



Right to Asylum in the Republic of Serbia Periodic Report for January-June 2019



Belgrade Centre
for Human Rights

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ACRONYMS

AC - Asylum Centre

AO - Asylum Office

BCHR - Belgrade Centre for Human Rights

Belgrade BPS - Belgrade Border Police Station

CAT - United Nations Committee against Torture

CEDAW - United Nations Committee on the Elimination of Discrimination against Women

CRC - CRC

CRC Committee - Committee on the Rights of the Child

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

EASO - European Asylum Support Office

ECRE - European Council on Refugees and Exiles

ECtHR - European Court of Human Rights

FL - Foreigners Law

LA - Law on Asylum

LATP - Law on Asylum and Temporary Protection

LGAP - Law on the General Administrative Procedure

MI - Ministry of the Interior of the Republic of Serbia

MLEVSA - Ministry of Labour, Employment, Veteran and Social Affairs

NPM - National Preventive Mechanism against Torture

RS - Republic of Serbia

SGBV - Sexual and Gender-Based Violence

SWC - Social Work Centre

UN - United Nations

UNAMA - United Nations Assistance Mission in Afghanistan

UNHCR - United Nations High Commissioner for Refugees

UNICEF - United Nations International Children's Emergency Fund

UN Special Rapporteur on torture - UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

INTRODUCTION

The BCHR has been extending legal aid to asylum seekers and foreigners granted international protection in the RS since 2012. These activities have been implemented within a project supported by the UNHCR. Within the project, the BCHR team has also been conducting other activities geared at improving the protection of the refugees' rights and their integration in the cultural, social and economic life in the RS.

Although the RS has, for humanitarian reasons, been tolerating the presence of a number of irregular migrants, some of whom may be in need of international protection, this Report focuses on the status of foreigners who have sought asylum in the RS. The Report is predominantly based on information the BCHR team obtained directly, whilst representing the asylum seekers, and during its regular visits to facilities accommodating asylum seekers.¹ BCHR obtained specific information from the competent authorities pursuant to the Law on Access to Information of Public Importance² and from other civil society organisations assisting asylum seekers. A number of BCHR's conclusions and recommendations rely on the observations of UN treaty bodies and special procedures.

The statistical data published in the Report regard the 1 January – 30 June 2019 period. This document does not provide a comprehensive and detailed analysis of the RS asylum system; rather, it focuses on specific issues that the BCHR team deemed particularly important in the second quarter of 2019.³ It describes cases and developments in the first quarter of 2019 and the previous years to provide a better illustration of the relevant authorities' practices.

The Report devotes particular attention to access to the asylum procedure in RS territory, notably the Belgrade "Nikola Tesla" Airport transit zone. It also analyses the decisions of the first- and second-instance asylum authorities (the AO and Asylum Commission respectively) adopted in Q2 2019, and focuses, *inter alia*, on the problems regarding the application of the law more favourable for the asylum seekers, incomplete findings of fact and overly long asylum proceedings. The authors thoroughly analysed

¹ During its visits, the BCHR team has been discussing with the asylum seekers their rights and obligations, grounds for seeking asylum in the RS, their accommodations and all the challenges they have been facing in the RS.

² *Official Gazette of the RS*, Nos. 120/04, 54/07, 105/09 and 36/10.

³ A comprehensive analysis of the RS asylum system is available in BCHR's annual asylum reports, available at: www.azil.rs.

the status of unaccompanied and separated children, after the tragic death of an Afghani boy in Belgrade in June 2019, to whom the competent RS authorities had apparently failed to extend adequate protection and assistance. The Report also describes the difficulties faced by asylum seekers survivors of sexual and gender-based violence SGBV in their countries of origin or transit or in the RS.

The Report is primarily addressed to all RS state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals monitoring the situation in the field of asylum. Its authors endeavoured to highlight good practice examples and the specific normative shortcomings and challenges in the work of the competent authorities from the perspective of human rights protection standards and the asylum seekers' personal accounts⁴ and, consequently, offered recommendations on how to improve the law and practices.

Report Cover: Cats (rayist percep.[tion] in rose, black, and yellow), 1913, Natalia Goncharova

⁴ With a view to protecting the privacy of the asylum seekers whose cases are mentioned in this Report, the authors altered or did not fully disclose some of their personal data.

1. STATISTICS

All statistical data were obtained from the UNHCR Serbia Office, to which the RS MI has been forwarding its operational reports and statistical data. The data cover the 1 January – 30 June 2019 period. The AO does not publish data on its work on the MI's website.

1.1. REGISTRATION OF ASYLUM SEEKERS

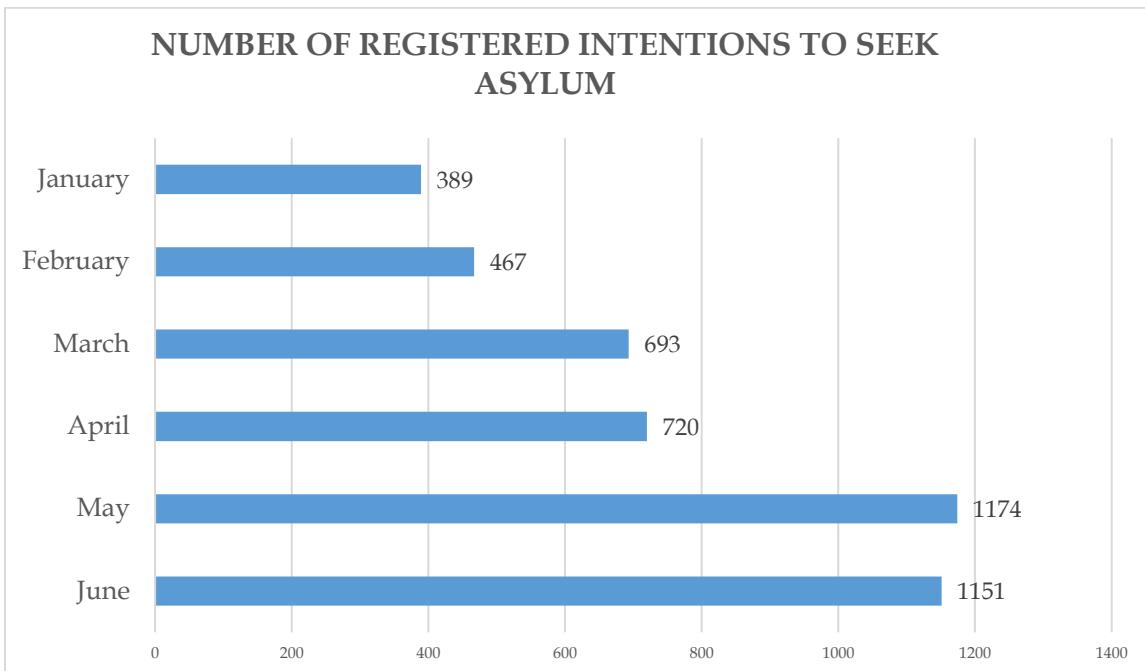
A total of 4,594 foreigners expressed the intention to seek asylum in the RS in the first six months of the year; 4,370 of them were men and 224 were women. The intention to seek asylum in the RS was expressed by 1,061 children, 355 of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered in the reporting period: 389 in January, 467 in February, 693 in March, 720 in April, 1,174 in May and 1,151 in June 2019.

Most of the foreigners who expressed the intention to seek asylum in the reporting period, were nationals of Pakistan (1,481), Afghanistan (1,443), Syria (386) and Iraq (349). The intention to seek asylum was also expressed by nationals of Bangladesh (247), Iran (174), India (100), Algeria (93), Palestine (66), Morocco (52), Burundi (36), Libya (34), Egypt (29), Eritrea (15), Turkey (15), Lebanon (11), Tunis (7), Sudan (6), Somalia (5), North Macedonia (4), Bosnia and Herzegovina (3), Jordan (3), Cuba (3), Russia (3), Albania (2), Chad (2), Greece (2), Yemen (2), Cameroon (2), Germany (2), Nepal (2), Bulgaria (1), Ghana (1), Georgia (1), South Sudan (1), Kazakhstan (2), China (1), the Democratic Republic of Congo (1), Mali (1), Nigeria (1), Peru (1), Romania (1), Sri Lanka (1), Togo (1), the United Kingdom (1) and Ukraine (1).

Most of the individuals to whom certificates of registration of the intention to seek asylum in the RS (certificates of registration) were issued in the first half of 2019 were registered in the police stations (4,093) and at border crossings (427), and such certificates of registration were issued to 51 foreigners at Belgrade Airport "Nikola Tesla". Four foreigners were registered in the Shelter for Foreigners⁵ in Padinska Skela and another 19 by the AO staff in the ACs.

⁵ Under Article 3(1)(12) of the Foreigners Law (*Official Gazette of the RS*, Nos. 24/18 and 21/19), the Shelter for Foreigners is designated for the accommodation of foreigners refused entry into the RS, foreigners against whom decisions ordering their deportation, removal or return have been issued but cannot be

A total of 638,330 foreigners expressed the intention to seek asylum in Serbia from 2008 until end June 2019. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577, 995 foreigners in 2015, 12,821 foreigners in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018 and 4,594 in the first half of 2019.



enforced immediately, and foreigners who have been ordered into detention under enhanced police supervision in accordance with the law.

1.2. ACCOMMODATION AND NUMBER OF MIGRANTS IN THE RS

According to MI data, 1,274 registered migrants who expressed the intention to seek asylum reported to and were accommodated in ACs and 2,222 of them left these establishments of their own accord in the first six months of the year.⁶ A total of 4,200 migrants were living in Serbian reception and ACs in January 2019; their number steadily fell, to 3,050 in June 2019.

The number of migrants in the RS rose slightly every month, ranging from 4,500 to 3,800 in the same period.⁷ During the first half of the year, most of the migrants were accommodated in the Krnjača AC and the Reception Centres in Obrenovac, Principovac and Adaševci.

UNHCR estimated that most of the migrants had entered Serbia from North Macedonia and far fewer from Bulgaria. The greatest numbers of migrants were pushed back to Serbia from Croatia, as well as Bosnia and Herzegovina and Hungary, and the fewest from Romania.⁸

1.3. WORK OF THE AO

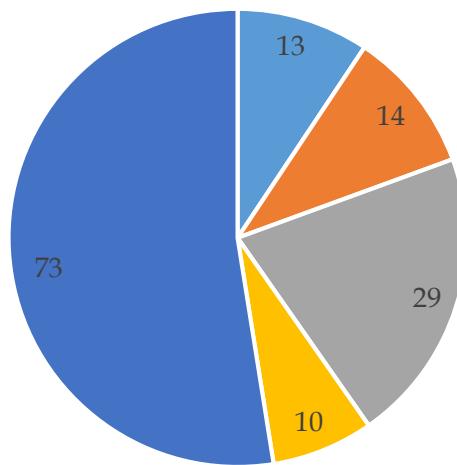
Ninety-six asylum applications were filed with AO staff and another 45 asylum applications were submitted in writing in the first six months of the year. The AO held oral hearings regarding applications filed by 105 asylum seekers and granted asylum to 13 asylum seekers: five nationals of Iran, three nationals of Russia, three nationals of Cuba, one national of Afghanistan and one national of Iraq. Subsidiary protection was granted to 14 foreigners: five nationals of Syria, four nationals of Iraq, two nationals of Libya, two nationals of Pakistan and one national of Afghanistan. The Office dismissed 19 asylum applications concerning 29 applicants on the merits and dismissed as ill-founded another nine applications concerning ten foreigners. The Office discontinued the review of 59 applications concerning 72 individuals, for the most part because the applicants had left Serbia during the asylum procedure.

⁶ According to AO monthly operational reports forwarded to the UNHCR Office in the January-June 2019 period.

⁷ In this Report, migrants denote asylum seekers, as well as other foreigners not registered in the asylum system.

⁸ *UNHCR Serbia Snapshot - June 2019*, UNHCR, July 2019. Available at: <https://bit.ly/2Te6UD4>.

ASYLUM OFFICE STATISTICS (JANUARY - JUNE 2019)



- Decisions granting refugee status
- Decisions discontinuing asylum proceedings
- Decisions dismissing claims on the merits
- Decisions granting subsidiary protection
- Decisions dismissing claims as ill-founded

In total, the relevant Serbian authorities have upheld the applications of 156 foreigners since 2008, granting asylum to 68 and subsidiary protection to 88 migrants. Majority of persons granted international protection in RS originate from Libya (44), Syria (23), Ukraine (15), Afghanistan (14), Iraq (11), Iran (11) and Cuba (7).

2. ACCESS TO THE ASYLUM PROCEDURE

2.1. ACCESS TO THE ASYLUM PROCEDURE IN THE RS TERRITORY

The right to asylum is enshrined in the Constitution of the RS,⁹ while the asylum procedure and legal status and rights and obligations of asylum seekers are governed by a separate law – the LATP.¹⁰ The provisions of the LGAP¹¹ apply to procedural issues not regulated by the LATP. Notwithstanding the solid legal framework, specific legal provisions and practices of the relevant authorities have unfortunately precluded some foreigners in need of international protection from applying for asylum, i.e. accessing the asylum procedure although they are already in the territory of the RS.

During the reporting period, the BCHR identified several reasons exacerbating the migrants' access to the RS asylum procedure. First, MI officers still do not inform the migrants of their rights and obligations in a language they understand at the time of registration of their intention to seek asylum, wherefore many of them fail to initiate specific procedural measures because they are unaware of them and thus remain outside the asylum system. Second, the AO has not been promptly scheduling asylum application appointments. Third, asylum seekers are entitled to apply for asylum only in the ACs, but not in the other facilities they are accommodated in. And, last but not the least, access to the asylum procedure is exacerbated by the asylum seekers' inability to themselves apply for asylum in writing, without the direct involvement of AO staff. This practice will be analysed in greater detail in the text below.

⁹ Article 57 of the Constitution of the RS, *Official Gazette of the RS*, No. 98/06,

¹⁰ *Official Gazette of the RS*, No. 24/18. The LGAP was adopted on 22 March 2018 and came into effect on 3 April 2018. It has been applied since 2 June 2018.

¹¹ *Official Gazette of the RS*, Nos. 18/16 and 95/18.

2.1.1. Issuance of Certificates of Registration in Serbian and Non-Provision of Information

Access to the asylum procedure is regulated by the LATP, under which foreigners in the territory of the RS are entitled to express the intention to apply for asylum to an authorised MI officer and to apply for asylum in the RS.¹² Therefore, expression of the intention to seek asylum is the initial action by which foreigners launch the asylum procedure and constitutes grounds for their lawful presence in the RS.

Authorised MI officers issue certificates of registration to foreigners who express the intention to seek asylum.¹³ The certificates refer the foreigners to ACs or other facilities designated for the accommodation of asylum seekers, which they have to report to within 72 hours from the moment they are issued their certificate.¹⁴ However, the MI has been issuing certificates of registration exclusively and only in Serbian, and in the Cyrillic script at that.¹⁵ Given that most asylum seekers do not understand Serbian or read Cyrillic, it would be unreasonable to presume that they can understand the content of the certificates or the instructions therein.

Under the LATP, foreigners must report to the accommodation facility specified in their certificate of registration within 72 hours from the moment of registration, otherwise their presence in the RS shall be deemed illegal.¹⁶ Therefore, foreigners (potentially) at risk of persecution or torture in case of return to their country of origin shall not be treated by the relevant Serbian authorities as such just because they are unable to read the certificates of registration that are in Serbian and Cyrillic. They shall be subject to regulations that are less favourable for them and that may result in violation of the principle of *non-refoulement*.

On the other hand, the LATP obligates police and other state officials taking actions within their remit to inform foreigners expressing the intention to seek asylum of the ensuing actions and their rights and obligations whilst in the RS.¹⁷ In addition, the UNHCR has also noted the states' obligation to provide the foreigners with basic

¹² Art. 4 of the LATP.

¹³ Art. 35(11) of the LATP.

¹⁴ Art. 35(3) of the LATP.

¹⁵ The certificates are issued in accordance with the Rulebook on the Procedure of Registration and Design and Content of Certificates of Registration of Foreigners Who Expressed the Intention to Seek Asylum (*Official Gazette of the RS*, No. 42/18).

¹⁶ Art. 35(13) of the LATP.

¹⁷ Art. 56 of the LATP.

information, regardless of where they apply for asylum.¹⁸ Such information regards the asylum procedure, including access to interpretation facilities, as well as basic legal counselling.¹⁹ UNHCR has recommended that states inform asylum seekers in writing and without delay of the practical arrangements for their reception and of other useful information about their rights and obligations. It has particularly appealed to authorities to provide asylum seekers with all the relevant information about the asylum procedure.²⁰ The LATP, however, does not specify how the MI officers are to fulfil their obligation to provide information to foreigners seeking asylum.

In its letter to the BCHR of 2018,²¹ the MI said that police officers issuing certificates of registration to foreigners expressing the intention to seek asylum informed them of their right to apply for asylum and their other rights and obligations. It, however, remains questionable whether the MI officers communicate with the foreigners in a language the latter understand. The information BCHR lawyers obtained during their discussions with asylum seekers leads to the conclusion that the latter are not informed of their rights and obligations at the time they express the intention to seek asylum, especially not in a language they understand.

2.1.2. Delays in Scheduling Asylum Application Appointments

The LATP lays down that the asylum procedure shall be initiated by the submission of an asylum application to an authorised AO's officer, on the prescribed form and within 15 days from the day of registration.²² Furthermore, the LATP sets out that foreigners with certificates of registration, who are not provided with the opportunity to apply for asylum by the authorised AO officers within the 15-day deadline, are entitled to apply for asylum by filling the asylum application forms and submitting them in writing within 8 days from the day of expiry of the 15-day deadline.²³

By failing to schedule the time and place for the submission of asylum applications, the AO's officers have essentially been precluding the migrants from

¹⁸ *Reception Standards for Asylum Seekers in the European Union*, UNHCR, Geneva, July 2000. Available at: <https://bit.ly/2GU7aSJ>.

¹⁹ *Ibid*, p. 7, Section C/II.

²⁰ *Ibid*, p. 8 Section C/II.

²¹ Letter of the MI, Police Directorate, Border Police Administration, No. 03/8/4, No. 26-1991/18 of 6 December 2018.

²² Art. 36(1) of the LATP.

²³ Art. 36(2) of the LATP.

applying for asylum within the 15-day deadline. Namely, AO officers are not present in the ACs on a daily basis and do not receive asylum applications in them every day.²⁴ Asylum applications may be filed only during the appointments scheduled by the AO, which are the only times its officers come to the ACs to receive the asylum applications.²⁵ This official action is performed in the following manner: an AO officer takes the statement of the asylum seeker on the reasons why s/he left his/her country of origin and other circumstances in the presence of an interpreter and the applicant's legal representative and enters it in the prescribed form.

