

Country Report: Serbia



2016
Update



Acknowledgements & Methodology

This report was written by Pavle Kilibarda and Nikola Kovačević at the Belgrade Centre for Human Rights (BCHR), and was edited by ECRE. The first update was written by Nikola Kovačević at BCHR, and was edited by ECRE.

This report draws on the BCHR's experience in representing asylum seekers and refugees in Serbia, engaging the asylum authorities and monitoring the respect for the right to asylum in the country.

The information in this report is up-to-date as of 31 December 2016.

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.
Afis	Automated fingerprint identification system
BCHR	Belgrade Centre for Human Rights
BPSB	Border Police Station Belgrade
CAT	United Nations 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
MYLA	Macedonian Young Lawyers' Association
OKS	Specific Category of Foreigners Određena kategorija stranaca
UAE	United Arab Emirates
UNHCR	United Nations High Commissioner for Refugees

Statistics

Overview of statistical practice

The Asylum Office does not publish statistics on asylum applications and decisions. Basic figures are published by UNHCR, though not regularly.

Applications and granting of protection status at first instance: 2016

	Intentions to apply for asylum in 2016	Applications submitted in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Rejection (merits)	Refugee rate	Subs. Prot. rate	Rejection rate
Total	12,821	574	:	19	23	40	23.1%	28%	48.9%

Breakdown by countries of origin of the total numbers

Afghanistan	5,591	187	:	1	5	:	:	:	:
Iraq	2,700	147	:	4	1	:	:	:	:
Syria	2,313	100	:	4	2	:	:	:	:
Pakistan	1,001	60	:	0	0	:	:	:	:
Iran	278	16	:	1	0	:	:	:	:
Algeria	173	2	:	0	0	:	:	:	:
Somalia	162	0	:	0	0	:	:	:	:
Morocco	141	1	:	0	0	:	:	:	:
Cuba	92	10	:	4	0	:	:	:	:
Bangladesh	46	5	:	0	0	:	:	:	:

Source: Asylum Office

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	12,821	-
Men	9,128	71%
Women	3,693	29%
Children	1,387	10%
Unaccompanied children	599	5%

Source: Asylum Office

Comparison between first instance and appeal decision rates: 2016

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	108	-	31	-
Positive decisions	42	28.6%	16	51.6%
• <i>Refugee status</i>	19	13%	0	0%
• <i>Subsidiary protection</i>	23	15.6%	2	6.4%
Negative decisions	105	71.4%	15	48.4%

Source: Asylum Office; Asylum Commission. Negative decisions include in-merit and admissibility.

Overview of the legal framework

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/1p2ntBO (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 opštem 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	Akcioni 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 the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger Official Gazette, no. 81/2015	Odluka o izdavanju potvrde o ulasku na teritoriju Republike 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		http://bit.ly/1L6HwsL (SR)

Decree on the Manner of Involving Persons Recognised as Refugees in Social, Cultural and Economic Life Official Gazette, no. 101/2016	Uredba o načinu uključivanja u društveni, kulturni i privredni život lica kojima je priznato pravo na utočište / Уредба о начину укључивања у друштвени, културни и привредни живот лица којима је признато право на уточиште	Integration Decree	
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Overview of the main changes since the first report

The first report was last published in **March 2016**.

- **Asylum reform:** The adoption of the new Asylum Act, initially foreseen for 2016, has been postponed. The draft of the new Asylum Act has been shared with civil society representatives for comments, and was also received positively by the European Commission. The new law will introduce both accelerated and border procedures. Bearing in mind that the Asylum Office is understaffed even in light of the single existing procedure, it is reasonable to assume that additional personnel will be required to implement the additional proceedings. It is otherwise difficult to envision adequate implementation of the new law in reality.

Asylum procedure

- **Access to the territory:** In July 2016, the Serbian Government adopted a decision to form mixed patrols of the army and police to strengthen the border with FYROM and Bulgaria. The Ministry of Defence reported in December 2016 that more than 18,000 migrants had been prevented from illegally crossing the border from Bulgaria. Between September and December 2016, the Belgrade Centre for Human Rights received 13 complaints concerning collective expulsions or push-backs to FYROM that involved approximately 750 persons. Those removed included people who had predominantly been residing in the reception centre in Preševo, as well as persons who had been intercepted by patrols of the police or army at the border, or mixed patrols deeper within the territory of Serbia.

Reception conditions

- **Accommodation:** By the end of 2016, more than 7,000 people were residing in Serbia, the vast majority of whom (around 82%) were accommodated in camps along the border where they were waiting for their turn to be admitted into Hungary. The remainder stayed in the streets of Belgrade and border areas with Hungary.
- The Ministry of Interior opened additional temporary reception centres to respond to the increase in refugees and migrants.

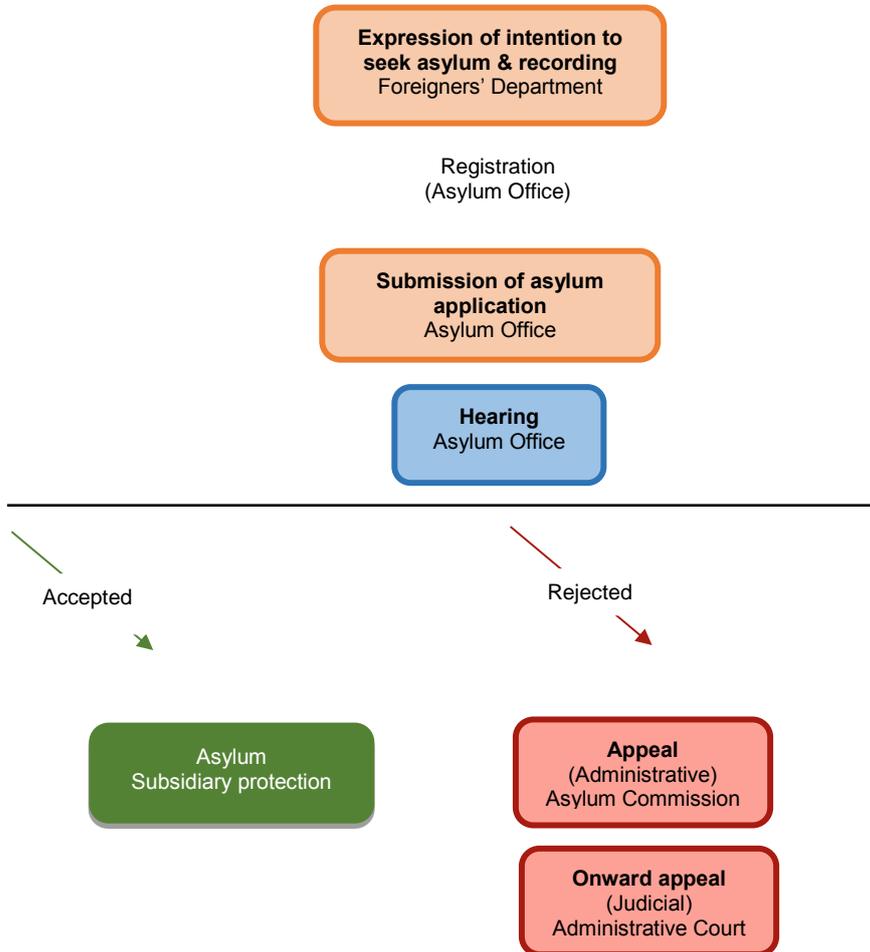
Content of protection

- **Integration assistance:** In December 2016, a Decree on the Manner of Involving Persons Recognized as Refugees in Social, Cultural and Economic Life ("Integration Decree") was enacted and entered into force in January 2017. The Decree foresees assistance various areas crucial to integration such as access to the labour market and education, including assistance in recognition of qualification and language courses. The Decree only refers to recognised refugees and does not explicitly cover subsidiary protection beneficiaries. However, due to its entry into force in January 2017, it remains to be seen how it will be implemented in practice.

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: ¹ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ² | <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: ³ | <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 of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (SR)
Decision on entry ⁴	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	15	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, while 2 have left.⁵

5. Short overview of the asylum procedure

The right to asylum is enshrined in Article 57(1) of the Constitution of Serbia.⁶ The asylum system and procedure *stricto sensu*, however, are mainly governed by the 2008 Asylum Act.⁷ Additionally, relevant

¹ For applications likely to be well-founded or made by vulnerable applicants.

