Right to Asylum in the Republic of Serbia Periodic Report for January - March 2018

Belgrade Centre
for Human Rights

Introduction

In the first three months of 2018, the Belgrade Centre for Human Rights (BCHR) continued to implement the project "*Support to Refugees and Asylum-Seekers in Serbia*" with the support of the United Nations High Commissioner for Refugees (UNHCR). The BCHR team provided free legal assistance and representation in the asylum procedure to the foreigners who perceived Serbia as a country of asylum, and monitored the treatment of the persons in need of international protection by the competent authorities of the Republic of Serbia. Further to legal representation, the BCHR project team also helped the persons granted asylum in Serbia to integrate into the Serbian society.

The most significant novelty in the area of migration management was the adoption of new laws – Law on Asylum and Temporary Protection, Law on Foreigners and the Law on Border Control - in the first quarter of 2018. These were awaited the last two years. During the public discussion of the drafts of these laws, BCHR gave written comments and proposals aimed at improvement and harmonisation thereof with the international standards.

The changed trends in the migration flow resulting from the Decision of the Government of Serbia to abolish the visa requirement for the nationals of the Islam Republic of Iran[1] was observed also in the first three months of 2018, with unabated increased influx of the nationals of this country into Serbia. To prevent abuse of the visa-free regime, the State officials announced stricter controls of Iranian tourists and stated that 485 asylum-seekers from this country were currently in Serbia.[2]

No new accommodation capacities for reception of refugees and migrants were built in 2018. The 18 asylum and reception centres accommodate all the persons who expressed intention to seek asylum or may be considered foreigners potentially in need of international protection, though their stay in Serbia is not legalised. Given that Serbia opted for humanitarian approach at the beginning of the refugee crisis, most of the foreigners who may be categorised as refugees and migrants were provided humanitarian reception and assistance. Nevertheless, the unsatisfactory practices of accommodating persons who consider Serbia a country of asylum in the reception centres not frequented by the Asylum Office, result in them not having access the asylum procedure. In the past, these persons initiated the asylum procedures only upon

[1] Decision published in *Službeni glasnik Republike Srbije*, no. 79/18, of 25 August 2018

[2] See: *http://www.rts.rs/page/stories/ci/story/5/ekonomija/3052946/srpski-iranski-forum-o-investicijama-turizmu-izvozu.html*

transfer into one of the asylum centres. This took a long time and often entailed engagement of their legal representatives. BCHR noted that clients accommodated in the reception centre in Preševo were sometimes driven to Belgrade for interviews in the asylum procedure.

A certain number of refugees and migrants staying in the asylum centres in Serbia continue to cross the Hungarian border on the basis of unlawful and untransparent lists they register on upon arrival into the centres. The length of their stay in Serbia (in transit) has increased, since Hungary reduced the number of persons accepted into its territory to two per day (one in Horgoš, one in Kelebija) in late January 2018.

In the second half of January 2018, the Envoy for Humanitarian Issues of the UN Secretary General dr Ahmed Al-Meraikhi visited Serbia. Following the meeting with the representatives of the Commissariat for Refugees and Migration, the UN agencies and the visit to the Asylum Centre in Krnjača, Mr. Al-Meraikhi assessed Serbia's treatment of refugees as positive and stated that Serbia's experiences should be shared with the other countries in a similar situation.[3]

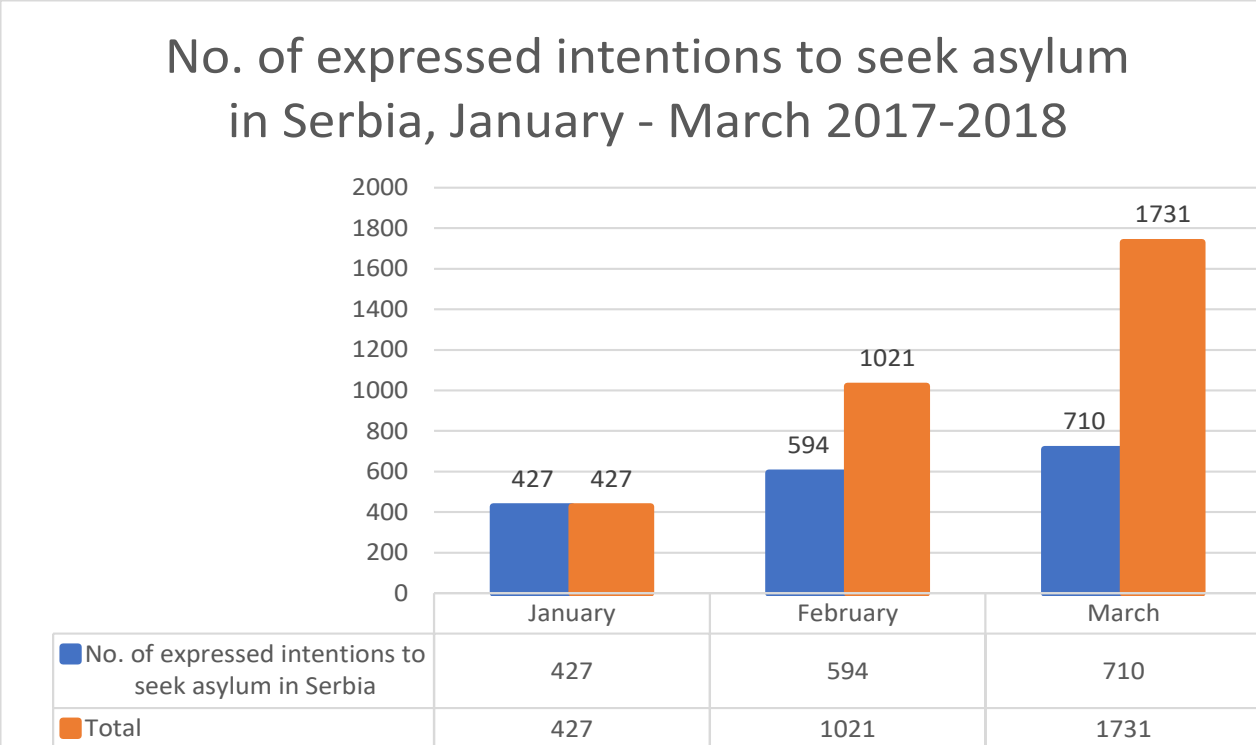
The January-March 2018 Report analyses the treatment of refugees and migrants by the competent authorities based on information that the BCHR team collected while representing asylum-seekers, in the field and while supporting them to exercise the set of integration-related rights. The statistical information about the work of the Ministry of Interior was obtained from UNHCR, and the other information was gathered by filing a request for information of public importance. The present report was prepared by the BCHR project team.

[3] See: *http://rs.n1info.com/a357463/Vesti/Vesti/Kako-zive-izbeglice-u-Srbiji.html*

1. Statistics

1.1. Number of expressed intentions to seek asylum

In the period 1 January to 31 March 2018, 1,731 foreigners expressed intention to seek asylum in the Republic of Serbia (1,532 men and 199 women). The intention was also expressed by 401 child, of whom 25 unaccompanied and separated children. The number of foreigners who expressed intention by month: 427 in January, 594 in February and 710 in March. During the same period last year, 584 foreigners expressed intention to seek asylum in Serbia in January, 502 foreigners in February and 707 foreigners in March.



