



# aida

Asylum Information  
Database

Asylum Information Database

# Country Report

## *Bulgaria*



БЪЛГАРСКИ  
ХЕЛЗИНСКИ  
КОМИТЕТ



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European Council  
on Refugees and Exiles

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This report was written by Iliana Savova, Director, Refugee and Migrant Legal Programme, Bulgarian Helsinki Committee and was edited by ECRE.

**The information is up-to-date as of 31 January 2015.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://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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# TABLE OF CONTENT

Statistics .....	6
Overview of the legal framework .....	8
Overview of the of the main changes since the previous report update .....	9
<b>Asylum Procedure.....</b>	<b>12</b>
<b>A. General.....</b>	<b>12</b>
1. Flow Chart .....	12
2. Types of procedures .....	13
3. List of the authorities intervening in each stage of the procedure (including Dublin) . .....	13
4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance) .....	14
5. Short overview of the asylum procedure .....	14
<b>B. Procedures.....</b>	<b>16</b>
1. Registration of the Asylum Application .....	16
2. Regular procedure .....	18
<i>General (scope, time limits)</i> .....	18
<i>Appeal</i> .....	19
<i>Personal Interview</i> .....	20
<i>Legal assistance</i> .....	21
3. Dublin .....	23
<i>Procedure</i> .....	23
<i>Appeal</i> .....	25
<i>Personal Interview</i> .....	25
<i>Legal assistance</i> .....	26
<i>Suspension of transfers</i> .....	26
4. Admissibility procedures .....	27
<i>General (scope, criteria, time limits)</i> .....	27
<i>Appeal As described above in the section appeal under regular procedures.</i> .....	28
<i>Personal Interview</i> .....	28
<i>Legal assistance</i> .....	28
5. Border procedure (border and transit zones).....	28

6. Accelerated procedures .....	28
<i>General (scope, grounds for accelerated procedures, time limits)</i> .....	28
<i>Appeal</i> .....	29
<i>Personal Interview</i> .....	30
<i>Legal assistance</i> .....	30
<b>C. Information for asylum seekers and access to NGOs and UNHCR .....</b>	<b>30</b>
<b>D. Subsequent applications .....</b>	<b>32</b>
<b>E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture).....</b>	<b>33</b>
1. Special Procedural guarantees .....	33
2. Use of medical reports .....	34
3. Age assessment and legal representation of unaccompanied children .....	35
<b>F. The safe country concepts .....</b>	<b>36</b>
<b>G. Treatment of specific nationalities .....</b>	<b>37</b>
<b>Reception Conditions .....</b>	<b>39</b>
<b>A. Access and forms of reception conditions.....</b>	<b>39</b>
1. Criteria and restrictions to access reception conditions .....	39
2. Forms and levels of material reception conditions .....	40
3. Types of accommodation .....	42
4. Conditions in reception facilities .....	43
5. Reduction or withdrawal of reception conditions.....	44
6. Access to reception centres by third parties .....	44
7. Addressing special reception needs of vulnerable persons .....	44
8. Provision of information.....	45
9. Freedom of movement .....	45
<b>B. Employment and education .....</b>	<b>46</b>
1. Access to the labour market.....	46
2. Access to education .....	46
<b>C. Health care .....</b>	<b>47</b>

**Detention of Asylum Seekers.....48**

**A. General.....48**

**B. Grounds for detention.....49**

**C. Procedural safeguards and judicial Review of the detention order .....52**

**D. Legal assistance.....53**

**Annex I Transposition of the CEAS in National Legislation.....54**

## Statistics

**Table 1: Applications and granting of protection status at first instance in 2014<sup>1</sup>**

	Total applicants in 2014	Refugee status	Humanitarian Protection	Rejections (in-merit and admissibility)	Otherwise closed/discontinued	Refugee rate	Humanitarian Protection rate	Rejection rate
	A	B	C	D	E	B/(B+C+D) %	C/(B+C+D) %	D/(B+C+D) %
<b>Total numbers</b>	11081	5162	1838	500	2853/2196	68%	24%	6%
<b>Breakdown by countries of origin of the total numbers</b>								
<b>Top 10</b>								
<b>Syria</b>	6524	4821	1585	15	617/492	75%	24%	0.2%
<b>Afghanistan</b>	2968	7	17	104	1085/1061	5%	13%	81%
<b>Iraq</b>	608	48	44	121	164/50	22%	20%	46%
<b>Stateless</b>	268	264	163	23	5/24	58%	36%	0.2%
<b>Pakistan</b>	183	2	0	14	40/58	12%	0%	87%
<b>Algeria</b>	155	0	0	7	308/128	%	%	%
<b>Iran</b>	119	2	13	47	51/51	3%	21%	78%
<b>Mali</b>	53	1	1	18	94/51	5%	5%	90%
<b>Ghana</b>	52	0	0	17	65/43	0%	0%	%
<b>Morocco</b>	50	0	1	2	60/25	0%	0%	%
<b>Others<sup>2</sup></b>								
<b>Ukraine</b>	41	0	0	0	10/1	0%	0%	%
<b>Cote D'Ivoire</b>	38	0	1	18	41/27	0%	0%	94%

Source: State Agency for Refugees

<sup>1</sup> All statistics are taken from the State Agency for Refugees, *2014 Annual Statistical Overview*, January 2014.

<sup>2</sup> Other main countries of origin of asylum seekers in the EU.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2013**

	Number	Percentage
<b>Total number of applicants</b>	<b>11081</b>	<b>100%</b>
<b>Men</b>	7608	68,6%
<b>Women</b>	2533	22,9%
<b>Unaccompanied children</b>	940	8,5%

Source: State Agency for Refugees

**Table 3: Comparison between first instance and appeal decision rates in 2014**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>7500</b>		-	
<b>Positive decisions</b>				
<b>Total</b>	<b>7000</b>	93%	-	-
<i>Refugee Status</i>	<b>5162</b>	73,7%		-
<i>Subsidiary protection</i>	-	-	-	-
<i>Hum/comp protection</i>	<b>1838</b>	26,7%	-	-
<b>Negative decision</b>	<b>500</b>	7%	-	-

Source: State Agency for Refugees

**Table 4: Applications processed under an accelerated procedure in 2014**

	Number	Percentage
<b>Total number of applicants</b>	<b>11081</b>	
<b>Number of applications treated under an accelerated procedure at first instance</b>	131	1,1%%

Source: State Agency for Refugees

**Table 5: Subsequent applications submitted in 2012<sup>3</sup>**

	Number of subsequent applications submitted
<b>Total number</b>	809
<b>Top 5 countries of origin</b>	
<b>Iraq</b>	33
<b>Stateless</b>	15
<b>Syria</b>	15
<b>Armenia</b>	16
<b>Afghanistan</b>	13

Source: Eurostat

<sup>3</sup> This refers only to those which have been accepted as constituting a fresh claim. This is an estimated 10% of the total number of those who make further submissions. Statistics for 2014 not available.

## Overview of the legal framework

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

Title in English	Original title	Abbreviation	Weblink
Law on Asylum and Refugees	Закон за убежището и бежанците	LAR	<a href="http://www.aref.government.bg/?cat=25">http://www.aref.government.bg/?cat=25</a>
Law on Aliens in Republic of Bulgaria	Закон за чужденците в Република България	LARB	<a href="http://www.mvr.bg/NR/rdo/lyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPN RBGESChTS_EN.pdf">http://www.mvr.bg/NR/rdo/lyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPN RBGESChTS_EN.pdf</a>

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

Title in English	Original title	Abbreviation	Weblink
Ordinance №332 from 28.12.2008 for the responsibilities and coordination among the state agencies, implementing Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, Council Regulation No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation	Наредба приета с ПМС №332 от 28.12.2008 за отговорността и координацията на държавните органи, осъществяващи действия по прилагането на Регламент (ЕО) № 343/2003 на Съвета от 18 февруари 2003 г. за установяване на критерии и механизми за определяне на държава членка, компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 1560/2003 на Комисията от 2 септември 2003г. за определяне условията за прилагане на Регламент (ЕО) № 343/2003 на Съвета за установяване на критерии и механизми за определяне на държавата членка, която е компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 2725/2000 на Съвета от 11 декември 2000г. за създаване на система	ORD332/08	<a href="http://lex.bg/laws/ldoc/2135576190">http://lex.bg/laws/ldoc/2135576190</a>



(EC) No 2725/2000	"ЕВРОДАК" за сравняване на дактилоскопични отпечатьци с оглед ефективното прилагане на Дъблинската конвенция и Регламент (ЕО) № 407/2002 на Съвета от 28 февруари 2002 г. за определяне на някои условия за прилагането на Регламент (ЕО) № 2725/2000 относно създаването на системата "ЕВРОДАК" за сравняване на дактилоскопични отпечатьци с оглед ефективното прилагане на Дъблинската конвенция		
Ordinance № I-13 from 29 January 2004 on the rules for administrative detention of aliens and the functioning of the premises for aliens' temporary accommodation	Наредба № I-13 от 29 януари 2004 за реда за временно настаняване на чужденци, за организацията и дейността на специалните домове за временно настаняване на чужденци	ORD1-13/04	<a href="http://law.dir.bg/reference.php?f=ni13vr04">http://law.dir.bg/reference.php?f=ni13vr04</a>

## Overview of the of the main changes since the previous report update

***The previous report update was published in April 2014.***

### Asylum Procedure

- In January 2015 the government announced<sup>4</sup> the retreat of the additional police patrols dispatched along the Bulgarian-Turkish land border and their replacement by army staff. The MOI reported<sup>5</sup> 6400 third-country nationals who had been officially refused access to the national territory in 2014 and returned, mainly to Turkey.<sup>6</sup> Another 28,000 individuals were reported to have been sighted on the Turkish territory in close proximity to the Bulgarian border, but who have not attempted to cross the borderline. The top countries of origin of officially non-admitted 6400 individuals were stated to be Syria, Iraq and Afghanistan. The comparative analysis with the top countries of origin of asylum seekers registered in 2014 in Bulgaria<sup>7</sup> (Syria, Afghanistan and Iraq) indicated that the COI profile of non-admitted individuals, for the most part, coincided with the profile of the persons seeking protection.

<sup>4</sup> A newspaper report shows Bulgarian government's plan to re-enforce land border control with the support of the army, available at [http://dnes.dir.bg/temite/news/granitza-bezhanskia-tatisk-18337875?tag\\_id=132368](http://dnes.dir.bg/temite/news/granitza-bezhanskia-tatisk-18337875?tag_id=132368) /BG/

<sup>5</sup> Data provided by the General Directorate Border Police, Readmission Sector, TWG focal point on 15 January 2015;

<sup>6</sup> 6000 non-admissions of individuals arriving from Turkey and 400 non-admissions of individuals arriving from Greece

<sup>7</sup> 6524 applicants from Syria, 2968 from Afghanistan and 608 from Iraq in 2014, Source: State Agency for Refugees;

- Status determination duration decreased to 6 months on average; prioritized approach is applied with regard to Syrian asylum seekers whose applications are considered as "manifestly founded".
- Recognition rates increased significantly to reach, in 2014, the highest recognition/lowest rejection rates ever, respectively - 55% overall recognition rate and 6% rejection rate (in total 12787 decisions, of which 40% or 5162 refugee statuses, 15% or 1838 humanitarian statuses, 6% or 738 refusals, 17% or 2196 suspended and 22% or 2853 terminated procedures).
- According to SAR as of 31 December 2014, Bulgaria had received 7581 requests for information from other Member States under the Dublin Regulation. 6873 "take back" requests and "take charge" requests were submitted to Bulgaria, of which 3613 were eventually taken charge. The rest 978 communications were requests for information under Article 34 of the Dublin Regulation.

### **Reception Conditions**

- Reconstruction, renovation and refurbishment were undertaken by the SAR to achieve in mid-2014 the minimum standards for reception in all asylum centres/shelters.
- As of 30 January 2015, the capacity of the six SAR centres (reception and registration centres – Banya, Ovcha Kupel and Harmanli, Transit centre Pastrogor, reception shelters of Voenna Rampa and Vrazhdebna) reached 5650 spaces with 65% occupancy rate; Kovachevtsi shelter (350 places) was closed on 1 November 2014.
- Due to the ongoing lack of integration programmes for the newly recognized refugees and subsidiary protection holders, these status-holders instead make use of the only accessible accommodation support, which is in reception centres/shelters. This support is available to them for 6 months after gaining recognition. Therefore, out of 3675 individuals accommodated in the SAR centres as of 22 January 2015, 23% of them or 850 individuals were recognized refugees.

