



**Right to Asylum in the  
Republic of Serbia  
Periodic Report for  
January–June 2021**



**Belgrade Centre  
for Human Rights**

# Contents

|  |    |
|--|----|
| Acronyms .....   | 3  |
| Introduction .....   | 5  |
| 1. Statistics .....  | 8  |
| 1.1. Registration of Asylum Seekers .....  | 8  |
| 1.2. Work of the Asylum Office .....   | 9  |
| 2. Practice of the Asylum Authorities .....  | 11 |
| 2.1. Asylum Office Decisions .....   | 11 |
| 2.2. Asylum Commission Upheld the BCHR's Appeals .....   | 20 |
| 2.3. Will Administrative Court Judgments Affect the Efficiency of the Asylum Office and<br>Commission? ..... | 27 |
| 3. Accommodation of Migrants and Asylum Seekers .....  | 29 |
| 3.1. Facilities under CRM's Jurisdiction .....   | 30 |
| 3.2. Conclusion and Recommendations .....  | 38 |
| 4. Integration .....   | 39 |
| 4.1. BCHR's Online Campaign #MiLjudiZajednoMožemoViše .....  | 40 |
| 4.2. Recognition of Refugees' Foreign School Certificates .....  | 41 |
| 4.3. Refugees' College Enrolment Procedure .....   | 44 |
| 4.4. <i>Refugees for Refugees</i> Project Activity .....   | 46 |

# Acronyms

AC – Asylum Centre

APC – Asylum Protection Center

BCHR – Belgrade Centre for Human Rights

BIRN – Balkan Investigation Reporting Network

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

CRPC – Crisis Response and Policy Centre

DRC – Danish Refugee Council

EASO –European Asylum Support Office

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

ECtHR – European Court of Human Rights

EQPR – European Qualifications Passport for Refugees

EU – European Union

IOM – International Organization for Migration

LATP – Law on Asylum and Temporary Protection

LGAP – Law on the General Administrative Procedure

MOI – Ministry of the Interior of the Republic of Serbia

PIN – Psychosocial Innovation Network

R4R – Refugees for Refugees

RS – Republic of Serbia

RTC – Reception-Transit Centre

UN – United Nations

UNHCR –United Nations High Commissioner for Refugees

Photo Cover: *On White II*, Wassily Kandinsky (1923)

# Introduction

In 2021, the Belgrade Centre for Human Rights (hereinafter: BCHR) has continued extending free legal aid to refugees and asylum seekers in Serbia within the project *Support to Asylum Seekers in Serbia* implemented with the support of the United Nations High Commissioner for Refugees (hereinafter: UNHCR). In addition to from representing asylum seekers and refugees before the relevant Serbian authorities and international institutions, BCHR's team has been extending them assistance with a view to facilitating their integration in the country's social, economic and cultural life.

UNHCR data indicate that 82 million people were displaced in 2020, twice as many as in 2011. Forty-two percent of them were boys and girls under 18 years of age.<sup>1</sup> Between 5,000 and 5,500 refugees and migrants were in the RS in June 2021, and between 4,000 and 4,500 of them were living in the centres managed by the Commissariat for Refugees and Migration (CRM).<sup>2</sup> The CRM began renovating some of its facilities in the first half of 2021, including the Asylum Centre (AC) in Banja Koviljača. The Serbian Government adopted a decision transforming two Reception-Transit Centres (RTCs) – in Vranje and Obrenovac – into ACs, with a view to increasing the CRM's capacity to accommodate foreigners seeking asylum in the RS.<sup>3</sup>

Given that the coronavirus pandemic is not abating, the state in March began vaccinating migrants, refugees and asylum seekers in order to protect all categories of the population.<sup>4</sup> The opportunity to receive a vaccine was first provided to migrants and asylum seekers living in ACs and RTCs and subsequently to those living in private accommodation. Representatives of international institutions lavished praises on Serbia for providing refugees and migrants with the chance to be vaccinated against COVID-19.<sup>5</sup>

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<sup>1</sup> "UNHCR: Unprecedented number of displaced people across the world, Serbia has always been open to them," *NI* (19 June 2021) available in Serbian at: <https://bit.ly/3zkGK5Z>.

<sup>2</sup> "UNHCR praises Serbia: around 5,500 refugees and migrants at the moment, most accommodated and being vaccinated," *Danas* (19 June 2021) available in Serbian at: <https://bit.ly/3dxeMe8>.

<sup>3</sup> The decision is available in Serbian at: <https://bit.ly/3hp10vj>.

<sup>4</sup> More in the *Right to Asylum in the Republic of Serbia, Periodic Report for January – March 2021*, BCHR (Belgrade 2021), pp. 51-52 (hereinafter: *January-March 2021 Right to Asylum Report*), available at: <https://bit.ly/3RcJ>.

<sup>5</sup> See, e.g. "Vaccination of refugees starts at reception centres in Serbia," *Radio Free Europe* (26 March 2021) available in Serbian at: <https://bit.ly/3ykZ5OE>, and "UNHCR praises Serbia: around 5,500 refugees and migrants at the moment, most accommodated and being vaccinated," *Danas* (19 June 2021), available in Serbian at: <https://bit.ly/3dxeMe8>.

In late March 2021, the US State Department published its Serbia 2020 Human Rights Report<sup>6</sup>, which includes a section on the protection of refugees. The report highlights the problem of *refoulement*, as well as shortcomings in the context of conditions and capacities for the accommodation of migrants and asylum seekers in the RS.

On 17 June 2021, Serbia and the EU signed an agreement on EU support to migration management. The agreement was signed by the Serbian Minister of EU Integration, the Ambassador of the EU Delegation to Serbia and the representative of the International Organization for Migration (IOM) in the RS.<sup>7</sup> Under this agreement, which is exceptionally important for migration management, the EU will provide Serbia with financial aid in the amount €2.5 million.<sup>8</sup>

The Ministry of the Interior (MOI) launched several campaigns in Belgrade in the first half of 2021, during which the police took the irregular migrants they found on Belgrade's streets to the RTCs in the RS.<sup>9</sup> The police took more than 100 migrants at a time to the RTCs during some of these campaigns, which were regularly conducted during the reporting period.<sup>10</sup>

Smuggling poses a major risk to refugees and migrants and can often be fatal.<sup>11</sup> The Global Initiative against Transnational Organized Crime<sup>12</sup> reported that the annual turnover on the migrant smuggling market in the Western Balkans was at least €50 million. The report further stated that, in addition to “classic” smuggling along illegal border crossing routes, migrants often entered WB countries with the help of legal companies opened for that very purpose.<sup>13</sup> The report qualified Serbia as a major destination, given that it borders with four EU Member States – Croatia, Hungary, Romania and Bulgaria. The report quoted MOI data, according to which over 8,500 migrants were intercepted while they were trying to cross the border illegally in 2020. and said that the police also discovered several tunnels under the wire fence along the Serbian-Hungarian

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<sup>6</sup> Available at: <https://bit.ly/2TMsELO>

<sup>7</sup> “Agreement on EU support to migration management signed, 3,977 migrants in Serbia,” *NI* (17 June 2021) available in Serbian at: <https://bit.ly/3jhJkDT>.

<sup>8</sup> “Serbia to receive €2.5 million from EU to support migrants,” *Radio Free Europe* (17 June 2021) available in Serbian at: <https://bit.ly/3w4QGhm>.

<sup>9</sup> “Police find 66 illegal migrants in heart of Belgrade,” *NI* (22 April 2021), available in Serbian at: <https://bityl.co/8RcQ>.

<sup>10</sup> Police find 126 illegal migrants, will transport them to reception centres (VIDEO, PHOTO,” *Blic* (17 June 2021), available in Serbian at: <https://bityl.co/8RcT>.

<sup>11</sup> “Spain: 17 dead in migrant boat found drifting off Canarias,” Associated Press (27 April 2021), available at: <https://bit.ly/3kkJkQ>.

<sup>12</sup> *Spot Prices: Analyzing flows of people, drugs and money in the Western Balkans*, Global Initiative against Transnational Organized Crime (May 2021), available at: <https://bit.ly/3gAZHtE>.

<sup>13</sup> Such cases were registered in Montenegro. Migrants sometimes travel in trucks, with drivers who legally report them as their passengers, albeit with fake passports.

border, which are considered relatively risky because of the likelihood of being caught or the danger of the tunnel collapsing. A large number of migrant smugglers has been arrested in the RS and the region since 2015. Despite efforts invested by Balkan and EU states to shut down the so-called Balkan Route, it is apparently still active. The Balkan Investigative Reporting Network (BIRN) said in June 2021 that some smugglers of refugees and migrants in the RS enjoyed the protection of members of the security service.<sup>14</sup>

Interest in refugee and migrant issues on the Serbian political stage abated in the first half of 2021 compared to 2020, when these topics were often politicised and used to score political points, especially in the pre-election period. However, practice has shown that insistence on these topics on the part of some political parties did not yield the expected results.<sup>15</sup> On the other hand, a substantial share of the general public still harbours negative views of and bias against refugees and migrants, feeling apprehensive about their numbers and fearing that they plan on settling down in the RS.

This Report analyses the treatment of the asylum seekers and refugees in Serbia in the first six months of 2021, based on information the BCHR team obtained during their legal representation in the asylum procedure and provision of support in their integration, and during its field work. In addition to illustrating relevant decisions by the asylum authorities, the Report also describes the BCHR's initiatives and activities aiming to facilitate the integration of refugees and asylum seekers. The Report also comprises data the BCHR collected through regular cooperation and communication with the state authorities and UNHCR. The statistical data cover the 1 January – 30 June 2021 period. The Report has been prepared by the BCHR legal and integration team.<sup>16</sup>

The Report is primarily addressed to state authorities charged with ensuring the realisation of the rights of asylum seekers and foreigners granted international protection, as well as other professionals and organisations monitoring the situation in the field of asylum. Its authors endeavoured to point out good practice examples, as well as specific shortcomings in the work of the relevant authorities and offer recommendations on how to address them in order to help the relevant RS authorities establish a more functional asylum system.

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<sup>14</sup> “Crossing Borders: In a Belgrade Café, Codes, Cash and a Cut for the State,” *Balkan Insight* (3 June 2021), available at: <https://bit.ly/2Y3Z0CV>.

<sup>15</sup> The few politicians who voiced radical views on occasion did so more to promote themselves than to seriously address the migrant issue. See, e.g. “Vulin: Not one migrant has settled down or will settle down in Serbia, responsible crisis management,” *Radio Television of Vojvodina* (18 March 2021), available in Serbian at: <https://bit.ly/2UkzIOE>.

<sup>16</sup> With a view to providing a more comprehensive illustration of the positive and negative aspects of the asylum authorities' work, where relevant, the authors described their practices in the past or referred to prior BCHR reports.

# 1. Statistics

All statistical data were obtained from the UNHCR Serbia Office, to which the RS Ministry of the Interior (MOI) has been forwarding its operational reports. The data in this Report cover the 1 January – 30 June 2021 period. The national asylum authorities do not publish information about their work on their websites.

## 1.1. Registration of Asylum Seekers

A total of 600 foreigners expressed the intention to seek asylum in the RS since the beginning of the year; 543 of them were men and 57 were women. The intention to seek asylum in the RS was expressed by 113 children, 12 of whom were unaccompanied by their parents or guardians. Herewith a breakdown by month of the number of foreigners whose intention to seek asylum was registered since the beginning of the year: 71 in January, 41 in February, 124 in March, 91 in April, 112 in May and 161 in June 2021.