In practice, asylum applications are submitted in the following manner; the asylum seeker's legal representative writes to the AO, asking it to schedule an appointment for the submission of the application. As of mid-February 2019, BCHR lawyers have on several occasions written to AO staff,²⁶ asking them to schedule asylum application appointments for 14 of its clients. It took the AO three months to respond to BCHR's four repeated requests and schedule the appointment for the submission of asylum applications by most of BCHR's clients.

An unaccompanied child, a national of Iran, was on BCHR's "list" of clients who wanted to apply for asylum. He was issued a certificate of registration on 5 June 2018, but nearly a year passed before the AO received his asylum application, on 20 May 2019. Without going into the effects, the AO's practice had on the child, it needs to be noted that this Office is under the obligation to comply with the principle of protection of the best interests of the child.²⁷ Asylum applications filed by unaccompanied or separated children shall be given priority over other asylum applications.²⁸

Finally, in the meaning of the LATP and the LGAP, asylum seekers do not have any legal remedies in the event they are prevented from applying for asylum. The LGAP allows parties to appeal adopted after the expiry of the legal deadlines,²⁹ but only provided that the procedure has already been initiated by the submission of a motion (silence of the administration appeal). However, foreigners cannot practically file appeals

²⁴ The AO is headquartered in Belgrade and its staff have to travel by car up to several hours to reach the ACs and perform official actions therein.

²⁵ Based on BCHR lawyers' experience in representing asylum seekers.

²⁶ BCHR letters No. 25/25 of 2 April 2019, No. 25/32 of 16 April 2019 and No. 25/45 of 28 May 2019. The first letter, in which the BCHR asked the AO to schedule an appointment for the submission of asylum applications, was sent by e-mail on 19 February 2019.

²⁷ Art. 10 of the LATP.

²⁸ *Ibid*, para 7.

²⁹ Art. 151(3) of the LGAP.

in the event the AO fails to schedule their asylum application appointments because the procedure has not been formally initiated in the first place.

2.1.3. Inability to Apply for Asylum in Reception Centres

In practice, the AO implements official actions *only and exclusively*³⁰ in ACs. That means that foreigners accommodated in other facilities *de facto* have limited access to the asylum procedure.³¹ Asylum seekers referred to reception rather than ACs during registration³² are transferred by the staff of the CRM to ACs. Namely, after the foreigner's legal representative files a request with the AO to schedule an asylum application appointment, the AO asks the CRM to transfer the foreigner to an AC. That means that foreigners remain in the reception centres until the AO asks the CRM to transfer them to an AC. The CRM and the MI have informally established this practice.

Although such a practice is not provided for by any law, the authors of this Report presume that it is the result of an arrangement between the relevant authorities, under which the AO receives asylum applications exclusively in ACs. Other facilities (reception centres) have been established to accommodate migrants present in the territory of the RS but not intending to seek asylum in it. However, MI officers registering foreigners expressing the intention to seek asylum refer them also to reception centres, although the AO does not implement the asylum procedure in them, whenever the ACs lack room to accommodate new arrivals at the time of their registration by the MI.

BCHR lawyers have noted instances of the CRM's informal transfers of asylum seekers from overcrowded reception centres to ACs, i.e. without having adopted a decision signed and stamped by authorised staff and without having notified the migrant's legal representative or the AO thereof. Notwithstanding the CRM's good intentions - to accommodate these foreigners in facilities in which the AO conducts the asylum procedure - such actions may place the foreigners at a disadvantage. Namely, both their legal representatives and the AO may lose track of the whereabouts of specific

³⁰ Italics ours.

³¹ Under Article 23 of the LATP, all asylum and reception centres are under the jurisdiction of the CRM.

³² The LATP does not explicitly specify that asylum seekers shall be accommodated exclusively in ACs; rather, the relevant provision is worded as follows "... asylum centre or another designated accommodation facility" (Art. 51 of the LATP).

individuals,³³ who are to apply for asylum.³⁴ Such transfers may render the foreigners' presence in the RS illegal under the LATP³⁵ and give rise to the violation of the principle of *non-refoulement*.

2.1.4. Migrants Cannot Apply for Asylum by Themselves

As noted, under the LATP, migrants are entitled to themselves apply for asylum in the event the AO does not provide them with such an opportunity. They may apply for asylum in writing within eight days from the day of expiry of the 15-day deadline running as of the moment of registration.³⁶ In the experience of BCHR lawyers, they cannot avail themselves of this legal possibility in practice.

In the case of Turkish nationals K.A.F, A.A.S. and A.B.F, their legal representatives filled the asylum application forms after interviewing them and sent them to the AO.³⁷ Two weeks later, the AO notified the legal representatives that the official application submission action would be performed in one of the ACs in the RS. The AO obviously fully neglected the fact that the asylum seekers had themselves applied for asylum with their legal representatives' assistance and in accordance with the LATP. The AO acted this way also in 2018, in the case of Iranian nationals.³⁸

Apart from the migrants' inability to themselves apply for asylum in practice, it remains unclear how the legislator expects of legally unschooled individuals to apply for asylum by themselves since not all of them have legal aid and are not informed of their rights, obligations and deadlines by which they have to undertake procedural actions. This opportunity is further impeded by the fact that AO officers are not present in the facilities in which asylum seekers are accommodated on a daily basis, wherefore they are actually not at their disposal to provide them the requisite information and receive their asylum applications.³⁹

³³ More in Ana Trkulja (ed), *Right to Asylum in the Republic of Serbia 2018 Annual Report*, BCHR, April 2019, p. 72. Available at: <http://bit.ly/2Kw874P>.

³⁴ Such actions were identified in two more cases, of Iranian families represented by BCHR's lawyers.

³⁵ Art. 35(13) of the LATP.

³⁶ Art. 36(2) of the LATP.

³⁷ BCHR Letter No. 24/261-1 of 5 January 2019.

³⁸ BCHR Letter No. 24/204-217 of 11 October 2018.

³⁹ Under Article 48 of the LATP, asylum seekers are entitled to legal aid. Article 36 of the LATP obligates the relevant authorities to inform asylum seekers of their rights and obligations, especially their rights to residence, free interpretation services, legal aid and access to the UNHCR.

2.1.5. Conclusion and Recommendations

The MI's practice does not facilitate unimpeded access to the asylum procedure because this authority has not been issuing foreigners certificates of registration of their intention to seek asylum in a language they understand or informing them adequately of their rights and obligations. Access to the asylum procedure is further exacerbated by the implementation of official actions exclusively in ACs and the scheduling of such actions with delays; to make things worse, migrants are not effectively provided with the possibility of applying for asylum themselves.

The MI should, as soon as possible, start issuing certificates of registration of the intention to seek asylum in languages the migrants understand. MI officers should inform the migrants of their rights and obligations at the time they register them. They can impart such information either orally or in writing, by providing them with info sheets in languages the migrants understand. The information MI officers provide migrants should be imparted in a reliable and comprehensive manner to ensure that they clearly understand their status and the measures they will be subjected to.

Furthermore, the MI and CRM should prepare brochures with important information in languages most asylum seekers speak and make sure that these brochures are available in all MI units and facilities accommodating asylum seekers. This will eliminate any language barriers between the asylum seekers and state officials - when there are no interpreters at hand - and ensure that asylum seekers are informed of their rights and obligations.

The AO should receive asylum applications in all facilities in which asylum seekers are accommodated. The CRM should therefore put in place all the material and technical conditions for the implementation of official asylum-related actions in these facilities.

The MI should ensure that AO staff are present in all facilities accommodating asylum seekers on a daily basis with a view to ensuring better provision of information to asylum seekers and prompt submission of asylum applications and precluding the risk of the AO violating the time limits prescribed by law. Furthermore, the continuous presence of AO staff in all accommodation facilities would provide migrants with the possibility of applying for asylum themselves. They would have the opportunity to submit to the AO staff the application forms they themselves have filled.

2.2. Access to the Asylum Procedure at Belgrade Airport “Nikola Tesla”

During the first half of 2019, the Belgrade BPS issued 51 certificates of registration to foreigners who expressed the intention to seek asylum at Belgrade Airport “Nikola Tesla”.⁴⁰ BCHR lawyers intervened on behalf of the migrants in ten cases – either at the Airport or over the phone.

The BCHR intervened, *inter alia*, on behalf of nationals of Burundi and India. The increase in the number of nationals of these countries coming to Serbia may be attributed to the Decision on the Abolition of Visas for Nationals of the Republic of India⁴¹ and the Decision on the Abolition of Visas for Nationals of the Republic of Burundi.⁴²

Although foreigners may in principle express the intention to seek asylum at Airport “Nikola Tesla” and thus access the asylum procedure, specific legal provisions and the Belgrade BPS’ practice still suffer from numerous shortcomings. These shortcomings have already been identified in the reports of the NPM and the UN Special Rapporteur on torture. Unfortunately, the MI has not undertaken any substantive measures yet to eliminate the identified shortcomings, which will be further elaborated below.

2.2.1. Lack of Adequate Procedural Guarantees for Migrants Refused Entry into the RS

Under the FL,⁴³ the competent authorities shall issue foreigners refused entry into the RS decisions specifying the grounds for refusal of entry and enter the refusal of entry in their travel documents.⁴⁴ The decisions on refusal of entry into the RS are issued on bilingual forms and are available in Serbian and English.⁴⁵ Such decisions may be appealed within

⁴⁰ Data obtained from the UNHCR Office in Serbia.

⁴¹ *Official Gazette of the RS*, No. 79/17.

⁴² *Official Gazette of the RS*, No. 35/18.

⁴³ *Official Gazette of the RS*, Nos. 24/18 and 21/19.

⁴⁴ Art. 15(2) of the FL.

⁴⁵ Decisions on refusal of entry are issued in accordance with the Rulebook on the Design of Forms of Decisions Refusing or Granting Entry into the RS and Entry of Data on Refusal of Entry in the Travel Documents of Foreigners (*Official Gazette of the RS*, 50/18). The form of the decision on refusal of entry is an integral part of the Rulebook and is available in Serbian at: <http://bit.ly/31mNIWz>.

eight days from the day of service. The appeals are reviewed by the MI and do not stay enforcement of the decisions.⁴⁶

In his report of January 2019, the UN Special Rapporteur on torture noted that the considerations underlying and informing the decision of the Border Police to refuse entry and initiate forcible return were not documented with sufficient precision in individual case files and that any such deportation decision did not appear to be subject to a legal remedy involving an individual assessment of the risk of *refoulement* to a place where the person in question might be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁴⁷

The UN Special Rapporteur on torture expressed serious concern that refusal of entry and, more importantly, deportation decisions based on the personal perceptions of individual border guards, if not properly documented and subjected to independent judicial review, bore a great risk of arbitrariness and, in certain cases, might well amount to *refoulement* in violation of human rights law and, in particular, of the prohibition of torture and ill-treatment.⁴⁸ The procedure of deporting foreigners refused entry into the RS must be implemented in compliance with procedural guarantees.⁴⁹

During their interventions, BCHR lawyers noted that Belgrade BPS officers still did not issue foreigners refused entry individual decisions specifying the grounds why they were refused entry into the RS.⁵⁰ Therefore, foreigners in principle do not have the possibility of appealing such decisions, because the Belgrade BPS does not issue them in the first place.⁵¹ A decision on refusal of entry has been issued only in one case, of Turkish national H.I.⁵²

The deficiencies identified by the UN Special Rapporteur on torture were not eliminated in the first half of the year. The Belgrade BPS' practice leads to the conclusion that the procedure in which foreigners are refused entry into the country is still for the most part implemented in an informal fashion, without compliance with any procedural guarantees.

⁴⁶ Art. 80 of the FL.

⁴⁷ *Visit to Serbia and Kosovo**, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the UN Human Rights Council, A/HRC/40/59/Add.1 (25 January 2019), para 50. Available at: <http://bit.ly/2MN24eO>.

⁴⁸ *Ibid.*, para. 51.

⁴⁹ *Ibid.*

⁵⁰ Art. 15(2) of the FL.

⁵¹ The possibility of appeal in such cases is provided by Art. 16 of the FL.

⁵² BCHR lawyers intervened in this case.

2.2.2. Expressing the Intention to Seek Asylum

In the vast majority of cases in which BCHR lawyers intervened, foreigners expressed the intention to seek asylum at the airport only after the Border Police officers refused them entry into the RS.⁵³ Under the FL, foreigners not fulfilling requirements for lawful entry may be allowed to enter Serbia for humanitarian reasons, which is precisely why asylum is sought.⁵⁴

When foreigners express the intention to seek asylum at border crossings, police officers are under the obligation to provide them with access to the asylum procedure, register their intention and issue them certificates of registration.⁵⁵ Most foreigners on whose behalf BCHR intervened were issued certificates of registration, but only after some time, after they had been detained (sometimes) several days at the Airport. Foreigners issued certificates are advised to initiate the asylum procedure implemented by the relevant authority under the LATP, i.e. the AO.

Regardless of the moment when the intention to seek asylum is expressed or the fact that a foreigner does not fulfil the requirements for entry into the RS, Border Police officers are under the obligation to review (potential) risks of persecution⁵⁶ or treatment violating the prohibition of torture⁵⁷ before they return the foreigners to the countries they had come from. Therefore, the competent authority, the Belgrade BPS in this case, must provide foreigners with access to the procedure in which they will relate all the relevant facts of the risks they may be exposed to in case they are returned to their country of origin or the countries they had passed through on their way to Serbia.

Belgrade BPS officers have to be aware of the fact that their denial of access to the asylum procedure or of entry to foreigners, who have no possibility of appeal, may have severe and irreparable consequences. This is why they need to devote particular attention to foreigners coming from war-torn countries or countries with poor human rights records.

⁵³ It, however, remained questionable whether the foreigners on whose behalf the BCHR intervened actually wanted to apply for asylum, given that some of them, once granted entry into the RS, no longer maintained contact with the BCHR or expressed interest in the asylum procedure in the RS.

⁵⁴ Art. 15(2) of the FL.

⁵⁵ Art. 35 of the LATP.

⁵⁶ In the context of Article 1 of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto.

⁵⁷ In the context of Article 3 of the European Convention on Human Rights and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2.2.3. Inadequate Accommodation Conditions at “Nikola Tesla” Airport

The LATP provides for the implementation of the asylum procedure at border crossings or transit areas of airports or inland ports.⁵⁸ The Law allows the implementation of the asylum procedure at these venues provided that the asylum seekers are provided with adequate accommodation and food, that their asylum applications may be dismissed as ill-founded because they are ineligible for asylum or subsidiary protection, and the requisite circumstances are in place to review their applications under the accelerated procedure.⁵⁹ Furthermore, the asylum procedure may be conducted at a border crossing when the asylum application can be dismissed without reviewing it on the merits.⁶⁰

The LATP does not obligate the AO to issue a separate decision allowing the implementation of the asylum procedure in a transit zone. It does, however, lay down that the AO shall rule on the submitted application within 28 days from the day of submission.⁶¹ If it fails to do so, it shall allow the asylum seeker to enter Serbia and pursue his asylum claim.⁶² The applicant is entitled to appeal a decision on his/her asylum application with the Asylum Commission within five days from the day of service.⁶³

Provision of adequate accommodation and food for asylum seekers is one of the prerequisites that must be in place to implement the asylum procedure in the transit zone. In its report on its visit to the Belgrade BPS at “Nikola Tesla” Airport, the NPM qualified the conditions in the facility in which foreigners refused entry into the RS are detained as

⁵⁸ Art. 41 of the LATP.

⁵⁹ Under Article 40 of the LATP, a decision on an asylum application shall be rendered in an accelerated procedure if it has been established that: 1) the applicant has presented only the facts that are irrelevant to the examination of the admissibility of the asylum application; 2) the applicant has consciously misled the AO by presenting false information; 3) the applicant has destroyed or concealed documents establishing his/her identity and/or nationality in bad faith so as to provide false information about his/her identity and/or nationality; 4) the applicant has presented manifestly inconsistent, contradictory, inaccurate, or unconvincing statements, contrary to the verified information about the country of origin, rendering his/her application implausible; 5) the applicant has submitted a subsequent asylum application that is admissible; 6) the applicant has submitted his/her asylum application for the clear purpose of postponing or precluding his/her removal from the Republic of Serbia; 7) the applicant poses a grave threat to national security or public order; 8) it is possible to apply the safe country of origin concept.

⁶⁰ Art. 42 of the LATP lays down that decisions dismissing asylum applications without reviewing them on the merits shall be rendered if it is possible to apply the concept of first country of asylum in accordance with Art. 43 of the LATP or the concept of safe third country in accordance with Art. 45 LATP.

⁶¹ Art. 41(5) of the LATP.

⁶² Art. 41(6) of the LATP.

⁶³ Art. 41(7) of the LATP

substandard in terms of space, furnishing, hygiene, heating and lighting.⁶⁴ The UN Special Rapporteur on torture came to that conclusion as well.⁶⁵ He called on Serbia to ensure “adequate material conditions in any holding area, including in areas such as airport transit zones, where persons may be held pending their deportation or return to their airport of departure.”⁶⁶

To the best of BCHR’s knowledge, the living conditions in the Airport transit zone have not been improved in the first half of 2019. That means that the entire asylum procedure cannot be implemented in the Belgrade Airport transit zone. Instead, after registering the foreigners’ intention to seek asylum at the airport, Belgrade BPS officers refer them to a reception or AC, where they can apply for asylum.⁶⁷

2.2.4. Conclusion and Recommendations

The Belgrade BPS officers’ failure to issue reasoned decisions refusing foreigners entry into the RS is in violation of the Foreigners Law.⁶⁸ The UN Special Rapporteur on torture recommended to Serbia to, *inter alia*, ensure that such decisions were properly documented and subjected to independent judicial review. All foreigners issued such decisions must be informed, in a language they understand, of their content and their rights, especially their right to a legal remedy. The MI should, as soon as possible, put in place the conditions for the fulfilment of this recommendation and review the possibility of proposing to the National Assembly that it amend the FL to facilitate judicial reviews of decisions refusing foreigners entry into the country. Under the law as it stands now, foreigners may appeal such decisions with the MI, which is an administrative authority, albeit their appeals do not have suspensive effect.

