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Database

Country Report: Serbia



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Edited by:



Beogradski centar
za ljudska prava



ecre

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The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore, the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

Expression of intention	Request certifying a person's intention to apply for asylum. This does not constitute a formal application for asylum.
Recording	Act of acknowledging the expression of a person's intention to seek asylum. This does not amount to registration of the asylum claim.
BCHR	Belgrade Centre for Human Rights
CAT	Committee against Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FYROM	Former Yugoslav Republic of Macedonia
IDP	Internally displaced person
UNHCR	United Nations High Commissioner for Refugees

Statistics

Table 1: Applications and granting of protection status at first instance: 2015

	Intentions to apply for asylum in 2015	Applications submitted in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Rejection ¹	Refugee rate	Subs. Prot. rate	Rejection rate
Total	577,995	583	:	16	14	28	27.6%	24.1%	48.3%

Breakdown by countries of origin of the total numbers

Syria	301,533	135	:	6	0	:	:	:	:
Afghanistan	160,831	25	:	0	0	:	:	:	:
Iraq	76,003	5	:	3	1	:	:	:	:
Iran	11,578	2	:	0	0	:	:	:	:
Pakistan	9,090	3	:	0	0	:	:	:	:
Somalia	3,835	102	:	0	0	:	:	:	:
Eritrea	1,151	21	:	0	0	:	:	:	:
Nigeria	715	9	:	0	0	:	:	:	:
Sudan	496	48	:	1	0	:	:	:	:
Mali	340	3	:	0	0	:	:	:	:

Source: Ministry of Interior. Data marked [:] is not available.

Since the establishment of the Asylum Office in 2008, a total of 48 persons have been granted international protection, with 22 refugee status grants and 26 subsidiary protection grants. The main nationalities receiving protection are Syria (13 grants), Libya (10 grants) and Ukraine (9 grants).

¹ Rejection should include *both* in-merit and admissibility negative decisions. Technical / discontinuation decisions are excluded.

Table 2: Gender/age breakdown of the total numbers of persons expressing an intention to seek asylum: 2015

	Number	Percentage
Total number of intentions to seek asylum	577,995	100%
Men	413,272	71.5%
Women	153,479	28.5%
Children	Not available	Not available
Unaccompanied children	10,642	1.8%

Source: Ministry of Interior.

Table 3: Comparison between first instance and appeal decision rates: 2015

	First instance		Administrative appeal		Judicial appeal	
	Number	Percentage	Number	Percentage	Number	Percentage
Total number of decisions	608	-	35	-	8	-
Positive decisions	30	4.9%	25	71.4%	6	75%
Negative decisions	28	4.6%	8	22.8%	1	12.5%

Source: Ministry of Interior. The total number of decisions includes discontinuation decisions for reasons of absconding.

Table 4: Applications processed under the accelerated procedure in 2015

There is no accelerated procedure in Serbia.

Table 5: Subsequent applications lodged in 2015

There is no available data on subsequent applicants, as the concept is not applied in practice.

Table 6: Number of applicants detained per ground of detention: 2013-2015

There is no available data on detained asylum seekers, as their detention is very rare in practice (see [Grounds for Detention](#)).

Table 7: Number of applicants detained and subject to alternatives to detention: 2013-2015

Alternatives to detention are not used in practice (see [Alternatives to Detention](#)).

Overview of the legal framework and practice

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (SR)	Abbreviation	Web Link
Law on Asylum of the Republic of Serbia Official Gazette no. 109/2007	Zakon o azilu Republike Srbije / Закон о азилу Републике Србије	Asylum Act	< http://bit.ly/20df38u > (EN)
Law on Foreigners of the Republic of Serbia Official Gazette no. 97/2008	Zakon o strancima Republike Srbije / Закон о странцима Републике Србије	Foreigners Act	< http://bit.ly/1p2ntBQ > (EN)
Law on Migration Management of the Republic of Serbia Official Gazette no. 107/2012	Zakon o upravljanju migracijama Republike Srbije / Закон о управљању миграцијама Републике Србије	Migration Management Act	< http://bit.ly/1Qo7kPK > (SR)
Constitution of the Republic of Serbia Official Gazette no. 83/06	Ustav Republike Srbije / Устав Републике Србије	Constitution	< http://bit.ly/1Rd2D98 > (EN)
General Administrative Procedure Act of the Republic of Serbia Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/2001 and the Official Gazette of the Republic of Serbia, no. 30/2010	Zakon o opstem upravnom postupku Republike Srbije / Закон о општем управном поступку Републике Србије	General Administrative Procedure Act	< http://bit.ly/1QvcyXX > (SR)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

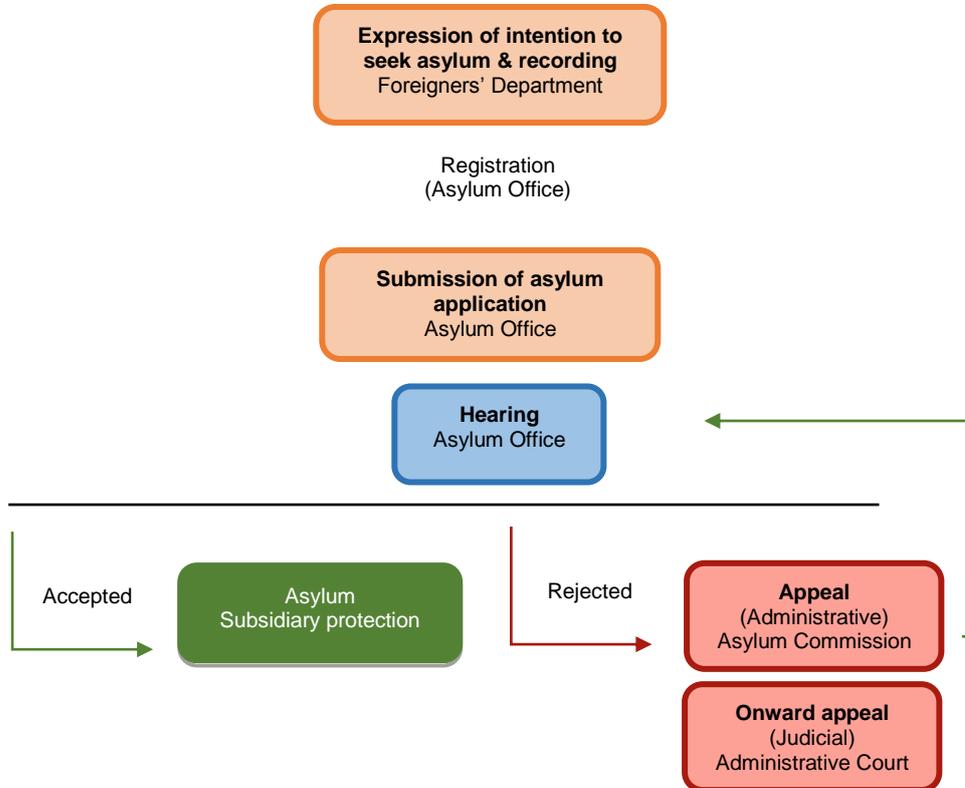
Title (EN)	Original Title (SR)	Abbreviation	Web Link
Action Plan for Chapter 24 of the EU Accession Talks	Akcionni plan za poglavlje 24 pristupnih pregovora sa Evropskom unijom / Акциони план за поглавље 24 приступних преговора са Европском унијом	Action Plan	< http://bit.ly/1QFd0C7 > (EN)
Decision Determining the List of Safe Countries of Origin and Safe Third Countries Official Gazette, no. 67/2009	Odluka o utvrđivanju liste sigurnih država porekla i sigurnih trećih država / Одлука о утврђивању листе сигурних држава порекла и сигурних трећих држава	Safe Countries Decision	< http://bit.ly/1TbSkbl > (SR)
Decision on Issuing a Certificate of Having Entered	Odluka o izdavanju potvrde o ulasku na teritoriju Republike		< http://bit.ly/1L6Hwsl > (SR)

the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger Official Gazette, no. 81/2015	Srbije za migrante koji dolaze iz zemalja u kojima su njihovi životi u opasnosti / Одлука о издавању потврде о уласку на територију Републике Србије за мигранте који долазе из земаља у којима су њихови животи у опасности		
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Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|---|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ² | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ³ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Admissibility procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Border procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: ⁴ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Other: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes No

3. List the authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (SR)
Decision on entry ⁵	Foreigners' Department	Odeljenje za strance / Одељење за странце
Application	Asylum Office	Kancelarija za azil / Канцеларија за азил
Refugee status determination	Asylum Office	Kancelarija za azil / Канцеларија за азил
Appeal procedure		
❖ First appeal	❖ Asylum Commission	❖ Komisija za azil / Комисија за азил
❖ Onward appeal	❖ Administrative Court	❖ Upravni sud / Управни суд
Subsequent application	Asylum Office	Kancelarija za azil / Канцеларија за азил

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Asylum Office	17	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

In line with the Rulebook on the internal organisation and systematisation of positions in the Ministry of Interior, which established the Asylum Office on 14 January 2015, there should be 29 positions within the Asylum Office. As of 2 November 2015, only 17 staff members were hired.⁶

² For applications likely to be well-founded or made by vulnerable applicants.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law.

⁵ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

⁶ Information received from the Ministry of the Interior in their reply 03/10-06-1418/15 to request for access to information of public importance, of 2 November 2015.