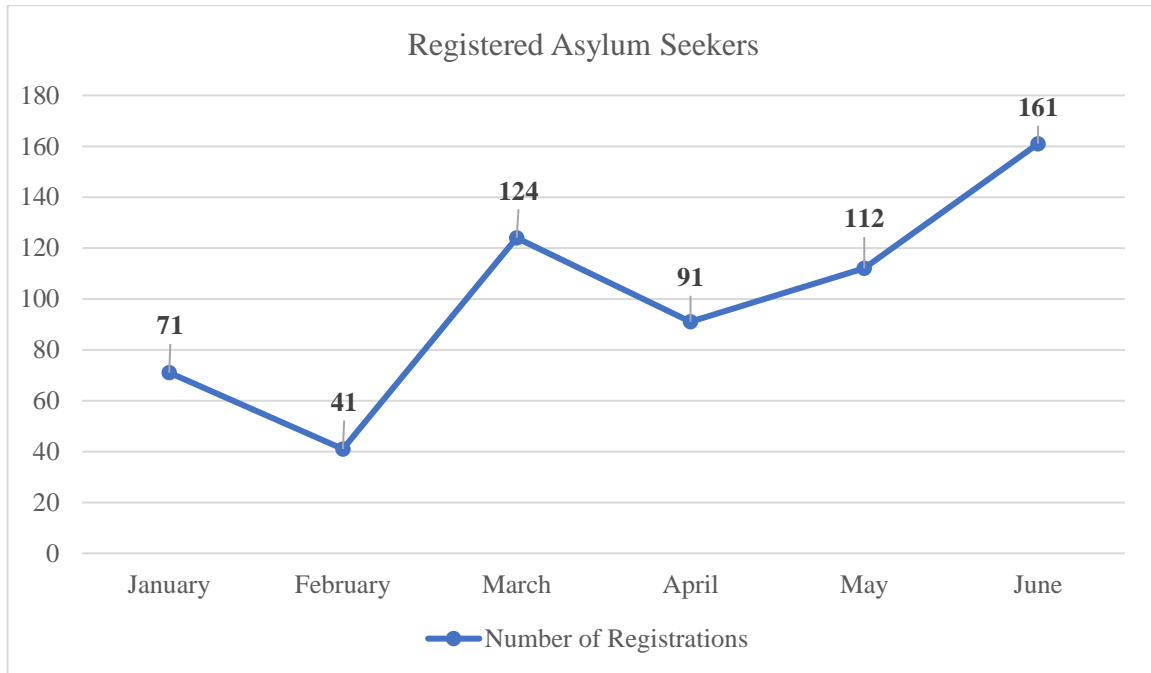
Most of the foreigners who expressed the intention to seek asylum were nationals of Afghanistan (296), followed by nationals of Bangladesh (64), Pakistan (55), Syria (55), Iraq (12), Iran (11), Burundi (11), Yemen (10), Cuba (9), Somalia (8), Turkey (7) and India (7). The intention to seek asylum in the reporting period was also expressed by six nationals of Palestine, Egypt and Algeria; five nationals of Morocco and Libya; three nationals of Russia; two nationals of Guinea and two nationals of Albania. The fewest asylum seekers were nationals of Armenia, Bosnia and Herzegovina, Columbia Croatia, Equatorial Guinea, North Macedonia, Georgia, Ghana, United States of America, Guinea-Bissau, Jordan, Lebanon, Mali and Niger (one from each of these countries).

Most foreigners issued certificates confirming they expressed the intention to seek asylum (registration certificates) in the first half of the year were registered in police departments in the interior of the country (537), and at Belgrade Airport Nikola Tesla (20), while 19 foreigners were registered at border crossings. The Asylum Office staff registered 24 foreigners as intending to seek asylum at other locations, such as asylum centres (ACs).

A total of 650,103 foreigners expressed the intention to seek asylum in Serbia from 2008 to end June 2021. Specifically, such an intention was expressed by 77 foreigners in 2008, 275 foreigners in 2009, 522 foreigners in 2010, 3,132 foreigners in 2011, 2,723 foreigners in 2012, 5,066 foreigners in 2013, 16,490 foreigners in 2014, 577,995 foreigners in 2015, 12,821 foreigners

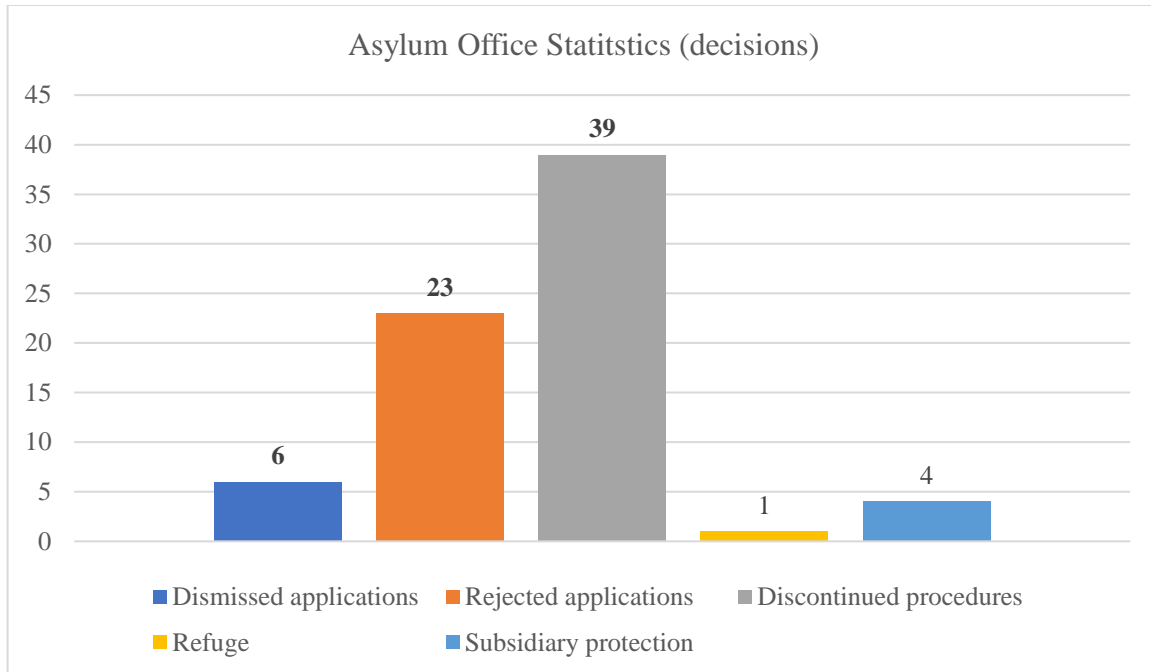


in 2016, 6,199 foreigners in 2017, 8,436 foreigners in 2018, 12,937 in 2019 and 2,830 in 2020. Registration certificates were issued to 600 foreigners during the first half of 2021.



## 1.2. Work of the Asylum Office

As of 1 January 2021, 42 asylum applications were submitted in person before Asylum Office staff and 38 applications were submitted in writing; furthermore, four subsequent asylum applications were filed. The Asylum Office held hearings concerning 51 asylum seekers. It upheld five asylum applications, granting refuge in one and subsidiary protection in four cases. It rejected 23 applications concerning 23 foreigners and dismissed six asylum applications filed by six individuals. The Asylum Office discontinued the review of 39 applications, primarily because the applicants had left the RS before the completion of the asylum procedure.



Available data indicate that the RS authorities have upheld the asylum applications of 199 foreigners since 2008. They have granted refugee status to 91 and subsidiary protection to 108 applicants to date.

## **2. Practice of the Asylum Authorities**

Under the Law on Asylum and Temporary Protection (LATP), the first-instance asylum procedure is conducted by the Asylum Office, while appeals of its decisions are heard by the Asylum Commission. The Asylum Commission decisions may be challenged before the Administrative Court.

During the first six months of 2021, the Asylum Office rendered 19 decisions in cases in which the asylum seekers were represented by the BCHR; it upheld two applications (granting refuge in one case and subsidiary protection in another), rejected 12 asylum applications and discontinued the procedure in five cases. From January to the end of June 2021, the Asylum Commission rendered eight decisions dismissing the appeals filed by the BCHR on behalf of its clients and upholding the Asylum Office's decisions in these cases. In that period, the Asylum Commission adopted three decisions upholding the BCHR's appeals on behalf of its three clients and remitted the cases to the Asylum Office for reconsideration. The Administrative Court delivered three judgments rejecting one and adopting two lawsuits filed by the BCHR on behalf of six clients during the reporting report.

This part of the Report contains the BCHR legal team's analysis of individual decisions by asylum authorities adopted during the first half of 2021 which it considers particularly important. These decisions illustrate the asylum authorities' good practices, as well as specific irregularities and shortcomings that have persisted for years now.

### **2.1. Asylum Office Decisions**

#### **2.1.1. Burundian Victim of Torture Granted Refuge**

In late June 2021, the Asylum Office issued a ruling<sup>17</sup> upholding Burundian national M.'s asylum application and granting him refuge on account of persecution for reasons of political opinion. Namely, M. had been a member of an opposition party and took part in the 2015 demonstrations in his country of origin. Given how the Burundian government dealt with its opponents, M. moved on a number of occasions, in fear of persecution. However, members of the intelligence agency and the Imbonerakure found him and arrested him in 2016, while his wife and

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<sup>17</sup> Asylum Office Ruling No. 26-1337/20-1 of 29 June 2021.

children fled Burundi in fear for their safety. M. was first convicted to twenty years' imprisonment, but was released in 2018 when a decision to pardon political prisoners was adopted. However, many of the inmates, including M.'s two close friends, were killed soon after they were released. After the police came to his family home looking for him, M. realised his safety was under serious threat and decided to leave Burundi. He lived in Rwanda and Uganda for around two years and then decided to come to the RS via Turkey.

**a) Asylum Office took account of submitted reports on asylum seeker's torture in his country of origin**

Whilst in prison, M. was subjected to some of the most severe forms of torture and sustained injuries with permanent consequences. With a view to substantiating claims that M. had been a victim of torture, the BCHR legal team commissioned a report of a court medical expert, who performed a clinical examination of M.<sup>18</sup>

The Asylum Office, notably, took into account the court medical expert's findings, opinion and photographs in their entirety during its review of the merits of M.'s application. It stated in its ruling that they could apply to the case at hand *in view of the description of the injuries and their causes, as well as the doctor's opinion that the injuries left permanent consequences in the form of aesthetic impairments at the scar locations, wherefore the findings of the physical examination are consistent with the applicant's descriptions of the way he sustained the injuries.*

In addition to medical documentation regarding M.'s claims of torture, the Asylum Office also examined a report on his psychological state of health, drawn up by a psychologist of Psychosocial Innovation Network (PIN). M. was found to have, inter alia, prominent symptoms indicating the existence of the Post-Traumatic Stress Disorder (PTSD), such as flashbacks, physical response to reminders of trauma and emotional withdrawal.

**b) Asylum Office found that the applicant's fear of persecution was well-founded**

In its ruling, the Asylum Office also interpreted UNHCR's Guidelines,<sup>19</sup> under which several elements need to be taken into consideration when deciding whether a political offender can be considered a refugee. They include, notably, the personality of the applicant, his political opinion, the motive behind the act, the nature of the act committed, the nature of the prosecution and its

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<sup>18</sup> The BCHR legal team has submitted to the Asylum Office the opinion of a court medical expert in the case of another Burundian asylum seeker, who had also been tortured. The review of his asylum application was still pending at the end of the reporting period.

<sup>19</sup> *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR (2019).

motives; and, finally, the nature of the law on which the prosecution is based. In M.'s case, the Asylum Office correctly assessed all the circumstances in his country of origin, such as M.'s participation in the 2015 demonstrations, his arrest and year-long deprivation of liberty and his conviction to 20 years' imprisonment. Based on all of these considerations, the Asylum Office concluded that M. was in fear of persecution, not of punishment, in his country of origin.

Furthermore, in UNHCR's view, when assessing whether well-founded fear of persecution exists, not only the frame of mind of the person concerned determines his refugee status, but this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and both elements must be taken into consideration in determining whether well-founded fear exists. The Asylum Office accordingly took into account both elements when it reviewed the merits of M.'s application.

Specifically, when it reviewed the existence of the subjective element of the fear of persecution, the Asylum Office assessed M.'s frame of mind in the light of the credibility of the statement on the decisive facts and circumstances that he gave during the procedure. On the other hand, with a view to ascertaining the existence of the objective element of fear, the Asylum Office assessed M.'s statement in the context of the security situation in Burundi. Namely, having referred to a number of credible international reports,<sup>20</sup> the Asylum Office concluded that the situation in M.'s country of origin was extremely unfavourable, and that political opponents and prisoners have been in dire straits since 2015 and the demonstrations. Arbitrary arrests and killings are commonplace in Burundi. Human rights violations are on the rise and continue to have a political dimension, and they mainly concern the right to life, liberty and security, prohibition of torture and sexual violence.

Referring to the LATP,<sup>21</sup> the Asylum Office said that there were links in this case between the reasons for persecution, acts of persecution and non-existence of effective protection from such acts. Namely, due to the circumstances he had been subjected to, M. was not in a position to avail himself of effective protection in his country of origin, given that he was persecuted by no other than the officials of the regime and organised pro-government groups.

### **c) Conclusion**

In this case, the Asylum Office correctly assessed the submitted evidence, both individually and cumulatively. Its assessment of the medical documentation and its due regard to the court

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<sup>20</sup> E.g. 2015 Report of the UN Security Council Secretary General, the UN General Assembly Report, and the report of the Immigration and Refugee Board of Canada.

