 August 1993) para. 11, available at: <http://www.refworld.org/type,UNHCRNOTES,,3ae68d5d10,0.html>.

29 Given that they fled Syria, Iraq, Somalia, Eritrea, Sudan or other states in fear of widespread violence or persecution on one of the grounds in the 1951 Refugee Convention.

30 More on the non-refoulement principle in the *2012 Right to Asylum Report*, pp. 29-30.

Serbia were using the asylum system to avoid deportation from Serbia and as a stopover, before travelling on to an EU member state.³¹ Such assumptions may adversely affect the way in which the asylum procedure is conducted.

As mentioned, 16,490 aliens expressed the intention to seek asylum in Serbia in 2014. Most certificates of intention to seek asylum were issued by the police directorates with territorial jurisdiction for the asylum centres. In other words, many aliens first went to the ACs and the AC staff referred them to the closest police stations to express their intentions to seek asylum and obtain their certificates.³² The fact that many asylum seekers first come to ACs has led to suspicions that their smugglers drive them or refer them directly to the ACs. BCHR's legal team on several occasions noticed groups of aliens getting out of vehicles that drove them to the ACs. In its Serbia 2014 Progress Report, the European Commission noted that "[I]n the first half of the reporting period, in particular, there were allegations of illicit activities carried out within the Serbian asylum system, facilitated by organised criminal groups. The authorities should open an official enquiry on those issues. More generally, efforts are needed to prevent asylum centres from being targeted by organised crime groups involved in smuggling migrants."³³

Access to the Asylum Procedure in the Police Directorates and Regional Border Police Centres

MOI statistical data indicate that 15,739 aliens expressed the intention to seek asylum in the regional police directorates (PDs) and that 715 of them expressed that intention in the border areas. Although the police issued a significant number of certificates in 2014, there are still risks that police officers do not always recognise the aliens' intention to seek asylum, both due to communication problems and their incorrect interpretation of the valid regulations.

This risk is particularly great in situations in which the police deprive aliens of liberty on suspicion of illegal entry, residence in or transit through

31 The BCHR legal professionals had the opportunity to acquaint themselves with the capacities of the competent Serbian authorities to recognise the aliens' needs for international protection during their regular activities involving the extension of legal aid to asylum seekers, their activities within the NPM and within the project *Networking and Capacity Building for More Effective Migration Policy in Serbia – Pursuing Further Progress*.

32 During the implementation of NPM-related activities, the BCHR established that, e.g. the Valjevo PD issued 2,630 certificates by 17 November 2014, that the Novi Pazar PD issued 1,578 certificates by 3 September 2014 and that the Belgrade PD Aliens Department issued 5,876 certificates by 15 December 2014.

33 *Serbia 2014 Progress Report*, (European Commission, Brussels, 8 October 2014), page 52, available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

the Republic of Serbia. Police officers usually communicate with the aliens in English.³⁴ It is, however, reasonable to assume that not all aliens deprived of liberty are sufficiently fluent in English to ensure that they receive the necessary information from the police officers and that their status (of asylum seekers or irregular migrants) is properly determined. This problem could be addressed by drafting a factsheet listing the rights of aliens deprived of liberty³⁵ and their right to seek asylum in Serbia in the event they had left their country of origin due to violence or persecution. The factsheet should be translated into the languages spoken by the aliens (English, French, Arabic, Farsi and Urdu) and handed out to them.³⁶

On the other hand, aliens have problems accessing the asylum procedure in specific PDs and Regional Border Police Centres (RBPCs), where some officers interpret the expression of intention to seek asylum extremely restrictively. For instance, police officers in some PDs issue certificates only to aliens who explicitly mention the word “asylum”,³⁷ a practice observed in the past as well.³⁸ Furthermore, police officers in the Kanjiža police station are of the view that aliens Hungary returned to Serbia under the Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation³⁹ are not entitled to seek asylum in Serbia.⁴⁰ Such aliens may thus be deprived of access to the asylum procedure, which may lead to the violation of the non-refoulement principle. In addition, asylum seekers complained to BCHR’s legal team in 2014 that the Loznica police station was not issuing them certificates that they had expressed the intention to seek asylum. The NPM established during its visit to this station that it had not issued any certificates in the first seven months of 2014.⁴¹

34 Information obtained by the BCHR team extending legal aid to asylum seekers and within NPM-related activities.

35 Under Art. 27 of the Serbian Constitution, all persons deprived of liberty by a state authority shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to notify any person of their choice about deprivation of liberty without delay.

36 “It is essential that newly arrived irregular migrants be immediately given information on these rights in a language they understand. To this end, they should be systematically provided with a document explaining the procedure applicable to them and setting out their rights in clear and simple terms. This document should be available in the languages most commonly spoken by the detainees and, if necessary, recourse should be had to the services of an interpreter.” CPT 19th General Report [CPT / Inf (2009) 27], para. 84, available at: <http://www.cpt.coe.int/en/annual/rep-19.pdf>.

37 As the BCHR ascertained during the NPM visit to the Prijepolje PD on 23 September 2014.

38 See the *2012 Right to Asylum Report*, p. 19.

39 *Sl. glasnik RS – Međunarodni ugovori* 103/07.

40 As the BCHR ascertained during the NPM visit to the Kanjiža police station on 19 September 2014.

41 As the BCHR ascertained during the NPM visit to the Loznica PD on 18 July 2014.

Another practice that may hinder access to the asylum procedure was noted in the Valjevo PD, which stopped issuing certificates after a police officer was designated to the Bogovada AC to issue certificates of intention to seek asylum and register the aliens.⁴² This police officer is unable to issue more than 10-15 certificates a day; the number of certificates he issues is even smaller on the days when the Asylum Unit receives asylum applications because he spends part of his working hours helping the Asylum Unit register people applying for asylum.⁴³ Aliens, who have not been issued certificates on the day of arrival, are not admitted in the ACs and spend the night in open air, usually without any ID documents.⁴⁴

Access to the Asylum Procedure in the Aliens Shelter

The competent MOI authority shall issue rulings ordering the placement of aliens who cannot be expelled forcibly, whose identity has not been established, who do not have travel documents and in other cases prescribed by the law in the Aliens Shelter⁴⁵ (hereinafter: Shelter) under enhanced police supervision.⁴⁶

During its visit to the Aliens Shelter⁴⁷, the NPM established that the aliens and the Shelter staff communicated solely in English, and that the House Rules (visibly displayed in the common rooms) were translated into English, French, Russian and Arabic.⁴⁸ A factsheet on the aliens' rights, which the Shelter management claims is handed out to all aliens, is available only in English translation and does not specify that they are entitled to seek asylum in Serbia. Ten Syrian nationals were staying at the Shelter at the time of NPM's visit. They did not know the real reason for their referral to the Shelter, i.e. that they were placed in it pending their forced removal to the countries from which they illegally entered Serbia. Such misunderstandings can be avoided by drafting a document listing all the rights, obligations and rules of procedure applying to aliens staying in the Shelter and translating it into languages commonly spoken by the potential asylum seekers. The aliens should also be provided with copies

42 Information the BCHR legal team obtained from the Valjevo PD officers in Bogovada in 2014.

43 The certificates are issued only during working hours, from 7 am to 3 pm.

44 In the experience of the BCHR's legal team extending legal aid to asylum seekers.

45 The Aliens Shelter shall denote a facility for the accommodation of aliens not allowed to enter the country or whose expulsion or deportation has been ordered but cannot be effected and who have been ordered into placement under enhanced police supervision in accordance with the law (Art. 3(1)(11), Aliens Act).

46 Article 49, Aliens Act.

47 31 October 2014.

48 A large number of irregular migrants in Serbia come from countries in which Arabic, Farsi, Pashtu or Urdu are spoken, as corroborated by perusal of the Aliens Shelter 2014 records.

of the House Rules in the languages they understand. The aliens' right to seek asylum should definitely be included in the document. This would help minimise mistakes in determining the status of the aliens.

These shortcomings in communication, however, have not absolutely barred the aliens from accessing the asylum procedure, since twenty-four aliens in the Aliens Shelter expressed the intention to seek asylum in 2014. Besides, aliens referred to the Shelter were allowed to communicate with BCHR's legal team extending legal aid in the asylum procedure.

Access to the Asylum Procedure at Nikola Tesla Airport

BCHR legal team's records show that 12 aliens expressed the intention to seek asylum in the Nikola Tesla transit zone.⁴⁹ According to MOI's records, eight foreign nationals expressed that intention at the Belgrade airport.

Aliens, who do not fulfil the requirements to enter Serbia and are to be deported, are confined by the officers of the Belgrade Border Police Station (BPS) in separate rooms in the transit zone of the airport, where they stay until they are deported⁵⁰ or allowed to enter Serbian territory in the event they express the intention to seek asylum. From its conversations with the Belgrade BPS officers, the BCHR legal team established that the border police officers do not consider that the confinement of aliens at Nikola Tesla airport amounts to their deprivation of liberty.⁵¹ Under Article 5(1)(f) of the ECHR, deprivation of liberty is allowed in case of the lawful arrest or detention of a person against whom action is being taken with a view to deportation or extradition, but the states are required to base their decisions on positive regulations.⁵² Several

49 All these aliens had phoned the BCHR legal team beforehand, seeking legal aid in the asylum procedure.

50 Article 46(2), State Border Protection Act: "Persons not fulfilling the requirements for entering the territory of the Republic of Serbia shall be returned to their initial destinations at the expense of the airline referred to in paragraph 1 of this Article."

51 More in ECtHR's judgment in the case of *Amuur v. France*, App. No. 19776/92.

52 "For its part, the CPT has always maintained that a stay in a transit or "international" zone can, depending on the circumstances, amount to a deprivation of liberty within the meaning of Article 5 (1)(f) of the European Convention on Human Rights, and that consequently such zones fall within the Committee's mandate. The judgement delivered on 25 June 1996 by the European Court of Human Rights in the case of *Amuur against France* can be considered as vindicating this view. In that case, which concerned four asylum seekers held in the transit zone at Paris-Orly Airport for 20 days, the Court stated that "The mere fact that it is possible for asylum seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction ("atteinte") on liberty" and held that "holding the applicants in the transit zone was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty", para 25, CPT 7th General Report [CPT/Inf (97) 10], available at <http://www.cpt.coe.int/en/annual/rep-07.htm>.

asylum seekers represented by BCHR's legal team claimed that no decisions on their confinement at the airport had been adopted or, if they had been, that they had not been apprised of them.⁵³

Furthermore, the asylum seekers claimed that the police officers at the airport mostly communicated with the aliens in English, which does not always guarantee that they are able to properly determine the aliens' status – that of asylum seeker or irregular migrant.⁵⁴

In one case, three Syrian nationals in the Nikola Tesla transit zone sought the assistance of BCHR's legal team. After they were extended legal aid and issued certificates of intention to seek asylum at the airport, Belgrade Border Police Station officers filed criminal charges against them for entering Serbia with forged passports.⁵⁵ Such practices are in contravention of the principle of impunity of asylum seekers for illegal entry or residence laid down in the Asylum Act and the 1951 Refugee Convention.⁵⁶

The Border Police Directorate in 2014 allowed the BCHR to display posters at Nikola Tesla Airport notifying the aliens wishing to seek asylum in Serbia on how to contact its legal team and obtain legal aid. The BCHR team and the Belgrade BPS in September 2014 agreed on a mode of cooperation and actions to be taken in the event an alien at the Belgrade Airport asks the BCHR for assistance in seeking asylum in Serbia, which should ensure the potential asylum seekers access to free legal aid in the asylum procedure at the Belgrade airport.