The Belgrade BPS’ practice indicates that there is a real risk that it will not always recognise the foreigners’ need for international protection, although it has identified it in specific cases. Border Police officers must continuously inform themselves of the situation

⁶⁴ *Report on the visit to the Belgrade Border Police Station at Nikola Tesla Airport*, NPM – Protector of Citizens of the RS, Ref. No. 281-83/18, 25 October 2018, p. 5. The Report is available in Serbian at: <http://bit.ly/2yGPC86>.

⁶⁵ *Visit to Serbia and Kosovo*, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the UN Human Rights Council*, A/HRC/40/59/Add.1, 25 January 2019, para 33. Available at: <http://bit.ly/2MN24eO>.

⁶⁶ *Ibid*, para. 108(a).

⁶⁷ Information obtained from BCHR lawyers who extended legal aid to foreigners detained at “Nikola Tesla” Airport.

⁶⁸ Art. 15 of the FL.

in war-torn countries and countries where human rights are flagrantly violated. With a view to precluding the risk of their failure to recognise *prima facie* refugees, the Border Police need to interview the foreigners about the reasons why they had left their country of origin, always with the assistance of interpreters and in consultation with AO staff, before they decide to refuse them entry into the RS. Given that the Border Police may find it complicated to secure an interpreter in each individual case, the MI may wish to consider the possibility of soliciting UNHCR and other organisations to place interpretation services at the disposal of the Belgrade BPS.

Finally, the material conditions in the transit zone still fall short of those required to enable the detention of foreigners and implementation of the asylum procedure at the airport. The MI should request of the National Assembly to envisage an allocation in the State Budget Law for the renovation of the Belgrade Airport transit zone facility in which foreigners refused entry are detained to ensure that they are held in conditions not violating their human dignity.

3. ANALYSIS OF SPECIFIC ASYLUM-RELATED DECISIONS

The AO issued nearly three times fewer decisions in Q2 2019 than in Q1 2019.⁶⁹ BCHR lawyers noticed that the first-instance procedures were unduly long, as will be elaborated further in the text.

The BCHR is not in possession of data on the total number of decisions the Asylum Commission adopted in 2019.⁷⁰ In Q2 2019, the Asylum Commission adopted three decisions on BCHR's appeals. In over a decade of work, the second-instance authority upheld only two asylum applications on appeal, i.e. it reviewed them on the merits and, as opposed to the AO, granted the applicants asylum.⁷¹ Such a practice leads to the conclusion that the AO is the only authority granting asylum.⁷² The Asylum Commission practice mostly boils down to assessing the procedural violations during the first-instance procedure and upholding the claims in the appeals or confirming the lawfulness of the first-instance decisions. In BCHR's view, the Asylum Commission has not been exercising all its legal powers, thus bringing into question the effectiveness of appeals in the asylum procedure.

Before embarking on an analysis of the decisions of first- and second-instance asylum authorities, the authors of this Report wish to draw attention to several important issues regarding the implementation of the LATP, which are of relevance to a better understanding of the decisions of the AO and Asylum Commission.

Namely, the LATP has been applied since 2 June 2018 and it may be considered more favourable for asylum seekers in specific aspects⁷³ than its predecessor, the LA.⁷⁴ Under the LATP, all asylum procedures initiated before the coming into effect of this Law

⁶⁹ It should, however, be borne in mind that the decisions adopted in Q1 2019 mostly regarded cases opened in 2018. More in BCHR's *Right to Asylum in the Republic of Serbia Periodic Report for January-March 2019*, April 2019. Available at: <http://bit.ly/2ON9CRi>.

⁷⁰ Including all cases pending before the Asylum Commission, whether or not the asylum seekers are represented by BCHR legal team.

⁷¹ Asylum Commission Decisions No. Až - 25/09 of 23 April 2010 and Až - 06/16 of 12 April 2016.

⁷² The Administrative Court has not upheld any asylum applications since the asylum system in the RS was established in 2008. When it did uphold the claims of the plaintiffs, it referred the cases back to the Asylum Commission for reconsideration.

⁷³ *Ibid.*

⁷⁴ *Official Gazette of the RS*, No. 109/07.

shall be completed in accordance with provisions of the LA, unless the provisions of this Law are more favourable for the applicants.⁷⁵ This is particularly important with regard to the application of the safe third country concept.

The inadequate and frequently automatic⁷⁶ application of the safe third country concept had been one of the main reasons why only 156 people had been granted asylum or subsidiary protection in the RS in the 2008-2018 period.⁷⁷ Under the LA, the relevant asylum authorities adopted numerous decisions dismissing asylum applications⁷⁸ in the event the applicants had come to Serbia from countries listed in the Serbian Government Decision on Safe Countries of Origin and Safe Third Countries.⁷⁹ The asylum authorities sporadically reviewed the merits of applications filed by foreigners who had come to Serbia from North Macedonia or Bulgaria, but the percentage of negative decisions was still high (around 70% in 2017).⁸⁰

The LATP governs the application of the safe third country concept differently than its predecessor. Under the LATP, a safe third country denotes a country in which the asylum seeker is safe from persecution as defined in Article 24 of the LATP,⁸¹ or from suffering serious harm.⁸² Safe third countries must guarantee asylum seekers formal and substantive protection from *refoulement* and provide them with access to an effective procedure.⁸³ During their determination of whether a specific country can be considered

⁷⁵ Art. 103 of the LATP.

⁷⁶ Asylum authorities had for years relied almost exclusively on the Serbian Government Decision on Safe Countries of Origin and Safe Third Countries (*Official Gazette of the RS*, No. 67/09) and dismissed numerous asylum applications without reviewing them on the merits in the event the asylum seekers had transited through any of the countries listed as safe in the Decision on their way to Serbia. These “safe third” countries included, *inter alia*, all the states Serbia borders with.

⁷⁷ More in Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018 Annual Report*, BCHR, April 2019, pp. 45-51. Available at: <http://bit.ly/2Kw874P>.

⁷⁸ Pursuant to Art. 33 of the LA.

⁷⁹ *Official Gazette of the RS*, No. 67/09.

⁸⁰ A detailed analysis of the application of the safe third country concept is available in Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia 2018 Annual Report*, BCHR, April 2019, pp. 45-51. Available at: <http://bit.ly/2Kw874P>.

⁸¹ Article 24 reads as follows: “The right to refuge, i.e. refugee status shall be granted to an asylum seeker outside his country of origin or country of habitual residence if there are justified grounds to fear his persecution on account of his race, sex, language, religion, ethnicity, membership of a social group or political opinion, due to which he is unable or unwilling to avail him/herself of the protection of that state.”

⁸² Serious harm shall comprise threats of death by penalty or execution, torture, inhuman or degrading treatment or punishment, as well as serious and individual threat to life by reason of indiscriminate violence in situations of international or internal armed conflict (Art. 25(2)).

⁸³ Art. 45(1) of the LATP.

safe, the relevant authorities must review each application individually and obtain assurances from that country that it will allow the asylum seeker back in its territory and review his/her asylum application. In the event the third country refuses to let in an asylum seeker whose application was dismissed in the RS, the RS authorities are under the obligation to review his/her application on the merits.⁸⁴

The entry into force of these provisions led to the improvement of the AO's practice to an extent. The number of cases in which it reviewed the merits and existence of reasonable fear of persecution increased significantly by the end of 2018. However, these cases primarily regarded asylum seekers who had applied for asylum after the LATP came into force. The AO, on the other hand, continued automatically applying the safe third country concept in cases opened at the time the LA was in force. Such a practice is in contravention of the LATP which, as already noted, lays down that it shall apply whenever its provisions are more favourable for the asylum seekers.

The following section of the Report analyses specific AO and AC decisions rendered in the 1 April-30 June 2019 period, notably in cases in which asylum seekers from Afghanistan, Iran, India and Pakistan were represented by BCHR lawyers.

3.1. FIRST-INSTANCE DECISIONS

3.1.1. Case of Asylum Seekers Survivors of Sexual and Gender-Based Violence

The AO dismissed an asylum application filed by a single mother from Iran, X. and her underage daughter Y, taking the view that Turkey could be considered a safe third country for them.⁸⁵ The Office rendered this decision after reconsidering the case referred back to it by the AC, which overturned its prior decision⁸⁶ on 4 September 2018.⁸⁷ The AO based its initial decision, also dismissing the asylum application, on identical arguments, that Turkey was a safe third country. Therefore, the AO's second decision is nearly

⁸⁴ Art. 45(5) of the LATP.

⁸⁵ Decision No. 26-148/18 of 1 April 2019.

⁸⁶ AO Decision No. 26-148/18 of 21 May 2018.

⁸⁷ In its Decision No. Až-26-1/18 of 3 July 2019, the Asylum Commission overturned AO Decision No. 26-148/18 of 21 May 2018. Although the applicants' legal representative presented extensive evidence of the lack of effective protection in Turkey in the appeal which the AO had failed to consider, the Asylum Commission did not pay any heed to it either and referred the case back to the AO for reconsideration merely because of the procedural violations. Namely, the first-instance decision had been signed by the Deputy Head of the AO, who is not legally entitled to sign the AO decisions.

identical to its initial one, which was overturned on appeal. The case was again pending on appeal before the Asylum Commission, because the applicants' legal representative identified several gross omissions of the relevant authorities that will be elaborated below.

The case of X. and Y. is specific because it concerns a single mother and her underage child. They had been subjected to multiple gender-based physical and psychological violence, which the LATP recognises as acts of persecution.⁸⁸ Although the applicants had asked the relevant authorities in Iran for help on numerous occasions, they were not extended adequate support and the violence against them continued.

X. and Y. tried to resettle in other cities in their country of origin (*internal flight alternative*), but faced discrimination there because of their refusal to comply with strict traditional and religious norms.⁸⁹ Namely, the Iranian legal system punishes all conduct deviating from stereotyped gender roles; forcible submission of women to obedience by men is socially acceptable.⁹⁰ Furthermore, Iran is one of the few countries in the world that has not ratified the Convention on the Elimination of All Forms of Discrimination against Women.⁹¹

The child, Y., was in real danger of being subjected to harmful traditional practices and child marriage,⁹² given that 13 is the minimum age for marriage under Iranian Sharia law.⁹³ All these reasons led X. and Y. to leave their country of origin in April 2016 and go to Turkey.

⁸⁸ Art. 28(2(1)) of the LATP.

⁸⁹ Minutes of the Oral Hearing in Case No. 26-148/18 held on 24 April 2018.

⁹⁰ See *Women's Rights in Iran*, Human Rights Watch, 28 October 2015. Available at: <http://bit.ly/2Se8Hra>.

⁹¹ More on the international human rights treaties ratified by Iran and its fulfilment of its treaty obligations at: <http://bit.ly/2Sdmmih>.

⁹² According to UNHCR Guidelines, domestic violence, forced marriage, violations of survival and development rights as well as severe discrimination of children born outside strict family planning rules may be considered persecution. See *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/09/08, 22 December 2009, paras. 19 and 33. Available at: <http://bit.ly/2LRnV4b>.

⁹³ Around 40,635 marriages of girls under 16 were registered between 2012 and 2013; over 8,000 of them were married to men at least 10 years their senior. Furthermore, marriages of at least 1,537 girls under 10 were registered in 2012, twice as many as in 2011. See *Situation of human rights in the Islamic Republic of Iran*, UN General Assembly, UN Doc. A/69/356, Geneva, 27 August 2014. Available at: <http://bit.ly/2YTnVaK>.

a) Non-Application of the More Favourable Law

At the beginning of the asylum procedure, X.'s and Y.'s legal representative asked that the LATP apply to their case although they had applied for asylum at the time the LA was in effect.⁹⁴ He emphasised that the LATP was more favourable for X. and Y. because it elaborated, to a greater extent than its predecessor, the principles of gender equality and sensitivity,⁹⁵ of ensuring special procedural and reception guarantees for children and single mothers and their underage children,⁹⁶ and the mentioned provisions on the application of the safe third country concept.⁹⁷ Furthermore, the LATP lays down the principle of the best interests of the child, which did not exist in the LA.⁹⁸

In its explanation of its decision, the AO did not specify why it held that there was no call to apply the LATP, which is more favourable for the applicants, and why it applied the LA instead. Under the LGAP, administrative authorities are under the obligation to properly, truthfully and fully establish all the facts and circumstances of relevance to the lawful and correct resolution of administrative matters.⁹⁹ Furthermore, administrative authorities are under the obligation to rule on all motions and proposals of the parties,¹⁰⁰ which the AO failed to do in this case.

b) Turkey is Not a Safe Country for SGBV Survivors

Under the LATP, a safe third country shall denote a state in which an asylum seeker enjoys safeguards against *refoulement*, has the possibility of accessing an effective procedure and enjoys protection under the 1951 Convention relating to the Status of Refugees.¹⁰¹ The AO found that Turkey, through which X. and Y. had passed on their way to Serbia, was safe for them, but it did not take into account their particular

⁹⁴ Namely, under Art. 103 of the LATP, this Law shall apply in asylum procedures initiated before it came into force in the event its provisions are more favourable for the asylum seekers.

⁹⁵ Art. 16 of the LATP.

⁹⁶ Art. 17 of the LATP.

⁹⁷ Art. 45 of the LATP.

⁹⁸ Art. 10 of the LATP.

⁹⁹ Art. 10(1) of the LGAP.

¹⁰⁰ Art. 106(4) of the LGAP.

¹⁰¹ Art. 45(1) of the LATP.

vulnerabilities¹⁰² or the Turkish authorities' ability to extend them the requisite protection.

X. and Y. had spent a year and a half in Turkey, attempting to obtain adequate protection from the Turkish authorities, which were constantly referring them to the UNHCR.¹⁰³ They moved from one town to another in the attempt to flee their family members, who threatened to take Y. away from X. by force and they asked the official Turkish authorities for help every time. The latter's only response was that they should move to another town. The fourth time they moved, the Turkish police told them that they could no longer protect them and suggested they return to Iran.

Therefore, X. and Y. had not been provided with "special protection" from gender-based violence in Turkey. The extension of such protection, i.e. the provision of special procedural guarantees to asylum seekers is particularly important in cases of children, precisely because of their "extreme vulnerability".¹⁰⁴ In addition to general safeguards against *refoulement*, procedural guarantees in cases of children include, *inter alia*, guarantees of an adequate level of protection tailored to their specific needs, related, in particular, to their gender, age and health status.¹⁰⁵

Assessments of the risk of *refoulement* and violations of other human rights in case of return to a country qualified as a safe third country must involve not only perusal of reports published by the authorities of these third countries; these reports must be assessed against information from other reliable and impartial sources as well.¹⁰⁶ Furthermore the assessments must be conducted in the light of the following two factors: the general situation in that state and the personal circumstances of the person at issue and in the light of the combination of these two factors.¹⁰⁷ In other words, the AO was obligated to ascertain the general state of affairs concerning the protection of refugees in Turkey *proprio motu*, from various sources, not only on the basis of the information provided by its Turkish authorities. Furthermore, it should have assessed whether Turkey was capable of providing X. and Y. with protection in the meaning of the LATP,

¹⁰² Art. 17(1) of the LATP recognises, *inter alia*, the following vulnerable groups: children, single parents and their underage children, victims of grave forms of psychological or physical violence and lays down that they shall be provided with special guarantees during the asylum procedure.

¹⁰³ Minutes of the Oral Hearings in Case No. 26-148/18 held on 24 April 2018 and 14 February 2019.

¹⁰⁴ *Tarakhel v. Switzerland*, ECtHR, App No. 29217/12 (2014), para. 99.

¹⁰⁵ *Ibid*, paras. 118-119.

¹⁰⁶ *Rahimi v. Greece*, ECtHR, App. No. 8687/08 (2011), para. 65.

¹⁰⁷ *Salah Sheekh v. The Netherlands*, ECtHR, App. No. 1948/04 (2007), para. 136.

as well as the standards arising from the case-law of the ECtHR, given their personal circumstances and vulnerabilities,

As far as the general situation is concerned, Turkey is the only Council of Europe Member State that maintains a geographical limitation to the of the 1951 Convention and 1967 Protocol relating to the Status of Refugees, wherefore it is not under the obligation to apply its provisions to non-European refugees.¹⁰⁸ Furthermore, the Turkish authorities' poor treatment of refugees and asylum seekers is documented in numerous public reports of UN treaty bodies and international organisations.¹⁰⁹

The "conditional refugee status" Turkey offers refugees from non-European countries, with the exception of those from Syria,¹¹⁰ guarantees a much narrower scope of protection.¹¹¹ The few individuals granted such status are, *inter alia*, not offered the prospect of long-term legal integration in Turkey and are excluded from family reunification rights.¹¹²

At the time X. and Y. were living in Turkey, its authorities were systematically and automatically dismissing all asylum applications filed by Iranian nationals¹¹³ wherefore they faced the risk of *refoulement* to Iran. Furthermore, the Turkish authorities were constantly referring them to the UNHCR and third country resettlement that would allow them to exercise their rights and they were unaware Turkey had a procedure in place for granting international protection.¹¹⁴ However, the AO said the following in its decision dismissing X.'s and Y.'s asylum application:

She said she had not applied to the Turkish authorities to regulate her status and file an asylum application, but the UNHCR opened her case in

¹⁰⁸ See more at: <http://bit.ly/2Gc1lQh>.

¹⁰⁹ See, *inter alia*, reports on Turkey by UN treaty bodies, available at: <http://bit.ly/2JEDycL>. See also *World Report 2019 – Turkey*, Human Rights Watch, January 2019, available at: <http://bit.ly/2Y0UWSe>; and, *Amnesty International Report 2017/18 – Turkey*, Amnesty International, February 2018, available at: <http://bit.ly/2LhzUbT>.

¹¹⁰ A so-called temporary protection system has been established for refugees from Syria, but it, too, guarantees a lower degree of protection than the 1951 Convention and does not offer the prospect of s long-term integration. To recall, the very essence of refugee protection is to ensure the human dignity of the refugees and find lasting solutions for them. See *Country Report: Turkey*, AIDA, 2019, pp. 111-153. Available at: <http://bit.ly/2xOzotk>.

¹¹¹ More on various forms of protection in: *Country Report: Turkey*, AIDA, 2019. Available at: <http://bit.ly/2xOzotk>.

¹¹² *Ibid.*

¹¹³ *Ibid.*, p. 55.

¹¹⁴ Minutes of the Oral Hearings in Case No. 26-148/18 held on 24 April 2018 and 14 February 2019.