<sup>21</sup> Art. 28(3), Art. 29(1(2-3)), and Art. 30(3), LATP

medical expert's findings and opinion on the applicant's treatment in contravention of Article 3 of the ECHR is particularly encouraging. A multi-disciplinary approach is necessary in asylum procedures for the proper assessment of all the circumstances of the individual cases and the adoption of lawful decisions on the submitted applications. The BCHR hopes that the Asylum Office will continue this good practice in other cases as well, especially those with particularly sensitive components.

### **2.1.2. Subsidiary Protection Granted to Somali National**

In April 2021, the Asylum Office upheld the asylum application of Somali national F. and granted him subsidiary protection.<sup>22</sup> F. had fled his country of origin because of the threats had had been receiving from the terrorist organisation Al-Shabaab. Namely, members of this organisation considered him an enemy because he was a civil servant in the Somali government. Al-Shabaab had earlier killed his relative, a senior public official, with whom F. had been living. Fearing persecution, F. left Somalia and legally entered Turkey and then crossed into Greece illegally. He entered Serbia from Albania in early 2020.

#### **a) Al-Shabaab's negative impact on the general security situation in Somalia**

During its review of the merits of F.'s asylum application, the Asylum Office assessed that the general security situation in Somalia was extremely unfavourable, for the most part due to Al-Shabaab's activities.<sup>23</sup> It stated in its ruling, inter alia, that Al-Shabaab was capable of launching large terrorist attacks, mostly in the capital of Mogadishu, as well as across the country, and that a large number of people had been killed in the incidents. Al-Shabaab has been launching both targeted and indiscriminate attacks on civilians and civilian infrastructure, resorting to makeshift explosive devices, suicide bombs and shelling, as well as assassinations. Furthermore, this organisation prohibits cooperation with humanitarian organisations and blocks delivery of aid in Somalia, which has resulted in the displacement of around 800,000 people. Al-Shabaab's control and influence are also reflected in the fact that its members have "infiltrated" a number of government institutions and sectors. The civilian population is at great risk of becoming collateral damage, as well as of falling victim to generalised violence in Mogadishu.<sup>24</sup>

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<sup>22</sup> Asylum Office Ruling No. 26-1357/20 of 21 April 2021.

<sup>23</sup> Al-Shabaab is one of the main destabilising factors in Somalia; its actions have greatly impinged on the general security situation in the country, characterised also by a weak central government and numerous mutually conflicting local tribal alliances and clans.

<sup>24</sup> *Ibid*, pp. 3-4.

## **b) Risk of serious harm due to individual threat to life**

BCHR lawyers applaud the fact that the Asylum Office referred to the latest problems in Somalia in its decision. The Asylum Office also analysed the developments that had occurred just a few days before it reached its decision. They included the adoption of a legislative framework extending the term in office of the current Somali President, which has further aggravated the crisis and destabilised the country. The Asylum Office not only reviewed the reports BCHR lawyers submitted in this case but referred to a number of other reports relevant to F.'s asylum application as well.<sup>25</sup> Based on them, the Asylum Office correctly concluded that F. would be at risk of serious harm due to the individual threat to his life, caused by the internal armed conflicts in his country of origin. It thus concluded that returning F. to his country of origin would be in contravention of Article 3 of the European Convention on Human Rights (ECHR) and, consequently, that F. fulfilled the requirements to be granted subsidiary protection.<sup>26</sup>

## **c) Subsidiary protection vs. refuge**

The Asylum Office found that F. did not fulfil the requirements to be granted refuge.<sup>27</sup> It explained that F.'s statement did not provide sufficient detail about the decisive facts and included inconsistent elements. This particularly applied to his allegations about the murder of his relative, the public office he held, and their mutual relationship. The Asylum Office also said that F. did not have in his possession any threatening messages which he should have held on to. Furthermore, it said that Al-Shabaab generally did not target local staff. The Asylum Office also did not admit the photocopy of F.'s staff ID card because it said it could not ascertain beyond doubt that the document was an original; it therefore concluded that this piece of evidence was unreliable and irrelevant to its decision on F.'s asylum application.<sup>28</sup>

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<sup>25</sup> *Ibid*, pp. 3-4. E.g. reports by EASO, ACCORD, the Danish Refugee Council, the International Crisis Group et al.

<sup>26</sup> Art. 25 of the LATP reads as follows: "Subsidiary protection shall be granted to applicants who do not meet the requirements to be granted refuge referred to in Article 24 of this Law if there are justified reasons indicating that they would face a real risk of suffering serious harm if they were returned to their country of origin or habitual residence and who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

Serious harm shall denote threat 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."

<sup>27</sup> Under Article 24 of the LATP, the right to refuge, or refugee status, shall be granted to applicants who are outside their country of origin or habitual residence, and who have a well-founded fear of persecution for reasons of race, sex, language, religion, nationality, membership in a particular social group or political opinion, and who are unable or, owing to such fear, unwilling to avail themselves of the protection of that country.

<sup>28</sup> Asylum Office Ruling No. 26-1357/20 of 21 April 2021, pp. 2-3.

Unfortunately, the Asylum Office merely enumerated the above reasons for not granting F. refuge, without explaining them in greater detail. For instance, it failed to specify which parts of F.'s statement regarding decisive facts lacked detail or consistency. Furthermore, it remains unclear why the Asylum Office thought that F. should be in possession of Al-Shabaab's threatening messages, especially in view of his long and arduous journey from Somalia to the RS. The BCHR also finds disputable the Asylum Office's conclusions about the photocopy of F.'s staff ID card. Namely, most asylum seekers do not possess original documents for a number of reasons (they left them behind or lost them in their country of origin or during transit, etc.). Finally, the Asylum Office's claim that al-Shabaab generally does not target local staff are not sufficiently persuasive for the conclusion that F. had not been at direct risk from this terrorist organisation, especially since the BCHR listed a number of sources substantiating the opposite conclusion in its submission on the state of human rights and security in Somalia.

#### **d) Conclusion**

BCHR's lawyers welcome the Asylum Office's decision to uphold F.'s asylum application and grant him subsidiary protection and, notably, its reference to relevant international reports and the latest developments in his country of origin.

However, as already noted, the Asylum Office should have explained more precisely why it concluded that F. did not fulfil the requirements to be granted refuge. The BCHR expects of the Asylum Office to hereinafter perform a more detailed analysis when deciding which of the two forms of international protection it will grant in individual cases.

### **2.1.3. Burundian Journalist's Asylum Application Rejected Again**

In May 2021, the Asylum Office again adopted a decision rejecting the asylum application filed by B. from Burundi, who had fled his country of origin on account of his assumed political affiliation and ethnicity.<sup>29</sup> The Asylum Office's prior consideration of this case had been fraught with deficiencies. Namely, when it rendered its initial decision on B.'s asylum application,<sup>30</sup> it failed to take into consideration all of his individual circumstances or qualify the grounds for his persecution. Furthermore, the Asylum Office drew blanket conclusions and selectively assessed the submitted evidence,<sup>31</sup> wherefore the BCHR appealed its decision. The Asylum Commission

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<sup>29</sup> Asylum Office Ruling No. 26-3131/19-1 of 21 May 2021.

<sup>30</sup> Asylum Office Ruling No. 26-3131/19 of 19 January 2021.

<sup>31</sup> See the *January-March 2021 Right to Asylum Report*, p. 19.



upheld BCHR's appeal and remitted the case to the first-instance authority for reconsideration.<sup>32</sup> However, the Asylum Office again reached the same conclusion.

B., a journalist by profession, was the victim of persecution by state agents (police and intelligence officers) who suspected him of associating with other Burundian journalists who had fled to Rwanda during the 2015 demonstrations and whom they considered enemies of the regime. B. had been taken into custody by the police on a number of occasions on suspicion that he had been going to Rwanda to communicate information to the journalists who continued reporting on the situation in Burundi from that country. B. was ill-treated and abused during arrest and detention. The police issued an arrest warrant against B. after he stopped responding to their summons. Furthermore, B. is a member of the Tutsi ethnic community and he lived in the part of the city known as the opposition stronghold. All these reasons prompted B. to leave his country of origin in July 2019.

#### **a) Asylum Commission upheld the appeal and remitted the case for reconsideration**

During its review of BCHR's appeal, the Asylum Commission found that the first-instance authority had not established all the facts, which resulted in its misapplication of substantive law and incorrect conclusion about the facts. Namely, the Asylum Office had based its decision only on parts of the applicant's statements and, to an extent, on the available reports by international organisations, as B.'s legal representatives emphasised in the appeal. The Asylum Commission notably held that the Asylum Office should not have rejected B.'s asylum application without first reviewing the risk of his *refoulement* thoroughly and carefully, wherefore it found that the Asylum Office had violated the provisions of the LATP and the LGAP.<sup>33</sup>

In the appeal, BCHR's lawyers asked the Asylum Commission to hold an oral hearing and itself interview B. However, the Asylum Commission said that it would remit the case for reconsideration to the Asylum Office, explaining that the latter would eliminate the deficiencies of the first-instance procedure more rapidly and cost effectively. The Commission instructed the Office to eliminate the specified shortcomings and render a new decision based on the law.<sup>34</sup>

However, after it held a supplementary oral hearing,<sup>35</sup> the Asylum Office issued a new ruling again rejecting B.'s asylum application. In BCHR's view, the Office again failed to establish all the facts relevant to a proper decision on B.'s asylum application and again drew an incorrect

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<sup>32</sup> Asylum Commission Ruling No. Až-47/20 of 26 March 2021.

<sup>33</sup> *Ibid*, p. 4.

<sup>34</sup> *Ibid*, p. 4.

<sup>35</sup> The supplementary oral hearing was held on 20 April 2021.

conclusion about the facts; consequently, the Asylum Office again acted in violation of the LATP and LGAP.

**b) Asylum Office rejected the asylum application although it assessed the claim as plausible and the evidence as credible**

Namely, the Asylum Office failed to adequately examine and qualify the actions or grounds for persecution in B.'s case, because it assessed them exclusively against the fact that the regime in Burundi has changed.<sup>36</sup> It consequently drew the wrong conclusion that B. had not been subjected to persecution in his country of origin and that he would not be subjected to it in case he returned to it. The Asylum Office also failed to properly consider the claims made during the oral hearing, the submitted evidence, B.'s individual circumstances or personal characteristics.

The Asylum Office did find that the applicant's claims of police treatment in his country of origin were plausible and that the submitted evidence was credible.<sup>37</sup> Nevertheless, it drew the wrong conclusion that *such treatment could not be qualified as persecution at the hands of state authorities, bearing in mind the new situation caused by the change of regime and a narrow interpretation of that situation in the light of the change in state policy towards journalists in Burundi and the applicant's activities that had not been directed against state policies, with special emphasis on the fact that the state authorities had not perceived the applicant as an opponent of the regime at the height of political instability in Burundi.*<sup>38</sup>

Furthermore, in the new ruling, the Asylum Office again failed to properly consider B.'s claims that he had fled his country of origin because of his problems with state agents, the time he spent in Rwanda and his alleged links with the journalists there who had left Burundi in 2015. Instead, the Asylum Office interpreted all the facts of relevance in this legal matter in the context of the 2015 political events in Burundi, which were not associated at all with the problems B. faced in 2019. The Asylum Office applied the institute of passage of time totally incorrectly, inadequately interpreting B.'s circumstances before he left his country of origin, the situation of journalists in Burundi and Rwanda in the meantime, and all the consequences B. would suffer in case he returned to his country of origin.

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<sup>36</sup> The Asylum Office invoked the change of regime in Burundi as the crucial argument for rejecting the asylum applications of a number of Burundian nationals. See Asylum Office Rulings Nos. 26-2176/19 of 5 November 2020, 26-3215/19 of 4 November 2020 and 26-3136/19 of 26 November 2020.

<sup>37</sup> Asylum Office Ruling No. 3131/19-1 of 21 May 2021, p. 3.

<sup>38</sup> *Ibid*, p. 4.

### **c) Incorrect interpretation of circumstances concerning the prohibition of torture and blanket assessment of the situation of Burundian journalists**

In the impugned ruling, the Asylum Office again referred to the definitions of torture and the ECtHR's general views on the prohibition of torture and inhuman or degrading treatment or punishment.<sup>39</sup> Although the claims on the existence of ill-treatment the Asylum Office quoted in its decision can be unequivocally associated with the police ill-treatment B. had been subjected to in his country of origin, the Asylum Office did exactly the opposite again and rejected his asylum application.

