

## Introduction

With UNHCR's support, the Belgrade Centre for Human Rights (BCHR) in 2017 continued implementing the *Support to Asylum Seekers in Serbia* project, primarily aimed at extending legal aid to foreigners in need of international protection. The BCHR Project Team extended legal aid to and legally represented foreigners considering Serbia a country of asylum and monitored the treatment of people in need of international protection by the relevant authorities of the Republic of Serbia. BCHR also endeavored to assist foreigners granted asylum in Serbia in integrating in Serbia's society.

This quarterly report comprises an analysis of the practices of the competent authorities and the developments in the field of refugee law in Serbia in the first three months of 2017, based on the information the BCHR Team collected in the field and whilst representing asylum seekers, as well as on the information it obtained from the Belgrade Office of the United Nations Commissioner for Human Rights (UNHCR). More information on the asylum procedure in Serbia can be found in annual report of the Belgrade Centre for Human Rights *Right to Asylum in the Republic of Serbia 2016*. This periodic report has been compiled by the researchers of the Belgrade Centre for Human Rights.

## **GENERAL OVERVIEW**

In the January-March 2017 period, the Republic of Serbia continued extending humanitarian assistance to a large number of migrants, without ascertaining in each individual case whether they were in need of international protection or issuing individual decisions determining their status. The migrants, the numbers of whom ranged between 7,000 and 8,000 on any given day, were provided with accommodation in 17 government-run Asylum and Reception Centres. Some, however, remained outside the asylum system. The Serbian Government has not availed itself of the possibility, provided by Article 36 of the Asylum Act, to adopt a decision on temporary protection in case of a large-scale inflow of refugees. Such decisions have not been adopted by any EU Member States either. The Republic of Serbia still lacks a clearly define migration policy. Over the past few years, it has been taking in foreigners, who have not regulated their legal status and have no intention of settling down in Serbia. Although the state officials have told the media that Serbia had vowed "to its international partners to secure 6,000 strong, solid beds..." for the accommodation of the migrants,1 it remains unclear in which specific enactment the state has assumed the obligation and how it reflects on the migrants' legal status and their realization of their rights. Perusal of the Government Conclusions on the Establishment of Reception Centres<sup>2</sup> shows that they were adopted solely by reference to Article 43(3) of the Government Act.3 In them, the Government did not refer to the Asylum Act or the Migration Management Act, which substantiates the conclusion that the relevant authorities have frequently opted for ad hoc solutions to migration issues and that the state lacks a clearly defined policy or regulations governing the situation.

The migrants' endeavors to leave Serbia and continue their journey to more developed EU countries have met with even greater obstacles after Hungary adopted even more restrictive

<sup>&</sup>lt;sup>1</sup> "Vulin: Enough Room for Migrants in Serbia", *Blic*, 29 January 2017, available on Serbian on: <a href="http://www.blic.rs/vesti/drustvo/vulin-dovoljno-mesta-za-migrante-u-srbiji/f6ftg5w">http://www.blic.rs/vesti/drustvo/vulin-dovoljno-mesta-za-migrante-u-srbiji/f6ftg5w</a>.

<sup>&</sup>lt;sup>2</sup> Conclusion 05 Ref. No. 464-7137/2015 of 27 June 2015.

Conclusion 05 Ref. No. 464-10040/2015-1 of 19 August 2015.

Conclusion 05 Ref. No. 019-230/2016-1 of 14 January 2016.

Conclusion 05 Ref. No. 464-4036/2016 of 24 May 2016.

Conclusion 05 Ref. No. 019-9572/2016 of 11 May 2016.

Conclusion 05 Ref. No. 464-472/2017-2 of 24 January 2017.

<sup>&</sup>lt;sup>3</sup> The Government shall adopt conclusions when it does not adopt other enactments, Article 43(3) of the Government Act, Official Gazette of the Republic of Serbia Nos. 55/2005, 71/2005 - corr., 101/2007, 65/2008, 16/2011, 68/2012 – Constitutional Court Decision, 72/2012, 7/2014 - Constitutional Court Decision and 44/2014.

laws and cut the number of migrants it allows into its territory on a daily basis. Amendments to the Hungarian asylum law that came into effect in late March 2017 impose a mandatory restriction of the freedom of movement of asylum seekers, including children over 14 years of age, throughout the asylum procedure. Around 580 people were pushed back from Hungary and Croatia to Serbia in January 2017. Given that, on 23 January, Hungary reduced the number of migrants it was letting into its territory on workdays to ten people a day, more and more people are expected to try and cross the border illegally. In February, 658 cases of pushbacks were reported, and many of the migrants subjected to it complained about the inhuman treatment at the hands of the Hungarian police. The number of registered pushbacks of migrants to Serbia was slightly lower in March – 382. However, reports indicated that increasing numbers of were pushed back from Croatia during the reporting period.<sup>4</sup>

The first three months of the year were marked by a grotesque picture in the heart of Belgrade: between 1,200 and 1,300 migrants were sleeping in abandoned barracks near the Main Bus Station in freezing temperatures in January. This can be ascribed to various reasons: some migrants were unable to access the asylum procedure while others had decided not to report to the relevant Serbian authorities and seek asylum (and avail themselves of government-run) accommodation, in fear that their plans of reaching their desired countries of destination would be thwarted, but also that they would be deprived of liberty and returned to the country from which they had entered Serbia. In late January, the Serbian Government adopted a Conclusion ceding to the Commissariat for Refugees and Migration (CRM) a property in Obrenovac, owned by the state and used by the Ministry of Defense, to provide migrants and asylum seekers with accommodation and basic living conditions.<sup>5</sup> The CRM helped organize the transport of the migrants living in the inhuman and unhygienic Belgrade barracks to the new Reception Centre in Obrenovac. However, not all migrants agreed to move to the Obrenovac Reception Centre, which accommodated 550 migrants by the end of January. A number of migrants continued living on Belgrade streets. Their number gradually grew, to around 1,000 in late March; around 1,000 migrants (359 of them unaccompanied children) were staying at the Obrenovac Reception Centre in late March.

The Minister of Labor, Employment and Veteran and Social Issues said that the migrants staying at the Obrenovac Reception Centre were allowed to leave it only with the relevant

<sup>&</sup>lt;sup>4</sup> Data obtained from UNHCR.

<sup>&</sup>lt;sup>5</sup> Serbian Government Conclusion 05 Ref. No. 464-472/2017-2 of 24 January 2017.

passes.<sup>6</sup> The BCHR was not provided with access to this facility although it had repeatedly asked the CRM to grant it permission to visit the Centre in order to extend legal aid to migrants who wanted to seek asylum. This Report thus will not elaborate on the living conditions of foreigners in this facility. However, in the event the migrants' freedom of movement is indeed restricted, such a restriction must be individualized, proportionate and necessary and it must be based on grounds for restricting movement set out in the Constitution of the Republic of Serbia (Article 39) and Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Article 2).

The Government of the Republic of Serbia appointed the new members of the second-instance asylum authority, the Asylum Commission during the reporting period. The terms in office of the prior Commission members expired in September 2016 and this second-instance authority was not operational until March 2017. The Deputy Head of the Ministry of the Interior (MOI) Administrative Affairs Administration was appointed Chair of the Commission. The Commission also comprises the Deputy Head and Chief Inspector of the Border Police Administration, a senior MOI adviser, the acting Health Ministry Secretary, the head of the CRM Group for Property and Legal Affairs, a Belgrade University Law College Associate Professor and the Acting Assistant Minister of Foreign Affairs. The practice of the newly-appointed members of the Commission will show whether the independence and professionalism of this authority, stipulated by Article 20 of the Asylum Act, have been secured.