² Accelerating the processing of specific caseloads as part of the regular procedure.

³ Labelled as "accelerated procedure" in national law.

⁴ Formally speaking, the Border Police is not authorised to refuse entry to any person seeking asylum.

⁵ 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.

⁶ '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).

⁷ Law on Asylum of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 109/2007.

are the Foreigners Act⁸ and the General Administrative Procedure Act,⁹ 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,¹⁰ which regulates certain issues relevant to the housing and integration of asylum seekers and refugees.

Overall, 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 2016.¹¹ However, as a result of early parliamentary elections held in April 2016, all legislative activities were postponed until further notice. The draft of the new Asylum Act has been shared with civil society representatives, who have been given the opportunity of providing comments and suggestions to the authorities. It is also important to point out that the draft was positively received by the European Commission. However, it is very difficult to assess when the new Asylum Act might enter parliamentary proceedings, bearing in mind the current political situation and further upcoming elections.

In spite of the fact that the new Asylum Act has yet to be adopted, several legislative novelties may be discerned from available draft documents. The new law will introduce both accelerated and border procedures. Bearing in mind that the Asylum Office is understaffed even in light of the single existing procedure, it is reasonable to assume that additional personnel will be required to implement the additional proceedings. It is otherwise difficult to envision adequate implementation of the new law in reality.

One of the most significant changes concerns the “safe third country” concept. The draft Asylum Act foresees that Serbian asylum authorities are obliged to obtain guarantees that an asylum seeker, whose claim might be rejected for having passed through a safe third country prior to entering Serbia, will be allowed to access the territory and asylum procedure of that country. Otherwise, their claim must be examined in the merits.

The existing 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.

⁸ Law on Foreigners of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 97/2008.

⁹ 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.

¹⁰ Law on Migration Management of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 107/2012.

¹¹ Action Plan for Chapter 24 of the EU Accession Talks, available at: <http://bit.ly/1QFd0C7>, point 2.1.4.3.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. 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

A number of issues concerning limited access to the asylum procedure were reported in 2016. These include push-backs from Serbia to the Former Yugoslav Republic of Macedonia (FYROM) and Bulgaria, arbitrary returns to third countries or countries of origin 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.¹² 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.

In July 2016, the Serbian Government adopted a decision to form mixed patrols of the army and police to strengthen the border with FYROM and Bulgaria.¹³ The decision came in response to refugees and migrants' facing increasing difficulties in leaving Serbia to Croatia or Hungary.¹⁴ By the end of 2016, more than 7,000 people were residing in Serbia, the vast majority of whom (around 82%) were accommodated in camps along the border where they were waiting for their turn to be admitted into Hungary.¹⁵ The remainder stayed in the streets of Belgrade and border areas with Hungary.¹⁶

The introduction of mixed patrols gives reasons for concern, especially if we take into consideration the fact that state officials frequently make public statements that "migrants" or "illegal migrants" are successfully being repelled from the borders of Serbia. The Ministry of Defence reported in December 2016 that more than 18,000 migrants had been prevented from illegally crossing the border from Bulgaria.¹⁷ Without trying to dispute Serbia's right to control entry, stay or exit on its soil,¹⁸ it is very important to conduct it in line with its domestic laws and principle of *non-refoulement*,¹⁹ as well as with principle of absolute prohibition of collective expulsions.²⁰ It is hard to assume that 18,000 people were prevented from crossing the border in a manner that was in line with Council of Europe standards i.e. that each of these persons was served with a decision that is rendered in a procedure where individual circumstances of each person were examined; with the assistance of a lawyer and a translator for the language he or she understands; and with the possibility to lodge an appeal that has suspensive effect.

Serbia still does not have an adequate legal framework providing sufficient procedural guarantees against *refoulement* in forced return procedures, which gives rise to credible fears that the authorities are engaged in practice which violates international law. It is clear that newly introduced practice established suitable ground for collective expulsions. For that reason, it is necessary to introduce a border monitoring mechanism which will include representatives of civil society, as was, *inter alia*, recommended by the UN

¹² See BCHR, *Right to Asylum in the Republic of Serbia 2016, 2017*, Forthcoming.

¹³ N1, 'The police and army together against illegal migrations', 16 July 2016, available in Serbian at: <http://bit.ly/2kelszH>.

¹⁴ After the closure of the Western Balkan route, Hungary introduced a practice limiting the admittance of refugees to 30 persons a day to its territory (15 persons at the Kelebija border crossing and 15 persons at the one in Horgoš). This number was reduced to 20 by the end of November 2016.

¹⁵ UNHCR, *Serbia update: 26 December 2016 – 1 January 2017*.

¹⁶ International Business Times, 'Sub-zero temperatures and snow deepen the plight of Serbia's refugees', 11 January 2017, available at: <http://bit.ly/2j1DN72>.

¹⁷ Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

¹⁸ ECtHR, *Chahal v. UK*, Application No 22414/93, Judgment of 15 November 1996, para. 73.

¹⁹ Article 3 ECHR.

²⁰ Article 4 Protocol No 4 ECHR.

Committee against Torture (CAT) in its latest concluding observations on the second periodic report of Serbia.²¹

Between September and December 2016, the Belgrade Centre for Human Rights received 13 complaints concerning collective expulsions or push-backs to FYROM that involved approximately 750 persons. Those removed included people who had predominantly been residing in the reception centre in **Preševo**, as well as persons who had been intercepted by patrols of the police or army at the border, or mixed patrols deeper within the territory of Serbia. In addition, the NGO Macedonian Young Lawyers' Association (MYLA) from FYROM reported that more than 400 people had been pushed back from Serbia not far from the camp in **Tabanovce** between 12 and 16 October 2016.²²

In December 2016, a family of seven, coming from Syria, was intercepted by a mixed patrol of the army and police along the way to the reception centre in **Bosilegrad**. They were duly registered and issued certificates of having expressed the intention to seek asylum, then referred to Bosilegrad. Twenty kilometres from Bosilegrad, they were forced off the bus and taken deep into the woods close to the Bulgarian border. They were abandoned there at temperatures dropping as far as -11°C.²³

The practice of the Border Police Station Belgrade (BPSB) at '**Nikola Tesla**' airport remained unchanged in 2016.²⁴ Foreigners who, according to the assessment of BPSB, did not meet the requirements to enter Serbia were detained in the transit zone of the airport. They remained in the transit zone as long as the company they had been traveling with did not provide them a seat on the return flight (to their country of origin or a third country). In other words, foreigners may be detained in the transit zone ranging from a few days to several weeks.

A related issue is the fact that the BPSB does not consider these people as being deprived of liberty. It does not therefore render a decision on deprivation of liberty, preventing these people from enjoying the rights of persons deprived of liberty (including the right to have a lawyer, to inform a third person of their whereabouts and challenge the grounds of their detention); neither are these people informed (in a language they understand) about the returns procedure they face. Persons that are likely in need of international protection are not informed about the possibility of applying for asylum, nor does the BPSB examine the risk of *refoulement* in case of return.²⁵

In first six months of 2016, 14 persons that were likely in need of international protection (coming Afghanistan, Libya, Syria, Iran and Somalia) were returned to third countries such as Greece, Lebanon, United Arab Emirates (UAE), Turkey etc. Since December 2013, the BCHR has intervened over a hundred times in order to prevent forced removal to countries where *prima facie* refugees could be at risk of torture or other forms of ill-treatment. Three requests that interim measures be indicated in line with Rule 39 of the Rules of Court have been submitted to the ECtHR in order to prevent *refoulement* to Greece,²⁶ Somalia²⁷ and Turkey.²⁸

²¹ CAT, *Concluding observations on the second periodic report of the Republic of Serbia*, CAT/C/SR.1322 i CAT/C/SR.1323, para. 15.

²² Information was obtained by Macedonian NGO MYLA.

²³ Osservatorio balcani e caucaso, 'Serbia needs to investigate asylum seekers push backs', 11 January 2017, available at: <http://bit.ly/2koHnsj>.

²⁴ See BCHR, *Right to Asylum in the Republic of Serbia 2015, 2016*, available at: <http://bit.ly/2jmYbhy>, 45-47.