The Asylum Office assessed the status of journalists in Burundi exclusively based on media reports.<sup>40</sup> Furthermore, the Asylum Office interpreted the information in these articles selectively, drawing incorrect conclusions about the situation of journalists, especially those who had fled to Rwanda and with whom the Burundian authorities associated B. Furthermore, it did not explain anywhere in the ruling why it considered inconsequential the information describing the situation of Burundian journalists in much greater detail, which the BCHR had included in its submissions.<sup>41</sup>

### **d) Conclusion**

The Asylum Office's decision in this case is unfortunately fraught with deficiencies, primarily because it failed to assess all the individual circumstances or adequately qualify the grounds for B.'s persecution. Furthermore, it drew blanket conclusions on the merits of the application, based on its selective assessment of the submitted evidence. Such actions contribute to the violation of the asylum seekers' fundamental human rights and of the prohibition of ill-treatment. The BCHR has thus filed an appeal of the latest Asylum Office ruling. The procedure was pending at the end of the reporting period.

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<sup>39</sup> See: *January-March 2021 Right to Asylum Report*, p. 20

<sup>40</sup> Articles published on The Africa Report ([theafricareport.com](http://theafricareport.com)) and Africa News websites.

<sup>41</sup> Various reports published by UN bodies (HRC, GA, UNHCR, CAT et al), EASO, International Criminal Court, US Department of State, Human Rights Watch, Freedom House, Amnesty International, IFHR, IRRI, Immigration and Refugee Board of Canada, International Federation of Journalists, etc.

## **2.2. Asylum Commission Upheld the BCHR's Appeals**

### **2.2.1. Asylum Office Ruling Rejecting the Asylum Application of an Unaccompanied Stateless Child Overturned**

In mid-January 2021, the Asylum Office rejected the asylum application filed by S., an unaccompanied stateless child.<sup>42</sup> S. had fled Pakistan, his country of habitual residence<sup>43</sup> and the risk of persecution on account of the fact that he is a stateless person from Afghanistan. Due to his specific status, S. had difficulty accessing his rights, such as the rights to education and health care. Furthermore, S. and his family, like many other Afghan refugees, were at risk of being arbitrarily arrested and forcibly returned to Afghanistan by the Pakistani authorities because of their unregulated legal status.

In its decision, the Asylum Office disregarded the plight of Afghan refugees in Pakistan; its findings of fact were incorrect and incomplete; and it grossly violated the principle of the best interests of the child.<sup>44</sup> The BCHR thus filed an appeal on behalf of S. with the Asylum Commission, which issued a ruling upholding the appeal and remitting the case for reconsideration to the first-instance authority.<sup>45</sup> Namely, the Asylum Commission found that there were a number of disputable circumstances that the Asylum Office needed to clarify in order to render a proper and lawful decision on the asylum application.<sup>46</sup>

#### **a) Pakistan is not a state party to the 1951 UN Convention Relating to the Status of Refugees**

The Asylum Commission first emphasised that it agreed with the claims in the appeal that Pakistan was not a signatory of the UN Refugee Convention and that the status of refugees in this country was effectively unfavourable. It found that the BCHR team correctly noted in the appeal that the asylum authorities had to review also the relevant international reports on the status of stateless persons in Pakistan, given that S. was both stateless and a refugee.<sup>47</sup> The Asylum

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<sup>42</sup> Asylum Office Ruling No. 26-2349/19 of 12 January 2021.

<sup>43</sup> Under Art. 2(1(10)) of the LATP, a country of origin denotes a foreigner's country of nationality or a stateless person's country of former habitual residence.

<sup>44</sup> More in *January-March 2021 Right to Asylum Report*, p. 22.

<sup>45</sup> Asylum Commission Ruling No. Až-46/20 of 17 March 2021.

<sup>46</sup> *Ibid*, p. 3.

<sup>47</sup> *Ibid*, pp. 3-4.

Commission thus requested of the Asylum Office to review these reports, especially in the context of refugees and stateless minors in Pakistan.<sup>48</sup>

#### **b) Fear of return to Pakistan and objective risk of refoulement to Afghanistan**

The Asylum Commission also found that the Asylum Office should ascertain whether fear of return to Pakistan sufficed to fall under the scope of persecution or a grave risk of human rights violations. It held that there was indisputably an objective risk that S. would be returned to Afghanistan (in terms of potential chain *refoulement*),<sup>49</sup> especially since the applicant was an unaccompanied stateless child.<sup>50</sup>

#### **c) Protection of the interests of the child and adoption of a decision in the best interest of the child**

In its decision, the Asylum Commission voiced doubts that the Asylum Office had devoted sufficient attention to the fact that the sixteen-year-old applicant was indeed a minor and to the sufficient protection of his interests. It also noted that the principle of the best interests of the child had to be a primary consideration before any actions concerning the child were undertaken. Namely, this is not only a legal obligation, but an international standard of key importance for proper decisions on the rights of the child as well.

The Asylum Commission found that the Asylum Office had not substantiated that its decision was in the best interests of the child. Furthermore, it correctly noted that S. was vulnerable on two grounds – he is a child and he is stateless.<sup>51</sup> Therefore, it requested of the Asylum Office to review all the circumstances relevant to the application of the principle of the best interests of the child.<sup>52</sup>

#### **d) Right to education and a setting conducive to the applicant's further development**

In its appeal of the Asylum Office ruling, the BCHR team referred to S.'s access to education. The Asylum Commission instructed the Asylum Office to further review: S.'s claims that one of the reasons he had left Pakistan was to pursue his education, since he had been forced to leave school in that country and had no chance of continuing his schooling; the fact that S. has been attending school in the RS and learning the language; the fact that S. has a temporary guardian;

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<sup>48</sup> *Ibid*, p. 5.

<sup>49</sup> *Ibid*, p. 4.

<sup>50</sup> *Ibid*, p. 5.

<sup>51</sup> *Ibid*, p. 4.

<sup>52</sup> *Ibid*, p. 5.

and the fact that S. has been living in an institution looking after refugee children.<sup>53</sup> The Asylum Commission also said that the Asylum Office should take into account the opinion of the relevant guardianship authority, which said that the setting S. was living in at the moment was safe and conducive to his further development.<sup>54</sup>

**e) Violation of the Law on Border Control and risk of falling victim to child trafficking**

The BCHR stated in its appeal that S. did not have any personal documents<sup>55</sup> wherefore he would violate the law if he had to comply with the first-instance ruling<sup>56</sup> and tried to cross the RS border.<sup>57</sup> The Asylum Commission accordingly instructed the Asylum Office to examine these circumstances and ascertain whether S. was at risk of falling victim to trafficking in children.<sup>58</sup>

The Asylum Commission also considered BCHR's suggestion in the appeal, that it hold a supplementary oral hearing given all the shortcomings of the first-instance procedure and the adoption of a ruling in contravention of the law. The Asylum Commission, however, deemed that it would be faster and more expedient and cost effective if the Asylum Office held a new oral hearing and itself eliminated the identified deficiencies of the first-instance procedure.<sup>59</sup>

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<sup>53</sup> The institution is located in Belgrade.

<sup>54</sup> *Ibid*, p. 4.

<sup>55</sup> Asylum Commission Ruling No. Až-46/20 of 17 March 2021, p. 4.

<sup>56</sup> Dismissing S.'s asylum application and ordering him to leave the RS.

<sup>57</sup> Namely, under Article 71(1(1)) of the Law on Border Control, individuals who cross or try to cross the state border outside a border crossing, outside the working hours of the border crossing or in contravention of the purpose of border crossings, or who cross or try to cross the state border at a border crossing without a valid travel or another document prescribed by law for crossing the state border shall be punished by a fine ranging between 10,000 and 100,000 RSD or by up to 30 days' imprisonment (Art. 12(2))."

<sup>58</sup> Asylum Commission Ruling No. Až-46/20 of 17 March 2021, p. 4.

<sup>59</sup> *Ibid*, p. 5.

## **2.2.2. Asylum Office Ruling Rejecting Iranian Activist's Asylum Application Quashed**

Like in the previous case, the Asylum Commission<sup>60</sup> upheld the BCHR's appeal of the Asylum Office ruling<sup>61</sup> rejecting as ill-founded the asylum application filed by G.M., an Iranian national. Namely, in her country of origin, G.M. had supported a movement advocating the abolition of the obligation to wear a hijab and the protection of women's rights and freedoms. Like other Iranian women supporting the movement, G.M. had appeared in public without her hijab in defiance of the regulations, wherefore she had been repeatedly taken into custody by the Iranian authorities and subjected to threats and harassment. Furthermore, G.M. worked as a model in her country of origin, in contravention of the Moslem patriarchal culture and the interpretation of the status of women in the Koran, which gave rise to her conflicts with her family.

After she was held in police custody in August 2018, G.M. received a court summons. Risking a years-long prison sentence if convicted on the charges levelled against her, she decided to leave Iran several days later.

During its deliberation of the merits of G.M.'s case, the Asylum Office made incomplete and improper findings of fact, based on which it concluded that the applicant was not at risk of persecution in her country of origin because of her membership in a particular social group. BCHR's lawyers appealed the first-instance decision with the Asylum Commission. The Asylum Commission upheld BCHR's arguments about the irregularities and deficiencies of the first-instance ruling and remitted the case to the Asylum Office for reconsideration. During the repeat procedure, the Asylum Office is obligated to eliminate all the identified violations, fully and properly review all the facts and circumstances of relevance to the adoption of a legal decision and assess all the evidence based on the procedure in its entirety.

### **a) Asylum Office insufficiently examined the relevant facts and the applicant's arguments**

The impugned ruling rejecting G.M.'s application failed to clearly specify the years when the key events described during the first-instance procedure occurred, wherefore the Asylum Office incorrectly concluded that her statement was not credible. The minutes of the oral hearing

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<sup>60</sup> Asylum Commission Ruling No. Až-8/21 of 26 April 2021.

<sup>61</sup> Asylum Office Ruling No. 26-1672/19 of 29 January 2021.

show that G.M. gave a detailed and chronological account of the events that had led to her decision to leave her country of origin.<sup>62</sup>

Before adopting the impugned ruling, the Asylum Office should have fully and properly established all the facts the applicant put forward during the submission of the application and at the oral hearing, and clarified specific parts of G.M.'s statement. BCHR's lawyers recalled a view the Asylum Commission had taken earlier – that, in case it had doubts about the credibility of the statement, it was obligated to question the applicant further in order to clarify any ambiguities and ascertain all the facts.<sup>63</sup>

**b) Asylum Office ignored the evidence and submissions filed by G. M.'s legal representatives during the procedure**

During the first-instance procedure, G.M. did her utmost to submit various pieces of evidence corroborating her claims about her activism in her country of origin, her relationship with an activist who was also arrested and subsequently sentenced to a year-long prison sentence, and about her modelling career. The Asylum Office dismissed this evidence explaining that its authenticity had not been verified.

Furthermore, although the Asylum Office noted in its ruling that G.M.'s representatives had submitted evidence, it did not take such evidence into account during its deliberation of the case, which is in contravention of the LATP.<sup>64</sup> These submissions included, notably, reports on the state of human rights in Iran and on the status of women defying Islamic traditional customs and endeavouring to live a life of freedom and dignity. In addition, the Asylum Office ignored the psychological assessment report drawn up by PIN's psychologist, which was key to its decision in this case, especially given the applicant's vulnerability.

The LGAP proclaims the principle of truth and free assessment of evidence.<sup>65</sup> The application of this principle entails, inter alia, a diligent assessment of each piece of evidence, both individually and collectively, by the relevant authority. If it deems specific pieces of evidence irrelevant or less relevant than others (or vice versa), it is under the obligation to clearly explain

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<sup>62</sup> There are specific contradictions in G.M.'s statement about events that occurred upon her arrival in the RS.

<sup>63</sup> Asylum Commission Ruling No. AŽ-19/19 of 26 August 2019, p. 5.

<sup>64</sup> Art. 32(2(1-3)), LATP.

<sup>65</sup> Art. 10, LGAP.



its view. Specifically, if it does not consider specific pieces of evidence credible, it needs to provide a valid reason and argument for its opinion.<sup>66</sup>

In G.M.'s case, the Asylum Office did not act in accordance with the law, wherefore its findings of fact were incomplete and incorrect and led to an erroneous conclusion. In its ruling upholding the BCHR's appeal, the Asylum Commission enumerated the steps the Asylum Office needed to take to eliminate the identified shortcomings during its re-examination of the case. They included, amongst others, the consideration of three submissions by G.M.'s lawyers, material evidence – photographs and video recordings of G.M., media reports corroborating her claims and her psychological assessment report.