Registration of and IDs for Asylum Seekers

Aliens issued certificates that they expressed the intention to seek asylum are under the obligation to report to an asylum centre where they will be accommodated or to the Asylum Office to receive consent to reside at a private address.⁵⁷ The Asylum Unit registers aliens once they are admitted to an asylum centre or receive approval to reside at a private address. Registration entails establishing the aliens' identity and photographing and fingerprinting them and the temporary seizure of all their documents that may be relevant to

53 The asylum seekers told the BCHR legal team that their confinement in these rooms lasted between several hours and several days.

54 BCHR's request for an interim measure upheld by the ECtHR on 29 July 2014 prevented the return of an alien to his country of origin after he provided proof he would be at risk of persecution because of his political activities if he were deported.

55 Pursuant to Article 355 of the Criminal Code incriminating forging of documents.

56 Article 8 of the Asylum Act and Article 31 of the 1951 Refugee Convention.

57 Articles 22 and 39, Asylum Act.

decisions in the asylum procedure; the aliens are issued receipts for the seized documents.⁵⁸ Aliens in possession of any identification documents or other documents of relevance to the asylum procedure are under the obligation to hand them over during registration or submission of asylum applications, before their interviews at the latest.

The Asylum Unit in 2014 registered only 1,350 asylum seekers although 16,490 people expressed the intention to seek asylum and 11,118 people were accommodated in the asylum centres. Registered asylum seekers are issued IDs, which are valid for six months and extended until the asylum procedure is completed.⁵⁹ Although the Asylum Act does not specify the deadline by which the asylum seekers are to be issued IDs, the wording of the relevant provision of this law leads to the conclusion that they are to be issued immediately upon registration. Asylum seekers, however, wait a long time for their IDs in practice.⁶⁰ The Asylum Unit issued 460 IDs in 2014, which indicates that many registered asylum seekers were not issued identity documents. Given the fact that many people seeking asylum in Serbia have no personal documents, asylum seekers practically reside in Serbia without any identity papers for months.

The Asylum Unit in September 2014 introduced the practice of registering asylum seekers at the time they submit their asylum applications, which is in contravention of both the Asylum Act and the Protector of Citizens recommendation that they are to be registered as soon as they are admitted in an asylum centre.⁶¹ Asylum Unit officers explained that this practice was introduced because many asylum seekers left the asylum centres after registration and before they applied for asylum, which rendered the registration meaningless because the registered aliens did not want to seek asylum in Serbia.⁶² The Asylum Unit should, however, not speculate whether asylum seekers actually intend to remain in Serbia until the asylum procedure is completed; rather, it should take all the procedural actions with respect to all people with a view to efficiently implementing the asylum procedure. In view of the fact that some aliens, who have expressed the intention to seek asylum, sometimes have to wait two months to apply for asylum,⁶³ the practice of not registering them until the time

58 Article 24, Asylum Act.

59 Article 7, Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection.

60 Information obtained from asylum seekers represented by the BCHR legal team.

61 Protector of Citizens, Recommendations 75-6/14 of 10 February 2014, Section V, para 3.

62 Information obtained from Asylum Unit staff during the submission of an asylum application in Bogovada on 19 November 2014.

63 Information obtained from asylum seekers represented by the BCHR legal team.

they apply for asylum may result in situations, in which they wait unduly long for their personal documents and are during that period deprived of any chance to prove their residential status, which renders them even more vulnerable.

Initiation of the Asylum Procedure

Under the General Administrative Procedure Act, which applies subsidiarily in the asylum procedure, an administrative procedure may be initiated *ex officio* or on the motion of a party.⁶⁴ Parties are entitled to obtain a decision in an administrative procedure within two months from the moment the procedure is initiated.⁶⁵ Under the Asylum Act, the asylum procedure shall be initiated by submitting an asylum application to an authorised officer of the Asylum Office on a prescribed form, within 15 days from the day of registration.⁶⁶ Therefore, although the Asylum Act lays down that the alien must file an application for asylum, it also sets out that it must be submitted to an Asylum Office officer, wherefore asylum applications are in practice submitted at times specified by the Asylum Unit. Asylum seekers have, however, waited for several months for the opportunity to apply for asylum. This has been the case in the Sjenica and Tutin Asylum Centres, which the Asylum Unit visited only three times in 2014 to receive asylum applications. Seventy-nine of the 2,360 aliens living in the Tutin AC and 86 of the 2,154 aliens living in the Sjenica AC applied for asylum in 2014.⁶⁷ It cannot be concluded that aliens in these ACs have access to the asylum procedure equal to that of aliens in other ACs, which are visited by the Asylum Unit staff nearly every week.

Therefore, applying for asylum absolutely depends on whether the Asylum Unit will enable the prompt implementation of this procedural action, wherefore the procedure is *de facto* initiated *ex officio*.

In the event the asylum procedure is initiated *ex officio*, under the General Administrative Procedure Act, the procedure shall be deemed initiated as soon as the authority conducts any action related to the procedure.⁶⁸ In view of the described Asylum Unit practice, it may be concluded that the asylum procedure is initiated before an alien applies for asylum, by the prior procedural actions undertaken by the Asylum Unit, wherefore the parties are entitled to appeal the silence of the administration in the event the relevant authority fails to issue a ruling within the prescribed deadline. The Asylum Commission has also held

64 Article 113, GAPA.

65 Article 208(1), GAPA.

66 Article 25, AA.

67 Information obtained from the Asylum Unit on 19 February 2015.

68 Article 115, GAPA.

that appeals of silence of the administration in asylum procedures, in which the parties were not provided with the chance to apply for asylum, are admissible and filed in time.⁶⁹ The Commission's view is extremely important because it provides asylum seekers with the chance to file appeals if they are prevented from applying for asylum due to the dilatoriness of the Asylum Unit. One asylum seeker, on whose appeal the Asylum Commission took this view, had not been provided with the opportunity to apply for asylum for nearly the year and a half he spent in Serbia, which prompted him to leave the country.⁷⁰

Aliens apply for asylum in the following manner: the Asylum Unit officers ask the aliens questions in the application form in the presence of their legal counsels and interpreters and enter their replies in the application form.⁷¹ The Asylum Unit received only 388 asylum applications in 2014, i.e. only 2.35% of the aliens who expressed the intention to seek asylum actually applied for asylum.

Interviews

The Asylum Unit conducted only 17 interviews of 18 asylum seekers in 2014. In his Recommendations 75-6/14 of 10 February 2014, the Protector of Citizens recommended to the Asylum Unit to interview aliens who have applied for asylum without delay (Section V, para 5). In practice, aliens wait almost a year for their interviews from the day they applied for asylum.⁷²

The Asylum Unit officers interview the asylum seekers in the presence of their legal counsels and interpreters about issues of relevance to establishing the merits of their asylum applications. Under the Asylum Act, the authorised Asylum Office officers shall endeavour during the interview to establish all the facts of relevance to a decision on an asylum application, and in particular: the identity of the asylum seeker in question, the grounds on which his/her asylum application is based, the asylum seeker's movement after leaving his/her country of origin, and whether the asylum seeker has previously sought asylum in any other country.⁷³ The records of the interviews are signed by the asylum seekers, their legal counsels, the interpreters and the Asylum Unit officers performing

69 Asylum Commission Ruling Až 07/14 of 28 August 2014.

70 In the experience of the BCHR team extending legal aid to asylum seekers.

71 The content and design of the form are governed by the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection, *Sl. glasnik RS* 53/08.

72 Asylum seeker A.A. from Syria, residing in the Bogovada Asylum Centre and represented by the BCHR in the asylum procedure.

73 Article 26(4), AA.

the interviews. The asylum seekers' legal counsels are entitled to ask the asylum seekers additional questions to ensure comprehensive finding of fact.

First-Instance Decisions

Following the interview of an asylum seeker, the Asylum Unit shall render a decision on the asylum application, either upholding the application and recognising the asylum seeker's right to refuge or subsidiary protection or rejecting the application in the event it finds that the application is ill-founded or that there are reasons for denying the right to asylum.⁷⁴ The Asylum Unit is also entitled to dismiss an asylum application without ruling on its merits.⁷⁵ In 2014, the Asylum Unit rendered six decisions granting asylum, 12 decisions dismissing asylum applications and 325 conclusions discontinuing the procedure because the asylum seekers left the ACs after they applied for asylum. It did not issue any rulings rejecting asylum applications in 2014. In 2014, the Asylum Unit granted subsidiary protection to five applicants and refuge to one asylum seeker. Although the Asylum Unit continued applying the safe third country concept in 2014 in general,⁷⁶ it commendably departed from this practice in the cases in which it granted asylum.⁷⁷

In the event the Asylum Unit fails to rule on an application within two months from the day the procedure was initiated, the asylum seeker may appeal the *silence of the administration* with the Asylum Commission.⁷⁸ The appeal, however, is not an entirely effective legal remedy given that the Asylum Commission only orders the Asylum Unit to render its ruling within an additional 30-day deadline.⁷⁹ The deadline is, however, instructive in character and the

74 Articles 28 and 29, AA.

75 Article 33, AA.

76 The Asylum Office shall reject an asylum application without examining the eligibility of an asylum seeker for the recognition of asylum if it has established that the asylum seeker has come from a safe third country (Art. 33(1)(6)). Under Article 2 of the AA, a safe third country shall denote a country on a list drawn up by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (hereinafter referred to as: the Geneva Convention and the Protocol), where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened. More on the practice of applying the safe third country concept in the *2012 Right to Asylum Report*, pp. 29-32.

77 Information obtained after an analysis of the Asylum Commission decisions rendered in 2014.

78 Article 236, GAPA.

79 In the experience of the BCHR team extending legal aid to asylum seekers.

Asylum Unit can prolong the procedure without suffering any procedural consequences. The Asylum Commission should itself rule on asylum applications when asylum seekers appeal the silence of the administration⁸⁰ and thus significantly cut down the duration of the asylum procedure. The asylum procedure lasts between six and 12 months on average.⁸¹

Appeals Procedure

Thirteen appeals were filed with the Asylum Commission in 2014. The Commission rejected seven appeals and upheld two of them and overturned the first-instance decisions. The Commission was still reviewing four appeals at the time this report was finalised. Seven asylum seekers filed appeals over silence of the administration with the Commission in 2014 and the Commission ordered the Asylum Unit to rule on them within 30 days – the Unit upheld four asylum applications, rejected two applications and discontinued the review of two applications.

