



**PERIODIC REPORT
JULY- SEPTEMBER 2016
RIGHT TO ASYLUM
IN THE REPUBLIC OF SERBIA**



Belgrade Centre
for Human Rights

INTRODUCTION

The Belgrade Centre for Human Rights (BCHR) continued implementing the project involving the provision of legal aid to refugees and asylum seekers with UNHCR's support in the latter half of 2016. BCHR lawyers continued regularly visiting Asylum Centres and extending legal advice to refugees, asylum seekers and migrants with a view to familiarising them with their rights and obligations. The BCHR has also been occasionally visiting Reception Centres and informal venues at which persons in need of international protection have been rallying. The project activities include advocacy of improvement of the asylum system in the Republic of Serbia, monitoring of the asylum procedures and analysis of the practices of the Asylum Office and Commission, as well as the monitoring of the work of other state authorities dealing with asylum seekers. The BCHR has also been investing efforts in raising public and institutional awareness of the issue and promoting adequate solutions to problems identified in practice.

During the reporting period, the BCHR also conducted and published the *Asylum Act Gender Analysis – Enforcement of the Gender Equality Principle in the Asylum System of the Republic of Serbia*, within the project *Refugee and Migrant Crisis in the Western Balkans*, implemented in cooperation with Oxfam and UN Women.

ACTIVITIES TO BE IMPLEMENTED UNTIL THE END OF 2016

- Provision of legal aid in the asylum procedure and the refugee integration process in Serbia;
- Regular visits to Asylum Centres and occasional visits to the Aliens Shelter and Reception Centres for persons in need of international protection at the borders

with Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia (FYROM) and Hungary;

- Organisation of two round tables on fundamental refugee law principles for Serbia Misdemeanour Court judges;
- Monitoring of the status of aliens deprived of liberty within the National Preventive Mechanism;
- Organisation of a socially responsible exhibition to raise the general public's and decision-makers' awareness of and sensitivity to the migration and refugee issues (in cooperation with *Liceulice*);
- Monitoring of the process of adoption of new laws on asylum and aliens and advocacy of the enactment of adequate normative provisions;
- Strategic litigation before international bodies, primarily the European Court of Human Rights.

This Report covers the July-September 2016 period and includes only data relevant to that period. Comprehensive information about the asylum system in Serbia is available in BCHR's 2015 annual report *Right to Asylum in the Republic of Serbia*. This Report was prepared by BCHR researchers Bogdan Krasić, Nikolina Milić, Nataša Nikolić, Lena Petrović, Anja Stefanović, Sonja Tošković, Bojan Stojanović, Vlada Šahović and Ana Trifunović.

The masculine pronoun is used in the Report to refer to an antecedent that designates a person of either gender unless the Report specifically refers to a female. Both the authors of the Report and the BCHR advocate gender equality and in principle support gender neutral language.

Belgrade, October 2016

GENERAL OVERVIEW OF MIGRATION TRENDS AND STATUS OF ASYLUM SEEKERS IN THE REPUBLIC OF SERBIA

The number of people in need of international protection continued growing in Serbia in the reporting period, despite the EU-Turkey agreement¹, which was to have resulted, inter alia, in the closure of the so-called Balkan migrant route taken by over a million people on their way to West Europe in 2015. It is impossible to ascertain the precise number of refugees and migrants who have transited through Serbia since April 2016, when the Serbian authorities practically started registering only the aliens expressing the intention to seek asylum, rather than all those entering Serbia.² UNHCR has been estimating the number of people entering Serbia every day on the basis of information from the field and individual assessments of organisations extending aid to refugees, asylum seekers and migrants.³ Furthermore, the Commissariat for Refugees and Migration (CRM) has been keeping records of persons accommodated in the national Asylum and Reception Centres. Based on these data, the UNHCR estimated that there were 1,015 people in Serbia in need of international protection in early July 2016; their number gradually grew, reaching as many as 5,700 in late September 2016.⁴ Eighty percent of these aliens were accommodated in the centres for refugees and migrants.

¹ Available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>.

² Statistical data compiled by the UNHCR based on information communicated by the Asylum Office.

³ The daily inflow of refugees and migrants was estimated at 200 in July and August and up to 300 in September 2016.

⁴ *Serbia Interagency Operational Update July 2016*, UNHCR, August 2016 and *UNHCR Serbia Update 26-28 September 2016*.

The number of refugees and migrants spending the nights in open air, in Belgrade parks, garages and vacant buildings near the Main Bus Station grew after the CRM decided on 14 July 2016 to allow only aliens who had expressed the intention to seek asylum, rather than all those in need of



Photo: Refugees and migrants in Bristol park in Belgrade

accommodation, to stay at the Krnjača Asylum Centre. In July 2016, around 450 people were staying at these informal venues every day,⁵ in extremely adverse living conditions, with no legal status, prompting dozens of them to launch a hunger strike on 22 July. The strike ended a week later, when the CRM provided accommodation for these people in the Reception Centres.

The CRM presumably decided to allow only people, who declared the intention to seek asylum in Serbia, and those referred to the Krnjača Asylum Centre to stay there due to the large number of people accommodated in this Centre, while the other Centres had room. The CRM arranged the transport of aliens with certificates of intent to seek asylum and referred to other Centres to those Centres; it transferred the refugees and migrants who did not want to seek asylum in Serbia to one of the Reception Centres in Šid, Adaševci or Principovac. Such a practice continued until 11 August, when the CRM reversed its decision and started allowing all persons in need of international protection to stay at the Krnjača Asylum Centre. The decision soon led to a fall in the number of

⁵ *Serbia Interagency Operational Update July 2016*, UNHCR, August 2016.

people sleeping in open air. Around 800 people were staying at the Krnjača Asylum Centre by end August;⁶their number exceeded 1000 in September.

The amendments to the Hungarian State Border and Asylum Acts entered into force on 5 July 2016. Under the new rules, Hungarian police are entitled to automatically push back all persons apprehended without valid documents and visas within eight kilometres of its borders with Serbia and Croatia. Hungarian police statistics on the number of people caught trying to enter the country illegally show a plunge since early July 2016; the average number of people trying to cross the border illegally and apprehended by the Hungarian police every day dropped from 126 in June, to 18 in July, 11 in August and 5 in September.⁷The Hungarian Government also rendered the decision to declare Serbia a safe third country, which practically means that all asylum claims filed by aliens, who had passed through Serbia on their way to Hungary, can be dismissed under a summary procedure and that they can be returned to Serbia. Human Rights Watch obtained data indicating that the Hungarian authorities have since May 2016 been summarily dismissing asylum claims by most adult males entering Hungary from Serbia and allowing some vulnerable groups to stay at reception centres in Hungary.⁸ HRW research suggests that asylum claims in Hungarian transit zones are usually dismissed within a day, often within an hour.⁹Although the transit zones are in Hungarian territory, Hungary maintains that the people in them have not yet 'entered' Hungary, so they can be removed from them, and effectively returned to Serbia without informing the Serbian authorities.¹⁰

⁶ The Krnjača Asylum Centre's optimal capacity is 750; it can provide urgent accommodation to another 300 people.