In cooperation with the BCHR, the CRM endeavored to develop individual integration plans for foreigners granted refuge in Serbia and a brochure informing beneficiaries of international protection about the ways in which they can exercise their rights. As per the integration of refugees, the state has to put in place mechanisms facilitating coordination among its authorities and lay down the relevant in-house rules to fill specific legal lacunae.

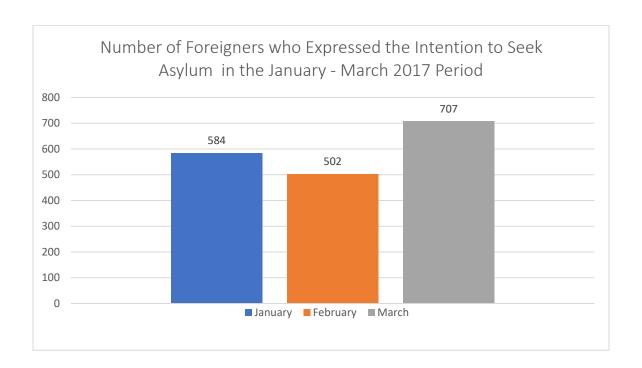
<sup>&</sup>lt;sup>6</sup> "Vulin: Movement of Migrants in Obrenovac Restricted," RTS 1 February 2017, available on Serbian:

http://www.rts.rs/page/stories/sr/story/125/drustvo/2614663/vulin-restrikcije-kretanja-migranata-u-obrenovcu.html.

Ruling on the Appointment of the Asylum Commission Chairperson and Members, 24 Ref. No. 119-2520/2017 of 23 March 2017.

## **STATISTICS**

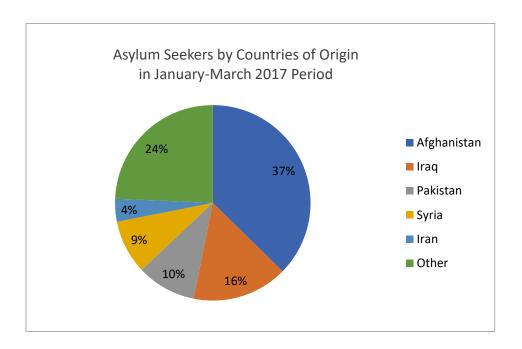
A total of 1,793 people expressed the intention to seek asylum in the Republic of Serbia from 1 January to 31 March 2017; 1,413 of them were male and 380 were female. The intention to seek asylum was expressed in this period by 785 children, 27 of whom were not accompanied by their parents or guardians. Herewith their breakdown by month: January – 584, February - 502, and March - 707. The vast majority (1,668) migrants expressed the intention to seek asylum in the regional police administrations; while 47 of them did so at the border crossings. No one expressed the intention to seek asylum at Belgrade Airport "Nikola Tesla". Twelve foreigners expressed the intention to seek asylum at the Shelter for Foreigners. Fifty-four foreigners expressed the intention to seek asylum at the Reception Centre in Preševo – 36 of them in March 2017.



A total of 619,101 people expressed the intention to seek asylum in Serbia since the Asylum Act entered into force, notably – 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, 12,821 in 2016 and 1,793 in the first quarter of 2017.

# BREAKDOWN OF FOREIGNERS WHO EXPRESSED THE INTENTION TO SEEK ASYLUM BY COUNTRY OF ORIGIN

Most of the people who expressed the intention to seek asylum in the first three months of the year came from Afghanistan (809), Iraq (343), Pakistan (213) and Syria (193). The intention to seek asylum in the first quarter of 2017 was also expressed by nationals of Iran (82), Algeria (27), Somalia (17), Palestine (15), Ghana (13), Morocco (12), Bangladesh (9), Lebanon (8), Sri Lanka (8), Cuba (7), Egypt (5), Turkey (4), India (3), the South African Republic (3), Cameroon (3), Ukraine (3), Libya (2), Nigeria (2), Russian Federation (2) and Bosnia and Herzegovina, Bulgaria, the Czech Republic, Yemen, the Democratic Republic of Congo, Mongolia, the United States and Tunisia (one from each).



# ACCESS TO ASYLUM PROCEDURE IN THE BELGRADE SAVSKI VENAC POLICE STATION

The BCHR noticed that the Savski venac Police Station (PS) Department for Foreigners inspectors refused to issue certificates of intent to seek asylum (pursuant to Article 22 of the Asylum Act) to migrants with regard to whom the MOI had already taken legal actions envisaged by the Asylum Act or the Aliens Act, i.e. to whom it had already issued certificates of intent to seek asylum but they had not reported to the Asylum or Reception Centre they had been referred to<sup>8</sup> or who were subsequently prevented from illegally crossing Serbia's borders. The MOI also refused to issue certificates of intent to foreigners whom the courts found guilty of illegally staying in Serbia and ordered them to leave the country (under Article 43 of the Aliens Act) or had ordered them to leave the country (under Article 35 of the Aliens Act). All actions regarding foreigners are entered into the MOI electronic databases OKS<sup>9</sup> and *Afis*. <sup>10</sup>

The BCHR analyzed the rulings ordering the migrants to leave Serbia. Most of them cited the following grounds: lack of a valid travel document or visa where necessary (Art. 11(1(1)), Aliens Act); lack of funds for subsistence whilst in Serbia, to return to their country of origin or transit to a third country in the absence of subsistence otherwise secured during their stay in Serbia ((Art. 11(1(2)), Aliens Act); existence of reasonable doubt that they shall not use their stay for the declared purpose ((Art. 11(1(8))). It may thus be concluded that the practice has remained the same as in 2016.<sup>11</sup>

The police interpreted their denial of access to the asylum procedure in these cases as prevention of abuse of the asylum system. Such conduct, however, is not in accordance with Articles 22 and 23 of the Asylum Act, which do not provide the police with any discretion to

Under Article 22(2) of the Asylum Act, foreigners are under the obligation to report to the Asylum Centres they are referred to within 72 hours from the moment they are issued their certificates of intent. Due to the large inflow of foreigners, those who expressed the intention to seek asylum in Serbia have been referred to both Asylum and Reception Centres.

<sup>9</sup> OKS stands for Specific Category of Foreigners and denotes a database of foreigners in Serbia, in which all official actions the MOI has undertaken with respect to them are entered.

<sup>&</sup>lt;sup>10</sup> Afis is an MOI database used for registering persons who have expressed the intention to seek asylum and into which their personal data, photographs and biometric data, which cannot be forged, are entered.

<sup>&</sup>lt;sup>11</sup> See BCHR's 2016 Annual Report Right to Asylum in the Republic of Serbia, Belgrade, 2017.

decide whether or not to issue a certificate of intent to seek asylum.<sup>12</sup> The police may report suspicions of abuse to the Asylum Office, which is entitled to take the measures laid down in the law. Namely, under the Asylum Act, authorized police officers may notify the Asylum Office of their suspicions and the latter is entitled to issue a measure restricting the migrants' movement, e.g. refer them to the Shelter for Foreigners (Article 52(1(1), Asylum Act) or prohibit them from leaving the Asylum Centre (Article 52(1(2), Asylum Act). Foreigners denied certificates of intent to seek asylum cannot avail themselves of any legal remedy. Although the described practice is the rule, police have on occasion issued certificates to foreigners, whose prior certificates had expired or who had been ordered to leave the country. They did so in the case of an Iranian national, whom the BCHR represented.

The BCHR has gained the impression that the police have been acting on internal orders, which has resulted in the arbitrary treatment of foreigners in specific cases, as well as in denying them access to the asylum procedure. This can be ascribed to the fact that the circumstances in which migrants in Serbia have found themselves and the policies of the neighboring countries have, on the one hand, precluded the foreigners from protecting their status in the best way, wherefore they often have doubts about whether they want to seek asylum in Serbia, while, on the other hand, the relevant Serbian authorities do not have a consistent migration policy and, consequently, a practice of treating migrants, which renders the entire situation even more confusing and unforeseeable.