*accordance with the Law on Foreigners and International Protection, wherefore the applicant had hoped that they would be resettled in a third country. All of the above leads to the conclusion that the applicant had been well informed of her rights and obligations while she was in Turkey, of how the asylum system functioned and the resettlement procedure conducted by the UNHCR, i.e. that she was secured the right to information, which is one of the initial indicators that the system is functioning.*¹¹⁵

In addition to its incorrect assessment of the general treatment of refugees in Turkey, the AO's explanation of its decision in the X. and Y. case does not clarify what led it to believe that Turkey was a safe country given the special circumstances of the asylum seekers at issue. The AO did not even mention in its decision whether Turkey had in place a system for the protection of single mothers in need of international protection, who had survived multiple gender-based violence in their country of origin. Nor did it mention the particular vulnerability of the child, especially a child who had been subjected to violence since early childhood. The applicants' legal representative had described all this information – both general and individual information and evidence – in detail and corroborated them with information from relevant impartial sources, which he forwarded to the AO.¹¹⁶

Available information on the state of human rights of women refugees in Turkey shows that they are at heightened risk of sexual and other forms of violence in that country.¹¹⁷ CEDAW identified multiple systemic problems giving rise to violations of the human rights of women who had fled persecution in their countries and sought refuge in Turkey. Namely, CEDAW described the living conditions of female refugees as precarious and insecure.¹¹⁸ It noted they were often deprived of basic services and essential goods, education, economic opportunity, health care, clothing, food, hygiene articles, et al.¹¹⁹. CEDAW also expressed concern about the pervasive underreporting of gender-based violence against refugee women, including sexual violence, and the limited availability of specialised services.¹²⁰

¹¹⁵ AO Decision No. 26-148/18 of 1 April 2019, p. 8.

¹¹⁶ The legal representative submitted relevant UNHCR reports, most recent observations on Turkey published by UN treaty bodies and EASO reports.

¹¹⁷ *Concluding observations on the seventh periodic report of Turkey*, CEDAW, CEDAW/C/TUR/CO/7, Geneva, 25 July 2016, paras. 14-15. Available at: <http://bit.ly/2xL9oPp>.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

CAT also noted that Turkey faced serious problems in protecting women and children from domestic violence.¹²¹ It was also concerned at reports that women, who had received or applied for protection orders, have not received effective protection from the State party's authorities in practice, resulting in a number of cases in which they were subsequently killed.¹²²

Furthermore, the AO did not obtain assurances from Turkey, qualified as a "safe third country", that it would allow X. and Y. to return and provide them with access to the asylum procedure and adequate reception conditions.¹²³ The AO said in its decision that Turkey was on the list of safe third countries drawn up by the RS Government. It also outlined the temporary protection system in Turkey and assessed that non-European and non-Syrian refugees were not afforded the same level of protection and that they were precluded from long-term integration. The AO, however, also quoted statistical data on the number of individuals who had exercised the right to protection in Turkey but did not specify their countries of origin.¹²⁴ The Office ended its reasoning with the following conclusion:

*All of the above clearly corroborates that X. and her underage daughter Y. would have been provided with access to the asylum procedure in Turkey had they wanted to access it. Therefore, in this specific case, Turkey can be considered a safe third country for the above asylum seekers, wherefore there is no doubt that the requirements for applying Article 33(1)(6) of the Law on Asylum have been fulfilled.*¹²⁵

Therefore, the AO insufficiently assessed the risk of ill-treatment X. and Y. would face in Turkey. Nor did it obtain adequate assurances that X. and Y. would be received

¹²¹ *Concluding observations on the fourth periodic report of Turkey*, CAT, CAT/C/TUR/CO/4, Geneva, 2 June 2016. Available at: <http://bit.ly/2xrUSf4>.

¹²² *Ibid*, para. 45.

¹²³ Diplomatic assurances cannot per se be used as evidence that an individual is not at risk of *refoulement*, i.e. they do not exclude the state's obligation to conduct a rigorous assessment of the conditions in the third country, with respect to the personal circumstances and vulnerabilities of the individuals whose deportation is being considered. See *General Comment No 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, CAT, Geneva, 9 February 2018, paras. 19-20. Available at: <http://bit.ly/2YVVSo0>.

¹²⁴ For example, the AO said that "[T]he Turkish Directorate General of Migration Management specified in its 2016 annual report on migration that 66,167 applications for international protection were lodged and that international protection was granted in 23,886 cases." It, however, remains unclear which countries these individuals had come from and what kind of protection they had applied for.

¹²⁵ AO Decision No. 26-148/18 of 1 April 2019, p. 10.

in Turkey and that the Turkish authorities would allow them to apply for asylum. The AO thus exposed X. and Y. to the risk of violation of the absolute prohibition of torture in case of their removal to Turkey.

c) Failure to Assess the Best Interests of the Child

In this case, the AO failed even to mention let alone assess the best interests of the child, as it is obligated to under Article 3 of the ratified CRC,¹²⁶ as well as Article 10 of the LATP. Namely, the state has the positive obligation to ensure that the best interests of the child are a “primary consideration” during the implementation of these activities and adoption of decisions concerning children, including decisions ordering their return to countries qualified as “safe third countries”.¹²⁷

The CRC Committee has held that States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.¹²⁸ This is one of the broadest definitions of *refoulement* in international law. It entails assessment of the risk of returning a child to a specific state vis-à-vis a very extensive set of child rights, especially in the light of the children’s right to life, survival and development.¹²⁹ The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.¹³⁰

This practically means that the AO decision should have, at the very least, included an evaluation of the possible positive and negative impact of returning the child to Turkey.¹³¹ In that sense, the state authorities are under the obligation to explain how they had taken the best interests of the child into account and weighed the child’s interests weighed against other considerations, be they broad issues of policy or

¹²⁶ *Official Gazette of the SFRJ – International Treaties No. 15/80, Sl. list SRJ – International Treaties Nos. 4/86 and 2/97.*

¹²⁷ Pursuant to Art. 3(1) of the CRC.

¹²⁸ CRC Committee, *General comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, Geneva, 1 September 2005, para. 27. Available at: <http://bit.ly/2Tg4Avl>.

¹²⁹ *Ibid*, paras. 26-30.

¹³⁰ *Ibid*, para. 27.

¹³¹ CRC Committee, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC /C/GC/14, Geneva, 29 May 2013, para. 6(c). Available at: <http://bit.ly/2KIRpGi>.

individual cases.¹³² Therefore, even if Turkey is safe for the mother (as it is not), that does not mean it is also safe for Y.¹³³

The reasoning of the decision indicates that the AO ignored the best interests of the child. Therefore, not only did it fail to pay adequate attention to the best interests of the child when it was deciding on the asylum application but it grossly neglected Y.'s interests as well. Such conduct by the AO is in contravention of the positive obligations the RS undertook when it ratified the CRC.¹³⁴ Although the prior LA did not explicitly lay down the obligation of asylum authorities to assess the children's best interests, the AO was under the obligation to do so both under the CRC and the RS Constitution.¹³⁵ Its failure to do so exposed Y. to the risk that her rights to life, survival and development would be violated.

3.1.2. Dismissal of the Asylum Application of an Afghani National

In the latter half of April 2019, the AO issued a decision¹³⁶ dismissing an asylum application filed by an Afghani national. The AO concluded that he did not fulfil the requirements for asylum and subsidiary protection laid down in the LA.¹³⁷

Whilst in Afghanistan, the asylum seeker and his family members received death threats from rebel groups (the Taliban and the so-called "Islamic State of Iraq and the Levant") because his two older brothers were working in state institutions. They received letters threatening them with death; his eldest brother, a police officer, was told that he and his family would be killed if he did not quit. During the oral hearing, the asylum seeker said that state officials in Afghanistan were branded infidels by the Taliban and the so-called "Islamic State of Iraq and Levant" and that their lives and the lives of their families were in danger.¹³⁸

¹³² *Ibid.*

¹³³ *Tarakhel v. Switzerland*, ECtHR, App No. 29217/12, 2014, paras 116-122.

¹³⁴ Art. 3 of the CRC proclaims that the best interests of the child shall be a primary consideration in all actions concerning children, while Art. 39 of the Convention obligates states to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim.

¹³⁵ Under Article 18(2) of the Constitution of the RS, "The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws."

¹³⁶ AO Decision No. 26-1278/17 of 17 April 2019.

¹³⁷ The asylum application was filed on 5 July 2017 and the procedure was conducted in accordance with the LA, which was in force at the time.

¹³⁸ Minutes of the Oral Hearing held on 6 October 2017.

During its assessment of the asylum seeker's fulfilment of requirements for subsidiary protection, the AO said that he had not been subject to ill-treatment and would not be subject to it in case he returned to Afghanistan. The AO failed to take into account reports of international bodies and other relevant organisations the BCHR referred to during the first-instance procedure.¹³⁹

The AO's decisions should be based on scrupulous and diligent assessments of all individual pieces of evidence and the evidence on the whole, as well as on the results of the entire proceedings.¹⁴⁰ Furthermore, pursuant to the LATP, when it was reviewing the admissibility of the application, the AO should have particularly taken into account the relevant facts and evidence presented by the asylum seeker during the procedure, as well as the latest reports on the situation in his country of origin contained in various sources of international human rights organisations.¹⁴¹

According to the most recent UNHCR guidelines regarding asylum seekers from Afghanistan,¹⁴² anti-Government forces have been systematically targeting, *inter alia*, family members of people employed in the Government and pro-Government armed forces.¹⁴³ UNHCR has held that these individuals may be in need of refugee protection on account of their reasonable fear of persecution by non-state actors and the inability of the relevant Afghani authorities to extend them adequate protection. Notwithstanding, in the reasoning of its decision, the AO said that the asylum seeker had not proven that he was at risk of persecution in his country of origin.

The AO noted that the asylum seeker's legal representative had submitted reports on the security situation in Afghanistan and on the psychological assessment of the asylum seeker.¹⁴⁴ These reports described the persistent indiscriminate violence in

¹³⁹ *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UNHCR, Geneva, 30 August 2018, available at: <http://bit.ly/30utb1O>; *The 2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, UNAMA, Kabul, February 2017, available at: <http://bit.ly/2Y0e16Z>; *Quarterly Report on the protection of civilians in armed conflict: 1 January to 30 September 2018*, UNAMA, Kabul, 10 October 2018, p. 2, available at: <http://bit.ly/32l8Lu1>; *Afghanistan: Security Situation – Update*, EASO, Valetta, May 2018, p. 26, available at: <http://bit.ly/2xx6RIy>.

¹⁴⁰ Art. 10 of the LGAP.

¹⁴¹ Art. 32(2(1 and 2)) of the LATP.

¹⁴² *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UNHCR, Geneva, 30 August 2018. Available at: <http://bit.ly/30utb1O>.

¹⁴³ *Ibid*, p. 39.

¹⁴⁴ The asylum seeker was diagnosed with an anxiety-depressive disorder and prescribed a therapy. It was also concluded that the living conditions in the AC he has been staying in, as well as long-term uncertainty

Afghanistan and its effects on the asylum seeker's mental health. All of this leads to the conclusion that he was in need of international protection. The first-instance asylum authority, however, held otherwise.

The AO did not assess the listed evidence or explain why it failed to do so, which is in contravention of the LGAP, under which the reasoning of a decision must specify reasons that were decisive during the assessment of each piece of evidence, i.e. why some evidence was or was not taken into account.¹⁴⁵ On the other hand, the AO selectively used some reports when it ruled on this specific application, given that it quoted only parts of reports corroborating its decision to dismiss the asylum application. It came to the conclusion that Afghanistan could be considered a safe country only on the basis of information about the voluntary return of over five million Afghani refugees to Kabul, Herat and Mazar-e-Sharif since 2002.¹⁴⁶ Furthermore, the AO totally ignored the legal representative's submissions proving the increase in the number of victims across Afghanistan over the past few years and indicating that the Taliban have been attacking civilians and representatives of state authorities and thus corroborating the existence of indiscriminate violence.

Therefore, the AO failed to establish all the facts in this case or provide an appropriate justification of its decision. The legal representatives thus filed an appeal with the Asylum Commission.

3.1.3. One Positive Decision

In its decision of 29 May 2019, the AO granted asylum to an Afghani national who applied for asylum in March 2019.¹⁴⁷ It found that the applicant was at risk of persecution on two grounds in his country of origin: his ethnicity and membership of a social group.¹⁴⁸ The asylum seeker had been a target of the Taliban's verbal and physical assaults because he worked in various ministries in Kabul and because he is an ethnic Tajik. As noted above, UNHCR recognised that Government officials and public servants could be in need of

about the outcome of the asylum procedure, could substantially undermine his already deteriorated mental health.

¹⁴⁵ Art. 141(4) of the LGAP.

¹⁴⁶ *Afghanistan Key socio-economic indicators, Focus on Kabul city, Mazar-e-Sharif and Herat City, Country of Origin Information Report*, EASO, Valetta, April 2019. Available at: <https://bit.ly/2ZDwvaY>.

¹⁴⁷ AO Decision No. 26-787/19 of 29 May 2019.

¹⁴⁸ Art. 26(1(1 and 5)) of the LATP.

international protection on account of their reasonable fear of persecution by non-state actors.¹⁴⁹

Before arriving in the RS, the asylum seeker had spent around a week in Bulgaria, where he was constantly under the supervision of smugglers, who were controlling all his movements. According to the asylum seeker, every attempt to stray away from the group was violently prevented and punished.¹⁵⁰ Given that he could not contact the relevant Bulgarian authorities for these reasons, the AO decided to review the facts of relevance to his asylum application, rather than apply the safe third country concept.¹⁵¹

The AO scrupulously and diligently assessed the numerous pieces of evidence (travel documents, certificates, letters of recommendation, photographs and other documents) that the asylum seeker submitted during the procedure. The evidence corroborated his identity and claims that he had been a public official in Afghanistan. During its assessment of the security situation in Afghanistan, the AO *inter alia* took into account the reports of relevant international institutions and organisations.¹⁵² The AO acted in compliance with the principle of truth and free evaluation of evidence in this case.¹⁵³

3.1.4. Conclusion and Recommendations

The AO adopted a much smaller number of decisions in Q2 than in Q1 2019. This is why it is essential it promptly conduct the asylum procedure.

The LATP greatly contributed to the abolition of the practice of automatic application of the safe third country concept; the AO has started reviewing the admissibility of asylum applications regardless of which countries the asylum seekers had passed through on their way to Serbia. However, it has primarily done so with respect to asylum applications filed in accordance with the LATP. As per asylum applications filed in accordance with the LA, the asylum authorities must also bear in mind the LATP and apply the provisions of either the LA or the LATP that are more favourable for the applicants.

¹⁴⁹ *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UNHCR, Geneva, 30 August 2018. Available at: <http://bit.ly/30utb1O>.

¹⁵⁰ Minutes of the Oral Hearing held on 9 May 2019.

¹⁵¹ Art. 45 of the LATP.

¹⁵² Such as EASO, UNAMA and ECRE.

¹⁵³ Art. 10 of the LGAP.

In any case, when it assesses the risks asylum seekers may face if they return to a safe third country, the AO must take into account the general situation in that country and the asylum seekers' individual circumstances. This is particularly relevant in cases where the asylum seekers are additionally vulnerable because of their age, gender or form of violence they had been subjected to.

The best interests of the child should be one of the key principles in all proceedings concerning children. The AO should pay particular attention to asylum-seeking children, accompanied and unaccompanied alike. It should thus ensure the involvement and hear the opinions of other actors, such as SWCs, which are charged with assessing the best interests of the child, during the proceedings. In its prior periodic report, the BCHR commended the AO's multidisciplinary approach to the case of an underage Iraqi asylum seeker.¹⁵⁴

As the illustrated cases of Afghani asylum seekers show, the AO still lacks a uniform approach to considering reports about countries of origin that are presented as evidence in the asylum procedure. The BCHR concluded as much in 2018 as well.¹⁵⁵ The AO should align its practice in terms of the proper assessment of evidence and act in accordance with the LATP and LGAP.

3.2. SECOND-INSTANCE DECISIONS

3.2.1. New Developments in the Case of the Kashmir Family

On 1 April 2019, the Asylum Commission adopted a decision¹⁵⁶ dismissing an appeal filed by a four-member asylum-seeking family from Kashmir. The AO had previously issued a decision¹⁵⁷ finding the family ineligible for asylum in the RS.

During the first-instance procedure, the asylum seekers claimed that neither their families nor their traditional and conservative community accepted their civil union because they practiced different religions.¹⁵⁸ The asylum seeker also claimed that he had

¹⁵⁴ See *Right to Asylum in the Republic of Serbia, Periodic Report for January-March 2019*, BCHR, April 2019, pp. 8-9. Available at: <http://bit.ly/2ON9CRi>.

¹⁵⁵ See *Right to Asylum in the Republic of Serbia, Periodic Report for April-June 2018*, BCHR, July 2018, pp. 11-12. Available at: <https://bit.ly/2YIVAEh>.

¹⁵⁶ Asylum Commission Decision No. Až - 07/19 of 1 April 2019.

¹⁵⁷ AO Decision No. 26-1262/18 of 8 February 2019.

¹⁵⁸ Minutes of the Oral Hearing held on 18 October 2018.

been tortured several times by the soldiers of the Indian and Pakistani armies, which have been fighting for control over Kashmir for decades.¹⁵⁹

The AO held that the family had not proven who specifically they were at risk from and why. They also failed to prove the kinds of problems they would face in Kashmir because of their different religions.¹⁶⁰

In its decision, the AC upheld the first-instance authority's view that the non-acceptance of their interconfessional civil union by their families was the main reason why the asylum seekers had left Kashmir and that the security situation in that part of India was not the main reason why they were seeking international protection. The AC qualified as ill-founded their allegations that they were at risk of persecution for those reasons.

In its decision, the AC said that it had reviewed all the relevant international reports regarding the situation in India and interconfessional marriages in the case file. It, however, failed to take into account the drastic deterioration of the security situation in Kashmir after the appeal was filed. Namely, tensions between India and Pakistan started growing after a Pakistani militant group Jaish-e-Muhammad killed 42 Indian security forces in India-administered Kashmir on 14 February 2019.¹⁶¹ India retaliated by launching air strikes on the group's strongholds in Pakistan. The situation further escalated at the contact line between Indian and Pakistani forces in the contested Jammu and Kashmir region, where the asylum seekers come from.¹⁶² In addition, the Islamic State claimed in May 2019 that it had for the first time established a "province" in India, after a conflict between its militants and Indian security forces in Kashmir.¹⁶³ These conflicts were too intense for the AC to ignore them. The situation in Kashmir was still unstable at the time this Report was finalised.

The applicants' legal representatives alerted the AC to the latest developments in submissions filed after the appeal was lodged. The Commission could have taken them

¹⁵⁹ *Ibid.*

¹⁶⁰ AO Decision No. 26-1262/18 of 8 February 2019.