### **Detention of Asylum Seekers**

- Asylum seekers who applied at the border have by law to be transferred within 24 hours from the Border Police to SAR reception facilities. In practice, since October 2013 asylum seekers are transferred to the newly established Elhovo Allocation Centre, operating under a closed regime, where they spend between three to six days on average before being transferred to any of the SAR reception facilities.<sup>8</sup>
- First time applicants from certain nationalities, predominantly from the Maghreb region and sub-Saharan Africa (Algeria, Morocco, Tunisia, Mali and Cote D'Ivoire), were discriminated against with regard to their release from detention centres and access to the asylum procedure. Individuals of these nationalities were required to obtain a court ruling sanctioning their release, whereas this extra requirement was not the case for other nationalities.. In response, the SAR started to register, interview and determine the applications of asylum seekers from these nationalities in the detention centres.
- Average detention duration for those who applied from pre-removal detention centres decreased to 11 days (in comparison with 45 days in 2013);

### **Transposition of the EU asylum *acquis***

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<sup>8</sup> 5% or 155 asylum seekers out of all 3054 border applicants in 2014 were admitted directly to asylum reception centres, statistics as of 25 January 2015, Source: Bulgarian Helsinki Committee.

- Draft amendments introduced by the Parliament in October 2013 were largely advertised to be transposing the recast Qualification Directive and Reception Conditions Directive, although neither of them is being fully transposed, in particular the Reception Conditions Directive which is reflected in the draft only with regard to Articles 8 -11 relating the detention of asylum seekers. Nevertheless, the draft was not put to vote by the previous 42<sup>nd</sup> Parliament. It was re-introduced again before the new 43<sup>rd</sup> Parliament in December 2014.<sup>9</sup>

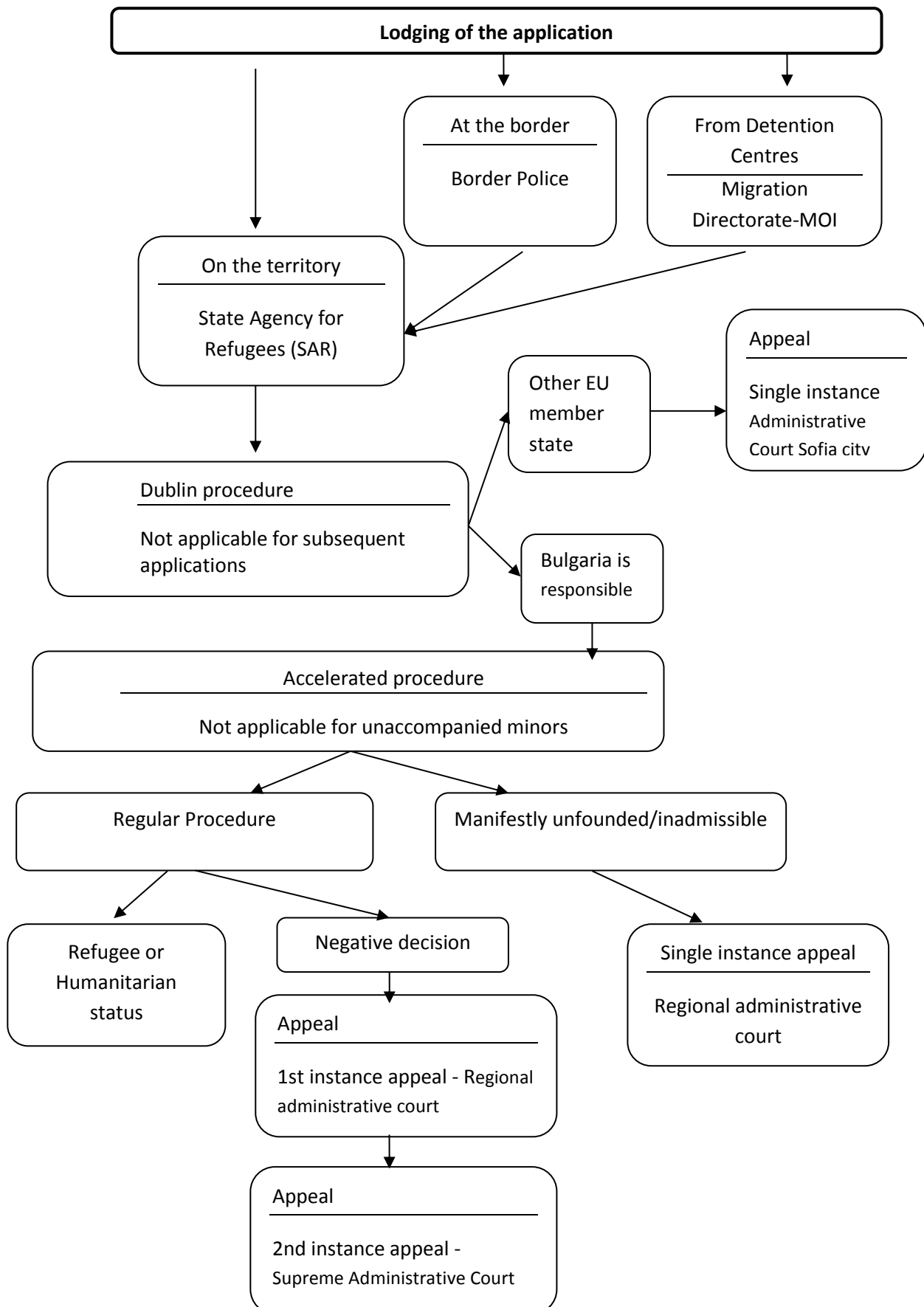
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<sup>9</sup> <http://www.parliament.bg/bg/parliamentarycommittees/members/2331/reports/ID/5029>.

# Asylum Procedure

## A. General

### 1. Flow Chart



## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes ☒ no ☐
- border procedure: yes ☐ no ☒
- admissibility procedure: yes ☒ no ☐
- accelerated procedure (labelled as such in national law): yes ☒ no ☐
- accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure): yes ☐ no ☒
- prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): yes ☒ no ☐
- Dublin Procedure: yes ☒ no ☐
- others: none

## 3. List of the authorities intervening in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (BG)
Asylum application lodging	State Agency for Refugees (SAR) & any state authority	Държавна агенция за бежанците (ДАБ) и друг държавен орган
National security clearance	State Agency for National Security (SANS)	Държавна агенция "Национална сигурност"
Registration of asylum seeker	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Dublin Procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Accelerated procedure (admissibility, manifestly unfounded applications, subsequent applications)	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Regular procedure (status determination on the substance)	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
- Dublin determination	- Administrative court Sofia	- Админ.сът София-град
- negative decisions in the accelerated procedure;	- regional administrative court as per the residence of asylum seeker	- административен съд по местоживее
- refusal of recognition/protection ( on two instances): > first appeal instance > cassation instance	- regional administrative court as per the territorial unit of the SAR where the asylum seeker has his/her residence - Supreme administrative court	- админ.сът по седалището на териториалната структура на Държавната агенция за бежанците (ДАБ), в чийто район се намира постоянният или настоящият адрес на жалбоподателя - Върховен административен съд
- refusal of accommodation	- regional administrative court as per the residence of asylum seeker	- админ.сът по седалището на териториалната структура на Държавната агенция за бежанците (ДАБ), в чийто район се намира постоянният или настоящият адрес на жалбоподателя

- refusal of family reunification ( at two instances ): > first appeal instance > cassation instance	- regional administrative court as per the territorial unit of the SAR where the asylum seeker has his/her residence - Supreme administrative court	-Админ.съд София-град -Върховен административен съд
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#### 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
State Agency for Refugees	303 (32 <sup>10</sup> )	Council of Ministers	Yes

#### 5. Short overview of the asylum procedure

An asylum application may be lodged either before the specialised asylum administration, the State Agency for Refugees (SAR), or before any other administration, which will be obligated to refer it immediately to the SAR. Thus, asylum can be claimed on the territory, at borders (before the Border Police staff) or in detention centres (before the Migration Directorate staff). The asylum application should be made within a reasonable time after entering the country, except in case of irregular entry/residence when it is ought to be made immediately, otherwise it could be ruled out as inadmissible. If the asylum application was made before an administration, different than the SAR, status determination procedures could not legally start until the asylum seeker was transferred from the border/detention centre to any of the SAR's premises for the so called 'personal' registration.

Asylum applications in Bulgaria are examined in 3 stages: the Dublin procedure (whether the asylum application will be examined by Bulgaria or another EU member state), an accelerated procedure (combined examination on both admissibility and manifestly unfounded grounds) and a regular procedure (status determination on the merits of the application). If the asylum application is rejected at a former phase, the latter is inapplicable unless the rejection is revoked by a court. The decision-maker, the SAR, is a single central administrative authority, which has the rank of a ministry, but whose budget is assigned through the Ministry of Interior. SAR is competent to decide on all individual asylum applications and to grant/reject refugee or subsidiary protection (humanitarian) status. In case of a mass influx where individual asylum applications cannot be processed, a temporary protection status is granted by the government by a collective decision.

The Dublin procedure is not applicable to subsequent asylum applications. If the asylum application of an applicant returned to Bulgaria was already decided on its merits by a final negative decision, the applicant is re-admitted to the country, but then treated as an irregular migrant. Criteria, rules and deadlines of the Dublin Regulation are applied directly without transposition into national legislation.

The first instance procedure starts mandatorily with an accelerated procedure. However, the latter is not applicable to unaccompanied children, who after a decision has been taken that Bulgaria is the State responsible for examining their asylum application are admitted directly to determination on the substance in the regular procedure. Notwithstanding its name, the accelerated procedure combines the examination of both admissibility and manifestly unfounded grounds. The examination can result in finding the asylum application inadmissible, if the applicant is granted protection or permanent residence permit in another EU Member state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can be

<sup>10</sup> 20 case-workers in Sofia registration center, 8 in Harmanli registration center and 4 in Pastrogor transit center;

found manifestly unfounded, if the applicant did not state any grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. The decision within an accelerated procedure should be issued in 3 days from its registration, otherwise the application is automatically transferred for status determination in a regular procedure on the merits. However, the law requires the State Agency for National Security (SANS) to provide an opinion in every asylum application, the examination of which as a result of the Dublin procedure was determined to be the responsibility of Bulgaria. If such opinion has not been provided, a decision can be issued neither in the accelerated, nor in the regular procedure. Therefore, in practice the 3 days deadline of the accelerated procedure is rarely observed and the majority of the asylum applications are automatically transferred for determination in the regular procedure. Hence, in practice the accelerated procedure is applied only with regard to subsequent applications, where the opinion of the SANS has been already collected during the first examination of the claim. The regular procedure (labelled under the law as a 'general' procedure) requires detailed examination of the asylum application on its merits. The regular procedure is a single procedure as far as the asylum application is decided upon both with regard to the need of international protection and the type of protection that should be granted - refugee status or subsidiary protection (humanitarian) status. The decision should be issued in 4 months from the registration of the asylum application but this deadline is indicative not mandatory.

The appeal procedure mirrors the phases of the administrative stage of status determination, namely: (1) an appeal procedure against Dublin decisions, heard by the Administrative Court in Sofia only; (2) an appeal procedure against the decisions rejecting asylum applications as inadmissible or manifestly unfounded, heard by the administrative court from the relevant district where the appellant is residing and (3) an appeal procedure against decisions rejecting the asylum application on its merits, heard on two court instances by the regional administrative court as per the territorial unit of the SAR, where the asylum seeker is residing (1<sup>st</sup> instance) and the Supreme administrative court (2<sup>nd</sup> instance). All appeals have suspensive effect, except in Dublin cases unless the Dublin appellant asked the court explicitly to suspend the transfer to the other EU Member State concerned. Legal aid can be granted by the court, if requested. The time limit for lodging an appeal against a first instance decision of the SAR is 14 calendar days as of the notification of the decision in the regular procedure, 7 calendar days in the accelerated and Dublin procedure.

All courts in all types of appeal procedures can revoke entirely the appealed administrative decisions and give mandatory instructions as to how the case must be decided at the first instance by the SAR. The court cannot itself grant protection, but can instruct the administration to do so. If an administrative decision issued in an accelerated procedure was reverted by a court, the SAR has to re-consider the asylum application in 3 days after the judgement was served. If the reverted decision was made in a general procedure, the re-consideration should not take longer than 14 days after the judgement. However, the courts do not have powers to sanction the SAR, if their instructions were not observed while reverted asylum applications were re-considered. They can only proclaim the re-issued decision that ignores the instructions of the Court as null and void (in a new appeal procedure). Additionally, the court has the right to review and revoke two other types of administrative decisions: the rejection of a request to be accommodated in a transit/reception asylum centre and the rejection of requests for family reunification permits. The former type of decisions is subjected to the control of the administrative court in the district where the respective asylum seeker resides or has stated residence. –The rejection of a request for family reunification can be appealed and revised on two court instances by the regional administrative court as per the territorial unit of the SAR, where the asylum seeker is residing (as 1<sup>st</sup> instance) and the Supreme administrative court (as 2<sup>nd</sup> instance).