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<sup>&</sup>lt;sup>12</sup> Foreigners without certificates of intent to seek asylum are not eligible for accommodation in the Reception or Asylum Centres. This is, *inter alia*, one of the reasons why migrants have been forced to live in the streets of Belgrade and other cities.

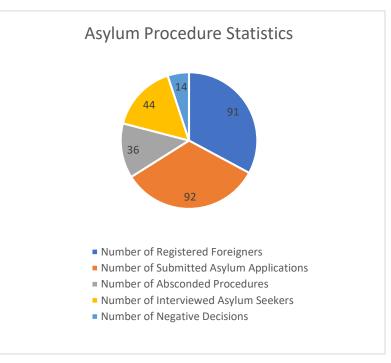
## FIRST-INSTANCE PROCEDURE

The first-instance asylum authority, the Asylum Office, intensified its official activities in the reporting period. Namely, it received the migrants' asylum applications and interviewed them on a number of occasions. These official activities were conducted both at the Asylum Centres, as well as the Preševo Reception Centre and the border police administrations in Šid and Belgrade.

#### **ASYLUM PROCEDURE STATISTICS**

The Asylum Office has granted asylum in 41 and subsidiary protection in 49 cases since the Asylum Act came into force. <sup>13</sup> In the first quarter of 2017, the Asylum Office registered 91 asylum seekers, received 92 asylum applications and interviewed 44 asylum seekers.

None of the applications were upheld; the Office dismissed one application on the merits and dismissed another 13 applications



regarding 14 asylum seekers and discontinued the procedures in 22 cases regarding 36 asylum seekers, because they had left Serbia or withdrawn from the asylum procedure in the meantime.

<sup>&</sup>lt;sup>13</sup> Asylum Office and UNHCR statistics show that 90 foreigners have been granted international protection since the Asylum Act came into effect. However, these figures do not reflect the fact that two decisions granting subsidiary protection were overturned in the appeals procedure, i.e. that 47 not 49 people have been granted subsidiary protection, wherefore the actual number of people granted international protection stands at 88.

#### PRACTICE OF THE ASYLUM OFFICE

The Asylum Office staff in January and February 2017 profiled the migrants and asylum seekers<sup>14</sup> with a view to ascertaining which of the circa 8,000 migrants staying at the Asylum and Reception Centres were genuinely interested in seeking asylum in the Republic of Serbia. According to the staff of this first-instance authority, they established that up to 130 people wanted to apply for asylum and the Office conducted the asylum-related actions in their cases. It remains unclear how this profiling was conducted and on the basis of which criteria. For instance, the Sjenica police profiled the migrants staying at the Asylum Centre in that town, but the question arises how they conducted the profiling and whether they used the services of interpreters for Farsi, Arabic, Pashtu, Urdu, etc. in the process.<sup>15</sup>

Most of the Asylum Office's decisions dismissing the asylum applications in the January-March 2017 period referred to Article 33(1(6)) of the Asylum Act,<sup>16</sup> the fact that the asylum seekers had entered Serbia from one of the neighboring countries – Bulgaria, the Former Yugoslav Republic of Macedonia (FYROM) or Hungary –which were declared safe third countries in the Serbian Government 2009 Decision on Safe Countries of Origin and Safe Third Countries.

In one case, the Asylum Office issued a ruling<sup>17</sup> dismissing the asylum application because the applicant had been in Turkey before he came to Serbia, specifying that Turkey was listed as a safe third country in the Government Decision, disregarding the way in which Turkey was now enforcing its refugee regulations.<sup>18</sup> It needs to be emphasized that the list of safe third countries does not reflect the actual situation on the ground as it has not been updated since it was adopted. The Asylum Office thus avoided ruling on the merits of the case, fully neglecting the reasons why the asylum seeker left his country of origin, notwithstanding the evidence adduced by BCHR's lawyers who were representing the asylum seeker. Such a decision brings into question the basic principles of international refugee law given that the applicant is a dark-skinned Russian national, who belongs to a social group – the LGBT

<sup>&</sup>lt;sup>14</sup> The BCHR was told about the profiling of the migrants by Asylum Office staff.

<sup>&</sup>lt;sup>15</sup> BCHR legal professionals obtained this information from the Asylum Office staff they talked to in February 2017.

<sup>&</sup>lt;sup>16</sup> Official Gazette of the Republic of Serbia No. 109/2007.

Asylum Office Ruling No. 26-1414/16 of 26 January 2017.

<sup>&</sup>lt;sup>18</sup> Amnesty International, No Safe Refuge, Asylum-Seekers and Refugees Denied Protection in Turkey, March 2016.

population and who had been discriminated in his country of origin also on racial grounds. Furthermore, the Asylum Office had dismissed the asylum application without having obtained guarantees from Turkey that it would let the asylum seeker back into its territory and provide him with access to its asylum procedure.

In another case, the Asylum Office issued a ruling<sup>19</sup> dismissing the asylum application because the asylum seeker had come to Serbia from Bulgaria. In this case, too, the Asylum Office automatically applied the safe third country concept, paying no heed to reports by the UNHCR and international non-government organizations (such as Amnesty International and Oxfam) on the Bulgarian authorities' treatment of asylum seekers. In yet another case in which it dismissed the asylum application, the Asylum Office issued a ruling<sup>20</sup> specifying that the asylum seeker had been in FYROM before entering Serbia. In this decision, too, the Asylum Office automatically applied the safe third country concept. In its reasoning, it set out the legal framework governing refugee law in the FYROM and specified that FYROM was an EU candidate country, which is not in the least relevant to the assessment of a country as a safe third country. The Asylum Office totally ignored the UNHCR 2015 document on FYROM setting out the numerous deficiencies of the Macedonian asylum system and advising states not to return asylum seekers to that country.<sup>21</sup>

All of the above leads to the conclusion that the Asylum Office has continued automatically applying the safe third country concept, failing to obtain any guarantees from the states the unsuccessful applicants had come from that they would be let in and provided access to the asylum procedure. Such a practice has deprived refugees staying in Serbia of the opportunity to obtain international protection either in Serbia or in the "safe" third countries, to which they cannot return in a regular fashion.

<sup>&</sup>lt;sup>19</sup> Asylum Office Ruling No. 26-2552/16 of 6 February 2017.

<sup>&</sup>lt;sup>20</sup> Asylum Office Ruling No. 26-1975/16 of 10 February 2017.

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, August 2015, available at: http://www.refworld.org/docid/55c9c70e4.html.

# STATUS OF MIGRANTS IN ASYLUM AND RECEPTION CENTRES

The BCHR Team regularly visited the following Asylum Centres in the first quarter of 2017: the Krnjača Asylum Centre three times a week (33 visits in total), the Bogovađa and Banja Koviljača Asylum Centres once a week (11 visits to each) and the Sjenica and Tutin Asylum Centres (10 and 8 times respectively).

The BCHR Team also monitored the situation in the Reception-Transit Centres, adapted or ad hoc built facilities for the urgent accommodation of migrants and asylum seekers, notably



Asylum Centre in Krnjača

in Šid, the Adaševci motel at Šid, Obrenovac, Principovac, Sombor, Dimitrovgrad, Pirot, Divljana and Bosilegrad. As of February 2017, it was provided with regular weekly access to the Reception Centres in Preševo (8 visits) and Bujanovac (7 visits), where BCHR's lawyer extended legal advice and monitored the treatment of the beneficiaries.