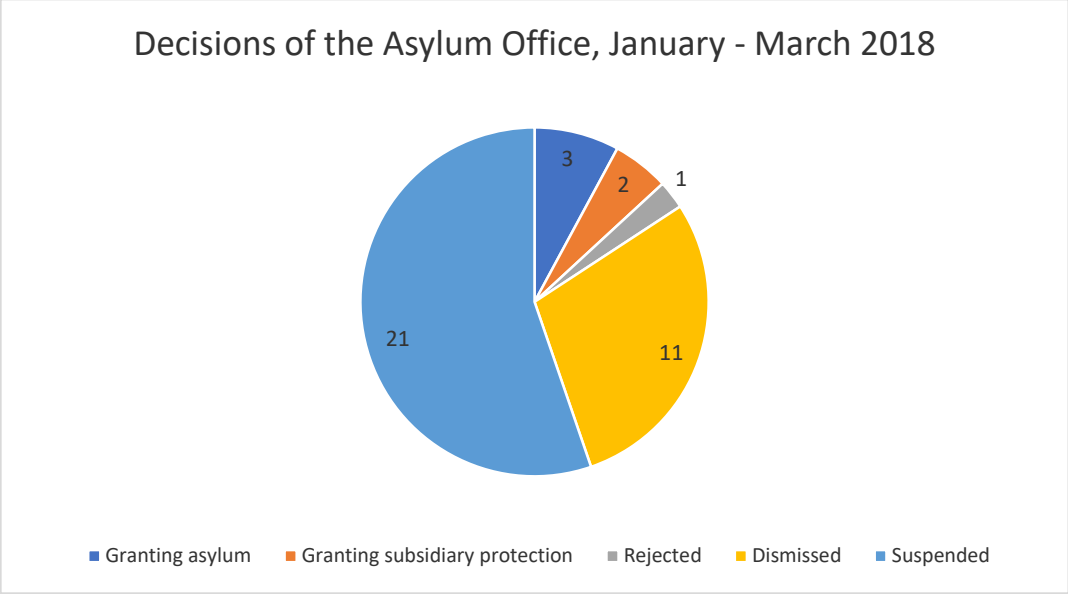
Most of the intentions to seek asylum in the first three months of 2018 were expressed in regional police administrations (1,654). In all, 53 foreigners expressed intention to seek asylum at the Belgrade airport, 13 in the Reception Centre for Foreigners and eight foreigners expressed intention to seek asylum in the Reception Centre in Preševo.

Since the Law on Asylum came into effect, 627,031 foreigners expressed intention to seek asylum in Serbia: 77 in 2008; 275 in 2009; 522 in 2010; 3,132 in 2011, 2,723 in 2012; 5,066 in 2013; 16,490 in 2014; 577,995 in 2015; 12,821 in 2016; 6,199 in 2017 and 1,731 foreigners by end-March 2018.

1.2. Statistics related to the asylum procedure

The Asylum Office granted asylum to 47 foreigners, and subsidiary protection to 62 foreigners since the beginning of implementation of the Law on Asylum,.

In the period January – end March 2018, the Asylum Office registered 36 foreigners; 35 foreigners submitted asylum applications and 41 applicant was interviewed. Three foreigners were granted asylum (two nationals of Afghanistan and one national of Iran) and two were awarded subsidiary protection (one national of Bangladesh and one national of Somalia). One asylum application was rejected, and the applications of 11 persons were dismissed. Asylum procedures were suspended for 21 foreigners because the asylum-seekers had either left Serbia or withdrawn from the procedure.



1.3. Asylum-seekers by country of origin

During the first three months of 2018, the majority of asylum-seekers were nationals of Pakistan (497), Afghanistan (406), Iran (305), Iraq (173) and Syria (144). Since the beginning of the year and until end of March, the persons in need of international protection who expressed the intention to seek asylum were the nationals of India (42), Libya (40), Bangladesh (29), Algiers (19), Tunisia (12), Morrocco and Nepal (nine from each), Sri Lanka (seven), Somalia and Turkey (five from each), Palestine, Kuwait and Nigeria (three from each), Albania, DR Congo, Israel, Myanmar (two from each), and one asylum-seeker each from Egypt, Bosnia and Herzegovina, China, Cameroon, Cuba, Kazakhstan, Lebanon, Mali, Russian Federation, Sudan, Ukraine and Zimbabwe.

2. Practice of the authorities adjudicating in asylum procedures

In the first three months of 2018, the Asylum Office rendered 16 decisions in respect of 17 asylum-seekers. Of those, the first-instance body decided six in substance, and dismissed 10 asylum applications (for 11 asylum-seekers), having established that the procedural conditions for deciding in substance had not been met.

With respect to the procedures decided in substance, the asylum applications were upheld and asylum was granted to two nationals of Afghanistan and one national of Iran. Subsidiary protection was awarded to one national of Bangladesh and one of Somalia. The asylum application of a national from Algiers was rejected because the first-instance body decided that the conditions to grant international protection had not been met in the concrete case.

The observed practice of the first-instance body to decide on the merits of the case may be described as very good taking into account the fact that almost all of the three above mentioned persons whose asylum applications were upheld entered Serbia from Macedonia or Bulgaria, and that the concept of the safe third country had not been applied in these cases. The criticism that may be put to the first instance body is that almost all of the above procedures lasted unreasonably long relative to the legally

prescribed timeframe for completion of the procedure.[4] This may be a consequence of the lack of human and technical resources.

With respect to the decisions to dismiss asylum applications, the concept of the safe third country was applied in nine out of ten cases. In the case of an Iraqi national, the stand was taken that he could have obtained protection from the safe country of origin. The applications of four nationals of Pakistan and one of Iran were dismissed because the Asylum Office took the view that Bulgaria was a safe third country for them. Also, asylum applications lodged by two female nationals of Iran were dismissed with the reasoning that they had had an efficient access to the asylum procedure in Turkey and thus could enjoy international protection there provided they were eligible.[5] The asylum applications of two nationals of Pakistan who entered Serbia from Macedonia as well as one national of Cuba who arrived in Serbia from Montenegro were also dismissed.

The practice of the Asylum Commission remained unchanged relative to the previous period.[6] In the course of the first quarter of 2018, this authority upheld four decisions of the Asylum Office based on the application of the safe third country concept.[7] The safe third country concept was applied relative to Bulgaria (in two cases),[8] Turkey (in one case)[9] and Macedonia (in one case).[10] Turkey was proclaimed the safe third country for a national of China; Bulgaria for a national of Nigeria and a female national of Afghanistan, and Macedonia for a national of Iraq.

2.1. Analysis of certain positive decisions in the asylum procedure

The first positive decision rendered by Asylum Office in 2018 was on the application of the national of Bangladesh who was awarded subsidiary protection as he could not have obtained adequate medical treatment in the country of origin. Since the person in question is a quadriplegic, the first-instance body established that return to Bangladesh in absence of guarantees of him obtaining the medical care corresponding to his extremely vulnerable situation would subject him to the treatment that could be

[4] Article 145 (3), Law on General Administrative Procedure
[5] Decisions of the Asylum Commission no. 26-2432/17 of 14 March 2018 and no. 26-2433/17 of 14 March 2018
[6] See more in: *Right to Asylum in the Republic of Serbia 2017*, Belgrade Centre for Human Rights, Belgrade, 2018, pp. 46-48 and 51-60
[7] Procedures in which BCHR lawyers acted as proxies of asylum-seekers
[8] Decisions of the Asylum Commission no. 43-1/17 and no. 02-1/18, both of 25 January 2018
[9] Decision of the Asylum Commission no. 44-1/17 of 20 February 2018
[10] Decision of the Asylum Commission no. 46-1/18 of 20 February 2018

qualified as inhuman and degrading.[11] This case resembles very much to the case of B.B., a national of Nigeria, whom by BCHR represented in the asylum procedure and who remained paraplegic in a traffic accident following his entry from Macedonia to Serbia. In his case, the first instance body established that he would be exposed to pain and suffering reaching the threshold of inhuman and degrading treatment for lack of adequate medical treatment. Therefore he was awarded subsidiary protection on 28 December 2017. In its reasoning of the latter decision, the first instance body invoked the stand of the European Court in the case *D. v. United Kingdom*.[12] The above decisions of the Asylum Office may be considered best practice examples.[13]