Ever since the establishment of the national asylum system in Bulgaria, asylum seekers have enjoyed liberty and freedom of movement. However, at the end of 2013 the government pushed for draft amendments of the law, which if adopted will allow for the detention and other limitations of the freedom of movement of asylum seekers pending their status determination. The draft amendments were not put to vote before 42<sup>nd</sup> Parliament, but were again re-introduced to 43<sup>rd</sup> Parliament in December 2014.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
☒ Yes      ☐ No
- If so, and if available specify
  - o the time limit at the border:
    - reasonable time, if arriving legally;
    - immediately, if the entry was irregular;
  - o the time limit on the territory:
    - reasonable time, if stay or residence is legal;
    - immediately, if asylum seeker stays irregularly;
  - o the time limit in detention:
    - immediately, detention applies to irregular migrants
- 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

An asylum application may be lodged either before the specialised asylum administration, the State Agency for Refugees (SAR), or before any other administration, which will be obligated to refer it immediately to the SAR<sup>11</sup>. Thus, asylum can be requested on the territory, at the borders (before the Border Police staff) or in detention centres (before the Migration Directorate staff). The asylum application should be made within a reasonable time after entering the country<sup>12</sup>, except in cases of irregular entry or residence when it ought to be made immediately, otherwise it could be rejected as inadmissible<sup>13</sup>. If the asylum application was made before an administration, different than the asylum one (i.e. SAR), then status determination procedures could not legally start until the asylum seeker was transferred from the border/detention centre and accommodated in any of the SAR's premises for a registration of the individual in person. In practice, until mid-2013 the national reception capacity was highly insufficient to accommodate more than 1000 new arrivals (places for 805 individuals in total).

Therefore, when in the autumn of 2013 a large influx of mixed migration flows occurred,<sup>14</sup> the registration procedure in practice totally collapsed. Registration and determination procedures remained constricted for a substantial period of time until the spring of 2014. In January 2014, the SAR reported 4694 asylum seekers accommodated in reception centres, but another 4421 asylum seekers living outside them at so called "external addresses". The registration and documentation of the latter have been postponed from 3 up to 6 months, leading to situations where in mid-2014 there were still some individual cases without registration and issued documents. Being undocumented and without any access to accommodation, social assistance or medical care, these asylum seekers opted to leave Bulgaria and seek protection elsewhere.. As of 1 January 2015, SAR reported<sup>15</sup> only 430 asylum seekers living at "external addresses". Registration of asylum seekers who applied from the national detention centres, a process which was hugely delayed in 2013 with an average duration of 45 days,<sup>16</sup> decreased significantly in 2014 to an average detention duration of 11 days (See section on Detention of Asylum Seekers in this report) .

<sup>11</sup> Law on Asylum and Refugees, Article 58(4).

<sup>12</sup> Law on Asylum and Refugees, Article 13(1)-11.

<sup>13</sup> Law on Asylum and Refugees, Article 13(1)-12.

<sup>14</sup> 11618 persons apprehended at borders, EASO *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.1. Asylum Registration Process).

<sup>15</sup> 31<sup>st</sup> National Coordination Meeting, Sofia, 8 January 2015;

<sup>16</sup> Bulgarian Helsinki Committee, *2013 Annual Human Rights Report*, March 2014.



In September 2014, as a reaction of again growing number of the new arrivals<sup>17</sup>, SAR suspended to register, document and accommodate those asylum seekers, who have managed to enter the territory irregularly and approach directly SAR without being arrested or detained by Border or Migration police. Instead, SAR organised their referral to detention centres without any regard to nationality, vulnerability or individual profile. It took a series of advocacy interventions on behalf of human rights NGOs until this malpractice was finally abandoned in November 2014. During 2014 first time applicants from certain nationalities, predominantly from Maghreb region and sub-Saharan Africa (Algeria, Morocco, Tunisia, Mali and Cote D'Ivoire) were clearly discriminated against with regard to their release from detention centres and access to procedure. In distinction with all other asylum seekers who were usually released from detention centres within 11 days on average<sup>18</sup>, throughout the whole of 2014 SAR persistently has been refusing to authorise the release and the registration of asylum seekers from the above mentioned countries of origin and it required a court conviction in order to be achieved.<sup>19</sup> In response to court convictions, SAR started to implement status determination procedures with respect to these asylum seekers in detention centres.

In 2014 1250 border officers and another 1350 regular policemen remained dispatched and patrolling along the Bulgarian-Turkish border. The MOI reported<sup>20</sup> 6400 third-country nationals who had been officially refused access to the national territory in 2014 and returned, mainly to Turkey.<sup>21</sup> Another 28,000 individuals were reported to have been sighted on the Turkish territory in close proximity to the Bulgarian border, but who have not attempted to cross the borderline. The top countries of origin of officially non-admitted 6400 individuals were stated to be Syria, Iraq and Afghanistan. The above figures indirectly corroborated the allegations of *refoulement* and push-back practices of potential asylum seekers, published by various international organizations and observers.<sup>22</sup> The comparative analysis with the top countries of origin of asylum seekers registered in 2014 in Bulgaria<sup>23</sup> (Syria, Iraq and Afghanistan) indicated that the COI profile of non-admitted individuals, for the most part, coincided with the profile of the persons seeking protection. Therefore, intensified border control and prevention measures have mostly affected the inflows of forced migration from countries of origin which are characterized by persecution, armed conflicts and indiscriminate human rights violations. In 2014, in total 4041 asylum applications were made at the national borders, of whom - 2851 adults (2127 male, 724 female), 995 children (559 boys and 432 girls) and 195 separated children of whom - 176 boys and 19 girls. On their behalf Border Police registered altogether 3046 applications.<sup>24</sup> Border practices with respect to unaccompanied asylum-seeking children improved to a certain extent as Border Police initiated referrals of unaccompanied children to local Child Protection Services, which assisted them to apply for asylum. The top country of origin of border applicants admitted to country territory in 2014 remained Syria (3494 border applicants), followed by Afghanistan (257 applicants), Iraq (246 applicants), Pakistan (17 applicants), Iran (13 applicants), Myanmar – 3, Bangladesh - 2, Yemen - 2 and Morocco, Palestine, Somalia, Kuwait, Armenia, Lebanon and Turkey - with one applicant each.

<sup>17</sup> Monthly asylum applications in 2014: January - 822, February - 776, March - 433, April - 320, May - 545, June - 645, July - 911, August - 1104, September - 1220, October - 1429, November - 1378 and December - 1498 individuals.

<sup>18</sup> Bulgarian Helsinki Committee, 2014 Annual SPMR, 15 January 2015;

<sup>19</sup> Administrative Court Sofia City, Case N630/2014, Section 15, Decision N982 from 21 February 2014; Administrative Court Sofia City, Case N631/2014, Section 19, Decision N1202 from 28 February 2014; Administrative Court Sofia City, Case N814/2014, Section 11, Decision N1446 from 10 March 2014 and many others.

<sup>20</sup> Data provided by the General Directorate Border Police, Readmission Sector, TWG focal point on 15 January 2015;

<sup>21</sup> 6000 non-admissions of individuals arriving from Turkey and 400 non-admissions of individuals arriving from Greece

<sup>22</sup> Human Rights Watch, *Bulgaria: New Evidence about Syrians Forced back to Turkey*, 18 September 2014, <http://www.hrw.org/news/2014/09/18/bulgaria-new-evidence-syrians-forced-back-turkey>; Amnesty International, *The Human Cost of Fortress Europe*, July 2014, Index: EUR 05/001/2014, [http://www.amnesty.eu/content/assets/Reports/EUR\\_050012014\\_Fortress\\_Europe\\_complete\\_web\\_EN.pdf](http://www.amnesty.eu/content/assets/Reports/EUR_050012014_Fortress_Europe_complete_web_EN.pdf) ProAsyl, *Bulgaria – Brutal Push-backs at the Turkish Border*, 25 April 2014, [http://www.proasyl.de/en/news/news-english/news/bulgaria\\_brutal\\_push\\_backs\\_at\\_the\\_turkish\\_border/](http://www.proasyl.de/en/news/news-english/news/bulgaria_brutal_push_backs_at_the_turkish_border/);

<sup>23</sup> Source: State Agency for Refugees;

<sup>24</sup> Accompanied children are registered together with their parents and do not submit a separate asylum application.

Just 4% of the border applicants (190 out of 4041) were admitted directly to asylum procedure and transferred to national reception centres (80 to Pastrogor Transit centre, 65 to Harmanli RRC, 3 to Sofia RRC and 42 to Banya RRC). All the rest 96% (3851 border applicants) were initially detained in Elhovo Allocation centre, from where they have been distributed to asylum centres/shelters at a later stage. The average detention duration in 2014 in Elhovo Allocation centre was 6 days<sup>25</sup>.

In the beginning of September 2013, when the increase of asylum seekers hit the media, the Chief Prosecutor announced<sup>26</sup> that his office was sending on a mission to Svilengrad additional prosecutors in order to reinforce the criminal prosecution against asylum seekers on account of their irregular entry. Human rights NGOs and the professional organisations of the judiciary immediately advocated against this approach as contradictory to Article 31 of 1951 Geneva Convention.<sup>27</sup> The Bulgarian Judges Union and the Association of Prosecutors upheld the position that Article 31 *non-punishment* principle should be fully respected and asylum seekers, who entered irregularly the territory of the country, should not be convicted. Following this position of the Guild, conviction for irregular entry practice was basically overturned and just 0,2% (11 cases out of 4041 border applicants) cases of irregular entry resulted in a criminal conviction by a court in 2014.

## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 3
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
- As of 31<sup>st</sup> December 2014, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered Not available

The national authority, competent to take decisions on asylum applications at first instance - the State Agency for Refugees (SAR) - is an administration with a rank of a Ministry, responsible directly to the government alone. However, as far as its budget is allocated through the Ministry of Interior, in practice the SAR is dependent on the decisions of the MOI when making requests for additional or emergency funding. The SAR's only competence is to decide on individual applications for international protection by recognising or refusing refugee status, or, granting or refusing humanitarian status (subsidiary protection). SAR also has an advisory role to the government when it decides whether to apply temporary protection on a group basis in cases of a mass influx of asylum seekers who flee from a war like situation, gross abuse of human rights or indiscriminate violence.

The Law on Asylum and Refugees (LAR) sets a 3 month time-limit<sup>28</sup> for deciding on an asylum application, which has been admitted to a regular procedure. The LAR requires that within 2 months from the beginning of the regular procedure at least one eligibility interview is conducted with the asylum seeker to allow the interviewer to draft a proposal for a decision on the asylum application concerned. The asylum application should firstly be assessed on its eligibility for refugee status. If the answer is negative, the need for subsidiary protection on account of a general risk to the applicant's human rights should be also considered and decided upon. The interviewer's position is reported to the decision-

<sup>25</sup> 24572 days: 3851 applicants = 6 days average detention duration in Elhovo allocation center.

<sup>26</sup> *Dnevnik* newspaper report, 9 September 2013, Прокуратурата реши да отчита активност с дела срещу бежанци (Prosecutor offices decide to gain credit on account of charges against refugees) , available at [http://www.dnevnik.bg/bulgaria/2013/09/09/2137176\\_prokuraturata\\_reshi\\_da\\_otchita\\_aktivnost\\_s\\_dela/](http://www.dnevnik.bg/bulgaria/2013/09/09/2137176_prokuraturata_reshi_da_otchita_aktivnost_s_dela/)

<sup>27</sup> An online media article criticises the criminal convictions of asylum seekers on account of their irregular entry, available at <http://www.legalworld.bg/32867.absurdno-e-da-bydat-sydeni-bejanci-vlezli-u-nas-za-da-tyrsiat-zakrila.html>

<sup>28</sup> Law on Asylum and Refugees, Article 75(1).

maker, who has another month for consideration and decision. If evidence is insufficient for taking a decision the law allows for the 3 months deadline to be extended for another 3 months at most, thus providing the SAR with a possibility to take 6 months in total to decide in the regular procedure.

Determination deadlines are not mandatory, but only indicative. Therefore if these deadlines are exceeded, this does not affect the validity of the decision. In practice, in the past the asylum procedure usually lasted between 4 to 6 months approximately, in some cases it can last up to 12 months. However, as the number of new arrivals continued to rise at a steady pace in 2014<sup>29</sup>, it challenged SAR to seek long-term institutional solutions with regard to asylum registration and status determination. SAR staff was expanded significantly (See sections on Asylum Procedure, A. General, Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance). Along with it, as the majority of the asylum seekers in Bulgaria are Syrian nationals, SAR started to apply a *prima facie* approach and assessed their applications with priority as “manifestly well-founded”. This enabled SAR to shorten status determination procedures to an average duration up to 6 months.