²⁵ CAT, *Concluding observations on the second periodic report of the Republic of Serbia*, CAT/C/SR.1322 i CAT/C/SR.1323, para. 15.

²⁶ ECtHR, *P. S. v. Serbia*, Application No 90877/13.

²⁷ ECtHR, *Ahmed Ismail (Shiine Culay) v. Serbia*, Application No 53622/14.

²⁸ ECtHR, *Arons v. Serbia*, Application No 65457/16.

2. 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 to apply 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

2.1. 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,²⁹ including prisons, the Shelter for Foreigners³⁰ 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.³¹ The police officer also collects personal and biometric data from the individual, takes their photo and enters them in electronical data bases: the Specific Category of Foreigners (OKS)³² and Afis.³³

'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,³⁴ 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.³⁵ 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.³⁶

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

²⁹ Article 22(1) Asylum Act.

³⁰ 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.

³¹ Article 22(2) Asylum Act.

³² Specific Category of Foreigners (Određena kategorija stranaca): is a database which records all legal measures undertaken with regard to a foreigner during his or her stay in Serbia, such as the approval and basis upon which the foreigner was approved temporary residency, any decisions cancelling temporary residence (Article 35 Foreigners Act), decisions regarding illegal residence (Article 43 Foreigners Act), requests for the initiation of misdemeanour proceedings and misdemeanour sanctions that were imposed, decisions on placement in the Shelter for Foreigners in Padinska Skela (Article 49 Foreigners Act), etc.

³³ Afis is the Ministry of Interior's database containing information on criminal and misdemeanour offenders, but which is also used by the Ministry for refugees and asylum seekers since it includes rubrics for biometrical data and photography. Afis is more reliable for identity checks because OKS contains only data that can easily be forged, e.g. name, place and date of birth, etc.

³⁴ Article 23(2) Asylum Act.

³⁵ The certificate includes personal data such as the asylum-seeker's name, surname, place and date of birth and country of origin.

³⁶ This is the Belgrade Centre's experience in working with Asylum Office staff when representing asylum seekers in the procedure.

Over the course of 2016, the Ministry of Interior issued a total of 12,821 certificates of having expressed the intention to seek asylum in Serbia. However, this data does not adequately reflect the real number of persons who were genuinely interested in seeking asylum in Serbia. Certificates are mainly requested in order to be admitted to the asylum or reception centres, where asylum seekers may enjoy such basic rights as accommodation, food, healthcare, psycho-social support, etc.³⁷ Under the circumstances, the Ministry of Interior does not adequately assess an individual's aspirations – whether or not they genuinely want to remain in Serbia. Conversely, it is common practice that genuine asylum seekers be referred to reception centres³⁸ instead of asylum centres, thereby preventing them from entering the asylum procedure, forcing NGOs providing legal assistance to asylum seekers to advocate for their transfer to an asylum centre. This process can sometimes last for more than several weeks, which further delays access to the asylum procedure.

Particularly disturbing is the situation of asylum seekers who had been hoping to continue towards Western and Central Europe but got 'trapped' in Serbia as a result of neighbouring countries shutting down their borders.³⁹ Because they had already spent weeks or even months in Serbia by the time they apply for asylum, they are often treated as simple irregular migrants and face action under the Foreigners Act, such as being issued an order to leave the country or face forced return proceedings. If the foreigner had previously applied for asylum but then tried to leave the country, the Ministry of Interior considers it an abuse of the asylum procedure and often denies them the possibility of submitting an application. Under such circumstances, police officers tasked with issuing certificates of having expressed the intention to seek asylum will often refuse to do so, in spite of the fact that they are not entitled to make such a decision under the Asylum Act.

Another issue that was present throughout 2016 involved persons who refused to go to particular reception centres, such as the one in **Preševo**, because they were afraid of being deprived of their liberty and informally expelled to FYROM. Reintroducing these people into the asylum procedure after 72 hours have expired since they had been issued a certificate represents real hardship due to a flawed interpretation of Articles 22 and 23 of the Asylum Act.

Apart from problems related to the interpretation of Articles 22 and 23 of the Asylum Act, the Belgrade Centre for Human Rights and other NGOs received several complaints of unprofessional and abusive behaviour of police officers in Belgrade's **Savski Venac** Police Station. This included yelling, threats of deportation to FYROM or Turkey, or imprisonment. One asylum seeker from Syria stated during the asylum procedure interview that one of the police officers offended him on religious grounds and told him to go back to Turkey.⁴⁰

As had been the case in previous years, refugees expelled / returned from Hungary are still facing difficulties in accessing the asylum procedure in 2016. It is not clear what the official stance of Serbian authorities vis-à-vis such cases is, but in light of several incidents wherein the Belgrade Centre's

³⁷ The Government of Serbia attempted to resolve this issue by adopting the Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger. However, due to the fact that the so-called 'transit certificate' (that had been issued in line with the Decision) was valid for the same amount of time as the certificate for asylum (72 hours), the problem of unregulated status of people who are in need of international protection, but do not perceive Serbia as a country of destination, continued to exist in 2016, since 72 hours was not long enough for an individual to leave Serbia. Besides, the implementation of the aforementioned decision was halted in the first half of 2016, and the authorities continued with the practice of issuing certificates of having expressed the intention to seek asylum to people who did not want to seek protection in Serbia.

³⁸ E.g. to the reception centre in **Preševo**.

³⁹ In September 2015, Hungary established a fence along its border with Serbia, criminalised damaging it, introduced an accelerated asylum procedure in the detention centres Tompa and Röszke which is based on the automatic application of a safe third country concept in relation to Serbia, etc. Nonetheless, the Belgrade Centre and other NGOs operating in the border areas with Croatia and Hungary received dozens of complaints related to pushback and ill-treatment that had preceded it at the hands of Hungarian and Croatian border police. See more at: AIDA Country Report Hungary: 2016 Update, February 2017, available at: <http://bit.ly/2k3zGE9>.

⁴⁰ Minutes of the hearing from the case file no. 26-1395/16.

intervention was required, asylum seekers, who possessed case files from accelerated asylum proceedings that had been conducted in transit zones Tompa or Röske in Hungary or who had been readmitted to Serbia, were denied the possibility of expressing the intention to seek asylum. In a case involving 3 Syrian refugees whose asylum applications had been dismissed in Hungary, persistent advocacy on the part of the Belgrade Centre's lawyers was required before the Serbian authorities agreed to allow them into the asylum procedure.

2.2. 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.⁴¹

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 procedure and are to be returned regardless of its outcome.⁴² Asylum seekers possessing such documents are obliged to relinquish them by the time of their hearing at the latest.⁴³ 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.⁴⁴

In 2016, the Asylum Office only registered 830 asylum seekers.

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.⁴⁵ 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.⁴⁶ The Asylum Office issued a mere 177 personal identity documents in 2016, 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.⁴⁷ 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.⁴⁸

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*.

⁴¹ Articles 22 and 39 Asylum Act.

⁴² Article 24(2) Asylum Act.

⁴³ Article 24(3) Asylum Act.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ Information obtained by providing legal aid to asylum seekers in Serbia.

⁴⁷ Article 113 General Administrative Procedure Act.

⁴⁸ Article 25 Asylum Act.

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 574 asylum applications in 2016.

C. Procedures

1. Regular procedure

1.1. 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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016: | 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.⁴⁹ The Asylum Office is also entitled to dismiss an asylum application without ruling on its merits.⁵⁰

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.⁵¹ No official data exists concerning the average length of the asylum procedure in practice, however experience shows that it took the Asylum Office between 4 and 6 months on average to issue a first-instance decision, and occasionally much longer.⁵²

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.⁵³

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;

⁴⁹ Articles 28-29 Asylum Act.

⁵⁰ Article 33 Asylum Act.

⁵¹ The Asylum Office clearly lacks human resources. During 2016, 11 asylum officers were conducting the asylum procedure. However, in the second part of 2016, two asylum officers left the Asylum Office; 2 of them went on maternity leave, while in October 2016 four asylum officers were sent to two months of police training. In other words, during November and December 2016, only 3 asylum officers were conducting official activities.