The Asylum Act does not lay down precise criteria for the appointment of the Commission members, e.g. that they are expert in refugee law, and only requires that they are versed in human rights regulations, which is no guarantee of the quality or competence of this body. For instance, the Director of the General Affairs Department of the telecommunications company Telekom, who has not worked in the field of human rights at all, has been appointed Commission member. The Asylum Commission is chaired by the Assistant Head of the Border Police Directorate, within which the Asylum Unit operates, which raises *prima facie* doubts about the independence of this second-instance authority.⁸²

The Asylum Commission forwarded to the BCHR the decisions it rendered from 1 January 2013 to 31 December 2014 pursuant to its request for access to information of public importance. The following paragraphs will highlight the views of the Asylum Commission of relevance to the efficiency of the asylum procedure in Serbia and the effectiveness of appeals in general.

80 Under Article 236 of the GAPA, a second-instance administrative authority (the Asylum Commission in this case) shall itself rule on a matter (the asylum application in this case) in case of an appeal due to the unjustified failure of the first-instance authority to rule on the matter within the prescribed deadline, either by reviewing the matter itself or by ordering the first-instance authority (the Asylum Unit in this case) to review the matter and then itself ruling on the matter.

81 In the experience of the BCHR team extending legal aid to asylum seekers.

82 The RS Government Ruling on the Appointment of the Commission Chairperson and Members No. 119-6141/2012 of 20 September 2012, available in Serbian at <http://www.apc-cza.org/ar/komisija-za-azil.html>.

As per reference to the Serbian Government Decision on the List of Safe Countries of Origin and Safe Third Countries as grounds for dismissing asylum applications of asylum seekers who had transited or directly come from one of the countries designated as safe in the Government Decision,⁸³ the Asylum Commission has taken the view that Turkey, Greece and Macedonia are safe third countries in which asylum seekers can apply for asylum. The Asylum Commission said that it perused an official UNHCR document on Turkey (albeit it failed to specify which one), which states that Turkey provides protection to non-European asylum seekers despite the geographic restriction contained in the Refugee Convention,⁸⁴ and that UNHCR is endeavouring to find a solution for refugees in Turkey, notably by resettling them in other countries.⁸⁵

The Asylum Commission commendably refers to ECtHR judgments in some of its decisions.⁸⁶ However, it took the view that the ECtHR judgment in the case of *MSS v. Greece and Belgium*, invoked by an asylum seeker's legal counsel to support the claim that Greece was not a safe third country, should be taken into consideration only when the facts of a specific case coincide with the allegations in the judgment. This ECtHR judgment actually notes the systemic lack of access to the asylum procedure in Greece and, consequently, the risk of chain refoulement and of a state being found in violation of Article 3 of the ECHR in case it returns an asylum seeker to Greece.⁸⁷

The Asylum Commission considers the Former Yugoslav Republic of Macedonia a safe third country as well, because the asylum seekers in it are not exposed to human rights violations. It corroborates its view by referring to the European Commission 2012 Progress Report, noting progress in the area of asylum in Macedonia, and a UNHCR *report and data* (which it does not specify), which allegedly also note Macedonia's progress in the field of asylum.⁸⁸ The Commission took that view also in a case in which the asylum seeker claimed that he had been arrested as soon as he entered Macedonia and told he would be deported, but that he had been left at the border with Bulgaria and Greece and told to choose which of these countries he wanted to go to.⁸⁹

83 The enforcement of this Decision was analysed in detail in the *2012 Right to Asylum Report*, pp. 29-32, and the *2013 Right to Asylum Report*, pp. 42-44.

84 Turkey has not ratified the 1967 Protocol, which means that the Refugee Convention is not applied in Turkey to persons who have fled non-European countries.

85 Asylum Commission Ruling Až 03/14 of 15 May 2014.

86 Asylum Commission Rulings Až 12/13 of 15 May 2014 and Až 06/14 of August 2014.

87 The Council of Europe Committee of Ministers stated in its decision of 5 June 2014 that the Committee still was not persuaded that the Greek asylum system fully ensured respect of the rights enshrined in the ECHR. See: <https://wcd.coe.int/ViewDoc.jsp?id=2199769&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

88 Asylum Commission Rulings Až 38/11 of 5 May 2014 and Až 45/12 of 6 March 2013.

89 Asylum Commission Ruling Až 04/13 of 16 April 2013, p. 5.

It, however, remains unclear which documents the Asylum Commission referred to when it qualified Turkey, Greece and Macedonia as safe third countries, given that it did not specify them in its reasonings of its decisions. According to the information the BCHR obtained from the UNHCR Belgrade Office, there is no UNHCR report on Macedonia noting its progress in the field of asylum. The Asylum Commission should have taken into account UNHCR's 2009 Observations on Greece as a Country of Asylum⁹⁰ in which the UNHCR recommended to states not to remove asylum seekers to Greece, because of the risk that people in need of international protection may be removed from Greece to Turkey and onward from Turkey, including to countries where they may face persecution or other forms of serious harm, such as Iraq and Afghanistan. The Constitutional Court of Serbia has held that UNHCR reports contributed to the proper application of the Asylum Act by the competent authorities of the Republic of Serbia.⁹¹

The Asylum Commission is of the view that reports by international organisations referred to in an appeal cannot be considered evidence that a specific country is not a safe third country for the asylum seeker *per se* and that they merely illustrate the state of human rights in that country and substantiate the asylum seekers' allegations. The Commission has held that the reasons why someone cannot seek asylum in a country on the list of safe third countries have to be *linked to the personality of the asylum seeker, and have to be real and justified*, whereby it has placed the entire burden of proof on the asylum seekers.⁹²

One asylum seeker's legal counsel stated in the appeal that the first-instance authority was under the duty to check whether a specific asylum seeker could be returned to a country designated as safe in the asylum procedure and establish whether that country was willing to let him enter it and ensure him access to the asylum procedure. The Asylum Commission, however, held that the first-instance authority was unable to perform such checks given that Article 18 of the Asylum Act laid down that information obtained during the asylum procedure shall constitute an official secret and that access to it shall be allowed only to persons authorised by law.⁹³ This view is in contravention of the safe third country concept and may result in depriving asylum seekers of the possibility of obtaining protection either in Serbia or countries designated as safe third countries for them in the asylum procedure.

90 See Observations on Greece as a Country of Asylum (UNHCR, December 2009), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4b4b3fc82&skip=0&query=observations%20on%20greece>.

91 Constitutional Court Decisions UŽ 1286/2012 of 29 March 2012 and UŽ 5331/2012 of 24 December 2012.

92 Asylum Commission Ruling Až 04/13 of 16 April 2014, p. 7.

93 *Ibid.*

The Asylum Commission overturns first-instance decisions on account of the safe third country concept only when the Asylum Unit has not established from which country an asylum seeker entered Serbia⁹⁴ as, under Article 2 of the Asylum Act, only countries through which asylum seekers passed or stayed in *immediately* before entering Serbia can be qualified as safe. This Commission view, however, is quite senseless because, as the Commission itself deems, the Asylum Unit is not under the obligation to establish whether the states from which the asylum seekers came to Serbia will let them back into their territory and provide them with access to the asylum procedure.

Furthermore, with respect to a case in which the Asylum Unit rejected the asylum application, i.e. did not apply the safe third country concept as grounds for dismissing an asylum application, the Asylum Commission held that the Asylum Unit incorrectly applied the Asylum Act because it had been under the duty to first examine whether there were any grounds to dismiss the application.⁹⁵ This Commission view has actually contributed to the Asylum Unit's failure to rule on most asylum applications on the merits,⁹⁶ which has been criticised both by the UNHCR,⁹⁷ and the BCHR and other NGOs,⁹⁸ because asylum seekers are deprived of access to the asylum procedure due to the way in which the Serbian competent authorities have been applying the safe third country concept.

Several asylum seekers filed appeals challenging Asylum Unit decisions granting asylum and subsidiary protection because, in the view of their legal counsels, they should have been granted refugee status. The Asylum Commission rejected the appeals under a blanket explanation that, *having reviewed the case file and the security situation in the country of origin at the moment, it concluded that the first-instance procedure had been properly conducted and that the Unit adopted a proper ruling based on the law.*⁹⁹ The Commission's reasoning is quite tenuous because it failed to comment on all

94 Asylum Commission Ruling Až 01/13 of 10 March 2013.

95 Asylum Commission Rulings Až 12/13 of 10 February 2014 and Až 10/13 of 10 February 2014.

96 In the experience of the BCHR team extending legal aid to asylum seekers, most asylum seekers enter Serbia by land, via the neighbouring countries. This fact constitutes grounds for dismissing asylum applications pursuant to the Government Decision on the List of Safe Countries of Origin and Safe Third Countries, given that all the countries bordering with Serbia are on the list.

97 See: *Serbia as a Country of Asylum* (UNHCR, August 2012), pp. 35- 38, available at: <http://www.refworld.org/docid/50471f7e2.html>.

98 See: *Serbia As a Safe Third Country: A Wrong Presumption*, (Hungarian Helsinki Committee, September 2011), pp. 13– 14, available at: http://helsinki.hu/wp-content/uploads/Serbia_as_a_safe_third_country_A_wrong_presumption_HHC.pdf.

99 Asylum Commission Rulings Až 7/13 of 30 September 2013 and Až 06/13 of 12 September 2013.

the arguments of the counsel or list the sources on the basis of which it assessed the security situation in the country of origin, which is in contravention of Article 235(2) of the General Administrative Procedure Act, under which all arguments in the appeal must be assessed in the reasoning. The Administrative Court also alerted to the Asylum Commission's obligation in its 2014 decisions.

Procedure before the Administrative Court

Six administrative disputes challenging Asylum Commission rulings¹⁰⁰ were initiated before the Administrative Court¹⁰¹ in 2014. The Administrative Court rejected two complaints¹⁰² and was still reviewing the other four complaints at the end of the reporting period.¹⁰³

The Administrative Court in the same period ruled on six administrative disputes regarding the right to asylum in the Republic of Serbia; it rejected four and upheld two complaints.¹⁰⁴ In the latter two decisions, the Administrative Court overturned the Asylum Commission rulings and ordered it to review the cases again. The Administrative Court ruled on these cases without holding oral hearings, since it was of the view that the nature of the disputes obviously did not require of it to hear the parties in person or itself conduct a finding of fact.¹⁰⁵ Not one motion to review the Administrative Court's decisions, an extraordinary legal remedy,¹⁰⁶ was filed with the Supreme Court of Cassation in 2014.¹⁰⁷

Most of the complaints regarded the way the competent authorities applied the third safe country concept in the asylum procedure. The Administra-

100 Information obtained in reply to a request for access to information of public importance, Administrative Court letters Su III – 18 124/14 of 8 December 2014 and Su III – 18 2/15 of 21 January 2015.

101 More on the Administrative Court's jurisdiction on page 16.

102 Cases Nos. U. 9049/2014 and U. 9050/2014.

103 Cases Nos. U. 8792/2014, U. 11230/2014, U. 14154/14 and U. 14706/14.

104 Information obtained in reply to a request for access to information of public importance, Administrative Court letters Su III – 18 124/14 of 8 December 2014 and Su III – 18 2/15 of 21 January 2015.