¹⁶¹ "Brief overview of Pakistani-Indian conflict on February 26-27 (Map)," *South Front*, 27 February 2019. Available at: <http://bit.ly/2JvObQ2>.

¹⁶² "India and Pakistan exchange artillery strikes in Kashmir area, casualties reported," *South Front*, 2 March 2019. Available at: <http://bit.ly/2JIoJWi>.

¹⁶³ "Islamic State claims 'province' in India for first time after clash in Kashmir," *Reuters*, 11 May 2019. Available at: <https://reut.rs/2VRCtXb>.

into account, as provided for in the LGAP,¹⁶⁴ given that these developments, which ensued after the completion of the first-instance procedure, are of relevance to the adoption of a proper decision on this administrative manner. The asylum seekers' claim was pending before the Administrative Court at the end of the reporting period.

3.2.2. The AC's View on the Deadlines by Which the AO is to Rule on Asylum Applications

Decisions on asylum applications in regular proceedings must be adopted within three months from the day of submission. Exceptionally, the deadline may be extended another three months if necessary to ensure the full and proper consideration of the application.¹⁶⁵ Since the prior asylum law did not explicitly lay down the deadlines by which the first-instance decisions had to be adopted, the LGAP, under which first-instance decisions must be adopted within 60 days from the day of submission of the request, applied.¹⁶⁶

All authorities' decisions on asylum issues need to conduct their proceedings within the legally prescribed deadlines and thus contribute to achieving a higher degree of legal certainty of asylum seekers. Overly long proceedings are in contravention of the principle of effectiveness and economy laid down in the LGAP, under which proceedings shall be conducted without undue delay.¹⁶⁷

Overly long procedures undermine the asylum seekers' trust in the effectiveness of the asylum procedure in the RS.¹⁶⁸ Furthermore, the timely completion of the procedures is propitious the quality of the AO's decisions, because its officers assess the credibility of the asylum seekers' statements, *inter alia*, on the basis of their conduct during the oral hearings. Passage of time impinges on the impression of the credibility of the asylum applications that the AO officers gained during the hearing of the asylum seekers.

The following section of the Report will focus on the Asylum Commission's view on compliance with legal deadlines. An average of 262 days passed from the day the asylum applications were lodged to the day the AO rendered its decisions in cases in which BCHR lawyers represented asylum seekers. That means that the proceedings

¹⁶⁴ Art. 167(3) of the LGAP lays down that the second-instance authority shall rule on appeals based on the facts found by the first- or second-instance authority.

¹⁶⁵ Art. 39(1 and 3) of the LATP.

¹⁶⁶ Art. 145(3) of the LGAP.

¹⁶⁷ Art. 9(2) of the LGAP.

¹⁶⁸ Information obtained from the clients represented by BCHR lawyers.

usually lasted over eight months. The view the Asylum Commission voiced in the analysed decisions definitely does not contribute to improving the efficiency of the AO, which is under the obligation to comply with all provisions of the LATP.

For instance, the AO issued its decision dismissing the asylum application of an Afghani national, analysed above, nearly two years after he had filed it.¹⁶⁹ It remains unclear why the AO did not issue its decision within the legal timeframe. It needs to be noted that this decision was preceded by another AO decision discontinuing the procedure,¹⁷⁰ which resulted in the further deterioration of the asylum seeker's mental health. The Asylum Commission had overturned this decision on appeal and referred the case to the AO for reconsideration.¹⁷¹

The AO nevertheless definitely dismissed his application for the above-mentioned reasons. The overly long procedure and uncertainty of its outcome gravely undermined the Afghani asylum seeker's mental health, as his legal representative repeatedly alerted the Office, sending it professional psychological assessments of his client.

In June 2019, the Asylum Commission dismissed¹⁷² the appeal and upheld the AO's decision to dismiss the asylum application.¹⁷³ In the Asylum Commission's view, the AO had properly applied substantive law and based its decision on properly established facts.¹⁷⁴ The Commission's views on the claims regarding violations of procedural rules in the appeal are interesting.

Namely, the asylum seeker submitted his application on 3 August 2018 and a decision on his application was rendered on 4 March 2019. Therefore, the decision was

¹⁶⁹ Case No. 26-1278/17.

¹⁷⁰ In its Decision No. 26-1278/17 of 10 September 2018, the AO said that the asylum seeker had reportedly left the AC he was living in of his own accord, without notifying the relevant authority within the legally prescribed deadline.

¹⁷¹ In its Decision No. Až-47/18 of 19 November 2018, the Asylum Commission overturned the AO decision, stating that the Office could have discontinued the procedure only in the event it had failed to serve the summons or other relevant documents on the asylum seeker, due to his failure to report his change of address. Given that the AO had not undertaken such a procedural action, the procedure could not have been discontinued under the LA or the LGAP.

¹⁷² AC Decision No. Až-08/19 of 9 April 2019.

¹⁷³ AO Decision No. 26-1267/18 of 4 March 2019.

¹⁷⁴ During the procedure, the asylum seeker claimed that he had had problems with his in-laws in his country of origin because they were against their marriage, primarily because they thought that their daughter had married below her station and that the marriage had not been concluded in accordance with traditional customs. The AO found that the asylum seeker had not proven that he was at risk of persecution on any of the grounds prescribed by law because of this and that he was ineligible for subsidiary protection.

adopted after seven months, which is in contravention of the LATP.¹⁷⁵ The asylum authority did not notify the asylum seeker's legal representatives that it would not rule on the application within the deadline, although it was under the obligation to do so.¹⁷⁶ In its decision, the Asylum Commission concluded that procedural rules were violated but that the decision would have been the same even if they had not been. It held that its rescission of the first-instance decision because of the AO's non-compliance with the deadline would be in contravention of the principle of effectiveness and economy of proceedings.¹⁷⁷

The authority's explanation regarding the deadlines by which decisions are to be rendered in another case - that of the family from Kashmir - is also interesting.¹⁷⁸ Namely, the first-instance authority rendered its decision with a three-month delay. The asylum applications were filed on 16 August 2018 and the decision was adopted six months later, on 8 February 2019. The following view of the Asylum Commission remains unclear:

*The Law on Asylum and Temporary Protection does not specify what happens and the consequences of exceeding the legal deadline by which the first-instance decision is to be adopted, i.e. what happens with the submitted asylum applications.*¹⁷⁹

In the case of the Kashmir family, the Asylum Commission also noted that non-compliance with the legal deadline might constitute grounds for initiating other procedures.¹⁸⁰ It did not, however, consider itself responsible for ensuring that the asylum procedure is conducted in a timely fashion. The Asylum Commission's views render senseless the existence of the above-mentioned deadlines and indicate to the Asylum Commission that it need not comply with them in practice.

¹⁷⁵ Under Art. 39(1) of the LATP, decisions on asylum applications in the regular procedure shall be rendered within three months from the day of their submission.

¹⁷⁶ Art. 39(4) of the LATP.

¹⁷⁷ Art. 9(2) of the LGAP lays down that proceedings shall be conducted without undue delay and at minimum cost for the parties and other participants to the proceedings whilst ensuring the presentation of all evidence requisite for correct and full finding of fact.

¹⁷⁸ AO Decision No. 26-1262/18 of 8 February 2019.

¹⁷⁹ Asylum Commission Decision No. Až - 07/19 of 1 April 2019, p. 3.

¹⁸⁰ *Ibid.*

3.2.3. Conclusion and Recommendations

The AC's main duty is to control the lawfulness of the AO's decisions. By reviewing the contested first-instance decisions, it should contribute to the proper implementation of the asylum procedure and improvement of the AO's work. With a view to improving the quality of the asylum procedure, the AC should pay equal attention to violations of both procedural and substantive law. It should rule on the merits of the cases more often and thus play a more active role in the asylum procedure.

Asylum seekers coming to the RS are fleeing politically unstable or war-torn states, in which the situation is changing on a daily basis. The asylum authorities should therefore regularly and closely monitor the developments in those countries during the asylum procedure. In all individual cases, the AC is under the obligation to independently and continuously review the situation in the countries of origin of the asylum seekers, as well as in the transit countries, rather than rely exclusively on the views the AO expresses in its decisions. The AC should also hold oral hearings and itself hear the facts of relevance to the adoption of correct and lawful decisions.

As per the AO's (non-)compliance with the deadlines, the AC must take the view that these deadlines are explicitly laid down in the law and assume responsibility for controlling whether the AO complies with them. It should not shift the responsibility to other authorities.

4. SYSTEM FOR THE PROTECTION OF SEPARATED AND UNACCOMPANIED CHILDREN

The number of migrant children unaccompanied by their parents or guardians in the RS is still high. At least several hundred migrant children have passed through Serbia since the beginning of the year.¹⁸¹ Of the 1,061 migrant children, whose intention to apply for asylum was registered by end June 2019, 355 (33.5%) were unaccompanied¹⁸² or separated¹⁸³. In Q2 2019 alone, 685 migrant children were registered; 231 (33.7%) were unaccompanied or separated – their number was 86.3% higher than in Q1 2019. Most of the unaccompanied and separated children registered in Q2 2019 were nationals of Afghanistan (69.7%) and Pakistan (13.4%).

The definition of a refugee in the 1951 Convention and 1967 Protocol relating to the Status of Refugees must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children.¹⁸⁴ Persecution of the kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status.¹⁸⁵

Given that most unaccompanied and separated children have come to the RS from war-torn countries in which child rights are grossly violated, they are in need of special attention of the relevant authorities, as recognised in the LATP.¹⁸⁶ The RS, however, still

¹⁸¹ There are still no official data on the total number of unaccompanied and separated migrant children in Serbia, only on the number of children living in facilities designated for the accommodation of refugees and asylum seekers.

¹⁸² Unaccompanied children are children, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

¹⁸³ Separated children are children, who have been separated from both parents, or from their previous legal or customary primary care-giver, but are children accompanied by other adult family members or relatives.

¹⁸⁴ CRC Committee, *General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, Geneva, 1 September 2005, para 74. Available at: <http://bit.ly/2FRnrre>.

¹⁸⁵ *Ibid.*

¹⁸⁶ More in the section on special procedural guarantees for unaccompanied and separated children in the asylum procedure.

has not ensured the consistent application of the legal provisions that would result in the establishment of an adequate child protection system.

Systemic problems still exist although the child protection system has been improved to an extent compared to the pre-2017 period, thanks to the support of civil society organisations. The key problems BCHR identified in its work with unaccompanied and separated children arise from the lack of quality guardianship protection throughout RS and the absence or lack of appropriate models of alternative child care. These problems were identified, *inter alia*, also by the UN treaty bodies. Furthermore, unaccompanied and separated children face additional problems with respect to registration and the asylum procedure. The following sections will describe the manifestations of these problems in the January-June 2019 period.

4.1. INADEQUATE GUARDIANSHIP PROTECTION

The CRC guarantees children such protection and care as is necessary for their well-being.¹⁸⁷ As a minimum standard of protection, no child should be without the support and protection of a legal guardian or other recognised responsible adult or competent public body at any time.¹⁸⁸ Guardianship is a form of arrangement for children without parental care and children who may, in specific circumstances, be in need of legal representation that their parents cannot provide.

The Family Law¹⁸⁹ lays down the obligation of guardianship authorities to appoint guardians for all children without parental care¹⁹⁰ who will care for them and represent their interests in all proceedings.¹⁹¹ The Instruction¹⁹² adopted by the MLEVSA provide guardianship authorities with guidelines on the treatment of unaccompanied and separated children. Under the Instructions, as soon as they meet or are informed of an

¹⁸⁷ Art. 3(2) of the CRC.

¹⁸⁸ *Guidelines for the Alternative Care of Children, Resolution adopted by the General Assembly*, UN General Assembly, A/RES/64/142 (24 February 2010), para 19. Available at: <https://uni.cf/2qtPnHU>.

¹⁸⁹ *Official Gazette of the RS*, Nos. 18/05, 72/11 and 6/15.

¹⁹⁰ Arts. 124 and 125 of the Family Law.

¹⁹¹ Art. 135 of the Family Law.

¹⁹² Instruction on Procedures of Social Work Centres – Guardianship Authorities for the Accommodation of Unaccompanied Migrant/Refugee Children No. 019-00-19/2018-05 of 12 April 2018. Available in Serbian at: <http://bit.ly/2LqX92l>.

unaccompanied child, field social workers are to notify the guardianship authorities thereof and the authorities are to appoint a temporary guardian for that child.¹⁹³

Although the Instruction have been adopted, the CRC Committee in 2017 recommended to Serbia to ensure the full inclusion of asylum-seeking and refugee children who are unaccompanied or separated in the existing child protection system.¹⁹⁴ Similarly, having found that unaccompanied and separated children did not have adequate access to guardians, the Human Rights Committee recommended that Serbia ensure that such children receive appropriate guardianship and treatment that takes into account the principle of the best interests of the child.¹⁹⁵

The procedure of appointing a temporary guardian may take up to several weeks due to the complexity of the process of assessing the child's individual needs.¹⁹⁶ During that period, the child is usually living in an asylum or reception centre s/he has been referred to in the certificate of registration of the intention to seek asylum or for humanitarian reasons, in the event the child has not sought asylum.¹⁹⁷ SWCs are understaffed and often have excessive workloads, which impinges on the availability and quality of protection extended to unaccompanied and separated children.

To illustrate, the greatest number of unaccompanied and separated children are currently living in the territory under the jurisdiction of the Belgrade City Social Work Centre – Palilula Department. This SWC issued 350 decisions in Q1 2019 appointing temporary guardians for unaccompanied and separated children, five decisions appointing direct temporary guardians and no decisions appointing collective guardians.¹⁹⁸ In the same period, 13 individuals acted as temporary guardians,¹⁹⁹ and two

¹⁹³ *Ibid*, p. 2.

¹⁹⁴ *Concluding observations on the combined second and third periodic reports of Serbia*, CRC, CRC/C/SRB/CO/2-3, Geneva, 7 March 2017, para 57(b). Available at: <https://bit.ly/2TcTjf5>.

¹⁹⁵ *Concluding observations on the third periodic report of Serbia*, Human Rights Committee, CCPR/C/SRB/CO/3, Geneva, 10 April 2017, paras 32-33. Available at: <https://bit.ly/2M3hpbu>.

¹⁹⁶ This conclusion was drawn on the basis of information the BCHR collected during its regular activities within the project of extending protection to asylum seekers in the RS.

¹⁹⁷ *Ibid*.

¹⁹⁸ Reply to BCHR's request for free access to information of public importance No. 550-139 of 22 April 2019.

¹⁹⁹ Under Art. 132 of the Family Law, the guardianship authorities are entitled to appoint only temporary guardians for refugee and migrant children. In the meaning of Arts. 135-144 of the Family Law, temporary guardians denote individuals caring for children and representing them in all proceedings affecting their rights. Guardians are under the obligation to visit their wards and ensure that they receive the care, upbringing and education that will enable them to lead independent lives as soon as possible.

caseworkers²⁰⁰ were charged with working with unaccompanied and separated migrant children.²⁰¹ This means that, in Q1 2019, each guardian in the Palilula Municipality had to look after at least 26 children, while each caseworker was charged with over 175 children, although minimum child protection standards lay down that no caseworker should be handling more than 25 cases²⁰² in order to ensure quality. It needs to be noted that the work of the guardians is primarily funded through projects implemented by civil society organisations.²⁰³

Under the Family Law, Social Work Centres may appoint only temporary guardians for unaccompanied and separated children.²⁰⁴ However, the Sjenica SWC has been adopting decisions appointing its staff collective guardians for unaccompanied and separated children living in the Sjenica AC. Under the Family Law, only the director or a member of staff of a residential institution, i.e. not a SWC member of staff, may be appointed a collective guardian if that is in the interest of the institution's wards.²⁰⁵ Therefore, this practice of the Sjenica SWC is in violation of the law.

Furthermore, the collective guardian of all children in the Sjenica AC is often charged with looking after dozens of children.²⁰⁶ Guardianship protection is an extremely complex process requiring of the guardians to establish a trusting relationship with the

The decisions on guardianship define the legal actions or types of legal actions guardians may undertake, depending on the needs and circumstances of each individual case.

²⁰⁰ Caseworkers are defined in the Rulebook on the Organisation, Norms and Operational Standards of SWCs (*Official Gazette of the RS*, Nos. 59/08, 37/10, 39/11 and 1/12) as professionals charged with specific cases, who identify and use the requisite professional and other resources of the SWCs or other institutions and organisations in the local community required to fulfil the needs and address problems and extend appropriate services to users. The caseworkers' work is based on a systemic approach, including assessments, arrangement of access to services, planning, coordination, monitoring and evaluation of services that should respond to the needs of individual beneficiaries. Caseworkers are also entitled to act as guardians in emergencies.

²⁰¹*Ibid.*

²⁰² *Minimum Standards for Child Protection in Humanitarian Action*, Child Protection Working Group, 2012, p. 138. Available at: <https://bit.ly/31v1czL>.

²⁰³ The organisation IDEAS has been funding the work of most professional guardians of unaccompanied and separated children in Belgrade and one guardian in Sjenica through a project supported by UNHCR and in cooperation with the MLEVSA.

²⁰⁴ Art. 132(2(4)) of the Family Law.

²⁰⁵ Art. 130 of the Family Law.

²⁰⁶ This conclusion was drawn after perusal of decisions on collective guardianship of asylum-seeking children represented by BCHR lawyers. Namely, Decision No. 560-855 of 27 November 2018 placed 77 Afghani children under guardianship, while Decision No. 560-64 of 22 January placed another 35 Afghani children under guardianship.

children and to act in their best interests. The question arises whether one individual, who is taking all the guardianship protection measures with respect to a large number of children, is capable of performing his/her guardianship duties well and in the interest of his/her wards.

An efficient guardianship system is the basis for extending protection to and guaranteeing the rights of unaccompanied and separated children. Every child without parental care should be appointed a temporary guardian without delay, to facilitate the prompt development of a care plan and identification of provisional and lasting arrangements for the child in accordance with his/her best interests.

4.2. CHALLENGES RELATED TO ALTERNATIVE CHILD CARE

Children temporarily or permanently deprived of their family environment shall be provided with alternative care in accordance with the law if that is in their best interests.²⁰⁷ All children without parental care, regardless of their legal status in the country they are living in, are entitled to the same scope of protection as children who are nationals of that country and who are permanently or temporarily deprived of their family environment for any reason.²⁰⁸ Therefore, the scope of protection the state is to provide children does not depend on the child's legal status, i.e. on whether or not s/he is lawfully residing in the RS.