⁵² For example, the asylum seeker in case 26-93/16 submitted an asylum application on 22 January 2016, while the decision dismissing the application was rendered on 12 August 2016; the asylum seeker in case 26-286/17 submitted an application on 22 January, while a decision was rendered on 31 October 2016; in case 26-11/16, the application was submitted on 3 March 2016, while the Asylum Office only rendered a decision on 9 August 2016; in case 26-1414/16, the asylum seeker submitted an application on 20 June 2016, and the case is still pending.

⁵³ As advised by UNHCR, *International standards relating to refugee law: Checklist to review draft legislation*, March 2009, 19.

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.⁵⁴

In 2016, the Asylum Office rendered 28 decisions granting asylum to 42 persons, 17 decisions rejecting the application (40 persons), 53 decisions dismissing the applications (65 persons) and 268 conclusions discontinuing the procedure because the asylum seekers had left the asylum centre or another place of residence after they had applied for asylum. Refugee status was granted to citizens of: Libya (5), Cuba (4), Sudan (4), Cameroon (2), Syria (1), Iran (1), Kazakhstan (1) and Afghanistan (1). Subsidiary protection was granted to citizens of: Libya (6), Afghanistan (5), Ukraine (5), Syria (2), Somalia (2) and Iraq (1).

It can be concluded from the above that the vast majority of asylum seekers abandon the asylum procedure before a first-instance decision is rendered (268). On the other hand, if we analyse procedures where the Asylum Office has actually issued a decision on the asylum application, we can conclude that 54% of all cases (53 decisions) involve the Asylum Office dismissing the application because it had found that procedural requirements for ruling on merits of a claim had not been met.⁵⁵

In 46% of the cases (45 decisions), the Asylum Office did decide on the merits. Of those cases, 62% ended in a positive decision (28 decisions), while the application was rejected in 38% of cases. If we analyse nationalities of the asylum seekers whose asylum applications had been rejected, it can be concluded that in the vast majority of cases they could not have been considered as *prima facie* refugees: Russia (4), FYROM (3), Pakistan (3), Senegal (1), Montenegro (1), Congo (1), South Africa (1) and Ghana (1). However, in 2016, the Asylum Office – as well as the Asylum Commission and the Administrative Court – likewise rejected the applications of 16 Libyan nationals, claiming that they would not be persecuted and treated contrary to Article 3 ECHR in case of being returned to Libya.⁵⁶ In one of these cases BCHR was forced to submit a request for interim measures under Rule 39 of the Rules of Court to the ECtHR in order to prevent the applicants' expulsion to Libya.⁵⁷ The case is currently pending before the Constitutional Court of Serbia and the ECtHR.

1.2. Prioritised examination and fast-track processing

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

1.3. 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.

⁵⁴ Article 30 of the Asylum Act.

⁵⁵ In 95% of all cases, the asylum application was dismissed on the basis of Article 33(1)(6) Asylum Act – safe third country concept in relation to FYROM and Bulgaria. See [Safe Third Country](#).

⁵⁶ The asylum application of one Somali national was also rejected in 2016. However, since the Belgrade Centre for Human Rights was not the legal representative in this case, we are not able to provide an analysis of the decision-making process.

⁵⁷ ECtHR, *Ben Rfad v. Serbia*, Application No 37478/16.

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.⁵⁸

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 160 interviews in 2016. In practice, asylum seekers often wait from several weeks to up to a month following the submission of their application for a hearing to be scheduled.

1.4. Appeal

Indicators: Regular Procedure: Appeal		
1. Does the law provide for an appeal against the first instance decision in the regular procedure?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
❖ If yes, is it suspensive		
- Administrative appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
- Onward appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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.⁵⁹ 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.⁶⁰

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.⁶¹ 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.⁶² 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

⁵⁸ Article 26(4) Asylum Act.

⁵⁹ Article 20 Asylum Act.

⁶⁰ 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.

⁶¹ Article 236 General Administrative Procedure Act.

⁶² Article 35 Asylum Act.

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.⁶³

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.⁶⁴ 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 September 2016, the mandate of Asylum Commission members expired, and as of the day this report was concluded, new members have not yet been appointed by the Government of Serbia. For this reason, the BCHR has started addressing appeals directly at the Administrative Court for the time being.

In the first six months of 2016, 33 appeals were lodged to the Asylum Commission (51 persons). In the same period, the Asylum Commission rendered 17 decisions (29 persons): 11 decisions rejecting the appeal (15 persons) and 6 decisions upholding it and returning the case to the first-instance body. The Asylum Commission decided on the merits of only one case, granting subsidiary protection to 2 Libyan citizens.

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.⁶⁵

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

⁶³ Article 232 General Administrative Procedure Act.

⁶⁴ Article 19 Administrative Disputes Act, Official Gazette of the Republic of Serbia, no. 111/2009.

⁶⁵ Article 15 General Administrative Procedure Act.

The initiation of an administrative dispute does not *ipso facto* suspend the enforcement of the impugned administrative act.⁶⁶ 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.⁶⁷ 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.

A case of an administrative dispute initiated by the BCHR is illustrative in this regard, having lasted from 14 April to 29 June 2016; in other words, it took the Administrative Court almost three months to deliver its judgment.

In 2016, 22 complaints were lodged to the Administrative Court. In the same period, this body decided on 7 complaints: 5 decisions rejecting the complaint, 1 decision dismissing it and 1 upholding it.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
------------------------------	--	--

 - ❖ Does free legal assistance cover

<input type="checkbox"/> Representation in courts
<input type="checkbox"/> 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.⁶⁸

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.

2. Dublin

Serbia does not participate in the Dublin system.

⁶⁶ Article 23 Administrative Disputes Act.

⁶⁷ Article 23 General Administrative Procedure Act.

⁶⁸ Article 10 Asylum Act.

3. 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](#)).⁶⁹

4. Border procedure (border and transit zones)

There is no border procedure in Serbia.

5. Accelerated procedure

There is no accelerated procedure in Serbia.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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. Does the law provide for an identification mechanism for 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.

Age assessment

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."⁷⁰

In spite of criticism levelled at national authorities by civil society throughout 2016, neither the age assessment mechanisms, nor the legal representation procedure for underage migrants have changed in Serbia. The identification of unaccompanied minors continues to be 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. An additional problem the authorities face in identifying unaccompanied minors lies in the fact that minors often travel in groups together with adults, making it difficult for the police to ascertain whether or not they are travelling together with their parents or legal guardians.

Over the course of 2016, the authorities of Serbia recognised a total of 175 asylum seekers as unaccompanied minors, out of a total of 4,850 underage asylum seekers. However, bearing in mind the above-mentioned challenges in identifying unaccompanied minors, their real number is likely far greater. It is also crucial to bear in mind that the authorities only maintain, or have only made available, records of such unaccompanied minor foreigners as have expressed the intention to seek asylum. The number of minors regarded by the authorities as irregular migrants is therefore unknown.

⁶⁹ Article 33 Asylum Act.

⁷⁰ Article 2 Asylum Act.

2. 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:

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.⁷¹ However, this has rarely been adhered to in practice, with the authorities demonstrating little flexibility in prioritising or otherwise facilitating the asylum procedure of persons with special needs.⁷²

3. 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.⁷³

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

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.⁷⁴ However, it is questionable whether this actually occurs in practice, seeing as how the legal guardian usually merely assumes care for the minor in a formal way, sometimes without ever even 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. Since the end of 2015, minors' centres have accepted to accommodate unaccompanied minor asylum seekers, thereby significantly improving their position seeing as how the group had previously been housed at asylum centres together with adults who had no relation to them.

⁷¹ Article 15 Asylum Act.

⁷² 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.

⁷³ 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.

⁷⁴ Article 16 Asylum Act.

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.⁷⁵

E. 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.’⁷⁶

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

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national legislation allow for the use of “safe country of origin” concept? Yes No
 - ❖ Is there a national list of safe countries of origin? Yes No
 - ❖ Is the safe country of origin concept used in practice? Yes No
2. Does national legislation allow for the use of “safe third country” concept? Yes No
 - ❖ Is the safe third country concept used in practice? Yes No
3. Does national legislation allow for the use of “first country of asylum” concept? Yes 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.⁷⁷ A list of safe countries of origin and safe third countries was established by Governmental Decree in 2009 and has not been revised since.⁷⁸

1. 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

⁷⁵ 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.