If the decision is negative, the appeal and court proceedings can add up to 12 more months in case the decisions in the regular procedure are reviewed by the courts on two instances. If the court finally reverts the first instance decision, the determining authority SAR has 14 days to issue a new decision, complying with the court's instructions on the application of the law. SAR however, continued to disrespect this 14 days deadline, and in many cases to again reject the asylum application despite the court's instructions. Repeated appeal procedures against the second negative decision can add to the asylum procedure to extend over two years. In attempt to reduce the workload of the Administrative court of Sofia city, previously responsible for handling all Dublin appeals as well as all appeals in the regular procedure as the first instance of appeal, the law was changed<sup>30</sup> to distribute the competence for the latter among all regional administrative courts, designated as per the residence of the asylum seekers, who submit the appeal.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure: ☒ Yes ☐ No
  - o if yes, is the appeal ☒ judicial ☐ administrative
  - o If yes, is it suspensive ☒ Yes ☐ No
- Average processing time for the appeal body to make a decision: 12 months

The negative decision taken in the regular procedure on the substance (merits) of the asylum application can be appealed within 14 days from its notification. In general, this time-limit proved sufficient for rejected asylum seekers to get legal advice, prepare and submit the appeal within the deadline. The decision-maker (SAR) is obligated to, and actually does, provide information to rejected asylum seekers as to where and how they can receive legal aid (see below, Legal assistance) when serving a negative decision. The law establishes two appeal instances in the regular procedure<sup>31</sup> - in contrast to appeal procedures for contesting decisions taken in Dublin and accelerated procedures, where first instance decisions are reviewed in only one appeal instance<sup>32</sup>. Appeal procedures are only

<sup>29</sup> 35% increase of newly arriving asylum seekers in 2014 (2013 - 7144 asylum seekers; 2014 - 11081 asylum seekers);

<sup>30</sup> Administrative Procedure Code, Article 133 (State Gazette №104 from 2013, enforced on 1 January 2014);

<sup>31</sup> Law on Asylum and Refugees, Article 90 (3).

<sup>32</sup> Law on Asylum and Refugees, Article 85 (4).

judicial; the law does not envisage an administrative review of asylum determination decisions, at all. Both appeals before the 1<sup>st</sup> and 2<sup>nd</sup> appeal courts have suspensive effect. The first appeal is held before the regional administrative court, where the respondent party (the decision-maker, SAR) has its territorial unit and where the appellant (the person lodging the appeal) resides<sup>33</sup>. The first appeal instance conducts a full review of the case, both on the facts and the points of law. Asylum seekers are summoned and questioned in a public hearing as to the reasons they applied for asylum. Decisions are published, but also served personally to the appellant. If the first instance appeal decision is negative, the asylum seekers can bring their case to the second (final) appeal court, the Supreme administrative court, 3<sup>rd</sup> Department, but only with regard to points of law. Both appeal courts have to issue their decisions within one month. However this deadline is indicative, not mandatory and therefore regularly not respected. Average duration of an appeal procedure before the court at both judicial instances is 12 months, although in more complex cases it can last up to 18 months.

### Personal Interview

#### Indicators:

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

The law requires<sup>34</sup> that asylum seekers, whose applications were admitted to the regular procedure, should be interviewed at least once with regard to the facts and circumstances of their applications. Decisions cannot be considered in accordance with the law, if the interview was omitted, unless it concerns a medically established case of insanity or other mental disorder. In practice, all asylum seekers are interviewed at least once in order to determine their eligibility for refugee or humanitarian (subsidiary protection) status. Second or more interviews are usually conducted only if there are contradictions in the statements or if some facts need to be clarified.

Presence of an interpreter ensuring interpretation into a language that the asylum seeker understands is mandatory according to the national legislation. The law provides for a gender sensitive approach as interviews can be conducted by an interviewer and interpreter of the same sex as the asylum seeker interviewed, upon their request. In practice, all asylum seekers are indeed asked explicitly whether they would like to have an interviewer or interpreter of the same sex in the beginning of each interview. Interpreters from key languages such as Arabic, Dari, Farsi, Pashto, Urdu, Kurdish, English, French and Russian are available. Problems to provide interpretation in practice arise in cases of rare languages such as Tamil and Somali. In these cases videoconference interpretation is used, however, due to financial constraints, interviewers are encouraged<sup>35</sup> to convince asylum seekers to agree to be interviewed in another language spoken by the asylum seeker, even though their level of knowledge of this second language is poor or close to non-existent. Training of interpreters is provided, though this is sporadic rather than on a regular basis. Most of the interpreters used by the State Agency for Refugees (SAR) did agree on and signed the Interpreter's Code of Conduct adopted in 2009; however its rules are not followed strictly in practice. For example, quite often the statements are summarized or the interpreters provide comments on their authenticity or likelihood. Lawyers representing asylum seekers during the interviews reported that burnout is a serious problem not only among interviewers, but also

<sup>33</sup> Administrative Procedure Code, Article 133 (State Gazette №104 from 2013, enforced on 1 January 2014).

<sup>34</sup> Law on Asylum and Refugees, Article 63a (3).

<sup>35</sup> Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2013, par. 3.2.2.

among interpreters as often impatience and irritation is being demonstrated by both, which finally results in issues only being addressed vaguely or summarized interpretations.<sup>36</sup>

All interviews are conducted by staff members of the SAR, whose competences include interviewing, case assessment and preparing a draft decision on the claim. Audio recording is possible and equipment is available in all interviewing rooms, however in practice the interviewers opt not to use it and systematically try quite hard to convince<sup>37</sup> asylum seekers that it is not necessary. As a result, audio recording has not been used in practice at all, despite the fact that UNHCR and NGOs repeatedly insisted on it as a solid safeguard against malpractice and corruption and despite the fact that the SAR included audio recording as a priority in its strategic objectives.<sup>38</sup> NGO determination monitoring<sup>39</sup> reported that in 100% of monitored cases asylum seekers were presented by the case-worker with a standard declaration to consent to not having the interview audio-recorded without being given explanations about its advantages. Therefore, almost all interviews are recorded in writing by the interviewers, many of them verbatim by typing questions/answers on a computer. In this way a proper interview report is created, printed immediately after the end of the interview, checked with the asylum seeker and corrected, if necessary. However, some of the interviewers continue to write down the interviews by hand and transcribe them at a later stage, which creates concerns about protocol's accuracy. In the latter case, the interview records are finalized after the interview, often days later, which raises justified doubts as to the precision and correctness of the records. It has to be noted that in practice most of the protocols, even if properly recorded are not read and interpreted to the asylum seeker, but simply presented for signing.

Refugee Status Determination (RSD) monitoring, implemented by legal NGOs<sup>40</sup> in 2014 demonstrated that 78% of monitored asylum claims (358 out of 461 monitored cases) were stated before a government institution other than the State Agency for Refugees (SAR). In 92% of these cases (423 cases) the supporting documents, collected by the relevant institution (Border or Migration police) were sent to the SAR in due time. In 70% of the monitored cases (323 cases) interviewers did not provide general guidance on determination procedures to asylum seekers. Evidence or proof, if any, which were submitted by asylum seekers were not duly put in writing in 0.2% of monitored cases (2 cases), which could result in such evidence not to be taken into consideration when applications were to be determined. In 8% of monitored cases (37 cases) the initial date of RSD procedure was delayed with more than 1 month from the date of the submission of the asylum claim before government agency (Border or Migration police) other than the SAR. Only in 1% of all monitored cases the interviews were tape-recorded as ultimate safeguard for a decision based on all facts and circumstances as stated by the asylum seeker. All interviews were recorded in writing by the interviewers, some by hand which created serious concerns about the accuracy of statement's description. Yet, in 74% of monitored cases (341 cases) the interviewer used "open" questions to allow the applicant to present their story in detail and all these cases asylum seekers were given an opportunity to clarify contradictions in statements, if such were observed.

### Legal assistance

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<sup>36</sup> Bulgarian Council on Refugees and Migrants, *Advocacy Paper on Access to Territory and Procedure*, 2010, par.3.1.4.

<sup>37</sup> Bulgarian Helsinki Committee, *2014 Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3. 4.

<sup>38</sup> State Agency for Refugees, *Strategic objectives*, 2012, <http://www.aref.government.bg/?cat=12>.

<sup>39</sup> Bulgarian Helsinki Committee, *2014 Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3. 4.

<sup>40</sup> Bulgarian Helsinki Committee, *2014 Sub-project monitoring report, Pillar 1: Asylum Seekers in Central Europe*, 25 January 2015.



*Indicators:*

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision? ☒ Yes ☐ not always/with difficulty ☐ No
- In the first instance procedure, does free legal assistance cover:  
☐ representation during the personal interview ☐ legal advice ☒ both ☐ Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
☒ representation in courts ☐ legal advice ☐ both ☐ Not applicable

In 2013, the national Law on Legal Aid was amended<sup>41</sup> to introduce mandatory legal aid for asylum seekers at all stages of status determination procedure, sponsored under the state budget. In the law, the provision of legal aid to asylum seekers is subject to the condition that legal aid is not already provided on another basis. According to the amendment, asylum seekers have the right to ask for the appointment of a legal aid lawyer from the moment of the registration of their asylum application. Before the law was amended, state funded legal aid was only available to asylum seekers at the appeal stage before the Administrative Court or Supreme Court, according to the law on legal aid. However, the National Bureau for Legal Aid (NBLA), an institution within the Ministry of Justice designated to manage legal aid funding, does not have any resources planned for legal aid to asylum seekers during status determination at first instance. The Bureau applied for funding for these activities from European Refugee Fund (ERF), but the application was rejected by SAR in its capacity as ERF responsible authority on account of other private legal aid providers.<sup>42</sup> Legal aid, provided under ERF projects from private legal aid providers consists of legal advice and representation during eligibility interviews as well as assistance to appeal negative decisions before the court. Interpretation costs are also covered as a part of legal aid projects to facilitate the communication between lawyers and asylum seekers. Remuneration for both lawyers and interpreters is calculated in accordance with the generally applicable official rates for the respective professions. However, NGO status determination monitoring<sup>43</sup> established poor quality of the legal services of private legal aid providers; also in practice during 2014 legal representation of asylum seekers in eligibility interviews were occasional, and rather exceptional than being a rule.

Beyond the framework of the abovementioned ERF-projects, under the law the legal aid at first instance is accessible to all asylum seekers, including those submitting a subsequent asylum application, if funds are available. However, as indicated, such funds are not secured by the State budget to the National Bureau for Legal Aid for the administrative phase of status determination procedure. Legal aid before the court at both judicial instances (regional administrative courts and Supreme administrative court) is funded under the State budget and is systematically granted to asylum seekers, unless the asylum application was a subsequent one without new evidence or facts involved. It has been criticized only with relation to the quality of the legal representation, which however is a general flaw of the legal aid system in Bulgaria.<sup>44</sup> NGO monitoring<sup>45</sup> reported that in more than 1/3 of the court hearings asylum seekers were not represented by a lawyer. In 44% of the cases there was a private lawyer hired by the asylum seeker, while legal aid lawyers were used to a lesser extent (21%). As regards unaccompanied asylum-seeking children, procedural representation by a lawyer was ensured in 60% of the cases, in 20% of them the legal representative being a legal aid lawyer. In the remaining 40% the unaccompanied children did not have legal representation during court proceedings. While the legal representation is

<sup>41</sup> Law on Legal Aid, Article 22(8), State Gazette №28/13, enforced on 23 March 2013.

<sup>42</sup> <http://www.aref.government.bg/ebf/docs/info%2018713.doc> (BG)

<sup>43</sup> Bulgarian Helsinki Committee, 2014 Annual RSD Monitoring Report, January 2015;

<sup>44</sup> Open Society Institute-Sofia, *Implementation Evaluation of the Law on Legal Aid 2007-2011*, par.8.

<sup>45</sup> Association for Refugees and Migrants, *Analytical Report on refugee court proceedings monitoring*, Sofia, October 2014, <http://abm-bg.org/wp-content/uploads/2014/01/Analytical-report.pdf>.

generally assessed as adequate, the relatively high percentage of lack of case's preparation (over 1/4 of the cases) is an indication of concern for the quality of provided legal assistance. A low level of preparedness has been found in 1/3 of the cases with legal aid lawyers, and in 1/4 of the cases with privately engaged lawyers.

### 3. Dublin

#### *Indicators:*

- Number of outgoing requests in the previous year: 34
- Number of incoming requests in the previous year: 7851
- Number of outgoing transfers carried out effectively in the previous year: 22
- Number of incoming transfers carried out effectively in the previous year: 174

#### *Procedure*

#### *Indicator:*

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? 2 months (60 days) approximately

EURODAC has been used as an instrument for checking the identity of all irregular migrants. Fingerprints taken by the border or immigration police are uploaded automatically in the SIS system and can be used for the purpose of implementing the Dublin Regulation. Nonetheless, all asylum seekers are systematically fingerprinted again by the Dublin Unit of the asylum authority (State Agency for Refugees - SAR) for technical reasons.