⁷ The data on the number of people who tried to cross into Hungary illegally and were apprehended by the Hungarian police are available at: <http://police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes?honap%5Bvalue%5D%5Byear%5D=2016&honap%5Bvalue%5D%5Bmonth%5D=7>.

⁸ See: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.

⁹ Appeals may be filed within seven days, during which the asylum seekers are not allowed to leave the transit zones.

¹⁰ Under the Readmission Agreement, Serbia has to agree to readmit people Hungary wants to send back to its territory.

In September 2015, Hungary started gradually limiting the number of people allowed to enter its transit zones on the border with Serbia and access the asylum procedure.¹¹ It set up two so-called transit zones, near the Horgoš and Kelebija border crossings, as the only places where refugees and migrants can legally enter Hungary from Serbia and access the Hungarian asylum procedure. The number of aliens, who had managed to enter Serbia from FYROM and Bulgaria in the ensuing period, was much greater than the number of those who could leave Serbia, which is why makeshift camps, inhabited by up to 1,500 refugees and migrants at any one time, soon appeared near the transit zones.¹²

In order to introduce order in the vicinity of the transit zones and prevent the plight of hundreds of people in the inhuman living conditions in the makeshift camps while they waited to enter Hungary, refugees and migrants in Serbia started drawing up waiting lists of persons who wished to enter Hungary and forwarding them to the Hungarian border police in April 2016. This informal system of compiling and exchanging lists functioned in the ensuing months in the following manner: the refugees and migrants put their names on the list when they arrived at an Asylum or Reception Camp and these lists are forwarded to the representatives of refugees and migrants on the border with Hungary. The Hungarian border police draw up new lists on the basis of these lists, making sure the vulnerable groups, primarily families with children and unaccompanied children are given priority. CRM representatives in the individual Centres are notified which residents will be among the 30 to be allowed to cross the border in the following few days and these people are transferred to the border with Hungary with the help of the International Organization for Migration or in another manner, from the Asylum and Reception Centres across Serbia. It needs to be noted that

¹¹ Hungary cut the number of people it allowed to enter a transit zone from the initial 100, to 50, to a mere 30 people in mid-2016.

¹² According to the UNHCR *Serbia Interagency Operational Update July 2016*, 1,553 refugees and migrants were present at the Hungarian border on 24 July 2016.

entry into Hungarian territory means that these people will be registered as asylum seekers in Hungary and that, under the new rules, their claims will most probably be dismissed because Hungary declared Serbia a safe third country. The introduction of the list system alleviated the difficult humanitarian situation in the Horgoš and Kelebija border area only to an extent; a large number of refugees were still staying there in informal and makeshift camps.

At its session on 17 July 2016, the Serbian Government adopted a Decision on the establishment of joint police-army forces to combat illegal migration and human trafficking along the border with FYROM and Bulgaria. These Government measures aimed at suppressing human smuggling and protecting the state border should be implemented in a manner ensuring respect for the rights of people in need of international protection and access to the asylum procedure in Serbia.

The second “Response Plan in Case of Increased Inflow of Migrants to the Republic of Serbia in the October 2016 - March 2017 Period” (Response Plan) was presented on 27 September 2016 at the meeting of the Refugee Protection Working Group. The Response Plan was prepared by the Serbian Government Working Group on Mixed Migration Flows (Working Group). The Response Plan is based on several presumptions: that the uncontrolled transit of refugees and migrants via Western Balkan countries has been halted, that the number of migrants illegally entering Serbia will drop considerably, that the number of refugees and migrants entering and leaving Serbia on a daily basis will not exceed 30, and that most refugees and migrants will not perceive Serbia as a country of asylum. Based on these presumptions, the Working Group believes that there will be five thousand refugees and migrants staying in Serbian Reception and Asylum Centres at any one time during the winter, that they will stay two to three months, and that the number of people passing through Serbia in the six-month period will total 12-13 thousand. The authors of the Response Plan, however, neglected the following fact: that many more migrants have been entering Serbia in the past few months (UNHCR

reports show that the average daily influx of refugees and migrants stood at 200 in July and August and 300 in September) than leaving it.

The new Response Plan outlines the following courses of action: urgent aid to and protection of migrants, accommodation for migrants, cooperation with the local communities to preserve tolerance towards migrants, security of state borders and fight against human smuggling. With a view to providing the migrants with adequate protection, the Response Plan states that the Asylum and Reception Centres will provide clear and timely information on the asylum procedure, the rights of refugees and asylum seekers and that vulnerable groups will be identified and referred to the relevant institutions to satisfy their needs. Unaccompanied minors, victims of torture and human trafficking, chronically ill migrants, pregnant women, children and the elderly are identified as vulnerable groups in the Response Plan. Child protection shall be ensured by the constant presence of Social Welfare Centre (SWC) staff, and the Red Cross of Serbia Tracing Service will be used to search for family members to facilitate family reunification. Given the SWCs' lack of capacity to extend protection to the increased number of unaccompanied or separated children, hitherto problems in keeping such children in Serbia and the lack of a specialised institution where they can be accommodated, it is unlikely that the adequate protection of children will be possible in the ensuing period unless the existing shortcomings in the system are eliminated.

As far as accommodation is concerned, the Response Plan envisages the improvement of the living conditions in the Centres and expansion of their capacities. Furthermore, the Response Plan lays down that all refugees and migrants must be provided with three meals a day, hygiene items, and clothing and footwear. The Response Plan also covers health care services to be extended to the increased number of refugees and migrants and sets out that health care and regular epidemiology surveillance will be ensured in cooperation with the local health institutions.