⁷⁶ Article 32 Asylum Act.

⁷⁷ Articles 33(1)(4) and (6) Asylum Act.

⁷⁸ Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, no. 67/2009.

protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights.⁷⁹

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.

2. 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.”⁸⁰

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.

Although neither the law itself, nor individual by-laws provide for a more precise interpretation of the manner in which the safe third country principle is to be applied by the authorities, the approach of asylum bodies has generally been to require no greater link between the applicant and a safe third country other than the fact that they had transited through them prior to arriving in Serbia.

The notion of “reasonableness” is neither a requirement set by national law nor has it ever been applied in practice. Asylum seekers whose applications have been deemed inadmissible on the basis of the safe third country concept are generally left to their own devices and rarely actually subjected to a formal forced returns procedure.

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 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 organisations such as Human

⁷⁹ Article 2 Asylum Act.

⁸⁰ *Ibid.*

Rights Watch and Amnesty International, as well as the relevant practice of the ECtHR, the Committee against Torture (CAT) etc.⁸¹

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 UNHCR⁸² and CAT.⁸³ 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,⁸⁴ however it is as of yet impossible to determine whether or not this represents a consistent improvement.

The practice of automatic application of the safe third country concept resulted in a situation wherein only 8 persons were granted international protection in the first 5 years of Serbian asylum system (2008 – 2012). All of these persons had arrived in Serbia legally and directly from their country of origin, or from a country which has not ratified 1951 Convention; or they were *sur place* refugees. According to UNHCR, from 2008 to 2010 all asylum requests were dismissed on the basis of Article 33(1)(6) of the Asylum Act.⁸⁵ This practice has continued in the following years:

Dismissal of asylum applications on inadmissibility grounds: 2010-2016							
	2010	2011	2012	2013	2014	2015	2016
Dismissal decisions	47	53	64	8	12	25	53
Total decisions, excluding technical	48	55	67	17	18	58	98
Percentage	97.9%	96.3%	95.5%	47%	66.6%	43.1%	54.1%

In 2011 only two cases were decided in merits (negatively), while all other asylum applications were dismissed.⁸⁶ In 2012, the Asylum Office was exclusively rendering decisions on dismissal of asylum application by automatically applying the safe third country concept (64 decisions).⁸⁷ In 2013, Asylum Office dismissed on the same ground 8 asylum applications.⁸⁸ In 2014, the only negative decisions that were rendered by the Asylum Office were based on the automatic application on a safe third country concept (12 decisions).⁸⁹ During 2015, the Asylum Office continued with the same practice and rendered 25 decisions on dismissal of asylum application in relation to citizens of: Russia (8), Ukraine (5), Syria (4), Sudan (3), Somalia (2), Cameron (1), Ghana (1) and Morocco (1).⁹⁰

In 2016, this practice of automatic application of safe third country concept in relation to FYROM and Bulgaria continued in the vast majority of cases. The Asylum Office rendered 53 decisions dismissing the asylum applications of 65 asylum seekers. More precisely, in 54% of all cases, the Asylum Office rendered a decision dismissing the asylum application, for persons coming from: Pakistan (14), Iraq (10), Russia (9), Syria (7), Libya (5), Afghanistan (5), Bangladesh (3), FYROM (3), Sudan (2), Cuba (2), Somalia (1), Bosnia and Hercegovina (1), Bulgaria (1), Algeria (1). One application by a stateless person was

⁸¹ See, e.g. BCHR, *Right to Asylum in the Republic of Serbia 2014, 2015*, available at: <http://bit.ly/1RxYcZc>, 33-37; BCHR, *Right to Asylum in the Republic of Serbia 2016, 2017*, Forthcoming.

⁸² UNHCR, *Serbia as a country of asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, 12.

⁸³ CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para. 15.

⁸⁴ 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.

⁸⁵ UNHCR, *Serbia as Country of Asylum*, August 2012, para. 36.

⁸⁶ 53 decisions in relation to 83 asylum seekers, UNHCR, *Serbia as Country of Asylum*, August 2012, para. 43.

⁸⁷ In 2012 Asylum Office decided on the merits only in 3 cases, and only in relation to people who arrived in Serbia directly from country of origin. See Belgrade Centre for Human Rights, *Right to asylum in Republic of Serbia 2012, 2013*, 17.

⁸⁸ Nine cases were decided on the merits (4 positively and 5 negatively). See Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2013, 2014*, 24 and 41-43.

⁸⁹ Four cases were decided on the merits (3 subsidiary protection and 1 refugee status).

⁹⁰ In three cases asylum application was rejected in merits in relation to two Cubans and one South African citizen.

dismissed (1). In 95% of these cases the safe third country concept was applied. The reasoning in these decisions relied on the Decision Determining the List of Safe Countries of Origin and Safe Third Countries.

Actually, out of 88 people who have been granted international protection in Serbia since 1 April 2008, 56 (64%) of them arrived in Serbia directly from their country of origin or a third country which had not ratified the 1951 Convention on Status of Refugees.⁹¹ As for the remaining 32 asylum seekers (36%), one Syrian citizen arrived from Turkey,⁹² 7 arrived from FYROM,⁹³ 2 from Bulgaria,⁹⁴ whereas 5 refugees from Afghanistan did not know which country they had entered Serbia from, so the Asylum Office decided on the merits of their application. Regarding the remaining 17 refugees,⁹⁵ seeing as how the Belgrade Centre did not represent them in the procedure, where they had entered Serbia from is not known.

In October 2016, the Belgrade Centre submitted a request for interim measures to be indicated in line with Rule 39 of the Rules of Court of the ECtHR in order to prevent the expulsion to FYROM of a Sudanese national whose asylum application had been rejected.⁹⁶

The outlined practices of the Asylum Office and Commission corroborate that UNHCR's conclusion in its 2012 Serbia as a Country of Asylum report remain valid. The UNHCR report describes Serbia as a country which is not safe for asylum seekers, *inter alia*, due to the automatic application of the safe third country concept. In particular, UNHCR recommended that Serbia put in place appropriate mechanisms for the designation and review of safe third countries and apply the safe third country concept only when adequate safeguards were in place for every individual, such as ensuring that he or she would be readmitted to the territory of the safe third country and have their asylum claim examined in a fair and efficient procedure. In the Belgrade Centre's opinion, these UNHCR recommendations have not been fulfilled yet.⁹⁷

3. First country of asylum

Article 31(1)(2) of the Asylum Act foresees that the asylum seeker's application will be deemed inadmissible should they already have been granted asylum in another country. No additional criteria are laid out by national law, nor have any ever been applied in practice by the authorities.

G. Relocation

Serbia does not participate in the relocation scheme.

⁹¹ In 2009 – Ethiopia (3) and Iraq (1); in 2010 – Somalia (1); in 2012 – Libya (2) and Egypt (1); in 2013 – Turkey (2); in 2014 – Tunisia (1); 2015 – Ukraine (9), Libya (8), South Sudan (1), Lebanon (1) Iraq (1); 2016 – Libya (13), Ukraine (5), Cuba (4), Cameroon (2) and Kazakhstan (1).

⁹² The Asylum Office has established through its practice that Turkey cannot be considered as safe third country, see Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2015, 2016*, 24 and 54.

⁹³ 5 Sudanese, 1 Syrian and 1 Iranian.

⁹⁴ 1 Afghan and 1 Iraqi.

⁹⁵ 12 Syrians, 3 Iraqis and 2 Somalis.

⁹⁶ ECtHR, *Kandafru v. Serbia*, Application No 57188/16.

⁹⁷ See the Belgrade Centre for Human Rights, *Right to asylum in the Republic of Serbia – periodic report for July – September 2016*, October 2016, available at: <http://bit.ly/2jtTw8>, 15-20.

H. 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
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
4. 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.⁹⁸

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.

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.

I. Differential treatment of specific nationalities in the procedure

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?⁹⁹ 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. Since the entry into force of the Asylum Act in 2008, 88 persons were granted asylum: Libya (23), Syria (14), Ukraine (14), Iraq (6), Afghanistan (6), Sudan (5), Cuba (4), Somalia (3), Ethiopia (3), Cameroon (2), Turkey (2), Lebanon (1), Egypt (1), South Sudan (1), Tunisia (1), Kazakhstan (1), Iran (1). This data is 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**

⁹⁸ Article 10 Asylum Act.