### **c) Asylum Office selectively assessed international reports on the situation in Iran**

On the other hand, when it deliberated G.M.'s case, the Asylum Office consulted several international reports on the situation in Iran but resorted to selective citing of excerpts substantiating its negative decision. For instance, the Asylum Office quoted an Australian Government's report on the situation in Iran<sup>67</sup> in the context of G.M.'s allegation that she would be arrested and convicted if she returned to Iran, inter alia, because she had applied for asylum in the RS. The Office quoted the following excerpts: "Authorities pay little attention to failed asylum seekers on their return to Iran" and those "who return on a *laissez-passer* are questioned by the Immigration Police at [...] Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour [...]. Arrest and mistreatment are not common during this process." However, in addition to a number of paragraphs in this report going in G.M.'s favour,<sup>68</sup> the report also noted that Iranian nationals not granted asylum in third countries who wanted to return to their country of origin<sup>69</sup> were at issue, which does not apply to G.M.'s case. Furthermore, in their appeal with the Asylum

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<sup>66</sup> Art. 141(4), LGAP.

<sup>67</sup> DFAT – Australian Government – Department of Foreign Affairs and Trade; Country Information Report Iran, 14 April 2020.

<sup>68</sup> For instance, the report states that Iran has a global and longstanding policy of not accepting involuntary returns. Historically, Iran has refused to issue temporary travel documents (*laissez-passers*) to facilitate the involuntary return of its citizens from abroad. The authors of the report have also assessed that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism) – like G.M., returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.

<sup>69</sup> In such cases, the state issues them *laissez-passers*.

Commission, BCHR's lawyers referred to other international reports<sup>70</sup> and ECtHR case-law,<sup>71</sup> indicating that the Asylum Office had drawn a blanket conclusion on the potential consequences G.M. would face on return to Iran.

Therefore, the BCHR is of the view that the Asylum Office ignored the real risks of G.M.'s ill-treatment by the Iranian authorities if she were returned to her country of origin, in contravention of the prohibition of torture<sup>72</sup> and the *non-refoulement* principle. The Asylum Commission upheld BCHR's arguments and instructed the Asylum Office to particularly take into consideration not only the facts and the evidence set forth by G.M., but also the risk that she would be persecuted or suffer serious harm in case she returned to Iran. It instructed the Asylum Office to ascertain the facts in the context of G.M.'s position and personal circumstances, including her sex and age.

### **2.2.3. Conclusion**

BCHR lawyers applaud the Asylum Commission's decision unequivocally noting the deficiencies in the work of the Asylum Office, especially the fact that underage S. and G. M. belong to particularly vulnerable groups of asylum seekers. The Asylum Commission was correct to overturn the first-instance rulings rejecting their asylum applications and remit the cases for reconsideration. The decisions also properly reflect the role of the Asylum Commission, as the authority controlling the work of the Asylum Office. In addition to finding violations in the Asylum Office's review of S.'s and G. M.'s asylum applications, the Asylum Commission also enumerated all the steps the Office should undertake during its re-examinations in order to adopt new decisions that will be in compliance with the law. In the opinion of BCHR's lawyers, the Asylum Commission has thus made a step forward both in its own practice of reviewing appeals and in the practice of the Asylum Office, as well as the adoption of comprehensive, appropriate and lawful decisions.

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<sup>70</sup> Research Directorate, Immigration and Refugee Board of Canada, *Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2017-February 2020)*, available at: <https://bit.ly/2WqpAVM>; UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Reissue, Geneva, February 2019.

<sup>71</sup> *N. A. v. Finland*, Application No. 25244/18 of 14 November 2019, paras 53–57 and 58–60; *M. A. v. Belgium*, Application No. 19656/18 of 27 October 2020, paras 60–61.

<sup>72</sup> Article 3 of the ECHR.

### **2.3. Will Administrative Court Judgments Affect the Efficiency of the Asylum Office and Commission?**

The BCHR analysed the Asylum Commission decisions on appeals of “silence of the administration” in its first 2021 periodic report.<sup>73</sup> This process has been ongoing since October 2020, when a number of appeals were filed because the first-instance Asylum Office failed to rule on the asylum applications within the deadlines set out in the LATP.<sup>74</sup>

To recall, soon after the BCHR appealed with the Asylum Commission, the Asylum Office issued rulings on the merits of most of the asylum applications at issue.<sup>75</sup> Notwithstanding the fact that the BCHR did not give up on its appeals, the Asylum Commission issued rulings<sup>76</sup> discontinuing the proceedings, under the explanation that there were no grounds for continuing them since the Asylum Office had ruled on the asylum applications. This prompted the BCHR to institute a number of administrative disputes, by filing claims with the Administrative Court.

The Administrative Court ruled on two out of the six cases it opened by the time this report was completed. It upheld the BCHR’s claims, overturned the rulings on the discontinuation of the procedures and remitted the cases to the Asylum Commission for reconsideration.<sup>77</sup> In the Administrative Court’s view, the impugned rulings had violated the law to the detriment of the asylum seekers, since Article 157(3) of the LGAP provides for the discontinuation of the review of an appeal only on the request of the applicant. The Administrative Court emphasised that Article 101(1) of the LGAP the Asylum Commission had referred to was inapplicable in these cases. Under that provision, proceedings may be discontinued in the event the authority conducting them finds that the requirements for continuing them have not been fulfilled and the law does not insist on their completion. Therefore, this provision applies in cases when a party to the proceedings explicitly abandons the claim or when the reasons for conducting the proceedings cease to exist due to the party’s conduct (e.g. tacit abandonment) or other circumstances (e.g. death of the party).

In the third case, the Administrative Court upheld BCHR’s claim contesting the silence of both asylum authorities.<sup>78</sup> In this case, the Asylum Commission did not rule on the appeal

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<sup>73</sup> More in the *January-March 2021 Right to Asylum Report*, pp. 30-31.

<sup>74</sup> More in the *July-September 2020 Right to Asylum Report*, p. 23.

<sup>75</sup> More in the *January-March 2021 Right to Asylum Report*, p. 30.

<sup>76</sup> Asylum Commission Ruling No. Až-43-1/20 of 9 December 2020; Asylum Commission Ruling No. Až-45-1/20 of 9 December 2020; Asylum Commission Ruling No. Až-42/20 of 15 January 2021; Asylum Commission Ruling No. Až-46/20 of 22 January 2021; and Asylum Commission Ruling No. Až-47/20 of 29 January 2021.

<sup>77</sup> Administrative Court Judgments Nos. U. 2141/21 of 19 April 2021 and U. 2251/21 of 23 April 2021.

<sup>78</sup> Administrative Court Judgment No. U. 2144/21 of 21 May 2021.

contesting the silence of the Asylum Office filed in October 2020 even after the BCHR submitted a follow-up request.<sup>79</sup>

The remaining three claims contesting discontinuation of the procedures regarding the silence of the administration the BCHR had filed were still pending before the Administrative Court at the end of the reporting period. However, it may be presumed based on the above judgments that the Administrative Court will uphold the claims and reaffirm that the review of an appeal of the silence of the administration cannot be discontinued just because the first-instance authority has ruled on the asylum application in the meantime. This will hopefully mark a step forward to obligating the asylum authorities to rule on asylum applications and appeals within the statutory deadlines.

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<sup>79</sup> This case concerns two Cuban nationals (a mother and a daughter), who applied for asylum in Serbia on 20 November 2019. It took the Asylum Office 11 months to interview them, specifically on 30 October 2020. In the meantime, the BCHR filed an appeal contesting the silence of the administration on 1 October 2020. Since the Asylum Commission failed to rule on the appeal within the statutory 60 days, the BCHR filed a follow-up request with it on 15 January 2021. Given the Asylum Commission's failure to act on its follow-up request, the BCHR filed a claim with the Administrative Court.

### 3. Accommodation of Migrants and Asylum Seekers

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognise the right of all individuals to an adequate standard of living, which includes the provision of food, clothing and accommodation to those asylum seekers unable to secure them.<sup>80</sup> The human rights of asylum seekers may also be protected by regional human rights instruments which apply to all persons residing in the respective Contracting States, regardless of their legal status in the country of asylum.<sup>81</sup>

Under UNHCR standards,<sup>82</sup> needy asylum seekers should be given all necessary support covering the basic necessities of life, including food, clothing and basic accommodation, throughout the asylum procedure until a final decision is taken on their application.<sup>83</sup> Furthermore, conditions in reception centres or in other types of collective accommodation for asylum seekers should fulfil minimum standards, including the existence of basic facilities, as well as access to health care and education. Asylum seekers should, however, have access to and the means for alternative accommodation arrangements, if these centres do not provide sufficient privacy or negatively impact on family unity or health conditions in a serious way in the longer term, or if the procedure is protracted.

The Committee of Ministers and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have both expressed the necessity to accommodate detained migrants and asylum seekers in facilities specifically designated for that purpose. Such facilities should offer them material conditions and a regime appropriate to their legal and factual situation and staffed by suitably qualified personnel.<sup>84</sup>

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<sup>80</sup> Art. 11, ICESCR, available at: <https://bitly.co/8Rvr>.

<sup>81</sup> Global Consultations on International Protection, Reception of Asylum-Seekers, Including Standards of Treatment in the Context of Individual Asylum Systems, available at: <https://bitly.co/8Rvs>.

<sup>82</sup> *Ibid.*

<sup>83</sup> Where necessary, this should apply also to asylum seekers who are allowed to work but unable to find adequate employment.

<sup>84</sup> Yannis Ktistakis, *Protecting Migrants under the European Convention on Human Rights and the European Social Charter – A handbook for legal practitioners*, Council of Europe, Strasbourg 2013, p. 34.

### 3.1. Facilities under CRM's Jurisdiction

Under the LATP,<sup>85</sup> asylum seekers are entitled to material conditions of reception: accommodation, food, clothing and a cash allowance for personal needs.<sup>86</sup> The LATP entrusts the CRM with providing asylum seekers with the reception material conditions.<sup>87</sup> The CRM secures the accommodation of migrants and asylum seekers in ACs and RTCs established pursuant to RS Government decisions.<sup>88</sup>

The Serbian Government in 2018 adopted the 2018-2020 Strategy to Combat Irregular Migration in the Republic of Serbia.<sup>89</sup> Serbia's EU accession process involves the alignment of national law with the EU *acquis* and the implementation of attained EU legal standards in the domestic legal system. In the context of reception conditions, the standards of the European Asylum Support Office (EASO) are the most relevant in the field of asylum and migration.<sup>90</sup> These standards guarantee minimum quality living conditions for migrants and asylum seekers, whilst providing the signatory states with room to raise their own standards to a higher level.

The CRM plays a crucial role in the fulfilment of these standards in the RS given that it manages the facilities accommodating migrants and asylum seekers and secures them access to the basic necessities. The state is under the obligation to enable the CRM to implement its activities adequately, provide migrants and asylum seekers with health care,<sup>91</sup> and social protection<sup>92</sup> within the bounds of the law and the state's economic capacity

In its Serbia 2020 Report, the European Commission said that Serbia continued to make substantial efforts to meet the essential needs of migrants passing through or remaining on its territory.<sup>93</sup> However, the accommodation facilities run by the CRM are still not at a satisfactory level.

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<sup>85</sup> Art. 48, LATP.

<sup>86</sup> Art. 50(1), LATP. BCHR was unaware by the end of the reporting period that any residents of ACs or RTCs have been receiving cash allowances for their personal needs.

<sup>87</sup> Art. 23, LATP.

<sup>88</sup> Art. 51, LATP.

<sup>89</sup> *Sl. glasnik RS* 30/18.

<sup>90</sup> See more in: <https://bitly.co/8Rvt>.

<sup>91</sup> Art. 54, LATP.

<sup>92</sup> Art. 53, LATP.

<sup>93</sup> European Commission, Serbia 2020 Report, available at: <https://bitly.co/8Rvw>.

The Migration Management Law<sup>94</sup> sets out that migration shall be managed in accordance with the principle of balanced and planned economic development and the prohibition of the artificial change of the ethnic composition of the population.