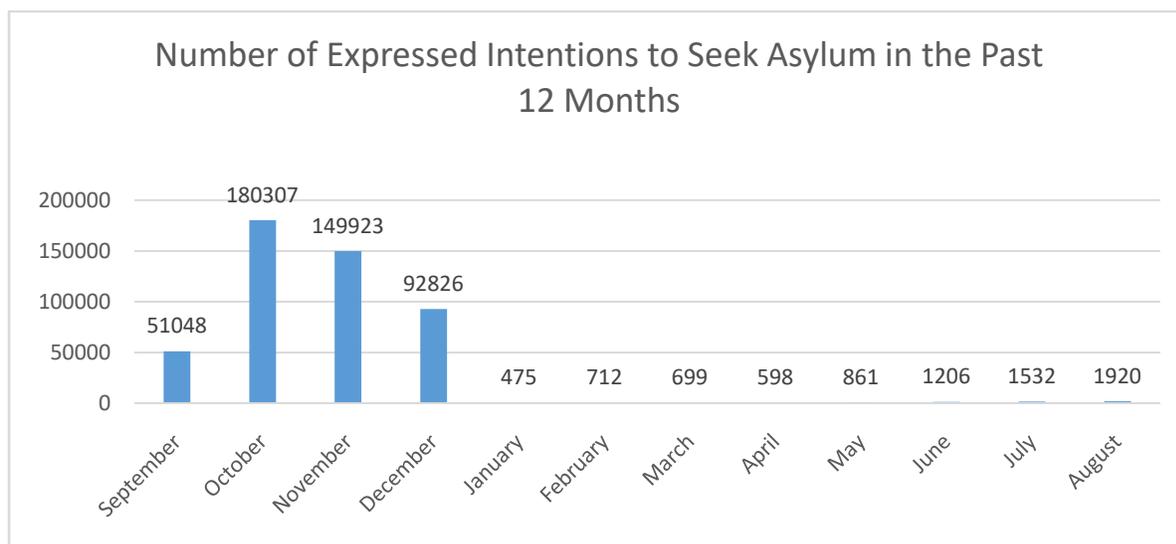
Under the Response Plan, 2.1 billion RSD will be needed to implement the planned activities: 29% will be spent on state border protection and combatting human smuggling, 25% on food, 21% on accommodation, 12% on legal protection, 7% on health care, 3% on hygiene, clothing and footwear, 2% on support to local communities and 1% on transportation and logistics. The Response Plan was adopted in September 2016. The Serbian Minister of Interior said that accommodation for 6,000 people was ensured thanks to budget funding and donor assistance.¹³

¹³See the Blic report available in Serbian at: <http://www.blic.rs/vesti/politika/stefanovic-svaka-zemlja-na-migrantskoj-ruti-da-preuzme-deo-tereta/5xge709>.

STATISTICS¹⁴

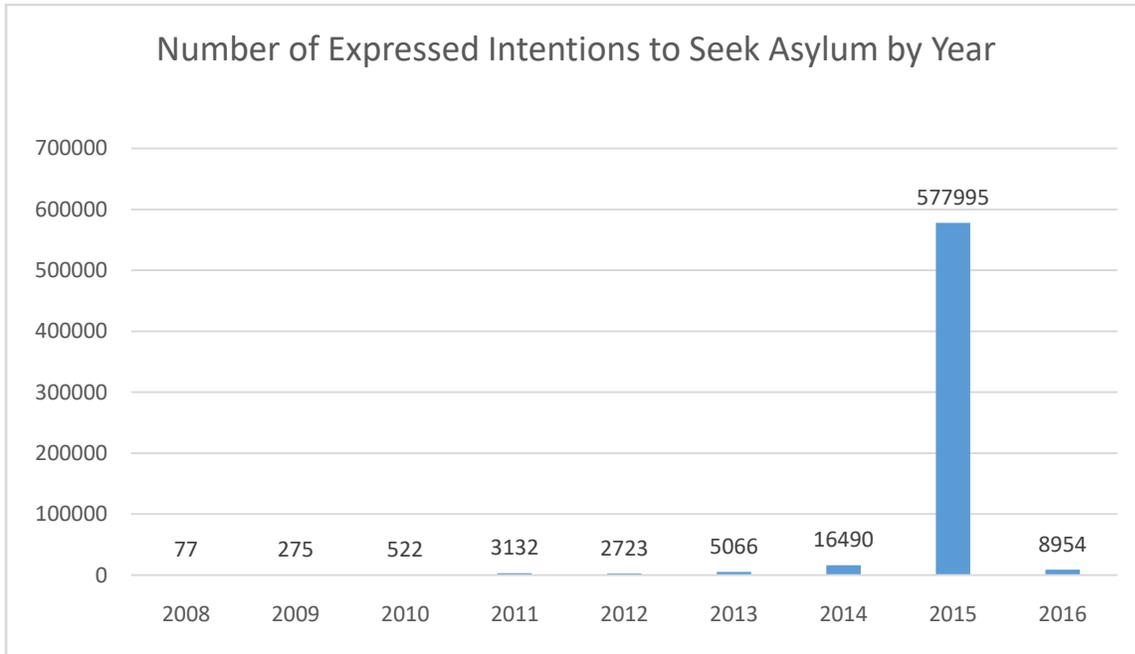
STATISTICS ON THE NUMBER OF EXPRESSED INTENTIONS TO SEEK ASYLUM

A total of 4,403 people expressed the intention to seek asylum in the Republic of Serbia in the 1 July-30 September 2016 period (1,532 in July, 1,920 in August and 951 in September); 3,148 of them were men and 1,255 were women. The intention to seek asylum was expressed in this period also by 1,953 children, 26 of whom were unaccompanied by parents or guardians. Most refugees/migrants expressed the intention to seek asylum in the regional police directorates (3,291) and at the border crossings (252). Two people expressed the intention to seek asylum at Belgrade Airport Nikola Tesla and twenty at the Aliens Shelter. The Preševo Reception Centre registered 423 people intending to seek asylum – 420 of them in July.



¹⁴ All statistical data were obtained from the UNHCR Office in Belgrade and the Asylum Office of the Ministry of Interior of the Republic of Serbia.