⁹⁹ Whether under the “safe country of origin” concept or otherwise.

than other nationalities, as well as to recognise them as refugees rather than beneficiaries of subsidiary protection.¹⁰⁰

Starting in November 2015, Serbia, along with other countries along the Western Balkan route, gradually started to apply increasing restrictions on the passage of refugee and migrants through its territory, usually basing such restrictions on these persons' country of origin. However, after the effective closure of the 'state-sanctioned' Western Balkan route following the EU-Turkey agreement of 9 March, Serbia instituted a general foreclosure of the border to all persons who do not express the intention to seek asylum within its territory, without any manner of preferential or discriminatory treatment on the grounds of country of origin. In spite of the official closure of the route, refugees and migrants do continue to arrive and/or transit through Serbia, and those who desire to seek asylum in Serbia may still enter the asylum procedure.

¹⁰⁰ Information received from the Ministry of the Interior, January 2017.

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.¹⁰¹

Persons seeking asylum in Serbia have a right to accommodation at an asylum centre.¹⁰²

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.

In late 2016, the Ministry of Interior requested that civil society representatives working with asylum seekers and refugees direct persons likely in need of international protection to express the intention to seek asylum and be accommodated in asylum centres.

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 July 2016 (in original currency and in €): RSD 7,890 / €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.¹⁰³

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

¹⁰¹ Article 21 Asylum Act; Chapters II and III Migration Management Act.

¹⁰² Article 21 Asylum Act.

¹⁰³ 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>.

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.

3. 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.¹⁰⁴ 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,¹⁰⁵ 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.

4. 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,¹⁰⁶ and equal and planned economic development by managing migrations,¹⁰⁷ 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 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.¹⁰⁸

¹⁰⁴ Article 39 Asylum Act.

¹⁰⁵ Article 52 Asylum Act.

¹⁰⁶ Article 4 Migration Management Act.

¹⁰⁷ Article 5 Migration Management Act.

¹⁰⁸ Article 51 Asylum Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of asylum centres:¹⁰⁹ 5
2. Total number of places in the asylum centres: 1,130
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 that had been 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.

1.1. Asylum centres

There were 5 active asylum centres in Serbia in 2016:

Asylum centre	Capacity
Banja Koviljača	150
Bogovađa	280
Tutin	150
Sjenica	200
Krnjača	350
Total	1,130

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 was adequate for 1,060 persons in February 2016,¹¹⁰ and has expanded to 1,130 places at the end of 2016. However, the capacity of asylum centres is estimated only by the number of available beds, rather than their overall facilities, including toilets, bathrooms and kitchens. All of the enumerated asylum centres are overcrowded, with a lack of privacy and poor hygienic conditions.

Asylum centres are open and accommodated asylum seekers have the right to leave the centre, although 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,¹¹¹ 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.

1.2. 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

¹⁰⁹ Both permanent and for first arrivals.

¹¹⁰ Information received from the Commissariat for Refugees and Migrations on 26 February 2016.

¹¹¹ Article 24 Asylum Act.

were entering 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 2015 in **Preševo**, 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 at various times set up in **Miratovac**, **Bujanovac**, **Kanjiža**, **Subotica**, **Sombor**, **Šid**, **Adaševci**, **Principovac**, **Bosilegrad**, **Dimitrovgrad** and **Pirot**. 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. However, they were not foreseen for the accommodation of persons seeking asylum in Serbia.

The respective capacity of the temporary reception centres is as follows:

Temporary reception centre	Border location	Capacity
Preševo	FYROM	1,500
Miratovac	FYROM	300
Bujanovac	FYROM	250
Sombor	Croatia	120
Principovac	Croatia	300
Šid	Croatia	560
Adaševci	Croatia	250
Kanjiža	Hungary	55
Dimitrovgrad	Bulgaria	66
Bosilegrad	Bulgaria	50
Pirot	Bulgaria	232
Total		3,683

By the end of 2016, the centres in **Miratovac** and **Kanjiža** were closed because of changes in the Western Balkan route, and the authorities plan to open new ones in **Kikinda**, **Negotin** and **Zaječar** in order to accommodate the increasing number of arrivals coming from Bulgaria. According to the Commissariat for Refugees and Migrations, the reception centres currently in function have the capacity to accommodate up to 4,000 persons.

In January 2017, there were 12 temporary reception facilities: Preševo, Bujanovac, Pirot, Dimitrovgrad, Bosilegrad, Divljana, Principovac, Šid, Adaševci, Obrenovac, Sombor and Subotica.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

2.1. 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. However, at the moment all asylum centres are overcrowded, with a lack of privacy and poor hygienic conditions.

The centre in Banja Koviljača was established in 2008 as the first asylum centre in Serbia. With a capacity for accommodating 100 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. During 2016, at times of increased arrivals to the centre, the common room was converted into a provisional dormitory, however the centre's overall capacity generally seems to meet existing needs. Asylum seekers accommodated there usually do not have many negative remarks concerning the reception conditions, apart from those levelled at a chronic lack of footwear and clothing.

The asylum centre in Banja Koviljača is the only centre to have a Ministry of Interior official present at all times for recording incoming asylum seekers. However, the Asylum Office conducts the asylum procedure there exceedingly rarely, having undertaken its last 2016 visit there in October.

The asylum centre in Bogovađa is a Red Cross facility that has been used for the accommodation of asylum seekers since 2011. Following extensions in 2016, the centre has an overall capacity for the accommodation of up to 280 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, and the situation is made even more grave by the fact that the Asylum Office visits the centre exceedingly rarely, not having gone there since July 2016.

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. Two medical workers have been hired to work at the centre, however current needs greatly exceed their capacity. 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 there especially difficult during winter.

The asylum centre in **Krnjača**, opened in mid-2014 as a provisional centre, lies 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.

2.2. Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia fluctuated throughout 2016. 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** (1,500 places), 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. Preševo is the only reception centre in Serbia that allows for the recording of asylum seekers and the expression of the intent to seek asylum on its premises. The facilities were expanded in 2016, allowing for almost triple the maximum reception capacity the centre had previously possessed.

It is important to note that the reception centre in Preševo does not allow full freedom of movement to its tenants, who have to apply for daily leave of a maximum of three hours from the reception centre.¹¹²

The reception centre in **Miratovac** (300 places) 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.

A reception centre was opened in **Bujanovac** (250 places) in Southern Serbia in October 2016. The centre was opened in a former automotive battery factory lying along the Belgrade-Skopje highway. Bearing in mind that the facilities have only recently been renovated and that the centre is intended only for short-term stay, the reception conditions may be described as acceptable.

The reception centre in **Sombor** (120 places) was opened in 2015 in the warehouse of a military complex close to the border with Croatia. It mainly houses families, with meals provided by the Red Cross of Serbia. Additional centres were opened in **Principovac** (300), **Šid** (560) and **Adaševci** (250), Šid municipality, once the refugee and migrant flow had turned towards Croatia.

An additional centre was opened in **Kanjiža** (55), not far from the border between Serbia and Hungary. Although it had seemingly become unnecessary and vacated after the closure of the border with Hungary in September 2015, starting in early summer 2016, large numbers of refugees and migrants once again sought accommodation in **Subotica**, and in such numbers as greatly exceeded the centre's capacity.

In mid-2016, the authorities of Serbia opened an additional three centres in **Dimitrovgrad** (66), **Bosilegrad** (50) and **Pirot** (232) to handle the increasing number of arrivals from Bulgaria. All three centres offer very basic, aging facilities and are inadequate for anything other than very short-term stay.

However, several reports at the end of 2016 and beginning of 2017 have denounced the dire and inhuman conditions facing persons living in makeshift camps in **Belgrade**.¹¹³ From September 2016 to January 2017, between 1,500 and 2,000 people, coming primarily from Afghanistan and Pakistan, were residing in the city centre of Belgrade in derelict buildings. This was not the result of a lack of space in reception facilities, but due to the fact that many refugees and migrants were reluctant to go to the reception centre in Preševo for fear of deprivation of liberty and deportation. Accordingly, some 1,500 persons were residing in makeshift shelter that could not provide sufficient protection from the elements, at temperatures occasionally dropping to -16°C. A number of people could be seen sleeping outside in the snow or next to a campfire. Finally, lice have become a chronic problem for the refugee and migrant population, and providing treatment to those who are not accommodated at reception centres is almost impossible.