Under the law and in practice the Dublin procedure is applied systematically to all asylum applications, except in the case of subsequent applications.<sup>46</sup> The law does not establish criteria to determine the state responsible, but simply refers to the criteria listed in the Dublin Regulation. Most common criteria applied in both taking charge and taking back cases are previously issued documents and the Member state where the asylum seeker first entered. Bulgaria accepts responsibility for examination of the asylum application based on the humanitarian clause and mostly vis-à-vis document and entry reasons.<sup>47</sup> The sovereignty clause is used in few cases in combination with the humanitarian clause, mainly for family reasons. In cases where another Member state accepts the responsibility to examine the application of an asylum seeker who is in Bulgaria, the transfer is implemented within 2 months on average.

Asylum seekers are usually not detained in practice upon the notification of the transfer. However in certain cases transferred asylum seekers can be detained up to 5 days prior the transfer itself as a precautionary measure to ensure their timely boarding on the plane. In all cases the transfer is carried out without an escort. It should be noted that in practice sometimes asylum seekers agree to be detained for a couple of days before the flight to the responsible Member State as this is the only way for them to avoid any procedural problems that can delay their exit.

Asylum seekers to be transferred under the Dublin Regulation to another Member State are given a written decision stating the grounds for applying the Dublin Regulation and the right to appeal the transfer to the other Member State before the court. However, asylum seekers are not informed of the fact that requests are made for taking back/taking charge to the Member State deemed responsible nor of any progress made with regard to such requests, unless the applicant themselves requested the transfer and/or provided due evidence in this respect. Following the national developments in 2014 and

<sup>46</sup> Law on Asylum and Refugees, Article 67a (3).

<sup>47</sup> State Agency for Refugees, 2012 *National EUROSTAT Report*, Dublin Chapter, Annex 1 and 2.

particularly, SAR's increased institutional capacity<sup>48</sup>, the UNHCR lifted<sup>49</sup> its recommendations to halt the Dublin transfers to Bulgaria, excluding with regard to vulnerable categories of beneficiaries. Notwithstanding, UNHCR expressed its concerns on the sustainability of the improvements of the situation in Bulgaria, including because of the "potentially large number of pending Dublin transfers to Bulgaria". According to SAR as of 31 December 2014, 7851 requests under Dublin Regulation were pending, including 6873 "take back" requests and "take charge" requests as well as 978 requests for information under Article 34 of the Dublin Regulation.<sup>50</sup>

Asylum seekers who are returned from other Member States in principle do not have any obstacles to access the asylum procedure in Bulgaria upon their return. Prior to the arrival of Dublin returnees SAR informs the Border Police of the expected arrival and whether the returnee should be transferred to asylum reception centre or to an immigration detention facility. This decision depends on the phase of the asylum procedure of the Dublin returnee as outlined below. Hence, if the returnee has a pending asylum application in Bulgaria, he is transferred to a SAR reception centre because SAR usually suspends an asylum procedure when an asylum seeker leaves Bulgaria before the procedure was completed. If the Dublin Returnees' asylum application was rejected in absentia, but not served to the asylum seeker before he had left Bulgaria, the returnee is transferred to asylum reception centres. If, however, the Dublin returnee's asylum application was rejected with a final decision before he had left Bulgaria or the decision was served in absentia and therefore became final, the returnee is transferred to one of the detention immigration facilities, usually in the detention centre in Sofia (Busmantsi), while in case of lack of space, the returnee may also be transferred to Lyubimets detention centre (near the Turkish border). Parents are usually detained with their children. In exceptional cases children may be placed in child care social institutions while their parents are detained in immigration facilities, in cases when an expulsion order on account of national security threat is issued to any of the parents.

Even though a Dublin Returnee is formally accepted into Bulgaria under Article 13 of the Dublin Regulation (indicating no prior asylum application in Bulgaria), it could be the case that this person most probably has already been given an "application number" by SAR in Bulgaria but the application had not been formally registered, as had happened during the 'emergency period' of late 2013 – early 2014 when registration of individuals who entered Bulgaria during the said period was usually delayed for a period longer than 6 months. According to the national legislation, there is a practical gap of an unspecified period of time between the lodging of an asylum application and the physical registration of the applicant by SAR, contrary to the Article 6 of the Reception Directive.

There are situations, where asylum seekers, including Dublin returnees, forfeit their right to social assistance and accommodation. Usually, it is by request of asylum seekers in order to be allowed to live outside the reception centres, effectuated before they travelled to the returning country. This right can be forfeited by SAR, when asylum seekers have left the reception centre for more than three days without prior and due notice, which is the common Dublin cases situation. However, vulnerable applicants, especially families with small children, are generally accommodated upon the Dublin return in spite of this. There is no procedure to assess vulnerability, and the term 'vulnerable applicants' in practice is applied in general to families with small children and individuals with disabilities. For those who had opted to reside in an external address at their own expense by signing a declaration to this effect forfeit their right to accommodation and social benefits during the asylum procedure. If a Dublin returnee had signed such a declaration, it still applies when he is returned to Bulgaria and he will normally not be able to access accommodation in SAR reception centres or social benefits upon return.

The date of the Dublin interview is determined by those responsible for registration at the SAR at the moment of registration (mostly a week to ten days after the registration). The caseworkers are not informed about these dates as they received the list of the interviews to be conducted the evening

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<sup>48</sup> Kovachevtsi shelter (350 places) was closed on 1 November 2014, present SAR reception centers accommodation capacity -5650 individuals; appointed 303 SAR staff, of whom 14 registrars and 32 case-workers

<sup>49</sup> UNHCR Observations on the Current Situation of Asylum in Bulgaria, April 2014, Geneva as re-examined, following UNHCR Observations 'Bulgaria as a Country of Asylum' from 2 January 2014;

<sup>50</sup> *ibidem*



before or at the same day of the interview. The reports of the Dublin interviews were hand written and added to the hardcopy file. A certain time is needed to process all the Dublin decisions at the SAR head office before handing back the file to the caseworker.

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
- o if yes, is the appeal 

<input checked="" type="checkbox"/> judicial	<input type="checkbox"/> administrative
--	---
  - o If yes, is it suspensive 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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- Average processing time for the appeal body to make a decision: Not available

Appeals against decisions in the Dublin procedure are heard only before the Administrative court of Sofia and only at one instance. All other appeals against decisions rendered at first instance are heard before the respective administrative court located in the region where the asylum seeker is residing. Dublin appeals do not have a suspensive effect, but it can be awarded by the court upon an explicit request from the asylum seeker.

The time limit for lodging the appeal is 7 calendar days, which is equal to the time limit for appeal in the accelerated procedure. Appeal procedures are held in an open hearing, legal aid can also be awarded. Court accepts in practice all kind of evidence in support of the appeal, including on the level of reception conditions and procedural guarantees to substantiate its decision, which was the case for all Dublin transfers to Greece until they were discontinued under the sovereignty clause in 2011. The court practice however is quite poor as very few Dublin decisions on transfers to other Member States are challenged. That is why no clear conclusions can be made whether national courts take in principle into account the reception conditions, procedural guarantees and recognition rates in the responsible Member state when reviewing the Dublin decision.

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure? 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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- If so, are interpreters available in practice, for interviews? 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
- Are interviews conducted through video conferencing? 

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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The law<sup>51</sup> does not require the organisation of a personal interview in the Dublin procedure, rather it gives an opportunity to the interviewer to decide whether the interview is necessary or not in light of all other related circumstances and evidence. If an interview is conducted it is not different than any other eligibility interviews in the asylum procedure except relating to the type of questions asked in order to verify and apply the Dublin criteria. Similar to the regular procedure, an audio recording is possible and equipment is available in all interviewing rooms. However, in practice, the interviewers opt not to use it and systematically try to convince asylum seekers that it is not necessary. As a result, the audio recording has not been used in practice in Dublin procedures either. Prior the influx in autumn 2013, the decision-maker in State Agency for Refugees (SAR) conducted Dublin interviews in all cases, not only when it was established from other statements (during the registration) or already collected evidence (e.g. documents, tickets, visas, EURODAC hits) that it was likely that another Member State would be responsible for the examination of the asylum application. The Dublin interview template repeats many of the questions and queries already listed in the registration form as it focuses on entry

<sup>51</sup> Law on Asylum and Refugees, Article 67b (2).

routes, previous visits or residence in other Member States or establishment of family members in these states. This approach however proved inadequate in a situation of growing number of new arrivals. In practice it takes one-month on average to organise a Dublin interview, which may lead to further delays in the asylum procedure in a situation of an increased influx. Additional problems are created by the fact that the decision-making process remains multi-staged and centralized as far as the Dublin decisions are concerned as such decisions can be issued only by the SAR's Dublin Unit, which is in the headquarters of the SAR in Sofia<sup>52</sup>. Therefore, the EASO mission in Bulgaria recommended that Dublin interviews should be combined with the registration of the asylum seekers; thus use only one form instead of two similar forms; as well as competences to issue Dublin decisions to be delegated or distributed from SAR Dublin Unit to the local staff at the reception/transit centres around the country.

There are no guidelines or a code of conduct for asylum officers, elaborating on the manner interviews should be conducted. There are currently no gender sensitive mechanisms in place in relation to the conduct of interviews, except the asylum seekers' right<sup>53</sup> to ask for an interpreter from the same gender.

The SAR does not exclude any caseloads or nationalities from interviews.

There have been so far no complaints about the quality of transcripts of interviews.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? ☐ Yes ☒ always/with difficulty ☐ No

Amendments of the national law (Law on Legal Aid<sup>54</sup>) now provide for state funded representation in procedures before the administration. As a result, legal aid financed by the State budget became available to asylum seekers during the Dublin procedure in 2013, additionally to already available legal aid during an appeal procedure before the court. In practice however due to financial constraints and deficiencies, the legal aid during the Dublin procedure is highly dependent on the available ERF funding and projects (see section Regular procedure, legal assistance).

The same conditions and the same problems as for legal aid provided during the regular procedure apply to legal aid provided during the Dublin procedure.

### Suspension of transfers

#### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? ☒ Yes ☐ No
  - o If yes, to which country/countries? Greece

Bulgaria suspended all Dublin transfers to Greece in 2011, thereby assuming responsibility for examining the asylum applications of the asylum seekers concerned. The suspension of Dublin

<sup>52</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>53</sup> Article 63a(4) of the Law on Asylum and Refugees.

<sup>54</sup> See Section on Asylum Procedures, Regular Procedure, *Legal assistance*.

transfers to Greece was decided by the State Agency for Refugees (SAR)<sup>55</sup> as a matter of overall policy and was based on the UNHCR's position related to the matter. As a result, all asylum seekers who otherwise should be returned to Greece on the basis of the Dublin Regulation were admitted to the next stages of the status determination procedure (accelerated and, after, regular procedure) with full access to all available rights and entitlements. This policy is presently applied in practice since 1st August 2011 but it has been reported that for some months after the *M.S.S. v Belgium and Greece* judgment of the European Court of Human Rights, until August 2011 Dublin transfers to Greece were still carried out.<sup>56</sup>

Suspensions of transfers are not automatic, as there might be cases of “take charge”, where applicants have family members in other EU Member States, or other circumstances that engage the responsibility of another state. Due to the level of material reception conditions in Bulgaria, there have been any appeals against Dublin transfer decisions to any other EU Member State.

On 2 January 2014 the UNHCR issued a paper<sup>57</sup> that assesses the prevailing reception conditions and asylum procedures in Bulgaria, including the situation for people transferred to Bulgaria under the Dublin Regulation. The paper alerted that with the exponential rise in the numbers of the new arrivals in Bulgaria since the autumn of 2013, the previously existing gaps in the national asylum system have worsened with serious impact on affected asylum seekers. UNHCR concluded that asylum-seekers in Bulgaria face a real risk of inhuman or degrading treatment, due to systemic deficiencies in both the reception conditions and asylum procedures and urged other EU member-states to halt all transfers of asylum seekers to Bulgaria pursuant the Recast Dublin Regulation where it applied. On 15 April 2014, UNHCR lifted its call for all Dublin transfers to Bulgaria to be suspended in light of the improvements in the asylum system and reception conditions that were achieved with the support of UNHCR, EASO and non-governmental stakeholders. Nevertheless, it continued to raise concerns with respect to access to the territory, inadequate reception conditions in two of the centres; the lack of systematic identification of vulnerable asylum seekers (and in particular (unaccompanied) children) and of a system to respond to their needs; the quality of decisions on asylum applications and procedures, and the absence of an integration programme for those who have been granted a protection status. UNHCR expressed particular concern that “in the absence of a solid strategy and sustainable programme to ensure access to livelihoods, affordable housing, language acquisition and effective access to formal education for children, beneficiaries of international protection may not have effective access to self-reliance opportunities and thus may be at risk of poverty and homelessness”.<sup>58</sup> UNHCR therefore acknowledged that, despite the improvements, there may be reasons that preclude transfer to Bulgaria under the Dublin Regulation “for certain groups or individuals”. In particular, UNHCR recommends particular vigilance with respect to the transfer of asylum seekers with specific needs and vulnerabilities. It also remains concerned over the sustainability and the consolidation of the efforts undertaken in the medium and longer-term.