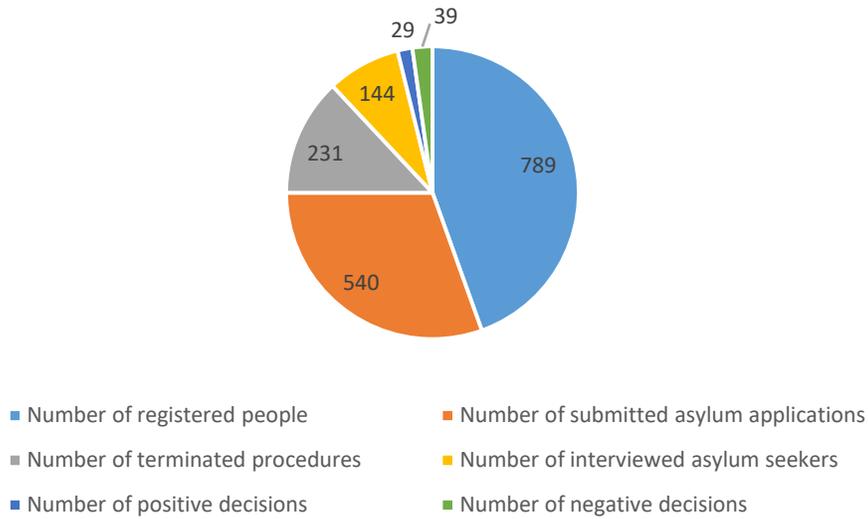
Since the Asylum Act came into effect, a total of 613,089 people expressed the intention to seek asylum in Serbia: 77 in 2008, 275 in 2009, 522 in 2010, 3,132 in 2011, 2,723 in 2012, 5,066 in 2013, 16,490 in 2014, 577,995 in 2015 and 8,954 in the first nine months of 2016.



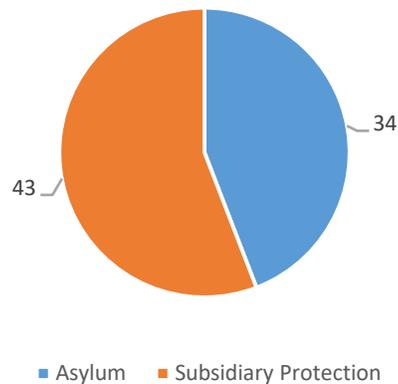
ASYLUM PROCEDURE STATISTICS

The Asylum Office has granted asylum to 34 people and subsidiary protection to 43 people since the Asylum Act came into force. It registered 789 asylum seekers in the first nine months of the year. It received 540 asylum claims and interviewed 144 asylum seekers. It upheld 29 and dismissed 39 claims and discontinued reviews of 231 claims because the applicants had left Serbia in the meantime. Of the 29 successful applicants, 12 were granted asylum and 17 subsidiary protection. Asylum was granted to four nationals of Cuba, four nationals of Sudan, one national of Kazakhstan, one national of Syria, one national of Afghanistan and one national of Iran. Subsidiary protection was granted to nationals of Ukraine (5), Afghanistan (5), Libya (3), Syria (2) and Somalia (2).

2016 Asylum Procedure Statistics



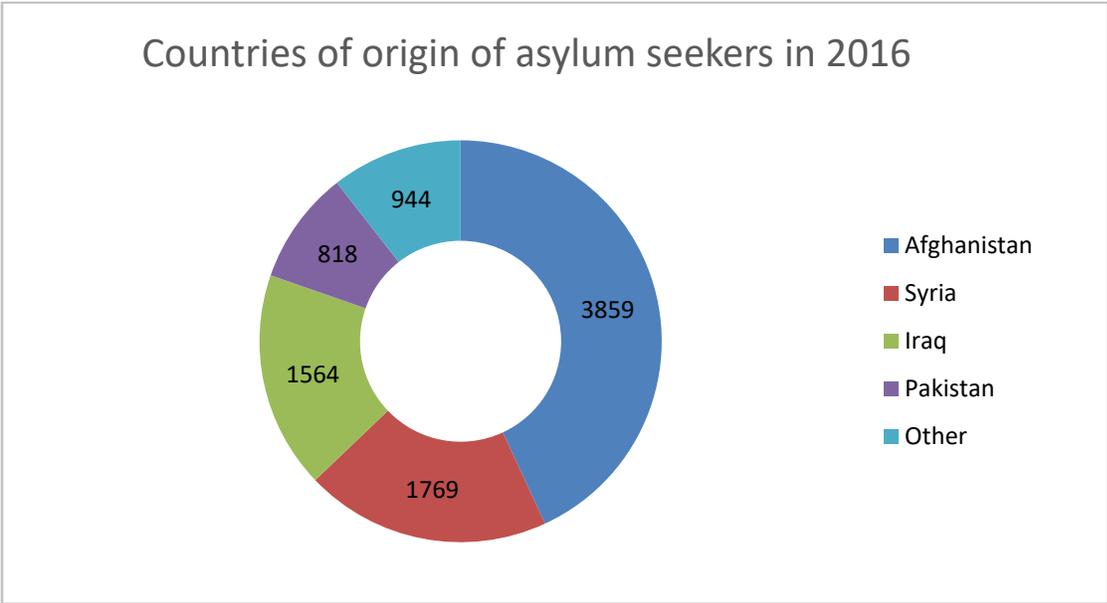
Total Number of People Granted Asylum or Subsidiary Protection from 2008 to 30 September 2016



ASYLUM SEEKERS BY COUNTRY OF ORIGIN

Most persons who expressed the intention to seek asylum in Serbia in the first nine months of the year were nationals of Afghanistan (3,859), Syria (1,769), Iraq (1,564) and Pakistan (818). The intention to seek asylum in that period was also expressed by nationals of Iran (169), Somalia(162), Algeria (147), Morocco (139), Bangladesh (41),

Libya(34), Cuba (32), Palestine (26), Eritrea (26), Sri Lanka (23), the Democratic Republic of Congo (20), India (12), Egypt (11), Tunis (8), Cameroon (6), Ethiopia (6), Nigeria (6), United States of America (5), Ghana (5), Lebanon (5), Western Sahara (5), Croatia (4), Bosnia and Herzegovina (4), Nepal (4), Sudan (4), Turkey (4), Uzbekistan (4), Russian Federation (3), Guinea (3), Mali (3), Yemen (3), Saudi Arabia (2), Lebanon (2), FYROM (2), Bulgaria (1), Slovenia (1), Central African Republic (1), Montenegro (1), Albania (1), Burundi (1), Republic of Congo (1), Ivory Coast (1), Greece (1), Mexico (1), Moldova (1), Poland (1), Romania (1)and two people whose countries of origin have not been established.