¹¹² Such was the practice at the reception centre at the time of the BCHR's visit in December 2016.

¹¹³ See e.g. UNHCR, 'Desperate refugees and migrants in Serbia face freezing temperatures', 25 January 2017, available at: <http://bit.ly/2kpLcNy>; Human Rights Watch, 'Asylum Seekers Left in the Cold', 6 January 2017, available at: <http://bit.ly/2i0dfmj>.

C. 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? Yes No
❖ If yes, when do asylum seekers have access the labour market? 9 months
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes 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.¹¹⁴

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

The right to education in Serbia is regulated by a number of legal instruments, primarily the Act on the Basis of the Education System,¹¹⁵ with relevant issues also regulated by the Primary School Act,¹¹⁶ the Secondary School Act¹¹⁷ and the High Education Act.¹¹⁸ 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.¹¹⁹ 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."¹²⁰

¹¹⁴ Article 13 Employment of Foreigners Act, Official Gazette of the Republic of Serbia, no. 128/2014.

¹¹⁵ 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.

¹¹⁶ 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.

¹¹⁷ 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 – cor. 62/2003 – other law, 64/2003 – corr. of other law, 101/2005 – other law, 72/2009 – other law and 55/2013 – other law.

¹¹⁸ 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.

¹¹⁹ Article 100 Law on the Basis of the Education System of the Republic of Serbia.

¹²⁰ Article 41 Asylum Act.

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
 Yes No
2. Do asylum seekers have adequate access to health care in practice?
 Yes Limited No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Limited No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
 Yes Limited 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.”¹²¹ To that extent, the Ministry of Health published a Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres in 2008,¹²² 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 or 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.¹²³ No such cases were recorded in 2016.

E. Special reception needs of vulnerable groups

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.¹²⁴ 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.

¹²¹ Article 40 Asylum Act.

¹²² Rulebook on Health Examinations of Asylum Seekers on Admission in the Asylum Centres, Official Gazette of the Republic of Serbia, no. 93/2008.

¹²³ 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.

¹²⁴ Article 15 Asylum Act.

Minor asylum seekers are housed together with their parents or legal guardians. Since the end of 2015, unaccompanied minors have been accommodated in institutions in **Belgrade, Niš** and **Subotica**.¹²⁵ These facilities are also used to accommodate nationals of Serbia – primarily underage offenders, and are therefore neither specifically-tailored to the needs of migrants, nor particularly suitable for their housing. Regardless, unaccompanied minor asylum seekers in these facilities are kept separately from other groups, and overall reception conditions are considerably better than otherwise available at asylum centres, although a chronic lack of interpreters for various languages spoken by migrants continues to present a considerable challenge to ensuring their proper development and integration.

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.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

See the section on [Asylum Procedure: Information to Asylum Seekers](#). The House Rules of Asylum and Reception centres are translated in languages asylum seekers understand.

2. 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.¹²⁶ Furthermore, persons seeking asylum have the right to contact UNHCR during all phases of the asylum procedure.¹²⁷ 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.¹²⁸

G. Differential treatment of specific nationalities in reception

There have been no reports of differential treatment in reception based on asylum seekers' nationality.

¹²⁵ The facilities in Belgrade, Niš and Subotica may, respectively, accommodate up to 12, 10 and 20 unaccompanied minors at any given time, although it should be borne in mind that the first two only receive children above the age of 10.

¹²⁶ Article 5 Asylum Act.

¹²⁷ Article 12 Asylum Act.

¹²⁸ As observed by members of the Belgrade Centre for Human Rights present in the field at the time the decision was implemented.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: ¹²⁹	12
2. Number of asylum seekers in detention at the end of 2016: ¹³⁰	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, in 2016 the Asylum Office has exceedingly rarely resorted to such measures, and only 12 asylum seekers were placed under detention in order to ensure their presence during the asylum procedure.

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,¹³¹ 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 work of the Shelter for Foreigners throughout 2016 represents a good practice example with regard to accessing the asylum procedure. The Belgrade Centre's lawyers had unhindered access to all persons likely in need of international protection. During 2016, 43 persons expressed the intention to seek asylum at the Shelter for Foreigners.

In the first six months of 2016, 78 foreigners were expelled from Serbia, originating from: Afghanistan (49), Morocco (10), Algeria (4), Bosnia and Hercegovina (3), Albania (2), Bangladesh (2), Russian Federation (1), FYROM (1), Bulgaria (1), Romania (1), Myanmar (1), Tunis (1) and Iran (1). Among them, 67 were returned to Bulgaria under the Readmission Agreement with the EU.

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: ¹³² | <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 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;

¹²⁹ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

¹³⁰ Specify if this is an estimation.

¹³¹ Article 49 Foreigners Act.

¹³² 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.¹³³

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.¹³⁴ 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.¹³⁵ 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 smuggling¹³⁶ and human trafficking.¹³⁷ Given that neither the Foreigners Act, nor the Criminal Procedure Code¹³⁸ 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*.¹³⁹

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 timelimit, 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.

¹³³ Article 51 Asylum Act.

¹³⁴ Article 49 Foreigners Act.

¹³⁵ *Ibid.*

¹³⁶ Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 85/2005, 88/2005 – cor. 107/2005 – cor. 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014 (hereinafter: Criminal Code), Article 350.

¹³⁷ Article 388 Criminal Code.

¹³⁸ 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).

¹³⁹ See CAT, *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para 15.

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.¹⁴⁰ Such measures, however, have never been taken in practice as of the end of 2016.

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.

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 preferential treatment.¹⁴¹

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.¹⁴²

¹⁴⁰ Article 52 Asylum Act.

¹⁴¹ See Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2014*.

¹⁴² Article 52 Asylum Act.

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)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes 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 Act.

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** (see [Access to the Territory](#)) 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? Yes No
❖ If yes, is it limited to emergency health care? Yes No
2. Is access to detention centres allowed to
❖ Lawyers: Yes Limited No
❖ NGOs: Yes Limited No
❖ UNHCR: Yes Limited No
❖ Family members: Yes Limited No

Shelter for Foreigners

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 80m² 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 Act¹⁴³ and the Asylum Act,¹⁴⁴ 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 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

¹⁴³ Article 49 Foreigners Act.

¹⁴⁴ Article 52(4) Asylum Act.

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.¹⁴⁵

E. Differential treatment of specific nationalities in detention

There have been no reports of differential treatment in detention on the basis of nationality, such as nationals of certain countries being susceptible to systematic or longer detention than others.

¹⁴⁵ ECtHR, *Othman v. Serbia*, Application No 27468/15.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 5 years
 - ❖ Subsidiary protection 1 year

Despite their entitlement to a right to permanent residence under the Asylum Act,¹⁴⁶ recognised refugees are not issued a separate document of residence, as they are considered *ipso facto* to be entitled to reside in the country.

Article 58(3) of the Asylum Act requires the Ministry of Interior to issue persons granted asylum with an identity card, but the modalities of such identity cards are to be spelt out by implementing legislation. The identity card has a validity of 5 years for refugees and 1 year for beneficiaries of subsidiary protection.¹⁴⁷

Due to this interpretation, refugees hold no specific documentation that certifies their status so as to enjoy their rights.

2. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: N/A

The Long-Term Residence Directive is not applicable in Serbia.

3. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship? N/A
2. Number of citizenship grants to beneficiaries in 2016: N/A

Beneficiaries of international protection are subject to the same framework applicable to all foreigners. However, there is no existing practice vis-à-vis naturalisation to allow for an assessment of the procedure.

4. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Under Article 54 of the Asylum Act, refugee status ceases where the beneficiary:

- Has voluntarily re-availed him or herself of the protection of the country of origin;

¹⁴⁶ Article 43 Asylum Act.

¹⁴⁷ Article 61 Asylum Act.