5. Short overview of the asylum procedure

The right to asylum is enshrined in Article 57(1) of the Constitution of Serbia.⁷ The asylum system and procedure *stricto sensu*, however, are mainly governed by the 2008 Asylum Act.⁸ Additionally, relevant are the Foreigners Act⁹ and the General Administrative Procedure Act,¹⁰ both of which act as *legi generali* with regards to the Asylum Act in their respective subject matter, as well as the Migration Management Act,¹¹ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees.

On the whole, it may be said that Serbian asylum legislation is generally in line with international standards for the protection of persons in need of international protection, with deficiencies in the system and procedure generally stemming from poor implementation of the existing legislation. Regardless, Serbia is expected to further harmonise its legislation with European *acquis*, and the national Action Plan for Chapter 24 of the EU Accession Talks foresees the enactment of a new Asylum Act in early 2016.¹²

The Asylum Act envisions a single asylum procedure, which is the same for all asylum seekers regardless of their country of origin or location (i.e. there are no separate accelerated or border procedures).

The procedure for seeking asylum in Serbia is as follows: a foreigner may 'express the intention to seek asylum in Serbia' within Serbian territory or at border crossings (including the airport 'Nikola Tesla' in Belgrade), following which he or she is recorded by the officials of the Ministry of the Interior before whom he or she has expressed the intention and given a certificate of having done so. The asylum seeker is then expected to go to his or her designated asylum centre, or to notify the Asylum Office should he or she wish to stay at private accommodation.

Upon arrival at the centre or private accommodation, the asylum seeker waits for Asylum Office staff to register him or her, issue him or her personal identity documents for asylum seekers and take his or her asylum application. The Asylum Office is under the legal obligation to decide on the application within 2 months of its submission, during which time one or more hearings must be held in order to establish all of the facts and circumstances relevant to rendering a decision.

It should likewise be added that, Serbia being neither a member of the European Union nor a party to the Dublin Regulation, there is nothing equivalent to a Dublin procedure in the country.

⁷ 'Any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia,' Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 83/06, Article 51(1).

⁸ Law on Asylum of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 109/2007.

⁹ Law on Foreigners of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 97/2008.

¹⁰ General Administrative Procedure Act of the Republic of Serbia, Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/2001 and the Official Gazette of the Republic of Serbia, no. 30/2010.

¹¹ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

¹² Action Plan for Chapter 24 of the EU Accession Talks, available at: <http://bit.ly/1QFd0CZ>, point 2.1.4.3.

B. Procedures

1. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?
 - ❖ To express intention Yes No
 - ❖ To submit an application after being registered Yes No
2. If so, what is the time-limit for submitting an application? 15 days
3. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No

1.1. Expression of intention to seek asylum and recording

Under the Asylum Act, a foreigner may express the intention to seek asylum in Serbia orally or in writing to competent officials of the Ministry of the Interior at a border checkpoint or within its territory,¹³ including prisons, the Shelter for Foreigners¹⁴ in Padinska skela, airport transit zones and during court proceedings. The foreigner shall be 'recorded', following which he or she is obliged to report to authorised officials of the Asylum Office or one of the asylum centres within the following 72 hours.¹⁵

'Recording' an asylum seeker – which, under Serbian law, is not the same as 'registering them' – entails issuing them a certificate of the expressed intention to seek asylum,¹⁶ the content of which is specified in the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection.¹⁷ The Rulebook foresees that three copies of the certificate be issued – one is given to the asylum seeker, another is forwarded to the Asylum Office and the last one is filed in the Ministry of the Interior unit that issued it.

The certificate of having expressed the intention to seek asylum in Serbia is not considered an asylum application; therefore, expressing the intention to seek asylum does not constitute the initiation of the asylum procedure.

It is possible for the same person to express the intention to seek asylum more than once, as long as his or her asylum application has not been rejected, in which case he or she may lodge a subsequent application. This includes people whose certificate has expired, or has been stolen or lost, persons returned under a readmission agreement from neighbouring countries who had previously been recorded as asylum seekers etc.¹⁸

Unaccompanied minors cannot express the intention to seek asylum before a social welfare centre appoints a temporary legal guardian.

Over the course of 2015, 577,995 persons expressed the intention to seek asylum in Serbia. However, this number is not indicative of the actual number of persons interested in staying in Serbia, this being

¹³ Article 22(1) Asylum Act.

¹⁴ The Foreigners Act defines the Shelter for Foreigners as 'a building for the accommodation of foreigners who are not allowed to enter the country or who are to be expelled or deported from the country but cannot be expelled and who, in conformity with the law, are determined to stay under enhanced police supervision.' Article 3(11) Foreigners Act.

¹⁵ Article 22(2) Asylum Act.

¹⁶ Article 23(2) Asylum Act.

¹⁷ The certificate includes personal data such as the asylum-seeker's name, surname, place and date of birth and country of origin.

¹⁸ This is the Belgrade Centre's experience in working with Asylum Office staff when representing asylum seekers in the procedure.

merely the formal manner in which Serbian law treats all persons recorded as *prima facie* refugees or asylum seekers.¹⁹

Until September 2015, a legal framework that would differentiate persons likely in need of international protection who were not willing to stay in Serbia from those who were did not exist. In September, the Government issued a decree instituting a 'certificate for migrants coming from countries where their lives are in danger',²⁰ ergo, a document to be issued to persons likely in need of international protection who are not interested in staying in Serbia.²¹ In December 2015, the Ministry of the Interior started issuing these documents persons transiting through Serbia and it is reasonable to assume that the number of persons expressing the intention to seek asylum in Serbia will decrease in the future.²²

The certificate for migrants coming from countries where their lives are in danger gives the right to its bearers to stay legally in Serbia, be accommodated at an asylum centre and access medical services, however it is only valid for 72 hours, during which time the bearer is expected to leave Serbia. A particularly disturbing issue is the persistent issuing of such certificates to those persons who do not wish to stay in Serbia, but will not be admitted into Croatia under the existing arrangement for the movement of refugees and migrants along the Western Balkan route (i.e. persons who do not come from Syria, Iraq or Afghanistan).²³

Push backs

A number of issues concerning limited access to the asylum procedure were reported in 2015. These include push-backs from Serbia to the Former Yugoslav Republic of Macedonia (FYROM), arbitrary returns to third countries from Belgrade 'Nikola Tesla' Airport, to Bulgaria under the Readmission Agreement with the European Community (without careful examinations of every individual case), refusals to issue the certificate of having expressed the intention to seek asylum to persons whose certificate expired or was stolen, denial of access to the asylum procedure to asylum-seekers returned from Hungary, etc.²⁴ These issues could, to a significant extent, be ascribed to a general lack of knowledge of international refugee law and international human rights law by national officials, including those engaging directly with refugees and migrants.

1.2. Registration of the asylum seeker and submission of application

Foreigners issued certificates of having expressed the intention to seek asylum in Serbia are obliged to report to their assigned asylum centre within 72 hours of being issued the certificate; alternatively, they may contact the Asylum Office to ask for consent to reside at a private place of residence.²⁵

The Asylum Office registers asylum seekers once they are admitted to an asylum centre or receive approval to reside at a private address. Registration entails establishing the asylum seeker's identity, taking his or her photo and fingerprints and seizing all relevant personal identity documents; the foreigners are issued receipts for the seized documents, which are held for the duration of the asylum

¹⁹ It should be borne in mind that, out of 577,995 persons who expressed the intention to seek asylum, only 583 submitted an asylum application, while even fewer (89) stayed in Serbia long enough for their hearing to take place.

²⁰ Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger, Official Gazette of the Republic of Serbia, no. 81/2015.

²¹ In spite of its name, this document does not constitute a proper screening mechanism and merely seeks to separate those persons who wish to seek asylum in Serbia from those who do not.

²² Already in January 2016, when the implementation of the Decision in question started fully, out of a total number of 58,464 persons registered as entering Serbia as potential asylum seekers, only 475 expressed the intention to seek asylum in Serbia.

²³ No legal, publicly available agreement or decision instituting such policy exists, but it is implemented by the authorities as a matter of fact.

²⁴ See Belgrade Centre for Human Rights, *Asylum in the Republic of Serbia: Report for the period of January – May 2015*, 2015, available at: <http://bit.ly/1pirWQH>, 5.

²⁵ Articles 22 and 39 Asylum Act.

procedure and are to be returned regardless of its outcome.²⁶ Asylum seekers possessing such documents are obliged to relinquish them by the time of their hearing at the latest.²⁷ Although there is no specific deadline for an asylum seeker to be registered, it should be done as soon as possible, in line with the principles of legal certainty and efficiency.²⁸

In 2015, the Asylum Office only registered 662 asylum seekers, in spite of the fact that 10,237 persons were accommodated in an asylum centre from January until the end of November.²⁹

Registered asylum seekers are issued a personal identity document confirming their status, which is valid for 6 months and is to be extended until the end of the asylum procedure.³⁰ Although the Asylum Act does not specify the deadline by which the asylum seekers are to be issued these documents, the wording of the relevant provision of this law leads to the conclusion that they are to be issued immediately upon registration. In practice, however, asylum seekers are forced to wait a long time in order to receive them. This is problematic given the fact that, in spite of having the right to freedom of movement, they are at risk of getting into trouble with the authorities should they be required to provide proof of their identity.³¹ The Asylum Office issued a mere 196 personal identity documents in 2015, which indicates that many registered asylum seekers were not provided with one.