APPLICATION OF THE SAFE THIRD COUNTRY CONCEPT BY THE ASYLUM OFFICE AND COMMISSION

The Serbian authorities charged with the asylum procedure continued automatically applying the safe third country concept in most cases in 2016 and dismissing the asylum claims of applicants who had entered Serbia from FYROM or Bulgaria under Article 33(1(6)) of the Asylum Act.¹⁵ Under this Article, asylum claims of applicants coming from safe third countries shall be dismissed unless they can prove those countries are not safe for them. Reasoning of such decisions primarily rely on the Serbian Government Decision on Safe Countries of Origin and Safe Third Countries.¹⁶

The automatic application of the safe third country concept had resulted in the granting of some form of international protection to only eight people in the first five years of enforcement of the Asylum Act.¹⁷ All of them had entered Serbia legally and directly from their countries of origin, where they were at risk of persecution or they had been in Serbia on other grounds and in the meantime faced the risk of persecution due to change of circumstances in their countries of origin (refugees *sur place*).¹⁸ Nearly all other claims had been dismissed, without the authorities reviewing them on the merits. Indeed, the authors of this Report assume that 48 of the total of 78 people granted some form of international protection since the asylum system was established in Serbia had come to Serbia directly from their countries of origin, that 17 had come from FYROM and fewer from Bulgaria.¹⁹ There were cases in which the Asylum Office decided to

¹⁵ *Official Gazette of the RS* 109/2007.

¹⁶ *Official Gazette of the RS* 67/2009

¹⁷ The Asylum Act entered into force on 1 April 2008.

¹⁸ From 1 April 2008 to 31 December 2012, asylum was granted to nationals of Ethiopia (3), Libya (2), Iraq (1), Somalia (1) and Egypt (1).

¹⁹ These aliens had been extended legal aid by other NGOs representing them in the asylum procedure.

grant international protection to persons, who had entered Serbia irregularly but were unable to explain which countries they had passed through on their way to Serbia.²⁰The analysis of the cases in which the Asylum Office reviewed the merits of the asylum claims and those in which it dismissed them under Article 33(1(6)) indicates it is impossible to ascertain the criteria this body is guided by when it renders different decisions on persons in nearly identical situations. For instance, the Asylum Office in 2016 rendered two decisions granting asylum to a national of Syria and a national of Iran.²¹ The Office simply noted in them that they had transited through FYROM on their way to Serbia and satisfied the criteria under Article 1 of the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention).

On the other hand, the Asylum Office decided to dismiss the claims of three Syrian nationals, who had entered Serbia while the so-called Balkan migrant route was open, because they had been unable to prove that FYROM was not safe for them.²²The Office specified in its reasoning that the asylum seekers had not even tried to apply for asylum in FYROM and that they said during their interviews they had not intended to stay in that country. The Office went on to quote excerpts from a UNHCR's report entitled Former Yugoslav Republic of Macedonia as a Country of Asylum²³ albeit selectively. All the cited excerpts reflected UNHCR's positive assessments of headway achieved in the FYROM asylum system. This practice gives rise to concern and to an extent renders meaningless UNHCR's message to countries ruling on claims of people who had passed through FYROM. UNHCR did, indeed, commend the headway made in establishing an efficient and effective asylum system in this country in its report, but it primarily published it to draw the attention of the State Parties to the 1951 Refugee Convention and the 1967 Protocol thereto that FYROM had not yet established an efficient system

²⁰ Asylum Office Decision 26-652/16 of 17 June 2016.

²¹ Asylum Office Decisions 26-5413/14 of 2 March 2016 and 26-1051/16 of 13 September 2016.

²² Asylum Office Decisions 26-1394/16 of 8 September 2016, 26-1393/16 of 13 September 2016 and 26-1395/16 of 23 September 2016.

²³ Available at: <http://www.refworld.org/pdfid/55c9c70e4.pdf>.

for the protection of persons in need of international protection and recommend to them to refrain from returning or sending asylum-seekers to Macedonia, until further improvements to address the asylum system gaps have been made by its Government.²⁴

It has been noted that the Asylum Office as the first instance authority has not sufficiently been asking the asylum seekers about how they had been treated in the transit countries or why they had not sought asylum in them ever since the asylum procedure was introduced in Serbia. Even when asylum seekers state during their interviews that they had been ill-treated in Bulgaria or FYROM, their allegations do not suffice for the Asylum Office or Commission to conclude that these countries are not safe for them. For instance, one Iraqi asylum seeker reported that the Bulgarian police had seized all he had, 700 dollars, his cell phone and his backpack;²⁵ both the Asylum Office and Commission noted his allegation in their decisions but did not assess it in terms of whether Bulgaria was a safe third country for that asylum seeker. In another case, the Serbian asylum authorities ignored the asylum seeker's description of the Bulgarian authorities' treatment of refugees as horrible during the interview. No importance was attached to his statement during the procedure. Nor did the Asylum Office try to ascertain what "horrible" treatment by the Bulgarian authorities involved.²⁶ In this case, the Asylum Commission concluded that the asylum seeker's general assessments of the way Bulgarian authorities treated refugees could not be considered proof that this country was not safe for him.

The European Court of Human Rights long ago established the standard that states were under the obligation to familiarise themselves with the asylum procedure irregularities in other countries, that they were not merely to assume that the applicants would be treated in conformity with the 1951 Refugee Convention but, on the contrary, that they were to first verify how the authorities of a specific country applied their

²⁴ *Ibid*, para. 47.

²⁵ Asylum Office Decision 26-5867/15 of 20 April 2016 and Asylum Commission Ruling AŽ 22/16 of 15 August 2016.

²⁶ Asylum Office Decision 26-1224/16 of 21 July 2016 and Asylum Commission Ruling AŽ 35/16.

legislation on asylum in practice.²⁷ The Serbian asylum authorities, however, are not guided at all by this standard. Furthermore, in the event the Asylum Office and Commission qualify a state as a safe third country, they must receive firm assurances from its authorities that they will allow the asylum seeker into their territory and provide him with access to the asylum procedure, and that he will be accommodated in facilities ensuring his dignity of person.²⁸ Not once did the Asylum Office obtain such assurances in cases in which it dismissed claims by asylum seekers represented by BCHR's lawyers.

Article 2(1(11)) of the Asylum Act lays down the cumulative conditions that must be satisfied for a country to be qualified as a safe third country: it must be on a list established by the Government; observe international principles pertaining to the protection of refugees in the 1951 Refugee Convention and 1967 Protocol thereto; the asylum seeker had resided or passed through it immediately before he arrived in the territory of the Republic of Serbia and he had an opportunity to apply for asylum in it; the asylum seeker would not be subject to persecution, torture, inhuman or degrading treatment in it or sent back to a country where his life, safety or freedom would be threatened.

