

**Right to Asylum  
in the Republic of Serbia  
Periodic Report  
for January - March 2020**



**Belgrade Centre  
for Human Rights**

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## ACRONYMS

AC - Asylum Centre

BCHR - Belgrade Centre for Human Rights

BPS - Border Police Station

CRM - Commissariat for Refugees and Migration of the Republic of Serbia

ECHR - European Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR - European Court of Human Rights

ICERD - International Convention on the Prohibition of All Forms of Racial Discrimination

IOM - International Organization for Migration

LATP - Law on Asylum and Temporary Protection

LF - Law on Foreigners

LGAP - Law on the General Administrative Procedure

MOI - Ministry of the Interior of the Republic of Serbia

OHCHR - Office of the High Commissioner for Human Rights

RS - Republic of Serbia

RTC - Reception-Transit Centre

UN - United Nations

UNHCR - United Nations High Commissioner for Refugees

WHO - World Health Organization



## Introduction

The legal team of the Belgrade Centre for Human Rights (BCHR) has been extending legal aid to asylum seekers and foreigners granted international protection in the Republic of Serbia (RS) since 2012. These activities, as well as the development of this Report, have been implemented within the project *Support to Refugees and Asylum Seekers in Serbia* supported by the United Nations High Commissioner for Refugees (UNHCR). The project aims to improve the protection of refugees in the RS and facilitate the realisation of their rights and their integration into Serbia's cultural, social and economic life.

This Report focuses on the right to asylum in the RS in the January-March 2020 period and was prepared by BCHR's legal team and associates. The Report contains information the BCHR legal team obtained whilst representing asylum seekers and in its regular cooperation and communication with the state authorities and the UNHCR. The statistical data presented in it cover the 1 January - 31 March 2020 period.

The Report addresses specific issues that the BCHR team deemed particularly important in the first quarter of 2020. It provides an overview of the asylum authorities' practices and an analysis of selected asylum decisions. Where relevant, the Report briefly describes the prior practices of the relevant authorities or refers to BCHR's earlier reports to provide a more comprehensive illustration of the positive and negative aspects of their work. One of the main topics covered by this Report is the state of emergency, which was declared in the RS on 15 March in response to SARS-CoV-2, and how the anti-pandemic measures imposed by the RS Government have affected the status of foreigners in need of international protection. The authors of this Report also analysed public discourse during the first quarter of the year, given the increased attention devoted to migration issues by the media and decision makers, mostly in a negative context. The authors' analysis was informed by the qualitative data from numerous media sources, as well as the public opinion poll on migrants commissioned by the BCHR and conducted by IPSOS Strategic Marketing in November 2019.

The Report is primarily addressed to state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals and organisations monitoring the situation in the field of refugee law. Its authors alert to specific shortcomings and challenges in the work of the

relevant authorities and offer recommendations on how to address them at the end of each section. We believe that this Report will deepen the readers' understanding of the situation refugees are in and help the relevant RS authorities establish a more functional asylum system.

# 1. Statistics

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports. The data in this Report cover the 1 January – 31 March 2020 period. The national asylum authorities do not publish information about their work on their websites.

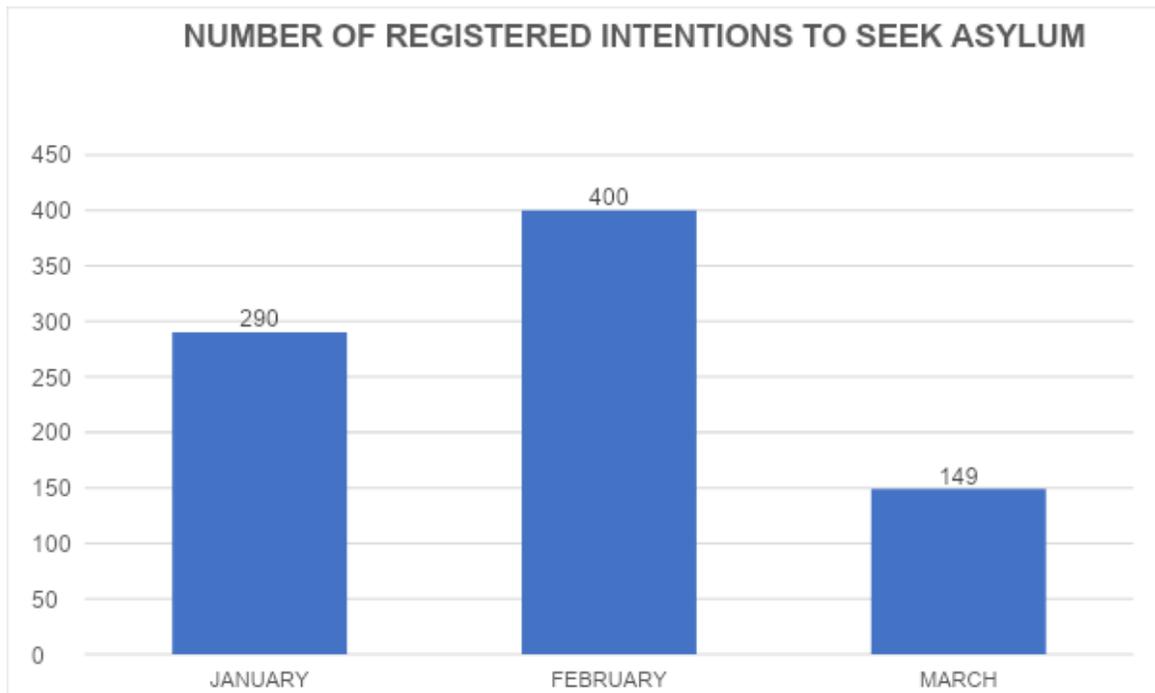
## 1.1. Registration of Asylum Seekers

A total of 839 foreigners expressed the intention to seek asylum in the RS since the beginning of the year; 787 of them were men and 52 were women. The intention to seek asylum in the RS was expressed by 120 children, 26 of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered since the beginning of the year: 290 in January, 400 in February and 149 in March 2020.

Most of the foreigners who expressed the intention to seek asylum in the reporting period were nationals of Afghanistan (359), followed by nationals of Pakistan (155), Bangladesh (71), Syria (53) and India (44). The intention to seek asylum in the reporting period was also expressed by nationals of Iran (37), Iraq (31), Algeria (18), Palestine (9), Morocco (7), Burundi (6), Russia (6), Turkey (5), Lebanon (4), Somalia (4), Egypt (3), Congo (3), Libya (3), Myanmar (3), Sudan (3), Nepal (2), Tunisia (2), Albania (1), Eritrea (1), Guinea (1), Yemen (1), Jordan (1), Cuba (1), Senegal (1) and North Macedonia (1).

The vast majority of foreigners issued certificates of registration of the intention to seek asylum in the RS (certificates of registration) in the first quarter of 2020 were registered in police stations (708), and at border crossings (77); such certificates were also issued to 33 foreigners at Belgrade Airport Nikola Tesla. Asylum Office staff registered 29 foreigners as intending to seek asylum in the asylum centres in the reporting period.

A total of 647,512 foreigners expressed the intention to seek asylum in Serbia from 2008 to end March 2020. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577, 995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018, 12,937 in 2019 and 839 in the first quarter of 2020.

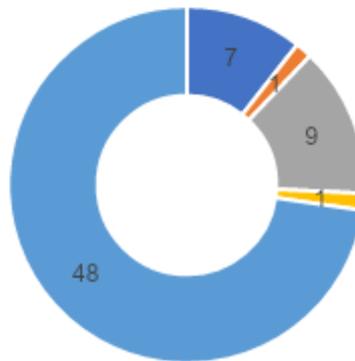


## 1.2. Work of the Asylum Office

As of 1 January 2020, 29 asylum applications were submitted in person before Asylum Office staff and 12 applications were submitted in writing. The Asylum Office held hearings concerning 34 asylum seekers. It granted refuge to seven foreigners – four nationals of Iran, two nationals of Burundi and one stateless person. The Asylum Office granted subsidiary protection to one national of Afghanistan. It rejected eight applications concerning nine asylum seekers and dismissed one asylum application. The Asylum Office discontinued the review of 38 applications concerning 48 asylum seekers, primarily because the applicants had left the RS before the completion of the asylum procedure.

Available data indicate that the RS authorities have upheld the asylum applications of 173 foreigners since 2008. They granted refuge to 80 and subsidiary protection to 93 applicants.

**ASYLUM OFFICE STATISTICS SINCE 1 JANUARY 2020  
(NO. OF ASYLUM SEEKERS)**



- Decisions granting refugee status
- Decisions granting subsidiary protection
- Decisions rejecting asylum applications
- Decisions dismissing asylum applications
- Decisions discontinuing the asylum procedures

## 2. Access to the Asylum Procedure at Belgrade Airport Nikola Tesla

In the first quarter of 2020, the BCHR legal team did not identify any additional irregularities in access to the asylum procedure apart from the ones it had already alerted to.<sup>1</sup> However, while extending assistance in accessing the asylum procedure to foreigners at Belgrade airport Nikola Tesla, they found that there were still irregularities in the treatment of prospective asylum seekers. These challenges will be described in greater detail below.

### 2.1. Practice of the Border Police and the BCHR's Interventions

During the first three months of 2020, the Border Police Station (BPS) at the Nikola Tesla Airport issued 33 certificates of registration<sup>2</sup> to foreigners who expressed the intention to seek asylum. BCHR lawyers intervened on four occasions<sup>3</sup> on behalf of 13 foreigners, either personally at the airport or in telephone conversations with BPS officers. The BCHR intervened on behalf of a number of nationals of India,<sup>4</sup> as well as on behalf of Cuban and Syrian nationals.

The BCHR intervenes when foreigners are denied entry into the RS by the BPS under the Law on Foreigners (LF)<sup>5</sup> although they reportedly expressed the intention to seek asylum to the police officers. In such cases, the foreigners phone or e-mail the BCHR<sup>6</sup> or the UNHCR and ask for assistance in seeking asylum in the RS.

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<sup>1</sup> See more at Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, (BCHR, 2020), pp. 19-39. Available at <http://azil.rs/en/wp-content/uploads/2020/03/Right-to-Asylum-in-Serbia-2019.pdf>.

<sup>2</sup> Three in January, 25 in February and 5 in March. Data obtained from the UNHCR Belgrade Office.

<sup>3</sup> In two out of the four cases, the BPS allowed BCHR lawyers to visit the foreigners at the Airport.

<sup>4</sup> The Decision Abolishing Visas for Nationals of India (*Sl. glasnik RS 79/17*) has been in force since 2017. See more in Serbian at: <https://bit.ly/2WaVBiD>.

<sup>5</sup> *Official Gazette of the RS*, Nos. 24/18 and 31/19.

<sup>6</sup> BCHR's telephone number and e-mail are displayed on a poster in the room where foreigners denied entry in the RS are held.

Under the LF, foreigners may be allowed entry into the country on humanitarian grounds or if so provided under Serbia's international obligations, which is precisely the reason for seeking asylum.<sup>7</sup> Authorised police officers at border crossings are under the obligation to provide access to the asylum procedure to foreigners who express the intention to seek asylum, register their intention and issue them certificates of registration.<sup>8</sup>

Regardless of whether foreigners fulfil the requirements to enter the RS, police officers are under the obligation to examine whether they may be at any risk of persecution<sup>9</sup> or treatment in contravention of the absolute prohibition of torture<sup>10</sup> before returning them to the country they have come from. When foreigners access RS territory, the relevant authority, in this case the BPS, is under the obligation to provide them with access to the asylum procedure, in which they will advance all the relevant facts on potential risks they may be exposed to if they return to their country of origin and/or a country they transited on their way to the RS.

As noted, numerous shortcomings were earlier identified in the practice of the BPS officers.<sup>11</sup> These shortcomings have been flagged both by the BCHR and the US State Department, which said in its 2019 report that Serbian authorities still lacked the resources and expertise to protect asylum seekers from *refoulement* and that the authorities pushed back irregular migrants without screening them to see if they were seeking asylum.<sup>12</sup> The Report also noted that according to information attributed to the MOI, 1,186 denials occurred at the Belgrade Nikola Tesla Airport, representing a significant increase, compared with 2018 (771 denials). It went on to say that there were unconfirmed reports that potential asylum seekers arriving at the Belgrade Nikola Tesla Airport, for instance Kurds from Turkey, may be sent back on the next flight.<sup>13</sup>

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<sup>7</sup> Art. 15(3) LF.

<sup>8</sup> Art. 35 LATP.

<sup>9</sup> In the context of Art. 33 of the Convention Relating to the Status of Refugees.

<sup>10</sup> In the context of Art. 3 of the ECHR and Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>11</sup> See more at Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019* (BCHR, 2020) pp. 24-29.