105 See Article 33(2), Administrative Dispute Act.

106 See Article 9, Administrative Dispute Act.

107 Information obtained in reply to a request for access to information of public importance, Administrative Court letters Su III – 18 124/14 of 8 December 2014 and Su III – 18 2/15 of 21 January 2015. According to BCHR's data, no motions for reviewing Administrative Court decisions had been submitted to the Supreme Court of Cassation in 2012 or 2013 either, see *2012 Right to Asylum* report, p. 16 and the *2013 Right to Asylum* report, p. 49.

tive Court confirmed in most of its decisions¹⁰⁸ that the competent authorities had properly applied Article 33(1(6)) of the Asylum Act.¹⁰⁹

The Administrative Court departs from the view that the states on the List of Safe Countries of Origin and Safe Third Countries in the Government Decision (hereinafter: List of Safe Countries) are states abiding by the international principles on the protection of refugees enshrined in the 1951 Refugee Convention and the 1967 Protocol.¹¹⁰ The Administrative Court's reviews mainly focused on whether the complainants proved in their complaints that the countries on the List of Safe Countries were not safe for them and in most cases found that they had not presented enough evidence proving that some of the countries on the List of Safe Countries they had passed through on their way to Serbia were not safe for them. The Court's reasonings, however, do not specify which evidence the complainants invoked, i.e. do not allow for a conclusion as to what the Court would deem adequate evidence refuting the presumption that a country is safe.¹¹¹

In its reviews of the complainants' claims that Greece was not a safe third country, as the ECtHR judgment in the case of *MSS v Belgium and Greece* corroborated, the Administrative Court repeatedly took the view¹¹² that this judgement may be of relevance only in the event the asylum seekers *claim that one of their rights enshrined in the European Convention on Human Rights has been violated* in an administrative procedure before the competent administrative authority in the Republic of Serbia or a proceeding before this Court.¹¹³ It is not entirely clear what the Administrative Court meant to say, but the complainants should not be expected to explicitly invoke specific articles of the ECHR when the reasonings of their claims clearly indicate that the application of the safe third country concept by the first-instance authority in their cases, i.e. recognition of Greece as a safe third country, may result in a violation of the refoulement prohibition and expose them to treatment essentially in contravention of Article 3 of the ECHR.

108 See, e.g. the Administrative Court judgment in the case of 4 U. 9049/2014, of 1 September, p. 5. Overviews of the Administrative Court's decisions in 2012 and 2013 are available in the *2012 Right to Asylum Report*, p. 29 and the *2013 Right to Asylum Report*, pp. 50-53.

109 The Asylum Office shall reject an asylum application without examining the eligibility of an asylum seeker for asylum in the event it establishes that the asylum seeker came from a safe third country, unless he/she can prove that it is not safe for him/her.

110 Administrative Court judgment in the case of 4 U. 9049/2014, of 1 September 2014, p. 4.

111 *Ibid.* See also the judgments in the cases of US 10 U. 6464/2012 of 7 March 2014, 15 U. 8867/13 of 30 January 2014 and of 19 U 539/13 of 23 January 2014.

112 See the *2013 Right to Asylum Report*, p. 50.

113 Administrative Court judgment in the case of 4 U. 9049/2014, of 1 September 2014, p. 4 (italics ours)

The Administrative Court's case law is not uniform, because, in some judgments, it said that Article 33(1(6)) explicitly inferred *that it is not up to the competent authority to establish whether a state on the RS Government list is safe for the asylum seeker*; rather, that it is under the duty to accept that fact.¹¹⁴

The Administrative Court, however, in 2014 rendered a judgment¹¹⁵ in favour of the complainant, finding that the Asylum Commission performed a "merely blanket" review of her arguments and found them irrelevant and *that the complainant had failed to submit valid evidence that one of the safe third countries through which she had passed and stayed in had been unsafe for her personally*,¹¹⁶ although her legal counsel listed the reasons why those countries were not safe for her and sources substantiating the allegations. The Administrative Court was of the view that the Commission had not fulfilled its obligation to assess all the allegations in the complaint in its reasoning of the second-instance ruling,¹¹⁷ in this case, those regarding the circumstances under Article 33(1(6)), i.e. evidence that a country on the List of Safe Countries was not safe for the asylum seeker.

The Administrative Court's recent case law may help improve the quality of the Asylum Commission's reasonings of its decisions. The Administrative Court in 2014 delivered one more judgment in favour of a complainant. In this case, the complainant argued that he should have been granted refugee status rather than subsidiary protection and that he had been granted the latter due to incomplete and incorrect finding of fact and misapplication of the law in the asylum procedure. The Court found that, in its ruling rejecting the appeal, the Commission had failed to specify why it had rejected the complainant's arguments, the relevant legal regulations and why it upheld the view of the first-instance authority, given the finding of fact.¹¹⁸

114 See, e.g. the judgment in the case of 1 U 9050/14, of 16 September 2014.

115 Administrative Court judgment in the case of 7 U. 3834/12 of 7 February 2014.

116 *Ibid*, p.3.

117 Article 235(2) GAPA.

118 Administrative Court judgment in the case of 8 U. 18705/13 of 21 February 2014. The Administrative Court found the Commission in violation of the procedural rules under Articles 199(2) and 235(5) of the GAPA.

Accommodation of Asylum Seekers

Pending final decisions on their asylum applications, the asylum seekers were in 2014 accommodated in facilities in Banja Koviljača, Bogovađa, Sjenica, Tutin, Obrenovac and Krnjača, which operate under the jurisdiction of the Commissariat for Refugees and Migrations and are funded from the state budget.¹¹⁹ Specific issues of relevance to the work of the asylum centres are governed by by-laws.¹²⁰

The large number of asylum seekers and lack of accommodation capacity in 2013 (and 2014) prompted the RS Government to issue a conclusion¹²¹ opening new provisional asylum centres in Obrenovac, Sjenica and Tutin.

The Obrenovac Asylum Centre had the capacity to accommodate 180 people. The provisional AC in Obrenovac was organised in the *Sava Tent Hotel* and was one of the better equipped provisional ACs that fulfilled all the requisite accommodation standards.¹²² Unfortunately, it served as an asylum centre for a short period of time because of the damage it sustained during the May 2014 floods and will not reopen in the foreseeable future.¹²³ Although this AC was near Belgrade, where the Asylum Unit is headquartered, one cannot conclude that the asylum procedure was conducted efficiently in it; the Asylum Unit officers had merely registered the people staying in the Obrenovac AC (albeit not regularly) and none of its residents had applied for asylum while it operated.¹²⁴

The Tutin Asylum Centre, a former sponge plant converted into a provisional asylum centre, has the capacity to accommodate up to 80 people in the winter and 150 people in the summer.¹²⁵ Asylum seekers live in larger rooms

119 The by-laws are available in Serbian on the Commissariat's website <http://www.kirs.gov.rs/articles/azilpravilnici.php?type1=39&lang=SER&date=0>.

120 Rulebook on Accommodation and Basic Living Conditions in Asylum Centres; Rulebook on Records of People Accommodated in the Asylum Centres; Rulebook on Asylum Centre House Rules, available at: <http://www.kirs.gov.rs/articles/ruleasyl.php?lang=ENG>.

121 Conclusion No. 031-10248/2013-1 of 28 November 2013.

122 More on accommodation standards in the UNHCR Executive Committee Conclusion No. 93 available at <http://www.unhcr.org/3dafdd344.html>.

123 More on the Obrenovac provisional asylum centre in BCHR's *2012 Right to Asylum* and the *January-April 2014 Right to Asylum Reports*, available at www.azil.rs.

124 Information BCHR obtained during its regular visits to the Obrenovac Asylum Centre.

125 More about all the asylum centres is available in Serbian on the Commissariat's website: <http://www.kirs.gov.rs/articles/azilcentri.php?type1=38&lang=SER&date=0>.

(10-14 beds) and smaller rooms (6-8 beds). The dining room is large and separated from the living quarters; the Centre also has one room for medical examinations and a large pantry. The Centre, however, lacks a common room that could serve as a living room, so the asylum seekers spend most of their time in the halls or their rooms.¹²⁶ The dining room was renovated in 2014, but the living conditions in the other rooms, which had been converted into living space in a rush – the bedrooms, toilets and the former workshop used for emergency accommodation – are quite desultory.¹²⁷

The Provisional Asylum Centre in Sjenica has been set up in the Berlin Hotel and can take in up to 150 people. The asylum seekers are accommodated on the ground floor of the Hotel. The asylum seekers are not using the hotel rooms but are living in the Hotel banquet hall on the ground floor, which is divided into two parts by a divider screen: they sleep on bunk beds in one part of the banquet hall, while the living room, which also serves as the dining room, is in the other part of the hall. The other floors and parts of the Hotel are used by the Hotel guests.¹²⁸ Women with children have occasionally been accommodated in the guest rooms and sometimes in the room used by the AC management, the part separated from the management office only by a curtain.¹²⁹ No staff of the Commissariat for Refugees and Migrations are present in this provisional Centre at all times.

The Sjenica and Tutin Asylum Centres are provisional and the contracts with their owners are extended every 3-6 months, for as long as necessary.¹³⁰

Since the existing ACs could not accommodate the increased number of asylum seekers in 2014, the Government on 7 August 2014 issued a conclusion¹³¹ designating the facilities of the Belgrade company *Ivan Milutinović - PIM a.d.* for the provisional accommodation of asylum seekers in Serbia. This AC is located in a Belgrade suburb in the Palilula Municipality called Krnjača. According to the Commissariat for Refugees and Migrations, this AC will be used until the former army complex *Mala Vrbica* in Mladenovac is converted into an asylum centre.¹³²

126 More on the Tutin provisional Asylum Centre in BCHR's *January-April 2014 Right to Asylum Report*, available at: http://www.azil.rs/doc/ENG_april_2014.pdf.

127 As the BCHR legal team saw for itself during its visits to the Tutin Asylum Centre in 2014.

128 Information the BCHR legal team obtained from one of the Tutin AC staff during its visits to that Centre in 2014.

129 As the BCHR legal team saw for itself during its visits to the Tutin Asylum Centre.

130 Reply of the Commissariat for Refugees and Migrations No. 019 -701/1-2015 to BCHR's request for access to information of public importance of 2 March 2015.

131 Conclusion No. 019 -8512/2014.

132 Information available in Serbian on the Commissariat's website <http://www.kirs.gov.rs/articles/azilcentri.php?type1=38&lang=SER&date=0>.

This fifth provisional asylum centre is located in a block of 17 barracks, in which refugees from Croatia, Bosnia and Herzegovina and IDPs from Kosovo have been living since 1993. The five barracks designated for the asylum seekers can accommodate up to 180 people.¹³³ During its regular visits to the AC in Krnjača in September 2014, the BCHR legal team noted that the facility lacked an adequate common room in which the asylum seekers can spend time meaningfully and a kitchen; the dining room is used by all the residents of the barracks in Krnjača, the refugees and IDPs from ex-Yugoslavia and the asylum seekers, who are served the meals at different times. The living conditions in the barracks, the rooms and toilets are, however, more concerning - they are old and dilapidated and will not be able to satisfy the minimum standards of accommodation (nutrition, maintenance of hygiene, extension of medical aid and social support, etc.) in the longer term.