Yet another best practice example was the decision in the case of an Afghan national Y. K that the Asylum Office passed on 10 January 2018. He had spent most of his life in Pakistan as a refugee but had to flee due to persecution on the grounds of membership of a particular social group. Namely, Y. K. was targetted by radical Islamic groups who characterised his art as blasphemy and who repeatedly sent him death threats. This fact was taken as basis for granting refugee status. The decision represents a good example of recognition of membership of a particular social group as basis of persecution.[14] Importantly, the first-instance body adjudicated on the application of Y. K. in substance although he had entered Serbia from Bulgaria. Even though the reasoning of the decision is not explicit in saying that the first instance body does not consider Bulgaria a safe third country, this opinion ensues from the fact that it fully accepted the detailed statements presented by Y.K. during the interview when he described the bad treatment of the police and local population to refugees and asylum-seekers in Bulgaria and the poor situation prevailing in the Reception Centre *Harmanli*. In this case, the first instance procedure started more than one year after Y.K. had been issued a certificate on the expressed intention to seek asylum.[15]

The same day when it adjudicated on the asylum application of Y. K, the Asylum Office granted refugee status to an Afghan A.I. He had left the country of origin fearing persecution of Talibans who thretened him with death because he had worked for the companies providing logistic support to the US troops. A.I. entered Serbia from

[11] See: *http://www.apc-cza.org/fr/8-vesti/1322-prvi-odobren-azil-u-2018-godini.html*

[12] Application no. 30240/96

[13] However, one must not neglect the fact that the asylum procedure for B. B. lasted unreasonably long. He was issued a certificte on the expressed intention to seek asylum on 11 June 2015; applied for asylum on 8 July 2015, and was interviewed on 6 April 2017 - more than two years after the date of submission of the asylum application. The decision was passed on 28 December 2017, which means that the asylum procedure lasted just short of two and a half years. Though the efficiency of the procedure had been dependant on the medical condition of B. B, the length of the first instance procedure - two and a half years – cannot be considered reasonable and justified.

[14] Decision of the Asylum Commission no. 26-78/17 of 10 January 2018

[15] The certificate on expressed intention was issued on 6 December 2016; the asylum application was submitted on 24 January 2017, and the interview was conducted on 14 March 2017

Bulgaria, but managed to prove that Bulgaria cannot be considered safe for him due to a series of incidents (psychological and physical violence, collective expulsion, robbery, etc.) he had experienced with the Bulgarian police and the smugglers' groups. The reasoning of the decision shows that the first-instance body assessed the allegations related to Bulgaria and established the risk from torture should A.I. be forcibly removed to that country.[16] This procedure lasted much shorter than the previous two, but still longer than the statutory maximum.[17]

The last positive decision in the first quarter of 2018, in the case of an asylum-seeker represented by BCHR, was passed on 26 January 2018. Asylum was granted to F.I., national of Iran who fled the country of origin because he had converted from Islam to Christianity, which represents a well known basis of persecution in the practice of many EU countries. As in the two previous positive decisions, the Asylum Office disqualified Bulgaria as a safe third country due to the risk of treatment contrary to the absolute prohibition of torture. The entire procedure - from submission of application to the decision thereon - lasted more than seven months.[18]

Hence, analysing these decisions one may conclude that there has been a significant progress in the practice of the Asylum Office with respect to automatic application of the safe third country concept. Nevertheless, there still prevail decisons where the asylum applications are dismissed on the grounds of the automatic application of the safe third country concept, i.e., Article 33(1.6) of the Law on Asylum that will be expounded on in continuation of this Report.

2.2. Application of the safe third country concept

The common denominator in all the procedures wherein asylum applications were dismissed due to the safe third country concept application is that the first-instance body failed to obtain guarantees that the foreigner whose application had been dismissed would be received back onto the territory of the 'safe third country' and that he/she would have access to the asylum procedure there.[19] On the other hand, the Asylum Commission did not consider this omission of the first-instance body founded,

[16] Decision of the Asylum Commission no. 26-1239/17 of 10 January 2018
[17] The asylum application was submitted on 24 July 2017, and the official activity of interviewing the applicant was conducted on 15 September 2017. So, the procedure lasted just under six months from the date of submission of the asylum application.
[18] Decision of the Asylum Commission no. 16-1083/17 of 26 January 2017
[19] See: *Tarakhel v. Switzerland*, Application no. 29217/12 paras. 120–122, and *Bader and Kanbor v Sweden*, Application no. 13284/04, para. 45

although it had been singled out in the appeals. Thus, for instance, in the case of asylum-seeker Z. F, who is a victim of gender-based violence,[20] the competent authorities failed to obtain specific guarantees that she would be received back in Bulgaria. In addition, the Asylum Commission did not separately assess this circumstance relative to the general situation and treatment of refugees in Bulgaria.[21] It was the duty of the competent authorities in this case to obtain guarantees not only that Z. F. would be accepted back in Bulgaria, but that – being a member of a particularly vulnerable group – she would receive adequate accommodation, psychosocial support and other services in Bulgaria she would be entitled to as a victim of abuse.

It should also be noted that when adjudicating on application of the safe third country concept, the first and the second-instance bodies do not assess – to a sufficient degree - all the evidence submitted by the proxies of asylum-seekers: the facts related to absence of functioning asylum systems in the neighbouring countries, absence of integration of persons granted international protection, risk from torture by the security forces, local population and organised criminal groups, etc. And so, deciding on the complaint of the proxy of A.M.M. from Iraq to the decision of the Asylum Office dismissing his application, the Asylum Commission neglected the findings of UNHCR published in the paper *Macedonia as a Country of Asylum*.[22] In this document, UNHCR recommended to the state signatories not to return refugees back into this country for as long as significant progress in development of the asylum system and the migration policy is not made.[23] The decision of the Asylum Commission also totally neglected the findings of other bodies mentioned in the complaint (final observations of UN treaty bodies such as Committee for Economic, Social and Cultural Rights and the Committee Against Torture), as well as the findings of *Amnesty International* and *Human Rights Watch*. The European Court for Human Rights considers all the above sources relevant when adjudicating on the risk of treatment contrary to Article 3 of the European Convention on Protection of Human Rights and Fundamental Freedoms in cases of expulsion.[24]

As mentioned above, the Asylum Office passed two decisions, and the Asylim Commission one decision upholding the first instance decision where Turkey was

[20] Decision of the Asylum Commission Až-02-1/18 of 25 January 2018

[21] Numerous findings of UNHCR and UN treaty bodies, as well as other credible sources indicating a problem of poor living conditions in the centres, frequent violence targeting migrants and refugees, the links between the police and organised criminal groups, etc.

[22] UNHCR, *Macedonia as a Country of Asylum*, 2015

[23] *Ibid*, para. 47

[24] See, e.g.: *Sufi and Elmi v. UK*, Application no. 8319/07 and 11449/07, paras. 133-139, 191-192, 245, 288, *M.S.S. v. Belgium and Greece*, Application no. 30696/09 paras. 244–246, 255, 258, 281–282, 300, 302, 304, 318, 332, 348–349

found to be a safe third country.[25] Taking into consideration the general human rights situation in Turkey and the geographical limitations on the regions outside Europe, such decisions represent a dangerous setback in the practice of the Asylum Office and a continuation of the erratic practice of the Asylum Commission which almost automatically applies the safe third country concept to all the countries, and thus Turkey as well.

It is important to note that the Administrative Court passed a judgement on 8 February 2018 upholding the complaint of the BCHR lawyer on behalf of an asylum-seeker, annulled the decision of the Asylum Commission and remanded the case.[26] In its decision, the Administrative Court established a significant violation of provisions of administrative procedure, as the Asylum Office rejected the complaint of the BCHR lawyer neglecting all the individual circumstances related to a minor asylum-seeker and other facts contained in reports on the situation of human rights in Bulgaria (which was considered a safe third country). The Court particularly stressed that the reasoning does not prove that the second instance body had assessed all the statements of the complaint individually, above all the statements related to the provisions of the UN Convention on the Rights of the Child and a series of standards resulting from the above document, as well as the practice of the Committee for the Rights of the Child.[27] This judgement of the Administrative Court is yet another in the series of decisions signalising to the second instance body that the statements of complaints must be carefully reviewed when adjudicating on the merits of thereof, and when assessing whether a certain country may be considered safe in a concrete case.[28]

3. The new Law on Asylum and Temporary Protection

As mentioned in the introduction, the long awaited reform of asylum and migration legislation finally took place in March 2018 finally. The new Law on Asylum and Temporary Protection (hereinafter: LATP) entered into the Parliamentary procedure on 12 September 2017, and it was adopted at the first regular spring session of the Parliament of the Republic of Serbia which began on 6 March 2018. The agenda

[25] Decisions of the Asylum Office no. 26-2433/17 of 14 March 2018 and no. 26-2432/17 of 14 March 2018, and the Decision of the Asylum Commission no. 44-1/17 of 20 February 2018
[26] Decision of the Administrative Court no. U. 13309/17 of 8 February 2018
[27] In this concrete case, an underage, unaccompanied asylum-seeker who entered Serbia from a country that was criticized by the Committee for the Rights of the Child in 2017
[28] See: *Right to Asylum in the Republic of Serbia 2017*, pp. 56-57

included a set of draft laws relevant to the refugee law. The New Law on Foreigners, the Law on Amendments to the Law on Citizenship of the Republic of Serbia and the new Law on Border Control were also adopted.[29] This section of the Report analyses certain novelties introduced in the LATP that we consider paramount to the refugee law in Serbia.