The General Administrative Procedure Act, which acts as *lex generalis* to the Asylum Act, an administrative procedure may be initiated *ex officio* or at the motion of a party.³² The Asylum Act foresees that the asylum procedure shall be initiated by submitting an asylum application to an authorised officer of the Asylum Office on a prescribed form, within 15 days of registration.³³

It should be borne in mind that, in spite of the fact that the Asylum Act foresees the above-mentioned deadline for submitting an asylum application, doing so in practice depends entirely on Asylum Office staff, seeing as how the application must be submitted in their presence, meaning that the asylum procedure is *de facto* initiated *ex officio*.

The submission of the asylum application involves the Asylum Office representative asking the asylum seeker questions related to their country of origin, the grounds for seeking asylum, the manner in which they reached Serbia, and others, as foreseen by the application form.

The Asylum Office received only 583 asylum applications in 2015.

²⁶ Article 24(2) Asylum Act.

²⁷ Article 24(3) Asylum Act.

²⁸ Starting in September 2014, the Asylum Unit (the predecessor of the Asylum Office) introduced the practice of registering asylum seekers at the time they submit their asylum applications, which is not in line with the spirit of the law or the Ombudsman's recommendation that they be registered upon being admitted to a centre.

²⁹ December statistics concerning the number of persons accommodated at asylum centres were never released by the Ministry of the Interior.

³⁰ Article 7 Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection, Official Gazette of the Republic of Serbia, no. 53/2008.

³¹ Information obtained by providing legal aid to asylum seekers in Serbia.

³² Article 113 General Administrative Procedure Act.

³³ Article 25 Asylum Act.

2. Regular procedure

2.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
3. Backlog of pending cases as of 31 December 2015: Not available

Following the hearing of an asylum seeker, the Asylum Office shall render a decision on the asylum application, either upholding the application and recognising the asylum seeker's right to refuge or subsidiary protection or rejecting the application in the event it finds that the application is ill-founded or that there are reasons for denying the right to asylum.³⁴ The Asylum Office is also entitled to dismiss an asylum application without ruling on its merits.³⁵

The Asylum Act does not specify the deadline within which the Asylum Office is to rule on an asylum application, but Article 208(2) of the General Administrative Procedure Act sets a general 60-day deadline for rulings on administrative matters. This is apparently insufficient for ruling on asylum applications because it often takes the Asylum Office far longer to issue a ruling concerning an asylum application.

The Asylum Act does not specify the burden of proof required for being granted asylum, nor does it foresee that the Asylum Office should render a decision in favour of the asylum-seeker in case of doubt, provided that their account is coherent and plausible.³⁶

The Asylum Office shall reject asylum applications based on false grounds or data, as well as forged identity papers or other documents, unless the asylum seeker presents justified reasons for having provided them. The Asylum Office shall also reject asylum applications in the event that the asylum seeker's allegations are incoherent or in contravention of other evidence presented during the procedure; in the event that it is established during the procedure that the asylum applications were submitted merely to postpone deportation; or in the event that the asylum seekers came to Serbia for purely economic reasons.³⁷

In 2015, the Asylum Office rendered 30 decisions granting asylum, 25 decisions rejecting the application, 3 decisions dismissing the applications and 550 conclusions discontinuing the procedure because the asylum seekers left the asylum centres or another place of residence after they had applied for asylum.

2.2. Fast-track processing

No caseloads are prioritised as a matter of law or practice.

³⁴ Articles 28-29 Asylum Act.

³⁵ Article 33 Asylum Act.

³⁶ As advised by UNHCR, *International standards relating to refugee law: Checklist to review draft legislation*, March 2009, 19.

³⁷ Article 30 Asylum Act.

2.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

The Asylum Office is obliged to schedule a hearing of the asylum seeker *in casu* following the submission of an application and within the two-month deadline. The hearing is to be held in the presence of the asylum-seeker's legal representatives (unless they choose otherwise) and an interpreter for a language they understand; a UNHCR representative may also be present.

The Asylum Act requires the official conducting the hearing to establish all of the relevant facts necessary for ruling on an asylum application, in particular: the identity of the asylum-seeker; the grounds on which their asylum application is based; their movement after leaving the country of origin; and whether they have previously sought asylum in any other country.³⁸

At the end of the hearing, the records are signed by the asylum seeker, their legal representative, the interpreters and the official leading the interview. The asylum seekers' legal representatives are entitled to ask additional questions to ensure comprehensive establishment of the facts of the case.

More than one hearing may be held concerning an individual asylum-seeker, but this happens rarely in practice due to the general desire of the Asylum Office to establish all of the relevant facts in a single interview. This usually leads to hearings lasting for many hours without a single break.

The Asylum Office conducted only 89 interviews 2015. In practice, asylum seekers often wait for several months following the submission of their application for a hearing to be scheduled.

2.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive
 - Administrative appeal Yes No
 - Onward appeal Yes No
2. Average processing time for the appeal body to make a decision: 2-4 months

Appeals against Asylum Office decisions are reviewed by the Asylum Commission, a body comprising nine members appointed to four-year terms in office by the Government.³⁹ The Asylum Act does not lay down precise criteria for the appointment of the Commission members and only requires that they are versed in human rights regulations.⁴⁰

³⁸ Article 26(4) Asylum Act.

³⁹ Article 20 Asylum Act.

⁴⁰ Such lax provisions have led, for example, to the appointment of the Director of the General Affairs Department of the telecommunications company *Telekom* to the Commission, in spite of the fact that he had never previously worked in the human rights field.

Should the Asylum Office fail to rule on an application within two months of its submission, the asylum seeker may appeal against administrative silence to the Asylum Commission.⁴¹ The appeal, however, is not an entirely effective legal remedy given that the Asylum Commission merely orders the Asylum Office to render its ruling within an additional 30-day deadline.

The Asylum Act does not regulate the appeals procedure and the General Administrative Procedure Act applies in a subsidiary manner to the second-instance procedure. Appeals of first-instance decisions are submitted to the Asylum Commission within 15 days of the day of serving of the first-instance decision to the parties or their legal representatives.⁴² The Commission renders its decisions by a majority of votes.

Under Article 221(1) of the General Administrative Procedure Act, appeals against administrative decisions shall be of a suspensive nature. Appeals are submitted to the first-instance authority, which examines whether the procedural prerequisites for their review by the second-instance authority have been fulfilled. When the first-instance authority receives the appeal, it may render a different decision on the matter and substitute the impugned ruling with a new one, should it find the appeal well-founded and that it is unnecessary to conduct the procedure again. Should the Asylum Office find that the procedure it had implemented was incomplete, it may perform the requisite supplementary actions and render a new decision, which is also subject to appeals by the asylum applicant. In the event it does not reject the appeal, the Asylum Commission may itself decide on the administrative matter. It may also set aside the impugned ruling and order the first-instance authority to re-examine the matter, when it finds that the shortcomings of the first-instance procedure will be eliminated more rapidly and economically by the Asylum Office.⁴³

The Asylum Act does not specify the duration of the second-instance procedure. Under the Administrative Disputes Act, a claim may be filed with the Administrative Court in the event the Asylum Commission fails to render a decision on the appeal within 60 days of the day of its receipt, upon the expiry of 8 days from the day a reminder was sent to the second-instance authority.⁴⁴ In other words, the time limit for the second-instance decision is 2 months after the appeal was lodged. In practice, however, it takes at least 3 months for the Asylum Commission to render and deliver the second-instance decision, although, in case the Asylum Commission fails to decide on the appeal within 2 months, it is possible to lodge an appeal against administrative silence with the Administrative Court.

Since the establishment of the Asylum Commission in 2008, this body has decided in the merits in but a single case. For this reason, an appeal to the Commission only prolongs the asylum procedure since, in the vast majority of cases, the first-instance decision is annulled and returned to the Asylum Office. The same practice is present in case of an appeal lodged against administrative silence, when the Asylum Commission, after adopting the appeal, orders the first-instance body to render the decision in the time-limit of one month, which further prolongs the procedure.

In 2015, 30 appeals were lodged against first-instance decisions and 3 appeals against administrative silence. The Asylum Commission delivered 35 decisions, out of which 25 upheld the appeal, 8 refused the appeal in 1 case discontinued the procedure because the applicant had left the asylum centre. In one case, the Asylum Commission ruled on the merits.

Onward appeal

Asylum seekers may initiate an administrative dispute before the Administrative Court in order to challenge the final decisions of the Asylum Commission, or in case it fails to render a decision on the appeal within the legal deadline.⁴⁵

The Administrative Court does not have a department or panel specialised in reviewing asylum cases

⁴¹ Article 236 General Administrative Procedure Act.

⁴² Article 35 Asylum Act.

⁴³ Article 232 General Administrative Procedure Act.

⁴⁴ Article 19 Administrative Disputes Act, Official Gazette of the Republic of Serbia, no. 111/2009.

⁴⁵ Article 15 General Administrative Procedure Act.

and it rules on the lawfulness of a final administrative act in three-member judicial panels.