The Asylum Office and Commission have merely been noting in their decisions that the countries the asylum seekers transited on their way to Serbia were safe because they were designated as such in the Government Decision. They have thus failed to check whether these countries fulfilled the other criteria safe third countries have to satisfy under the Asylum Act. They have also failed to take into consideration other relevant sources indicating problems in the treatment of refugees in a specific country. Such sources should definitely include reports by UN treaty bodies (Committee against Torture, Human Rights Committee and the Committee on Economic, Social and

²⁷ *M.S.S. v Belgium and Greece*, App. No. 30696/09 (2011).

²⁸ *Tarkahel v Switzerland*, App. No. 29217/12 (2014).

Cultural Rights) and reports by eminent international human rights organisations, such as Amnesty International and Human Rights Watch.

Although the Constitutional Court noted in its Decisions UŽ 1286/2012 of 29 March 2012 and UŽ 5331/2012 of 24 December 2012 that UNHCR reports helped improve the application of the Asylum Act and the safe third country concept in case the safe third countries' asylum procedures were in contravention of the Refugee Convention, Serbia's asylum authorities have not been taking UNHCR's reports on FYROM and Bulgaria into consideration at all or have selectively been quoting the positive excerpts of the reports, whilst neglecting the very essence and UNHCR's final assessment of the efficiency of the national asylum procedures.

In its assessment of the asylum procedure in Bulgaria of 2 January 2014²⁹, UNHCR said that Bulgaria could not be qualified as a safe third country because there were real risks that asylum seekers would be subject to risk of inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights. UNHCR noted the following in its conclusion:

UNHCR considers that asylum-seekers in Bulgaria face a real risk of inhuman or degrading treatment, due to systemic deficiencies in reception conditions and asylum procedures in the country. The primary basis for this conclusion is the deplorable reception conditions, which, in addition to amounting to inhuman or degrading treatment, are also at variance with the right to human dignity and respect for privacy. Moreover, asylum-seekers in Bulgaria are currently at risk of arbitrary detention, given the absence of a clear legal basis for detention in Bulgarian law, and given the delays, which can mean that detention continues for uncertain and often lengthy periods. In addition, while, according to UNHCR's information, asylum-seekers are not at this time returned forcibly in practice from within Bulgaria to other countries where they could be at risk of persecution or serious harm, they are denied access to a fair and effective asylum

²⁹ UNHCR, *Bulgaria as a Country of Asylum*, January 2014, available on: <http://www.refworld.org/docid/52c598354.html>.

determination procedure, which is at variance with the right to asylum and to numerous provisions of the acquis. (...)Return to these conditions could create a risk of refoulement."

The following view the Asylum Commission took in several cases is particularly problematic – that the asylum authorities cannot review whether a specific state is actually safe for asylum seekers because, under Article 33(1(6)) of the Asylum Act, such reviews may be performed only in the context of ascertaining whether they have come from a safe third country, in which case the burden of proof rests on the asylum seekers. Quite the contrary. Article 2(1(11)) of the Asylum Act specifies the cumulative conditions for qualifying a state as a safe third country, the satisfaction of which must be ascertained by the competent asylum authority. To reiterate, a safe third country is only a country which will treat the asylum-seeker in accordance with accepted international standards, will ensure effective protection against *refoulement*, and will provide the asylum-seeker with the possibility to seek and enjoy asylum.³⁰

The outlined practices of the Asylum Office and Commission corroborate that UNHCR's conclusion in its 2012 *Serbia as a Country of Asylum* report³¹ is still valid. In that document, UNHCR qualified Serbia as a country not safe for asylum seekers, inter alia, due to the automatic application of the safe third country concept. In particular, it recommended Serbia put in place appropriate mechanisms for the designation and review of safe third countries and apply the safe third country concept only when adequate safeguards are in place for every individual such as ensuring that he will be readmitted to the territory of the safe third country and have the asylum claim examined in a fair and efficient procedure. In BCHR's view, these UNHCR recommendations have not been fulfilled yet.

³⁰ UNHCR, *The safe third country policy in the light of the international obligations of countries vis-a-vis refugees and asylum seekers*, London, July 1993, para. 4.2.14. and UNHCR Executive Committee Conclusion No. 85, 1998. para (aa).

³¹ UNHCR, *Serbia as a Country of Asylum*, August 2012, available at: <http://www.unhcr.rs/media/UNHCRSerbiaCountryofAsylumScreen.pdf>.

STATUS OF ASYLUM SEEKERS IN SERBIAN ASYLUM AND RECEPTION CENTRES³²

In the third quarter of 2016, BCHR legal professionals continued implementing project activities in Asylum and Reception Centres in cooperation with the UNHCR Office in Belgrade, with a view to extending legal aid to refugees and asylum seekers in Serbia. Serbian authorities operate five Asylum Centres, in Krnjača, Bogovađa, Banja Koviljača, Sjenica and Tutin, in which aliens who express the intention to seek asylum are accommodated and in which the asylum procedure is to be conducted. Serbia also operates several Reception Centres, opened during the refugee crisis to provide emergency accommodation to persons in need of international protection but not intending to seek asylum in Serbia. These Reception Centres have been opened, among other places, in Preševo, on the border with FYROM, Šid, Adaševci and Principovac, on the border with Croatia, and in Subotica, on the border with Hungary. A Reception Centre was to open in Bujanovac and the construction of a Reception Centre in Dimitrovgrad, near the border with Bulgaria, was to be completed by end October.

KRNJAČA ASYLUM CENTRE

The number of aliens staying at the Krnjača Asylum Centre fell considerably in mid-July 2016 after the CRM decided to allow only those who had expressed the intention to seek asylum to stay there. Pursuant to its decision, the CRM organised the transportation of asylum seekers from the Krnjača Asylum Centre to the other Asylum Centres specified in their certificates of intent to seek asylum. It also organised the

³² Only the Centres the BCHR visited in the reporting period are covered in this Report.

transportation of the aliens residing at the Centre but not intending to seek asylum to the Reception Centres, mostly to the ones in Šid, Principovac and Adaševci.

Between 90 and 150 aliens were staying in the Krnjača Asylum Centre on a daily basis in July, as opposed to up to 600 just a month earlier. The number of its residents increased, to up to 700 a day in mid-August, after the CRM again allowed the Centre to take in all people in need of emergency



Photo: Refugees and migrants in the line for food packages in Krnjača Asylum Centre

accommodation, and exceeded 1,000 in September. These figures give rise to concerns in view of the fact that the Krnjača Asylum Centre has the capacity to take in 750 people and that the CRM lacks the staff to adequately respond to the increase in the number of people in need of international protection.