The general impression is that the local communities in Sjenica, Tutin and Krnjača accepted the opening of the asylum centres and asylum seekers very well, which is definitely good news in view of the circumstances in which the centres were opened (the municipal authorities and the residents had not been prepared in advance for receiving larger numbers of asylum seekers) and of the high degree of intolerance and prejudice against asylum seekers demonstrated by the representatives of local authorities and residents of other local communities, primarily in Obrenovac, Mladenovac and Vračević in the same time period.¹³⁴

The greatest problems of the new provisional ACs in Sjenica and Tutin lies in their remoteness from Belgrade, where the Asylum Unit and all other actors involved in the asylum procedure are located. The costs of travel and accommodation and interpreting services are high, hindering regular visits to the Asylum Centres in Sjenica and Tutin and precluding the asylum seekers' access to the asylum procedure.

The asylum seekers' accommodation should be organised at adequate locations to facilitate the efficiency and cost-effectiveness of the asylum procedure. In the experience of BCHR's legal team, the provisional ACs in Krnjača, Sjenica and Tutin do not fulfil all the minimum accommodation standards.

Asylum seekers may live in private accommodation at their own request and with the consent of the Asylum Unit (Art. 39(4)), AA). BCHR's legal team in 2014 continued representing asylum seekers living in private accommodation with the consent of the Asylum Unit.

133 Information obtained from the Commissariat on 18 February 2015.

134 More in the *January-April 2014 Right to Asylum Report*, p. 10.

Challenges in the Practice of the Asylum Centres

The Protector of Citizens in 2014 identified irregularities in the work of the Ministry of Interior and the Commissariat for Refugees and Migrations with respect to their treatment of a large number of people, who had expressed the intention to seek asylum, and issued a number of recommendations to them with a view to ensuring comprehensive support to these people.¹³⁵

BCHR's legal team in 2014 noted that there were aliens without certificates of the intention to seek asylum in the asylum centres¹³⁶. The AC staff refer them to the closest police stations to obtain the certificates. Given that the ACs' should operate with a view to facilitating the efficiency of the asylum procedure, the presence of aliens without certificates in the Asylum Centres should be an exception.¹³⁷ The NPM, however, established during its visit to the Sjenica AC that large numbers of aliens without certificates were present in the AC every day.¹³⁸ The Sjenica AC staff justified the practice by the fact that the Sjenica police station was unable to issue more than 10 or 15 certificates a day and that occasionally larger numbers of aliens appeared at the same time. This is why the AC staff admits them and they go to the police station in the following days. The AC management said that some aliens left the Centre before it was their turn to go the police station to obtain their certificates.

Once they admit an alien, the Asylum Centre managements keep the certificates of their intention to seek asylum and issue photocopies of them to aliens at their request. This practice needs to be altered because the vast majority of the aliens do not have any documents proving their residential status in Serbia since, in the experience of the BCHR legal team, the IDs are issued to the asylum seekers with delay. The aliens should hold on to their certificates of intention to seek asylum all the time and the ACs can photocopy them for their records.¹³⁹

In Section IV of his Recommendations,¹⁴⁰ the Protector of Citizens explicitly said that an alien referred or brought to an AC should be provided with

135 Protector of Citizens Recommendations 75-6/14 of 10 February 2014.

136 This practice has been noted in the Sjenica and Tutin Asylum Centres.

137 For instance, in inclement weather, when women, pregnant women, unaccompanied minors are at issue, et al.

138 The visit took place on 5 September 2014.

139 Under Article 5 of the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection, the certificates shall be issued in three copies, one of which shall be forwarded to the Asylum Office (Unit), one of which shall be archived in the MOI unit that issued it and one of which shall be given to the aliens.

140 Protector of Citizens Recommendations No. 75-6/14 of 10 February 2014, page 3, Section IV, para 3.

accommodation and support in accordance with the valid regulations and standards, which, notably, entail adequate accommodation conditions, nutrition, maintenance of hygiene, communication in a language they understand, provision of health care and social support, fulfilment of cultural and religious needs, et al.

In Section V of his Recommendations, the Protector of Citizens recommended to the ACs to stop the practice of “holding” rooms or beds for aliens who had left the ACs on any grounds, i.e. to stop issuing absence permits.¹⁴¹ In his opinion, vacated accommodation should without delay be made available to the newly-arrived aliens referred or brought to an AC. Notwithstanding the Protector of Citizens’ Recommendations, the Commissariat for Refugees and Migrations staff in 2014 continued issuing such permits to all AC residents who asked for them, who mostly justified their absence by “visiting a friend” in Subotica, Šid, Bogovada, Belgrade et al. However, in the experience of the BCHR legal team, many asylum seekers leave the Asylum Centres and attempt to enter an EU member state, wherefore the practice of issuing the absence permits results in the abuse of the possibility of leaving the ACs for specific periods of times and cannot be qualified as responsible conduct by the competent authority. The Sjenica, Tutin and Krnjača ACs were even issuing pre-signed and pre-stamped absence permits.¹⁴²

In its reply to the Recommendations, the Commissariat for Refugees and Migrations stated that the Protector of Citizens’ was trying to limit the asylum seekers’ right to freedom of movement in this way.¹⁴³ Limited issuance of temporary absence permits, however, is not in contravention of the right to freedom of movement, because the permit does not legalise the aliens’ residence and movement within the territory of the Republic of Serbia per se, but only enables them to return to the ACs within three days from the day of issue. Once they obtain their asylum seeker IDs, the aliens are entitled to move across the Republic of Serbia freely, as their IDs prove the grounds of their residence. Furthermore, the freedom of movement is not absolute in the asylum procedure, and the Asylum Act itself envisages the possibility of restricting an alien’s freedom of movement in the event there is “reason to presume that the application had been submitted to avoid deportation or in the event it is impossible to establish other relevant facts on which the asylum application is based in the absence of

141 As provided for in the Rulebook on Records of People Accommodated in the Asylum Centres, AC managers are entitled to issue special absence permits valid for 72 hours from the day of issue, which provide the asylum seekers with the possibility of returning after three days to their rooms or beds. Under the Rulebook, the AC managers are under the obligation to “hold” their rooms for them until the expiry of the 72-hour deadline.

142 Information BCHR obtained during the implementation of NPM activities.

143 The reply of the Commissariat for Refugees and Migrations is available in Serbian at http://www.ombudsman.rs/attachments/3190_odgovor%20komesarijata.pdf.

the alien".¹⁴⁴ The competent authorities have, however, commendably refrained from limiting the freedom of movement of aliens in the asylum procedure.¹⁴⁵

To the best of BCHR's knowledge, the Commissariat for Refugees and Migrations in 2014 transferred several asylum seekers from the ACs in Bogovađa and Obrenovac to the ACs in Tutin in Sjenica, to relieve the overcrowding in Bogovađa.

Referrals and transfers of asylum seekers from one AC to another are justified only in case they cannot be admitted in one of the asylum centres because they are overcrowded. Transfer of asylum seekers already admitted in one AC to another serves no practical purpose and wastes limited funding. These transfers must be carried out with caution, in the presence of interpreters for the languages the asylum seekers understand because they may mistake the organised bus rides for deportation, especially in view of their prior experiences. Such precautionary measures will help avoid any misunderstandings and stressful and traumatic situations. For instance, during the transfer of a group of asylum seekers from the Bogovađa AC to the Sjenica AC, one asylum seeker refused to enter the bus and hurt himself and the local police had to intervene to calm the situation.¹⁴⁶

144 Article 51(3) AA.

145 In the experience of the BCHR legal team extending legal aid to asylum seekers.

146 Information the BCHR obtained from the asylum seekers transferred from one AC to another and from the staff of the Commissariat for Refugees and Migrations.

Health Care of Asylum Seekers¹⁴⁷

Asylum seekers and persons granted asylum are entitled to health care in accordance with regulations governing the health care of aliens.¹⁴⁸ All asylum seekers shall undergo check-ups on admission.¹⁴⁹ The asylum seekers shall be examined by doctors in the outpatient health clinics with jurisdiction for the municipalities in which the asylum seekers are residing.¹⁵⁰

According to the records of the competent outpatient health clinics (in Loznica, Lajkovac, Tutin, Sjenica, Obrenovac and Palilula), 4,477 asylum seekers underwent check-ups in 2014.¹⁵¹ Some of the asylum seekers, who spent short periods of time in the ACs, had not been examined. The DRC has actively been monitoring the asylum seekers' access to health services at all levels and providing psychological support and interpreting services, where necessary, which are funded by the UNHCR. The costs of health services extended to asylum seekers in the Republic of Serbia are covered by the RS Ministry of Health.

Continuous epidemiological supervision of the asylum seekers is conducted by the Public Health Bureaus (in Belgrade, Šabac, Valjevo, Užice, Kraljevo), who report to the Ministry of Health and the Public Health Institute.

All medications prescribed to the asylum seekers by the doctors are funded by the UNHCR. Particular attention is paid to providing medications for children, women, pregnant women and persons with special needs. Apart from the basic medications, the asylum seekers with chronic illnesses are provided with the requisite therapies (immunosuppressive therapy after organ transplantation, insulin therapy for insulin-dependent diabetes, etc.).

The UNHCR in 2014 provided support to municipalities that took in the greatest number of asylum seekers, including in the form of medical and oth-

147 All information on the health care of asylum seekers was obtained from the Danish Refugee Council (DRC) Belgrade office. The DRC has been facilitating the asylum seekers' access to the national health care system in cooperation and coordination with the Serbian state institutions (Ministry of Health of the Republic of Serbia, RS Public Health Institute, Commissariat for Refugees and Migrations) and the health institutions at the local level within a UNHCR funded project extending aid to refugees and asylum seekers in Serbia.

148 Article 40, AA.

149 Article 39(2), AA.

150 Article 2, Rulebook on Medical Examinations of Asylum Seekers on Admission in Asylum Centres.

151 DRC obtained the information in telephone conversations with the outpatient health clinics in Loznica, Lajkovac, Tutin, Sjenica, Obrenovac and Palilula.

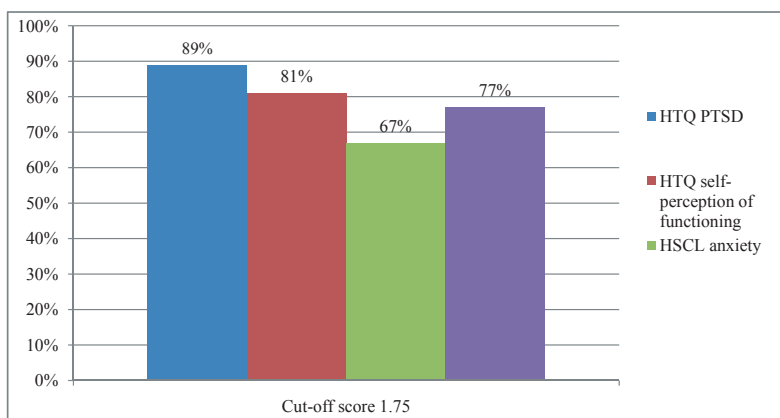
er equipment and funding construction work (Banja Koviljača, Tutin, Sjenica, Subotica and Belgrade). The outpatient health clinics (Palilula, Loznica, Lajkovac, Tutin and Sjenica) were donated sanitary material/disinfectants they need for their work.