The criteria under which migrants are referred to Asylum or Reception Centres should be clearly defined and based on the fact that they have expressed the intention to seek asylum in Serbia or intend merely to pass through it. This, however, is not the case in practice, wherefore the asylum seekers have been referred to Reception Centres where Asylum Office staff do not perform any asylum-related activities or do so infrequently.

The share of foreigners in need of international protection and intending on merely transiting through Serbia on their way to EU Member States was much higher during the

reporting period than the share of those who accessed the asylum procedure in Serbia. The practice of entering the names of the asylum seekers admitted to Asylum Centres in the lists of those waiting to be allowed to cross into Hungary continued in 2017<sup>22</sup> and most of the asylum seekers' questions regarded precisely that procedure. The fact that the Hungarian authorities gradually tightened the admission policy (by amending their regulations) and pushed many of the migrants back to Serbia in the reporting period led to the overcrowding of nearly all the Asylum and Reception Centres in the country and thus, to inhuman and inadequate living conditions in a number of Centres, which the asylum seekers complained the most about to the BCHR Team conducting its regular visits to the Centres. The situation was the direst in the Sjenica Asylum Centre, where over 400 migrants were staying during the first quarter of the year, although it has the capacity to take in between 150 and 200 people. The new building, with 27 rooms and the capacity of around 200 people, was finally opened in mid-March. The Krnjača Asylum Centre completed the renovation of the old barracks adapted to accommodate families with children and a half of the building, with rooms and premises for everyday activities, in the Bogovađa Centre was reconstructed in the reporting period.

As per the health care of the migrants and asylum seekers,<sup>23</sup> a facility in the Banja Koviljača Asylum Centre was adapted in January to facilitate the extension of basic health care.<sup>24</sup> The doctor's room officially opened on 9 February, providing the asylum seekers staying at this Centre with easier access to the medical assistance. A new doctor's room has also opened within the Krnjača Asylum Centre; a number of doctors and nurses have been engaged and the range of medical services they can extend has been expanded, all with the goal of ensuring the stable health of the migrants and asylum seekers.<sup>25</sup> There is no medical staff in the other Asylum Centres, wherefore the asylum seekers living in them are taken to the local Out-Patient Health Clinics for their examinations.

The BCHR Team continued devoting particular attention to vulnerable categories – children, pregnant women, single mothers and older people. The procedure of appointing temporary guardians for unaccompanied minors in some Asylum Centres improved over 2016.

<sup>&</sup>lt;sup>22</sup> See BCHR's 2016 Annual Report Right to Asylum in the Republic of Serbia, Belgrade, 2017, p. 10.

<sup>&</sup>lt;sup>23</sup> Article 39 and 40, Asylum Act.

In the past, asylum seekers living in the Banja Koviljača Asylum Centre had to go to the Loznica Out-Patient Health Clinic, where they were extended complete health care.

<sup>25</sup> The work of the doctor's offices and extension of health care in both Centres have been supported by the Danish Refugee Council via UNHCR.

The Asylum Centres in Banja Koviljača, Krnjača and Bogovađa notify the relevant Social Work Centres of the unaccompanied minors they admit and the Centres appoint temporary guardians for one or a group of minors. <sup>26</sup> On the other hand, social workers very rarely visit the Sjenica Asylum Centre and have not appointed a temporary guardian to any unaccompanied minors staying at it. The Krnjača Asylum Centre intensified the enrolment of unaccompanied children in primary school since the beginning of the year, which will facilitate their integration in Serbian society. These activities have been supported by the UNICEF office in Serbia. Around 90 children were enrolled in five primary schools in the Palilula municipality during the reporting period. <sup>27</sup> Furthermore, migrant children have also been enrolled in the Zemun primary school Branko Pešić, while the migrant children staying at the Belgrade Establishment Vasa Stajić have been enrolled in the Filip Filipović primary school. The PK Beograd agricultural school, near the Krnjača Asylum Centre, is the only secondary school migrant children have been enrolled in to date.

Playrooms, English and Serbian language lessons and other activities for children were regularly implemented in the Asylum Centres in Krnjača, Bogovađa and Banja Koviljača, with the support of UNHCR and civil society organizations Group 484,<sup>28</sup> the Danish Refugee Council,<sup>29</sup> Atina<sup>30</sup> and the humanitarian organization Caritas.<sup>31</sup> The Centres, however, lacked winter clothes and footwear for migrants of all ages.

Psycho-social support was mostly extended to the asylum seekers by Caritas, while the representatives of PIN<sup>32</sup> met with their beneficiaries in parks near the Centres or nearby offices they rented for that purpose because the CRM continuously denied them access to the Asylum Centres.

<sup>26</sup> Representatives of the CRM, and, above all, the social workers still face numerous difficulties in working with this vulnerable category of migrants.

<sup>27 &</sup>quot;School on the Road for Migrant Children," RTS, 27 March 2017, available in Serbian at: http://www.rts.rs/page/stories/ci/story/124/drustvo/2681006/skola-na-putu-za-decu-migrante.html

<sup>&</sup>lt;sup>28</sup> Group 484 is an NGO founded in 1995, which applies a systemic approach to the issues of forced migration and migration in general. Group 484's activities involve the extension of humanitarian, psychosocial, legal aid and information to refugees from the ex-Yugoslav states and the Middle East.

<sup>29</sup> The Danish Refugee Council (DRC) is a humanitarian, non-government and non-profit organisation established in 1956. It has been implementing numerous activities related to the integration and improvement of the living conditions of refugees, internally displaced persons and the socially vulnerable domicile population.

<sup>&</sup>lt;sup>30</sup> Atina is a non-government organisation engaged in fighting against human trafficking and all forms of gender-based violence.

<sup>&</sup>lt;sup>31</sup> Caritas is a socio-humanitarian organisation of the Catholic Church.

<sup>&</sup>lt;sup>32</sup> PIN (Psychosocial Innovation Network) is an organisation engaged in extending psychological support and empowering and improving the quality of life of individuals.

The family unity principle was complied with in all the Asylum Centres and during the transportation of the migrants to the Hungarian border.<sup>33</sup> BCHR Teams had not heard any complaints regarding this issue during their field visits. However, the Centres failed to consistently accommodate the migrants and asylum seekers in rooms with their ethnic or religious kin, an issue raised with the BCHR on several occasions.<sup>34</sup>

The BCHR extended legal aid to migrants and asylum seekers in all the Asylum and Reception Centres it visited in the first quarter of the year. Like in 2016, the Team's full and free access to all migrants and asylum seekers in the Krnjača Asylum Centre was next to impossible, which largely precluded the migrants' realization of their right to legal aid and to obtain information about the Serbian asylum procedure.<sup>35</sup> The BCHR Team was allowed to extend legal aid only in a room designated for that purpose, but not to freely move around the Centre.

The Asylum Office staff performed asylum-related activities in all the Asylum Centres, as opposed to the last quarter of 2016, when they conducted them only in the Krnjača Asylum Centre. Namely, a number of migrants decided to apply for asylum in Serbia and regulate their status in view of the significant difficulties in crossing into Hungary, wherefore the Asylum Office invested efforts in implementing the procedural actions more regularly.<sup>36</sup>

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<sup>&</sup>lt;sup>33</sup> The International Organization for Migration (IOM), and, in some cases, the CRM, have been transporting the migrants to the Serbian-Hungarian border in accordance with the admission lists drawn up by the Hungarian police.

<sup>&</sup>lt;sup>34</sup> A BCHR client, a national of Iran, who left his country of origin because he was persecuted on religious grounds (he renounced Islam) complained about the accommodation conditions in the Krnjača Asylum Centre. He feared for his life because he was referred to a room occupied by non-Iranians and Moslems.