<sup>12</sup> *Country Reports on Human Rights Practices: Serbia, 2019*, U.S. Department of State, Section 2. Respect for Civil Liberties, Including: F. Protection of Refugees. Available at: <https://bit.ly/2TNLJtC>.

<sup>13</sup> *Ibid.*

In the BCHR's experience, the trend continued in the first quarter of 2020. During one of its interventions, when its legal team went to the Airport, BPS officers told them that seven nationals of India had been referred to the relevant reception centre.<sup>14</sup> The Border Police returned three nationals of Cuba to the country they had come from.<sup>15</sup> All the foreigners that contacted the BCHR said that they had sought asylum before the police officers, wherefore it remains unclear why the BPS officers treated some of them differently, i.e. why they granted access to the asylum procedure to nationals of India but not to nationals of Cuba.

In another case, the BCHR was contacted by two nationals of India, who claimed that they had expressed the intention to seek asylum before the Airport police. During his visit to the Airport transit zone, a BCHR lawyer extended legal aid to them and questioned them about why they had left their country of origin. These nationals of India explicitly expressed their intention to seek asylum before three BPS officers and the BCHR lawyer. BCHR lawyers did not subsequently receive any information on whether the BPS had issued them their certificates of registration and referred them to a facility accommodating asylum seekers.<sup>16</sup> These nationals of India did not contact BCHR lawyers again or inform them of what happened.

In some cases, the BCHR was unable to establish with certainty whether the foreigners genuinely wanted asylum in the RS or had contacted the BCHR to help them enter the RS.<sup>17</sup> In several cases, various foreigners claiming they were nationals of India asked the BCHR to intervene from the same e-mail. After the BCHR intervened with the BPS, some of the foreigners who were issued certificates of registration never contacted the BCHR again. Furthermore, the BCHR cannot always ascertain whether the foreigners contacting them are actually at the Airport. When the BCHR contacted the BPS about a Syrian national, who had called it and left his personal data, the BPS officer told the BCHR that this individual was not at the Airport.

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<sup>14</sup> The nationals of India did not contact BCHR lawyers after the BPS officers issued them their certificates of registration and referred them to the Reception Centre in Pirot.

<sup>15</sup> BCHR lawyers were not informed of which countries the BPS returned these foreigners to. They assume they were returned to Russia since most Cuban nationals transit through Russia on their way to Serbia.

<sup>16</sup> After extending the nationals of India legal advice and interviewing them about why they had left their country of origin, BCHR lawyers decided not to represent them in the asylum procedure.

<sup>17</sup> See more at Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019* (BCHR, 2020), p. 21.

BCHR's inability to ascertain whether foreigners at the Airport really plan on seeking asylum and whether they are at the Airport at all has been exacerbated by BPS' inconsistent practice regarding provision of information to BCHR lawyers. The Border Police sometimes extend to the BCHR team information on specific foreigners held at the Airport and sometimes do not.<sup>18</sup>

## **2.2. Conclusion and Recommendations**

There is still a real risk that BPS officers at Nikola Tesla Airport do not recognise the foreigners' need for international protection. They should continuously apprise themselves of the situation in war-torn countries and countries with poor human rights records and always interview foreigners about why they had left their country of origin, in consultation with the Asylum Office, before denying them entry into the RS.

The BPS and BCHR should explore avenues for improving the existing modes of cooperation. They could give thought to developing a system of mutual support in identifying foreigners genuinely in need of international protection, in the context of preventing abuse of the asylum system.

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<sup>18</sup> When BPS officers are unable to provide the relevant information about foreigners contacting the BCHR from the Airport, BCHR lawyers send a letter to the BPS notifying it that they will visit the Airport and access the transit zone with their temporary passes.

### **3. Analysis of Selected Asylum Decisions**

Under the Law on Asylum and Temporary Protection (LATP), asylum applications are reviewed by the Asylum Office and appeals of its decisions are reviewed by the Asylum Commission. Asylum Commission decisions may be contested before the Administrative Court.

In December 2019 and the first quarter of 2020, the Asylum Office rendered eight decisions in which the asylum seekers were represented by BCHR lawyers: it upheld five asylum applications<sup>19</sup> and rejected the other three.<sup>20</sup> In the first quarter of 2020, the Asylum Commission rendered seven decisions (on three cases) rejecting BCHR's appeals and upholding the Asylum Office's negative decisions.

The beginning of the year was marked by three Asylum Office decisions granting refuge to foreigners represented by the BCHR. These foreigners fell in the category of particularly vulnerable people in need of international protection.<sup>21</sup>

This section of the Report includes the BCHR's analysis of Asylum Office decisions it deems particularly important. They provide good practice examples, but illustrate some of the irregularities and omissions of the first-instance authority as well.

#### **3.1. Refugee Status Granted to Particularly Vulnerable Asylum Seekers**

##### **3.1.1. Victim of Ill-Treatment from Afghanistan**

In December 2019, the Asylum Office issued a ruling upholding the asylum application of an Afghani refugee X. and granting him refuge.<sup>22</sup> X. had fled his country of origin

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<sup>19</sup> The Asylum Office granted refuge in four cases and subsidiary protection in one case.

<sup>20</sup> The Asylum Office rendered 80 various decisions in respect of 108 asylum seekers in the first quarter of 2020. The BCHR does not have data on the total number of decisions adopted by the Asylum Commission and Administrative Court during the reporting period.

<sup>21</sup> An LGBTI asylum seeker; a single mother who was a victim of ill-treatment and her child; and a young man subjected to sexual abuse and violence in his country of origin.

<sup>22</sup> Asylum Office Ruling No. 26-1403/19 of 11 December 2019.

because of gender-based ill-treatment caused by a situation of general insecurity and harmful traditional practices the Afghani authorities could not protect him from. X. had also been persecuted because of his ethnicity (Tajik) and religion (Shiite).

Although the ill-treatment X. had suffered had horrific psychological impact on him, his lack of access to psychiatric help or psycho-social aid until he arrived in the RS exacerbated the effects of persecution on his mental and physical health. The Asylum Office's decision in this case is a good practice example. The most important aspects of the decision are reviewed in the following paragraphs.

First of all, the Asylum Office took into account all the relevant sources of information about X.'s country of origin and assessed them against his personal circumstances. The Asylum Office devoted the most attention to UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan<sup>23</sup> and the UN Secretary General's latest report on the situation in Afghanistan.<sup>24</sup>

Herewith an explanation of why we are highlighting this particular aspect of this decision, given the Asylum Office's explicit statutory obligation to consult topical reports on the situation in the asylum seekers' country of origin when assessing the validity of their applications.<sup>25</sup> Namely, relying on impartial international sources, the Asylum Office found that all parts of Afghanistan were insecure in some cases, but then went ahead to declare it safe in the cases of other asylum seekers. In these latter decisions, it made no mention of all the relevant international reports on the situation in that country that had led it to the former decisions. The Asylum Office's valid and lawful decisions must be based on identical sources of information about a country of origin and their objective assessment in light of the asylum seekers' personal circumstances. This is the only way to ensure adequate protection from violations of the *non-refoulement* principle. This issue will be elaborated below, in the comparative analysis of the Asylum Office's

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<sup>23</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UN. Doc. HCR/EG/AFG/18/02 (Geneva, 2018). Available at: [www.refworld.org/docid/5b8900109.html](http://www.refworld.org/docid/5b8900109.html).

<sup>24</sup> UN, *The situation in Afghanistan and its implications for international peace and security, Report of the Secretary General*, Un. Doc. A/73/777-S/2019/193 (New York, February 2019). Available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/sg\\_report\\_on\\_afghanistan\\_6\\_march\\_2019.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/sg_report_on_afghanistan_6_march_2019.pdf).

<sup>25</sup> Art. 32 LATP.

decisions on asylum applications filed by two unaccompanied children from Afghanistan.

The Asylum Office rendered its decision on X.'s asylum application after a thorough analysis of all the evidence he had adduced during the asylum procedure, including evidence of the grave consequences of persecution on his mental health. Although a good practice example, this decision also illustrates an important feature of the RS asylum procedure. Namely, the Asylum Office's practice leads to the conclusion that it takes into account reports on the asylum seekers' psychological state only when it renders decisions upholding their asylum applications.<sup>26</sup> On the other hand, the Asylum Office often rejects applications by vulnerable asylum seekers without having gone into their psychological state in the context of persecution. Given that persecution is inextricably linked to the asylum seekers' psycho-social situation, expert reports by psychiatrists or psychologists could substantiate the validity of the asylum applications and clarify why asylum seekers are unable to remember all the circumstances surrounding their persecution.<sup>27</sup>

Finally, the Asylum Office rendered a decision on X.'s asylum application faster than it usually does.<sup>28</sup> The entire procedure was completed in six and a half months, whereas an average of nine months pass from the day the asylum seekers file their applications to the day they receive the first-instance decision. To recall, the LATP lays down that the Asylum Office shall render its decision within three months and that it

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<sup>26</sup> More on the importance of a multi-disciplinary approach to decision-making in the asylum procedure and the asylum authorities' practices in the preceding period in: Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2020), pp. 55-58.

<sup>27</sup> For example, an expert report confirming that the asylum seeker had suffered a trauma resulting in his difficulties in recollecting specific events can help Asylum Office staff decide how much weight they should attach to the lack of detail or coherence of the asylum seeker's statement. Furthermore, the principle on the provision of special procedural and reception guarantees under Art. 17 of the LATP appears to impose a duty on the Asylum Office to consult experts who may find, for example, that the asylum seeker had been subjected to grave forms of psychological abuse. The LGAP also provides for expert opinions when the establishment or assessment of a fact requires expertise the authorised public official does not have (Art. 128).

<sup>28</sup> In cases in which the BCHR lawyers represented the asylum seekers in 2019, 294 days on average passed from the day they had applied for asylum to the day they received the Asylum Office decisions. More on this aspect of the asylum procedure in: Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2020), pp. 53-54 and 110-112.

may extend the deadline only in exceptional circumstances, in which case it is under the obligation to promptly notify the applicant thereof.<sup>29</sup>

The principle on ensuring special procedural guarantees should be interpreted so as to mean that priority should be given to cases of vulnerable categories of asylum seekers, including victims of severe physical and psychological ill-treatment.<sup>30</sup> One study has shown that long-lasting asylum procedures have led to the deterioration of the asylum seekers' mental health to a greater extent than their premigration circumstances in their country of origin.<sup>31</sup> X's general mental well-being improved significantly because the review of his application took less than that of the other asylum seekers around him.

### **3.1.2. LGBTI Person from Iran**

In January 2020, the Asylum Office issued a ruling<sup>32</sup> granting asylum to an Iranian national.<sup>33</sup> He had fled Iran fearing persecution and capital punishment to which LGBTI persons living in that country are subjected.<sup>34</sup>

This Asylum Office decision is a good practice example. It was also the first positive decision this authority adopted in 2020. However, notwithstanding its evident qualities, the BCHR draws attention to the negative aspects of this case in the paragraphs below.

As per the content of the decision, the Asylum Office stated that Y. should be granted asylum because the statements he made during the procedure to substantiate the grounds for asylum indicated that he personally had been persecuted. The Asylum Office qualified Y.'s statements as "consistent and admissible; the asylum seeker invested

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<sup>29</sup> Art. 39 LATP.

<sup>30</sup> The LATP explicitly provides only for priority reviews of asylum applications filed by unaccompanied children (Art. 12(9)), but the Asylum Office rarely complies with this provision. More on this aspect of the asylum procedure in: Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2020), pp. 106-107.

<sup>31</sup> Cornelis Laban et al., *Postmigration Living Problems and Common Psychiatric Disorders in Iraqi Asylum Seekers in the Netherlands*, *The Journal of Nervous and Mental Disease* (2006) 193(12):825-32.

<sup>32</sup> Asylum Office Ruling No. 26-2467/17 of 15 January 2020.

<sup>33</sup> Art. 24 LATP.

<sup>34</sup> *Freedom in the World 2018 – Iran*, Freedom House, (19 January 2018). Available at: <https://freedomhouse.org/country/iran/freedom-world/2018>.

genuine efforts in describing everything he had lived through after he admitted to his parents, uncle and other relatives that he was gay". Another fact that the Asylum Office also referred to in its decision to grant Y asylum was that he had expressed the intention to seek asylum as soon as he entered the RS.

Via his BCHR representatives, Y. submitted a large amount of evidence and information about the situation of LGBTI persons in Iran that substantiated his claims during the procedure. The Asylum Office referred in particular to the UNHCR Guidelines on International Protection regarding Claims to Refugee Status based on Sexual Orientation and/or Gender Identity,<sup>35</sup> and international reports on the treatment of LGBTI persons in Iran.<sup>36</sup>

The fact that the Asylum Office took into account Y.'s psychological assessment, to which his BCHR representatives alerted on a number of occasions during the procedure, is particularly relevant as well. However, Y.'s impaired psychological state,<sup>37</sup> which can primarily be attributed to his years-long feelings of threat in Iran, was further aggravated in the RS due to the uncertainty he felt about the outcome of the asylum procedure.