Both ECRE and Amnesty International called for the continued suspension of transfers of asylum seekers to Bulgaria in light of the fact that inadequate conditions in parts of the reception system and deficiencies in the asylum procedure continue to remain, while also the sustainability of improvements to the asylum system in Bulgaria in the longer term is questionable.<sup>59</sup>

#### **4. Admissibility procedures**

##### *General (scope, criteria, time limits)*

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<sup>55</sup> State Agency for Refugees, Order №419 from 29 July 2011.

<sup>56</sup> See [European network for technical cooperation on the application of the Dublin II Regulation. Bulgaria, p. 42.](#)

<sup>57</sup> UNHCR, Bulgaria as a Country of Asylum: UNHCR Observations on the Current Situation of Asylum in Bulgaria, 2 January 2014.

<sup>58</sup> UNHCR, UNHCR observations on the current asylum system in Bulgaria, April 2014, available at: <http://www.refworld.org/docid/534cd85b4.html>.

<sup>59</sup> See ECRE, *ECRE reaffirms its call for the suspension of transfers of asylum seekers to Bulgaria under the recast Dublin Regulation*, 7 April 2014 and Amnesty International, *Suspension of Returns of Asylum-Seekers to Bulgaria must continue*, March 2014.

National legislation provides for a combined initial examination of the asylum application on both admissibility and manifestly unfounded grounds, which is to be distinguished from the regular procedure, where the examination is focused on the merits of the asylum application. The initial examination can result in finding the asylum application inadmissible, if the applicant is already granted protection in another EU state or safe third country,<sup>60</sup> or if the application is a subsequent asylum application without any new facts or evidence submitted.<sup>61</sup> The first ground is rarely applied due to lack of such hypotheses, but inadmissibility is systematically ruled out in practice on subsequent applications. However, during the initial examination the asylum application could be found admissible, but manifestly unfounded, if the applicant did not state any grounds for persecution at all, or, if their statements were unspecified, implausible or highly unlikely. This combined initial stage of the examination of the asylum application is according to the law considered as an "accelerated procedure". Therefore all issues related to the admissibility assessment are discussed in section 6 on the accelerated procedure.

#### *Appeal*

As described above in the section appeal under regular procedures.

#### *Personal Interview*

As described above in the section personal interview under regular procedures.

#### *Legal assistance*

As described above in the section legal assistance under regular procedures.

### **5. Border procedure (border and transit zones)**

There is no border procedure in Bulgaria.

### **6. Accelerated procedures**

#### *General (scope, grounds for accelerated procedures, time limits)*

The accelerated procedure is designed to examine the admissibility of the asylum application, but also the likelihood of the application being fraudulent or manifestly unfounded.<sup>62</sup> The examination can result in finding the asylum application inadmissible, in case the applicant is already granted protection or a permanent residence permit in another EU state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can also be found manifestly unfounded, if the applicant did not state any reasons for applying for asylum related to grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. All grounds are applied in practice. The decision within an accelerated procedure should be issued within 3 days from the decision that Bulgaria is responsible to examine the asylum application concerned.<sup>63</sup> If the decision is not taken within this timeframe, the asylum application is automatically transferred for examination on the merits under the regular procedure. However, the law requires the State Agency for National Security (SANS) to provide an opinion as to whether the person concerned constitutes a threat to national security in every asylum application, which as a result of the Dublin procedure was determined to be of the responsibility of Bulgaria. If such opinion has not been provided no decision can be issued neither in accelerated, nor in the regular procedure. Therefore, in practice the 3 days deadline of the accelerated procedure is rarely observed and the majority of the asylum applications are automatically transferred for determination in the regular procedure. Hence, in practice the accelerated procedure is applied only with regard to subsequent applications, where the opinion of the SANS has been already collected during the first examination of the claim. In 2010 and in 2014 the

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<sup>60</sup> Article 13 (2) of the Law on Asylum and Refugees (LAR).

<sup>61</sup> Article 13(1), item 5 of the Law on Asylum and refugees (LAR).

<sup>62</sup> Law on Asylum and Refugees, Article 13(1), items 1-4 and 6-14.

<sup>63</sup> Law on Asylum and Refugees, Article 70(1).

Bulgarian Helsinki Committee, a legal NGO, communicated to the SAR a suggestion to amend the law<sup>64</sup> and remove the security checks from status determination procedure stages, which are prior to the regular procedure because, even if established, any circumstances relating to a national security threat can be taken into account as an exclusion ground only if the inclusion clauses have been met in the particular case and such assessment can be done only in the regular procedure and not earlier than that. A similar recommendation was also made by the EASO in its 2014 mission report on Bulgaria.<sup>65</sup>

The authority responsible for taking decisions at first instance on asylum applications in the accelerated procedure is the State Agency for Refugees (SAR), through caseworkers specially appointed for taking decisions in this procedure. In practice all asylum applications are channelled first through the accelerated procedure as a mandatory phase of the status determination, except the claims of separated children, unaccompanied children or adolescent asylum seekers who are explicitly exempt from the accelerated procedure under the law<sup>66</sup> and have immediate access to an in-depth assessment of the substance of their asylum application in the regular procedure.

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
- o if yes, is the appeal:

<input checked="" type="checkbox"/> judicial	<input type="checkbox"/> administrative
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- o If yes, is it suspensive?

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

Appeals in the accelerated procedure have to be submitted within 7 calendar days (excluding public holidays) after notification of the negative decision, as opposed to the 14 calendar days deadline in the regular procedure. Another major difference with the regular asylum procedure is related to the number of judicial appeal instances. In the accelerated procedure there is only one judicial appeal possible, whereas in the regular procedure there are two appeal instances (a 1<sup>st</sup> instance appeal to the Court competent to review both to facts and legality of the first instance decision and an onward appeal in which only points of law are considered).

Lodging an appeal has automatic suspensive effect *vis-à-vis* removal of the asylum seeker. The court competent to revise first instance decisions in the accelerated procedure is the administrative court of the county in which the appellant resides. The court has the obligation to ascertain whether the assessment of the admissibility or the manifestly unfounded character of the claim is correct in view of the facts, evidence and legal provisions applicable. Asylum seekers have to be summoned for a public hearing and in practice are asked to shortly summarise their reasons for fleeing their country of origin and seek protection elsewhere.

In general, asylum seekers do not face significant obstacles to lodge an appeal in the accelerated asylum procedure within the 7 day deadline. However, national legal aid arrangements only provide for state funded legal assistance and representation after a court case has been initiated, i.e. after the appeal has been drafted and lodged. As a result, asylum seekers rely entirely on NGOs for their access

<sup>64</sup> Bulgarian Helsinki Committee, 2010 Annual Comment and Proposal for Draft Amendments to the Law on Asylum and Refugees, Exh.№5-01/15.01.2010 and 2014 Comments on the Draft Amendments to the Law on Asylum and Refugees, February 2014.

<sup>65</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>66</sup> Law on Asylum and Refugees, Article 71 (1).

to the court, i.e. for drafting and lodging the appeal. Presently, only one NGO<sup>67</sup> provides this type of assistance independently from ERF funding.

### *Personal Interview*

As described above in the section legal assistance under regular procedures. The questions asked during interviews in the accelerated procedure aimed at establishment of facts relate the individual refugee story, although in less detail in comparison with the interviews conducted within the regular procedure. Facts, such as travel routes, identity and nationality are in principle exhaustively addressed prior the accelerated procedure at the stages of registration and/or the Dublin procedure.

### *Legal assistance*

As described above in the section legal assistance under regular procedures.

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

### *Indicators:*

- Is sufficient information provided to asylum seekers on the procedures in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- 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 ☐ not always/with difficulty ☐ No

The law<sup>68</sup> explicitly mentions the obligation of the asylum administration to provide information to asylum seekers within 15 days from the submission of the application. The common leaflet and the specific leaflet for UAMs drafted by the Commission as part of the Dublin Implementing Regulation<sup>69</sup> are not being used in Bulgaria and provided to asylum seekers. The information should cover both rights and obligations of asylum seekers and the procedures that will follow. Information on existing organisations that provide social and legal assistance has to be given as well. The information has to be provided in a language the asylum seeker declared that he understands or, when it is impossible – in a language the asylum seeker may be reasonably supposed to understand. The law does not specify whether the information should be provided orally or in writing, but in practice the information is always provided to asylum seekers in writing in the form of a leaflet translated in the languages spoken by the main nationalities seeking asylum in Bulgaria, such as Arabic, Farsi, Dari, Urdu, Pashto, Kurdish, English and French.

<sup>67</sup> Since 1994 UNHCR has been supporting and partnering Bulgarian Helsinki Committee with regard to protection and legal assistance to asylum seekers in Bulgaria

<sup>68</sup> Law on Asylum and Refugees , Article 58(6).

<sup>69</sup> Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national



Information by leaflets - or where needed in another way (UNHCR or NGOs info boards) - is usually provided by the SAR from the initial application (e.g. at the border) until the registration process is finished<sup>70</sup>. However, leaflets are quite long and the explanations are deemed by most of the asylum seekers to be complex and difficult to understand. NGOs, in particular UNHCR's implementing partners, develop and distribute other leaflets that are simpler and easier to read and some do operate reception desks where this kind of information is also provided orally to the asylum seekers. In addition, all European Refugee Fund projects for legal aid so far included the provision of oral legal consultations on the rights, obligations and procedures pending each type of the status determination procedure at the first instance. The most pressing problems in practice related to this approach are the time gaps in between the different projects which sometimes can last for months, during which period the consultations are not available for asylum seekers. There is a need to update the information in the present leaflets, distributed by the SAR in order to provide sound and clear information to asylum seekers not only about the status determination procedure and their rights during the procedure, but on which of the various actors they can turn to in order to receive clarification, further counselling and/or assistance relating to different aspects of their situation that may concern them.

As mentioned under the section "Registration of the asylum application" registration of asylum applications is seriously delayed. Moreover, SAR does not meet its obligation<sup>71</sup> to provide, in a language comprehensible to the applicant, within fifteen days from the date of the submission of the asylum application, information as to the terms and procedures to be applied and their rights and obligations in the procedures, as well as organisations providing legal and social assistance. This is breach of Bulgaria's obligations under Article 5 of the 2003 EU Reception Conditions Directive, which have been slightly strengthened in Article 5 of recast Directive 2013/33/EU, which needs to be transposed by Member States at the latest by 20 July 2015. This situation worsened after the 2013 influx. For several months until February 2014 the information, including legal information with regard to rights, obligations and procedures, was provided to asylum seekers by NGOs and UNHCR. BHC together with UNHCR also distributed leaflets and boards with information specifically adapted to the particular emergency situation, e.g. types of procedures to follow, rights and obligations, lack of accommodation, delays in registration and identification, etc. This information was provided in English, French, Arabic, Farsi/Dari and Kurdish. Additionally, UNHCR supported the provision of legal counselling to asylum seekers during 2014 as a measure under 'Emergency 1' Operational Level, effectuated in Bulgaria until 31 December 2014. Thus, in 2014 asylum seekers as well as recognised individuals had access to qualified legal information and consultations relating to national asylum procedures and rights and obligations pending determination as well as after recognition or rejection. NGO operated telephone lines in Arabic and Farsi/Dari languages opened in November 2013 continued to operate throughout the whole of 2014, but closed in the beginning of 2015. Information and consultations provided by BHC network lawyers in 2014 in all SAR centers and shelters were also stopped in January 2015.

Information materials (boards, leaflets and a web-accessible tool) were also developed and disseminated to enable the access of asylum seekers to coherent and credible information on status determination procedures and their rights and obligations during and after the recognition or the rejection. The leaflets and the boards covered the most important topics of inquiry<sup>72</sup>, translated in most common languages<sup>73</sup> and distributed in all asylum centres and shelters and Sofia Information Centre for Urban Beneficiaries, operated in Sofia by the Bulgarian Red Cross. An RSD e-handbook was drafted, translated and put into operation on-line<sup>74</sup> thus providing correct and comprehensive legal information to asylum seekers in a sustainable manner beyond the end of 2014.

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<sup>70</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>71</sup> Law on Asylum and Refugees, Article 58(6).

<sup>72</sup> Leaflet topics covered: "Who is a refugee", "Documents", "Rights and Obligations", "Dublin procedure", "Accelerated procedure", "General procedure", "Appeal", "Family reunification" and "Voluntary return".

<sup>73</sup> English, French, Arabic, Farsi, Dari, Urdu and Pashto.

<sup>74</sup> See, [www.asylum.bg](http://www.asylum.bg).