The lawfulness of an administrative act may be challenged by a claim in an administrative dispute:

- In the event it was adopted by an authority lacking jurisdiction;
- At the authority's discretion, in the event the authority had exceeded its legal powers or the decision had not been adopted in accordance with the goal it had been granted specific powers;
- In the event the law or another general act had not been enforced properly;
- In the event the procedural rules have been violated during the procedure;
- In the event the facts were established in a manner that was incomplete or inaccurate, or an incorrect conclusion was drawn from the facts.

The initiation of an administrative dispute does not *ipso facto* suspend the enforcement of the impugned administrative act.⁴⁶ The Administrative Court may, however, stay the enforcement of a final administrative act on the motion of the claimant, until it rules on the administrative dispute in the event such enforcement would cause the claimant damage difficult to reverse and the stay is not in contravention of public interests and would not cause major or irreparable damage to the opposing party, i.e. interested party.⁴⁷ Exceptionally, the stayed enforcement of the enactment may be sought in an emergency, i.e. when an appeal without suspensive effect under the law has been lodged and the appeals procedure has not been completed. In such cases, the Administrative Court rules on the motions to stay enforcement within 5 days from the day they are filed.

In practice, the Administrative Court has not itself held any hearings on asylum claims to date. Its decisions so far have merely confirmed the lawfulness of the asylum authorities' practice of automatically applying the concept of safe third country in spite of the fact that it had not first been established whether the third countries were actually safe for the asylum-seekers *in casu*. Also, to this date, the Administrative Court has never decided on a complaint in the merits.

In 2015, 6 complaints were lodged to the Administrative Court. In the same period, the Administrative Court decided on 8 complaints. In 6 cases, the complaints were adopted, 1 was refused and 1 procedure was discontinued. In all of the 6 cases where the complaints were adopted, the Administrative Court found procedural violations.

However, in 2015, the Administrative Court was of the view that the practice of the Asylum Commission concerning several decisions did not entail a proper evaluation of all of the allegations of the appeals, which may lead to a change in this body's future practice.

2.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover: Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover Representation in courts
 Legal advice

The state does not provide free legal aid to asylum seekers in Serbia for the purposes of the asylum procedure. However, the right to free legal aid is guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.⁴⁸

⁴⁶ Article 23 Administrative Disputes Act.

⁴⁷ Article 23 General Administrative Procedure Act.

⁴⁸ Article 10 Asylum Act.

The Act further provides that an asylum seeker shall have access to free legal aid and representation by UNHCR and NGOs whose objectives and activities are aimed at providing free legal aid to refugees. In practice, the vast majority of persons who submit an asylum application in Serbia use the services of NGO lawyers.

3. Dublin

Serbia does not participate in the Dublin system.

4. Admissibility procedure

There is no admissibility procedure in Serbia. However, the Asylum Office may dismiss an application without examining the merits when the asylum seeker is deemed to come from a safe third country or a safe country of origin (see section on Safe Country Concepts).⁴⁹

5. Border procedure (border and transit zones)

There is no border procedure in Serbia.

6. Accelerated procedure

There is no accelerated procedure in Serbia.

C. Information for asylum seekers and access to NGOs and UNHCR

Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
 - ❖ Is tailored information provided to unaccompanied children? Yes No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

The right to free legal aid is guaranteed by the Asylum Act, as well as the right to receive information concerning asylum.⁵⁰

As a matter of practice, authorities generally fail to provide adequate information concerning the nature of the asylum procedure and the rights and obligations of asylum seekers present either in asylum centres or elsewhere. Interpreters are only occasionally available in asylum centres, making meaningful communication between asylum seekers and centre staff difficult.

⁴⁹ Article 33 Asylum Act.

⁵⁰ Article 10 Asylum Act.

Interpretation is regularly available for persons submitting an asylum application or present in a hearing, with no known problems concerning specific languages. However, it should be borne in mind that interpretation services are paid for by UNHCR, with individual interpreters available from a list compiled by the agency.

Legal information is provided by NGOs providing free legal aid to asylum seekers in Serbia. Such NGOs generally have access to interpreters, with leaflets provided in several languages usually spoken by asylum seekers.

D. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

The Asylum Act provides that a foreigner whose asylum application had previously been refused 'may file a new application if he or she provides evidence that the circumstances relevant for the recognition of the right to refuge or for granting subsidiary protection have substantially changed in the meantime.'⁵¹

However, the concept of subsequent application remains untested in practice so far.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes For certain categories No
 - ❖ If for certain categories, specify which:
2. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
 - ❖ If for certain categories, specify which:

The Asylum Act foresees that care be taken during the asylum procedure of asylum seekers with specific needs, including minors, persons lacking or having limited legal capacity, children separated from their parents or guardians, persons with disabilities, the elderly, pregnant women, single parents with underage children and persons who had been subjected to torture, rape or other forms of grave psychological, physical or sexual violence.⁵² However, this has rarely been adhered to in practice, with

⁵¹ Article 32 Asylum Act.

⁵² Article 15 Asylum Act.

the authorities demonstrating little flexibility in prioritising or otherwise facilitating the asylum procedure of persons with special needs.⁵³

2. Use of medical reports

Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 Yes No

Medical reports may be used in order to substantiate asylum claims; this is prescribed by the General Administrative Procedure Act.⁵⁴

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?
 Yes No
2. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

The identification of unaccompanied minors is usually done on the spot by officials (most often police officers) establishing first contact with potential asylum seekers. There is no proper or developed method for ascertaining the asylum seekers' age, meaning that the asylum seeker's word and the official's personal observations are the only criteria for identifying minors in the greatest number of cases.

Serbia considers as an unaccompanied minor 'a foreigner who has not yet reached eighteen years of age and who, at the time of entry into the Republic of Serbia or upon having entered it, is not accompanied by their parents or guardians.'⁵⁵

All unaccompanied minors must immediately be awarded a legal guardian by the local social welfare centre, and the guardian must be present during the hearing.⁵⁶ However, this is questionable, seeing as how the legal guardian merely assumes care for the minor in a formal way, sometimes without ever meeting the child. The minor is then put in a minors' centre under provisional care.

For unaccompanied minors recognised as persons wishing to express the intention to seek asylum, this must be done with the mediation of their legal guardian. Thus far, it has been widespread practice that such minors, once they have expressed the intention to seek asylum, are accommodated at one of the asylum centres, with minors' centres considering themselves as lacking the mandate to house asylum

⁵³ A chillingly illustrative example of such failure to adapt on the part of national authorities is the case of an asylum seeker represented by the Belgrade Centre for Human Rights who was hospitalised after having sustained severe injuries in a car accident in February 2015 and was subsequently rendered permanently immobile and almost completely incapable of speech. As of February 2016, the Asylum Office still has not taken this person's asylum application, citing the necessity of engaging in 'official conduct' requiring verbal communication, thus leaving the asylum seeker in a state of permanent legal limbo.

⁵⁴ Article 154 General Administrative Procedure Act. It should be borne in mind that, should the authorities doubt the veracity of such documents, expert witnesses may be summoned in order to examine said veracity.

⁵⁵ Article 2 Asylum Act.

⁵⁶ Article 16 Asylum Act.

seekers. However, this practice changed at the end of 2015 so that minors' centres will now accept unaccompanied minor asylum seekers for the duration of the asylum procedure.⁵⁷

Particular challenges have been encountered in practice when the legal guardian does not fulfil his or her duties with an adequate sense of professional ethics and responsibility, which has at times led to irreparable harm to the interests of unaccompanied minor asylum seekers in Serbia.⁵⁸

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|--|
| 1. Does national legislation allow for the use of "safe country of origin" concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of "safe third country" concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of "first country of asylum" concept? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The concepts of safe country of origin and safe third country are foreseen by the Asylum Act. The application of either concept may lead to the asylum application being rejected by the Asylum Office, although the asylum seeker may be able to prove that the country in question is not safe in his or her individual case.⁵⁹ A list of safe countries of origin and safe third countries was established by Governmental Decree in 2009 and has not been revised since.⁶⁰

Safe country of origin

Under Serbian law, a safe country of origin 'shall be understood to mean a country from a list established by the Government whose national an asylum seeker is, and if the person concerned is stateless, a country where that person had previous habitual residence, which has ratified and applies international treaties on human rights and fundamental freedoms, where there is no danger of persecution for any reason which constitutes grounds for the recognition of the right to refuge or for granting subsidiary protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights.'⁶¹

The following are considered safe countries of origin by the decree: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Norway, Iceland, Liechtenstein, Switzerland, Monaco, Russia, Belarus, Australia, New Zealand, Japan, Canada, the United States of America, Argentina, Paraguay, Uruguay, Chile, Costa Rica, Mexico, the Seychelles, Mauritius, Kenya, Tunisia and Turkey.

⁵⁷ The practice of housing unaccompanied minor asylum seekers was altogether unacceptable when considering the best interests of the child, seeing as how unaccompanied minors would be accommodated together with adult asylum seekers otherwise unrelated to them, thus putting them at risk of abuse or human trafficking.

⁵⁸ In a case from early 2016, an unaccompanied minor from Bangladesh was not allowed to enter the asylum procedure and was readmitted to Bulgaria in spite of wishing to express the intention to seek asylum in Serbia, mainly as a result of the legal guardian's incompetence and unwillingness to enter into a 'conflict' with the police by asking for asylum in the name of his ward.

⁵⁹ Articles 33(1)(4) and (6) Asylum Act.

⁶⁰ Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, no. 67/2009.