- Voluntarily re-acquires his or her citizenship after having lost it;
- Acquires a new citizenship, and thus enjoys the protection of the country of his or her new citizenship;
- Has voluntarily returned to the country he or she left or outside which he or she has remained owing to fear of persecution or ill-treatment; or
- Can no longer, because the circumstances that led to his or her being granted protection have ceased to exist, continue to refuse to avail him or herself of the protection of his or her country of origin. This ground is subject to the possibility for the beneficiary to give compelling reasons arising out of past persecution to challenge cessation.

The Asylum Office is required to initiate cessation proceedings *ex officio* where one of the grounds for cessation apply.¹⁴⁸ To the knowledge of the Belgrade Centre for Human Rights, however, the cessation provisions have never been applied in practice.

5. Withdrawal of protection status

To the knowledge of the Belgrade Centre for Human Rights, withdrawal never been applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? Yes No
 - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? Yes No
 - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes No

According to the Asylum Act, persons recognised as refugees in Serbia have the right to family reunification.¹⁴⁹ Family members of persons recognised as refugees have the right to be recognised as refugees based on the original decision to grant asylum. Serbian law provides no conditions for this procedure.

Unlike **refugees**, **beneficiaries of subsidiary protection** may likewise request family reunification, however their request is subject to general legislation concerning the family reunification of foreigners, and is therefore not absolute.¹⁵⁰

Domestic legislation considers an underage child, adoptee and step-child, spouse (if the marriage is concluded prior to their arrival in Serbia), as well as parents and foster parents with a legal obligation of custody with regard to them, as “family members”.¹⁵¹

So far, no practice exists with regard to the family reunification procedure.

¹⁴⁸ Article 55 Asylum Act.

¹⁴⁹ Article 48 Asylum Act.

¹⁵⁰ Article 49 Asylum Act.

¹⁵¹ Article 2 Asylum Act.

2. Status and rights of family members

Family members of persons recognised as **refugees** may *ipso facto* request to be recognised as refugees themselves and enjoy the same rights as all other such persons in Serbia.¹⁵²

Family members of persons granted **subsidiary protection** do not enjoy such rights, and their application for family reunification is subject to general foreigners' legislation.¹⁵³ Due to a lack of practice in this regard, it is unclear if the authorities would offer them subsidiary protection as well or some other manner of residence permit.

C. Movement and mobility

1. Freedom of movement

Refugees have equal rights to free movement as permanently residing foreigners in Serbia.¹⁵⁴

2. Travel documents

Although the Asylum Act provides that persons granted asylum shall be issued a travel document on a prescribed form,¹⁵⁵ which is also guaranteed by Article 48 of the Refugee Convention, the Ministry of Interior has not, since the entry into force of the Act, adopted a bylaw on the appearance and content of the travel document for refugees.

Due to this legal vacuum, refugees' freedom of movement is limited even though it is guaranteed by the Serbian Constitution and the ECHR. This means that refugees can leave Serbia only illegally unless they possess a valid travel document issued by their country of origin. In light of this situation, which one Syrian refugee who was granted asylum in Serbia found himself in, the BCHR filed a constitutional appeal with the Constitutional Court in 2015. A constitutional appeal was filed in 2014 as well for the same reasons for other BCHR clients.

The Constitutional Court dismissed the constitutional appeal on 20 June 2016, stating that the subject of constitutional appeal cannot be a failure to adopt general legal act, but only the individual act as it is prescribed by Article 170 of the Constitution.¹⁵⁶ This reasoning remains unclear since the consequences embodied throughout illegal and unjustified limitation of freedom of movement were reflected upon individuals. The BCHR is currently working on an application to the ECtHR.

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 1 year |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | Not available |

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.¹⁵⁷ In practice, persons granted asylum generally stay at an asylum centre; the temporal element of the relevant norm is not

¹⁵² Article 48 Asylum Act.

¹⁵³ Article 49 Asylum Act.

¹⁵⁴ Article 62 Asylum Act.

¹⁵⁵ Article 43 Asylum Act.

¹⁵⁶ Constitutional Court, Decision UŽ 4197/2015, 20 June 2016.

¹⁵⁷ Article 44 Asylum Act.

observed, i.e. these persons were not required to leave the asylum centre in question following the expiry of the one-year deadline.

E. Employment and education

1. Access to the labour market

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.¹⁵⁸ 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.¹⁵⁹

In December 2016, the authorities enacted a Decree on the Manner of Involving Persons Recognized as Refugees in Social, Cultural and Economic Life (“Integration Decree”) which foresees assistance in accessing the labour market as an integral part of integration.¹⁶⁰ The assistance is to be provided by the Commissariat for Refugees and Migrations and is to form part of every individual beneficiary of refugee status’ integration plan. The assistance includes assistance in gathering all of the necessary documents for registration with the National Employment Service, the recognition of foreign degrees, enrolling in additional education programmes and courses in line with labour market requirements and engaging in measures of active labour market policy.¹⁶¹ However, bearing in mind that the Decree has only entered into force as of January 2017, there is no extant practice with regard to implementation from which to ascertain any positive results of its enactment. In the past, any manner of assistance with accessing the labour market was provided by civil society.

It should also be pointed out that the above decree refers to beneficiaries of refugee status exclusively – it does not refer to beneficiaries of subsidiary protection. However, without any existing practice in these matters, it is not possible to determine at present whether or not the latter will also benefit from the Decree.

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.

2. Access to education

As of its entry into force in January 2017, the Integration Decree foresees assistance by the Commissariat for Refugees and Migrations to persons recognised as refugees in entering the educational system.¹⁶² The Commissariat is to assist recognised refugees who are children and enrolled in pre-school, elementary and high-school education, as well as illiterate adults, who are to be enlisted in adult literacy programmes in cooperation with the Ministry of Education. The assistance provided to children includes provision of textbooks and education material, assistance in having foreign degrees recognized, learning support and financial support for engaging in extracurricular activities.¹⁶³

In practice, asylum seekers and persons granted asylum are expected to enrol in primary and secondary schools on their own. It is unclear if and how the Decree will relate to this.

¹⁵⁸ Article 43 Asylum Act.

¹⁵⁹ Article 13(6) Employment of Foreigners Act.

¹⁶⁰ Article 2(6) Decree on the Manner of Involving Persons Recognized as Refugees in Social, Cultural and Economic Life, Official Gazette, no. 101/2016 (hereafter “Integration Decree”).

¹⁶¹ Article 7 Integration Decree.

¹⁶² Article 2(4) Integration Decree.

¹⁶³ Article 6 Integration Decree.

The December 2016 Decree also foresees Serbian language courses and courses of Serbian history, culture and constitutional order for persons recognized as refugees. Persons entitled to Serbian language courses are those who do not attend regular schools in Serbia, those who do, and persons older than 65. Persons not attending regular schools are entitled to 300 school periods of Serbian languages classes during a single school year, while those engaging in businesses requiring university education may be provided with another 100 periods in a school year. Persons attending school have the right to be provided an additional 140 school periods of Serbian language classes, whereas those above 65 are provided with 200 school periods of the Serbian language adapted to the needs of everyday communications. The courses may be provided at regular or foreign language schools, whereas the adapted Serbian language classes may likewise be provided by enterprises suggesting a suitable programme and capable of employing the required staff.¹⁶⁴ The classes are to be provided in the area where these persons reside, and if this is not possible, transport costs are to be covered by the Commissariat.

The Commissariat is to enlist the person in question in a Serbian language course within two months of the decision to grant asylum becoming final. If the person does not attend the courses without good cause, they lose the right to new or additional language classes.

Concerning the study of Serbian culture, history and constitutional order, persons recognized at refugees are provided lessons that may, in total, last up to 30 hours annually. Again, if the person does not attend the classes, the Commissariat is not obliged to provide for new or additional ones.¹⁶⁵

The above Decree represents a basis for the integration of refugees in Serbia, but it remains to be seen how it will be implemented in practice. The fact that it does not address beneficiaries of subsidiary protection is likewise concerning.

F. Health care

Access to health care for beneficiaries of international protection is the same as for asylum seekers, discussed in [Reception Conditions: Health Care](#).

¹⁶⁴ Article 4 Integration Decree.

¹⁶⁵ Article 5 Integration Decree.