There are 19 facilities in the RS designated for the accommodation of migrants and asylum seekers. The Asylum Centres (ACs) are located in Krnjača, Bogovađa, Sjenica, Tutin, Banja Koviljača; under the Serbian Government's decision<sup>95</sup> of 17 June 2021, the Reception-Transit Centres in Vranje and Obrenovac will also become Asylum Centres.<sup>96</sup> The other RTCs are located in Adaševci, Bosilegrad, Divljana, Kikinda, Preševo, Pirot, Principovac, Sombor, Subotica and Šid. According to the information the BCHR team collected during its field visits, the RTCs in Bujanovac, Principovac and Pirot have been temporarily put on standby, while the AC in Banja Koviljača is being renovated.<sup>97</sup> The BCHR team regularly visited all the ACs and the following RTCs during the first half of 2021: Adaševci, Bosilegrad, Bujanovac, Divljana, Pirot, and Preševo, and, where necessary, other facilities accommodating asylum seekers.<sup>98</sup>

The difference between ACs and RTCs is legal in character.<sup>99</sup> Namely, the Asylum Office conducts the asylum procedure in ACs, where it receives asylum applications and interviews the asylum seekers,<sup>100</sup> while migrants who do not want to seek asylum in the RS are accommodated in RTCs. The MOI has continued referring registered asylum seekers to RTCs, where their long wait for transfer to an AC has often discouraged them from settling down in the RS.<sup>101</sup> In practice, the relocation procedure can be faster in individual cases, if the foreigners referred to RTCs apply for asylum in writing.

In addition to accommodation in facilities run by the CRM, asylum seekers are entitled to live at a private address, if they can afford the rent and receive the Asylum Office's permission

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<sup>94</sup> *Sl. glasnik RS* 107/12-4.

<sup>95</sup> Decision on the Establishment of Asylum Centres No. 02-5650/2021 of 17 June 2021 (*Sl. glasnik RS* 62/21).

<sup>96</sup> In mid-June 2021, the CRM relocated the residents from the Vranje Centre in order to adapt it. Foreigners not planning on applying for asylum were referred to the RTC in Divljana and those planning on applying were transferred to the ACs in Krnjača and Tutin.

<sup>97</sup> The residents of the erstwhile RTC in Pirot were moved to the Divljana RTC (if they did not plan on applying for asylum) or the ACs in Krnjača and Tutin (if they did). Asylum seekers living in the Banja Koviljača AC were temporarily moved to the AC in Krnjača.

<sup>98</sup> Where necessary, the BCHR legal team has been visiting institutions accommodating unaccompanied and separated migrant and asylum seeking children, as well as the residents of the Shelter operated by the NGO Atina.

<sup>99</sup> Ana Trifunović (ed.) *Right to Asylum in the Republic of Serbia 2020*, BCHR (Belgrade, 2020), p. 77 (hereinafter: *2020 Right to Asylum Report*), available at: <https://bit.ly.co/8QIo>.

<sup>100</sup> To the best of BCHR's knowledge, Asylum Office staff have not visited the ACs in Tutin and Sjenica for over two years now.

<sup>101</sup> See more in *2020 Right to Asylum Report*, p. 77.

beforehand.<sup>102</sup> In practice, the Asylum Office reviews such requests if the applicants have already applied for asylum.

The ongoing COVID-19 pandemic led to the reduction of activities and workshops implemented by various domestic and international organisations in the ACs and RTCs.<sup>103</sup> School attendance by migrant and asylum-seeking children has diminished as well. The vaccination of interested migrants and asylum seekers in ACs and RTCs proceeded well during the reporting period

### 3.1.1. Asylum Centres

The BCHR has always focused on asylum centres during its nearly ten-year long extension of legal aid to asylum seekers and their representation in the asylum procedure, given that the Asylum Office conducts (or at least ought to) the asylum procedure in them. Admission to ACs is regulated by the Rulebook on Medical Examinations of Asylum Seekers on Admission to Asylum Centres and Other Facilities Accommodating Asylum Seekers.<sup>104</sup>

With the exception of the Krnjača AC, most of the ACs are unfortunately far away from Belgrade and the headquarters of the Asylum Office, often resulting in delays in its implementation of official activities. The BCHR team expects the Asylum Office staff to visit the AC in Obrenovac more frequently in the future, given the decision to renovate the facility to accommodate asylum seekers.

All ACs are open-type facilities, which means that asylum seekers are free to leave them without asking for permission, unless their movement is restricted in accordance with the law.<sup>105</sup> Asylum seekers may leave the AC for 72 hours with the AC management's written permission. If they do not return within that period, the CRM deletes their names from the list of AC residents, which affects reviews of their applications.<sup>106</sup> Namely, when the AC management forwards the information on the deletion of a name from the list of AC residents, the Asylum Office issues a

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<sup>102</sup> Under Art. 50(8), LATP. At the request of the applicants, the Asylum Office reviews their eligibility for renting private accommodation and issues its permission in the form of a ruling.

<sup>103</sup> The impression the BCHR gained during its field visits and interviews with CRM representatives during the reporting period.

<sup>104</sup> *Sl. glasnik RS* 57/2018.

<sup>105</sup> Art. 77, LATP.

<sup>106</sup> See more in *2020 Right to Asylum Report*, p. 80.



ruling discontinuing the asylum procedure, unless the asylum seeker promptly notifies it of their new address.<sup>107</sup>

The centre profiles on the CRM website do not include 2021 data,<sup>108</sup> which has impeded monitoring of the situation concerning the accommodation of migrants and asylum seekers in the RS and diminished the degree of available information in this area.<sup>109</sup> The following section of the Report provides brief descriptions of the situation of asylum seekers in all the ACs the BCHR visited during the reporting period. A more detailed analysis of the state of the ACs and the accommodation conditions in them will be provided in the 2021 annual report.

### **a) Banja Koviljača AC**

The Banja Koviljača AC is 151 km away from Belgrade. The closest public services, primary school and police station are approximately 1 km away from the AC. This was the first asylum centre established in Serbia, back in 2008.<sup>110</sup> The Banja Koviljača AC has the capacity to take in up to 120 asylum seekers. To the best of the BCHR's knowledge, this AC was not full during the reporting period.

During the first half of the year, the BCHR team conducted four regular visits to the AC in Banja Koviljača,<sup>111</sup> during which it gained insight in the actual situation there and the needs of its residents. After the May Day holidays, all the residents were moved to the AC in Krnjača and the renovation of the AC in Banja Koviljača began.<sup>112</sup>

This AC is designated for the accommodation of families and single asylum seekers. The Centre endeavours to comply with the principle on the unity of the family, while single asylum seekers share rooms or are occasionally provided with rooms of their own. They share the bathrooms and toilets. Asylum seekers are provided with three meals a day in accordance with their religious dietary and health needs.<sup>113</sup>

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<sup>107</sup> Information obtained from CRM representatives.

<sup>108</sup> The most recent data date back to August 2020. See more in Serbian at: <https://bityl.co/8Rw0>.

<sup>109</sup> The BCHR has been collected most of the relevant information through field work and cooperation with UNHCR.

<sup>110</sup> Lena Petrović (ed.), *Right to Asylum in the Republic of Serbia 2019*, BCHR (Belgrade, 2019), p. 75.

<sup>111</sup> Information on file with the BCHR.

<sup>112</sup> The BCHR team has not been told how long the renovation of the AC in Banja Koviljača will last.

<sup>113</sup> Information on file with the BCHR.

School-age children can attend the local primary school; the secondary schools are in Loznica, seven kilometres away from the AC. Several children living in the AC attended kindergarten and the primary school in the AC's immediate vicinity during the reporting period.<sup>114</sup>

The AC does not have interpreters on staff. They accompany NGOs<sup>115</sup> conducting various activities in the Centre. The AC has not yet designated a room for legal, psychosocial and other counselling of asylum seekers. Asylum seekers can obtain their IDs<sup>116</sup> in this AC because the Asylum Office has deployed a member of staff to work there full-time.

The residents of this AC had access to health care from 8 am to 2 pm on weekdays.<sup>117</sup> The doctors extending such health care were engaged via the local Out-Patient Health Clinic in Loznica.

## **b) Krnjača AC**

The Krnjača AC is around 4 km away from Belgrade. Located within the complex of the construction company PIM Ivan Milutinović, it has the capacity to take in 1,000 people. During the first half of 2021, the BCHR team conducted five regular and six ad hoc visits to the Krnjača AC, during which it gained insight in the actual situation in this Centre and the needs of its residents.

Asylum seekers share rooms in the barracks. The AC has a barracks designated for housing unaccompanied children. There are also barracks accommodating only families.<sup>118</sup> Unaccompanied children and children living in the Krnjača AC together with their parents have access to primary and secondary education.

Interpreters of the Crisis Response and Policy Centre (CRPC) and the IOM were regularly present in the AC during the reporting period and assisted representatives of the CRM and other organisations in communicating with the asylum seekers where necessary.<sup>119</sup> The Centre has rooms where they can have confidential conversations with the asylum seekers.

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<sup>114</sup> Information on file with the BCHR.

<sup>115</sup> Other organisations that implemented activities in the Banja Koviljača AC include the International Organization for Migration (IOM), the Danish Refugee Council (DRC) and the Asylum Protection Centre (APC).

<sup>116</sup> See: <https://bit.ly.co/8Rw6>.

<sup>117</sup> Information obtained in written correspondence with a BCHR client, on file with the BCHR.

<sup>118</sup> *2020 Right to Asylum Report*, p. 85.

<sup>119</sup> According to information the BCHR obtained during its visits to the Krnjača AC, the DRC, APC and PIN also conducted activities in this Centre.

The Krnjača AC has its own infirmary in one of the barracks, which is on occasion manned by several doctors and nurses. A general practitioner was present every workday, from 8 am to 2 pm during the reporting period. The vaccination process was conducted at a pace suiting the asylum seekers.

### **c) Bogovađa AC**

The Bogovađa AC is 70 km away from Belgrade and is housed in the facility of the erstwhile Red Cross Children's Resort. The AC is located in a summer cottage area surrounded by a forest. It has the capacity to take in 200 residents.

In early 2020, the CRM designated the Bogovađa AC for the accommodation of unaccompanied and separated children. The BCHR team visited the Centre six times during the first half of the year. The asylum seekers share rooms, bathrooms and toilets. The AC has a common TV room. The residents are provided with meals suiting their age and religious and health needs three times a day.<sup>120</sup> Hygiene in the AC is satisfactory.<sup>121</sup>

Providers of legal and psychosocial aid are granted access to the AC in Bogovađa. One of the rooms in the AC has been designated for confidential conversations with asylum seekers.

Various workshops for children and youths are implemented in this AC. Furthermore, Serbian language courses are held for all interested asylum seekers. The workshops are conducted by Caritas and the Red Cross. In addition to the BCHR, Caritas, CRPC, DRC, Group 484, IOM and UNHCR are also present continuously in the AC. CRPC representatives hold cultural mediation classes every workday, and English and Serbian language lessons with cultural orientation twice a week.<sup>122</sup>

According to the information the BCHR obtained from CRM's representative, unaccompanied and separated children had difficulties accessing health care because a doctor had not been deployed in the AC for several months, wherefore the children in need of medical aid were driven to Lajkovac or Valjevo for general and specialist check-ups.

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<sup>120</sup> *Ibid.*

<sup>121</sup> Available at: <https://bit.ly.co/8Rw9>.

<sup>122</sup> Information obtained from the Bogovađa AC management on 18 January 2021.

Although the Bogovađa AC is relatively close to Belgrade, the Asylum Office did not conduct any official activities in it during the first half of 2021. The major fluctuation of children every week indicates that hardly any of the children are interested in obtaining asylum in the RS.<sup>123</sup>

#### **d) Tutin AC**

The Tutin AC is housed in a facility in Velje Polje, 295 km away from Belgrade. It can take in 200 residents. The AC management puts families in separate rooms, while other asylum seekers share rooms.<sup>124</sup>

The BCHR team visited the Tutin AC six times during the first half of the year.<sup>125</sup> The residents share toilets and bathrooms. The AC has a common TV room, a cafeteria and a playground. The ground floor of the AC is disability friendly.

The residents of this AC are provided with three meals and the CRM makes sure that the food meets the residents' religious dietary needs. The asylum seekers are provided with adequate food and accommodation and none of the residents complained about them to the BCHR during the reporting period.

This AC does not have interpreters on staff. Interpreters usually accompany the NGOs conducting various activities in the AC. The Centre has a separate room, where the visitors can have confidential conversations with the residents. The residents have the opportunity to receive legal and psychosocial counselling.

The AC infirmary is staffed by a doctor every workday, from 8 am to 2 pm. The CRM arranges the transportation of asylum seekers in need of specialist examinations or urgent medical aid to the local hospital in Tutin or the hospital in Novi Pazar.<sup>126</sup>

The long distance between the AC in Tutin and Belgrade and the headquarters of the Asylum Office is a persisting problem, due to which the latter has not been conducting official activities in it. In the BCHR's experience, Asylum Office staff's visits to this Centre are extremely rare - they have not conducted any official activities in it over the past two years. Such inaction has discouraged asylum seekers in this AC from pursuing asylum in the RS.