⁶¹ Article 2 Asylum Act.

Safe third country

A safe third country 'shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (...) where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhumane or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened.'⁶²

Serbia considers the following as being safe third countries: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Norway, Iceland, Liechtenstein, Switzerland, Monaco, Australia, New Zealand, Japan, Canada, the United States of America and Turkey.

The often automatic application of the safe third country principle by the Asylum Office has been extremely problematic for the functioning of the asylum system of Serbia, especially due to the fact that all bordering countries are considered safe third countries, except for Albania. Countries such as Turkey, Greece and the FYROM are considered 'safe' merely due to the fact that they are parties to the 1951 Geneva Convention (the fact that Turkey has opted to apply geographic limitations to its implementation of the Convention likewise is not taken into consideration) and the list has never been revised in light of well-known case law such as the European Court of Human Rights (ECtHR) judgment in *M.S.S. v. Belgium and Greece*. This has led to many asylum applications being dismissed over the years without the Asylum Office ever having entered into the merits of the claim.

The automatic application of the safe third country concept is as problematic in the Asylum Commission's practice as it is in that of the Asylum Office. The Asylum Commission is of the opinion that Turkey, Greece and Macedonia are safe third countries in which asylum-seekers can apply for asylum, disregarding entirely reports by UNHCR and other relevant international human rights organizations such as Human Rights Watch and Amnesty International, as well as the relevant practice of the ECtHR, the Committee against Torture (CAT) etc.⁶³

The manner in which the safe third country concept has been applied in Serbia has been criticised by a number of local and international stakeholders, including UNHCR⁶⁴ and CAT.⁶⁵ Although the practice of the Asylum Office improved in this regard during 2015, especially following the publication of UNHCR's position paper on FYROM in August,⁶⁶ however it is as of yet impossible to determine whether or not this represents a consistent improvement.

⁶² *Ibid.*

⁶³ See, e.g. *Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia 2014, 2015*, available at <http://bit.ly/1RxYcZc>, 33-37; Belgrade Centre for Human Rights, *Belgrade Centre for Human Rights, Right to Asylum in the Republic of Serbia January to May 2015*.

⁶⁴ UNHCR, *Serbia as a country of asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, 12.

⁶⁵ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para. 15.

⁶⁶ UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum. Observations on the situation of asylum-seekers and beneficiaries of international protection in the former Yugoslav Republic of Macedonia*, August 2015.

G. Treatment of specific nationalities

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?⁶⁷ Yes No
❖ If yes, specify which: EEA countries, USA, Australia, New Zealand, Canada, Japan, Bosnia-Herzegovina, FYROM, Montenegro, Russia, Belarus, Argentina, Paraguay, Uruguay, Mexico, Costa Rica, Chile, Mauritius, Seychelles, Kenya, Tunisia, Turkey

There is no *a priori* difference in the treatment of asylum seekers based on their nationality in terms of the asylum procedure, nor does Serbia have an accelerated asylum procedure in order to differentiate the processing of claims in such a manner. However, of the 48 persons granted asylum since the entry into force of the Asylum Act in 2008, 3 come from Ethiopia, 1 comes from Somalia, 5 come from Iraq, 13 come from Syria, 1 comes from Lebanon, 10 come from Libya, 9 come from Ukraine, 1 comes from Egypt, 2 come from Turkey, 1 comes from Tunisia, 1 comes from South Sudan and 1 from Sudan, indicating that the Asylum Office was more likely to recognise as persons fulfilling the criteria for receiving asylum in Serbia asylum seekers from **Syria, Libya** and **Ukraine** than other nationalities, as well as to recognise them as refugees rather than beneficiaries of subsidiary protection.⁶⁸

As of November 2015, changes in Western Balkan countries' policy meant that the authorities only consider persons coming from **Syria, Iraq** and **Afghanistan** refugees, whereas other nationalities are considered 'illegal migrants'.⁶⁹ However, the extent to which this has affected individual asylum seekers is unclear: while the changes in policy have certainly prevented persons of 'other' nationalities entering Serbia from the south from being registered in Preševo, others have still been able to express the intention to seek asylum in Serbia, often in Belgrade. Although there have been allegations of push-backs of other nationalities to FYROM – with some such statements coming even from ministers⁷⁰ – the general impression is that such persons are left in Serbia without regulated status, often forced to resort to the services of smugglers in order to continue their journey onward as they will not be allowed to enter Croatia from Šid.

Additionally troubling is the position of persons granted a 'certificate for migrants coming from countries where their lives are in danger' – devised by Governmental Decree⁷¹ in September 2015 so as to differentiate persons seeking asylum in Serbia from those wishing to travel to another country – instead of a certificate of having expressed the intention to seek asylum in Serbia. Although this document is required for entering Croatia, an additional requirement is that the holder of the certificate come from one of the three above-mentioned 'war-afflicted areas'. It is not uncommon that persons coming from other countries likewise receive a 'new' certificate, which leads to them being rejected in Šid; the certificate is only valid for three days and expressing the intention to seek asylum once it has expired is very difficult, putting these persons at risk of being prosecuted for illegal entry or stay in Serbia.

As of March 2016, following joint action by a number of countries along the Western Balkan route, the majority of refugees and migrants are no longer able to use this route to travel to those European countries perceived as countries of asylum. However, persons who do reach Serbia may still submit an asylum application here.

⁶⁷ Whether under the "safe country of origin" concept or otherwise.

⁶⁸ Information received from the Ministry of the Interior.

⁶⁹ See, e.g. Danas, 'Korak ka potpunom zatvaranju granica', 26 February 2016, available in Serbian at: <http://bit.ly/1T3DTGo>.

⁷⁰ See, e.g. Blic, 'Vulin: Sinoć vraćeno 400 migranata u Makedoniju', 23 June 2015, available in Serbian at: <http://bit.ly/1VLWkNC>.

⁷¹ Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

❖ Accommodation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Social assistance and emergency aid	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

The Commissariat for Refugees and Migrations of Serbia is mandated with providing material reception conditions to asylum seekers and persons granted asylum in Serbia.⁷²

Persons seeking asylum in Serbia have a right to accommodation at an asylum centre.⁷³

Asylum seekers have the right to stay at a private residence if they can afford to do so. However, they are obliged to notify the Asylum Office and obtain permission beforehand or they will be considered to have absconded from the asylum procedure. Persons issued a certificate of having expressed the intention to seek asylum in Serbia are expected to present themselves at the centre indicated via a central mechanism between the Ministry of the Interior and the Commissariat for Refugees and Migrations so as to be registered and submit an asylum application, but consistent practice so far has shown that persons interested in finding their own accommodation need only notify the Asylum Office of their address within the 72-hour deadline foreseen by the certificate in order for this requirement to have been fulfilled. Should this be the case, the Asylum Office will usually schedule the registration, submission of an asylum application and hearing in that individual's case in the local police station.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2015 (in original currency and in €): RSD 7,898 / €64

Persons seeking asylum and housed at an asylum centre do not have the right to access social welfare. This remains a possibility for persons staying at private accommodation, however the monthly amount received from social welfare is very limited and generally insufficient in order to maintain a dignified existence.⁷⁴

Asylum seekers residing at asylum centres receive accommodation, food and free health care. Other benefits are generally not provided. However, seeing as how asylum seekers are generally equal in accessing national health care as Serbian nationals, persons with special medical requirements may be accommodated at other institutions such as hospitals or spas free of charge.

⁷² Article 21 Asylum Act; Chapters II and III Migration Management Act.

⁷³ Article 21 Asylum Act.

⁷⁴ As of November 2015, this amounts to a gross monthly amount of RSD 7,898.00 (€64) per household member: information on social welfare is available at the website of the Ministry of Labour, Employment, Veteran and Social Issues at: <http://bit.ly/214v6TV>.

3. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:⁷⁵ 5
2. Total number of places in the reception centres: 1,060
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other

Persons entering the asylum procedure in Serbia are usually accommodated at one of the 5 asylum centres spread out across the country, but those asylum seekers who can afford to stay at a private residence may do so, should they so desire. These 'asylum centres' should not be confused with the temporary reception centres set up by the Government throughout 2015 in response to the mass influx of refugees and migrants transiting through Serbia, seeing as how these are not foreseen for the housing of persons seeking asylum in Serbia.

Asylum centres

There are 5 asylum centres in Serbia:⁷⁶

Asylum centre	Capacity
Banja Koviljača	150
Bogovađa	210
Tutin	150
Sjenica	200
Krnjača	350
Total	1,060

Only the asylum centre in Banja Koviljača is formally speaking a permanent centre; the other centres are 'temporary' locations for the housing of asylum seekers. The overall reception capacity at the asylum centres is adequate for 1,060 persons.⁷⁷

Asylum centres are open and accommodated asylum seekers have the right to leave the centre, albeit the obligation remains to be present for the daily rollcall every evening in order for the centre's authorities to ascertain that the person in question is still present. However, seeing as how asylum seekers are required to surrender all personal identity documents to the police at the time of the hearing at the latest,⁷⁸ a potential issue remains in that, bearing in mind that the Asylum Office usually does not issue identity cards for asylum seekers in a timely fashion, they may have trouble with the authorities should they be found outside of the asylum centre without any documents. The same may befall those staying at private accommodation.