Most of the people staying in the Krnjača Asylum Centre during the reporting period were not asylum seekers, but aliens perceiving Serbia as a transit country, as can be concluded from the fact that they had not expressed the intention to seek asylum. Most of the asylum seekers at this Centre were not actually interested in staying in Serbia either, but made use of the opportunity to exercise the right to accommodation and hot meals, which are prepared only for asylum seekers, while the other residents are provided with food parcels by the Red Cross of Serbia.³³ These people's decision is legitimate in view of the fact that the accommodation provided asylum seekers is

³³ Refugees and migrants staying at the Krnjača Asylum Centre were provided with two coupons a day, which they could exchange for parcels with canned food, sweets and bread.

deplorable, that the asylum procedure is inefficient and that there are no plans for integrating refugees granted asylum.

On the other hand, the Krnjača residents the BCHR team interviewed complained that they had difficulty obtaining certificates of intent to seek asylum in the Belgrade and Pančevo police stations i.e. accessing the asylum procedure.³⁴ They were not directly rejected; the police officers told them to come back after a specific period of time to pick up their certificates, but they were not issued the certificates although they went to the police station in Belgrade several times. Some had even gone to the Pančevo police station to obtain the certificates, but to no avail.

The Asylum Office staff continued performing asylum procedure activities until 28 August 2016, receiving claims from and interviewing asylum seekers in the Krnjača Asylum Centre, however during September they did not receive any claims or interview any asylum seekers.

The Krnjača residents BCHR talked to mostly complained about the irregular distribution of hygiene packages, clothing and footwear, the living conditions in the non-renovated facilities and the overcrowded sleeping quarters. The 200 beds added to the Centre capacity in August 2016³⁵ did not suffice to accommodate all the people in need of urgent accommodation in the Centre with the arrival of cold and rainy weather.

Two medical teams³⁶ extended health care to the Krnjača Centre residents on a daily basis. They provided health care to all the beneficiaries, regardless of their legal status, and performed 30 to 40 examinations a day on average.

³⁴ No police officers are deployed at the Krnjača Asylum Centre, wherefore the aliens have to go to a police station to express their intention to seek asylum.

³⁵ The renovation of the living quarters to increase the accommodation capacity was financially supported by Catholic Relief Services and the Ana and Vlade Divac Foundation.

³⁶ The medical team engaged by the CRM and the UNHCR/DRC medical team were available to the asylum seekers in the Krnjača Asylum Centre from 7 am to 10 pm every day.

Workshops and other activities for children were organised every day in the Children's Corner, opened in the Krnjača Centre with the support of the UNHCR Belgrade Office, the Danish Refugee Council and the CRM.³⁷



Photo: Drawing of a Syrian child

BANJA KOVILJAČA ASYLUM CENTRE

The Banja Koviljača Asylum Centre, which can take in up to 100 beneficiaries, is the only Centre opened to provide permanent accommodation to asylum seekers. The number of refugees and migrants grew exponentially after the Croatian and Hungarian borders were closed, especially in the summer of 2016, resulting in the overcrowding of the Asylum Centres, including the one in Banja Koviljača. The Centre's TV den was converted into a dormitory to address the increase in the number of residents and the extended periods they spend in the Centre.³⁸

The Banja Koviljača Asylum Centre is the only one staffed by an Asylum Office officer. On admission to the Center, the asylum seekers submit their certificates of intent to seek asylum to be registered in the Centre database; they then meet the Camp Manager, who notifies them of the rules of conduct, House Rules and the character of the institution they are residing in. The beneficiaries' certificates of intent are not returned to them upon registration in the database, but retained by the Asylum Office.³⁹ Given that

³⁷ The Children's Corner was open from 8 am to 4 pm on Mondays, Wednesdays and Fridays, and from 8 am to 6 pm the other days of the week.

³⁸ Information obtained during BCHR team's field visits.

³⁹ Information obtained from the Banja Koviljača Asylum Centre Manager.

certificates of intent are the only documents persons seeking international protection in Serbia have (before they are issued asylum-seeker IDs) proving they are in Serbia legally, these certificates should be returned to them upon registration in the Asylum Centre database. The asylum seekers and refugees are accommodated on different floors of the Centre in Banja Koviljača, usually with residents of the same nationality or speaking the same language. The Asylum Office has not been performing asylum procedure activities in this Centre regularly.

The Centre is open and asylum seekers are entitled to leave it and return as they wish. They must attend the evening roll call if they want to pursue the asylum procedure in Serbia. The Banja Koviljača Centre residents are extended health care by the local Outpatient Health Clinic, within 10 minutes' walking distance, and the Loznica Hospital, to which they are transported by the Centre staff if necessary. Although the health institutions' capacities are overstretched, the Centre staff said that the time the asylum seekers had to wait for their examinations were reasonable and that they were not discriminated against vis-à-vis the local population. A medical team will be present in the Centre once the adaptation of a facility into a medical unit in the Centre compound funded by the Danish Refugee Council is completed.

The BCHR team extended legal aid to all asylum seekers in the Banja Koviljača Asylum Centre, especially focusing on vulnerable groups, such as women, unaccompanied minors, the elderly and aliens with health problems. It interviewed a Syrian family from Al-Hasakah, whose baby was born in Belgrade; the mother assured the BCHR that she and her newborn had been extended adequate care both in hospital and on return to the Asylum Centre. With the help of the UNHCR Office and Catholic Relief Services, the BCHR team intervened on behalf of another Syrian family from Al-Qamishli to help them obtain eyeglasses for their child (the paediatric and ophthalmological examinations of the child will be provided through the Serbian health system).

BOGOVAĐA ASYLUM CENTRE

The BCHR legal team visited the Bogovađa Asylum Centre several times during the reporting period. During its last visit in September 2016⁴⁰, there were 255 aliens staying at this Centre, 180 of whom had expressed the intention to seek asylum in the Republic of Serbia.⁴¹ Since no police officers are deployed at this Centre, the CRM representatives have themselves been driving the aliens who want to seek asylum to the police station in Valjevo, some 40 km away. During their interviews with these asylum seekers, the BCHR team realised that most of them were unaware that they had actually initiated



Photo: Bogovađa Asylum Centre

the asylum procedure in Serbia when they expressed the intention to seek asylum. The Asylum Office did not perform any official asylum activities in the Bogovađa Asylum Centre during the reporting period.

Most of the residents of this Asylum Centre in July and August 2016 had not expressed the intention to seek asylum, impeding the exercise of their rights, primarily the right to health care. The medical team on duty in the Centre every workday since mid-September has performed 30-40 medical interventions every day, mostly assisting residents complaining of respiratory problems. Refugees

and asylum seekers, who cannot be assisted by the Centre medical team, are driven to the Bogovađa medical unit, the Lajkovac Outpatient Health Clinic or the Valjevo Hospital, depending on the type of health care they need.