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<sup>123</sup> Information obtained from the CRM management in the Bogovađa AC.

<sup>124</sup> *2020 Right to Asylum Report*, p. 84.

<sup>125</sup> On file with the BCHR.

<sup>126</sup> On file with the BCHR.

## e) Sjenica AC

The Sjenica AC is located in the administrative building of the textile factory Vesna, around 250 km away from Belgrade. The Centre has the capacity to take in 400 residents. This AC has been primarily designated for unaccompanied and separated asylum-seeking children,<sup>127</sup> most of whom are between 15 and 18 years old. Between 10 and 15 children lived in the AC during the first half of the year. Given the lack of a method for reliably identifying the age of the asylum seekers, asylum seekers who were obviously adults have apparently been registered as minors and referred to this AC, which may put at risk the children living in it.

Representatives of NGOs extending assistance to asylum seekers have had difficulties accessing this Centre, due to its remoteness and poor road infrastructure.<sup>128</sup> The Asylum Office has not been conducting procedural activities in this AC for a long time now for the same reason.<sup>129</sup> Such a practice is particularly problematic in the light of the fact that asylum applications filed by unaccompanied and separated children should have priority.<sup>130</sup> On the other hand, hardly any of the children make use of the opportunity to apply for asylum in writing in practice, since they are apparently not interested in staying in the RS.

The BCHR team visited the Sjenica AC six times during the first half of the year.<sup>131</sup> Its residents were generally satisfied with their accommodation and treatment.<sup>132</sup> The children have access to educational and recreational content implemented by Sigma plus and the DRC and can also benefit from legal and psychological counselling.

The residents of the Sjenica AC have access to medical aid in the Centre every workday, from 8 am to 2 pm. Children in need of specialist examinations are taken to the local hospital or the Out-Patient Health Clinic.

As per access to education, all unaccompanied and separated children in the AC can attend the local primary school and the secondary vocational school. Nevertheless, many of them do not attend class, because they do not stay long in this AC and/or cannot follow class in Serbian. The

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<sup>127</sup> There is no formal decision upholding this MOI and CRM practice.

<sup>128</sup> In addition to the BCHR, the Sjenica AC is regularly visited by the following organisations: PIN, UNHCR, Sigma plus, DRC and IDEAS.

<sup>129</sup> On file with the BCHR.

<sup>130</sup> Art. 12, LAMP.

<sup>131</sup> On file with the BCHR.

<sup>132</sup> Information obtained from the temporary guardian engaged in the Sjenica AC, on file with the BCHR.

children's temporary guardian is commendably present in the AC at all times. The AC also makes sure an interpreter is available to assist in all communication with the residents.<sup>133</sup>

### **3.2. Conclusion and Recommendations**

The situation on the ground shows that no substantial changes in terms of accommodation occurred in the first half of 2021. Asylum seekers resided in both ACs and RTCs. Those the MOI referred upon registration to RTCs were allowed to apply for asylum in writing. However, their relocation to ACs still took an unjustifiably long period of time. The MOI should develop mechanisms enabling it to clearly distinguish between migrants who genuinely want to apply for asylum and those who do not. This would facilitate the entire procedure not only for the asylum seekers, but also for the MOI and other relevant institutions and organisations, as well as the latter's access to their target groups and implementation of activities within their remit.

The Asylum Office's failure to visit ACs far away from Belgrade, such as the ones in Sjenica and Tutin, is a persisting problem. The decision to transform the RTCs in Obrenovac and Vranje into ACs is encouraging.<sup>134</sup> It remains to be seen whether the MOI's Asylum Office will improve the efficiency of reviewing asylum applications filed by foreigners in need of international protection and living in remote ACs.<sup>135</sup>

The commendable practice of some CSOs, which have been extending interpretation assistance or securing the presence of their interpreters in the ACs, is not a sustainable solution in the long term. The CRM should make sure that all ACs have interpreters for the languages spoken by their residents available at all times.

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<sup>133</sup> Assistance of interpreters is usually arranged by the DRC.

<sup>134</sup> Available in Serbian at: <https://bit.ly.co/8RwF>.

<sup>135</sup> In particular, whether Asylum Office staff will visit the future AC in Vranje, given the long distance between this city and the Asylum Office's headquarters in Belgrade.

## 4. Integration

The Council of Europe has stated that social integration has been anchored in the protection of individual human dignity, non-discrimination and participation in the host societies.<sup>136</sup> According to the EU Action Plan on Integration and Inclusion 2021-2027, which the European Commission presented in late 2020, the key areas of integration include: education, employment, health care and housing, while additional focus is put, inter alia, on the engagement of all social actors, active participation of refugees in the community and the process of long-term integration.<sup>137</sup>

Integration is the path to the refugees' naturalisation in Serbian society and effective access to the rights<sup>138</sup> they are guaranteed under international and national law. Integration of refugees is a dynamic and multi-faceted two-way process requiring efforts of all key stakeholders, including the refugees' readiness to adjust to society in the host country, without having to forsake their own culture or identity. Furthermore, it requires the readiness of the state of refuge and the local community to accept these individuals. The integration process is complex and long. Its ultimate aim is the full integration of refugees in the society of the state granting them international protection.

Many of the integration-related challenges refugees have been facing in the past persisted in the first half of 2021. First and foremost, foreigners granted refuge or subsidiary protection were still unable to obtain travel documents, a problem BCHR has been alerting to for several years now.<sup>139</sup> Namely, the MOI has not yet adopted a by-law on the template of travel documents for refugees. Refugees and asylum seekers, especially nationals of Iran, Afghanistan, Iraq and Pakistan, have also been facing difficulties opening bank accounts. The BCHR team analysed in detail recent refugee experiences in the context of these two problems in its January-March 2021 Right to Asylum Report.<sup>140</sup>

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<sup>136</sup> *Human Rights Aspects of Immigrant and Refugee Integration Policies*, Council of Europe (Strasbourg, March 2019), available at: <https://bit.ly.co/8QKy>.

<sup>137</sup> *Action plan on Integration and Inclusion 2021-2027*, European Commission (Brussels, 24 November 2020), available at: <https://bit.ly.co/8QLM>.

<sup>138</sup> Under Article 59 of the LTP, foreigners granted the right to asylum, either refuge or subsidiary protection, are guaranteed the following rights: to residence, accommodation, freedom of movement, property, health care, education, access to the labour market, legal and social aid, freedom of religion, family reunification, personal and travel documents and assistance in integration.

<sup>139</sup> See, e.g. *2020 Right to Asylum Report*.

<sup>140</sup> See more in the *January-March 2021 Right to Asylum Report*, pp. 45-50.

In the context of the ongoing COVID-19 pandemic, the BCHR commends the relevant RS authorities' good practice of vaccinating refugees and asylum seekers. All of them, residing in ACs, RTCs and at private addresses, have had the opportunity to apply for the available vaccines via the *eUprava* (eGovernment) portal.

The following section of the periodic report presents several activities the BCHR team launched and implemented within the *Support to Refugees and Asylum Seekers in Serbia* project in executive partnership with the UNHCR Office in Serbia. One of them, the two-month online campaign *#MiLjudiZajednoMožemoViše* (*#WePeopleCanDoMoreTogether*) aimed at building general public awareness of the importance and mutual benefits of the integration of all members of society. The second novel programme activity BCHR launched, *Refugees for Refugees* (*Izbeglice za izbeglice*, R4R) has been implemented since April 2021. Namely, the BCHR recognised the need for the empowerment of refugees and asylum seekers through concerted action – “seasoned” refugees and asylum seekers have been sharing their experiences with and assisting asylum seekers who recently came to the RS and are in need of additional support in integrating in its society. Furthermore, this part of the report includes an analysis of the refugees' and asylum seekers' access to individual integration-related rights and the challenges they have been facing in accessing education, specifically the validation of their foreign school certificates and their enrolment in Serbian colleges.

#### **4.1. BCHR's Online Campaign *#MiLjudiZajednoMožemoViše***

Today's world has become an arena of conflict and persecution, creating a large number of refugees looking for peace, the opportunity to work, pursue their education, provide their children with safety, surrounded by their families and friends. Many refugees perceive the RS as a place where they can start their life over. The integration process plays the main role in their adjustment to the new social norms of their host country. Successful integration of refugees entails: living a life of dignity, adjustment to cultural norms and the local community, as well as the major contribution refugees can make to the development of the host society with their experiences, knowledge and talents. To achieve this, they need the help of the entire society of the host country, above all of the local community.

Public discourse in the RS, including on TV stations with national coverage, is rife with unverified reports and incongruous content about most social and political topics, including refugee issues. Manipulation of facts, especially of statistical data, abounds on Internet portals, fomenting hate speech, confusion, suspiciousness and even fear of refugees and migrants among



Serbia's citizens. Such discourse, which flourished in the run up to the 2020 elections, was analysed in detail by the BCHR team in its 2020 Right to Asylum Report.<sup>141</sup>

Lack of professional debates on the public stage motivated the BCHR team to approach this topic from a different perspective, through the active participation of the local and refugee populations. On 20 April, it launched the online campaign #MiLjudiZajednoMožemoViše<sup>142</sup> in order to highlight the importance of the refugees' integration in Serbia's society and the benefits of social cohesion and multi-culturalism. This two-month campaign also aimed at dampening the effects of the prior negative discourse by pointing out the necessity of a transparent migration policy providing the public with clear and credible information on this issue.

The #MiLjudiZajednoMožemoViše campaign involved the publication of diverse visual materials, video clippings and messages on BCHR's website and social media profiles,<sup>143</sup> while the central events took place during the Week of Multiculturalism and Tolerance marking World Refugee Day. BCHR's campaign familiarised the general public with the refugee integration process not only through its creative materials, but also by sharing with it the positive individual experiences of local integration, as well as with the help of the active participation of refugees and the local population<sup>144</sup> in the design of the campaign itself.

The campaign's goal was to raise general public awareness of the importance of the successful integration of refugees and the RS' benefits from it, in order to motivate Serbia's citizens to contribute together to the building of a more tolerant society and a more open social dialogue.

## 4.2. Recognition of Refugees' Foreign School Certificates

Given that education is one of the key factors for a successful, better-quality life, the BCHR continued devoting particular attention to advancing the refugees' education-related rights, the realisation of which greatly facilitates their effective integration in the RS. To recall, the BCHR in 2020 started advocating that the Serbian Qualification Agency ENIC – NARIC Centre join in the implementation of the CoE European Qualifications Passport for Refugees – EQPR project in the

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<sup>141</sup> See more in *2020 Right to Asylum Report*, p. 175.

<sup>142</sup> More information about the online campaign is available on the BCHR's official websites, [www.bgcentar.rs](http://www.bgcentar.rs) and [www.azil.rs](http://www.azil.rs), and its Facebook, Twitter and Instagram profiles.

<sup>143</sup> On Facebook, Instagram, Twitter and YouTube.

<sup>144</sup> Local and refugee youth participating in BCHR's programme activity *CoolTour Tube* within the *Support to Refugees and Asylum Seekers in the Republic of Serbia* project.

RS. The EQPR supports the implementation of Article VII of the Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region, facilitating the recognition of the refugees' qualifications even in the absence of all the documentation.<sup>145</sup> To that end, a meeting, attended by the highest UNHCR representatives in the RS and the representatives of the CoE Office in Belgrade, was organised in March 2021 to discuss the recognition of refugees' qualifications and the EQPR.<sup>146</sup> In early June 2021, the ENIC – NARIC Centre sent a note of accession to the Council of Europe, as the implementer of the EQPR project, whereby the RS began with its implementation.

The EQPR is a document that facilitates the assessment of the highest education qualifications obtained based on an individual's documentation and a structured interview. It also includes information on the individual's work experience and language skills. Many refugees and asylum seekers do not have all their original school diplomas and certificates. Furthermore, quite a few of them had been forced to leave school in their country of origin because of war or other circumstances. Thanks to this document, refugees will have better employment prospects and opportunities to pursue their education, which will in turn speed up their integration, enabling them to fully contribute to the society they are living in.

In February 2021, the BCHR filed an application with the Qualification Agency ENIC/NARIC Centre to validate the high school diploma of its client K.I.K., a Burundian refugee. K.I.K. had decided to apply for Medical School in Belgrade. She submitted all the required documents,<sup>147</sup> certified by a court-sworn French translator.

The validation process is not complicated. The applicants need to present their original documents for inspection and submit their certified translations, pay the administrative fee and fill a form obtained in the Qualification Agency. Ten days after K.I.K. applied, the Agency sent BCHR a ruling validating her high school diploma as the diploma of a general high school with passed matriculation exams corresponding to Level 4 of the National Qualifications Framework of the Republic of Serbia (NQFS).