Pursuant to the Guidelines for the Alternative Care of Children the UN General Assembly adopted in a resolution in 2010 and accompanying the CRC, states should ensure the availability of a range of alternative care options for emergency, short-term and long-term care.²⁰⁹ Priority should be given to family- and community-based solutions²¹⁰ such as foster care. Decision-making on alternative care should be based on rigorous assessment, planning and review, through established structures and

²⁰⁷ Under Art. 20(1) of the CRC, “[S]uch care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children.” Alternative child care denotes all care provided outside the child’s family. Modalities of alternative child cares are laid down in the Family Law and the Social Protection Law (*Official Gazette of the RS*, No. 24/11).

²⁰⁸ Art. 22(2) of the 1951 Convention.

²⁰⁹ *Guidelines for the Alternative Care of Children, Resolution adopted by the General Assembly*, UN General Assembly, A/RES/64/142, Geneva, 24 February 2010, para 54. Available at: <https://uni.cf/2qtPnHU>.

²¹⁰ *Ibid*, para 53.

mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals in a multidisciplinary team, wherever possible.²¹¹

This entire procedure is adequately regulated by national law. Under the Family Law, a decision on who will care for the child shall be made only by the guardianship authority that has undertaken guardianship protection measures and appointed a temporary guardian for the child.²¹² When decisions on alternative care are made, the child must be entitled to form and express his own view and due weight must be given to the child's views.²¹³

The Social Protection Law²¹⁴ provides for several forms of arrangements for children without parental care, depending on their best interests: placement with their relatives or foster families (family-based care), residential care, including small group care, placement in a shelter and other arrangements in accordance with the law.²¹⁵ This Law recognises as vulnerable groups, *inter alia*, children and young adults who are unaccompanied foreign nationals and stateless persons, as well as survivors of human trafficking.²¹⁶

The Instruction of the MLEVSA lay down the detailed criteria which the SWCs are to apply when deciding on the placement of unaccompanied or separated children.²¹⁷ According to the Instructions, children should be referred to ACs only if they are over 16 years of age and their guardians have applied for asylum on their behalf. They may be placed only in ACs fulfilling the requirements for the accommodation of minors and satisfying all their needs, and only when the guardianship authority assesses that such placement is in their best interest.²¹⁸

In the event these criteria are not fulfilled, the Instruction envisage several other placement alternatives: placement in a foster family (priority in case of children under 14) and placement in a residential (social protection) institution or a health institution

²¹¹ *Ibid*, para 57.

²¹² Art. 125(3) of the Family Law.

²¹³ Art. 12 of the CRC.

²¹⁴ *Official Gazette of the RS*, No. 24/11.

²¹⁵ Art. 47 of the Social Protection Law.

²¹⁶ Art. 41(2(7 and 8)) of the Social Protection Law.

²¹⁷ Instructions on Procedures of Social Work Centres – Guardianship Authorities for the Accommodation of Unaccompanied Migrant/Refugee Children No. 019-00-19/2018-05 of 12 April 2018, p. 3. Available in Serbian at: <http://bit.ly/2LqX92l>.

²¹⁸ *Ibid*.

until there is no longer a need for the provision of such protection.²¹⁹ Residential institutions and foster families taking in unaccompanied children must ensure their safety and provide them with health care, accommodation, clothing, basic hygiene facilities and adequate nutrition.²²⁰ Furthermore, they must provide the children with recreational activities, education and upbringing in accordance with the relevant regulations.²²¹

This entire procedure looks a bit different in practice. The initial decision on where the children will be accommodated is usually taken by the MI, which registers their intention to seek asylum in accordance with the LATP and orders them to report to an asylum or reception centre within 72 hours.²²² The MI decides which centres to refer the children to depending on which of the ACs have free beds; such information is communicated to the MI by the CRM.²²³ The children BCHR talked to said that their views had not been taken into account at this stage. The MI officers' registration of the children in the absence of their temporary guardians is illegal and, understandably, concerning.²²⁴

As already noted, decisions of the relevant guardianship authorities, which have undertaken guardianship protection measures, are the only valid legal grounds for selecting the modality of the children's placement, wherefore the above practice is definitely in contravention of regulations governing the legal protection of children, notably the national Family Law,²²⁵ the CRC and the Guidelines for the Alternative Care of Children.

Unaccompanied and separated children are mostly placed into care in accordance with the LATP, under which all asylum seekers shall be accommodated in ACs and other facilities designated for the accommodation of asylum seekers and established under RS Government decisions.²²⁶ The LATP exceptionally provides for the CRM's placement of

²¹⁹ *Ibid*, p. 3.

²²⁰ *Ibid*.

²²¹ *Ibid*.

²²² This conclusion was drawn on the basis of information obtained by BCHR legal advisers in the field and their interviews with guardians and their wards in Belgrade and Sjenica.

²²³ *Ibid*.

²²⁴ Such a practice is in contravention of Art. 11 of the LATP, under which the children's intention to seek asylum shall be expressed by their parents or guardians. For instance, the certificate of registration of the intention to seek asylum No. br.454/2018/2018 issued to an unaccompanied Afghani child on 26 October 2018 was not signed either by his temporary guardian or caseworker, who should have signed it *ex officio*.

²²⁵Art. 125(3).

²²⁶ Art. 51 of the LATP.

unaccompanied children, who have already applied for asylum, in alternative care pursuant to an SWC decision if the necessary accommodation conditions cannot be provided in the ACs or other designated accommodation facilities.²²⁷ These children can be placed in a residential institution, another accommodation service provider or a family.²²⁸ This alternative care is funded from the RS budget, specifically the allocation for the accommodation of asylum seekers, i.e. via the CRM.²²⁹

However, children are rarely placed in alternative care in the meaning of the LATP in practice, usually because the residential institutions lack capacity.²³⁰ CRM data of 7 June 2019 showed that 474 unaccompanied and separated children were living in the centres under its jurisdiction.²³¹ Most of them were living in the AC in Krnjača,²³² which is neither a residential institution nor a centre in which only children are accommodated. Furthermore, most children transferred to residential institutions or other forms of alternative care are the ones who have been living in the RS a longer period of time, once they start school and express the intention to stay in the RS.²³³

In its Concluding observations on Serbia's combined second and third periodic reports in 2017, the CRC Committee recommended that Serbia provide unaccompanied and separated children accommodation in foster families or other accommodation facilities adequate for their age, gender and needs.²³⁴ The selection of the modality of accommodation for the children must be based on the assessments of their best interests conducted on an individual basis.²³⁵ In BCHR's experience, the authorities place only very young children or children recent survivors of grave violence in residential institutions²³⁶ or in foster care as soon as they establish their identity. One of the reasons

²²⁷ Art. 52(2) of the LATP.

²²⁸ *Ibid.*

²²⁹ Art. 52(5) of the LATP.

²³⁰ Around 60 beds in all.

²³¹ Minutes of the meeting of the Child Protection Working Group, UNICEF, Belgrade, 7 June 2019.

²³² *Ibid.*

²³³ This conclusion was drawn on the basis of BCHR's experience in representing unaccompanied and separated asylum-seeking children in the RS and its visits to the institutions they are placed in. For example, the vast majority of children staying at the "Jovan Jovanović Zmaj" Home in June had applied for asylum, were determined to stay in the RS, and were attending the local schools.

²³⁴ Concluding observations on the combined second and third periodic reports of Serbia, CRC Committee, CRC/C/SRB/CO/2-3, Geneva, 7 March 2017, para. 57(b). Available at: <https://bit.ly/2TcTjf5>.

²³⁵ *Ibid.*

²³⁶ Unaccompanied and separated children are placed in the following institutions: Centre for the Accommodation of Foreign Unaccompanied Minors within the Belgrade Child and Youth Establishment,

definitely lies in the insufficient accommodation capacities of residential institutions and underdeveloped foster care services.²³⁷

In early June 2019, the CRM began transferring unaccompanied and separated children from the Krnjača AC to the Sjenica AC.²³⁸ Furthermore, according to the CRM,²³⁹ a decision has been taken to refer all newly arrived separated and unaccompanied children directly to the Sjenica AC as soon as they are registered.²⁴⁰ It remains unclear whether such a decision has been made in cooperation with the guardianship authority and whether the best interests of every individual child will be assessed before they are referred to this Centre.

The CRC Committee is clear on this issue. It has said that “[I]n order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child.²⁴¹ Assessments of the best interests of the child must be made in each individual case, taking into account the child’s personal circumstances and needs. The process cannot be conducted efficiently without the guardianship authority which is, as noted, charged with ensuring the protection of children.

A large number of unaccompanied and separated children were still living in the Krnjača AC although the CRM has begun transferring all such children to the Sjenica AC.²⁴² It remained unclear which criteria were used to decide which children should be transferred to the Sjenica AC and which should remain in the Krnjača AC.

Centre for the Accommodation of Foreign Unaccompanied Minors within the Niš Child and Youth Establishment, the “Jovan Jovanović Zmaj” Home within the Belgrade Centre for the Protection of Infants, Children and Youths. Such children are also referred to facilities managed by non-government humanitarian organisations: the *Pedro Arrupe* Integration House in Belgrade run by the Jesuit Refugee Service, and the House of Rescue in Loznica, managed by Borderfree Serbia.

²³⁷ More on the challenges faced by the system of foster care of unaccompanied and separated children in Ana Trkulja (ed.), *Right to Asylum in the Republic of Serbia, 2018 Annual Report*, BCHR, March 2019, pp. 51-66. Available at: <https://bit.ly/2Vg3Iqr>.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ Registration of the intention to seek asylum in the RS, in accordance with Art. 35 of the LATP.

²⁴¹ CRC Committee, *General comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, Geneva, 1 September 2005, para. 40. Available at: <https://bit.ly/2YyAokU>.

²⁴² This conclusion was drawn on the basis of information BCHR lawyers obtained during their visits to the Krnjača AC.

All of the above demonstrates that the RS has not yet changed its practice as recommended by the CRC Committee and the Human Rights Committee, given that unaccompanied children are still accommodated in the Krnjača AC, which also accommodates adults. Furthermore, the treatment of unaccompanied and separated children is not in accordance with the Guidelines for the Alternative Care of Children, which put major emphasis on non-institutional modalities of child care, foster care and small group care. Placement of children in ACs is not conducted in keeping with individual assessments of their best interests by the guardianship authorities, wherefore it is unlawful.

4.3. UNREGULATED LEGAL STATUS OF MANY CHILDREN

Nearly half of the children accommodated in the Krnjača AC were not even registered in accordance with the LATP;²⁴³ they were referred to them on *humanitarian grounds*²⁴⁴ and their legal status was unregulated. That practically means that all migrant children are provided with emergency accommodation in asylum and reception centres so they do not sleep in the streets. Although the goal of this policy is to ensure that no child is left sleeping in the streets, problems arise when the legal status of children living in the centres for months, sometimes more than a year, remains unregulated.²⁴⁵

The fact that a child's legal status is not regulated impinges on its development because it keeps it in a long-term state of uncertainty. Therefore, clear and accessible procedures need to be put in place to determine the children's status so as to enable them to regulate their residence status on various grounds.

In early June 2019, as many as 200 children not registered in the asylum procedure were living in the Krnjača AC alone.²⁴⁶ Although some of them may be in the process of voluntary resettlement in their country of origin, the fact that the legal status of many of these children is unregulated gives rise to concern.²⁴⁷ The goal of all actions taken with respect to children is to find a lasting and sustainable solution, be it asylum and local integration, reunification with their families in the RS or abroad, their return home or

²⁴³Ibid.

²⁴⁴ Italics ours.

²⁴⁵ Information obtained by BCHR lawyers during their regular visits to facilities accommodating children.

²⁴⁶ Minutes of the Child Protection Working Group Meeting, UNICEF, Belgrade, 7 June 2019.

²⁴⁷ BCHR drew this conclusion on the basis of interviews with the temporary guardians and unaccompanied and separated children during its visits to the Krnjača AC.

resettlement in a third country. For any of these options, the first step is to regulate the children's legal status – either by initiating the asylum procedure in the event they are in need or international protection or by regulating their residence status in accordance with the law on the rights of foreigners.

The institute of temporary residence on humanitarian grounds, provided by the FL²⁴⁸ may be applied to regulate the children's residence. Such temporary residence may be granted, *inter alia*, to minors who have been abandoned, are survivors of organised crime or have been left without parental care or are unaccompanied for other reasons.²⁴⁹ Furthermore, such residence may be granted for serious and warranted personal reasons humanitarian in character or in accordance with Serbia's international obligations.²⁵⁰

4.4. SPECIAL PROCEDURAL GUARANTEES FOR ASYLUM-SEEKING CHILDREN

The LATP includes provisions on the protection of child rights in the asylum procedure that its predecessor lacked. The provisions on asylum-seeking children are for the most part in accordance with international standards, but the same cannot be said of their application. The following text is devoted to the implementation of some of these LATP provisions in practice.

As opposed to its predecessor, the LATP explicitly guarantees that the principle of the best interests of the child shall be complied with in the course of the implementation of the provisions of this Law.²⁵¹ Although the relevant authorities' obligation to take into account the best interests of the child has been prescribed by the Family Law even before the LATP was adopted, the asylum authorities did not mention this principle in their decisions until the end of 2018.²⁵² Therefore, the inclusion of this provision directly in the LATP helped improve the practice of the asylum authorities with regard to unaccompanied and separated asylum-seeking children. All decisions on asylum applications by unaccompanied and separated children taken since the LATP came into

²⁴⁸ Art. 31 of the FL

²⁴⁹ Art. 31(5) of the FL.

²⁵⁰ Art. 31(6) of the FL.

²⁵¹ Art. 10 of the LATP.

²⁵² This conclusion was drawn after the perusal of all AO and Asylum Commission decisions adopted in the 2008-2018 period, which were forwarded to the BCHR in response to its request for access to information of public importance.

force have been positive. However, the problem is that the AO has been applying the LA in cases of children, who had applied for asylum before the LATP entered into force.

Mention needs to be made of an AO decision of 1 April 2019²⁵³ in which it totally ignored the best interests of the child, who had applied for asylum together with her single mother. Without going into its problematic assessment that Turkey was a “safe third country” for the two applicants, elaborated above, attention needs to be drawn to the fact that the AO did not even mention, let alone explain, why the deportation of a child fully integrated in the RS was in her best interest.

One of the procedural guarantees the LATP provides children is contained in the provision under which reviews of asylum applications filed by unaccompanied children shall have priority over others.²⁵⁴ The LATP generally lays down that first-instance decisions must be rendered within three months from the day of submission of the asylum applications,²⁵⁵ that this time limit may be extended by another three months in particular cases and that the applicants shall be notified thereof.²⁵⁶ However, in BCHR’s experience, this deadline is hardly ever complied with. Namely, the vast majority of children represented by BCHR lawyers since January 2019 had been waiting for several months for the AO just to schedule their oral hearings.²⁵⁷ Furthermore, by the end of the reporting period, no first-instance decisions were adopted in cases of BCHR’s underage clients who applied for asylum in 2019.

Under the LATP, account shall be taken of the specific circumstances of individuals requiring special procedural or reception guarantees, including unaccompanied and separated children.²⁵⁸ Special procedural and reception guarantees shall serve to provide the appropriate assistance to asylum seekers, including children, who due to their personal circumstances, are unable to benefit from the rights and

²⁵³ The AO decision No. 26-148/18 of 1 April 2019 is analysed in greater detail in section 3.1.1. of this Report.

²⁵⁴ Art. 12(9).

²⁵⁵ Pursuant to Art. 36 of the LATP.

²⁵⁶ Art. 39 of the LATP.

²⁵⁷ For instance, the oral hearing of a child, who applied for asylum on 21 September 2018 (Case No. 26-1437/18) was held six months later, on 22 March 2019. The first-instance decision on his asylum application was still pending at the end of the reporting period. The oral hearing of another child, who applied for asylum on 18 September (Case No. 26-1547/18) was held on 5 February 2019. The other children waited two or three months on average for their oral hearings (Case Nos. 26-218/19 and 26-932/19).

²⁵⁸ Art. 17(1) of the LATP.

obligations under the LATP without appropriate assistance.²⁵⁹ Such a broad and vague definition does not mean much in practice. It was applied only once in the cases in which BCHR lawyers legally represented the asylum seekers by end June 2019, notably, in April 2019, when the AO adjourned the oral hearing of an unaccompanied child because its officer concluded that the child could not take part in it because of his health. The oral hearing was adjourned until the child underwent the requisite check-ups.²⁶⁰

Therefore, from 3 April 2018, when the LATP entered into force, to end June 2019, the best interests of the child were mostly taken into account in all decisions on asylum applications filed by unaccompanied and separated children. This was, however, not the case with applications filed by children accompanied by their parents. The provisions on procedural guarantees and respect for the rights of the child are not applied consistently. Reviews of asylum applications by all children take an unreasonably long time.

4.5. SYSTEMIC PROBLEMS IN THE CASE OF THE KILLED AFGHANI BOY

A case that drew a lot of attention in early June 2019 regarded two murders in Belgrade in just two days; an unaccompanied child from Afghanistan was one of the casualties.²⁶¹ This case again demonstrated that the existing system for protecting unaccompanied and separated children is still fraught with numerous systemic problems.

The killed boy had previously been arbitrarily deprived of liberty under a decision of the Bačka Palanka Misdemeanour Court in January 2019.²⁶² After interviewing the boy and perusing his case file, BCHR lawyers identified a number of irregularities in the work of the police and the Misdemeanour Court, resulting in the violation of his fundamental human rights.

Specifically, when the Croatian police expelled the boy to the RS, his identity and age were incorrectly entered in the police and court case files.²⁶³ After the one-day

²⁵⁹ Art. 17(2) of the LATP.

²⁶⁰ Minutes of the Oral Hearing in Case No. 26-379/19 of 29 May 2019.

²⁶¹ "Case of Killed Migrants: Minors without Protection – Easy Prey for Smugglers," N1, 9 June 2019, available in Serbian at: <http://bit.ly/2LtEPpr>.

²⁶² Bačka Palanka Misdemeanour Court judgment in Case No. 65/19 of 14 January 2019.

²⁶³ Namely, although Z.N. was appointed the boy's temporary guardian by the Belgrade City Social Work Centre - Palilula Department (Decision No. 57100-12378/18 of 24 December 2018, which became final on 11 January 2019), the Bačka Palanka Misdemeanour Court said that he was of age in its judgment.

misdemeanour proceedings before the Bačka Palanka Misdemeanour Court, during which the boy was not provided with an interpreter, the judge said in the reasoning of his judgment²⁶⁴ that the boy had waived his right to appeal and issued a decision²⁶⁵ replacing the fine he had imposed by a ten-day prison sentence. Such replacement of a fine by a sentence of imprisonment of a child, which is in contravention of the Law on Misdemeanours²⁶⁶ occurred precisely because the police officers had incorrectly registered the boy's age.