During a high-level meeting bringing together Heads of State and Government of EU Member States and countries along the Balkan route ("Western Balkan Summit") on 25 October 2015, an agreement was reached for the creation of 50,000 reception places along the Balkan route.⁷⁹ Further to this

⁷⁵ Both permanent and for first arrivals.

⁷⁶ Information as of 31 January 2016.

⁷⁷ Information received from the Commissariat for Refugees and Migrations on 26 February 2016.

⁷⁸ Article 24 Asylum Act.

⁷⁹ European Commission, *Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action*, IP/15/5904, 25 October 2015.

commitment, Serbia committed to establishing 6,000 reception places as its contribution to the target.⁸⁰ Nevertheless, as of the end of February 2016, no official steps have been taken to implement such an increase in reception capacity in Serbia.

Temporary reception centres

Concerning the temporary reception centres, a number of these were opened by the Government of Serbia in the second half of 2015 in order to provide emergency reception conditions for persons who enter Serbia in an irregular manner and are transiting towards their preferred destination countries in the European Union. The first centre was set up in early summer in **Preševo** (650 places), labelled a 'one-stop centre', where refugees and migrants could be registered and provided humanitarian assistance upon entering Serbia from FYROM. Additional centres – where humanitarian assistance and limited accommodation is offered – were later set up in **Miratovac** (300 places), **Subotica** (150), **Kanjiža** (830), **Sombor** (200), **Šid** (1000), **Adaševci** (250) and **Principovac** (300). These are all situated in border areas towards FYROM, Hungary and Croatia, where the flow of refugees and migrants transiting through Serbia was most intense, and make up a total of 3,680 places. However, they were not foreseen for the accommodation of persons seeking asylum in Serbia.

4. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

Conditions in asylum centres

The conditions in the asylum centres vary from one to the other, with those in the centres in **Banja Koviljača** and **Bogovađa** being arguably of the highest quality.

The centre in Banja Koviljača was established in 2008 as the first asylum centre in Serbia. With a capacity for accommodating 150 persons, the overall conditions in the centre are satisfactory. The Centre operates an open regime and the living conditions in it are satisfactory; families with children and persons with special needs are prioritized in terms of accommodation, with single women residing in separate rooms from single men.

The asylum centre in Bogovađa is a Red Cross facility that has been used for the accommodation of asylum-seekers since 2011. The centre has an overall capacity for the accommodation of up to 210 persons. Limited recreational facilities exist and the reception conditions may be described as satisfactory.

The asylum centre in **Tutin** used to be a sponge plant before becoming a provisional centre for the accommodation of asylum-seekers. Reception capacity varies from approximately 80 persons in winter to up to 150 in summer. Persons accommodated at Tutin live in large rooms with 10-14 beds, with some smaller rooms with 6 to 8 beds. In addition to the above, there is a large dining room and living room, although the latter is inadequate for a centre at full capacity, with most residents spending their time in the halls or in their rooms. All in all, the reception conditions in Tutin could not be described as satisfactory, with dormitories and bathrooms in very poor condition.

⁸⁰ European Commission, *Progress following Western Balkans Route Leaders' Meeting: Contact Points Video Conference*, IP/15/5952, 29 October 2015; *Second Contact Points Video Conference*, IP/15/6003, 5 November 2015.

The asylum centre in **Sjenica** is likewise provisional, having been set up in a leased hotel that can hold up to 200 persons. However, asylum seekers do not reside in the hotel rooms, but rather in an improvised dormitory in the hotel lobby, which is at the same time the restaurant. The dormitory is divided into two parts by a screen, with residents sleeping on bunk beds in one part, and the other half being the dining room. Women and children are occasionally accommodated in one of the guest rooms, which however remain at the disposal of regular guests. The conditions in this asylum centre are deplorable.

It should be added that both Sjenica and Tutin lie in some of the coldest regions of Serbia, which makes the situation of asylum seekers accommodated here especially difficult during winter.

In mid-2014, an additional provisional centre was opened in **Krnjača**, just outside of Belgrade, in a complex of barracks used to house a number of refugees from Croatia and Bosnia and Herzegovina, as well as internally displaced persons from Kosovo; some of these people have been living there since 1993. The centre currently has a capacity for accommodating 350 persons. Although single women and families are housed separately in somewhat better conditions, altogether the state of the premises is very poor, with no proper recreational facilities, kitchen, adequate toilets and bathrooms. The dining room is used both by refugees and internally displaced persons (IDPs) from the former Yugoslavia and the 'new' asylum seekers, who take their meals at different times. The facilities in Krnjača are inadequate for long-term stay.

Conditions in temporary reception facilities

As the number of refugees and migrants passing through Serbia increased significantly during 2015, the authorities started opening temporary reception facilities for these persons in order to provide basic accommodation and humanitarian support to persons who are likely in need of international protection, but are not interested in seeking asylum in Serbia. These are not asylum centres and are not meant for long-term stay.

The reception ('one-stop') centre in **Preševo**, close to the border with FYROM, was opened during the summer of 2015. Emergency support was initially provided by Red Cross Serbia and the local municipality, but the Government soon decided to have a local tobacco factory adapted and turned into a registration and accommodation facility. The centre has a reception capacity for several hundred persons at any given moment. There are numerous international and local organisations present in Preševo in order to provide relief to refugees, including UNHCR.

The reception centre in **Miratovac** lies in a village along the border between Serbia and FYROM. It was opened in August 2015 and is the first stop for most refugees and migrants entering Serbia from the south; basic humanitarian and medical support is provided in Miratovac, following which refugees and migrants continue towards Preševo, which lies several miles away.

The reception centre in **Sombor** was opened in 2015 in the warehouse of a military complex close to the border with Croatia. Additional centres were opened in **Principovac**, **Šid** and **Adaševci**, Šid municipality, once the refugee and migrant flow had turned towards Croatia.

Additional centres were opened in **Kanjiža** and **Subotica**, not far from the border between Serbia and Hungary, but became dysfunctional following the closure of the border in September 2015.⁸¹

⁸¹ For a description, see ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015.

5. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
 Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

The Asylum Act guarantees unconditionally the right to accommodation at an asylum centre, with the only requirement that the asylum seeker support his or her own residence at such facilities, provided that he or she possess sufficient financial capacity.⁸² In practice, however, this is never required.

'Withdrawal' of reception conditions may only come to pass concerning asylum seekers placed under detention at the Shelter for Foreigners,⁸³ should the conditions foreseen by Article 51 of the Asylum Act arise. However, care for persons thus deprived of liberty is likewise fully an obligation of the state.

Persons granted asylum have the right to receive accommodation or financial support in order to live at a private residence for another year following the final decision in their asylum case.⁸⁴ In practice, persons granted asylum generally stay at an asylum centre; the temporal element of the relevant norm is not observed, i.e. these persons were not required to leave the asylum centre in question following the expiry of the one-year deadline.

6. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

The Commissariat for Refugees and Migrations has jurisdiction over access to reception facilities. In spite of the fact that these are open and that asylum seekers are not deprived of their liberty, third parties wishing to visit the centres are required to request admission from the Commissariat at least 2 days beforehand by e-mail, as well as submit scans of their identity documents.

UNHCR has unrestricted access to all reception facilities in Serbia, including both asylum centres and provisional reception centres. National authorities are obliged to cooperate with UNHCR in line with its mandate.⁸⁵ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.⁸⁶ However, planned UNHCR visits should be announced in a timely fashion.

Access to civil society organisations is also relatively unimpeded, although not at the same level as UNHCR. While access to legal representatives during various phases of the asylum procedure has never been brought into question and need not be specifically announced, there have been cases of civil society organisations being denied access even if the authorities had been notified more than a week earlier.⁸⁷

⁸² Article 39 Asylum Act.

⁸³ Article 52 Asylum Act.

⁸⁴ Article 44 Asylum Act.

⁸⁵ Article 5 Asylum Act.

⁸⁶ Article 12 Asylum Act.

⁸⁷ As observed by members of the Belgrade Centre for Human Rights present in the field at the time the decision was implemented.

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

The Asylum Act foresees that care be taken during the asylum procedure of asylum-seekers with specific needs, including minors, persons lacking or having limited legal capacity, children separated from their parents or guardians, persons with disabilities, the elderly, pregnant women, single parents with underage children and persons who had been subjected to torture, rape or other forms of grave psychological, physical or sexual violence.⁸⁸ However, this does not refer to reception conditions, although persons with special needs might receive slightly better accommodation compared to other residents of asylum centres. Very often even these 'improved' reception conditions are inadequate for such persons.

Persons with special medical needs may generally be placed in hospitals or other facilities. However, the identification of other groups of extremely vulnerable individuals, including unaccompanied minors, victims of torture and other cruel, inhuman or degrading treatment, sexual and gender-based violence or human trafficking is quite rudimentary and, even when such cases have been identified, the authorities do not adopt a special approach to the needs of these persons.

8. Provision of information

See the section on Information to Asylum Seekers.

9. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?
 Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

When opening asylum centres, the Commissariat for Refugees and Migrations must act in line with the principles of prohibition of artificial changing of the national composition of local demographics,⁸⁹ and equal and planned economic development by managing migrations,⁹⁰ both foreseen by the Migration Management Act. This is also the case for providing accommodation for persons granted asylum in Serbia.

However, the asylum centres of Serbia are open and resident asylum seekers are free to come and go as they please but are expected to be present for the daily rollcall. Otherwise, they risk losing the right to stay at an asylum centre and may even be considered as having absconded the asylum procedure.