Namely, over 700 days passed from the day Y. applied for asylum until the first-instance decision on his application was adopted.<sup>38</sup> In the meantime, the Asylum Office did not notify him either of the reasons for the delays nor when he could expect a decision.<sup>39</sup> Prolongation of the procedure, especially in highly sensitive cases, such as that of Y., can further exacerbate the applicants' psychological state. This is why the asylum

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<sup>35</sup> *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/12/01, UNHCR (23 October 2012).

<sup>36</sup> In the reasoning of its ruling, the Asylum Office referred to cases of flagellation of LGBTI persons and death sentences executed them described in reports by Human Rights Watch and the Austrian Centre for Country of Origin and Asylum Research and Documentation.

<sup>37</sup> Y's psychological state was assessed by an accredited psychologist of the Psychosocial Innovation Network.

<sup>38</sup> Iranian national Y applied for asylum on 26 January 2018. The Asylum Office adopted a ruling on his application on 15 January 2020, i.e. after almost two years. BCHR lawyers petitioned the Asylum Office on 3 October 2019 to review his case promptly. On 22 January 2020, they filed a complaint against the Asylum Office under Article 173 of the LGAP, but withdrew it the same day, after they received the ruling granting Y asylum.

<sup>39</sup> Art. 39 LATP.

authorities must ensure that they give priority to the cases of non-heterosexual applicants and other vulnerable categories of asylum seekers.<sup>40</sup>

### 3.1.3. Two Burundi Nationals

In early February 2020, BCHR received the Asylum Office decision<sup>41</sup> granting asylum to two Burundi nationals, X.Y. and her daughter Y.Y., who had left their country of origin in fear of persecution by the authorities. The Asylum Office found that their fears of persecution were warranted because X.Y. was branded as an enemy of the government.

This is the second time the Asylum Office granted international protection to Burundi nationals since the asylum system was established (it adopted its first decision in 2017<sup>42</sup>). The political crisis in this country has been raging since April 2015, after the ruling party CNDD–FDD (*Conseil National Pour la Défense de la Démocratie–Forces pour la Défense de la Démocratie*) said that President Pierre Nkurunziza would run for his third term in office at elections slated for 26 June 2015. The announcement prompted civic and political protests and claims that his third term in office would be in violation of the Constitution, under which the President may be re-elected only once. The attempt to overthrow Nkurunziza during his visit to Tanzania on 13 May 2015 failed because the government forces re-established control the following day. In the ensuing months, the security forces launched repressive campaigns, fraught with gross violations of the human rights of individuals accused of participating in the demonstrations or the abortive coup.

During this period, X.Y. was arbitrarily deprived of her liberty because her children allegedly took part in the protests and she and her husband were allegedly hiding weapons and aiding and abetting the protesters. Her husband and eldest son were brought in several days after her release. Soon afterwards, the police again broke into their home and tortured members of her family.

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<sup>40</sup> E.g. women victims of domestic violence, victims of sexual abuse, et al, pursuant to the anti-discrimination principle proclaimed in Art. 7 LATP.

<sup>41</sup> Asylum Office Ruling No. 26-2328/19 of 24 February 2020.

<sup>42</sup> See more at: Sonja Tošković (ed.), *Right to Asylum in the Republic of Serbia* 2017, BCHR (Belgrade, 2018), p. 46. Available at: <http://azil.rs/en/wp-content/uploads/2018/04/Right-to-Asylum-in-the-Republic-of-Serbia-2017.pdf>.

The Asylum Office consulted credible sources<sup>43</sup> to assess the security situation in Burundi. It took into account UNHCR Guidelines specifying that asylum applicants, in this case X.Y., need not have personally experienced persecution and that what, for example, happened to their friends and relatives and other members of the same racial or social group may well show that their fear that eventually they will also become a victim of persecution is well-founded.<sup>44</sup>

During their reviews of applications, the asylum authorities need to follow the Asylum Office's suit in this case and take into account the relevant reports. They can establish the facts properly only if they objectively and thoroughly review such documents and other evidence. Such actions contribute to lawful decision-making.

## **3.2. Challenges Faced by the Asylum Office**

### **3.2.1. Third Decision in the Case of Iranian Victims of Gender-Based Violence**

In its prior reports, the BCHR analysed the case of a single mother from Iran, X., and her daughter Y. They based their asylum applications on claims of ill-treatment by a private individual and violations of the rights of women and girls in Iran.<sup>45</sup>

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<sup>43</sup> *Burundi: Treatment of Tutsis, in particular, young Tutsis, by the authorities; their treatment at the ports of entry (April 2015 - November 2015)*, Immigration and Refugee Board of Canada (30 November 2015). Available at: <https://www.refworld.org/docid/568fc6064.html>; *Report of the Secretary-General on the United Nations Electoral Observation Mission in Burundi*, United Nations Security Council, UN. Doc. S/2015/98516, (December 2015). Available at: <https://undocs.org/S/2015/985>; *Report of the Commission of Inquiry on Burundi*, UN Human Rights Council, UN. Doc. A/HRC/36/54, (6 August 2017). Available at: <https://undocs.org/en/A/HRC/42/49>.

<sup>44</sup> Asylum Office Ruling No. 26-2328/19 of 24 February 2020, p. 10.

<sup>45</sup> More in the *January-June 2019 Right to Asylum in the Republic of Serbia* report, BCHR (Belgrade, 2019), pp. 26-34. Available at: <http://azil.rs/en/wp-content/uploads/2019/08/Periodic-report-Right-to-Asylum-in-Serbia-January-June-2019.pdf>; the *July-September 2019 Right to Asylum in the Republic of Serbia* report, BCHR (Belgrade, 2019), pp. 29-31. Available at <http://azil.rs/en/wp-content/uploads/2019/11/Right-to-Asylum-in-Serbia-July-September-2019.pdf>; and, Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2020), p. 66.

The Asylum Office issued three decisions on their asylum applications. It dismissed the applications twice under the safe third country concept (Turkey).<sup>46</sup> The third time, it rejected their applications on the merits, in a ruling of 27 December 2019.<sup>47</sup> The Asylum Office's first two decisions<sup>48</sup> and the Asylum Commission's decision<sup>49</sup> on their appeal of the second first-instance decision were analysed in the BCHR's prior reports. The paragraphs below present the main details of the third Asylum Office decision, in which it reviewed the merits of X.'s and Y.'s asylum applications for the first time.

The Asylum Office's reasoning of the decision shows that it again failed to assess all the evidence X. and Y. had submitted during the asylum procedure. It apparently ignored the expert reports on their impaired psychological state which diagnosed them with post-traumatic stress disorder (PTSD). Given that X. and Y. suffered grave physical and psychological violence in their country of origin, their psychological state is very closely linked to their fears of persecution. The LAMP recognises that various forms of gender-based violence cause victims a lot of pain and suffering, both physical and mental, wherefore such violence is considered persecution regardless of who perpetrated it, public officials or private individuals.<sup>50</sup> The European Court of Human Rights (ECtHR) has repeatedly noted that assessment of the severity of ill-treatment depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim.<sup>51</sup> The Asylum

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<sup>46</sup> Asylum Office Ruling No. 26-148/18 of 21 May 2018 and Asylum Office Ruling No. 26-148/18 of 1 April 2019.

<sup>47</sup> Asylum Office Ruling No. 26-148/18 of 27 December 2019.

<sup>48</sup> More in the *January-June 2019 Right to Asylum in the Republic of Serbia* report, BCHR (Belgrade, 2019), pp. 26-34. Available at: <http://azil.rs/en/wp-content/uploads/2019/08/Periodic-report-Right-to-Asylum-in-Serbia-January-June-2019.pdf>.

<sup>49</sup> See *July-September 2019 Right to Asylum in the Republic of Serbia* report, BCHR (Belgrade, 2019), pp. 29-31. Available at <http://azil.rs/en/wp-content/uploads/2019/11/Right-to-Asylum-in-Serbia-July-September-2019.pdf>.

<sup>50</sup> Art. 28(2(1)), LAMP.

<sup>51</sup> See, inter alia, *Kudła v. Poland*, ECtHR, App. No. 30210/96 [GC] (2000), para 91, *M.S.S. v. Belgium and Greece*, ECtHR, App. No. 30696/09 [GC] (2011), para 219, *Tarakhel v. Switzerland*, ECtHR, App. No. 29217/12 [GC] (2014), para 94.

Office failed to consider the vulnerabilities of Y., a minor, from the perspective of the rights of the child and ECtHR case law.<sup>52</sup>

Furthermore, the Asylum Office's lack of attention to X.'s claims about the ineffective protection of women victims of gender-based violence in Iran is corroborated by its selective reference to excerpts of reports substantiating its conclusion and omission of the relevant parts substantially assessing the (in)effectiveness of the Iranian system for the protection of women and children victims of gender-based violence. Moreover, the Asylum Office cited statements that were not made in the document it quoted as the source, a document that actually contained information contradicting the information on which the Office based its decision. On the other hand, the Asylum Office failed to take into account the relevant international reports by UN treaty bodies and Special Rapporteurs, the British Home Office, Amnesty International and Human Rights Watch and other reports X. and Y. submitted via their representative.

The Asylum Office thus violated a number of procedural rules under domestic law. X. and Y. filed an appeal with the Asylum Commission. It also needs to be noted that X.'s and Y.'s asylum procedure has been ongoing for over two years now, which cannot be considered either rational or economic. And, from the victims' perspective, it definitely cannot be perceived as conducive to their rehabilitation and recuperation.

### **3.2.2. Inconsistent Practice in Cases of Unaccompanied Afghani Children**

The Asylum Office in February 2020 adopted two decisions on asylum applications filed by unaccompanied children from Afghanistan. The ensuing comparative analysis of the decisions illustrates the inconsistencies in the Asylum Office's practice and its departure from its case law on same or similar cases.<sup>53</sup> The inconsistencies in the Asylum Office's practice have been very problematic since the asylum system was established and seem to have become even more pronounced over the past two years.

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<sup>52</sup> *Tarakhel v. Switzerland*, ECtHR, App. No. 29217/12 [GC] (2014).

<sup>53</sup> Under Art. 5(3) of the LGAP, the Asylum Office and Commission are to take into consideration earlier decisions in same or similar cases when deciding on asylum applications. Art. 141(4) of the LGAP also requires of them to explain why they departed from their prior decisions on same or similar administrative matters.

In one of the cases, the Asylum Office upheld the asylum application and decided to grant Z. subsidiary protection in the RS.<sup>54</sup> He was seven when, unaccompanied by his parents, he fled general insecurity in Afghanistan and went to Iran. He lived in inhumane conditions in Iran for seven years and then started his journey to the RS.

In its decision granting Z. subsidiary protection, the Asylum Office *inter alia* said that “the situation in Afghanistan has remained unchanged for years and has deteriorated in some segments”. Referring to UNHCR’s views of 2018, the Office also said that no part of Afghanistan could be considered safe. Relying on a number of relevant international reports, the Asylum Office concluded that Z.’s security was at risk in Afghanistan “due to internal armed conflicts and the total absence of the rule of law in that country”.

On the other hand, only two days later, the Asylum Office rendered another decision in which it assessed the situation in Afghanistan differently.<sup>55</sup> In its ruling on an asylum application filed by K., also an unaccompanied child from Afghanistan, the Asylum Office drew a different conclusion on the security situation in that country and rejected the asylum claim. This decision makes no reference of the reports exhaustively listed in its decision granting Z. subsidiary protection. Instead, the Office said that UNHCR data showed that the largest voluntary repatriation program in UNHCR’s history has been implemented since 2002 and that refugees were returning to Kabul, Herat and Mazar-i-Sharif and that these cities were safe and growing rapidly.

As opposed to its finding in the decision on Z’s asylum application, that no parts of Afghanistan could be considered safe regardless of who controlled them, in K.’s case, the Asylum Office said that Kabul was safe because it was under the effective control of the official Afghani government. The assessment of the general situation in the country of origin – in the context of which the asylum seekers’ individual circumstances are assessed – cannot differ from one case to another if the latest reports indicate that the situation has remained unchanged. There is no reasonable explanation for the Asylum Office’s two contradictory views on the security situation in Afghanistan in just two days. The Office’s decision on Z’s asylum application indicates that it was familiar with the general circumstances in Afghanistan,<sup>56</sup> which it itself qualified as extremely poor. It

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<sup>54</sup> Asylum Office Ruling No. 26-1437/18 of 13 February 2020

<sup>55</sup> Ruling No. 26-378/19 of 11 February 2020

<sup>56</sup> *J.K. and Others v. Sweden*, ECtHR, App. No. 59166/12 (2016), para 83 and *F.G. v. Sweden*, ECtHR, App. No. 43611/11 (2016) para 115.

made the same assessments of the situation in that country in several of its 2019 decisions as well.<sup>57</sup>

Such a practice of the Asylum Office may lead to the impression that its reviews of asylum applications are arbitrary. Furthermore, it has not assessed with particular diligence the risk the asylum seekers may be in if they are returned to their country of origin given the circumstances the RS authorities know or ought to have known at the time of decision. Although every asylum application is to be reviewed with due consideration of the asylum seeker's individual circumstances, the decision has to be based on a thorough, accurate and proper establishment of all facts and circumstances relevant to its adoption.<sup>58</sup> That is the only way to ensure protection from violations of the *non-refoulement* principle.