3.1. Analysis of the key solutions in the Law on Asylum and Temporary Protection

As the Republic of Serbia is in the process of EU accession and that it has asumed certain obligations, it needs to harmonise the national legislative framework governing the area of asylum with the European standards. Since the asylum procedure i.e., international protection is standardised among the EU MS, the European institutions seek to equalise the scope of rights and obligations of asylum-seekers and persons granted one of the forms of international protection across all the Member States. Therefore, the national asylum system of the Republic of Serbia needs to be harmonised with the Directives of the European Union governing the area of asylum, in particular with: (1) Directive 2013/32/EU on the common procedures for granting and withdrawing international protection, with the emphasis that the stated procedures need to be equivalent in national legislations, (2) Directive 2013/33/EU on standards for the reception of applicants for international protection, (3) Directive 2001/55/EC on minimum standards for giving temporary protection in case of mass influx of displaced persons, measures implemented in reception, obligations of the receiving states as well as the rights and obligations of persons awarded temporary protection, and (4) Directive 2011/95/EU on standards for the qualification of third- country nationals or stateless persons as beneficiaries of the right to asylum, standards aimed at achieving uniform refugee status or status of persons eligible for granting subsidiary protection, as well as the standards related to the content (rights and obligations) of the granted protection.

Compared to the old Law on Asylum (hereinafter: AL), the recently-adopted LATP introduces a series of new solutions, both material and procedural. Before embarking on the analysis of each individual legislative solution, we deem it noteworthy to stress the following: Article 104 of LATP sets down that the Law would enter into force on the eighth day from the day of its publication in the Official Gazette of the Republic of Serbia (*Službeni glasnik Republike Srbije)*, and that it will be implemented upon expiry of the 60 days timeframe of its entering into force. Articles

[29] All the above laws were published in *Službeni glasnik Republike Srbije*, no. 24/18 of 26 March 2018

102 and 103 of LATP provide that the AL will cease to be in effect as at the day of its entry into force, and that the asylum procedures initiated prior to entry to that date are to be completed pursuant to the AL regulations, except in case that the provisions of LATP are more favourable for asylum-seekers. LATP was published in *Službeni glasnik Republic Serbia* on 26 March 2018, so it follows that it came into effect on 3 April 2018 as well as that AL stopped being effective that same day. It also follows that LATP can be applied as on 3 June 2018 only. Thus, a two-month period from 3 April to 2 June 2018 remained in limbo through negligence of the proponent of the new law and the Republican Secretariat for Legislation. Namely, new asylum procedures cannot be initiated during this period, be it pursuant to the old (AL) or according to the new law on asylum (LATP) (because the AL ceased to be in effect on 3 April and LATP may not be implemented before 3 June 2018). The only remaining option is to apply the Law on General Administrative Procedure. On the other hand, during the same period, the application of a more favourable law is precluded in the asylum procedures initiated at the time of AL effectiveness as provided for in Article 103 of LATP, because the implementation of LATP will start only on 3 June 2018.

Some of the key novelties in the LATP, that will be discussed in more detail later, refer to the very asylum procedure. Thus, some of the procedural activities were merged.[30] The possibility for an individual to submit an asylum application without the presence of the Asylum Office official was also introduced. New deadlines for conducting certain procedural activities have been prescribed as well as the possibility for the staff of other organisational units of MOI and/or other state body to temporarily take part in the interviews. LATP also introduces the possibility of audio-visual recording of interviews, an accelerated procedure and the possibility for the entire asylum procedure to be conducted at border crossings or transit zones of airports or inland ports. Compared to the old AL, the legislator introduced a completely new concept of a safe third country, expanded the competencies of certain state authorities, equalized the rights of the persons granted asylum and the persons awarded subsidiary protection, provided for search of members of family of unaccompanied and separated children, etc.

[30] For instance, expression of intention to seek asylum and registration of a foreigner wishing to seek asylum have been merged into a single procedure.

3.1.1. Principles and forms of protection

Article 17 of LATP sets down the principle of securing special procedural and reception guarantees which, in addition to children and unaccompanied and separated children, apply also to: persons with disabilities, the elderly, pregnant women, single parents with children, victims of trafficking, the gravely ill persons, persons with mental disorders, victims of torture, rape or other serious forms of psychological, physical or sexual violence (for instance, victims of genital mutilation). These personal circumstances are identified early on during the initiation of the asylum procedure i.e., at expressing intention to seek asylum at the border or in the transit area.

The newly-adopted LATP provides for three types of international protection granted by the Republic of Serbia: asylum, subsidiary protection and temporary protection.

3.1.1.1. The principle of the best interest of the child

Instead of the term *child*, LATP uses the terms *minor* and *minor child*.[31]

With respect to accommodation, LATP forsees that material conditions of reception of unaccompanied and separated children will be ensured in asylum centres or other facilities designated for accommodation of asylum-seekers until passing of the final decision on the asylum application.[32] Exceptionally, unaccompanied children may be accommodated in social welfare institutions, with another provider of accommodation or in another family, if the necessary conditions for their accommodation cannot be ensured in asylum centres or other designated accommodation facilities. This will be done by the Commissariat for Refugees and Migration on the basis of a decision of the centre for social welfare.

In addition, LATP provides the right of asylum-seekers to primary and secondary education free of charge, in line with special regulations,[33] and that minor

[31] Thus, for instance in Article 70 (2), LATP
[32] Article 52, LATP
[33] Article 55 (1), LATP

asylum-seekers shall be entitled to this right immediately and no later than three months from the date of submission of the asylum application.[34]

Under Article 35 of LATP, the children who may reliably and unequivocally be established as under the age of 14 shall not be fingerprinted. However, the Law failed to prescribe the method of ascertaining the age of asylum-seekers, thus leaving it to the competent bodies to arbitrarily establish the age of undocumented asylum-seekers. The absence of clearly defined criteria for establishment of age is not in line with the best interest of the child principle. In its Concluding Observations on the Third Periodic Report of Serbia, the UN Committee for Human Rights recommended that Serbian authorities adopt appropriate protocols for establishment of age of unaccompanied children.[35]

Article 73 of LATP lists special rights of unaccompanied children. An unaccompanied child who has been granted the right to asylum, shall be appointed a guardian or a legal representative by the guardianship authority as soon as possible. An unaccompanied child is accommodated with his/her adult family members or persons with whom he/she has particularly close bonds. Bearing in mind that particular bonds represent a standard, it would be necessary for the guardianship authority to ascertain these bonds in a separate procedure, in order for this LATP provision to be observed. An unaccompanied child granted the right to asylum may be placed in a foster family or an institution of social protection under the specially defined conditions.[36] On placement of unaccompanied children, special attention will be given that they are placed together with their brothers and sisters, if such a possibility exists and is in the best interest of a child. Attention shall be paid to their age and maturity.[37] LATP provides for another significant novelty. Namely, when necessary, the competent body shall initiate search for the members of family of an unaccompanied child, protecting his/her best interest. This search shall be conducted pursuant to the principle of confidentiality, if life and integrity of the minor or his close relatives may be threatened, and particularly so if they remained in the country of origin.[38]

LATP also offers certain procedural guarantees to unaccompanied children, and thus it provides that accelerated procedures cannot be conducted upon asylum

[34] Article 55 (2), LATP
[35] Concluding Observations on the Third Periodic Report of Serbia, Human Rights Committee, CCPR/C/SRB/CO/3 10 April 2017, paras. 32-33
[36] These conditions are set out in Article 52, LATP
[37] Article 73 (4), LATP
[38] Article 73 (5), LATP

applications submitted by unnacompanied children,[39] and that they shall be prioritized in the asylum and other procedures related to the rights of unaccompanied children.[40]

3.1.1.2. Asylum

According to the new solution adopted in the LATP, asylum is defined as the right to residence and protection enjoyed by a foreigner who was granted the right to asylum or awarded subsidiary protection by the decision of the competent authority. This definition is somewhat narrower than the one provided in the Law on Asylum which defines asylum as the right to residence and protection granted to a foreigner in Serbia provided he/she has been granted asylum or other form of protection provided for by the law. This means that temporary protection was also included in the provision defining asylum and other form of protection.