Article 52 of the Asylum Act foresees the possibility of imposing measures restricting freedom of movement in such a manner that the asylum seeker may not leave the centre. However, as far as civil society is aware, this has never been done in practice. Freedom of movement may be lawfully restricted for up to 3 months, with the possibility of extension for another 3 months if the detention is imposed as a

⁸⁸ Article 15 Asylum Act.

⁸⁹ Article 4 Migration Management Act.

⁹⁰ Article 5 Migration Management Act.

result of the necessity of ensuring the asylum seeker's presence for the asylum procedure or for ensuring the security of the state and public order.⁹¹

B. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9 months |
| 2. Does the law allow access to employment only following a labour market test? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Persons entering the asylum procedure in Serbia do not have an *ipso facto* right to access the labour market. However, persons who seek asylum while possessing a work permit on other grounds may continue working on the basis of that permit. Furthermore, asylum seekers whose asylum applications have not been decided upon through no fault of their own within 9 months of being submitted likewise have the right to be issued a work permit valid for 6 months with the possibility of extension for as long as they remain in the asylum procedure.⁹²

The Asylum Act foresees that persons recognised as refugees in Serbia shall be equal to permanently-residing foreigners with respect to the right to work and rights arising from employment and entrepreneurship.⁹³ In spite of the fact that this article does not explicitly mention beneficiaries of subsidiary protection, their position has not been different in practice from that of recognised refugees. Furthermore, the legal gap present in the Asylum Act is covered by the Employment of Foreigners Act, which explicitly states that persons who have been granted subsidiary protection are to be issued personal work permits for the duration of that status.⁹⁴

In spite of the fact that, in terms of the law, persons granted asylum in Serbia should not face significant challenges in accessing the labour market, finding employment is difficult in practice, especially bearing in mind the language barrier that exists between most of these persons and the local community. As of February 2016, no language courses or professional guidance for finding employment for either asylum-seekers or persons granted asylum has been planned or organised by the state, leaving it mostly to civil society to assist their beneficiaries on an *ad hoc* basis.

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

⁹¹ Article 51 Asylum Act.

⁹² Article 13 Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

⁹³ Article 43 Asylum Act.

⁹⁴ Article 13(6) Employment of Foreigners Act.

The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,⁹⁵ with relevant issues also regulated by the Primary School Act,⁹⁶ the Secondary School Act⁹⁷ and the High Education Act.⁹⁸ These laws also govern the education of foreign nationals and stateless persons and the recognition of foreign school certificates and diplomas.

The Act on the Basis of the Education System foresees that foreign nationals and stateless persons shall enrol in primary and secondary schools and exercise the right to education under the same conditions and in the same manner as Serbian nationals. Schools are obliged to organise language, preparatory and additional classes for foreign pupils, including stateless persons and refugees, who do not speak the language used in the schools or are in need of specific instructions in order to continue their education.⁹⁹ In addition, the Asylum Act foresees that ‘an asylum seeker and a person who has been granted asylum shall have the right to free primary and secondary education’.¹⁰⁰

In practice, asylum seekers and persons granted asylum are expected to enrol in primary and secondary schools on their own, with no real support from national asylum or educational institutions. This is particularly difficult given the fact that the majority of persons seeking asylum in Serbia do not speak Serbian or have any knowledge of the manner in which the national educational system functions.

Another burning issue is the lack of Serbian language courses for either asylum seekers or persons granted asylum in Serbia. Although the question of language courses has been set to be resolved as part of broader developments in integration policy foreseen by the national Action Plan for Chapter 24 of the EU Accession Talks – to be enacted by the Commissariat for Refugees and Migrations by means of a by-law with a December 2015 deadline¹⁰¹ – thus far this has not come to pass, and it remains to be seen how long it would take for such a plan to be implemented in practice.

C. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input checked="" type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The Asylum Act foresees that ‘an asylum seeker and a person who has been granted asylum in the Republic of Serbia shall have equal rights to health care, in accordance with the regulations governing health care for aliens.’¹⁰² To that extent, the Ministry of Health published a Rulebook on Health

⁹⁵ Law on the Basis of the Education System of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 72/2009 and 52/2011.

⁹⁶ Primary School Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 50/92,53/93,67/93,48/94,66/94 – Constitutional Court decision, 22/2002, 62/2009 – other law, 101/2005 – other law and 72/2009 – other law.

⁹⁷ Secondary School Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 50/92, 53/93, 67/93, 48/94, 24/96, 23/2002, 25/2002 - corr, 62/2003 – other law, 64/2003 – corr. of other law, 101/2005 – other law, 72/2009 – other law and 55/2013 – other law.

⁹⁸ High Education Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 76/2005, 100/2007 – authentic interpretation, 97/2008 and 44/2010, 93/2012 and 89/2013.

⁹⁹ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

¹⁰⁰ Article 41 Asylum Act.

¹⁰¹ Action Plan, point 2.1.5.2.

¹⁰² Article 40 Asylum Act.

Examinations of Asylum Seekers on Admission in the Asylum Centres in 2008,¹⁰³ which governs the manner in which asylum seekers undergo an initial check-up at an asylum centre, establishes the local community health centre's jurisdiction and obliges asylum centre staff to observe resident asylum seekers' health so as to notify immediately medical staff of any relevant changes.

In practice, asylum seekers and persons granted asylum have relatively unimpeded access to the national health care system in an equal manner to Serbian nationals. The costs of health care for asylum seekers and persons granted asylum are always covered by the Ministry of Health; costs of medications are covered by UNHCR through their implementing partner, the Danish Refugee Council.

Problems may arise for persons who express the intention to seek asylum while hospitalised, which happened several times over the course of 2015. While 'irregular migrants' are only entitled to the Ministry of Health covering emergency medical costs, for persons who are hospitalised at the time of asking for asylum the situation is difficult seeing as how national institutions only regard those persons issued a certificate of having expressed the intention to seek asylum as being, in fact, asylum seekers. As this would normally entail the person *in casu* presenting themselves at the local police station in order to formally express the intention to seek asylum, the police have shown little flexibility in visiting hospitals in order to record persons who cannot, as a result of their medical condition, come on their own.¹⁰⁴

¹⁰³ Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres, Official Gazette of the Republic of Serbia, no. 93/2008.

¹⁰⁴ It should be added that, in spite of the fact that Article 22 of the Asylum Act foresees the possibility of expressing the intention to seek asylum in writing, officials of the Ministry of the Interior have always interpreted this provision as requiring a Ministry official to be present regardless, thereby making redundant an article that would have been very appropriate for hospitalised persons who wish to seek asylum in Serbia.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: ¹⁰⁵	Not available
2. Number of asylum seekers in detention at the end of 2015: ¹⁰⁶	Not available
3. Number of detention centres:	1
4. Total capacity of detention centres:	70-80

The possibility of placing asylum seekers under detention in Serbia is prescribed by the Asylum Act. However, the Asylum Office has exceedingly rarely resorted to such measures, and only 9 asylum seekers were placed under detention in order to ensure their presence during the asylum procedure. All of these decisions were enacted in 2015.

However, each year, thousands of persons that are likely in need of international protection are detained in Serbia on various grounds. This may occur as a result of being convicted for illegal entry or stay in Serbia without having invoked the benefits of Article 8 of the Asylum Act, being detained in the Shelter for Foreigners under the Foreigners Act,¹⁰⁷ or being held in the airport transit zone.

The only official institution established for the purpose of detaining foreigners staying unlawfully is the Shelter for Foreigners, located in Belgrade, **Padinska skela**, with a capacity of up to 80 detainees.

The workload of the Shelter for Foreigners in Padinska skela decreased significantly in 2015. Serbia's Readmission Agreements with the EU, Montenegro and FYROM were *de facto* suspended when consensus to allow people in need of international protection to freely travel towards EU Member States was reached at the level of countries along the Western Balkan route. Consequently, referral to the Shelter for Foreigners reasonably believed to be in need of international protection pending their forced removal decreased considerably.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- | | | |
|--|--|--|
| 1. In practice, are most asylum seekers detained | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: ¹⁰⁸ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently | |
| | <input checked="" type="checkbox"/> Rarely | |
| | <input type="checkbox"/> Never | |

Detention of asylum seekers

Asylum-seekers can be detained by a decision of the Asylum Office, when it is necessary for the purposes of:

1. Establishing their identity;

¹⁰⁵ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

¹⁰⁶ Specify if this is an estimation.

¹⁰⁷ Article 49 Foreigners Act.

¹⁰⁸ Accommodation in airport transit zone with very restricted freedom of movement.

2. Ensuring the presence of a foreigner in the course of the asylum procedure, if there are reasonable grounds to believe that an asylum application was filed with a view to avoiding deportation, or if it is not possible to establish other essential facts on which the asylum application is based without the presence of the foreigners in question; or
3. Protecting national security and public order in accordance with the law.¹⁰⁹

In practice, the Asylum Office has had asylum seekers placed under detention extremely rarely.

Other grounds for the detention of foreign nationals who may be in need of protection

In spite of the fact that the Asylum Office rarely enacts decisions putting asylum seekers under detention, persons in need of international protection may regardless be subjected to detention in a number of situations.