### **3.2.3. The Case of Iranian Converts**

In December 2019, the Asylum Office issued a ruling<sup>59</sup> rejecting the asylum application of a four-member family A. from Iran. The family applied for asylum claiming they were at risk because they had converted from Islam to Christianity. The Asylum Office nevertheless concluded that they did not fulfil the requirements to be granted asylum or subsidiary protection.

The spouses started studying Christianity and adopted its beliefs. The police came to their house twice in search of their relative who was organising Bible studies. They searched their home and threatened them that practicing Christianity was prohibited. Several days after the police came to their house the second time, the asylum seeker A.A. was assaulted by an unidentified man in front of his house, who stole his cell phone. A.A. reported the incident to the police, who summoned him for questioning. At the police station, A.A. was again questioned about his relative and threatened. The family decided to leave Iran.

In the reasoning of its ruling, the Asylum Office said that the A. family was not at real risk of ill-treatment because it converted to Christianity. In its view, such risk would

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<sup>57</sup> See: Asylum Office Ruling No. 26-1403/19 of 11 December 2019, analysed in this Report. See also: Asylum Office Ruling No. 26-2643/17 of 30 January 2019; Asylum Office Ruling No. 26-787/19 of 29 May 2019; Asylum Office Ruling No. 26-784/18 of 20 November 2019.

<sup>58</sup> Art. 10(1) LGAP.

<sup>59</sup> Asylum Office Ruling No. 26-2404/18 of 12 December 2019.

occur if they, as converts, propagated Christianity publicly or drew attention to themselves.<sup>60</sup> However, the Asylum Office paid no attention to the applicants' statement that they had not publicly declared their new faith because such conversion was dangerous and punishable by law in Iran. They corroborated their statement by submitting numerous international reports in evidence to the Asylum Office.<sup>61</sup> The Asylum Office's conclusion that the applicants were at no risk of persecution because they were not planning on practicing their faith in a manner that would put them in danger is in contravention of the essence and substance of the right to freedom of religion.<sup>62</sup>

Furthermore, the Asylum Office ignored the *sur place* aspect of the family's asylum application. Given that the applicants "fully converted" to Christianity in the RS, where they were baptised, the Asylum Office took the view that there was no specific risk that the Iranian authorities were aware of their conversion. It held that the asylum seekers had left Iran on the assumption that the situation there would deteriorate. However, in some of its prior decisions, the Asylum Office said that, under the LATP, fear of persecution or real risk of suffering serious harm may be based on events that occurred after the asylum seekers left their country of origin.<sup>63</sup> It can also be based on the asylum seekers' activities after they left their country of origin, especially where it is established that they continued expressing their beliefs.<sup>64</sup> In this decision, the Asylum Office departed from several other decisions it had rendered,<sup>65</sup> by which it granted asylum in cases based on very similar findings of fact.

In BCHR's view, the Asylum Office made two mistakes in its review of family A.'s asylum application. First, it failed to properly establish the facts and assess all the evidence in their entirety. Second, it failed to take into account its prior practice. Namely, the LGAP lays down that administrative authorities are under the obligation to take into account also their earlier decisions on same or similar administrative matters.<sup>66</sup>

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<sup>60</sup> Asylum Office Ruling No. 26-2404/18 of 12 December 2019, p. 10.

<sup>61</sup> E.g. *Country Policy and Information Note Iran: Christians and Christian converts*, UK Home Office (March 2018); *Apostasy in the Islamic Republic of Iran*, Iran Human Rights Documentation Center (September 2014).

<sup>62</sup> *F.G. v. Sweden*, ECtHR, App. No. 43611/11 (2016).

<sup>63</sup> Art. 27 LATP.

<sup>64</sup> Asylum Office Ruling No. 26-1395/18 of 5 February 2019.

<sup>65</sup> Asylum Office Rulings No. 26-1083/17 of 30 January 2018 and No. 26-1081/17 of 4 July 2018

<sup>66</sup> Art. 5(3) LGAP.

Furthermore, the Asylum Office was under the obligation to specify why it had departed from its earlier decisions on same or similar administrative matters in the reasoning of its ruling.<sup>67</sup> By disregarding its prior practice, the Asylum Office violated the rules of procedure. BCHR lawyers filed an appeal of its decision in this case.

### **3.3. Conclusion and Recommendations**

During the reporting period, the Asylum Office commendably upheld the asylum applications of asylum seekers belonging to vulnerable groups. However, in the view of the BCHR legal team, the quality of the Asylum Office's work has not improved significantly compared with the previous period.

Namely, some of the problems identified earlier in the work of the Asylum Office still persist. They, notably, regard overly long procedures<sup>68</sup> and inconsistent decisions on applications with same or similar facts.<sup>69</sup>

The Asylum Office must promptly conduct asylum procedures. It needs to continuously monitor the state of human rights in the asylum seekers' countries of origin, with particular focus on vulnerable groups, and thus ensure that its decisions on asylum applications are proper and lawful. There is potential for improvement, as illustrated by the positive decisions the Asylum Office adopted in the reporting period.

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<sup>67</sup> Art. 141(4) LGAP.

<sup>68</sup> See more at Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2019), p. 53

<sup>69</sup> *Ibid.*, p. 58.

## 4. Accommodation

The Commissariat for Refugees and Migration of the Republic of Serbia (CRM) accommodates foreigners, who have not regulated their residence or expressed the intention to apply for asylum, in Reception-Transit Centres (RTCs), and transfers them to one of the five Asylum Centres (ACs) after they express the intention to seek asylum. During the first quarter of 2020, CRM reopened RTCs that were not used in 2019. It also designated ACs for the accommodation of specific categories of asylum seekers. The following section provides a brief overview of these changes in the accommodation of asylum seekers before the imposition of the state of emergency in the RS.

### 4.1. Accommodation Conditions before the Imposition of the State of Emergency

The RTC in Preševo, which can accommodate up to 900 persons, was reopened in late November 2019.<sup>70</sup> Accommodation of refugees and migrants in this RTC continued and intensified in early 2020. CRM data show that 820 foreigners were living in the Preševo RTC in January 2020.<sup>71</sup> The other ACs and RTCs that were operating in 2019 remained open in 2020. This means that a total of five ACs<sup>72</sup> and 12 RTCs<sup>73</sup> were in use in the RS from the beginning of the year to the imposition of the state of emergency.

Some changes occurred in the work of the Asylum Centres since January 2020. Some asylum seekers were transferred to the ACs which the CRM designated for the accommodation of specific groups – separated and unaccompanied children and families.

The CRM decided to transfer separated and unaccompanied children to the Bogovađa Asylum Centre, to which families had been referred. In its Concluding

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<sup>70</sup> *Ibid.*, p. 72

<sup>71</sup> Available at: <http://arhiva.kirs.gov.rs/site-profiles-eng/overview.php>.

<sup>72</sup> Banja Koviljača, Bogovađa, Krnjača, Sjenica and Tutin.

<sup>73</sup> Adaševci, Bosilegrad, Bujanovac, Kikinda, Obrenovac, Preševo, Pirot, Principovac, Sombor, Subotica, Šid and Vranje.

Observations on Serbia's Combined Second and Third Reports,<sup>74</sup> the UN Committee on the Rights of the Child criticised Serbia for accommodating unaccompanied children under 16 in asylum centres that do not have adequate facilities or trained staff to care effectively for the children round the clock. The Committee urged Serbia to provide such children accommodation in foster families or other accommodation facilities adequate for their age, gender and needs in line with best interest assessments conducted on an individual basis.<sup>75</sup> Furthermore, in his Report of 13 October 2018, the Special Representative on Migration and Refugees of Council of Europe Secretary General<sup>76</sup> made recommendations to Serbia regarding unaccompanied and separated children. He urged the RS to strengthen the protection system for unaccompanied children, notably by developing a sustainable guardianship system. This is why the CRM decision to designate the Bogovađa facility as the AC in which unaccompanied and separated children are to be accommodated was not a good one. BCHR is of the view that this Centre is not adequate for the age and needs of each individual child. Rather than expanding institutional accommodation, the authorities should strengthen the system of accommodating unaccompanied and separated children in foster families.

On the other hand, adult asylum seekers and families, who had been living in the Bogovađa AC, were moved to the AC in Banja Koviljača. Asylum seekers granted CRM approval to reside in private accommodation moved to the housing they rented.<sup>77</sup>

Most of the asylum seekers, who had moved to the Banja Koviljača AC and whom BCHR lawyers interviewed, were dissatisfied with the CRM's decision. They said that they had not been consulted or notified that they would be moving in a timely fashion.

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<sup>74</sup> UN Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, UN. Doc. CRC/C/SRB/CO/2-3 (7 March 2017), paras 56(b) and 57(b). Available at: <https://www.refworld.org/docid/58e76fc14.html>

<sup>75</sup> *Ibid.*, para 57(b). See also See Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018*, BCHR (Belgrade, 2019), pp. 62-63. Available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>.

<sup>76</sup> Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Serbia and two transit zones in Hungary*, (12-16 June 2017), SG/Inf(2017)33.

<sup>77</sup> Under Art. 50(8) of the LAMP, asylum seekers may live outside the Centres run by the CRM if they can afford to rent them and exclusively with the prior consent of the Asylum Office, which shall be issued after they submit their asylum applications. Exceptionally, the Asylum Office may issue such consent to foreigners whose intention to seek asylum has been registered but who have not yet applied for asylum, if so required to ensure their safety.

Many of them had been living in the Banja Koviljača AC for quite some time, their children had attended the local schools and some of the adult asylum seekers had found jobs in that community.<sup>78</sup> They perceived the transfer to another AC as a disruption of their integration in society.

Both the Bogovađa and Banja Koviljača ACs are far from Belgrade,<sup>79</sup> where the Asylum Office and other institutions important for the asylum seekers' realisation of their rights are headquartered. The distance between these ACs and Belgrade has impinged on the work of the relevant authorities, especially the staff of the Asylum Office, which is regrettable in the light of the fact that many of the asylum seekers, who had been living in the Bogovađa AC for months, wanted to stay in Serbia and integrate in its society. Now that they have been moved to the AC in Banja Koviljača, it is quite likely that the reviews of their asylum applications will take longer.

## **4.2. Conclusion and Recommendations**

The Ministry of Labour, Employment and Veteran and Social Issues and the relevant Social Work Centres should review the cases of all unaccompanied and separated children and provide them with accommodation primarily in non-institutional facilities, i.e. in foster families.

Asylum seekers and migrants had been moved from one AC to another on several occasions and without prior notice, before the state of emergency was imposed. This resulted in the disruption of their integration in society. BCHR therefore urges the CRM to first ascertain the degree of integration in Serbian society and the local community of all asylum seekers before it moves them to another AC. It should also promptly notify the asylum seekers of such decisions to provide them with time to prepare for the move. The CRM should organise meetings with local government representatives and the domicile population beforehand to discuss their reception of the newly-arrived asylum seekers in order to facilitate their basic daily activities (enrolment of children in kindergarten, preschool and school, access to health care, employment, et al).

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<sup>78</sup> Information obtained in interviews with asylum seekers in the January-March 2020 period. On file with the BCHR.

<sup>79</sup> Bogovađa is 70 km away from Belgrade and Banja Koviljača is 151 km away from Belgrade.

## 5. State of Emergency

On 11 March 2020, the World Health Organization (WHO) declared a pandemic of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) causing coronavirus disease 2019 (COVID-19).<sup>80</sup> At the national level, COVID-19 was declared a communicable disease by a Serbian Government Decision of 10 March 2020.<sup>81</sup> The decision on the imposition of a statement of emergency, signed on 15 March 2020 by the Serbian President, National Assembly Speaker and Prime Minister, was subsequently published in the Official Gazette.<sup>82</sup> The Health Minister issued an order proclaiming the coronavirus epidemic on 19 March 2020.<sup>83</sup> On 20 March 2020, the Serbian Government adopted a decision closing all border crossings except for freight transport.<sup>84</sup>

The RS Government adopted a number of decisions of relevance to the asylum procedure and the status of foreigners in the RS. Given the uncertainties surrounding the duration of the pandemic, the relevant RS authorities, international organisations and civil society need to closely monitor the enforcement of these decisions vis-à-vis asylum seekers and migrants.