<sup>35</sup> Like in the last quarter of 2016, the CRM required of the BCHR to forward it lists of the migrants it would extend legal advice to on the days of the visit, wherefore the BCHR was deprived of the possibility of establishing contact with other Asylum Centre residents in need of international protection.

<sup>36</sup> Forty-four BCHR clients applied for asylum in the first three months of 2017; the Asylum Office interviewed 11 of them in the same period.

# CONSTITUTIONAL COURT DECISION ON ACCESS TO THE ASYLUM PROCEDURE IN THE SJENICA AND TUTIN ASYLUM CENTRES

On 8 March 2017, the Constitutional Court of Serbia (CCS) delivered a decision on a constitutional appeal by two asylum seekers, who had been accommodated in the Tutin Asylum Centre, and three asylum seekers, who had been accommodated in the Sjenica Asylum Centre.<sup>37</sup> The constitutional appeal was filed back in 2014, when the Asylum Office had not conducted any official activities in these Asylum Centres, wherefore the asylum seekers were deprived of access to the asylum procedure, because they were unable to file their asylum applications to authorized officials of the first-instance authority (pursuant to Article 25 of the Asylum Act). In their appeal, the applicants complained of violations of their rights to equal protection and a legal remedy due to their accommodation in the Sjenica and Tutin Asylum Centres and, consequently, of their right to asylum (under Articles 36 and 57 of the Constitution of the Republic of Serbia). Although the applicants had been issued certificates of intent to seek asylum, they were unable to apply for asylum or appeal the silence of the administration, because the first-instance procedure had not been formally instituted in the first place, given that the Asylum Act lays down that such a procedure shall be initiated by the submission of an asylum application.

The CCS dismissed the constitutional appeal, specifying that, pursuant to Article 208(2) of the General Administrative Procedure Act, the applicants could have appealed the silence of the administration with the Asylum Commission, whether or not they had submitted their asylum applications. The CCS referred to BCHR's 2014 Annual Report on the Right to Asylum in the Republic of Serbia (p. 31) saying that the Asylum Commission was of the view that appeals of silence of the administration in cases of foreigners not provided with the opportunity to apply for asylum were admissible and timely<sup>38</sup> and that this view of the second-instance

<sup>&</sup>lt;sup>37</sup> Už 5867/2014 of 8 March 2017.

<sup>38</sup> Až 07/14 of 28 August 2014.

authority provided the asylum seekers with the chance to file an appeal in case they could not apply for asylum due to the dilatoriness of the first-instance authority. However, although the Asylum Commission took such a view in one decision, it may not be generally concluded that an appeal of the silence of the administration is an effective legal remedy in such cases, for the most part, because the Asylum Office has often failed to act on the directions of the Asylum Commission to perform official actions within a specific timeframe, in cases in which the Commission found that the appeals of silence of the administration were well-founded. The BCHR Report the CCS referred to also said that the asylum seeker (whose appeal of the silence of the administration was upheld by the Asylum Commission) had left the Republic of Serbia because he had been unable to apply for asylum for a year and a half. Furthermore, the BCHR analyzed the practices of the relevant authorities and concluded in its 2015 Annual Report on the Right to Asylum in the Republic of Serbia that appeals of silence of the administration were not an effective legal remedy.<sup>39</sup>

The CCS could have analyzed the practices of the relevant authorities more systematically, rather than concluding on the basis of one Asylum Commission decision that the asylum seekers could have appealed the silence of the administration when they were not provided with the possibility of applying for asylum. Notwithstanding, this CCS decision is relevant as it states that parties may appeal the silence of the administration (under Article 208 of the General Administrative Procedure Act) also when they are unable to submit an application, i.e. initiate an administrative procedure, which should also impose an obligation on the second-instance asylum authority to declare such appeals admissible in the future.

<sup>&</sup>lt;sup>39</sup> 2015 Annual Report *Right to Asylum in the Republic of Serbia*, BCHR, Belgrade, 2016, p. 55.

## PRACTICE OF THE SHELTER FOR FOREIGNERS

In the reporting period, a number of nationals of refugee-producing countries (Syria, Iraq, Afghanistan and Libya) as well as nationals of other countries from which a negligible number of asylum seekers came to Serbia in the past few years (Cameroon, Bangladesh, Pakistan, Tunis, Algeria, et al) were staying at the Shelter for Foreigners, to which foreigners whose movement is restricted and who are under enhanced police supervision are referred. According to the information conveyed orally to BCHR's lawyers, 149 foreigners were held in the Shelter for Foreigners in the first three months of the year. According to data obtained from the Asylum Office, 12 Shelter residents expressed the intention to seek asylum in the reporting period: four in January, five in February and three in March.

BCHR lawyers visited the Shelter for Foreigners nine times during the reporting period, and extended legal advice to 19 foreigners interested in applying for asylum in Serbia. They were nationals of: Afghanistan (9), Iran (4), Pakistan (2), Palestine (1), Algeria (1), Iraq (1) and Egypt (1). The Shelter management's satisfactory cooperation with the BCHR legal team was, notably, reflected in the latter's unimpeded access to the foreigners in the Shelter and the provision of the information it required. The BCHR lawyers would notify the management of the Shelter which of the foreigners it had talked to had expressed the wish to seek asylum and the management would provide them with access to the asylum procedure, i.e. issue them certificates of intent to seek asylum.

Foreigners are referred to the Shelter on various grounds, but most of the ones the BCHR provided legal advice to had been placed in it on one of the following two legal grounds: 1) to establish their identity under Article 49 of the Aliens Act and 2) to perform security checks under Article 5 of the Aliens Act. The following grounds for restricting the movement of asylum seekers are laid down in Article 51 of the Asylum Act: to establish their identity, to ensure their presence in the asylum procedure, and to protect national security and public order in accordance with the law. Most of the information on the detention of the foreigners was conveyed to the BCHR lawyers by the Shelter management, given that the decisions ordering

their detention in the Shelter were not always accessible to their legal representatives. Establishment of identity is apparently an absolutely arbitrary reason in view of the fact that thousands of migrants and asylum seekers have been accommodated in the Serbian Asylum Centres every year although their identity has not been established (i.e. their movement has not been restricted). Under the Asylum Act and, pursuant to the Asylum Office's practice, the registration of asylum seekers (entailing their fingerprinting and establishment of their identity with a view to implementing the asylum procedure) takes place only once they are admitted to an Asylum Centre (Article 24, Asylum Act).

Furthermore, in view of the regime in the Shelter for Foreigners, i.e. the intensity of restrictions imposed in this institution, as well as the fact that the foreigners cannot leave it of their own free will, it may be concluded that their stay in the Shelter is tantamount to deprivation of liberty, rather than restriction of movement. Whether or not someone is deprived of liberty does not depend on the legal qualification of the measure, but on the examination of each individual situation, whilst bearing in mind the entire spectrum of criteria, such as the type, manner, enforcement and effect of the measure. The difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance.<sup>40</sup>

The BCHR's legal team identified several irregularities in the two decisions ordering the detention of foreigners to the Shelter it had access to.<sup>41</sup> Namely, the decisions did not specify the duration of their detention in the Shelter, but merely said that it would last as long as grounds for it existed, thus placing the foreigners in a state of uncertainty. It also needs to be borne in mind that the foreigners at issue stayed at the Centre from 25 November 2016 to 9 February 2017. Furthermore, the decisions are in Serbian, which the foreigners at issue do not understand. Neither of them said that the decisions were translated to them or that they had been notified of their right to appeal them. This practice is in contravention of Article 5(2) of the ECHR."<sup>42</sup> Although Article 5(2) ECHR refers expressly only to the provision of reasons for "arrest", the European Court of Human Rights has held that this obligation applies equally to all persons deprived of their liberty through detention, including immigration detention, as an

<sup>&</sup>lt;sup>40</sup> See the European Court of Human Rights judgment in the case of *Guzzardi v. Italy*, Application No. 7367/76, delivered on 6 November 1980,

<sup>&</sup>lt;sup>41</sup> Asylum Office Rulings Nos. 26-420/16 and 26-421/16 of 25 November 2016.