3.1.1.2.1. Refuge

LATP provides for the right to refuge. In other words, refugee status is granted to an applicant who is outside the country of his/her origin or habitual residence, and who reasonably fears persecution on the account of his/her race, gender, language, religion, ethnic affiliation, membership of a particular social group or political opinion, due to which he/she cannot or does not want to avail himself/herself of the protection of that country.

3.1.1.2.2. Subsidiary protection

Pursuant to LATP, subsidiary protection is awarded to asylum-seekers who do not meet the criteria for refugee status, in case of justified reasons indicating that return to the country of origin or habitual residence (for stateless persons) will expose them to the realistic threat of serious harm and who are not able or due to that threat, do not

[39] Article 40 (4), LATP
[40] Article 12 (9), LATP

want to accept protection of that country. The Law defines serious harm as a threat of death by penalty or execution, torture, inhuman or degrading treatment or punishment, as well as serious and individual threat to life by reason of generalised violence in situations of international or internal armed conflict.

3.1.1.3. Temporary protection

LATP defines temporary protection as protection awarded in extraordinary procedure in case of mass influx of displaced persons who cannot return to their country of origin or habitual residence if there is a risk that, due to such mass influx, it will not be possible to carry out effectively individual asylum procedures, in order to protect the interests of displaced persons and other persons seeking protection. As in AL, the decision on granting temporary protection shall be passed by the Government of the Republic of Serbia. However, temporary protection provided for in LATP is defined more narrowly compared to the one provided for in AL and only applies to persons who left the area of armed conflict or localised violence and persons facing a serious threat of mass violations of human rights or who are victims of such violations.

The duration of temporary protection remains unchanged (one year). With respect to extension of duration of temporary protection, LATP provides that it may be extended by additional six months and up to a maximum one year,[41] while the AL provided it could be extended without specifying the duration.

3.1.2. Conditions for granting and denying asylum in the Republic of Serbia

The conditions for granting and cessation of the right to asylum in the Republic of Serbia have been stipulated in Articles 24-34 of LATP. LATP specifies actors of persecution in the country of origin, providers of protection in the country of origin and the assessment of facts and circumstances. The new legal solutions define, in detail, the concepts of the safe country of origin and the safe third country.

[41] Article 75, LATP

3.1.2.1. Safe country of origin

Pursuant to LATP, a country shall be considered as a safe country of origin where, on the basis of the legal situation, the application of the law, and the general political circumstances, it is clear that there are no acts of persecution referred to in Article 24 of this Law or risk of suffering serious harm within the meaning of Article 25 (2) of this Law.[42] This is established on the basis of information on the relevant country regulations, their application, observance of the rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 15(2), the International Covenant on Civic and Political Rights as well as the UN Convention Against Torture, observance of the principle of prohibition of expulsion or return as well as the implementation of an effective legal remedy. The safe country of origin concept is in line with the Directive 2013/32//EU governing the asylum procedure.

3.1.2.2. Safe third country

The safe third country concept is defined in Article 45 of LATP. The list of safe third countries shall not be established, in line with the European solutions. Rather, a statutory definition will be applied to establish whether a country may be considered safe. According to LATP, a safe third country is one where the asylum-seeker is free from persecution defined in Article 24 or from the risk of serious harm as defined in Article 25 (2) of LATP, in which he/she enjoys the guarantees prescribed by the principle of prohibition of expulsion or return and where he/she has access to an effective procedure of granting and enjoying protection pursuant to the 1951 Convention Relating to the Status of Refugees. In order to establish the conditions for application of the safe third country concept, each application shall be examined individually including the conditions for a certain country to be considered safe and the links between that country and the asylum-seeker based on which it may be reasonably expected for him/her to apply for asylum in it. The new concept also introduces the right of asylum-seekers to being promptly informed about the application of the safe third country concept in order to allow them the opportunity to challenge it in view of their personal circumstances.

[42] Article 44, LATP

The asylum-seekers whose applications are dismissed are issued a certificate by the Asylum Office informing the competent state authorities of the safe third country that these applications had not been examined in substance in the Republic of Serbia. If the safe third country refuses to accept the foreigner, the substance of his/her asylum application will be decided on pursuant to the provisions of the LATP.

Bearing in mind that most of the asylum applications have been dismissed due to the application of the safe third country concept, the relevant provisions of the new LATP on the application thereof may be considered a step in the right direction. They present a basis for a more proper application of the safe third country concept and improvement of the quality of the decisions passed on asylum applications, since they prescribe the obligation of the authorities to take into account the individual circumstances of each case. Nevertheless, the practice of the competent authorities is yet to show whether this statutory solution will advance the asylum procedure in Serbia.

3.1.3. Competent authorities

Articles 20-23 of LATP define the competent authorities in the asylum procedure: Asylum Office, the Asylum Commission, the Administrative Court and the Commissariat for Refugees and Migration, and their respective mandates.

3.1.3.1. Asylum Office

In the procedures for granting and cessation of the right to asylum, the procedure shall be conducted and all the first instance decisions taken by the Asylum Office – an organisational unit of the Ministry of Interior. The Asylum Office staff are not part of the uniformed personnel of the Ministry of Interior.

3.1.3.2. Asylum Commission

The first instance decisions in the asylum procedure may be appealed no later than 15 days from the date of receipt thereof. The appeal shall defer enforcement of the decision.

LATP sets down the composition of the Asylum Commission: a chairman and eight members. The persons eligible for the members of the Asylum Commission must

be the citizens of the Republic of Serbia, lawyers with minimum five years of work experience and knowledgeable in human rights regulations. LATP kept the solution stipulated in the AL regarding the number of Asylum Commission members and the eligibility criteria. An opportunity was missed to raise the threshhold of expertise and knowledge required from the members, which may affect the quality of adjudication in the procedure.

The solution adopted in LATP provides for the Asylum Commission to remain the second-instance body in the asylum procedure, and for the Administrative Court to be the third instance – the judicial review body. However, the dominant standard in the European asylum system is judicial review of first- instance decisions as it offers better protection as regards their legality, fairness and quality.

The solution that the legislator opted for could be justified if the work of the Asylum Commission had been assessed as independent from that of the first instance body. This not being the case, a better solution would have been that - after the decision of the Asylum Office - a possibility had been ensured to initiate administrative procedure before the Administrative Court instead of submitting a complaint to the Asylum Commission. This would have introduced a more efficient and timely judicial review of the decisions made in the first-instance asylum procedure. Though all the arguments in favour of judicial review of the first-instance decisions were well known at the time of the public discussion, the legislator still decided to align judicial review of first-instance decisions with the European asylum system in one of the future amendments of LATP.

3.1.3.3. Administrative Court

An administrative procedure before the Administrative Court may be initiated against the final decision of the Asylum Commission or in cases when the Asylum Commission fails to decide on the complaint within the statutory timeframe. The new LATP clearly prescribes the suspensive effect of the appeal, which was not the case in the previous Law on Asylum.