The workshops for children implemented with UNHCR's support in the Banja Koviljača and Bogovađa Asylum Centres aim at developing the children's social skills and their inclusion in the local communities. Additional activities, including Serbian language and sewing lessons, contribute to the preservation of the asylum seekers' mental health.

Mental Health of Asylum Seekers in Serbia

The results of the research *Mental Health of Asylum Seekers in Serbia*, which was conducted in 2014,¹⁵² indicate that asylum seekers in Serbia suffer from the Post-Traumatic Stress Disorder (PTSD), anxiety and depression to a considerable extent. PTSD and self-perception of functioning were registered by the Harvard Trauma Questionnaire, anxiety by the Hopkins Symptom Checklist (HSCL) and depressiveness by the HSCL Scale and Becks Inventory of Depression.

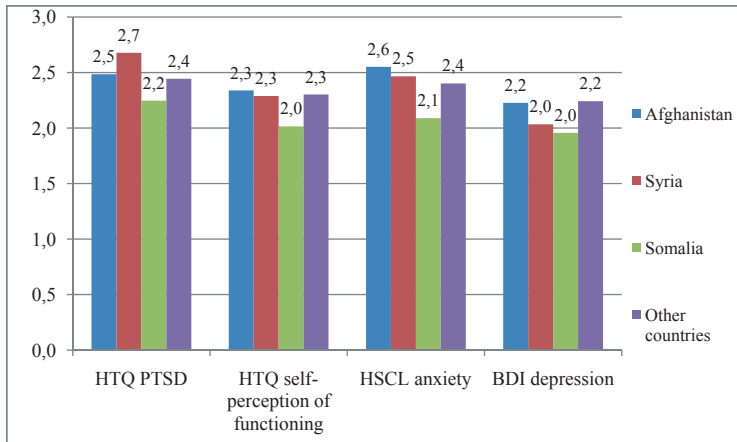
Graph 1 shows the percentage of asylum seekers suffering from PTSD, negative self-perceptions of functioning, anxiety disorder and depression symptoms.



Graph 1. Percentage of Asylum Seekers Suffering from PTSD, Negative Self-Perceptions of Functioning, Anxiety Disorder and Depression Symptoms

The research results broken down by country of origin indicate that Syrians suffer more from PTSD than asylum seekers from other countries, while Afghans suffer from depression more than the other asylum seekers. Graph 2 provides an overview of the differences.

152 Vukčević, M., Dobrić, J and Purić, D. (2014). *Mental Health of Asylum Seekers in Serbia*, UN-HCR, Belgrade.



Graph 2. Average Levels of PTSD, Negative Self-Perceptions of Functioning and Depression among the Asylum Seekers by Country of Origin

The research results indicate that asylum seekers are a highly traumatised population suffering from numerous and serious difficulties in psychological functioning.

The characteristic feelings of asylum seekers suffering from PTSD and depression include: isolation from other people, dissociation and difficulties connecting with others. They are manifested also by the feeling that they are the only ones who have experienced such hardship, that people do not understand what had happened to them, that they cannot count on anyone, that they have been betrayed; they are lonely, distrust other people and withdraw into themselves. The research results also show that the asylum seekers' self-perceptions and perceptions of their competences, qualities and strengths are extremely jeopardised. They mostly feel they have lost their skills and resourcefulness, that they are worthless. They have difficulty taking decisions and express negative self-images, self-criticism and a sense of worthlessness. Furthermore, they are excessively worried, dwell about why everything happened to them, they feel survivor guilt, keep on recalling the worst or most fearful events, are constantly on the alert and display sudden emotional or physical reactions when they remember the traumatic events. They feel restless, tense and are short-tempered and can no longer feel any satisfaction.

Status of People Granted Asylum

Integration

The Asylum Act lays down the general obligation of the Republic of Serbia to ensure conditions for the integration of refugees in social, cultural and economic life and facilitate the naturalisation of the refugees proportionate to its capacities.¹⁵³ The Migration Management Act charges the Commissariat for Refugees and Migrations with the accommodation and integration of people granted asylum or subsidiary protection.¹⁵⁴ The latter law does not include separate provisions on the integration of persons granted subsidiary protection apart from prescribing that they shall be provided with temporary housing.¹⁵⁵

Under the Migration Management Act, the Government of the Republic of Serbia shall adopt an integration plan proposed by the Commissariat for Refugees and Migrations within 12 months from the day the Act comes into effect (November 2012).¹⁵⁶ Such a plan had not been adopted by the time this report went into print. The adoption of a decree on criteria for prioritising accommodation of persons granted asylum or subsidiary protection and conditions for the temporary use of housing, specifying the future modalities of integration and facilitating further endeavours in this field, was to have been adopted in early 2014.¹⁵⁷ The Commissariat for Refugees and Migrations did not grant funding for accommodation to any alien in 2014, because no one had applied for such funding.¹⁵⁸ Two persons were provided with accommodation.¹⁵⁹

Nothing has been done to create conditions for the integration of persons granted international protection in Serbia since the Migration Management Act was adopted in 2012. The Commissariat for Refugees and Migrations noti-

153 Article 46, AA.

154 Articles 15 and 16, Migration Management Act.

155 Article 15(1), Migration Management Act.

156 Articles 16 and 21, Migration Management Act.

157 The Commissariat for Refugees and Migrations was approved two million RSD for the integration of persons granted subsidiary protection or refugee status under the Asylum Act in the 2014 Budget Act, according to the Commissariat's reply to BCHR's request for access to information of public importance No. 019-205-1/2014 of 5 February 2014.

158 Commissariat's reply to BCHR's request for access to information of public importance No. 019-701/1-2015 of 2 March 2015.

159 *Ibid.* To the best of BCHR's knowledge, these two people have been accommodated in a facility near the AC in Banja Koviljača and, consequently, asylum seekers, which will not facilitate their integration in Serbian society.

fied the BCHR that the authorities were drafting an integration programme in cooperation with EU member states, partners on an ongoing twinning project, but did not specify when the programme would be finalised. The Commissariat also notified the BCHR in its letter that the authorities planned to present the prepared documents on integration to the stakeholders for comment and suggestions, but it also specified that no public debate would be organised on the enactment regulating the procedure for accommodating persons granted asylum in the designated facilities because it did not infringe on any rights but merely governed the internal procedure.¹⁶⁰

Two people from Turkey, who had been granted asylum, left Serbia in 2014 and moved to Sweden with the help of the UNHCR Belgrade Office because they faced the same problems in Serbia that they had faced in Turkey and because they had no real prospects for integration.¹⁶¹

In May 2014, the UN Committee on Economic, Social and Cultural Rights (hereinafter: Committee) considered Serbia's 2nd periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights.¹⁶² The Committee devoted an entire section to asylum seekers, refugees and internally displaced persons. With respect to the work of the Commissariat for Refugees and Migrations, the Committee expressed concern that refugees and internally displaced persons did not have access to comprehensive integration programmes. The Committee was also concerned at the limited capacities of social welfare services in places where asylum centres were located and the insufficient reception capacities for asylum seekers.¹⁶³

The Committee recommended to the Republic of Serbia to:¹⁶⁴

- Enact the necessary by-laws and adopt other measures, including training for migration officers, as well as safeguards for the independence of the Asylum Office, to ensure the full implementation of the Law on Asylum of 2007 and to guarantee a fair and efficient asylum procedure, in particular protection against refoulement;
- Establish a functional local integration mechanism for refugees recognised under the Law on Asylum, as well as for internally displaced

160 *Ibid.*

161 The Commissariat for Refugees and Migrations offered them only Serbian language lessons, organised by the NGO Asylum Protection Centre, but they felt unsafe and uncomfortable there because they were constantly asked about their status and they did not want to attend the language course in such circumstances.

162 UN Economic and Social Council, Document E/C.12/SRB/CO/2, available at: <http://www.refworld.org/docid/53fdbbb64.html>.

163 *Ibid.*, articles 2, 9 and 11.

164 *Ibid.*, p. 5.

persons, in areas such as education, social assistance, language and vocational trainings and housing, and adopt and implement in that regard a national strategy for resolving problems of refugees and internally displaced persons beyond 2014, together with an action plan which should include clear time frames, as well as an adequate budget;

- Increase the capacities of social welfare services in places where asylum centres are located, in order to better respond to the needs of asylum seekers and recognised refugees;
- Improve the existing reception capacities for asylum seekers in order to be able to respond to fluctuations in the number of asylum applications and the actual length of the asylum procedure.

Under the Rulebook on Social Assistance for Asylum Seekers and Persons Granted Asylum (hereinafter: Rulebook), persons not accommodated in an Asylum Centre who have no income or have income below the threshold set in the Rulebook shall be entitled to monthly financial allowances.¹⁶⁵ This provision on eligibility to receive allowances is contradictory given that asylum seekers renting housing usually have sufficient financial means to pay the rent. Furthermore, there is no reasonable reason for depriving asylum seekers living in Asylum Centres of the right to financial aid, as they are usually in dire financial straits. The BCHR legal team in December 2014 asked the New Belgrade Social Work Centre to grant an allowance to a five-member Iraqi family seeking asylum, which was living in a rented apartment and lacked regular income. The Centre responded promptly in accordance with the Rulebook and granted the family an allowance. This is definitely a positive illustration of action by the competent institutions in the asylum system.

The hitherto failure of the competent authorities to facilitate integration leads to the conclusion that they do not consider integration a priority, although it is crucial for the establishment of a comprehensive asylum system. More and more people have been seeking asylum in Serbia, wherefore it would be reasonable to expect that more and more of them will be granted international protection and that systemic support to these people has to be in place.

Travel Documents for Refugees

Under the Asylum Act, persons granted refuge shall be issued travel documents in the prescribed form, which shall be valid for a period of two years.¹⁶⁶ The right to a travel document is also guaranteed under Article 48 of the Refugee

¹⁶⁵ Article 3 of the Rulebook on Social Assistance for Asylum Seekers and Persons Granted Asylum.

¹⁶⁶ Article 62, AA.