Foreigners who are likely in need of international protection may be detained in the Shelter for Foreigners in Padinska skela when they cannot be immediately forcibly expelled, or for the purpose of their identification, or when they do not possess valid travel documents, as well as in other cases prescribed by the law.¹¹⁰ However, this concerns those persons who do not express the intention to seek asylum in Serbia, as persons who have done so come under the regime foreseen by the Asylum Act explained above.

Regional police directorates may decide to have foreigners placed under detention at the Shelter for Foreigners provided they are granted consent by the Foreigners Department of the Border Police Directorate.¹¹¹ The most frequent reason for referring foreigners of relevance to this report to the Shelter for Foreigners is to ensure their presence as witnesses in criminal proceedings against people suspected of committing the crimes of illegal crossing of the state border and human smuggling¹¹² and human trafficking.¹¹³ Given that neither the Foreigners Act, nor the Criminal Procedure Code¹¹⁴ envisage testimony in criminal proceedings as grounds for referral to the Shelter for Foreigners, such action is taken under Article 49 of the Foreigners Act, under which a foreigner whose identity has not been established or who does not have a travel document may be referred to the Shelter.

Without disputing the importance of the criminal prosecution and punishment of human smugglers and traffickers, referral of aliens to the Shelter to ensure they testify in criminal proceedings is not specified as grounds in Serbia's regulations. It should also be borne in mind that Serbia lacks an adequate procedure for forcibly removing foreigners found to have illegally entered or stayed in its territory. In other words, the existing procedure does not provide procedural guarantees against *refoulement*.¹¹⁵

Additionally problematic is the widespread practice of convicting persons coming from refugee-producing countries for illegal entry or stay; the greater part of this practice is likely not in line with the principle of non-penalisation for illegal entry or stay foreseen by Article 31 of the 1951 Convention. However, although the majority of misdemeanour proceedings end with the person *in casu* paying a fine before being issued an order to leave Serbia within a certain time limit, it is not uncommon that potential refugees be sentenced to a short term in prison as a result of their illegal entry or stay. Bearing in mind that access to an interpreter for languages most refugees speak is extremely limited, it is doubtful to which extent these persons are made aware of their rights and understand the proceedings, including the right to seek asylum in Serbia.

¹⁰⁹ Article 51 Asylum Act.

¹¹⁰ Article 49 Foreigners Act.

¹¹¹ *Ibid.*

¹¹² Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 85/2005, 88/2005 - corr, 107/2005 - corr, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014 (hereinafter: Criminal Code), Article 350.

¹¹³ Article 388 Criminal Code.

¹¹⁴ Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014 (hereinafter: Criminal Procedure Code).

¹¹⁵ See CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para 15.

With regards to persons present at the Airport ‘Nikola Tesla’ in Belgrade, foreigners found not to fulfil the requirements for entering Serbia by the border police officials are returned to the country they had flown in from, usually on the next available flight, in accordance with the Foreigners Act. Those who cannot be returned immediately are either held in a separate room at the airport or allowed to move freely in the transit zone until they can be returned, depending on the security assessment of the border police.¹¹⁶ Women and minors are not held in the room.

Serbian legislation does not provide grounds for placing foreigners in the transit zone for the purposes of forced returns, nor does it provide for the possibility of appealing such a decision. It does not define the duration of the deprivation of liberty or the rights of the person deprived of liberty, such as the right to a lawyer, the right to notify a third person of one’s deprivation of liberty and the right to be examined by a doctor.

In practice, deprivation of liberty at the airport may last for up to 2 or 3 weeks, depending on the flight schedule and availability.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
 - Other
2. Are alternatives to detention used in practice? Yes No

The Asylum Act foresees the possibility of limiting asylum seekers’ freedom of movement to the asylum centre as such, instead of placing them under detention in the Shelter for Foreigners.¹¹⁷ Such measures, however, have never been taken in practice.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 - Frequently
 - Rarely
 - Never
 - ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 - Frequently
 - Rarely
 - Never

The Asylum Act does not contain any provisions detailing specific treatment of vulnerable asylum applicants. In practice, none of the persons placed under detention in the Shelter for Foreigners by a decision of the Asylum Office were vulnerable applicants, and it is impossible to foresee how such applicants may be treated in possible future cases.

¹¹⁶ It is the opinion of the commander of the border police at the airport that holding foreigners in the transit zone does not constitute deprivation of liberty.

¹¹⁷ Article 52 Asylum Act.

It is possible for unaccompanied minors who have not yet expressed the intention to seek asylum in Serbia to be subjected to misdemeanour proceedings and sentenced to a short term in prison as adults as a result of faulty age assessment. Likewise, vulnerable persons who are potential asylum seekers have been detained at the airport without any preferable treatment.¹¹⁸

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|--------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | Less than 6 months |

The Asylum Act foresees that asylum seekers placed under detention may be subjected to such a state for up to 3 months; this deadline may be extended once for another 3-month period by a decision of the Asylum Office.¹¹⁹

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|---|-----------------------------|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Persons who seek asylum in Serbia may be placed under detention in the Shelter for Foreigners in **Padinska skela**, Belgrade, which can host up to 70-80 persons. Persons who are in need of international protection but do not seek asylum may be treated as irregular migrants by the authorities and may, therefore, likewise be placed under detention in the Shelter for Foreigners in line with the provisions of the Foreigners Foreigners.

Foreigners who are sanctioned for misdemeanour of illegal border crossing or illegal stay on Serbian soil are detained in 27 different penitentiaries around Serbia. Persons who are detained at 'Nikola Tesla' Airport are accommodated at premises located in the transit zone, at the far end of the gate corridor.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is access to detention centres allowed to | | |
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ NGOs: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |

Shelter for Foreigners

¹¹⁸ See Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2014*.

¹¹⁹ Article 52 Asylum Act.

Persons held at the Shelter for Foreigners are accommodated in two separate parts, with the male part having 6 rooms, and the female one having 3 rooms. Each room has radiators and hygienic facilities that are in good condition and properly isolated. The rooms are well-lit, with ample access to sunlight as well as proper electric lighting, and the windows are large enough to allow for ventilation.

Both parts have a living room, bathroom and yard. Meals are also served in the living room. Detainees have the right to reside in the living room during the day and are entitled to a walk outside for 2 hours.

The issue that gives cause for most concern regarding life in the Shelter for Foreigners is the lack of meaningful activities and adequate communication between staff and detainees.

Foreigners may express the intention to seek asylum and to have access to legal aid, including NGOs and UNHCR.

Penitentiary facilities

Conditions in the penitentiaries where refugees are detained if convicted in the misdemeanour proceedings vary depending on the individual facility. The Serbian system for the implementation of criminal sanctions has suffered from overcrowding for many years, while conditions in certain facilities may amount to inhumane and degrading treatment as a result of poor living conditions, a lack of meaningful activities and the lack of communication with the staff and outside world.

The penitentiaries that are located in the border zones are the ones in which persons likely in need of international protection are usually detained at, such as the County Prison in **Vranje** (Southern border zone) and the Correctional Facility in **Sremska Mitrovica** (Western border area).

Transit zones

The airport transit premises have a size of 80 m² and are equipped with 25 sofas and some blankets. There are no adequate conditions for sleeping and the ventilation is unsatisfactory. The foreigners are locked up all day long. The toilet is located within the premises and is in acceptable condition.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? Yes No
2. If yes, at what interval is the detention order reviewed?

According to the Foreigners Act¹²⁰ and the Asylum Act,¹²¹ detainees have the right to lodge an appeal to the Higher Court. The decision is drafted in the Serbian language, and if the foreigner does not attain legal counsel (which is quite often the case), there is no real possibility of challenging it.

Since the refugees detained in the transit zone of 'Nikola Tesla' Airport are not considered persons deprived of liberty by the border police officials, they do not have the possibility of challenging their situation before the relevant authority. In other words, the placement of foreigners in the transit zone is not accompanied by a lawful decision depriving them of liberty, specifying the duration of the deprivation

120 Article 49 Foreigners Act.

121 Article 52(4) Foreigners Act.

of liberty and the rights of the person deprived of liberty, such as the right to have access to a lawyer, the right to notify a third person of one's deprivation of liberty and the right to be examined by a doctor.

Foreigners who are sentenced for the misdemeanour of illegal border crossing or illegal stay in Serbia may lodge an appeal against the first-instance decision. However, since the majority of cases are processed in an accelerated manner, where the foreigners are deprived of the possibility of challenging the charges against them in a language they understand and with the help of an attorney, appeals in these procedures are quite rare.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

Given that there have not been many decisions placing asylum seekers under detention at the Shelter for Foreigners, and none of the persons subjected to such detention having thus far been interested in challenging said decisions, it is impossible to form a clear image of the current state of affairs in this field.

In a 2015 detention case of a person who had been prevented from accessing the asylum procedure, the individual subjected to detention by a decision of the Foreigners Department did seek judicial review of the decision. The foreigner in question was placed under detention pending readmission, in spite of the fact that he wished to seek asylum and that a misdemeanour court had dismissed the charges of illegal entry or stay in Serbia because he had asked for asylum. In the end, it was only when the European Court of Human Rights (ECtHR), at the request of the individual's legal representatives, indicated interim measures, in line with Rule 39 of the Rules of Court that no forced return take place pending a decision on an ECtHR application, that the authorities released the individual and allowed him to access the asylum procedure.¹²²

¹²² ECtHR, *Othman v Serbia*, Application No 27468/15.