In its practice to date, the Administrative Court has never adjudicated in the disputes of full jurisdiction in the asylum procedure nor has it held a hearing. Its decisions rarely ever included a proper reasoning for such practice. Bearing in mind the pressure on the Administrative Court which is mandated with deciding on the legality of final administrative decisions in all administrative areas as well as the absence of specialised departments, the hitherto practice in asylum procedures does not come as a surprise.

3.1.3.4. Commissariat for Refugees and Migration

Compared to the solutions of the AL, the competencies of the Commissariat for Refugees and Migration (hereinafter: SCRM) are extended in several areas. Under LATP, SCRM shall ensure material conditions for reception of asylum-seekers and temporary accommodation of the persons granted the right to asylum in line with the provisions governing migration management. The material reception conditions include accommodation, food, clothing and cash allowance to cover personal needs.

A novelty introduced by LATP is the obligation of SCRM to ensure cash allowance for personal needs of asylum-seekers. AL did not provide for it. The amount of cash allowance for personal needs is equal to the amount of allowance received by adult social welfare beneficiaries with no income, accommodated in social protection institutions in line with the regulations governing social protection. The allowance is provided for maximum four members of the applicant's household including the applicant.[43]

Another novelty is that SCRM will conduct programmes of voluntary return of foreigners whose asylum applications had been rejected or dismissed, in cases the asylum procedure has been suspended, of foreigners granted temporary protection, foreigners whose temporary protection expired and of foreigners whose refugee status ceased. In line with the regulations governing migration management, SCRM remains competent for integration of persons granted asylum.

SCRM mandate was extended to monitoring attendance of the Serbian language and alphabet classes by the foreigners granted refugee status in Serbia. According to LATP, the persons granted refugee status need to register with SCRM to attend classes of the Serbian language and alphabet within 15 days from the final decision on asylum. In case a person fails to register within a prescribed timeframe or stops attending the classes, he/she will lose the right to financial assistance for temporary accommodation and the right to a cash grant provided from the budget of the Republic of Serbia.[44]

In addition to the status determination, integration of foreigners granted asylum into the economic, social and cultural life of the country of reception is one of the fundamental principles of refugee protection. Not much has been done in the domain of integration of foreigners who were granted international protection since the adoption of the Asylum Law ten years ago.

[43] Article 50 (2), LATP
[44] Article 59 (3), LATP

Article 46 of the 2008 Asylum Law stipulated that the Republic of Serbia would ensure conditions for refugee integration commensurately with its capacities. Also, the 2012 Law on Migration Management sets out that foreigners granted asylum will be ensured integration into social, cultural and economic life commensurately with the capacities of the Republic of Serbia, and that the manner thereof shall be regulated by the Government at the proposal of SCRM. However, the Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia was adopted only in December 2016. Since the above mentioned Decree has been applied for less than two years and Article 71 of LATP provides for integration assistance, progress in this area is yet expected.

3.1.4. Asylum procedure

LATP introduced numerous changes into the asylum procedure, all of which aim to increase the efficiency thereof and further harmonise it with the European solutions. The key novelty introduced by LATP refers to registration of asylum-seekers.

3.1.4.1. Registration

Unlike the old Asylum Law, the Law on Asylum and Temorary Protection merges expression of the intention to seek asylum and registration into one procedural step, and thus provides for registration. A foreigner may express an intention to seek asylum to an authorised police officer, verbally or in writing during a border control when entering the Republic of Serbia or inside its territory. He/she shall be registered immediately thereafter and referred to an asylum centre or other facility designated for accommodation of the applicants, that he/she must report to within 72 hours from the issuance of the registration certificate. When necessary or when one of the bases stipulated in Article 77 of LATP are met, as well as in other cases when that is required for security reasons, a foreigner whose intention to seek asylum has been registered shall be escorted to an asylum centre or other designated accommodation facility. A foreigner may also express intention to seek asylum in an asylum centre or another facility designated for accommodation of the applicants, and in the Reception Centre for Foreigners.

An authorised police officer shall photograph and fingerprint a foreigner. An authorised police officer shall have the right to search a foreigner with full respect of

his/her physical and psychological integrity and human dignity and to search his personal belongings for the purpose of finding identification papers and documents required to establish his/her identity. An authorised police officer shall also have the right to temmporarily seize all the identification papers and documents that may be relevant to the asylum procedure, if that is necessary, whereby the foreigner shall be issued a certificate thereon. A foreigner who possesses a passaport, an identity card or some other identification document, a residence permit, a visa, a birth certificate, a travel ticket or another document or an official communication of relevance to the asylum procedure shall be obliged to submit them during registration. If a foreigner deliberately obstructs, avoids or does not consent to registration, regulations governing the legal status of foreigners shall apply.

An authorised police officer of the Ministry of Interior shall issue a registration certificate to a foreigner who expressed intention to seek asylum. On reception of a foreigner issued a registration certificate into the asylum centre or other designated accommodation facility, SCRM shall confirm the fact of reception by indicating it in the registration certificate. Should a foreigner fail to report to an asylum centre or other designated accommodation facility within 72 hours of his registration without a justified reason, the regulations governing the legal status of foreigners shall apply. These shall also apply if a foreigner leaves the asylum centre or other designated accommodation facility arbitrarily, without authorisation and justified reason before the expiry of the statutory timeframe for submission of an asylum application.[45]

The terms and the procedure of registration, the form and the content of the registration certificate shall be prescribed more specifically by the Minister of Interior.

3.1.4.2. Initiating the asylum procedure

Under Article 36 of LATP, the asylum procedure shall be considered initiated on submission of the asylum form to the Asylum Office. LATP provides for four types of procedures on asylum applications: (1) regular asylum procedure, (2) procedure on

[45] Under the new Law on Foreigners (Article 74 (1.7)), residence of a foreigner shall be considered illegal if he/she has expressed intention to seek asylum but has not reported to a designated accommodation facility within 72 hours, if he/she failed to inform the Asylum Office of the change of address or has arbitrarily left the accommodation facility prior to submitting an asylum application.

subsequent asylum application, (3) accelerated asylum procedure and (4) procedure at the border or in the transit zone.

3.1.4.2.1. Regular asylum procedure

Regular asylum procedure in the Republic of Serbia is governed by Articles 35-39 of LATP. The process of initiating the procedure on an asylum application differs from that prescribed in the AL. Namely, under LATP an asylum-seeker personally submits an asylum application to the Asylum Office officers on a prescribed form within 15 days from expressing his/her intention to seek asylum. However, if an authorised officer of the Asylum Office does not enable an asylum-seeker to submit an application within the prescribed 15-day timeframe, the applicant may do so by filling in the asylum application form within eight days after the expiry of the 15-day timeframe.

Though the introduction by the legislator of the possibility of an asylum-seeker applying in writing is positive, this solution puts asylum-seekers in an unfavourable position by imposing on them a shorter timeframe to apply than the timeframe the Asylum Office officers had at their disposal. We believe a longer additional timeframe would have been a better solution having in mind that these are persons ignorant in law, foreigners, often illiterate and in difficult psychological and physical situations and that failure to meet this deadline may result in very serious and unfavourable consequences (they may be deprived access to the asylum procedure, and thus be subject to application of regulations about illegal stay and cancellation of stay in the Republic of Serbia stipulated in the Law on Foreigners).

The proposed legal solution includes minimum three conditions: first, that asylum-seekers must pay attention to the above stated deadlines; second, that they need to be clearly informed, in advance, about their obligations and legal consequences of failure to abide by them in a language they understand; and third that the asylum application form must be prepared in advance in a language that (all) asylum-seekers understand to enable them to fill it in properly. Efficient implementation of this provision by the asylum-seekers would require, at the minimum, deployment of professional interpreters in all the 18 accommodation centres.