### 5.1. Access to the Asylum Procedure in the Context of the Fight against the Pandemic

As noted, in response to the coronavirus pandemic, the RS Government on 19 March 2020 adopted the Decision on the Closure of All Border Crossings for Entry into the RS.<sup>85</sup> Under this Decision, temporary entry into the RS may be allowed if it is in national interest or on humanitarian grounds, and approved by the relevant state administration

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<sup>80</sup> WHO, *WHO Director-General's opening remarks at the media briefing on COVID-19* (11 March 2020). Available at: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>81</sup> *Official Gazette of the RS*, No. 23/20.

<sup>82</sup> *Official Gazette of the RS*, No. 29/20.

<sup>83</sup> *Official Gazette of the RS*, No. 37/20.

<sup>84</sup> "Serbia Closed Its Borders, Intercity Traffic Stops at Noon," *B92*, 20 March 2020. Available at: [https://www.b92.net/eng/news/society.php?yyyy=2020&mm=03&dd=20&nav\\_id=108152](https://www.b92.net/eng/news/society.php?yyyy=2020&mm=03&dd=20&nav_id=108152).

<sup>85</sup> *Official Gazette of the RS*, No. 37/20.

authority.<sup>86</sup> On the same day, the RS Government adopted a decision discontinuing all international commercial air traffic via Belgrade Airport Nikola Tesla until further notice.<sup>87</sup> BCHR expects that fewer foreigners will be able to seek asylum in the RS due to these state of emergency measures restricting entry of foreign nationals into the RS.

However, although states have the sovereign power to adopt such measures, international law lays down that these measures may not preclude access to the asylum procedure.<sup>88</sup> UNHCR specified how states should treat migrants accessing their territory during the epidemic.<sup>89</sup> It reconfirmed that “while States may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in *refoulement*.”

Although the RS President said before the borders were closed that all newly-arrived migrants would be placed in quarantine in the Preševo RTC,<sup>90</sup> such a decision was never formally adopted. Furthermore, BCHR lawyers are unaware whether any special quarantine measures have been introduced in the Preševo RTC or whether all migrants who entered the RS have actually been quarantined there.

Analysis of the new by-laws indicates that no measures on quarantining migrants entering the RS during the state of emergency and the validity of the decision on the closure of the borders have been adopted by the time this Report was completed. In its Conclusion of 17 March 2020,<sup>91</sup> the Serbian Government decided that general quarantine measures would be implemented in the army facilities in Morović at Šid and Miratovačko Polje. In addition, the Health Ministry issued instructions designating facilities in which enhanced health supervision preventive measures were to be implemented.<sup>92</sup> It, however,

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<sup>86</sup> Art. 2, Decision on the Closure of All Border Crossings for Entry into the RS.

<sup>87</sup> N1, “Belgrade Airport Closed to Commercial Flights,” 19 March 2020. Available at: <http://rs.n1info.com/English/NEWS/a579643/Belgrade-airport-closed-to-commercial-flights.html>.

<sup>88</sup> UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, March 2020, para 1*. Available at: <https://www.refworld.org/docid/5e7132834.html>.

<sup>89</sup> *Ibid.*

<sup>90</sup> “Vučić on Special Measures for Migrants Entering Serbia during the Pandemic,” *Blic*, 11 March 2020. Available in Serbian at: <https://www.blic.rs/vesti/drustvo/vucic-o-posebnim-merama-za-migrante-zbog-korona-virusa-kad-udu-u-srbiju-prvo/1xp2neh>.

<sup>91</sup> *Official Gazette of the RS*, No. 33/20.

<sup>92</sup> *Official Gazette of the RS*, No. 43/20.

remains unclear whether such measures apply to individuals irregularly entering the RS. Any measures preventing refugees from entering the RS, without valid proof that they constitute a risk to public health and in contravention of the *non-refoulement* principle, would be discriminatory and in violation of international standards.

Therefore, states may introduce measures such as health examinations or testing of persons in need of international protection when they access their territory. But these measures may not result in denying them the real possibility of seeking asylum.

## 5.2. Restriction of Movement in Asylum and Reception Centres

On 16 March 2020, the RS Government adopted the Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants Accommodated in Asylum and Reception Centres in the Republic of Serbia (Decision).<sup>93</sup> This decision temporarily restricts the movement of asylum seekers and irregular migrants to ACs and RTCs 24/7.

The Decision states that the measure was imposed to protect against the spreading of infectious diseases in the territory of the RS and “prevent the uncontrolled movement and wilful departure from asylum and reception centres of individuals who may be virus carriers.” The Decision also provides for enhanced supervision and security of these facilities for the accommodation of migrants.<sup>94</sup> The Decision specifies exceptions to the temporary restriction of movement. In exceptional situations, the CRM may for justified reasons allow asylum seekers and migrants to leave the facilities for a specific period of time (e.g. to see a doctor).<sup>95</sup> The RS Government thus granted the CRM discretion to itself assess the medical needs and relevance of the reasons why asylum seekers and migrants need to leave the ACs and RTCs.

Although the Decision defines this measure as a temporary restriction of the freedom of movement, it clearly amounts to a deprivation of liberty, given that migrants and asylum seekers have essentially been unable to leave the centres since 15 March. The notion of deprivation of liberty within the meaning of Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) contains both an objective element of a person’s confinement in a particular restricted

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<sup>93</sup> *Official Gazette of the RS*, No. 32/20.

<sup>94</sup> Art. 1, Decision.

<sup>95</sup> Art. 2, Decision.

space for a not negligible length of time, and an additional subjective element in that the person has not validly consented to the confinement in question.<sup>96</sup> The regime in the ACs and RTCs satisfies both the objective and subjective elements of deprivation of liberty as migrants and asylum seekers must remain in them 24/7 although they have not validly consented to such confinement.

Measures like this one should be proportionate to the aim and reasoned. However, the Government did not explain in its Decision why the freedom of movement of asylum seekers and migrants has to be fully restricted. The freedom of movement of other people in Serbia (Serbian nationals and other foreigners) has not been restricted to this extent.<sup>97</sup> The Decision at first glance apparently amounts to discrimination against migrants and asylum seekers because the criteria based on which this group should be treated differently than RS nationals and other foreigners remain totally unclear.

It should be reminded that the Article 1(1) of the International Convention on the Prohibition of All Forms of Racial Discrimination (ICERD)<sup>98</sup> defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Art. 2(1(c)) of the ICERD states that each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Therefore, the RS Government, which adopted the impugned Decision, should not have restricted the freedom of movement of migrants and asylum seekers differently than it restricted the movement of other people in the RS. Given the absence of a reasoning of the Decision, the impression is that the RS Government granted a privileged status to some people just because of their national or ethnic origin. It should thus as soon as possible rescind the Decision, as provided by the ICERD.<sup>99</sup>

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<sup>96</sup> ECtHR, Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security (Strasbourg, 2019), p. 9.

<sup>97</sup> Round the clock restriction of the freedom of movement was also imposed against everyone over 65 years of age in urban settlements. See Art. 1 of the Order Restricting and Prohibiting the Freedom of Movement of Individuals in the Territory of the Republic of Serbia, *Official Gazette of the RS*, Nos. 34/20, 39/20, 40/20, 46/20 and 50/20.

<sup>98</sup> *Official Gazette of the SFRY*, No. 31/67.

<sup>99</sup> Art. 2(1(c)).

In addition, in its Concluding observations on the combined second to fifth periodic reports of Serbia of 3 January 2018,<sup>100</sup> the Committee on the Elimination of Racial Discrimination recommended to Serbia to “pursue efforts to ensure that all non-citizens, including migrants and asylum seekers, enjoy their human rights and have access to adequate humanitarian services, including food, shelter and health services.”<sup>101</sup> Unimpeded enjoyment of these rights by migrants and asylum seekers can be achieved only if they can enjoy, without discrimination, their other human rights and freedoms (including the freedom of movement).

In its Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response,<sup>102</sup> the UNHCR said that States were entitled to take measures to ascertain and manage risks to public health, including risks that could arise in connection with non-nationals arriving at their border, but that they had to be non-discriminatory as well as necessary, proportionate and reasonable to the aim of protecting public health. It also said that measures restricting the freedom of movement had to be necessary and subject to regular review.

However, the practice in Serbia differs. Migrants and asylum seekers have been accommodated in ACs and RTCs, where their freedom of movement is fully restricted. This restriction of the freedom of movement applies to all refugees and migrants in the centres, not only those infected by coronavirus. Health risks cannot be used as an excuse to systematically restrict the freedom of movement of asylum seekers, who are *de facto* deprived of liberty. Misapplication of these measures can not only impinge on persons in need of international protection but facilitate the spreading of the disease as well.

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<sup>100</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, CERD/C/SRB/CO/2-5 (3 January 2018).

<sup>101</sup> *Ibid.*, para 27(a).

<sup>102</sup> UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response* (16 March 2020).

### 5.3. Material Accommodation Conditions

The number of migrants in Serbia in late February 2020 was estimated at 6,725; 5,530 of them were living in asylum and reception centres and another 1,195 outside them.<sup>103</sup> The Decision on the Temporary Restriction of Movement of Asylum Seekers and Irregular Migrants resulted in the accommodation of all of them in ACs and RTCs by the relevant authorities. The CRM activated the RTC in Divljana and locations Miratovačko Polje and Morović. After all migrants outside the centres were accommodated in the ACs and RTCs, the total number of foreigners living in such centres rose to 8,652. This means that the real number of migrants living outside centres was 160% higher than estimated. This put a considerable strain on the system that has the capacity to accommodate around 6,000 people.

After the state of emergency was imposed, asylum seekers in several centres told BCHR that their living conditions had deteriorated.<sup>104</sup> They mostly complained of overcrowding, poor hygiene, and meagre and unbalanced meals.

The Serbian Army has been charged with guarding the ACs and RTCs during the state of emergency. It initially performed these duties in cooperation with the MOI, but the police were subsequently reassigned to other tasks. The asylum seekers living in the centres the BCHR has been in touch with said they felt uncomfortable by the presence of armed forces in front of the centres.<sup>105</sup>

Asylum seekers living in the Banja Koviljača AC told BCHR that over 200 new migrants, mostly men, had been moved to that centre, and that their meals consisted of bread and canned food.<sup>106</sup> The rooms were generally overcrowded and some asylum seekers had to sleep on the floor because the rooms were too small to bring in new beds.<sup>107</sup>

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<sup>103</sup> UNHCR, *Serbia Update March 2020*. Available at: <https://data2.unhcr.org/en/documents/download/74575>.

<sup>104</sup> BCHR lawyers obtained the information (on file with the BCHR) in telephone conversations with the asylum seekers they are representing in the asylum procedure immediately after the imposition of the state of emergency.

<sup>105</sup> BCHR lawyers obtained the information in telephone conversations with the asylum seekers living in the ACs in Krnjača and Banja Koviljača on 7 April 2020. The information is on file with the BCHR.

<sup>106</sup> BCHR lawyers obtained the information in telephone conversations with the asylum seekers on 19 March 2020. The information is on file with the BCHR.

<sup>107</sup> Information obtained from asylum seekers on 20 March 2020. On file with the BCHR.

The situation in this AC improved when the new arrivals were transferred to other CRM facilities.<sup>108</sup> The soldiers guarding the AC did not allow asylum seekers to leave the compound, even to walk to the nearby shop to buy groceries. The meals must be of better quality in light of the pandemic and the need to strengthen the immunity of all the residents.

The situation in the Krnjača AC was similarly described by BCHR's clients in that centre. They also complained of lack of hygiene products, intolerance and clashes among asylum seekers of different nationalities staying at the Krnjača AC.<sup>109</sup> Restricted freedom of movement in the AC quite likely exacerbated the discontent and mutual intolerance among individual asylum seekers.

The state of emergency measures imposed by the RS Government have been applied in the Sjenica AC from the very start. All newly-arrived unaccompanied or separated children were kept in separate rooms, where they lived and slept and had their meals brought to them. This practice was introduced to prevent the spreading of the virus.<sup>110</sup> The photographs published by the Ministry of Defence (MoD), however, show Serbian Army troops with automatic rifles standing behind the AC fence, in plain sight of the children.<sup>111</sup> Brandishing of lethal weapons in front of facilities for migrants and asylum seekers is not only devoid of any logical connection to the pandemic response; it may also cause major traumas among children from war-ravaged areas and anxiety and agitation among people suffering from PTSD.<sup>112</sup>

On 31 March 2020, the OHCHR, IOM, UNHCR and WHO issued a joint statement. They emphasised that it was vital that everyone, including all migrants and refugees,

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<sup>108</sup> Information obtained at the *UNHCR Partners Meeting*, held on 31 March 2020.