Convention. However, the MOI still has not adopted an enactment on the design and content of travel documents for refugees, wherefore it cannot issue them travel documents.¹⁶⁷ Neither the Serbian Constitution nor the ECHR envisage the absence of a legal regulation pursuant to which a travel document may be issued as admissible grounds for limiting the freedom of movement. The BCHR legal team in 2014 filed a constitutional appeal with the Constitutional Court of Serbia complaining about the restriction of the refugees' freedom of movement due to the MOI's inability to issue them travel documents.¹⁶⁸

167 Asylum Unit letter 03/10 No. 26-1280/13 of 14 February 2014.

168 The Constitutional Court did not rule on this case by the end of 2014.

Drafting of a New Asylum Act

The MOI adopted a decision in December 2013 to establish a Project Group mandated with reviewing and analysing the legislation and the situation in the field of asylum and issuing proposals based on which a new asylum law would be drafted.¹⁶⁹ The Project Group meetings were attended by representatives of state institutions (the Ministry of Interior, the Commissariat for Refugees and Migrations, the Protector of Citizens), international agencies and organisations (UNHCR, IOM, EU Delegation to Serbia, UN Office in the Republic of Serbia) and national NGOs (the BCHR, the Asylum Protection Centre, Group 484 and Zero Tolerance) and chaired by the then MOI State Secretary Vladimir Božović. The work of the Project Group was an example of good practice of rallying state authorities, CSOs and international organisations in a broad forum with the common goal of improving the existing asylum system in the Republic of Serbia. At the Project Group meetings, all the stakeholders had the opportunity to comment the valid Asylum Act and highlight the problems in its enforcement, as well as to propose amendments to the Act, which the BCHR did, in cooperation with Group 484.¹⁷⁰ The Project Group, however, met only twice after the parliamentary elections in March 2014. Not one meeting was held after the change at the helm of the MOI; nor have the Project Group members been notified that their mandate has formally been terminated. The Project Group's potentials were very good and its meetings were constructive, wherefore it was irresponsible on the part of the MOI to discontinue the endeavour and fail to notify its members and others thereof.¹⁷¹

169 Information the BCHR learned at the Project Group meetings.

170 See Miroslava Jelačić et al, *Challenges of Forced Migration in Serbia* (Group 484, BCHR and the Belgrade Centre for Security Policy), pp. 70-171, available at: "http://www.azil.rs/doc/Challenges_of_Forced_Migration_in_Serbia_A_Second_Look_print_08_02_2013_.pdf."

171 The BCHR did not receive a reply by the end of the year to a letter it sent the MOI on 30 June 2014 asking it for an update on the forthcoming activities of the Project Group drafting the new asylum law.

Media Reports on Asylum Seekers

“They told us only 150 asylum seekers would be living here. That’s untrue, because 150 asylum seekers don’t need 17 hectares of the army barracks in Mala Vrbica [...] Our forefathers fought on the Thessaloniki Front for their descendants and we are today fighting for ours. Mala Vrbica is the arena at the moment.”¹⁷²

Media reports on asylum seekers in Serbia in 2014 mostly focused on the surge in their number, fears of an Ebola epidemic, smuggling and illegal border crossing, but also on the problems asylum seekers faced both in Serbia and on their way to it. The media reported on several protests held in Serbia over the existing or potential presence of asylum seekers and one cannot escape the impression that some dailies sympathise with and support the organisers of such protests, at least one of which was attended also by members of extreme right organisations.¹⁷³ Many of the headlines were sensationalist. Furthermore, media often published the names of the asylum seekers, thus potentially jeopardising their safety and that of their families.¹⁷⁴

Many reporters in Serbia are unfamiliar even with the basic terms and concepts of refugee law, which not only hinders proper reporting, but contributes to the forming of wrong perceptions of asylum seekers as well. Furthermore, many of the journalists have demonstrated a total lack of understanding of the circumstances in which the asylum seekers have found themselves. The best illustration of both of these conclusions is their use of the expression “illegal migrants” as a synonym for “asylum seeker”. The public service broadcaster *RTS*, for instance, reported that “Illegal migrants can seek asylum in our country, but they usually don’t because they consider Serbia merely a stopover”.¹⁷⁵ Such reports lead to the impression that “illegal migrants” decide to seek asy-

172 “Stop Asylum Rally Held”, Mladenovac municipality website, 6 October 2014, available in Serbian at <http://www.mladenovac.rs/vesti/aktuelnosti/1945.html>.

173 “Protest in Mladenovac: Democrats and Dveri Together against Asylum Seekers”, *Kurir*, 6 October 2014, available in Serbian at: <http://www.kurir.rs/vesti/politika/protest-u-mladenovcu-demokrate-i-dveri-zajedno-protiv-azilanata-clanak-1582945>.

174 See “Valjevo: Asylum Seekers End up in Hospital due to Tuberculosis and Frostbites,” *Blic*, 28 January 2014, available in Serbian at <http://www.blic.rs/Vesti/Srbija/438089/Valjevo-Azilanti-zbog-tuberkuloze-i-promrzlina-završili-u-bolnici>; “How I was Smuggled through Serbia: Account of a Syrian Asylum Seeker” *Blic*, 9 October 2014, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/501069/Kako-su-me-svercovali-kroz-Srbiju-Ispovest-azilanta-iz-Sirije>.

175 “Illegal Migrants in Subotica,” *RTS*, 12 December 2014, available in Serbian at <http://www.rts.rs/page/stories/sr/story/57/Srbija+danas/1773675/Ilegalni+migranti+u+Subotici.html>.

lum only in countries where the economic or other circumstances suit them. The term “refugee” is used extremely rarely.

Media often presented asylum seekers as a risk to public safety and health. The weekly *Telegraf* for instance, published the following article entitled “ZAJEČAR: City Full of Sick Asylum Seekers from Africa, None of Whom Saw a Doctor!” in which it said:

“Over 250 people of African and Asian origin were arrested in the territory of the city of Zaječar in the past month; 46 were arrested in the night of 22/23 October and another 15 people and four cab drivers driving them were brought in this evening [...]. We have scheduled a meeting of the Emergency Headquarters to find a way and protect Zaječar’s residents from illegal migrants present in the city territory on an everyday basis. Many of them go from one end of Serbia to another [...] Many illegal migrants are carrying the worst diseases in the history of mankind [...]”¹⁷⁶

In an article with a sensationalist headline “Asylum Seekers Invading Serbia,” the daily *Večernje novosti* wrote:

“This year’s “new arrivals” include 462 children (13.32%), of whom 286 are unaccompanied! Parents let them go towards Europe, where their relatives live, hoping that at least they will make it to a better life [...] [The number of asylum seekers] doubles every year as a rule, and Serbia is facing increasing problems [...] The police identified also a large number of those, who tried to enter or leave our country illegally in the first half of the year. They caught 194 aliens crossing the border illegally and stopped another 2,124 who were trying to cross it illegally.”¹⁷⁷

Although asylum seekers are described in the above article as “unfortunates coming to our country from war torn areas”, the readers are apparently led to conclude that asylum seekers pose a huge burden to the Republic of Serbia, whom the EU member states are not interested in either, and that many families in the countries of origin send their underage children alone to Europe, “where their relatives live”, to seek their fortune. As far as reports on the prevention of illegal crossing of borders are concerned (which do not distinguish between entering and leaving Serbia), not one of them mentions the principle of impunity for illegal entry or residence applying to persons who express the intention to seek asylum or in whose case such an intention is recognised;¹⁷⁸ nor do they mention the prohibition of expulsion or refoulement. The reporters also do not distinguish clearly between asylum seekers and irregular migrants. Their fre-

176 “ZAJEČAR: City Full of Sick Asylum Seekers from Africa, None of Whom Saw a Doctor!” *Telegraf*, 24 October 2014, available in Serbian at <http://www.telegraf.rs/vesti/1281089-pretnja-od-ebole-preko-ilegalnuh-imigranata-bolesni-azilanti-iz-afrike-u-zajecaru-niko-nije-isao-na-lekarski>.

177 “Asylum Seekers Invading Serbia” *Večernje novosti*, 21 June 2014, available in Serbian at <http://www.novosti.rs/vesti/naslovnadrustvo/aktuelno.290.html:497221-Invazija-azilanata-u-Srbiji>.

178 More on the principle of impunity in the 2013 Right to Asylum report, pp. 30-32.

quent mentions of asylum seekers in the context of smuggling and illegal border crossing creates the impression that these people are, first and foremost, breaking the law.

The media extensively reported on local protests against the opening of asylum centres in their neighbourhoods or demanding their dislocation. Before a group of asylum seekers was to arrive in Banja Vrujci and move into private accommodation, the media quoted the local residents, who feared that this “tourist resort” would suffer major damages due to the presence of the asylum seekers.¹⁷⁹ When Bogovada’s residents demanded that the asylum seekers be moved out of the Red Cross shelter in that town, the media reported that they feared the “Ebola virus and other contagious diseases, and warned at the protest that many homes and vacation cabins had been broken into and that the asylum seekers disturbed them in their homes at night”.¹⁸⁰ When the residents of Mala Vrbica near Mladenovac organised a protest in October 2014 after the Commissariat for Refugees and Migrations said it would open an asylum centre in their settlement, *RTS* reported that the residents were told that “up to 2,500 asylum seekers may move in next door”.¹⁸¹ *RTS*, however, focused solely on whether the municipal officials were entitled to appear at the protest given that they were members of parties with absolutely different ideologies, as the protest was attended by members of the Democratic Party and the ultra-nationalist Dveri.¹⁸² The media did not comment the xenophobic slogans such as: Stop to Asylum!!!, Yes to Investments, No to Asylum, or We Must Protect Our Children’s Future. Quite the contrary, their focus on the fact that the municipal authorities supported such an event risked to provide the protest with undue legitimacy in the eyes of the public.

What is especially concerning is the large number of comments by readers of these articles, who displayed a great degree of xenophobia, intolerance, lack of understanding of the situation the asylum seekers are in and even open racism.¹⁸³ The media coverage of asylum seekers has undoubtedly fomented such reactions among the members of the public.

179 “Asylum Seekers Unwanted in Banja Vrujci”, *Večernje novosti*, 22 January 2014, available in Serbian at <http://www.novosti.rs/vesti/srbija.73.html:474568-Azilanti-nepozeljni-u-Banji-Vrujci>.

180 “Bogovada: Petitioning against Asylum Seekers”, *Večernje novosti*, 4 November 2014, available in Serbian at <http://www.novosti.rs/vesti/srbija.73.html:518061-Bogovadja-Peticijom-teraju-azilante-iz-Afrike>.

181 “How the Asylum Seekers Brought DS and Dveri Together,” *RTS*, 9 October 2014, available in Serbian at <http://www.rts.rs/page/stories/sr/story/9/Politika/1718790/Kako+su+azilanti+spojili+DS+i+Dveri.html>.

182 *Ibid.*

183 See the readers’ comments to the following articles : “PASSING BY : Asylum Seekers Resting in Bogovada on Their Way to a Better Life”, *Kurir*, 17 August 2014, available in Serbian at <http://www.kurir.rs/komentari/u-prolazu-azilanti-u-bogovadi-odmaraju-na-putu-do-boljeg->

It can be concluded that one of the main problems in the media coverage of asylum seekers lies in the fact that the public very rarely has the opportunity to hear opinions of experts and even the competent state authorities that would give it insight in the asylum seekers' plight and the obligations Serbia has under international and national law to provide accommodation and adequate living conditions to persons who express the intention to seek asylum.¹⁸⁴

Public officials, at the republican and local levels alike, have not helped improve the public perceptions of asylum seekers in Serbia. The local community representatives rarely distanced themselves from the xenophobic protests; rather, they actively participated in them and provided them with legitimacy by their presence and their statements.

For instance, the chair of the Banja Vrujci Local Community supported the protests against the presence of asylum seekers in that "tourist" resort,¹⁸⁵ while the chair of the Bogovada Local Community backed the local protests in the Lajkovac municipality for the following reasons:

"We are also afraid of the Ebola virus risk and the outstanding utility problems that appeared when the asylum seekers appeared, which undermine hygiene additionally [...] We are protesting because we're at risk of contracting other diseases, because people illegally crossing the border are not subjected to adequate health checks. All this, together with the lack of a water pipeline, a sewage system, any infrastructure, additionally threatens health and hygiene in Bogovada."¹⁸⁶

To make things worse, no one refuted these allegations, especially since the asylum seekers are subjected to medical examinations on admission in the ACs. The claim about the "lack of a water pipeline, a sewage system, any infrastructure" suggests that accommodation in the ACs does not satisfy hygiene standards and presents a sanitary risk for the local population.