Of the total 6,199 intentions to seek asylum expressed in 2017, the Asylum Office registered 244 persons only. Of them, 236 applied for asylum to authorised officers of the Asylum Office and 106 were interviewed. In practice, several months seldom elapsed from the the issuance of the certificate on expressed intention up to the moment when the Asylum Office enabled asylum-seekers to submit an application to its officers. In BCHR opinion and on the

basis of the above, there may be grounds to expect that the application of the solution of Article 36 of LATP will result in that the Asylum Office officers will seldom make it possible for the asylum-seekers to submit applications to them within the prescribed timeframe of 15 days (particularly bearing in mind that there are 18 centres in Serbia), and that the burden of initiating the procedure will be on the asylum-seekers who will then require adequate assistance.

Under Article 37 of LATP, if the number of the asylum applications submitted increases to such an extent that the authorised officers of the Asylum Office are not able to interview each individual applicant in good time, the Government may, upon request of the competent authority, pass a decision on temporary involvement in the interviewing process of officers from other departments of the competent authority and /or other authorities. LATP sets out that officers from other departments or the competent authority and/or other authorities must receive the necessary training before their involvement in the interviewing process.

Article 39 of LATP prescribes that a decision on the asylum application shall be rendered within three months from the date of the asylum application or the date of the admissible subsequent asylum application. LATP also provides for the possibility of extending the three-month deadline if the application includes complex factual or legal issues or if a large number of foreigners submit asylum applications at the same time. Also, the timeframe for rendering a decision on the asylum application may exceptionally be extended by additional three months if this is required in order to review the application completely and properly. By these provisions, LATP gave a discretinary right to the Asylum Office to decide whether to extend the timeframe for passing the decision. Only when the Asylum Office starts implementing the Law on Asylum and Temporary Protection will it be possible to assess whether the need for such a solution is valid, and to establish the criteria for extension of the timeframe. Finally, LATP provides for a situation when one may reasonably expect that the decision on an application cannot be passed within the above timeframes due to a temporary insecurity in the country of origin of an applicant. In that case, the authorised officers of the Asylum Office are obliged to conduct checks on the situation in the country of origin once in three months and to duly inform the applicant about the deferal of the decision. However, the decision must be rendered no later than 12 months from the date of submission of the asylum application.

A new, positive solution introduced by LATP is the deferred effect of the complaint on the decision of the Asylum Office submitted to the Administrative Court. Under Article 96 (2) of LATP, an appeal shall suspend the enforcement of the decision. The suspensive effect of appeals was not stiplated in the old AL. Pursuant to Article 32

of the Law on Administrative Disputes,[46] one could only request suspension of enforcement of final administrative decisions at that time, which was not considered an efficient legal remedy.

3.1.4.2.2. Subsequent asylum application

Article 46 of LATP provides for the possibility of subsequent submission of asylum applications. Applicants may submit subsequent applications if they provide evidence that the circumstances relevant to granting of asylum have significantly changed, or evidence which they had not presented during the previous procedure due to justified reasons.

Subsequent submission of applications takes place after entry into effect of the decision rejecting the application, or suspension of the procedure for reasons provided for by the law. If the competent authority establishes that the subsequent application is admissible, it shall revoke the previous decision and decide again on the merits of the application.

The Asylum Office shall decide on a subsequent asylum application no later than 15 days from the date of the submission.

3.1.4.2.3. Accelerated procedure

Under Article 40 of LATP, a decision on the asylum application shall be passed in an accelerated procedure if it has been established that: (1) the applicant presented only the facts that are irrelevant to the examination of the asylum procedure in substance, (2) the applicant has consciously misled the Asylum Office officers by presenting false information or forged documents, or by failing to provide relevant information by concealing documents that could have a negative effect on the decision, (3) the applicant intentionally destroyed or concealed the documents which establish his/her identity or nationality so as to provide false information about his/her identity or nationality, (4) the applicant presented manifestly inconsistent, contradictory, inaccurate or unconvincing statements, contrary to the verified information about the

[46] *Službeni glasnik RS*, no. 111/09

country of origin, rendering his/her application unconvincing, (5) the applicant submitted an admissible subsequent asylum application, (6) the applicant submitted an application with an evident intention postpone, defer or prevent enforcement of the decision that would result in his/her removal from the Republic of Serbia, (7) the applicant presents a serious threat to the national security and public order, and (8) the safe country of origin principle is applicable.

The Asylum Office is obliged to inform the applicant that his/her application is processsed in an accelerated procedure. The decision on an accelerated procedure shall be passed no later than 30 days from the date of application for asylum or admissible subsequent asylum application, whereby the entire procedure shall be conducted.

An accelerated procedure may not be conducted on an asylum application submitted by an unaccompanied child.

The decision of the Asylum Office passed in an accelerated procedure may be appealed to the Asylum Commission within eight days from the date of the decision served.

3.1.4.2.4. Applying for asylum at border crossings or in transit zones

Article 41 of LATP introduces the possibility for the entire asylum procedure to be conducted at border crossings or in transit zones of airports or inland ports, provided that the main principles of the Law are observed. The preconditions of this asylum procedure are: (1) provision of adequate accommodation and subsistence to asylum-seekers on these locations, and (2) that the asylum application or a subsequent asylum application may not be dismissed as unfounded or rejected. The Asylum Office is to render a decision on the application no later than 28 days from the date of submission thereof. Failing to do so, it has to enable the applicant to access to the Serbian territory in order for the regular asylum procedure to be conducted. This deadline is in line with Directive 2013/32/EU. LATP prescribes a shorter deadline for submission of complaints against the first-instance decisions to the Asylum Commission – five days from the date of the decision served.

Access to the representatives of organisations providing legal aid to applicants is allowed at border crossings and in transit zones. Access of an attorney or a representative of an organisation providing free legal aid to applicants and persons

granted asylum may be temporarily restricted when required for reasons of protection of national security or public order. This restriction of access shall not apply to the representatives of UNHCR.

Asylum procedures relating to applications submitted by unaccompanied children may not be conducted at the border or in transit zones.

3.1.4.3. Restriction of movement of asylum-seekers in the Reception Centre for Foreigners

One of the measures of restriction of movement of asylum-seekers provided for in Article 78 of LATP prescribes stay of asylum-seekers in the Reception Centre for Foreigners as per order of the Asylum Office. This measure may last maximum three months and may be extended by additional three months. An appeal against the decision on restriction of movement may be submitted to the competent higher court no later than eight days of it being served. However, it does not defer enforcement.

Though the Asylum Office rarely applied this measure, ordering accommodation in the Centre for Foreigners may be considered deprivation of liberty in view of the level of limitation of the rights of asylum-seekers accommodated there (lack of possibility of arbitrary exit from the dormitory or a small area, limited contact with the outside world, duration of the measure, etc.).[47] Consequently, the procedure of ordering this measure should be aligned with the provisions of the Constitution of the Republic of Serbia and the European Convention for the Protection of Human Rights and Fundamental Freedoms that refer to the right to freedom and security.

According to BCHR, the above provisions of LATP do not fulfill the constitutional and international guarantees to freedom and security as they do not provide for mandatory and urgent judicial review of the decision rendered by the administrative authority (MOI) on deprivation of liberty of asylum-seekers. The stipulated optional review of the decision of the

[47] According to the view of the European Court for Human Rights, in cases when it is unclear whether a person has been deprived of liberty in the manner invoking protection from Article 5 of the European Convention on Human Rights and Fundamental Freedoms, or his/her freedom of movement has been restricted only, detention is not determined by reference to classification from the national law. Rather, actual restrictions imposed on the said person are taken into account. Consequently, the persons accommodated in a facility categorised as a centre for *reception*, *detention* or *accommodation* may be actually deprived of liberty if this is a result of a (protracted) duration of the restrictions imposed on them, the manner of implementation of the measure and its overall effect on the person in question. See more in: *Migration and International Human Rights Law*, A Practitioners' Guide no. 6, updated edition, International Commission of Jurists, 2014, p. 201 and cont'd.

administrative body on deprivation of liberty of an asylum-seeker on his/her appeal (that may be filed within eight days from the date of its serving and for deciding on which no deadline has been defined) is unsatisfactory. The above provisions are deficient for at least two more reasons. First, they do not specify the deadline in which the police officers must serve the decision to the person whose accommodation in the Shelter for Foreigners was ordered in a language he/she understands. And second, these provisions do not stipulate the obligation of the decision-maker to review this decision periodically, pass a decision on whether to extend or cancel it and inform the person in question thereof. Consequently, the asylum-seekers are unjustifiably put into a more unfavourable position than the persons whose detention is ordered during investigation or the criminal procedure.