The BCHR applied with the ENIC/NARIC Centre on behalf of two other clients, also Burundian refugees, during the reporting period. It submitted their college diplomas, diploma supplements and transcripts of their grades for validation. The college diploma validation procedure is more complex and the Centre completed the validation process only in respect of

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<sup>145</sup> See more in the *2020 Right to Asylum Report*, pp. 166-167.

<sup>146</sup> See more at: <https://fbook.cc/3QkW>.

<sup>147</sup> Certificates for every year of schooling, diploma, state exam certificate and state exam results, and certificate of general classical education.

client T.N. by the end of the reporting period. The greatest delay in his case was caused by the time it took T.N.'s alma mater in Burundi to provide the Centre staff with the requested feedback. Finally, T.N. himself helped the Centre staff establish contact with the college officials.

Like K.I.K., T.N. had all the required documents<sup>148</sup> certified by a court-sworn French translator. The first step involved filling an electronic application form and attaching to it all the scanned documents.<sup>149</sup> The application form requires the filling of numerous data about the applicant, institution/university, college, programme/department/discipline, credits and the applicant's pre-university education. Given that T.N.'s diploma had not been properly legalised by a stamped official certificate (an apostille), the BCHR subsequently submitted a statement explaining that the applicant was an asylum seeker who could not go back to his country of origin to have an apostille attached to his diploma. Several days later, the ENIC/NARIC Centre notified the BCHR that the ruling recognising T.N.'s college diploma for the purpose of employment has been completed. When he went to pick up the ruling, T.N. was required to submit to the ENIC/NARIC Centre hard copies of his electronic application form and of all the original documents he had attached to it.<sup>150</sup>

#### **4.2.1. Conclusion and Recommendations**

The BCHR welcomes all the efforts and activities of the Ministry of Education, Science and Technological Development (MOESTD) and the Qualification Agency ENIC/NARIC Centre in the RS and the launch of the EQPR project, thanks to which its clients will have the opportunity to pursue their education and/or find jobs corresponding to their schooling and qualifications, live better-quality lives and contribute more to the host society that has taken them in. The ENIC/NARIC Centre's efficiency and degree of cooperativeness is truly commendable.

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<sup>148</sup> Diploma and exam transcripts for each year.

<sup>149</sup> Original diploma and its translation, original exam transcripts and their translation, identification document, short biography and proof of payment of the administrative fee.

<sup>150</sup> T.N. was also required to submit certified photocopies of the documents, which are permanently archived with the application form in the applicant's case file.

### 4.3. Refugees' College Enrolment Procedure

Under the LATP, refugees are entitled to preschool, primary, secondary and tertiary education under equal terms as nationals of Serbia.<sup>151</sup> Burundian refugee K.I.K. expressed the wish to continue her schooling and enrol in Belgrade University's Medical School back in 2020. In its reply<sup>152</sup> to BCHR's query, the University of Belgrade said that foreign nationals who had the status of migrants/asylum seekers were entitled to enrol in college under the same terms as Serbian nationals.<sup>153</sup>

The professional guidance on enrolment in state-run colleges in the 2021/2022 school-year,<sup>154</sup> which was published in June 2021, reiterates that foreign nationals who have the status of migrants/asylum seekers may enrol in college under the same terms as nationals of the RS.

As mentioned, the BCHR validated K.I.K.'s high school diploma in February. With UNHCR's support, K.I.K. had attended Biology and Chemistry lessons to prepare for the entrance exam since early 2021. K.I.K. has also been studying Serbian regularly since 2020.

Soon after the Belgrade University Medical School published the 2021/2022 admission competition in May, the BCHR got in touch with an official of the School's Centre for International Cooperation, who helped K.I.K. apply. In addition to the ruling on the validation of her high school diploma, K.I.K. was required to submit a photocopy of her identification document, her birth certificate, her Serbian language certificate, her medical certificate and her health insurance.

Preliminary applications were submitted in the 17-21 June 2021 period.<sup>155</sup> In addition to their personal data, the applicants were required to enter the number of points they earned in high school. Their GPAs (5.0 being the maximum) in 9<sup>th</sup>-12<sup>th</sup> grades were multiplied by two and carried a maximum of 40 points. However, K.I.K.'s grades were on a scale of 1 to 100 rather than on a scale of 1 to 5 like in the RS. Another problem arose from the fact that K.I.K. had completed a three-year high school that followed a French curriculum. The BCHR asked the ENIC/NARIC Centre and the Medical School to help address the problem, but neither were able to advise how to recalibrate her grades. Furthermore, the Rulebook on Secondary School Grading also lacks specific information on the percentage of the curriculum a student has to master to earn a specific

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<sup>151</sup> Art. 64, LATP.

<sup>152</sup> University of Belgrade reply of 12 October 2020, No. 212/8.

<sup>153</sup> See more in the *2020 Right to Asylum Report*, p. 164.

<sup>154</sup> *Sl. glasnik RS* 59/2021

<sup>155</sup> Each applicant was given a number and the exact time at which they were to submit their documentation to the Medical School to avoid crowding.

grade. Ultimately, the Medical School told BCHR that K.I.K. should herself recalibrate her grades in the preliminary application and that the admissions committee would have the final say.

The applicants applied and submitted their documents in the 23-26 June period. In addition to the above-mentioned documents and proof of payment of the administrative fee, they were to buy the entrance exam materials in the School shop. The materials included, inter alia, two statements<sup>156</sup> they had to sign and submit together with their applications. After they submitted their documents, the applicants were given new numbers, which they brought with them to the Medical School where they were assigned seats in halls and classrooms where they took the entrance exam.

Around 1,250 high school graduates applied for Medical School. The entrance exam was held on 30 June. The applicants had to earn at least 31 points on the exam.<sup>157</sup> Unfortunately, BCHR's client was among the 45% of the applicants who failed the exam, wherefore she did not enrol in the college of her choice.

A Libyan refugee, K.S.S., applied at the University of Belgrade College of Economy. The enrolment procedure at this college is less complicated than the one at the Medical School. The applicants could apply only online, from 23 to 26 June. They needed to attach their high school certificates, diploma, proof of payment of the administrative fee and a statement allowing the College to use their personal data to draw up the enrolment ranking list. Furthermore, K.S.S. graduated from a high school in Serbia, wherefore he did not need to validate any school certificates. Given his completion of high school in Serbia, K.S.S. had fewer problems applying for college and taking the entrance exam.

The College of Economy held a practice test on 26 June and the entrance exam on 28 June. K.S.S. was ranked 50<sup>th</sup> below the line of students whose studies are funded from the state budget and he enrolled as a self-funding student.

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<sup>156</sup> The first statement authorised the Medical School to enter the provided personal data in the electronic database and use them to generate statistical data and the second statement confirmed that the applicant was not enrolled as a state-funded freshman elsewhere.

<sup>157</sup> The entrance exam carried a maximum of 60 points—30 could be earned on the Biology test and 30 on the Chemistry test.

### 4.3.1. Conclusion and Recommendations

In cooperation with UNHCR, the BCHR will continue supporting young refugees and asylum seekers who want to continue their education in the RS. Given that they are a vulnerable category of the population, the state should consider introducing additional measures facilitating their college admission under the Affirmative Action Programme.

The state should also give thought to providing a specific number of scholarships for refugee youths who want to go to college. For instance, Italy set aside 100 scholarships for refugees in 2020. The scholarships were managed and granted by the Conference of Italian University Rectors, the Italian Ministry of the Interior and the National Association of the bodies for the right to higher education.<sup>158</sup>

Pursuant to its powers under the Integration Decree<sup>159</sup> and at the initiative of the CRM, the Ministry of Education, Education, Science and Technological Development and national universities should introduce affirmative action measures recognising refugees as a particularly vulnerable category and establish a system for providing them with financial aid during their studies. In addition, all universities in the RS should develop preparatory programmes and active measures for including refugees in tertiary education. This would facilitate their enrolment in Serbian colleges either at the state's expense or with state scholarships.

## 4.4. *Refugees for Refugees* Project Activity

*Refugees for Refugees* (R4R) is a pilot project activity the BCHR has been implementing since April 2021 within the *Support to Refugees and Asylum Seekers in Serbia* project. Namely, the BCHR has recognised the need for the empowerment of this vulnerable category of the population: “seasoned” refugees and asylum seekers, who have already integrated in the RS, share their experiences, accounts, personal impressions and advice with the new arrivals and thus additionally support their integration in Serbia's society.

As already noted, integration is a complex and long process all refugees face in their host countries. Although arduous, familiarisation with the local culture and acceptance of the new social

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<sup>158</sup> See more at: <https://bit.ly.co/8Rwi>.

<sup>159</sup> Under Article 2(3) of the Integration Decree, inclusion in the social, cultural and economic life of individuals granted the right to asylum shall be secured by: “[...] provision of assistance in accessing the education system; in exercising the right to health care and social protection; and in accessing the labour market”.

environment are achievable, especially if the refugees are motivated and receive adequate systematic support. The BCHR recognised the need for additional support to this population provided by refugee assistants, who have themselves gone through the asylum procedure and integration process in the RS. These assistants help people in situations similar to their own integrate in society and begin the process of naturalisation as efficiently as possible.

R4R is specific inasmuch as it is the first such activity implemented in the RS. The BCHR team has continued identifying and developing efficient mechanisms for empowering individuals in need of international protection and in vulnerable situations. Refugees and asylum seekers are in need of a more sensitive approach R4R is trying to provide them with, to facilitate and simplify their adjustment to the new community as much as possible.

By sharing their experience and advice, refugee assistants are able to inform new refugees and asylum seekers more simply of their rights and obligations during the asylum procedure and once they are granted asylum. They help them by sharing with them information on how to access the labour market, education and health care, about the new social rules and values they need to adjust to, as well as about interesting cultural and social activities. Refugee assistants help empower the new arrivals by passing on to them the various skills and knowledge they have gained and which they need in order to adjust to life in the RS and communicate more easily.

Since R4R's launch, refugee assistants have been helping refugees and asylum seekers apply for work permits, replace their foreign driving licences with Serbian ones, and develop social contacts. They have also helped them open bank accounts and obtain various medical certificates and certificates of the National Employment Service. The assistants have been emphasising the importance of learning Serbian, as the first and indispensable step in the integration process. Life in a new community is much easier when one knows the local language and can communicate in it. With the assistants' support, R4R fosters the full integration of refugees and asylum seekers, which entails mastering Serbian and development of a social life.

Most refugees and asylum seekers are living in uncertain circumstances and are not provided with sufficient systemic and social support in the host community. They often feel lonely, far from their country of origin, family and friends, giving rise to feelings of isolation and social discomfort. Therefore, support extended by people who had been in the same situation and who can better understand what they are going through is, indeed, necessary and welcome. Experiences of refugees and asylum seekers involved in R4R are positive and encouraging. Many of them consider such help extremely beneficial. Given that they frequently face obstacles, both linguistic, legal and cultural, in many social situations, refugees and asylum seekers consider precious the assistance of individuals, especially of those coming from cultures similar to theirs, who have lived through similar crises. On the other hand, the assistants are also pleased with their role and activities,

because they have recognised the needs and benefits of helping this vulnerable category, they themselves had once belonged to.

Foreigners granted asylum who have sufficiently mastered Serbian and are aware of the need to adjust to and understand the new cultural and social system can share their precious knowledge and experiences with those starting the process of integration in the RS. On the one hand, R4R empowers the assistants in economic and social terms and provides them with space for personal and professional growth, while, on the other, it helps and facilitates the social inclusion of refugees and asylum seekers open to this kind of support.

The BCHR involved assistants speaking the languages spoken by most refugees in the R4R pilot project. One of them is a woman, who helps female refugees and asylum seekers exercise their rights and obligations, if necessary, wherefore such support is extended also in compliance with the gender sensitive approach.

#### **4.4.1. Conclusion**

R4R has been designed to help refugees and asylum seekers build a life of dignity in the RS. People in need of international protection have fled persecution, conflict, injustice and inhuman treatment in their countries of origin in search of a safe and more just life.

However, the process of their integration begins once they arrive in a new country; this process requires huge motivation and support in overcoming institutional and social barriers. Unfamiliarity with the regulations, culture and language of the new community can pose serious challenges to integration and necessitate additional support. Integrated refugees set an excellent example to new refugees and asylum seekers and assist them in dealing with the difficulties inherent in their adjustment to the host community. The BCHR will continue implementing R4R project activities in the forthcoming period.