<sup>109</sup> Information obtained by phone from an asylum seeker represented by BCHR lawyers on 20 and 30 March 2020. On file with the BCHR.

<sup>110</sup> Information obtained by phone from guardian Mediha Lakota, Sjenica CSR officer, on 19 March 2020.

**111** "Minister Vulin in Sjenica: the Serbian Armed Forces are Welcome in Both Sjenica and Belgrade, without Exception," MoD, press release, 21 March 2020. Available in Serbian language at: <http://www.mod.gov.rs/eng/15777/ministar-vulin-u-sjenici-vojska-srbije-je-dobrodosla-i-u-sjenici-i-u-beogradu-bez-izuzetka-15777>.

<sup>112</sup> Conclusion drawn on the basis of the BCHR's conversations with its clients.

were ensured equal access to health services and were effectively included in national responses to COVID-19, including prevention, testing and treatment.<sup>113</sup>

To the best of the BCHR's knowledge, no assessments of the risk of the residents of ACs and RTCs contracting the coronavirus have been carried out yet.<sup>114</sup> Nor is it aware of a protocol in case of a breakout of the virus in any of the centres. BCHR lawyers were told by their clients that health professionals continued visiting the centres like they did before the state of emergency, but that they lacked medications and hygiene products and protection gear.<sup>115</sup> The BCHR's clients complained that they were not provided with enough masks or gloves and that the new arrivals were not subjected to screening, giving rise to apprehension and discomfort among the migrants and asylum seekers already living in the facilities.<sup>116</sup> The asylum seekers claimed that health professionals maintained their pre-state of emergency shifts and focused exclusively on the pandemic, ignoring residents suffering from other chronic diseases or in need of medical care for other reasons. They told the BCHR that a pregnant woman was prevented from getting a check-up in the nearby medical facility because of the state of emergency measures. The health professionals told her that her check-up was not the priority now and that they had to concentrate on other emergency cases.<sup>117</sup>

Despite aggravated living conditions, some asylum seekers and migrants joined in campaigns of solidarity with the domicile population. Migrants in the Sombor RTC

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<sup>113</sup> OHCHR, IOM, UNHCR and WHO joint press release: *the rights and health of refugees, migrants and stateless must be protected in COVID-19 response*. Available at: <https://www.who.int/news-room/detail/31-03-2020-ohchr-iom-unhcr-and-who-joint-press-release-the-rights-and-health-of-refugees-migrants-and-stateless-must-be-protected-in-covid-19-response>.

<sup>114</sup> People over 65, people with hard conditions obesity, asthma, cancer, immunocompromised people, people with diabetes, and people with liver or kidney diseases. See *Coronavirus Disease 2019 (COVID-19) – People who are at higher risk*, CDC. Available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

<sup>115</sup> Information BCHR lawyers obtained by phone from asylum seekers staying at the Krnjača AC on 7 April 2020. On file with the BCHR.

<sup>116</sup> Information BCHR lawyers obtained by phone from asylum seekers staying at the Banja Koviljača AC on 26 March 2020. On file with the BCHR.

<sup>117</sup> Information BCHR lawyers obtained by phone from asylum seekers staying at the Banja Koviljača AC on 7 April 2020. On file with the BCHR.

volunteered to sew masks.<sup>118</sup> Masks were also sewn by migrants in the Bujanovac RTC. They sent a letter to the RS Government offering their skills and knowledge and stressing that “the virus does not distinguish between native citizens and refugees and that is why we stand side by side in our joint struggle”.

These activities illustrate the good will of the migrants and asylum seekers to integrate in Serbian society. They also help the migrants deal more easily with life in quarantine. The following section, unfortunately, demonstrates that feelings of solidarity between the migrants and the domicile population are not always mutual.

#### **5.4. Anti-Migrant Protests Eliciting No Official Response**

After the state of emergency was imposed, the CRM tried to open a new centre for migrants and asylum seekers in the School Recreational Centre Čardak in the Kovin municipality, used by the public company Vojvodina Forests. The CRM abandoned the idea after the Deliblato villagers protested, demanding that the facility be designated for coronavirus patients instead. Around two hundred villagers staged the protest despite the prohibition of public assemblies and blocked the roads with their vehicles. Around 7,000 people signed a petition they launched against the settlement of migrants in the centre.<sup>119</sup> The idea of accommodating migrants in the complex was definitely abandoned when the Vojvodina Emergency Headquarters on 26 March 2020 ordered that it serve as a quarantine facility.<sup>120</sup>

Protests like the one organised by the Deliblato villagers are not only xenophobic; they also pose a risk to public health during the pandemic. Rather than responding swiftly and efficiently, the state authorities remained mum. Given that assemblies are

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<sup>118</sup> “Migrants in Sombor Sewing Masks,” *N1*, 1 April 2020. Available in Serbian at: <http://rs.n1info.com/Vesti/a584568/Migranti-u-Somboru-siju-maske.html>.

<sup>119</sup> “Deliblat Villagers Protest against Accommodation of Migrants in Deliblato Sands,” *N1*, 25 March 2020. Available in Serbian at: <http://rs.n1info.com/Vesti/a582027/Protest-protiv-migranata-u-Deliblatu.html>.

<sup>120</sup> RTV, “Čardak in Deliblat Sands is the New Quarantine for Coronavirus Patients,” 26 March 2020. Available in Serbian at: [http://www.rtv.rs/sr\\_lat/vojvodina/banat/cardak-u-deliblatskoj-pescarionovi-karantin-za-obolele-od-koronavirusa\\_1106986.html](http://www.rtv.rs/sr_lat/vojvodina/banat/cardak-u-deliblatskoj-pescarionovi-karantin-za-obolele-od-koronavirusa_1106986.html).

prohibited in order to prevent the spread of the virus,<sup>121</sup> it is unclear why the relevant authorities did not take adequate steps against the citizens who rallied in protest of the migrants' accommodation in their local community.

The CRM's decision not to accommodate migrants in Čardak is also regrettable. It succumbed to pressures from people, who were not only violating the law by rallying during the state of emergency and ban on assemblies, but also basing their views on illegitimate aims – discrimination and xenophobia. The CRM could have filed criminal reports against them for organising an assembly in violation of the law. The CRM may wish to consider organising meetings in the future to familiarise the local communities with its intention to open new facilities for the accommodation of migrants and asylum seekers and dispel any apprehensions they may have about their future neighbours.

The CRM, MOI and the Ministry of Culture and Information should launch media campaigns promoting tolerance of asylum seekers, migrants and refugees, especially during the pandemic. This could preclude any incidents, hate speech and hate crimes.

## **5.5. Status-Related Issues and Implementation of the Asylum Procedure**

The state of emergency raised the issues of how the initiated asylum procedures would be implemented and new asylum applications submitted and of the validity of personal documents and work permits of asylum seekers and foreigners granted asylum. The RS Government addressed the main issues in its Decision on the Status of Foreign Nationals in the Republic of Serbia during the State of Emergency (Status Decision) of 24 March 2020.<sup>122</sup>

The Status Decision extends the validity of all expired IDs for asylum seekers and foreigners granted asylum until the state of emergency is lifted. The Status Decision is relevant also to the asylum procedure as it discontinues all police activities regarding the collection of biometric data until they can be safely collected. Therefore, the registration of asylum seekers has been suspended as it involves collection of their biometric data –

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<sup>121</sup> BCHR statement on Deliblato protest. Available at <http://www.bgcentar.org.rs/bgcentar/eng-lat/bchr-condemns-protest-against-accommodation-of-migrants-in-school-recreational-centre-cardak/>.

<sup>122</sup> *Official Gazette of the RS*, No. 41/20.

their photographing and fingerprinting.<sup>123</sup> The Status Decision also extends the lawful residence of all foreigners residing in the RS on any of the grounds prescribed by the LF for the duration of the state of emergency.

The RS Government on 16 March 2020 adopted a decision suspending the provision of all state administration services extended in person to the public.<sup>124</sup> The authorities are under the obligation to continue extending their services by post, e-mail or phone. They are also under the duty to publish on their websites e-mails for the submission of requests and to review them even if they are not submitted on the prescribed templates. The Asylum Office continued issuing certificates and personal documents in the prescribed manner although it does not feature on the MOI website.<sup>125</sup>

The Decree on Deadlines in Administrative Proceedings during the State of Emergency,<sup>126</sup> co-signed by the RS Government and the President, is also relevant to the asylum procedure. It sets out that parties to administrative proceedings shall not suffer consequences for non-action within the deadlines prescribed by the LGAP or other laws. Under the Decree, the deadlines for undertaking administrative actions, completing administrative procedures and ruling on appeals that expire during the state of emergency shall be extended by 30 days as of the day the state of emergency is lifted. These provisions extend protection to asylum seekers whose applications have been dismissed or rejected. The Decree also provides for a stay in filing of appeals and lawsuits within these proceedings, which would be impeded during the state of emergency, until the state of emergency is lifted.

On 17 March 2020, the Asylum Office sent an e-mail to the BCHR notifying it that it would not perform its official duties “in view of the epidemiological situation and the measures imposed by the RS Government” and that it would “be promptly notified of the resumption of official duties”. The BCHR is of the view that the Asylum Office could

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<sup>123</sup> Art. 35(2) LATP.

<sup>124</sup> *Official Gazette of the RS*, Nos. 35/20 and 37/20.

<sup>125</sup> The Asylum Office is mentioned only once on the MOI website, in the list of the Organizational Units: Police Directorates and Administrations. Its contact details are not available on the website. Nor have its reports or any information for asylum seekers been published on it. The MOI homepage displays a phone number 011/2741-580 and the e-mail [infokoronavirus@mup.gov.rs](mailto:infokoronavirus@mup.gov.rs) at which information about the epidemic within the MOI’s purview can be obtained. However, the English version of the website does not include these contract details. The only information available in English during the state of emergency was the one on the validity of documents.

<sup>126</sup> *Official Gazette of the RS*, Nos. 41/20 and 43/20.

conduct interviews with asylum seekers via video conference. Namely, criminal and misdemeanour courts have already been holding video conference hearings during the state of emergency. That said, the Bar Chambers have sharply criticised “Skype trials” and their arguments should be taken into account in case of asylum interviews as well.<sup>127</sup>

The technical problems in accessing the asylum procedure and performance of official duties need to be addressed during the state of emergency. Registration of asylum seekers is definitely possible, provided the protection measures are complied with. Such measures could involve putting up physical barriers between the staff and the asylum seekers or use of protective gear.

As per access to the labour market, the RS Government commendably adopted the Decision Extending the Validity of Work Permits Issued to Foreigners Pending the State of Emergency,<sup>128</sup> which is extremely important for the integration of successful asylum seekers. This Decision extends the validity of all work permits expiring during the state of emergency until it is lifted.

## 5.6. Right to Information and Legal Aid

The law entitles foreigners seeking asylum in the RS to be informed about their rights and obligations.<sup>129</sup> Organisations extending legal aid to asylum seekers and the UNHCR have not been able to visit ACs and RTCs since the introduction of the strict measures confining migrants and asylum seekers in these CRM facilities and restricting the movement of all people in the RS.<sup>130</sup> Therefore, provision of information to migrants and asylum seekers is in the hands of the relevant authorities. To recall, the MOI had not been informing them of their rights and obligations even before the state of emergency.<sup>131</sup>

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<sup>127</sup> Serbian Bar Chamber letter to the RS Government and Justice Ministry of 30 March 2020. Available in Serbian language at: <https://aks.org.rs/aks/wp-content/uploads/2020/03/saop%C5%A1tenje-povodom-skype-sudjenja.pdf>; Belgrade Bar Chamber letter to the RS High Judicial Council of 31 March 2020. Available in Serbian at: <https://akb.org.rs/wp-content/uploads/2020/03/Dopis-VSS.pdf>.

<sup>128</sup> *Official Gazette of the RS*, No. 43/19.

<sup>129</sup> Art. 56(1) LATP.

<sup>130</sup> Art. 2 of the Order Restricting and Prohibiting Movement of Individuals in the Territory of the Republic of Serbia, *Official Gazette of the RS*, Nos. 34/20, 39/20, 40/20 and 46/20. The Order was adopted on 18 March and amended on 21, 22 and 28 March 2020.

<sup>131</sup> See: Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018*, BCHR (Belgrade, 2019), p. 21.

As per the enforcement of by-laws enacted during the state of emergency, the relevant authorities have insufficiently informed both the public and the migrants and asylum seekers of the legal framework and undertaken measures. The relevant information cannot be found either on the website of the MOI or the other state authorities (Ministry of Health, Ministry of Defence, et al) The CRM's website is the exception. Since 25 March 2020, the CRM has been posting the latest news on the coronavirus on its website on a daily basis.<sup>132</sup> However, the legal framework is available on the website only in Serbian. The by-laws enacted during the state of emergency have not been posted in languages understood by asylum seekers and migrants either on the CRM or the MOI websites. Migrants and asylum seekers have thus been precluded from familiarising themselves with the regulations, which has impeded their daily activities and put them at a disadvantage, given that they are in a foreign country, the regulations of which they do not know, and that the vast majority of them do not understand Serbian.