<sup>&</sup>lt;sup>42</sup> See the ECtHR's judgment in the case of Nowak v. Ukraine, Application No. 60846/10, delivered on 31 March 2011, para 64.

integral part of protection of the right to liberty."<sup>43</sup> The treatment of foreigners in the Shelter is satisfactory with respect to their right to a lawyer and medical assistance and other basic needs.<sup>44</sup>

In the first three months of the year, BCHR lawyers registered three cases of foreigners referred to the Shelter to ensure they testified in criminal proceedings: these Afghan nationals were witnesses in a human smuggling trial (under Article 350 of the Criminal Code). Given that the Criminal Procedure Code does not list securing a testimony among grounds for holding foreigners in the Shelter, the rulings referring them to the Shelter cite other grounds laid down in the Aliens Act. In the case of one foreigner, the ruling ordering him to leave the country<sup>45</sup> specified that the decision to place the said foreigner in the Shelter to ensure his subsequent participation in a criminal trial had been taken after consultations with the deputy public prosecutor, while the ruling ordering his referral to the Shelter<sup>46</sup> cited Article 49(1) of the Aliens Act as the grounds. Restriction of a person's movement, i.e. his deprivation of liberty to ensure he testifies in criminal proceedings is unlawful under Serbia's positive law and the international treaties it ratified.

In view of the practice of referring foreigners to the Shelter for Foreigners, the BCHR recommends that: the decisions ordering the detention of foreigners in the Shelter for Foreigners be translated into the language they understand; that foreigners be referred to the Shelter for Foreigners exclusively in accordance with the law; and that referral to the Shelter be a measure of last resort, i.e. that the necessity and proportionality of the measure be assessed in each individual case.

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<sup>&</sup>lt;sup>43</sup> See the International Commission of Jurists, *Migration and International Human Rights Law – A Practitioners' Guide No. 6*, p. 228.

<sup>&</sup>lt;sup>44</sup> Their right to notify their family members or others of their deprivation of liberty (by phone), to access the UNHCR and consular assistance.

<sup>&</sup>lt;sup>45</sup> Ruling No. 222/17 of 29 March 2017

<sup>&</sup>lt;sup>46</sup> Ruling No. 111/17 of 29 March 2017

# **DOCUMENTED INCIDENT – COLLECTIVE EXPULSION**OF FOREIGNERS

In July 2016, the Serbian Government adopted the Decision Establishing Joint Police and Army Forces,<sup>47</sup> under which the joint Ministry of Defense and MOI patrols are to reinforce Serbia's borders with Bulgaria.<sup>48</sup> This move provided fertile ground for collective expulsions, i.e. pushing back foreigners to the neighboring countries without conducting the adequate procedures or providing them with access to the asylum procedure in Serbia. Such actions are in contravention of Article 4 of Protocol No. 4 to the ECHR. In March 2017, the Ministry of Defense said that 20,000 people had been "prevented from crossing the border illegally".<sup>49</sup> An incident documented by actors both in Serbia and Bulgaria occurred in February 2017.

In the early morning hours of 3 February 2017, 24 nationals of Afghanistan and one national of Pakistan were deprived of liberty on the road to Dimitrovgrad by a patrol of the Gradina Border Police Station (BPS), together with the members of the Serbian Gendarmerie and Army. After stopping their vehicle and bringing them to the Gradina BPS (at 1:45 am) the police called the BCHR interpreter in to help them communicate with the refugees. The Gradina BPS officers took the Afghan nationals' personal data (first and last names, date and place of birth, et al), fingerprinted and photographed them and entered their data in the MOI databases *Afis* and OKS. They then gave them a factsheet on the rights of persons taken into and held in custody in accordance with the Instructions on the Treatment of Persons Taken into and Held in Custody,<sup>50</sup> and a custody ruling,<sup>51</sup> and put them in the holding cells in the basement, the conditions in which can definitely be qualified as inhuman and degrading. They spent almost 12 hours in those cells, without the possibility of engaging a lawyer/legal representative, after

<sup>&</sup>lt;sup>47</sup> More in the *N1* report "Police and Army to Combat Illegal Migration Together," of 16 July 2016, available in Serbian at: http://rs.n1info.com/a177575/Vesti/Vesti/Policija-i-vojska-zajedno-protiv-ilegalnih-migracija.html.

More in BCHR's 2016 Annual Report Right to Asylum in the Republic of Serbia, Belgrade, 2017, p. 27.

<sup>&</sup>lt;sup>49</sup> More in the *N1* report "20,000 Migrants Prevented from Illegal Crossing the Border" of 22 march 2017, available in Serbian at: http://rs.n1info.com/a236674/Vesti/Vesti/Spreceni-ilegalni-prelasci-migranata-na-granici.html.

<sup>&</sup>lt;sup>50</sup> Official Gazette of the Republic of Serbia Nos. 101/05, 63/09 – Constitutional Court Decision, hereinafter: Instructions.

<sup>51</sup> All in Serbian.

which they were driven to the Pirot Misdemeanor Court, where the police filed motions for their prosecution.



Gradina BPS cells in which the Afghan nationals were held 1



Gradina BPS cells in which the Afghan nationals were held 2



Gradina BPS cells in which the Afghan nationals were held 3

The proceedings before the Pirot Misdemeanor Court lasted from 2:30 to 10 pm and ended with a ruling discontinuing the misdemeanor proceedings because the judge, Mrs. Ivana Mladenović, found that the defendants were in need of international protection and that they had left Afghanistan in fear of persecution and generalized violence, and that there was reasonable doubt that they were victims of human trafficking. The judge also concluded that their return to Bulgaria under the Serbia-EU Readmission Agreement was impossible due to the risk of them being subjected to treatment in contravention of the absolute prohibition of ill-treatment in case they were returned to Bulgaria. Namely, the refugees described the dire conditions in the Bulgarian refugee centres and claimed the Bulgarian police had abused them and seized their money. After the judge established the aforesaid and notified them of their right to seek asylum in the Republic of Serbia, the foreigners expressed the intention to seek asylum. In its decisions, the Misdemeanor Court ordered the representatives of the Gradina PBS and the CRM to issue certificates of intent to seek asylum to the foreigners, pursuant to Articles 22 and 23 of the Asylum Act.

After the hearing ended with the adoption of the ruling on discontinuing the misdemeanor proceedings, the Gradina BPS acted on the Pirot Misdemeanor Court order and in accordance with Articles 22 and 23 of the Asylum Act and issued certificates of intent to the Afghan nationals referring them to the Krnjača Asylum Centre. However, as the Krnjača Centre was overcrowded at the time, the foreigners were referred to the Reception Centre in Divljana at Bela Palanka. After they were handed their certificates, they boarded a police van in the presence of a Farsi interpreter.

The asylum seekers spent around an hour and a half in the van, convinced the officers were driving them to the Divljana Reception Centre. However, the van stopped at one point and the police officers ordered them to disembark. The asylum seekers said they were then searched and that all the documents they had been issued in the Republic of Serbia (including their certificates of intent to seek asylum, the Misdemeanor Court's decisions, the factsheets on the rights of persons taken into and held in custody, et al) and all other items indicating they had been in Serbia were seized and destroyed. The officers then used threats and derogatory language and ordered them to go through the woods back to Bulgaria across the so-called "green line". One of the policemen yelled: "Go, Bulgaria!". Several members of the group

objected and started to plead with the officers not to force them back to Bulgaria, but to no avail. Those who refused to obey the orders were kicked several times.