Given that the boy did not speak Serbian, in which the proceedings were conducted, and was not provided with a Pashtu interpreter, he did not understand that his personal data had been incorrectly entered. Nor was he aware that misdemeanour proceedings were conducted against him, of the charges levelled against him or his rights.²⁶⁷

The boy was not provided with the right to a legal remedy either. Although he did not speak Serbian, the judgment said that he had been *notified of it orally*²⁶⁸ and provided a brief explanation of it and told he had a right to appeal it.²⁶⁹ The judgment also said he had been provided with a copy of the operational part of the judgment, that he had not asked for a written copy of the judgment and that he had *waived his right of appeal*.²⁷⁰

Therefore, the boy was deprived of the right to a fair trial,²⁷¹ the right to be informed of the nature and reasons why he was charged with the offence and the evidence collected against him,²⁷² the right to equal protection of his rights and the right to a legal remedy.²⁷³ Furthermore, he did not have the right to a defence counsel or legal aid,²⁷⁴ he was deprived of the right to the inviolability of his physical and mental

²⁶⁴ Bačka Palanka Misdemeanour Court judgment No. 65/19 of 14 January 2019.

²⁶⁵ Bačka Palanka Misdemeanour Court decision No. 65/19 of 14 January 2019.

²⁶⁶ Replacement of an outstanding fine by a sentence of imprisonment may not be ordered in case of fines imposed on minors and legal persons (Art. 41(6)).

²⁶⁷ Information obtained during the interview of the child in the Novi Sad District Prison on 15 January 2019.

²⁶⁸ Italics ours.

²⁶⁹ Bačka Palanka Misdemeanour Court judgment No. 65/19 of 14 January 2019.

²⁷⁰ Italics ours.

²⁷¹ Art. 32 of the Constitution of the RS.

²⁷² Art. 33 of the Constitution of the RS.

²⁷³ Art. 36 of the Constitution of the RS.

²⁷⁴ Art. 67 of the Constitution of the RS.

integrity²⁷⁵ and the right to liberty and security in conjunction with the special rights of the child.²⁷⁶

Prior to this, the boy had lived for months in the Krnjača AC, which accommodates both underage and adult asylum-seekers. The Centre is not a social protection institution, which, *inter alia*, means that counsellors and staff trained in social protection are not present in it at all times. Although, according to BCHR's information, the boy went back to the Krnjača AC after he was let out of jail, the CRM claimed he had left the Centre back in 2018 and lived in hostels.²⁷⁷ In addition, although it had appointed him a guardian in January 2019, the Belgrade City SWC said it did not have any mechanisms or ways to influence the movement of unaccompanied children or force them in any way to live in an institution and avail themselves of social protection services at their disposal in the RS.²⁷⁸

The tragedy also opened the issue of safety and security in the asylum and reception centres, especially since many of them do not have round the clock security or are manned by an insufficient number of security guards.²⁷⁹ Therefore, unaccompanied and separated children living in them are not protected from contacts with smugglers and other adults who might abuse them. According to the MI's findings, smuggling and proceeds of smuggling were precisely one of the motives for this murder.²⁸⁰

The statement the CRM representative made to the national public broadcaster RTS only a day after the murder leads to the impression that the CRM had been aware of the risk looming over the boy, but had not done enough to protect the boy.²⁸¹ Namely, the Commissioner said that "the child was close to a group of extremely problematic young men who had for the past year (...) harassed not only their own circle, but other

²⁷⁵ Art. 26 of the Constitution of the RS.

²⁷⁶ Art. 27(1-3) of the Constitution of the RS in conjunction with Art. 64(3) of the Constitution and the guarantee on the special protection of children without parental care enshrined in Art. 66(3) of the Constitution.

²⁷⁷ "What's Behind the Murders of Two Migrants in Belgrade," *B92 Online*, 7 June 2019. Available in Serbian at: <http://bit.ly/32myd2a>.

²⁷⁸ "Underage Migrants Invisible to the System," *RTS Online*, 7 June 2019. Available in Serbian at: <http://bit.ly/2xKObVN>.

²⁷⁹ This conclusion was drawn on the basis of information the BCHR team collected during its regular visits to ACs and other facilities accommodating refugees, migrants and asylum seekers.

²⁸⁰ "Afghani National Accused of Inciting Grave Murder," press release published on 11 June 2019 on the MI's website, available in Serbian at: <http://bit.ly/2NT47QR>.

²⁸¹ "Cucić for RTS: Months-Long Abuse Preceded the Migrants' Murders," *RTS*, 7 June 2019. Available in Serbian at: <http://bit.ly/2LSAqwu>.

migrants as well.”²⁸² The CRM should have officially reported the violence to the relevant authorities and the child’s guardian, especially if its staff were aware that someone was “violence prone” and that an incident was likely.²⁸³

Furthermore, the NPM did not visit any asylum or reception centres in the first six months of the year.²⁸⁴ This mechanism exists precisely to assess risks of torture and inhuman or degrading treatment or punishment by conducting pre-notified and ad hoc visits.²⁸⁵ The NPM should continue with its practice of paying regular visits to these establishments and issuing specific recommendations to the relevant authorities to help lower risks of ill-treatment of children.

Placement of children in separate centres tailored to their needs and guaranteeing their security is the least that has to be done to reduce risks to their lives and safety. The state has a positive obligation to take appropriate measures to ensure alternative care for children temporarily or permanently deprived of their family environment.²⁸⁶

These and other problems have for several years now been alerted to by the CRC Committee,²⁸⁷ the Human Rights Committee²⁸⁸ and the UN Special Rapporteur on torture.²⁸⁹ The relevant authorities should take their observations seriously and provide separate accommodation facilities fully tailored to the needs of unaccompanied and separated children without delay. In addition, RS institutions must advance respect for the rights of the child in all proceedings, including in misdemeanour proceedings and the procedure in which the identity of foreigners is established.

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ Reply of the Protector of Citizens of the RS to BCHR’s request for access to information of public importance No. 3611-512/19 of 3 June 2019. Information on the NPM’s other visits is available in Serbian at: <http://bit.ly/2FUseYO>.

²⁸⁵ Pursuant to obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Official Gazette of the SCG – International Treaties*, Nos. 16/05 and 2/06.

²⁸⁶ Art. 20 of the CRC.

²⁸⁷ *Concluding observations on the combined second and third periodic reports of Serbia*, CRC Committee, CRC/C/SRB/CO/2-3, Geneva, 7 March 2017, para 57(b). Available at: <https://bit.ly/2TcTjf5>.

²⁸⁸ *Concluding observations on the third periodic report of Serbia*, Human Rights Committee, CCPR/C/SRB/CO/3, Geneva, 10 April 2017, Available at: <https://bit.ly/2M3hpbu>.

²⁸⁹ *Visit to Serbia and Kosovo*: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the UN Human Rights Council*, A/HRC/40/59/Add.1, Geneva, 25 January 2019. Available at: <https://bit.ly/2YNQy5T>.

4.6. CONCLUSION AND RECOMMENDATIONS

The system for protecting unaccompanied and separated children may generally be assessed as inadequate and not in compliance with the recommendations of UN treaty bodies monitoring Serbia's implementation of the international instruments it ratified, or with the recommendations of other UN human rights protection mechanisms. As noted, unaccompanied and separated children are especially at risk of human rights violations. This is why all state authorities dealing with such children must devote special attention to them and ensure full respect for their rights in the RS. This calls for concerted action of the key state authorities – the MLEVSA, the CRM and the MI.

Appointment of temporary guardians for all children and thorough determination of their best interests are prerequisite for extending them other forms of protection. The current human resources of the guardianship authorities – which are insufficient – caring for unaccompanied and separated children are almost fully funded through civil society projects. Therefore, no headway in the guardianship system can be considered a long-term solution because it remains uncertain how long the funds allocated for professional guardians will be available. Pursuant to its international commitments, the state is primarily under the obligation to put in place an adequate guardianship system. In that sense, the relevant MLEVSA must provide the children with the achieved level of protection, through long-term and sustainable programmes, as well as invest additional efforts in improving such protection.

The analysis presented in this Report clearly shows that the RS has a lot of work ahead of it also when it comes to improving the system of alternative care for unaccompanied and separated children. Asylum and reception centres, organised as they are now, cannot be considered adequate for the accommodation of unaccompanied and separated children, for the most part, due to the lack of security, the accommodation of the children together with adults they do not know, and the fact that they are not constantly manned by experts in child protection. The first and most urgent step to be taken to ensure the protection of these children is to place them in facilities where their safety and security will be guaranteed and where they will have round the clock access to experts who can provide them with the care envisaged by the law.

Furthermore, the legal status of all migrant children must be regulated, because there is no justification for the fact that hundreds of children are practically living in RS illegally. The MLEVSA is under the obligation to appoint temporary guardians for all unaccompanied and separated children and to develop plans for their care in keeping

with assessments of their best interests and with a view to finding, as soon as possible, a lasting solution – be it the child's return to his/her country of origin, asylum in the RS or something else. It is sometimes impossible to immediately determine what lasting solution is best for the child, but steps in that direction need to be made continuously. The MLEVSA and the MI Department for Foreigners should together review the possibility of providing children, whose legal status is unregulated, with humanitarian protection or another form of lawful residence in keeping with the FL.

Finally, although the LATP has formally improved the asylum procedure to an extent, the shortcomings that existed before it entered into force are still present. The information provided in this section indicates that police officers register unaccompanied and separated children in the absence of their temporary guardians appointed by the guardianship authorities or of the caseworkers. Such a practice is illegal, because it directly violates both the LATP and the Family Law.²⁹⁰

In addition to problems identified during registration, practice has shown that reviews of the children's asylum application take unreasonably long and that the AO does not consistently apply the LATP to the children. Therefore, the AO should ensure that the main child protection principles arising from RS's international obligations and national law are complied with consistently and without discrimination on any grounds.

²⁹⁰ Arts. 11 and 137 of the Family Law.

5. SEX AND GENDER AS GROUNDS OF PERSECUTION AND PROTECTION

Gender-related claims may be brought by either women or men, although due to particular types of persecution, they are more commonly brought by women.²⁹¹ This is why this Report will focus more on the situation of women. Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.²⁹²

Gender-based violence can occur in the context of armed conflicts, *en route* or in the country in which the individual applied for asylum. In addition to the basic needs shared with all refugees, refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.²⁹³

The relevant RS authorities still had not established full records of migrants in the RS in the first half of 2019, both of those who had applied for asylum and those who had not.²⁹⁴ Therefore, there are no data on the exact number of migrant women and girls in RS territory. According to the available data, women accounted for 224 of all foreigners whose intention to seek asylum in the RS was registered in the first six months of the

²⁹¹ *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/01, Geneva, 7 May 2002, para 3. Available at: <https://bit.ly/33hGbKi>.

²⁹² *Ibid.*

²⁹³ *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva, July 1991, para 3. Available at: <https://bit.ly/2YVZzgU>.

²⁹⁴ The AO is in possession of statistical data on the number of foreigners who have expressed the intention to seek asylum in the RS and been issued certificates of registration, wherefore they are covered by the asylum system. However, according to information collected in the field, the CRM has been accommodating foreigners without certificates of registration in some of the centres as well. Therefore, the number of migrants in the RS is higher than official data show, especially when one bears in mind that some migrants are not living in the state-run centres.

year.²⁹⁵ However, the number of women migrants present in the RS, who have not expressed the intention to seek asylum, is much higher.²⁹⁶

During the implementation of its activities, BCHR identified a specific number of women migrants and asylum seekers in the RS, who were subjected to SGBV either in their country of origin, *en route* or on arrival in the RS. There are no official or compiled data on the number of such women; many of them have not reported the violence out of shame or fear of their abusers, while some are not even aware that they are victims. In addition, the collection of representative data on the entire refugee population in Serbia has been further hindered by the language barrier, suspicions and mistrust.²⁹⁷

In SGBV cases, the support of professionals and specialised organisations is of crucial importance, because they inform the victims of their rights and thus empower them to report the violence and protect themselves. However, there are still some shortcomings, above all in the work of the state institutions, which will be described in greater detail in the following section of the Report.

5.1. GENDER AND SEX AS GROUNDS FOR REFUGEE PROTECTION

Persecution on grounds of sex or gender is not explicitly mentioned as grounds for refugee protection in the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto. In 1991, the UNHCR Executive Committee recommended a broad interpretation of the definition of a refugee so as to encompass also individuals persecuted on grounds of sex or gender.²⁹⁸ The UNHCR defines SGBV as violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty.²⁹⁹ In addition, the UN Special Rapporteur on violence against women

²⁹⁵ Statistical data obtained from the AO.

²⁹⁶ This conclusion has been drawn on the basis of information the BCHR team obtained during its regular visits to asylum and reception centres throughout the RS.

²⁹⁷ For example, the NGO Atina conducted a pilot survey of 162 migrant women and girls from 13 April to 15 May 2017. The survey showed that 64% of the respondents had been victims of physical violence and 24% of sexual violence, i.e. that a total of 109 respondents had been victims of some form of violence. See more at *Violence against women and girls among refugee and migrant population in Serbia*, Atina, Belgrade, 2017. Available at: <https://bit.ly/2YV20w8>.

²⁹⁸ *Guidelines on the Protection of Refugee Women*, UNHCR, Geneva, July 1991. Available at: <https://bit.ly/2YVZzgU>.

²⁹⁹ *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, UNHCR, Geneva, May 2003, p. 11. Available at: <https://bit.ly/2OGvzBp>.

emphasised in 2000 that Governments should adopt and implement guidelines recognising gender-related persecution as a basis for women to claim refugee status.³⁰⁰

The Constitution of the RS guarantees the right to refugee protection and recognises sex as grounds of persecution.³⁰¹ The LATP explicitly recognises sex as grounds of persecution and grounds for asylum in the RS.³⁰² Under the LATP, depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sex, gender, gender identity or sexual orientation,³⁰³ which constitutes one of the grounds of persecution defined in this Law.³⁰⁴

Under the LATP, acts of persecution may include physical or mental violence, including sexual and gender-based violence³⁰⁵ as well as acts of a gender-specific nature.³⁰⁶ When assessing whether an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the characteristic attracting the persecution, in this case gender or gender identity characteristic, provided that such a characteristic is attributed to the applicant by the actor of persecution.³⁰⁷

This is why the CEDAW in March 2019 welcomed the progress RS achieved since 2013, when it considered RS's prior reports, by adopting, *inter alia*, the LATP.³⁰⁸ Namely, its predecessor did not define in detail acts of persecution on grounds of sex and gender, although the relevant asylum authorities did recognise gender-based violence as the basis for granting refugee status or subsidiary protection in several cases. Specifically, the AO recognised sex and gender as membership of a particular social group. However, this authority's practice of implementing the safe third country concept in cases concerning gender-based violence has not been uniform.

For instance, in the case of two Turkish asylum-seekers represented by BCHR lawyers, the AO found they had reasonable grounds to fear persecution on account of their religion, ethnicity and sexual orientation.³⁰⁹ The AO attached particular weight to

³⁰⁰ R. Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective, Violence against Women*, E/CN.4/2000/68, (29 February 2000), para 122(f). Available at: <https://bit.ly/2yLvrpH>.

³⁰¹ Art. 57(1 and 2) of the Constitution of the RS.

³⁰² Art. 24 of the LATP.

³⁰³ Art. 26(2) of the LATP.

³⁰⁴ Art. 26(5) of the LATP.

³⁰⁵ Art. 28(2(1)) of the LATP.

³⁰⁶ Art. 28(2(6)) of the LATP.

³⁰⁷ Art. 26(3) of the LATP.

³⁰⁸ *Concluding observations on the fourth periodic report of Serbia*, CEDAW, CEDAW/C/SRB/CO/4, Geneva, 14 March 2019, para. 4. Available at: <https://bit.ly/2OTJnbQ>.

³⁰⁹ AO Decision No. 03/9-4-26-1280/13 of 25 December 2013.

objective facts about the status of homosexuals in Turkey, indicating that the two applicants would be subjected to persecution if they returned to their country of origin.³¹⁰ This procedure was implemented in accordance with the LA that was in force at the time.

More recently, the AO granted asylum to three Russian women,³¹¹ who based their asylum applications on their fear of persecution on account of their membership of the LGBTI community. When it was reviewing the admissibility of their applications, the AO reviewed the status of LGBTI individuals in Russia, as well as in the transit country, and concluded they would be unable to receive adequate protection in any of them.³¹² This decision is an example of good practice of the AO, which properly took into account the gender components of the applications and the particular vulnerability of the applicants, who, as LGBTI persons, had been subjected to discrimination on multiple grounds and gender-based violence in their country of origin. The cases of the Russian nationals were opened in accordance with the new LATP, which is more favourable for asylum seekers.³¹³

However, the AO in several cases decided to dismiss the applications because the asylum seekers had passed through safe third countries just before they arrived in the RS; the Office did not take into account the individual circumstances of each applicant, the general circumstances in the transit countries or the existence of a real possibility of them obtaining protection there. For instance, the AO dismissed the asylum applications³¹⁴ of a single mother and her child from Iran, wrongly concluding that they did not want to access the asylum procedure in Turkey, which is on the RS Government list of safe third countries.³¹⁵

In the case of an Afghani national, the AO failed to seriously review her claims that she had been sexually abused in Bulgaria, through which she had passed on her way

³¹⁰ Interestingly, the AO decided to join the Turkish nationals' cases in accordance with Article 117 of the LGAP, because they are partners and their asylum applications are based on similar findings of fact.

³¹¹ AO Decisions No. 26-1216/18, 26-1217/18 and 26-1218/18 of 12 February 2019.

³¹² In this case, the AO consulted the reports of relevant international bodies and organisations on the status of LGBTI persons in the applicants' country of origin and transit country, as well as the case-law of the ECtHR.

³¹³ Under Art. 45(2) of the LATP, the asylum authorities are under the obligation to review the individual and general circumstances both in the countries of origin and the third countries the applicants had passed through on their way to Serbia in each individual case.

³¹⁴ AO Decision No. 26-148/18 of 21 May 2018. More in Section 3.1.1.