3.1.5. Exercise of the rights and obligations of asylum-seekers and persons granted asylum

Exercise of the rights and obligations of asylum-seekers and persons granted the right to asylum is clearly defined and separated in two different sections of the LATP. A novelty introduced in LATP is equalising the rights and obligations of persons granted asylum and persons granted subsidiary protection.

3.1.5.1. Rights and obligations of applicants

In keeping with Article 48 of LATP, the applicants have the right to: (1) residence and freedom of movement in the Republic of Serbia, (2) material reception conditions, (3) social assistance, (4) health care, (5) primary and secondary education, (6) information and legal aid, (7) freedom of religion, (8) access to labour market and (9) personal documents. Exercise of these rights is specified in the provisions of Articles 49-58 of LATP.

A novelty introduced by LATP in the domain of the rights of applicants refers to material reception conditions including accommodation, food, clothing and allowance to cover personal needs. The amount of cash allowance for personal needs is equal to the amount of allowance received by adult social welfare beneficiaries with no income, accommodated in social protection institutions in line with the regulations governing social protection. The allowance is provided for maximum four members of the applicant's household including the applicant. Material reception conditions may be

reduced or withdrawn if the applicant possesses his/her own financial assets or if he/she startes to receive income from employment sufficient to cover material reception conditions as well as if he/she misuses the received allowance. A decision on reduction or withdrawal of material reception conditions shall be taken by SCRM. An applicant may appeal this decision with the Asylum Commission. The appeal does not defer enforcement of the decision in case the decision has been made to reduce or withdraw the cash allowance.

LATP, for the first time, provides for the possibility for the applicants to be accommodated in accommodation facilities other than asylum centres. Until passing of the final decision on the asylum application, the applicants are provided with material reception conditions in asylum centres or in other facilities for accommodation founded and designated by the decision of the Government. Asylum centres and other facilities designated for accommodation of applicants shall be managed by a SCRM managers, who shall pass an act regulating internal organisation and job classification in asylum centres and other designated facilities for accommodation of applicants. Funds for the operation of asylum centres and other designated facilities for accommodation of the applicants shall be provided in the budget of the Republic of Serbia.

As the previous Law on Asylum, the new Law on Asylum and Temporary Protection stipulates that foreigners who expressed intention to seek asylum in Serbia, as well as the applicants are entitled to be informed about their rights and obligations throughout the asylum procedure. Two novelties in this domain are: 1) the applicant has the right to be informed of his rights and obligations related to material reception conditions no later than 15 days from the date of the application, and 2) he/she has the right to be informed about the citizens' associations or other organisations providing assistance and information to the applicants (but the deadline for provision of this information to the applicants is not defined). LATP, as the previous AL, prescribes that foreigners who expressed intention to seek asylum in Serbia, as well as the applicants, are entitled to free legal aid and representation before the competent authorities provided by the organisations whose objectives and activities are aimed at providing legal assistance to applicants and persons granted asylum, as well as free legal aid provided by UNHCR.

Article 58 of the Law on Asylum and Temporary Protection sets down the obligations of applicants: (1) to comply with the measures for restriction of movement referred to in Article 52 of LATP, if imposed, (2) to inform the Asylum Office in writing of any change of address within three days of such change of address, (3) to abide by house rules, if he/she is accommodated in an asylum centre, (4) to respond to the

summons and cooperate with the Asylum Office and other competent authorities at all stages of the asylum procedure, (5) to hand over to an authorised official his/her identification papers, travel document and other documents that may be relevant to his/her identification, (6) to cooperate with the authorised officials during registration and medical examination, (7) to stay in the territory of the Republic of Serbia pending completion of the asylum procedure, (8) to leave the asylum centre or other accommodation facility for applicants upon the effectiveness of the decision on his/her asylum application.

3.1.5.2. Rights and obligations of persons granted asylum

The rights and obligations of persons granted asylum or subsidiary protection are governed by Articles 59-73 of LATP. The Asylum Office shall inform the person who has been granted asylum about the rights and obligations that such status entails in a language he/she understands and as soon as possible upon granting of the right to asylum.

The persons granted asylum or subsidiary protection are entitled to: (1) residence, (2) accommodation, (3) freedom of movement, (4) health care, (5) education, (6) access to the labour market, (7) legal aid, (8) social assistance, (9) ownership, (10) freedom of religion, (11) family reunification, (12) documents and (13) integration assistance.

LATP specifies that the right to reside in the Republic of Serbia shall be approved under a decision on granting the right to refuge, or subsidiary protection and shall be proved by an identity card for persons who have been granted the right to asylum. The right to reside in the Republic of Serbia shall be enjoyed by the family members of a person who has been granted the right to asylum. This legal solution represents an improvement relative to AL, which stipulated that asylum is the right to residence and protection enjoyed by a foreigner who has been granted refuge or some other form of protection on the basis of the decision of a competent authority which decided on his asylum application in the Republic of Serbia. With respect to types of residence guaranteed to the persons granted asylum or subsidiary protection, the Law on Asylum did not contain any provisions but stipulated that these persons be issued identity cards with a validity of five years (to persons granted asylum) or one year (to persons awareded subsidiary protection). However, the right to residence was neither

established in a separate decision in the asylum procedure, nor in the decision upholding the asylum application, which the LATP prescribed.

Another novelty is the right to legal aid to a foreigner granted asylum and who has the same rights at the nationals of the Republic of Serbia regarding free access to courts, legal aid, exemption from court and other taxes imposed by state authorities.

LATP also provides for the obligation of the Republic of Serbia to ensure conditions for integration of the persons granted asylum into the social, cultural and economic life commensurate to its capacities, as well as to allow for naturalisation of refugees. The conditions, manner, procedure and other issues relevant to inclusion of persons granted asylum into the social, cultural and economic life in the Republic of Serbia, as well as their naturalisation are established by the Government at the proposal of SCRM.

Article 59 of LATP sets down the obligations of persons granted asylum: (1) respect of the Constitution, the law, other regulations and general acts of the Republic of Serbia and (2) attendance of Serbian language and alphabet courses in the Republic of Serbia.

With respect to travel documents, Article 91 of LATP stipulates that the Asylum Office shall issue a travel document in a prescribed form, valid for five years at the request of a person granted asylum. For a child under the age of 16, the request shall be submitted by his/her parent or guardian. The previous AL allowed for issuance of a travel document to persons granted asylum in Serbia only if they turned 18, and the validity of the travel documents was two years. As AL, LATP stipulates that travel documents may be issued to persons awarded subsidiary protection, if they do not possess a national travel document in exceptional humanitarian cases, and that such a travel document will be valid up to one year.

Since 2008, the Asylum Office has never issued a travel document to persons granted asylum in Serbia, because the Ministry of Interior failed to pass a by-law on the content and design of travel documents for this category of foreigners. The transitional and final provisions of the Law on Asylum and Temporary Protection provide that the minister of interior will pass regulations on the content and the design of forms for issuance of refugee travel documents within 60 days from the date of entry into force of the Law.[48]

[48] Art 101, LATP

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The Belgrade Centre for Human Rights opines that the new law put in place the preconditions for improvement of the asylum system in the Republic of Serbia. The positive solutions introduced into the Law on Asylum and Temporary Protection primarily refer to introduction of new procedural guarantees, better regulation of the safe third country concept, introduction of new procedures into the asylum procedure, providing for a suspensive effect of appeals, clear separation of the rights and obligations of asylum-seekers and the persons granted asylum and equalisation of the rights of persons granted subsidiary and refugee protection.

The team of the Belgrade Centre for Human Rights will continue to provide legal assistance to the asylum-seekers and to support the competent institutions of the Republic of Serbia towards advancement of the asylum system in line with the international standards of refugee protection.