When the police officers left, the asylum seekers lit a fire and waited for the morning. The temperature in Dimitrovgrad was 2°C below zero that night and was, presumably, much lower in the woods. The children and the mothers were crying and M. H. became sick. The group started off in the direction of Sofia the next morning, walking down the highway. When they arrived in a Bulgarian village, the villagers, who realized that the Afghan nationals were exhausted, hungry and thirsty, called the Bulgarian police. The police checked their identity and referred M. A, M. A, M. A, F. A, N. R, S. R, S. R, A. R, T. R and A. J. R. to the Voena Rampa Reception Centre (where they had stayed before entering Serbia), and O. H, J. N, H. A, H. N, T. H. and M. H. to the Reception Centre Harmanli. Z. F., who had not been registered during her previous stay in Bulgaria, was deprived of liberty and taken to the Busmanci Detention Centre. The Bulgarian police covered the costs of the train tickets to Sofia. However, O. H, J. N, H. A, H. N, T. H and M. H. did not have money for the fare to Harmanli and had to spend the nights until 11 February in the streets of Sofia or in hostels.

The Afghan refugees referred to the Voena Rampa Reception Centre called the BCHR interpreter on 4 February 2017 and told him about the incident. Their account was confirmed the following day by the refugees living in the streets of Sofia when they called the interpreter up.

In the early morning hours on 11 February 2017, O. H, J. N, H. A, H. N, T. H. and M. H. again crossed the "green" border and entered Serbia, in the Bosilegrad region. The MOI was contacted when they arrived at the Bosilegrad Reception Centre and the police had them board the van and drove them to the border area. The group was told to get out of the van and left in the woods; the police gave them instructions which direction to take (another collective expulsion attempt). When the police left, the group headed towards Bulgaria, lost its way, and after wandering in the cold for 24 hours, decided to return to the Reception Centre in Bosilegrad. This time round, the group was allowed to stay in the Republic of Serbia and the MOI transported them to the Divljana Reception Centre on 12 February 2017. During the second collective expulsion attempt, J. N. was in touch with the BCHR interpreter. The next day, on 13 February, all of them, except M. H., were again issued certificates of intent to seek asylum. M.H.

was taken to the hospital in Pirot, where she was admitted and diagnosed with exhaustion and frostbite. This fact is evidence that she, and other refugees who had returned to Serbia, had already been subjected to the Serbian procedures and were subsequently expelled to Bulgaria in an impermissible and illegal manner.

All of the above demonstrates that the relevant Serbian authorities had violated a number of rights of the Afghan nationals. The fact that they had been deprived of liberty pending misdemeanor proceedings in which the court did not find them guilty clearly shows that their deprivation of liberty had been groundless. They were also deprived of other rights of persons deprived of liberty, such as the right to engage a lawyer, notify a third party of their choice of their detention, their right to be examined by a doctor and their right to appeal the decisions on their deprivation of liberty. Furthermore, the conditions in the Gradina BPS holding cells and the way they were expelled to Bulgaria can definitely be described as inhuman and degrading treatment. It goes without saying that the very procedure of pushing them back to Bulgaria - in the absence of decisions issued in proceedings in which their individual circumstances were reviewed and without the assistance of an interpreter and legal counsel, as well as without the possibility to file an appeal with suspensive effect – can only be qualified as collective expulsion. And, last but not the least, the fact that they were referred to different Bulgarian camps or detention centres (Voena Rampa and Busmansi), infamous for the extremely poorly living conditions in them, also amounts to treatment in violation of the absolute prohibition of ill-treatment. The BCHR filed a constitutional appeal regarding this case.

# INTEGRATION OF REFUGEES AND ASYLUM SEEKERS IN THE SOCIAL, ECONOMIC AND CULTURAL LIFE OF THE REPUBLIC OF SERBIA

Serbia's legal framework obliges all the relevant state authorities to facilitate and ensure social integration programmes for people granted international protection, as well as asylum seekers during the asylum procedure in Serbia. However, numerous deficiencies and legal lacunae have in practice greatly impeded the process of their integration in Serbian society. On the other hand, given the large number of migrants in Serbia, who have not been granted international protection although they are in need of it, or who have merely formally expressed the intention to seek asylum because they are unable to legalize their stay in Serbia otherwise, one of the main questions that arises is how to provide adequate protection to this category of migrants, who are actually in an *irregular* situation, during their stay in Serbia.

Notwithstanding their ethnicity, race, religion or legal status, migrants and nationals of the host country share the same dignity, rights and obligations. Irregular migrants are often in need of the most protection. The basic principle of international human rights law is that human rights are universal, indivisible, inalienable and interdependent. As enshrined in the Universal Declaration of Human Rights, migrants are primarily human beings and belong to the category of "everyone" in Article 2 of this document: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status..."The principle of universality means that the states of origin, transit and destination are all equally responsible for protecting the migrants' human rights. In that sense, Serbia, as a part of the UN system, has accepted numerous international standards and vowed to extend appropriate protection to the migrants regardless of their status.

In the New York Declaration for Refugees and Migrants, adopted on 19 September 2016 after the plenary session of the UN General Assembly on the resolution of the issues of the large movements of refugees and migrants, the heads of state and high representatives reaffirmed

that the human rights of all refugees and migrants, regardless of their legal status, had to be fully respected and protected. They recalled that "[T]hough their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms." The world leaders vowed to work on the adoption of a global compact on refugees and on a global compact for safe, orderly and regular migration in 2018.

In February 2017, the Committee on Economic, Social and Cultural Rights adopted a Statement on the States' Duties Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights (CESCR Statement),<sup>52</sup> in which it stated that all "people under the jurisdiction of the State concerned should enjoy the Covenant rights: this includes asylum-seekers and refugees, as well as other migrants, even when their situation in the country is irregular. As regards refugees, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol address a number of prescriptions to its Contracting Parties with respect to the economic, social and cultural rights of refugees. However, those prescriptions leave in practice a broad margin of appreciation to States."

Section III of the CESCR Statement explicitly discusses the integration of refugees and migrants who have not regulated their legal status. The following conclusions of the Committee, applicable also to the Republic of Serbia as a signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR), are particularly important:

• Beyond the immediate duty to ensure that the essential minimum content of the Covenant rights are guaranteed to all refugees and migrants under their jurisdiction, States parties to the Covenant should take the Covenant into account in defining the conditions of integration of refugees and migrants who are settling within their territory. The Committee draws the attention of the States parties, in particular, to the fact that enjoyment of the Covenant rights should not depend on the legal status of the persons concerned. The lack of documentation frequently makes it impossible for parents to send their children to school, or for migrants to have access to healthcare, including emergency medical treatment, to take up employment, to apply for social housing or to engage in an economic activity in a self-employed capacity. This situation cannot be tolerated. Pending a decision on their claim to be recognized as refugees, asylum-seekers

<sup>&</sup>lt;sup>52</sup> E/C.12/2017/1., Committee on Economic, Social and Cultural Rights, 24 February 2017.

should be granted a temporary status allowing them to enjoy economic, social and cultural rights without discrimination [...]