³¹⁵ The AO provided a similar explanation regarding Turkey as a safe third country in the cases of two other Iranian asylum-seeking women, who had been victims of sexual and gender-based violence in their country of origin. AO Decisions Nos. 26-2432/17 and 26-2433/17 of 14 March 2018.

to Serbia. Instead, the AO concluded that Bulgaria could be considered a safe third country in her case, both because she had free access to its asylum procedure and because Bulgaria was on the RS Government list of safe third countries.³¹⁶

Reviews of asylum applications by two Iranian nationals, members of the LGBTI population, were pending at the time this Report was finalised.³¹⁷ The first applicant faces the risk of persecution in his country of origin because of his sexual orientation. The second applicant was discriminated against in Iran after her sex change.

Given that the provisions of the LATP are more favourable for asylum seekers³¹⁸ and do not provide for the automatic application of the safe third country concept, the AO substantially improved its practice in the described case of the Russian nationals. The authors of this Report hope that the AO will fully and diligently establish the facts and attach particular weight to the vulnerabilities of SGBV survivors during its review of the pending asylum cases in which the gender component predominates.

5.2. PRINCIPLE OF GENDER SENSITIVITY AND PROHIBITION OF DISCRIMINATION

The LATP enshrines the principle of gender equality and sensitivity, entailing the obligation of the relevant authorities to interpret this Law in a gender-sensitive manner.³¹⁹ Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life.³²⁰ This means that, during reviews of asylum claims, particular account needs to be taken of the differences between women and men regarding their membership of a particular social group, political opinion, religion, ethnicity, race or sexual orientation. Considering the gender related aspects of the claim will help ensure that all aspects of a claim are fully and fairly considered. An

³¹⁶ AO Decision No. 26-1667/17 of 25 December 2017.

³¹⁷ Cases Nos. 26-2467/17 and 26-1592/18.

³¹⁸ Compared with the LA, the LATP more thoroughly elaborates the principles of gender equality and sensitivity (Art. 16), of ensuring special procedural and reception guarantees for children and single mothers with underage children (Art. 17), as well as the above-mentioned provision on the application of the safe third country concept (Art. 45).

³¹⁹ Art. 16 of the LATP.

³²⁰ *Gender Mainstreaming, Conceptual Framework, methodology and presentation of good practices*, Council of Europe, Ref. No. EG-S-MS(98)2, Strasbourg, May 1998, p. 8. Available at: <https://bit.ly/2yJALdi>.

understanding of the country of origin information relating to the position of women is essential to the effective conduct of interviews and to making correct decisions³²¹

Under the LATP, female asylum seekers accompanied by men shall submit their asylum applications and be interviewed separately from their male companions or husbands.³²² This provision is extremely important given that persons who have been subjected to some form of gender violence may be afraid and ashamed to talk about it in the presence of their partners and compatriots. Although the wording of the provision indicates that this guarantee is provided only to women, this principle is in practice applied to all individuals, and men and women are separately interviewed during the procedure.³²³

The principle of gender sensitivity also entails the asylum seekers' right to apply for asylum themselves and be interviewed by police officers of the same sex, and to be assisted by translators or interpreters of the same sex.³²⁴ This principle is generally complied with in practice.³²⁵ The AO has been endeavouring to engage interpreters of the same sex as the applicants.

In the opinion of the asylum seekers, the presence of people of the same sex is conducive to building a climate of trust during the procedure, wherefore they are more willing to relate the events that traumatised them.³²⁶ Consequently, they find it very important to feel comfortable, among people who will not judge them or abuse their situation.³²⁷

However, the AO did not provide a Somali asylum-seeking woman with an interpreter of the same sex at the time she was submitting her asylum application, despite

³²¹ *Gender Issues in the Asylum Claim*, UK Visas and Immigration, London, October 2010, p. 3. Available at: <https://bit.ly/2MLy8zx>.

³²² Art. 16(4) of the LATP.

³²³ This guarantee, however, is not envisaged for all family members, e.g. children, who are always heard in the presence of their parents or guardians.

³²⁴ Art. 16(2) of the LATP.

³²⁵ Especially since most of the AO staff are female.

³²⁶ Opinion of the Somali asylum seeker, who was subjected to SGBV in her country of origin.

³²⁷ After the refugee crisis escalated in the 2015/16 period, XY, an Afghani woman, applied for asylum in the presence of her husband, who had abused her in tandem with other family members in their country of origin. She was unable to relate her personal circumstances as grounds of persecution at that time. The woman was subjected to SGBV in the AC the family was accommodated in. After she reported it and the CRM's and NGO Atina's successful intervention, the asylum seeker was separated from her husband and accommodated in a shelter. Subsequently, with BCHR's support she was resettled in a third country through the UNHCR programme.

such a request by her legal representatives. The Office explained there was a lack of female interpreters in English (a language the asylum seeker understands). Such an explanation is unreasonable given the abundance of English interpreters in RS. Since this asylum seeker had been waiting for her asylum application appointment for over a month, she herself asked the Office not to reschedule her appointment and consented to be assisted by a male interpreter.

In the course of the implementation of the LATP, any discrimination on any grounds shall be prohibited, including for reasons of sex, gender, gender identity and sexual orientation.³²⁸ However, the CEDAW noted that migrant women were discriminated against in the exercise of numerous rights.

CEDAW expressed concern because women from vulnerable social groups, including refugee women, continued to experience multiple and intersecting forms of discrimination. It was particularly concerned that those women continued to have limited access to health care, education, employment and social assistance³²⁹ and that they lacked protection from gender-based violence.³³⁰ CEDAW recommended that RS intensify its efforts to raise awareness among women, including disadvantaged groups of women and refugee women, of their rights under the CEDAW and how to claim them.

The vast majority of migrant women are aware that discrimination and violence are prohibited by law, both in the RS and other European countries.³³¹ However, whether or not a victim of gender-based violence or discrimination will report it depends on her individual circumstances and the background of the individual cases. In the RS, migrant women are for the most part aware that they can seek the help of the police, the management of the facility they are accommodated in or of the representatives of organisations focusing on protecting survivors of violence. Furthermore, they have access to legal aid and psycho-social support extended by civil society organisations working in

³²⁸ Art. 7 of the LATP.

³²⁹ Migrant women have access to general health services in the ACs. For specialist check-ups, they need logistic support (mostly of the CRM) and an interpreter, ideally a female interpreter, for a language they understand. As far as employment is concerned, under Article 13(3) of the Law on Employment of Foreigners, only foreigners who have launched the asylum procedure are entitled to enter the labour market, nine or more months after they apply for asylum, or in case they are granted refugee protection in the RS. RS nationals have priority in the labour market over foreigners, including asylum seekers and refugees.

³³⁰ *Concluding observations on the fourth periodic report of Serbia*, CEDAW, CEDAW/C/SRB/CO/4, Geneva, 14 March 2019, para. 43. Available at: <https://bit.ly/2OTJnbQ>.

³³¹ Eighty percent of the 162 women and girls who took part in Atina's pilot survey were aware that violence was prohibited.

the field. However, there are no guarantees that they will openly talk about their traumatic experiences.

In general, support to migrants – survivors of multiple forms of discrimination and SGBV – must be systemically improved. The relevant authorities, above all the CRM and MI, need to develop additional mechanisms to help the survivors. Furthermore, the relevant asylum authorities need to invest additional efforts in ensuring the application of the principles on gender sensitivity and the prohibition of discrimination and design measures to empower women.

5.3. SPECIAL PROCEDURAL AND RECEPTION GUARANTEES

The LATP lays down the principle of ensuring special procedural and reception guarantees to specific vulnerable groups of asylum seekers.³³² The groups recognised as vulnerable under the LATP include, *inter alia*, pregnant women, single mothers with their underage children, survivors of human trafficking and survivors of grave forms of psychological, physical and sexual violence, such as female genital mutilation.

The relevant authorities, above all the MI and the CRM, are under the obligation to extend appropriate protection to asylum seekers who, on account of their personal circumstances, are unable to exercise their rights and obligations under this Law without such assistance.³³³ The LATP, however, does not specify what such assistance actually entails. During the implementation of its activities, BCHR has not yet ascertained how this principle is applied to individuals who experienced or are at risk of SGBV. Such persons have to date been extended assistance only by civil society organisations.³³⁴

In the light of CEDAW's recommendations, the RS must provide effective protection from gender-based violence, including access to legal aid extended by experienced professionals. Furthermore, women need to be extended greater protection

³³² Art. 17 of the LATP.

³³³ Art. 17(3) of the LATP lays down that the procedure for identifying the personal circumstances of a person referred to in paragraph 1 of this Article shall be carried out by the competent authorities on a continuous basis and at the earliest reasonable time after the initiation of the asylum procedure.

³³⁴ In the vast majority of cases, such assistance is extended by the NGO Atina, which accommodates such women in its shelters and implements various support and empowerment programmes. Psychosocial aid is extended by the International Aid Network (IAN), the Psychosocial Innovation Network (PIN), *Médecins Sans Frontières* (MSF) and other organisations.

in the asylum procedure, through the recognition of their vulnerabilities at the very start of the procedure and through adequate support until its completion.³³⁵

The MI and CRM, however, lack sufficiently developed mechanisms for identifying the vulnerabilities of special groups of people. The AO, for instance, usually learns that an asylum seeker is a survivor of violence or rape from her legal representative or a civil society organisation assisting survivors of violence and that it should pay special attention to her case.³³⁶

LATP further lays down that, when deciding on the accommodation of foreigners, whose intention to seek asylum has been registered, due attention shall be given in particular to their sex and age, status of a person requiring special procedural and/or reception guarantees, as well as family unity.³³⁷ This provision is applied to women travelling alone, single mothers and women survivors of SGBV.

In practice, SGBV survivors are provided with accommodation in ACs affording greater privacy and security. In most cases, they are accommodated in the ACs in Banja Koviljača or Bogovađa, which are smaller in size and designated for the accommodation of families.³³⁸ As soon as they issue the women certificates of registration of their intention to seek asylum, the MI officers refer them to one of these two centres. If the MI officers suspect that the women are survivors of violence already during their registration, the AO allows their immediate placement in the shelters managed by the NGO Atina, without their referral to an AC.³³⁹ Therefore, the AO has in some cases recognised the special needs and vulnerabilities of women survivors of gender-based violence.

When they identify a vulnerability or SGBV in an asylum or reception centre, the CRM officers alert organisations extending assistance to vulnerable individuals and survivors of gender-based violence,³⁴⁰ transfer the survivors to private accommodation (shelters) and notify the AO thereof. The so-called shelters for refugee and migrant

³³⁵ *Concluding observations on the fourth periodic report of Serbia*, CEDAW, CEDAW/C/SRB/CO/4, Geneva, 14 March 2019, para. 24(d). Available at: <https://bit.ly/2OTJnbQ>.

³³⁶ View based on information BCHR collected in the field and its experience in legally representing asylum seekers.

³³⁷ Art. 50(3) of the LATP.

³³⁸ This practice was introduced several years ago, in accordance with an informal arrangement between the MI and the CRM.

³³⁹ In 2016, the AO introduced the following practice: asylum seekers must first be accommodated in an AC and apply for asylum, before their requests to live in private accommodations are granted.

³⁴⁰ By competent representatives of NGOs, the CRM or in the event the victim herself reports the violence.

women survivors of SGBV are of limited capacity and are fully funded by CSOs, such as NGO Atina.

As noted, the state institutions' mechanisms for the prompt identification of SGBV survivors or foreigners at risk of such violence and the provision of adequate accommodation for them are still underdeveloped. The identification and care of survivors is mostly provided by non-government organisations.

5.4. RESPONSE OF THE RELEVANT AUTHORITIES TO SEXUAL AND GENDER-BASED VIOLENCE

In the experience of BCHR lawyers, survivors of violence are most often women from Iran, Afghanistan, Syria, Somalia and Burundi, who are especially vulnerable if they are travelling with their husbands, given that they depend on their actions and decisions regarding their common future.³⁴¹ The fact that, in addition to economic dependence, they are not even aware they were subjected to persecution or do not speak about it out of shame or guilt, quite often because of the cultural and traditional norms of the societies they are coming from, gives rise to concern.³⁴² This is why it is difficult to establish the precise number of migrants and asylum seekers in RS who are SGBV survivors.

When the survivors report the violence and seek assistance in the asylum or reception centres,³⁴³ the police and managers of the centres (CRM officers) are notified³⁴⁴

³⁴¹ Information obtained from an Afghani woman, victim of domestic violence, who did not want to separate from her husband as they were planning on settling down in the EU.

³⁴² There were indications that a national of India, with whom a BCHR lawyer talked, was a victim of domestic violence in the centre she was living in. However, although she was provided with all the relevant information about her rights and available protection, she denied that she had experienced any gender-related violence, strongly defending her husband and claiming that anxiety lay at the root of his erratic behaviour.

³⁴³ The operating procedures regarding the provision of assistance in cases of gender-based violence in asylum and reception centres are defined in the national Standard Operating Procedures (SOP) for the prevention and protection of refugees from gender-based violence. The SOP have been developed in cooperation with the MLEVSA, the MI, the Ministry of Health, the Ministry of Justice, the Gender Equality Coordination Body, the CRM the Republic Institute for Social Protection, the Dr. Milan Jovanović-Batut Institute for Public Health, the national regulatory human right authorities, the UN Population Fund in Serbia, UNHCR, UNICEF and civil society organisations present in the centres.

³⁴⁴ By the victim of the violence, if she wants to report it. Violence may also be reported by the other residents of the centre who witnessed it or representatives of civil society organisations present in the centre, pursuant to Art. 13(1) of the Law on the Prevention of Domestic Violence (*Official Gazette of the RS*, No. 94/16).

thereof. They are charged with securing interpretation and, if necessary, medical aid in the centre. Once the CRM notifies the police, the relevant SWC is notified; logistic support is extended by the competent international and domestic non-government organisations present in the field. In an emergency,³⁴⁵ the police are called immediately, and the victim of violence is provided with an interpreter, a safe environment, information about available services; the SWC officer on call is notified thereof. Suspects hauled in by the police after the violence is reported are not always prosecuted. They may be sentenced to a suspended sentence or separated from the victim and transferred to another asylum or reception centre.³⁴⁶

CEDAW sharply criticised RS with respect to the status of women survivors of gender-based violence. In addition to inadequate risk assessments to prevent gender-based violence against women and girls, it drew attention to the lack of effective prosecution of cases of SGBV against women, the persistent disparity between the number of criminal charges and the number of convictions, with a majority resulting in suspended sentences, and the low number of rape cases reported.³⁴⁷ Migrant women are in an especially vulnerable situation because of these shortcomings.

The RS must develop adequate institutional mechanisms facilitating the prompt identification of risks of SGBV. Furthermore, it should ensure that cases involving all forms of violence against women are properly investigated, that perpetrators are prosecuted and punished with sanctions commensurate with the gravity of the crime and that survivors are protected against revictimization.³⁴⁸

As already noted, the fact that support to survivors of violence is mostly extended by civil society organisations may give rise to another problem, given that such protection is not long-term or sustainable enough.³⁴⁹ In the event the state fails to take measures to prevent SGBV, conduct effective investigations, criminal prosecute and punish the perpetrators, and thus ignores cases of violence, the survivors of such violence are at a

³⁴⁵ Emergency interventions denote urgent assistance extended to ill or injured individuals, individuals at risk of recurrence or perpetuation of violence, or further exposure to violence, with a view to preventing the deterioration of their health that may result in their death.

³⁴⁶ Information BCHR obtained in several cases from CRM representatives in ACs and professionals extending legal aid and representing survivors of violence in criminal proceedings, and from MI representatives at a meeting of the Gender-Based Violence Working Group.

³⁴⁷ *Concluding observations on the fourth periodic report of Serbia*, CEDAW, CEDAW/C/SRB/CO/4, Geneva, 14 March 2019, para. 23(e). Available at: <https://bit.ly/2OTJnbQ>.

³⁴⁸ *Ibid.*, para 24(d).

³⁴⁹ *Ibid.*, para 23 (f). Civil society organisations are donor dependent, and so are automatically the women in need of their assistance.

real risk of violations of their fundamental human rights, such as the right to life, prohibition of torture, and right to respect for their private and family life. The state is under the obligation to extend effective protection from violence not only to its own nationals, but to all other individuals in its territory as well, by preventing or adequately responding to violence by individuals.³⁵⁰

5.5. CONCLUSION AND RECOMMENDATIONS

All of the above indicates that the system for the protection of SGBV survivors is still underdeveloped. Most of them come from countries with strictly defined gender roles, wherefore they need to be promptly informed of their rights, familiarised with various forms of protection available in the RS and empowered to strengthen their personal integrity.

This requires of the MI and CRM to develop a climate of trust and safety during the implementation of the asylum procedure and in the facilities accommodating asylum seekers. Furthermore, state officials, notably MI and CRM staff, must assure survivors of SGBV during the initial contact that everything they say will be treated with the strictest confidence and not divulged to their families or countries of origin.

The MI should provide additional training to AO staff to improve their consideration of gender-based asylum applications and compliance with the principle of gender equality and sensitivity. When reviewing such cases, AO staff need to regularly and properly inform themselves of the state of human rights and the status of vulnerable groups in the asylum seekers' countries of origin. Every asylum procedure with a gender component must be conducted in a climate tailored to the sensitivity of the asylum seeker, who must be allowed to choose the sex of the officers and interpreters taking part in all the official actions.

Given the lack of shelters for victims of gender-based violence, the state must secure a greater number of shelters for asylum seekers that will be funded from the state budget. Furthermore, the CRM needs to provide adequate institutional support and separate accommodations for unaccompanied women and women with underage children.

It has been ascertained that many victims are aware that they can report violence but that this does not necessarily mean that they will do so. This is why the relevant

³⁵⁰ See the ECtHR judgments in the cases of *M.C. v. Bulgaria*, App. No. 39272/98, 2003; and *Sandra Janković v. Croatia*, App. No. 38478/05, 2009.

asylum authorities and civil society organisations should invest additional efforts in empowering the victims and building their trust to encourage them to report their abusers. Various sessions with competent organisations, workshops and other common activities have proven extremely effective, especially in ACs where women rarely leave their rooms, wherefore they lack opportunity to separate from the men in whose company they arrived in the RS.³⁵¹

Effective SGBV protection and prevention calls for the strengthening of multi-sectoral cooperation and improvement of the work of all actors tasked with extending the victims protection and support. First of all, the MI, prosecution services, and health and residential institutions need to advance and apply the rules for the prompt identification of all SGBV survivors and put in place the basic conditions for their protection. The resources of these state institutions need to be increased as soon as possible to facilitate the efficient resolution of the violence problem.

³⁵¹ Room for Women and Girls: Female Voices from Refugees and Migrants in Serbia, ADRA Serbia, Belgrade, 2019, p. 16. Available at: <https://bit.ly/2YNnBpV>.