The BCHR prepared leaflets on the state of emergency in the languages most asylum seekers speak to provide the residents of ACs and RTCs with more information,<sup>133</sup> as well educational posters on coronavirus prevention measures.<sup>134</sup> The BCHR's lawyers continued regularly extending legal advice to asylum seekers, by e-mail and phone.

## 5.7. Conclusion and Recommendations

The RS' failure to develop detailed pandemic response plans and strategies has reflected also on the situation of migrants and asylum seekers. The government needs to continuously review all the imposed measures to assess their lawfulness, expediency and effectiveness. Such measures must not be discriminatory. That means that asylum seekers

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<sup>132</sup> *Daily Newsletter on the Coronavirus Pandemic*, CRM. Available in Serbian language at: [http://www.kirs.gov.rs/wb-news-more.php?id\\_category=8&id=1131](http://www.kirs.gov.rs/wb-news-more.php?id_category=8&id=1131).

<sup>133</sup> BCHR, "Restricted Movement of Asylum Seekers during the State of Emergency and Coronavirus Pandemic," press release, 23 March 2020. Available in Serbian at: <http://www.bgcentar.org.rs/ogranicenje-kretanja-trazilaca-azila-tokom-trajanja-vanrednog-stanja-i-pandemije-korona-virusa/>.

<sup>134</sup> "Let's Stop the Pandemic Together", BCHR, Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/lets-stop-the-pandemic-together-leaflets-in-arabic-english-persian-and-serbian>.

may not be at a disadvantage vis-à-vis other categories of foreigners and Serbian nationals if there are no health-related grounds warranting their different treatment.

Migrants and asylum seekers have been facing numerous challenges during the state of emergency. Some issues, like the validity of their personal documents, were resolved swiftly, but other ones – such as access to the asylum procedure, exercise of the right to information and legal aid, and the living conditions in the facilities they are accommodated in – are yet to be addressed. This is why the BCHR offers the following recommendations to the relevant authorities regarding their treatment of migrants and asylum seekers.

### **5.7.1. Recommendations Related to the Asylum Procedure**

The RS Government should enact a by-law on placement in quarantine of foreigners in need of international protection and entering the RS during the state of emergency. Such a decision should regulate the quarantine and subsequent accommodation of such persons in accordance with the *non-refoulement* principle.

The MOI should ensure compliance with the prohibition of discrimination, confidentiality of personal data and dignity of all persons during its border control activities and at border crossings, including the requisite screening and placement in quarantine, in line with the above-mentioned OHCHR and UNHCR guidelines. The state needs to bring its rules and practice at border crossings into conformity with OHCHR and UNHCR recommendations.

As the OHCHR noted, it is also vital that any tightening of border controls, travel restrictions or limitations on freedom of movement do not prevent people who may be fleeing from war or persecution, or who may otherwise be entitled to protection under human rights law, from accessing safety and protection.<sup>135</sup> Therefore, the relevant RS authorities, primarily the MOI and the Border Police Administration, should provide persons in need of international protection with access to Serbia's territory and the asylum procedure, whilst complying with anti-pandemic measures.

Given that the state of emergency may be in effect for a long time, the Asylum Office should facilitate the continuation of the asylum procedures. Such measures should

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<sup>135</sup> OHCHR, *COVID-19 Guidance, Migrants, Displaced People and Refugees*, (April 2020), para 5. Available at: <https://bit.ly/2y7oiCW>.

include protection of all parties from the disease, whilst ensuring a fair procedure and the asylum seekers' full access to legal aid, information and interpreting services.

The MOI and the CRM should promptly inform migrants and asylum seekers, in a language they understand, of their rights and obligations and the measures undertaken during the state of emergency. Such information must be available in the ACs and RTCs and on the websites of these authorities.

### **5.7.2. Recommendations Related to Accommodation Conditions**

Any *de facto* deprivation of liberty of migrants and asylum seekers, couched in the measure imposing round the clock restriction of movement, must be proportionate to the aim pursued and precisely explained, i.e. substantiated by public health protection reasons. People living in CRM facilities must be provided with conditions for living normal lives during the implementation of this measure.

The CRM should open new accommodation facilities to address the overcrowding in the ACs and RTCs. It should urgently reopen the centre in Dimitrovgrad and give thought to other avenues. Delays in addressing the problem, multiple transfers of asylum seekers from one centre to another, and succumbence to pressures from xenophobic groups may result in the appearance of the virus in the collective centres. The new accommodation facilities must fulfil the minimum statutory standards. The CRM should review the possibility of applying the provisions allowing accommodation in similar facilities, such as hotels, resorts and other suitable facilities.<sup>136</sup> The CRM should endeavour to avoid overcrowding and accommodation in tent complexes in which it is impossible to maintain satisfactory hygiene. The CRM should identify AC and RTC residents belonging to vulnerable groups and designate a centre for them where they will receive enhanced health care.

The CRM should organise meetings with local governments and the domicile population to familiarise them with its plans and discuss their reception of asylum seekers to be moved to their communities. Asylum seekers to be moved to other centres need to be promptly informed thereof by the CRM and the Asylum Office so as to prepare for the move.

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<sup>136</sup> Art. 50(10) LATP.

The Ministry of Defence and the Army of Serbia, which has been entrusted with guarding the ACs and RTCs, should implement their pandemic protection activities without intimidating or causing panic among migrants and asylum seekers. Notably, the Serbian armed forces must ensure that they do not expose children to lethal automatic rifles, which may also cause anxiety among PTSD victims.

The Ministry of Health should screen for coronavirus everyone in the territory of the RS, regardless of their legal status. With the assistance of other state authorities and organisations extending humanitarian and medical aid, it should work to secure sufficient quantities of protection gear and materials (gloves, masks, hand and other disinfectants) and distribute them to all facilities accommodating migrants and asylum seekers.

The National Preventive Mechanism within the Office of the Protector of Citizens should regularly visit ACs and RTCs. It should review whether the residents' human rights are respected during the pandemic.

## 6. Analysis of Public Discourse on Migrants

The authors of this Report analysed media reports published in the first three months of the year. They collected qualitative data from over 200 media reports broadcast on TV and published in newspapers and on Internet portals. They were also informed by the results of the public opinion poll on migrants commissioned by the BCHR and conducted by IPSOS Strategic Marketing in November 2019. We decided to use the term “migrants” in this part of the Report because it is much more frequently used in public discourse, much more than the terms “refugees” and “asylum seekers” that are usually used by experts to distinguish between foreigners with different statuses in the RS.<sup>137</sup>

Serbian society’s attitudes towards and perceptions of migrants still cannot be generally qualified as negative and intolerant. However, the gradual deterioration of attitudes may continue in the future. Our analysis identified several trends dominating the narratives in the media reports and reactions to them. We also singled out several key developments that led to the changes in attitudes towards migrants, unfortunately for the worse.

The IPSOS poll showed that neither positive nor negative attitudes towards migrants prevailed in Serbia. For instance, 22% of the pollees ticked “threat, problems for the state, they should be deported” and 21% ticked “pity, compassion, sorrow” as their first association to the word refugee. Out of circa 30% of the pollees who had direct contact with migrants, 12% had positive, 32% had negative and 54% had neither positive nor negative impressions of them. The pollees were mainly positive about the possibility of migrant children going to school with their children – 58% said they had nothing against it, as opposed to 34% who were opposed to it. On the other hand, most pollees

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<sup>137</sup> The term “migrant” is the broadest, but is not sufficiently precise in specific situations and differs from the terms “asylum seeker” and “refugee”. See the UNHCR definitions of the three terms in its glossary available at: <https://www.unhcr.org/449267670.pdf>.

were against migrants moving into their neighbourhood.<sup>138</sup> Views on migrants as potential co-workers were slightly more nuanced, albeit negative ones prevailed.<sup>139</sup>

Apart from the rare exceptions, most news and media reports on migrants were neutral and up to press standards. However, this statement holds true only with respect to the way the media disseminated information and opinions. Analysis of their content shows a somewhat different picture. In terms of content, we singled out three dominant narratives.

The first and prevalent narrative regards the security aspect in the migration context. It usually causes apprehension and feelings of threat among the recipients of the information. The second, humanitarian narrative, which focuses on the migrants' plight and suffering and usually causes empathy and compassion among information recipients, is much less visible. Even when it is present, it is linked to the security narrative, wherefore it is not in sharp relief and does not result in the creation of positive attitudes towards migrants, as one would expect. Finally, the third type of narrative, which we can call the integration or developmental narrative, features the least. This narrative entails topics aiming to present the positive aspects of the migrant population and its potential contribution to Serbian society, efforts invested in the integration of migrants and positive examples of intercultural accord.

One other topic present in the media also positively treats the migrant issue but cannot be categorised under any of the three narratives. It entails information state authorities and bodies, above all the CRM, as well as individual international and non-government organisations disseminate about the number of migrants, their activities and the situation in the centres. Such information is, commendably, regularly published by the media as it aims to provide accurate data and stifle various speculations that frequently appear in public.

The below paragraphs provide an overview of the three dominant - security, humanitarian and integration - narratives on migrants. They attempt to shed light on the reasons for them, i.e. the socio-political context that led to their creation and expansion.

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<sup>138</sup> A total of 47% of the pollees would not like to have migrants living next door, as opposed to 42% who would not mind.

<sup>139</sup> A total of 37% of the pollees had nothing against migrant co-workers, as opposed to 22% who would be not like to work side by side with them, while 29% would have nothing against migrant co-workers but would not socialise with them outside work.

## 6.1. Security Narrative

The security narrative includes several main topics. One of them entails reporting on migrants in the context of the global coronavirus pandemic, in which migrants have been branded as a risk to public health. Nearly all media reports mentioning migrants in the second half of March 2020 were to an extent related to the epidemic and the imposed state of emergency. Many of these reports emphasised that illegal border crossing could not be permitted and that migrants and refugees had to be put in strict quarantine. The imposition of the most restrictive measures against migrants was accompanied by an increasingly frequent militant tone, because the reports often stressed that the army was guarding and monitoring the centres in which migrants and refugees were living.<sup>140</sup>

The second dominant topic included the events that ensued after Turkish President Erdogan decided not to stop Syrian refugees from continuing their journey to Europe any longer.<sup>141</sup> The media reports focused on the situation at the Greek-Turkish border for a long time.<sup>142</sup> Fears of an “onslaught” of several million people started growing and the term “migrant crisis” reappeared. These events were directly related to and resulted in strengthening the climate of fear of a new migrant crisis, with the media focusing on potential new migration waves and how the states planned to protect their borders.<sup>143</sup> State officials were quoted as saying that Serbia was ready to respond to a potential “migrant crisis”, that it would help people in plight but that no-one expected

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<sup>140</sup> “Serbian Defence Minister Visits Troops at Sjenica Asylum Centre,” *Beta*, 21 March 2020. Available in Serbian language at: <https://beta.rs/vesti/drustvo-migranti/124797-ministar-odbrane-srbije-poseto-vojnike-kod-centra-za-zastitu-i-pomoc-traziocima-azila-u-sjenici>.

<sup>141</sup> “Erdogan: Turkish Border towards Europe Open to Migrants,” *N1*, 29 February 2020. Available in Serbian at: <http://rs.n1info.com/Svet/a573647/Erdogan-Turska-granica-ka-Evropi-otvorena-za-migrante.html>.

<sup>142</sup> “New Clashes between Migrants and Police at Greek-Turkish Border,” *Beta*, 6 March 2020. Available in Serbian at: <https://beta.rs/vesti/drustvo-migranti/124044-novi-sukobi-migranata-i-policije-na-grcko-turskoj-granici>.

<sup>143</sup> “Several Scenarios Await Serbia if Erdogan Lets Millions of Migrants out of Turkey,” *RTS*, 28 February 2020. Available in Serbian language at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/3869385/migranti-srbija-izgeglice-turska-erdogan.html>.

migrants to stay on in Serbia. The Serbian President said that the borders would be “hermetically closed” if need be.<sup>144</sup>

The upcoming parliamentary and local elections in the RS, called on 4 March 2020,<sup>145</sup> also contributed to the development of the security narrative and spread of negative attitudes towards migrants. However, an increase in negative messages by some political groups was visible in the preceding period as well. According to the IPSOS poll, 30% of the pollees approved of the Government policy on migrants, 32% opposed it, while 30% thought they were not well-informed about it. When deciding who to vote for, 16% percent of the pollees attached major importance to the political parties’ views on migrants, while 35% attached some and 28% attached no importance to them.<sup>146</sup> Migrants had not been an important issue parties could hope to attract votes on during the prior election cycles. But they seem to be one now.