⁴⁰ The last visit in the reporting period took place on 27 September 2016.

⁴¹ The Bogovađa Asylum Centre can optimally accommodate around 250 people.

Absence of interpreters and cultural mediators in the Bogovađa Asylum Centre is one of the problems faced on a daily basis by both the Centre residents and the CRM staff and medical teams. English-speaking refugees and migrants have to date facilitated communication between the staff and residents not speaking English but the engagement of interpreters would greatly help improve the residents' access to the services in the Centre.

The living conditions in the Centre are deplorable due to overcrowding. Four more rooms will be available for the accommodation of persons in need of international protection once the ongoing reconstruction of a previously unused part of the Centre is completed.

The Centre residents the BCHR team talked to said that their greatest problem was that they did not understand how the list for entering Hungary was being administered.

TUTIN ASYLUM CENTRE

The Tutin Asylum Centre was opened within a former factory compound, in temporary facilities that had served as workers' barracks. The Centre can optimally accommodate around 80 people, but can take in up to 150 people if need be, especially in winter. The accommodation facilities include large dormitories (10-14 beds) and smaller rooms (with 6-8 beds).⁴² The security guards man the Centre round the clock. The Centre is locked at night.

During the reporting period, the BCHR team extended legal aid to around 50 refugees, asylum seekers and migrants staying at the Tutin Asylum Centre. It explained to them the asylum procedure and the rights of asylum seekers in Serbia and that they could avail themselves of BCHR's free legal representation services in the asylum procedure.

⁴² Kilibarda P., Kovačević N., *Country Report Serbia*, Asylum Information Database, 2016, available at: http://www.ecre.org/wp-content/uploads/2016/06/aida_sr.pdf.

Most refugees and migrants BCHR talked to in the Tutin Centre did not perceive Serbia as a potential country of asylum, specifying Germany, Austria and Sweden as their preferred end destinations. None of the aliens BCHR talked to complained about how they were treated or alleged they had been deprived of the rights guaranteed to people staying in this type of institution. The living conditions in the Tutin Centre cannot, however, be qualified as satisfactory.

To the best of BCHR's knowledge, the Asylum Office employees only once visited the Centre in the reporting period to receive asylum claims, which means that persons referred to this Centre practically cannot apply for asylum or pursue the asylum procedure after they express the intention to seek asylum.

During its visits to the Centre, the BCHR particularly focused on identifying vulnerable categories of refugees and referring their cases to the relevant institutions and NGOs. BCHR's client, an Afghani national staying stayed at the Tutin Centre, is a good practice example of cooperation between the state institutions and NGO sector in helping vulnerable categories. She claimed she had been a victim of domestic violence in the Sjenica Asylum Centre; after the Centre and police intervened, she underwent a medical examination and was transferred to the Tutin Asylum Centre. However, given the geographic proximity of her abusive husband and the fact that her husband's family repeatedly came to the Tutin Centre and harassed her, the BCHR Team assessed after talking to her that it would be best both for her physical safety and psychological well-being if she were transferred to a safe location. With the support of the NGO Atina and the Tutin Centre management, the woman was moved to an Atina safe house, where she has been provided with the adequate psychological help and where she is safe. The Asylum Office visited the Tutin Centre only once to receive asylum claims during the reporting period, probably because it is very far away from the Office headquarters in Belgrade. It may thus be concluded that aliens in the Tutin Asylum Centre do not have access to the asylum procedure because they cannot file their claims to Asylum Office staff in person (under Article 25 of the Asylum Act).

SJENICA ASYLUM CENTRE

The Sjenica Asylum Centre is located in a former hotel, reconstructed to take in up to 200 asylum seekers. Apart from several rooms with bunk beds, asylum seekers are accommodated in makeshift dormitories in the hotel lobby, partitioned off by screens and curtains. The residents sleeping in the dormitories have hardly any privacy, especially in view of the fact that there is only a screen between the mixed rooms, in which families are accommodated, and those in which single men sleep. Apart from the

dormitories, the asylum seekers interviewed by BCHR also complained about the hygiene in the Centre and lack of toilets and bathrooms. They said they did not have hot water all the time and lacked clothing and footwear. Some asylum seekers claimed they had

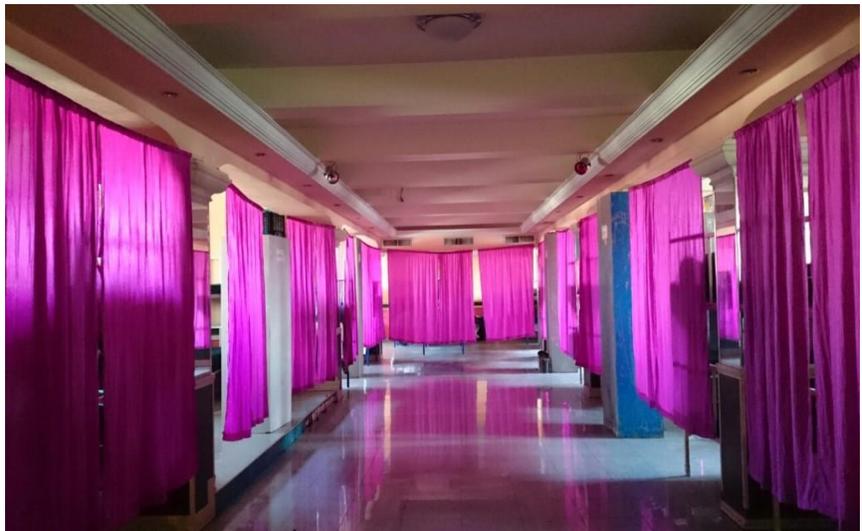


Photo: Sjenica Asylum Centre

not been notified of their rights or obligations on admission; the House Rules in several languages were visibly displayed on the bulletin board. They said they communicated with the Centre staff in English, usually with the help of other asylum seekers speaking English and their languages.

The Tutin Centre staff do not return the certificates of intent to seek asylum to the asylum seekers once they register them in the database either. Sjenica Centre residents do not have the opportunity to express the intention to seek asylum locally. All the residents were already in possession of certificates issued by police directorates across Serbia. The Asylum Office rarely performs asylum procedure activities in this Centre (its staff came only once during the reporting period to receive asylum claims),

wherefore it may be concluded that people staying at this Centre do not have access to the asylum procedure either.