One protest in Mladenovac was even attended by and addressed by the Mayor of that municipality. The press reported that the Mayors of Vračar, Smederevska Palanka and Topola supported the protest as well.¹⁸⁷ The Mladenovac Mayor reiterated that the municipality did not have the capacity to take in the

zivota-clanak-1512265; "Subotica: Frost-Bitten Asylum Seekers, Children Starving, Too!", *Večernje novosti*, 9 December 2014, available in Serbian at <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:523494-Subotica-Azilanti-u-promrzlinama-gladuju-i-deca>.

184 More in the survey *Public Perception of Asylum Seekers in Serbia* (UNHCR and CeSID, 2014), pp. 13-21, available at http://www.unhcr.rs/media/CeSID_UNHCR_311014_EN.pdf.

185 "Asylum Seekers Unwanted in Banja Vrujci", *Večernje novosti*, 22 January 2014, available in Serbian at: <http://www.novosti.rs/vesti/srbija.73.html:474568-Azilanti-nepozeljni-u-Banji-Vrujci>.

186 "Bogovada: Petitioning against Asylum Seekers", *Večernje novosti*, 4 November 2014, available in Serbian at <http://www.novosti.rs/vesti/srbija.73.html:518061-Bogovadja-Peticijom-teraju-azilante-iz-Afrike>.

187 "Battle for Mladenovac", *Danas*, 16 October 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/borba_za_mladenovac_1118.html?news_id=290889.

2,000 asylum seekers who were reportedly to be moved there.¹⁸⁸ This was not the first protest organised in Mladenovac. Although the Commissariat for Refugees and Migrations denied that two thousand people would be accommodated in Mladenovac,¹⁸⁹ the state authorities' reaction was inadequate, with the exception of the Protector of Citizens. The political party, which the Mladenovac Mayor is a member of, did, however, distance itself from the protest.¹⁹⁰

It seems, however, that the media in 2014 tried to provide the public with an idea of the problems and plight the asylum seekers experienced in their countries of origin or on their way to Serbia. In its article "Valjevo: Asylum Seekers End up in Hospital due to Tuberculosis and Frostbites," *Blic* published the account of three hospitalised asylum seekers it called "refugees".¹⁹¹ *Blic* also wrote about an asylum seeker from Syria and his journey through Serbia, giving the readers a glimpse of the problems Syrian and other refugees encounter in our country:

"Soultan finally decided to leave his hometown, Damascus, after he and his college friends were arrested and then brutally beaten and tortured by the regime soldiers. He couldn't have even imagined that he would suffer many similar scenarios on his way to asylum in Germany [...] The Serbian police were waiting for us. They beat us, they slapped me, and they took our money." [...] "And then they sent us back to Macedonia." Soultan told the Huffington Post. The next day, they snuck back into Serbia. [...] Near Belgrade "they found the nearest police station, hoping authorities would help them get in touch with the United Nations or other refugee aid groups. Instead, the group had to pay a 50 euro fine for entering the country illegally. They were locked up for the night and given a week to leave Serbia. They ignored the warning. Instead, they found smugglers who snuck them into Hungary and across the Austrian border for 1,500 euros a head."¹⁹²

Media coverage of the assistance asylum seekers in the Obrenovac AC extended the local population during the disastrous floods that ravaged the city in May 2014 was particularly interesting. Although the headlines, such as "One

188 "How the Asylum Seekers Brought DS and Dveri Together," *RTS*, 9 October 2014, available in Serbian at <http://www.rts.rs/page/stories/sr/story/9/Politika/1718790/Kako+su+azilanti+spojili+DS+i+Dveri.html>.

189 "Politicians at Protest against Asylum Seekers," *Radio Free Europe*, 7 October 2014, available in Serbian at: <http://www.slobodnaevropa.org/content/politicari-na-protestu-protiv-azilantata/26625768.html>.

190 "Condemnation of Protest against Asylum Seekers," *B92*, 7 October 2014, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=10&dd=07&nav_id=908536.

191 "Valjevo: Asylum Seekers End up in Hospital due to Tuberculosis and Frostbites," *Blic*, 28 January 2014, available in Serbian at: <http://www.blic.rs/Vesti/Srbija/438089/Valjevo-Azilanti-zbog-tuberkuloze-i-promrzlina-završili-u-bolnici>.

192 "How I was Smuggled through Serbia: Account of a Syrian Asylum Seeker" *Blic*, 9 October 2014, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/501069/Kako-su-me-svercovali-kroz-Srbiju-Ispovest-azilanta-iz-Sirije>.

Good Turn Deserves Another: Asylum Seekers Helping Defend the City from Flood”¹⁹³, “Asylum Seekers Saving Serbs: You Helped Us, Now We’re Helping You!”¹⁹⁴ and “Asylum Seekers Helping Krupanj: Locals Exhilarated!” were just as sensationalist, they nevertheless marked a turnabout in the media reports about asylum seekers, who at long last were not perceived as a security risk or just economic migrants but as “courageous young men mostly (*sic*) from African countries, [some of whom] have themselves experienced the horrors of floods in native Africa”.¹⁹⁵

Some media covered the status of asylum seekers and refugees with a greater degree of professionalism. Thanks to EU funding of the project Sights Set on European Law: Refugees and Asylum Seekers, within the Strengthening Media Freedom in Serbia programme, the weekly *Vreme* published 20 articles on asylum seekers and refugees in the February-November 2014 period. Two special publications were published and two panel discussions were held in that period as well. The journalists involved in the project properly used the refugee law terms and covered the views of all stakeholders in the asylum system, thus helping paint a more objective picture of the situation in the field of asylum.

Media reports on asylum seekers in the Republic of Serbia in general still suffer from lack of familiarity with refugee law terminology. Although the media were more interested in hearing the accounts of asylum seekers in 2014 and mostly published positive reports about the assistance they extended their neighbours during the floods, it can be concluded that such reports are isolated cases, steps in the right direction, although insufficient to radically change the public perceptions of asylum seekers in the Republic of Serbia. This is why journalists must familiarise themselves with refugee law terms and concepts to a greater extent. The media should also refrain from approaching the issue of asylum in a sensationalist manner and strive to publish objective reports abiding by the professional code of conduct. And, the competent institutions need to provide the public with comprehensive insight in the asylum system in the Republic of Serbia.

193 “One Good Turn Deserves Another: Asylum Seekers Helping Defend the City from Floods,” *Blic*, 21 May 2014, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/467290/Dobro-se-dobrim-vraca-Azilanti-pomazu-u-odbrani-od-poplava-FOTO>.

194 “Asylum Seekers Saving Serbs: You Helped Us, Now We’re Helping You!”, *Blic*, 16 May 2014, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/465637/Azilanti-spasavaju-Srbe-Vi-ste-pomogli-nama-sada-cemo-mi-vama>.

195 “Asylum Seekers Helping Krupanj: Locals Exhilarated!” *Prva TV*, 21 May 2014, available in Serbian at: <http://www.prva.rs/vesti/info/41903/azilanti-pomazu-krupnju-mestani-prezadovoljni.html>.

Recommendations

The BCHR prepared a number of recommendations to various institutions in the asylum system based on its experience in extending legal aid to asylum seekers and the findings published in its prior reports on asylum.

Recommendations to the Government of the Republic of Serbia:

1. Ensure the independence of the Asylum Commission and appoint its members from among experts renowned for their efforts to protect human rights.
2. Introduce adequate criteria for updating the List of Safe Countries of Origin and Safe Third Countries and revise the valid List.
3. Adopt an integration plan for people granted international protection in Serbia, as prescribed by the Migration Management Act, and earmark adequate funding for its implementation.
4. Extend greater financial and technical support to institutions in communities with greater influx of asylum seekers.

Recommendation to the National Assembly of the Republic of Serbia:

1. Adopt a new Asylum Act in compliance with EU standards that will be able to respond to the challenges of migration trends in the Republic of Serbia.

Recommendations to the Ministry of Interior:

1. Establish protection-sensitive screening and profiling mechanisms in accordance with international protection principles that will allow for the differentiation between asylum seekers and other migrants and their appropriate referral, which will reduce the pressure on the asylum system.
2. Ensure abidance by the Protector of Citizens Recommendations No. 75-6/14 of 10 February 2014.
3. Ensure that all police directorates in the territory of the Republic of Serbia issue certificates of intention to seek asylum.

4. Translate Instructions on Treatment of Persons Taken into and Held in Custody into Arabic, Farsi and Urdu.
5. Draft a factsheet listing the rights of aliens deprived of liberty and their right to seek asylum in Serbia in the event they had left their country of origin due to violence or persecution and translate it into the languages they understand (English, French, Arabic, Farsi and Urdu).
6. Ensure access to the asylum procedure to all aliens who express the intention to seek asylum during police arrest or custody.
7. Undertake all official actions preceding the submission of asylum applications promptly and without delay, pursuant to the Asylum Act.
8. Enable asylum seekers to apply for asylum within 15 days from the day of registration.
9. Abide by the 60-day deadline within which first-instance decisions on the asylum applications are to be adopted.
10. Apply the safe third country concept only if there are guarantees that the third country will agree to review the specific asylum applications on the merits.
11. Facilitate the issuance of travel documents to refugees pursuant to the Asylum Act and the Refugee Convention.
12. Facilitate independent monitoring of access to the asylum procedure at the border crossings, which will be conducted in cooperation between the MOI, UNHCR and human rights NGOs.
13. Introduce regular training programmes for all police officers on the right to asylum and treatment of asylum seekers as a vulnerable group.
14. Ensure that the asylum procedure is conducted by civilian staff that have undergone the relevant training.
15. Improve the efficiency of coordination and communication with the Commissariat for Refugees and Migrations with a view to ensuring the efficient implementation of the asylum procedure in all asylum centres.

Recommendation to the Ministry of Justice:

1. Provide the Administrative Court judges with relevant training in international refugee law standards, particularly about the prohibition of refoulement.

***Recommendations to the Commissariat
for Refugees and Migrations:***

1. Provide all asylum seekers with adequate accommodation fulfilling minimum standards for life with dignity – adequate facilities for living, maintenance of hygiene, nutrition, satisfaction of cultural and religious needs.
2. When deciding on opening provisional or permanent asylum centres, ensure that they facilitate the asylum procedure, i.e. that they are near the headquarters of all institutions competent for asylum, with a view to ensuring the efficient, timely and cost-effective implementation of the asylum procedure.
3. Ensure abidance by the Protector of Citizens Recommendations No. 75-6/14 of 10 February 2014.
4. Improve the efficiency of coordination and communication with the Ministry of Interior with a view to ensuring the efficient implementation of the asylum procedure in all asylum centres.
5. Urgently propose to the Government the adoption of the relevant by-laws to put in place a normative framework requisite for the integration of persons granted international protection, as envisaged by the Migration Management Act, and ensure the implementation of those measures.

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