This has above all been visible in the activities of opposition parties and movements trying to drum up support among voters, especially the Serbian Movement Dveri. Members of this movement held their first rally in Čačak on 18 February 2020 within their promotional caravan “Liberation” which was to have toured the entire country to explain to voters why it was for boycotting the elections. The promotional vehicle was pasted over by anti-migrant posters and the citizens were urged to sign the ongoing petition against the government’s migration policy.<sup>147</sup> Video footage posted on Dveri’s YouTube channel drew a lot of attention – on it, the movement leader Boško Obradović showed what would happen to Serbs in case of large-scale settlement of migrants in Serbia – he used two glasses, one filled with water and the other with a darker fluid. His “experiment” was soon dubbed “spritzer racism”.<sup>148</sup> Anti-migrant elements

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<sup>144</sup> News round-up, SRNA, 6 March 2020. Available at: <http://srna.rs/novosti/768690/srna-news-roundup-iii---march-6--2020.htm>.

<sup>145</sup> Decision on Parliamentary Elections (*Official Gazette of the RS*, No. 19/2020); Serbian National Assembly website: “Gojković Calls Local Elections,” 4 March 2020. Available at: [http://www.parlament.gov.rs/Gojkovic\\_Calls\\_Local\\_Elections.38903.537.html](http://www.parlament.gov.rs/Gojkovic_Calls_Local_Elections.38903.537.html).

<sup>146</sup> *Public Opinion Poll on Migrants*, IPSOS Strategic Marketing, BCHR, November 2019

<sup>147</sup> “Dveri launches election campaign in Čačak,” *N1*, 18 February 2020. Available in Serbian at: <http://rs.n1info.com/Vesti/a570487/Dveri-u-Cacku-pocele-kampanju-bojkota-izbora.html>.

<sup>148</sup> “My view: Obradović: Migrant Crisis”. Available at <https://www.youtube.com/watch?v=U-LU54cqiEA>. The term “spritzer racism” was coined because Obradović’s demonstration of what would happen if the domicile and migrant populations mixed resembles the way spritzers (of wine and sparkling or soda water) are made.

were present also in the policies of the Enough is Enough Movement, the Serbian Radical Party, the Serbian Right and various minor rightist organisations.

Finally, the security narrative was substantially strengthened by the visible increase in intolerance of migrants among Serbia's citizens and a rise in xenophobic incidents in Serbian society. Anti-migrant protests broke out on several occasions in the reporting period, mostly in towns where migrants were accommodated or staying. Such protests were held in Subotica in late February, in Belgrade, Šid and Požarevac in early March and in Deliblato in late March. A major protest in the heart of Belgrade on 8 March 2020 and the appearance of so-called "people's patrols" in late February, comprising the organisers of the March protest, also drew public attention. "People's patrols" were especially worrisome. These groups of vigilantes toured the part of Belgrade frequented by migrants in the evenings and at night, stopping them, imposing various restrictions on their movement and conduct, insulting and intimidating them.<sup>149</sup> Just as worrisome is the fact that, with the exception of CRM senior officials,<sup>150</sup> the state authorities failed to resolutely respond to these incidents. It remains unknown whether anyone has been held accountable for organising and participating in these quasi-police groups.

The surge in intolerance against migrants was caused by allegations of various acts of violence by them and their unbecoming behavior.<sup>151</sup> Such allegations were not made by traditional media, but by rightist Internet websites and various groups on social networks, an area extremely difficult to control efficiently. Most of the allegations were fake news or news several years old that were now posted as new ones. The Vojvodina Investigation-Analytical Centre (VOICE) identified at least 20 active pages on Facebook

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<sup>149</sup> "Massive People's Patrol against Migrants in Belgrade: Rightist Associations Stage Protest in Savamala," *Nedeljnik*, 9 March 2020. Available in Serbian at: <https://www.nedeljnik.rs/masovna-narodna-patrola-protiv-migranata-u-beogradu-desnicarska-udruzenja-organizovala-protest-u-savamali/>.

<sup>150</sup> "Refugee Commissioner: Anti-Migrant Protests Disgracing Serbia," *Danas*, 9 March 2020. Available in Serbian at: <https://www.danas.rs/drustvo/komesar-za-izbeglice-protesti-protiv-migranata-sramota-za-srbiju/>.

<sup>151</sup> "Migrants Stab Serb at Bitef Theatre, Man Seriously Injured, Media Silent!," *Srbinfo*, 25 February 2020. Available in Serbian at: <https://srbinfo.rs/drustvo/migranti-izboli-srbina-kod-bitef-teatra-uteskom-je-stanju-mediji-cute/>; "Migrants Demolish Bakery in Belgrade, Bloody Worker's Face!, Vučić Doggedly Silent," *Dnevna gazeta*, 4 February 2020. Available in Serbian at: <https://vesti.dnevna-gazeta.rs/2020/02/04/uznemirujuci-foto-migranti-razlupali-pekaru-u-beogradu-krvavo-lice-radnika-vucic-uporno-cuti/>.

promoting and advocating extremist views and chauvinist ideas.<sup>152</sup> The Facebook group “STOP Settlement of Migrants” reigned supreme among them; it had 200,000 members and continued growing.

The authors of this Report analysed the messages voiced at the protests and comments on various Internet websites and summed up the main arguments and specificities of the anti-migrant rhetoric. Migrants are perceived as a security threat both at the state level and among Serbia’s citizens. The authors of these messages and comments call for the defence of Serbian borders and talk about potential threats from terrorism and the spillover of the Middle East conflicts to Serbia. The migrants’ behaviour is often described as problematic and they are perceived as a threat to the citizens’ safety. The authors of these messages and comments cite alleged cases of migrant violence and claim migrants assault and rob the citizens, whilst focussing especially on the danger they pose to women and children. Talk of large-scale settlement of migrants in Serbia gained in intensity since the beginning of the year. The number of migrants in Serbia was exaggerated and the authors of the messages and comments mentioned their “invasion” or “onslaught” in the near future. They often claimed that there was a secret plan to settle migrants in Serbian villages.<sup>153</sup> The expressions “camp for migrants” and “parking lot for migrants” were often heard in the public discourse. The authors of these messages and comments highlighted the major cultural differences between migrants and Serbian citizens, warning that the former were a threat to the Serbian national corps and social homogeneity.

The reality is totally different from this narrative. Migrants have committed only a few crimes: most were clashes among the migrants themselves or entailed trespassing, i.e. breaking into empty buildings and homes that have been abandoned for a long time. The number of migrants in Serbia should not give rise to anti-migrant sentiments either.<sup>154</sup> It was relatively stable and ranged between six and seven thousand during the

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<sup>152</sup> “VOICE: Digital Anti-Migrant Chauvinism on the Rise on Facebook,” *Danas*, 15 March 2020. Available in Serbian at: <https://www.danas.rs/drustvo/voice-raste-digitalni-sovinizam-na-fejsbuku-prema-migrantima/>.

<sup>153</sup> This issue was first brought into the limelight by *Dveri* leader Obradović in late 2019. See: “Obradović: Petition against Settlement of Migrants, They Would Change the Structure of Serbia’s Population,” *Moravainfo*, 16 December 2019. Available in Serbian language at: <https://moravainfo.rs/2019/12/obradovic-peticija-protiv-naseljavanja-migranata-oni-bi-promenili-strukturu-stanovnistva-u-srbiji/>.

<sup>154</sup> “New Migrant Crisis, Xenophobia on the Rise, ‘People’s Patrols’ Going Unpunished,” *Insajder*, 8 March 2020. Available in Serbian at: <https://insajder.net/sr/sajt/tema/17168/>.

reporting period, rising slightly in late March. Migrants still do not perceive Serbia as a country they would like to settle down in.<sup>155</sup>

## 6.2. Humanitarian and Integration Narratives

News and reports with a humanitarian narrative drew attention to the migrants' plight in the countries they had fled and passed through on their way to their destinations. Such reports described the misfortunes many had experienced on that dangerous journey, and the violence they suffered at the hands of the domicile population, as well as state authorities, i.e. the police and border services.<sup>156</sup>

The integration narrative featured rarely. Several reports were published on the integration of migrant children in schools<sup>157</sup> and projects aiming to facilitate the migrants' integration in the local communities they are living in and their rapport with the local population. As the coronavirus situation became more and more serious, news of migrants who started sewing masks in the centres and offered their help in the fight against the virus appeared. Since some of them used to be health professionals in their countries of origin, they offered to join forces in suppressing the epidemic and pay Serbia back for its hospitality. The fact that such news was picked up by numerous outlets

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<sup>155</sup> According to a CRM representative who appeared on *NI TV*. Available in Serbian at: <https://www.youtube.com/watch?v=FgMGq5udV44>.

<sup>156</sup> "We Don't Have Anything Anymore, All We Want Is a Home," *Blic*, 26 March 2020. Available in Serbian at: <https://www.blic.rs/vesti/drustvo/cekajuci-voz-za-srecniju-buducnost-migranti-koji-noci-provode-u-napustenim-zgradama/0tw0fk0>; "UNHCR: Greece to Step up Plans for Overcrowded Refugee Centres," *Krstarica*, 7 February 2020. Available in Serbian at: <https://www.krstarica.com/vesti/region/unhcr-grcka-da-ubrza-planove-za-prenatrpance-izbeglicke-centr/>; "If You Don't Beat Them up, What Do You Do with Them?", *B92*, 13 February 2020. Available in Serbian at: [https://www.b92.net/info/vesti/index.php?yyyy=2020&mm=02&dd=13&nav\\_category=167&nav\\_id=1653884](https://www.b92.net/info/vesti/index.php?yyyy=2020&mm=02&dd=13&nav_category=167&nav_id=1653884).

<sup>157</sup> "Commissariat: Over 1,000 Migrant Children Attended Serbian Schools," *Beta*, 24 February 2020. Available in Serbian at: <https://beta.rs/vesti/drustvo-migranti/123542-komesarijat-vise-od-1-000-dece-migranata-ucilo-u-srpskim-skolama>.

showed that migrants should not be perceived as a threat to or a burden on the state, rather, that they can usefully contribute to society if given the chance.<sup>158</sup>

The problem is that the positive discourse is on the back burner and that it is created mostly by organisations and people extending aid to migrants and refugees, whose public outreach is limited. The voices of those defending migrants are very much in the minority among the comments posted on social networks and Internet portals.

The fact that the term “migrants” is used the most often also indicates that most people believe that the people from the Middle East and Africa coming to the RS are above all economic migrants, who embarked on the long journey to find a better life and improve their economic well-being. A distinction is also being made between “real” and “fake” refugees. Those speaking negatively about migrants often say that no-one is bothered by “real” refugees only by “fake” ones and go on to elaborate that most migrants do not even come from war-torn countries. They add that most are able-bodied men and that there are hardly any women and children among them. Part of the public obviously incorrectly associates the term “refugee” only with war. War is the first association the word refugee brings to mind to as many as 19% of the citizens.<sup>159</sup>

This is not the only dichotomy that can be recognised. Migrants are also divided into legal v. illegal and good v. bad (problematic). Such classifications in public discourse apparently aim to rationalise and justify xenophobic and racist views.

### **6.3. Conclusion and Recommendations**

It may be concluded that the negative perceptions and depictions of migrants in Serbia’s public discourse increased in the reporting period. The trend may have stagnated to an extent as public focus shifted to the coronavirus pandemic. However, it is quite likely that, once the state of emergency is lifted, the processes that had led to deteriorating perceptions of migrants will continue to impinge upon the fate of the ongoing migration movements.

As far as the authorities’ “contribution” to the creation of the public discourse on migrants is concerned, it is mostly characterised by their failure to take any steps to

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<sup>158</sup> “This is Serbia,” *RTS 1*, 31 March 2020. Available in Serbian at:

<https://www.youtube.com/watch?v=7Bs-DTavqko&list=PLnto2OrMBYDLBW3wHgpu4zpk0BtmD08ds&index=13>.

<sup>159</sup> *Public Opinion Poll on Migrants*, IPSOS Strategic Marketing, BCHR, November 2019.

prevent and suppress xenophobia, racism, hate speech and threats against migrants. All the relevant RS authorities need to demonstrate firmer resolve to protect the migrant population and respond more promptly and frequently to threats to their safety and their rights. The MOI and the judiciary are under the obligation to react to flagrant cases of hate speech and racism that might result in the escalation of intolerance. They should in particular prevent attempts by various groups to take the law into their own hands. Political parties, both those in power and those in the opposition, should refrain from abusing migrants to score political points.

The media, for their part, should comply with professional press standards and refrain from sensationalism. They could increase the humanitarian and integration narratives to improve the visibility of the positive aspects of the life and presence of migrants and refugees in Serbia.