- In its general comment No. 14 (2000), the Committee recalled that States parties "have a duty to respect the right to health by ensuring that all persons, including migrants, have equal access to preventive, curative and palliative health services, regardless of their legal status and documentation." The Committee listed a number of factors that may increase such vulnerability, including situations where the employer has control over the migrant worker's residence status or that tie migrant workers to a specific employer; the inability for the workers concerned to speak the national language(s); the fear of reprisals from employers; and eventual expulsion if these workers seek to complain about working conditions.<sup>53</sup>
- Similar concerns arise as regards the right to housing. The Committee has repeatedly found that migrants were housed in sub-standard conditions, sometimes in geographically segregated areas. Its concerns were echoed in this regard by the Committee on the Elimination of Racial Discrimination which, in its general recommendation No. 30 (2004), urged States parties to "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the [area] of ... housing" and to "guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices".54
- In its general comment No. 19 (2007), the Committee recalled that migrants should be entitled to access "non-contributory schemes for income support, affordable access to health care and family support". Restrictions on access to such schemes, including the requirement of a qualification period, should be reasonable and proportionate.<sup>55</sup>

To recall, the CESCR reviewed Serbia's second periodic report on the implementation of the ICESCR back in May 2014.<sup>56</sup> It devoted an entire section of its Concluding Observations

<sup>&</sup>lt;sup>53</sup> E/C.12/GC/23, para 47e).

<sup>&</sup>lt;sup>54</sup> CERD/C/64/Misc.11/rev.3, paras 29 and 32.

<sup>&</sup>lt;sup>55</sup> General Comment No. 19 (2007): The right to social security (E/C.12/GC/19), para 37.

<sup>&</sup>lt;sup>56</sup> UN Economic and Social Council, Concluding observations on the second periodic report of Serbia, E/C.12/SRB/CO/2, of 10 July 2014.

published in July 2014 to asylum seekers and internally displaced persons. In its assessment of the work of the CRM, the CESCR expressed concern that refugees and internally displaced persons did not have access to comprehensive integration programmes. It was also concerned at the limited capacities of social welfare services in places where asylum centres were located and the insufficient reception capacities for asylum seekers, wherefore it issued a number of recommendations to Serbia, some of which have already been fulfilled, such as the adoption of a by-law governing the integration process. Serbia, however, has not acted yet on the recommendation to establish a functional local integration mechanism for refugees recognized under the Asylum Act, as well as for internally displaced persons, in areas such as education, social assistance, language and vocational trainings and housing.

On 24 December 2016, the Serbian Government at long last adopted the Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia (Integration Decree), pursuant to Article 16 of the Migration Management Act and Article 46 of the Asylum Act. The Decree, which came into effect in 2017, applies only to people granted asylum, but not to asylum seekers and persons granted subsidiary protection.

Three months is much too short a period of time for drawing a conclusion on whether the Integration Decree has facilitated the integration of refugees in. The CRM, charged with integration, has, indeed, taken the initial steps towards applying the standards laid down in the Decree. To that end, it has held an internal meeting with the representatives of the institutions specified in the Decree (the Ministry of Education, Science and Technological Development, the Ministry of Labor, Employment and Social and Veteran Issues, the Ministry of Health and the National Employment Service) at which they agreed on the development of a brochure that will provide the refugees with full and timely information about their integration-related rights, options and obligations. The meeting was attended also by the representatives of the BCHR. The brochure is to be completed in April 2017.<sup>57</sup>

<sup>&</sup>lt;sup>57</sup> The meeting was held on 24 March 2017.

#### **EDUCATION**

Several initiatives regarding the education of migrant children, launched by the UNICEF Office in Belgrade and endorsed by the Ministry of Education, Science and Technological Development, were implemented during the reporting period. The program of support to the inclusion of refugee and migrant children in mainstream education has been implemented since September 2016, in cooperation with the Ministry of Education, Science and Technological Development, the Centre for Educational Policy and UNICEF. During the first stage of the project, which was completed by February 2017, ten schools in the Belgrade and Lazarevac areas, where two Asylum Centres are located, were provided with support to build their capacities in the forms of trainings, mentorship and mini grants. Meetings were held with the regional school administration to discuss the enrolment procedures, the requisite documentation and the monitoring and support mechanisms. In cooperation with all the partners, informal education guidelines were drafted to facilitate the development of basic skills (communication in native and foreign languages, computer skills, basic knowledge of math and other natural sciences, civic education, cultural sensitization, learning skills). The informal education programme aims at developing the children's skills that will facilitate their inclusion in the formal education institutions in Serbia, their other countries of destination or their countries of origin.

Around 2,100 migrant children were living in Serbia during the reporting period. Around 20 of them, who had come to Serbia together with their parents or unaccompanied, were attending school. They have been enrolled in five<sup>58</sup> primary schools in the territory of the Palilula municipality and the Branko Pešić primary school in Zemun, as well as in the primary school in Lajkovac, near the Bogovađa Asylum Centre. Various international organizations have been extending logistical support and transporting the children from the Asylum Centres to their schools and back. The Ministry of Education was preparing guidelines for the teachers, to facilitate their organization of work with the children and help in integrating in the system and overcoming problems in mastering the curriculum. The Ministry plans on organizing everyday lessons in two subjects for the children, as well as psychological and Serbian Language

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<sup>&</sup>lt;sup>58</sup> Primary schools: Jovan Cvijić, Jovan Ristić, Zaga Malivuk, Rade Drainac and Olga Petrov.

workshops. The schools will have interpreters and the children will be referred to grades in accordance with their age and current knowledge.

The primary school Branko Pešić is a very good practice example. Without any additional support from the Ministry of Education or supplementary instructions, it succeeded in successfully involving the children living in the Krnjača Asylum Centre in its programmes. The teachers work with 35 children in Serbian and use visual and creative language learning methods. The children also attend lessons in other subjects (Math, Geography, History, etc.). Every month, the school issues the children certificates on the skills and knowledge they acquired during the preceding month, which they can later, in their final destination countries, use as evidence of the skills and knowledge they acquired in the transit country.<sup>59</sup>

Although the right to education is enshrined in the Serbian Constitution and the Education System Act<sup>60</sup> recognizes the right of foreign nationals and stateless persons to education under the same conditions and in the same manner as Serbia's citizens, there was hardly any practice in the field of education of migrants, asylum seekers and refugees in Serbia until 2017. At present, migrants in Serbia who have not expressed the intention to seek asylum have no access to the national education system at any level. The reason may lie in the fact that many migrants have stayed in Serbia for very short periods of time, hoping they would reach their countries of destination, wherefore they have not had the opportunity to enroll in the local schools. There are, however, programs for irregular migrant children extending them at least informal education while they are in Serbia; these programs include language lessons, various thematic workshops, psycho-social empowerment, etc. Informal education programmes were organized during the reporting period in only five of the 17 Centres accommodating migrants and asylum seekers.

On the other hand, it is crucial to bear in mind that the ICESCR recognizes everyone's right to education directed to the full development of the human personality and the sense of its dignity. In its General Comment No. 13 (1999),<sup>61</sup> the CESCR stated that education was the "primary vehicle by which economically and socially marginalized adults and children can lift

<sup>&</sup>lt;sup>59</sup> The BCHR obtained this information at a meeting with the Headmaster of the Branko Pešić primary school on 12 April 2017.

<sup>&</sup>lt;sup>60</sup> Education System Act, *Official Gazette of the Republic of Serbia* Nos. 72/2009, 52/2011, 55/72013, 35/2015 –authentic interpretation, 68/2015 and 62/2016 - Constitutional Court Decision), Article 6.

<sup>&</sup>lt;sup>61</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10.

themselves out of poverty and obtain the means to participate fully in their communities."<sup>62</sup> Access to state preschool institutions or schools may not be denied because of the children's or parents' irregular status in the state they are in. In view of the fact that 5,390 unaccompanied or separated children were registered in Serbia in 2016 and that children accounted for 46% of all the migrants in Serbia in the first quarter of 2017, all decision makers and relevant institutions should take special care not to design any strategies or measures targeting migrant children that might result in their segregation and exclusion from the mainstream education system.

<sup>&</sup>lt;sup>62</sup> General Comment No. 13, para 1.