Among all types of different status determination procedures, the Dublin procedure proved to be the most difficult for asylum seekers to comprehend despite the considerable amount of written materials produced in practice to inform them about it. Another difficult issue is detention and the reasons why a person who applied for asylum can remain detained without a transparent and fixed maximum period of detention. NGOs, lawyers and UNHCR staff have unhindered access<sup>75</sup> to all border and inland detention centres and try to provide as much information as possible related to detention grounds and conditions. Despite that, the subject of detention remains hard to explain as an extremely high percentage of asylum seekers claim that they do not understand reasons why they are kept in detention in principle as all other irregular migrants<sup>76</sup>

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
☐ Yes ☒ No
- Is a removal order suspended during the examination of a first subsequent application?
  - At first instance ☒ Yes ☐ No
  - At the appeal stage ☒ Yes ☐ No
- 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 law<sup>77</sup> deals with subsequent asylum applications within the context of the accelerated procedure. Such applications are considered inadmissible, if the asylum seeker did not state in their subsequent asylum application any new facts or circumstances or did not provide new evidence. Within 3 calendar days (excluding public holidays) after lodging the subsequent asylum application the decision-maker (State Agency for Refugees - SAR) has to establish these facts and if this deadline is not being met, the subsequent application should be automatically referred to a regular procedure. Automatic referral of the asylum application to a regular procedure is regulated in the law<sup>78</sup> to encourage SAR's interviewers to make a decision within the 3-day deadline. Thus, a subsequent application can be examined in the regular procedure, but not because it was considered admissible, but because the case worker missed the deadline to declare it inadmissible within the strict terms of the accelerated procedure. The same rules apply regardless of the actual number of subsequent applications that have been submitted (first, second or more) or the time that lapsed between the submission of the subsequent application and the first or any other previous status determination procedures. Usually, subsequent asylum applications are being rejected in the accelerated procedure within the 3-day deadline. In case the SAR decides not to refer the subsequent asylum application to the regular procedure, it will have to prove before the court that the stated facts are not new but were already examined in the previous asylum procedure.

It is mandatory by law to organise an interview in the case of a subsequent asylum application and this was strictly applied in practice until autumn of 2013. Interviews with subsequent applicants, halted in the end of 2013 after the increase of the number of asylum applications, started again in mid-2014. Before, when there were no new statements, facts or evidence provided by the asylum seeker, the interviews

<sup>75</sup> For more information, see: 2012 Tri-Partite Annual Border Monitoring Report by UNHCR, General Directorate Border Police and Bulgarian Helsinki Committee.

<sup>76</sup> JRS Europe, *Becoming Vulnerable in Detention (Detention of Vulnerable Asylum Seekers - DEVAS Project)*, 2010, National Chapter on Bulgaria, p.147 - points. 3.1 and 3.2.

<sup>77</sup> Law on Asylum and Refugees, Article 13 (5).

<sup>78</sup> Law on Asylum and Refugees, Article 70 (2)



were just a formality. Decisions on subsequent asylum applications can be appealed under the same terms as any other decision made in the accelerated procedure, i.e. – within the 7-day deadline and before the respective county court in the area of residence of the asylum seeker. The Court's decision is final. Legal aid can be requested, but it is rarely provided by the court to asylum seekers lodging a subsequent asylum application, unless there are new facts and circumstances related to the subsequent asylum application.

The main obstacles for asylum seekers who lodge a subsequent application include the lack of a right to be accommodated as well as the considerably delayed registration of all subsequent asylum applications, which can be postponed for months by the SAR. These obstacles are a matter of policy, not law and are applied by the SAR in order to discourage the applicants to pursue their subsequent application. During this period of time asylum seekers remain undocumented and risk detention and deportation.

Lodging an appeal against a negative decision on a subsequent asylum application has automatic suspensive effect. From the moment of registration of the subsequent asylum application until the moment when the negative decision on such application becomes final (i.e. when there are no more possibilities to appeal before the court, meaning one court instance in case the subsequent application is processed in the accelerated procedure, two court instances when the subsequent application is processed in the regular procedure), the removal order is also automatically suspended under the law.<sup>79</sup> However, in the draft law 19 November 2013 amending the Law on Asylum and Refugees (LAR)<sup>80</sup>, re-introduced in December 2014<sup>81</sup>, this arrangement is maintained only with respect to first subsequent applications and deleted with regard to second, or any following, subsequent applications. If adopted, the amendment would allow the removal of the applicant, if his/her first subsequent asylum application is refused with a final decision, regardless of the submission of any following subsequent application by that person.

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

### **1. Special Procedural guarantees**

#### *Indicators:*

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ No ☐ Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ No ☐ Yes, but only for some categories

The law does not envisage any specific identification mechanisms for vulnerable categories of asylum seekers, except for children. Neither guidelines, nor practice exist to accommodate the specific needs of these groups. The law does not exclude the application of accelerated procedure with regard to torture victims, but it is excluded for unaccompanied asylum seeking children. Identification is mainstreamed in the training of caseworkers, and special trainings are rarely provided. In 2008 the SAR and UNHCR agreed<sup>82</sup> on standard operation procedures (SOPs) to be followed with respect to treatment of victims of Sexual and Gender-based Violence (SGBV). However, these were never applied in practice and therefore presently a process for revision<sup>83</sup> of the SOPs is ongoing, which also aims to include new

<sup>79</sup> Law on Asylum and Refugees, Article 67 (1);

<sup>80</sup> Law on Asylum and Refugees Draft Amendments, Article 29 (9), available at <http://www.parliament.bg/bg/bills/ID/15049/> /BG/

<sup>81</sup> Ibid. <http://www.parliament.bg/bg/bills/ID/15049/> /BG/

<sup>82</sup> SGBV SOPs, Exh.№630 from 27.02.2008.

<sup>83</sup> UNHCR Representation in Sofia, SGBV Task Force, established on 15 February 2014.

categories or vulnerable groups. However, as of 31 January 2015 the SOPs revision has not been finalised and adopted by SAR.

NGOs are very concerned by the lack of procedural guarantees for vulnerable asylum seekers in the Bulgarian asylum procedure. Most worrying is the situation of unaccompanied asylum-seeking children who are not appointed legal guardians during the examination of their asylum application. The law provides that a legal guardian needs to be appointed immediately.<sup>84</sup> However, if a guardian is not appointed, whatever the reason may be, the law allows<sup>85</sup> a social worker to be appointed instead to assist the child during the examination. Thus, the law stipulates the right of the administration (State Agency for Refugees) to disregard the standard for the protection of the child and to determine the child's asylum application without a guardian, if the interviews are conducted in the presence of a social worker. Social workers however cannot legally replace guardians and assume their functions. The special Law on Child Protection explicitly envisages<sup>86</sup> that any administration conducting any type of hearing with a child should do so in the presence of a parent, guardian or other person who provides direct care and who is familiar with the child concerned. Notwithstanding, in addition the law also requires<sup>87</sup> the assistance of a social worker during the hearing. Thus, the law itself explicitly distinguishes the functions of guardians and social workers<sup>88</sup> who cannot replace one another. The expert group appointed by the Parliamentary Commission on Human Rights to provide an analysis of the November 2013 draft amendments to the asylum law<sup>89</sup> unanimously advised the Commission to amend the draft with provisions relating to the mandatory appointment of guardians to unaccompanied asylum seeking children. The draft was not voted during the previous 42<sup>nd</sup> Parliament, but presently is being re-introduced before the new 43<sup>rd</sup> Parliament with adoption procedures currently pending..

In practice, for the time being this legal opportunity is applied extensively by the asylum administration and in all cases status determination is carried out with the assistance of social workers instead of appointed guardians. However, the law does not provide for any mandatory training of the social workers relating to the special situation of unaccompanied asylum-seeking children or even relating to the aim and modalities of the asylum procedure in general. Lacking basic skills and knowledge the social workers cannot and do not assist and advise properly the unaccompanied asylum-seeking children, especially in a situation where legal aid is not secured (as described in the section on legal assistance under regular procedures). UNHCR and NGO reports raised concerns related to cases where the lack of training of the social workers assisting unaccompanied children impacted negatively on the outcome of their asylum procedures.<sup>90</sup>

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
☐ Yes ☐ Yes, but not in all cases ☒ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

The legislation does not explicitly provide for the possibility of proving past persecution or harm by medical reports specifically, but neither prohibits any type of any expert opinion, written or oral evidence in this respect. Therefore medical reports can be and, in practice, are used to support the assessment

<sup>84</sup> Family Code, Article 153 (3).

<sup>85</sup> Law on Asylum and Refugees, Article 25 (5).

<sup>86</sup> Law on Child Protection, Article 15 (5).

<sup>87</sup> Law on Child Protection, Article 15 (5)

<sup>88</sup> Law on Child Protection, Article 3 (3).

<sup>89</sup> National Parliament, Human Rights Commission, Communication from 16 December 2013.

<sup>90</sup> Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3.5.

of the asylum application. However, such reports are only exceptionally commissioned by the case worker of the decision-making authority (State Agency for Refugees – SAR). In most if not all of the cases where medical reports were provided, this was at the initiative of the asylum seeker or their legal representative. The costs for such medical report are covered by legal aid where it is awarded and legal aid is awarded in the majority of cases. However, in case no legal aid is awarded, the costs related to the medical report are at the asylum seeker's own cost. Even if a medical report is submitted, case workers only rarely take them into account, particularly if these are medical assessments related to torture, trauma or sexual violence, provided by NGOs notwithstanding their specialisation or expert quality (e.g. specialised associations for torture survivors<sup>91</sup>, which apply the Istanbul Protocol). The law only in one particular case<sup>92</sup> mandatorily requires the case worker to order a medical examination, i.e. if there are indications that the asylum seeker might be mentally ill. In this case, if the result of the medical examination report shows that the asylum seeker suffers from disease or mental illness, the case worker approaches the decision-maker, the SAR's chairperson, who refers the case to the court for appointment of a legal guardian to the asylum seeker which is required in order to be able to continue with the examination of the asylum application.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
☒ Yes      ☐ No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
☒ Yes      ☐ No

Under the law<sup>93</sup> an age assessment should be requested by the caseworker in the case of an asylum application of an unaccompanied child, but the provision requires this only if there are doubts that the applicant is not actually a child. However, the law, does not state the method of the age assessment. In practice, the wrist x-rays method is applied systematically in all cases based on the assumption that this method is more accurate than a psycho-social inquiry. The Supreme Administrative Court,<sup>94</sup> however, considers this test as non-binding and applies the benefit of the doubt principle, which is also explicitly laid down in the national legislation.<sup>95</sup> Social workers have an obligation to provide a social report with an opinion on the best interest of the child concerned in every individual case. The legal guardians have the right and obligation to represent the children during their status determination procedure and actively support the establishment of facts and circumstances, ask questions, appeal negative decisions, and - most importantly - to ensure that a lawyer is appointed for all these activities. Recent jurisprudence of the Administrative Court Sofia City ruled that status determinations, in absence of an appointed guardian are unlawful, but this has had no impact yet on the practice.<sup>96</sup>

Theoretically there is a sufficient number of legal representatives – 1273 registered alone in Sofia – available to represent all unaccompanied children, if the law is actually and properly enforced. However, training would need to be provided to legal aid lawyers with respect to the specific needs of unaccompanied asylum seeking children during the status determination procedures.

<sup>91</sup> ACET Center for Torture Survivors, Nadya Center.

<sup>92</sup> Law on Asylum and Refugees, Article 61 (4)

<sup>93</sup> Law on Asylum and Refugees, Article 61 (3)

<sup>94</sup> Supreme administrative court, *Nuokedi Michael Oniebuchi*, Case №7749/2009, 3rd department, Decision №13298 from 9 November 2009.

<sup>95</sup> Law on Asylum and Refugees, Article 75 (2).

<sup>96</sup> Administrative Court Sofia City, *Omar Jumaa Hadji*, Case N7294/2012, Section 42, Decision N5882 from 5 November 2012; Administrative Court Sofia City, *Jaqueline Almasa Planic*, Case N8251/2012, Section 42, Decision N6063 from 12 November 2012; Administrative Court Sofia City, *Mohammed Sabar Khalaf*, Case N7342/2012, Section 3, Decision N6297 from 23 November 2012; Administrative Court Sofia City, *Anuar Bedar Naso*, Case N9090/2012, Section 16, Decision N6737 from 10 December 2012.

NGO monitoring<sup>97</sup> reported that 60% of unaccompanied asylum-seeking children were represented during court appeal procedures in case of a refusal. In 20% of these cases the legal representative was a state legal aid lawyer. The unrepresented 40% of unaccompanied children did not have legal representation during court proceedings, either because they failed to request it explicitly, or because the court failed to observe this safeguard on their behalf. While the legal representation is generally being assessed by the NGO monitoring as adequate, the relatively high percentage of lack of case's preparation (over 1/4 of the cases) is an indication of concern for the quality of provided legal assistance. A low level of preparedness has been found in 1/3 of the cases with legal aid lawyers, and in 1/4 of the cases with privately engaged lawyers. It is only in half of the cases that the lawyer submitted evidence in the course of the court hearing: in 50% of the cases with a legal aid lawyer and in over 52% of the cases with a lawyer hired by the asylum seeker. Nevertheless, only in 15% is registered a formal approach on behalf of the lawyer involved in the particular case, while in 85% of cases the legal representation is based on evident careful preparation and probing into the specifics of the individual case.

## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? ☐ Yes ☒ No
- Is there a list of safe countries of origin? ☐ Yes ☒ No
- Is the safe country of origin concept used in practice? ☐ Yes ☒ No
- Is the safe third country concept used in practice? ☐ Yes ☒ No

National legislation<sup>98</sup> allows for the use of a safe country of origin and safe third country concept in the asylum procedure. Prior to the EU accession, national lists of safe countries of origin and third safe countries were adopted annually by the asylum administration (State Agency for Refugees - SAR) and applied extensively to substantiate negative first instance decisions.

However, the national court considered that the safe country of origin and safe third country concept can only be applied as a rebuttable presumption<sup>99</sup> that could be contested by the asylum seeker in each and every individual case. In 2007, the national law was amended<sup>100</sup> to introduce explicitly the right for the asylum seeker to rebut the safe country presumption. The amendment also referred to the EU common list of safe countries of origin that was supposed to be adopted according to Article 29 2005 Asylum Procedures Directive as the only source applicable for considering a country of origin as safe. As a result, ever since the adoption of this amendment, the safe country of origin concept became inapplicable in practice as far as such a common EU list has never been adopted. The 2007 amendment makes the same reference to the Asylum Procedures Directive with regard to the adoption of the national safe third countries list, apparently based on an erroneous reading of the Asylum Procedures Directive. For this reason, there is no safe third countries list and the safe third country is not applied as a concept.

<sup>97</sup> Association for Refugees and Migrants, *Analytical Report on refugee court proceedings monitoring*, Sofia, October 2014, <http://abm-bg.org/wp-content/uploads/2014/01/Analytical-report.pdf> /BG/

<sup>98</sup> Law on Asylum and Refugees, Article 13 (1), item 13.

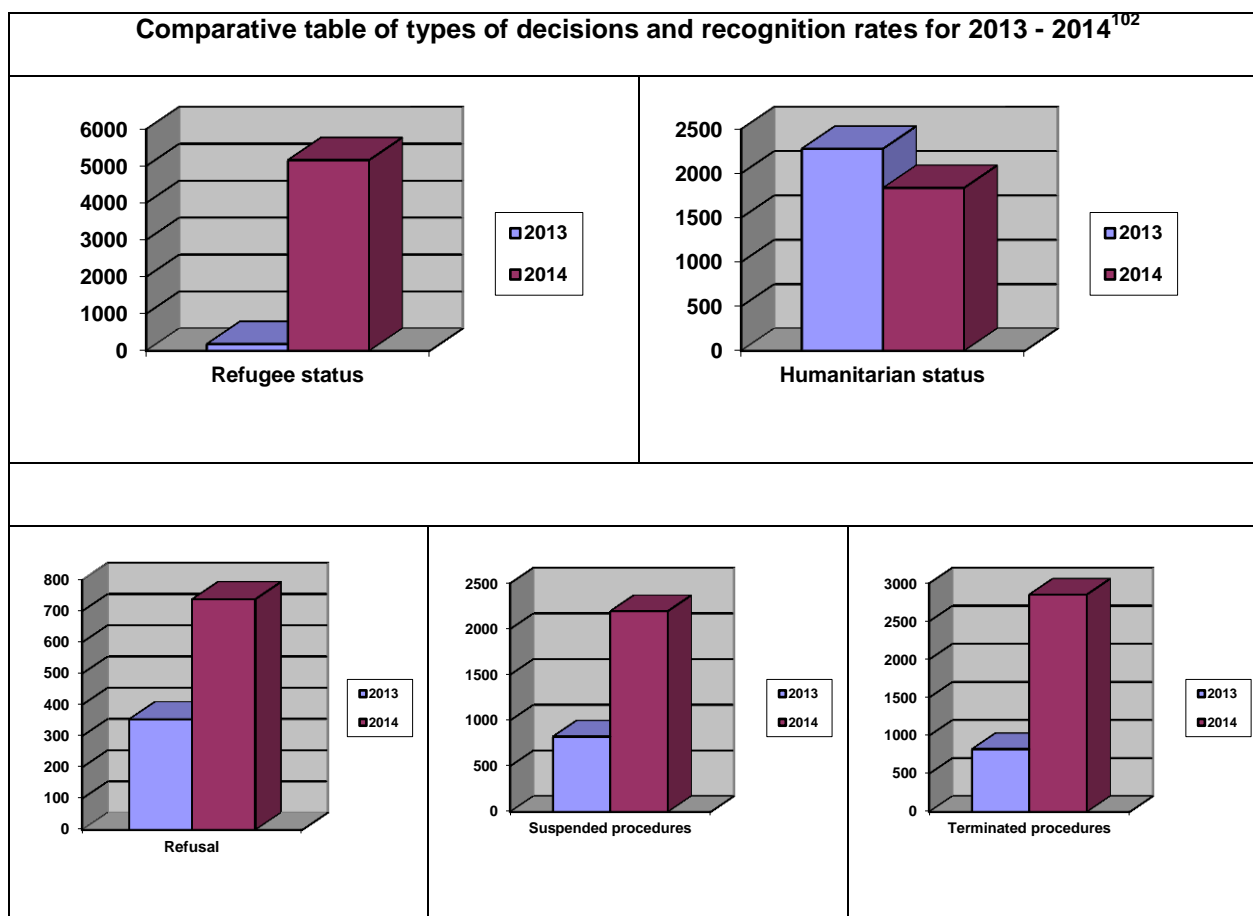
<sup>99</sup> Supreme administrative court, *Bekka Aley Bakari*, Case N646/2002, Five members Session, Decision № 4854 from 21 May 2002, and others.

<sup>100</sup> Law on Asylum and Refugees, Articles 96 – 98.

## G. Treatment of specific nationalities

As the majority of the asylum seekers in 2014 were Syrian citizens, the national refugee administration applied the so-called *prima facie* approach<sup>101</sup> to assessing their applications for protection as “manifestly well-founded”. This approach enabled SAR to examine asylum applications within a relatively short period of time and to issue decisions for a total of 6,406 Syrian nationals, of whom 4821 were granted refugee status, and 1585 humanitarian status.

As of the end of 2014 SAR reported the highest recognition rate, i.e. positive decisions on applications for protection, ever in the history of its existence since 1993: respectively - 55% overall recognition rate and 6% rejection rate (in total 12787 decisions, of which 40% or 5162 refugee statuses, 15% or 1838 humanitarian statuses, 6% or 738 refusals, 17% or 2196 suspended and 22% or 2853 terminated procedures).



The procedures for examining applications for international protection lodged by third-country nationals other than Syrian citizens, however, were for the most part put on hold and substantially delayed in the first half of 2014. In the end, out of a total of 11081 SAR decisions in 2014, 7530 decisions or 67% are decisions taken in respect of Syrian nationals; those taken with respect to asylum seekers from other nationalities are 5257 decisions or 33%. Out of the latter, non-Syrian asylum seekers, 11% are positive (594 decisions, of which 341 refugee status, and 253 humanitarian status), 4.5% (238 decisions) are rejected in accelerated procedure 9.5% are negative in regular procedure (485 refusals), 32% discontinued procedures (1704 decisions), and 43% (2236 decisions) terminated procedures. Under the law, status determination procedure is discontinued for a period of 3 months, when the asylum seeker fails to report when summoned for an eligibility interview. If during this period of time of 3 months, the asylum seeker fails to appear and provide justificatory reasons for his/her absence, the asylum procedure is terminated. Most commonly asylum procedures are discontinued and/or terminated when asylum seekers abandon them and depart from Bulgaria.

<sup>101</sup> Latin, legal: proved at first sight.

<sup>102</sup> The table presents the decisions and recognitions rates for all nationalities.

Under the law (Article 32 of the Law on Asylum and Refugees) refugees have rights equal to nationals with only a few exceptions, e.g. to vote or to be elected, to serve in the army, to be appointed in public positions that explicitly require nationality, and the like.

Humanitarian status holders are provided with the same rights as third country nationals with permanent residence status (Article 36 of the Law on Asylum and Refugees). Humanitarian status is not limited in time and their beneficiaries enjoy the same right of family reunification as refugees. The majority of Syrian nationals are granted humanitarian status as a prioritised group, fleeing as situation of internal armed conflict.<sup>103</sup>

Access to social welfare system and labour market to is automatic, regardless of status, without the need for any formal authorisation.

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<sup>103</sup> Law on Asylum and Refugees, Article 9 (1), item 3.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the accelerated procedure?  
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o During admissibility procedures:  
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o During the regular procedure:  
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o During the Dublin procedure:  
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o During the appeal procedure (first appeal and onward appeal):  
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - o In case of a subsequent application:  
☐ Yes ☐ Yes, but limited to reduced material conditions ☒ No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers are entitled to material reception conditions according to national legislation<sup>104</sup> during all types of asylum procedures. Rights provided include food, accommodation, social assistance, health care and psychological assistance. Although there is not explicit provision in the law, in practice asylum seekers without resources are accommodated with priority in the reception centres in case of lack of capacity to accommodate all new arrivals. Among all, circumstances such as specific needs and risk of destitution are assessed in each case. Destitution risk assessment is prepared by taking into account the individual situation of the asylum seeker of concern, such as, but not exhaustively - resources and means for self-support, profession and employment opportunities if work is formally permitted, and the number and vulnerabilities of dependent family members.

The sole category of asylum seekers that is excluded from these material reception conditions is that of asylum seekers who have lodged a subsequent asylum application. However if they fall under one of the categories of vulnerable asylum seekers they can enjoy these entitlements without restrictions. Competence to decide on vulnerability in such cases lies with the head of the respective reception unit. Notwithstanding asylum seekers have the right to withdraw from these benefits, if their application is pending in the regular procedure and they declare that they are in possession of means and resources to support themselves and chose to live outside reception centres.

The law stipulates<sup>105</sup> that each and every applicant shall be entitled to receive a registration card in the course of the procedure. In addition, the law implies a legal fiction,<sup>106</sup> according to which the registration card does not certify the alien's identity due to its temporary nature and the specific characteristics of establishing the facts and circumstances during the Refugee Status Determination (RSD) procedures which are based, for the most part, on circumstantial evidence. Hence, the registration card serves the sole purpose of certifying the identity declared by the asylum seeker. Nevertheless, this document is an absolute prerequisite for the access to the rights enjoyed by asylum seekers during the RSD procedure, namely – remaining on the territory, receiving shelter and subsistence, social assistance (under the

<sup>104</sup> Law on Asylum and Refugees, Article 29 (1), items 2 and 3.

<sup>105</sup> Law on Asylum and Refugees, Article 29 (1), item 6.

<sup>106</sup> Law on Asylum and Refugees, Article 40 (3).



same conditions as Bulgarian nationals and receiving the same amount), health insurance, access to health care, psychological support and education.

2014 was unilaterally and nationwide defined as a “zero integration year”. For the first time ever since 2005, when the first National Program for the Integration of Refugees (NPIR) was developed, the beneficiaries of international protection were provided with absolutely no specific integration measures for initial integration, including access to targeted financial aid for covering costs related to health insurance and accommodation outside SAR reception centres. This resulted in extremely limited access to basic social, labour and health rights for these individuals, while their willingness to permanently settle was reported to be decreased to a minimum.<sup>107</sup>

In a situation where the number of asylum seekers exceeded 1,000 persons per year<sup>108</sup> – the first such peak since the introduction of the national refugee system – and continued rising throughout 2014, the government and the competent authorities opted for an approach which, instead of being instrumental in meeting the enhanced needs, brought about ceasing the provision of integration support and postponing its efficient restart for an indefinite period of time. The government, instead of ensuring the expeditious and adequate drafting of the new integration programme in order to support the considerable number<sup>109</sup> of individuals granted refugee and humanitarian status in 2014, chose to take a step backward and approve a national strategy for integration for the period 2014–2020. This national strategy is a framework document based on which future annual programs and integration plans will be drafted. While the adoption of a strategy itself is a positive initiative, inasmuch as it facilitates long-term planning, this decision proved to be counterproductive in the specific annual context, and it resulted in an absolute lack of any integration support.<sup>110</sup> Thus, throughout 2014, refugees and humanitarian status holders were put in a situation where they had to ensure their initial and subsequent integration in the local society by means of their own efforts, funds and capacity, and with the limited assistance from non-governmental and volunteer organizations. As for the Strategy, it provides for municipalities to be involved in the process of integration, as the latter had never played a specific role in the implementation of these policies. The major issue with this approach, however, is the lack of a financial basis. , Neither financial estimates had been made for the strategy, nor did the state budget include specific integration measures to be financed. This situation poses the risk for the “year of zero integration” to be carried over into 2015. Moreover, the government has not yet developed an Integration Plan for the strategy or, if such a draft does exist, it has not been duly submitted for approval and financing.<sup>111</sup>

## **2. Forms and levels of material reception conditions**

### *Indicators:*

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2014 (per month, in original currency and in euros): BGN 65.00 / EUR 33.23

The forms of material support include accommodation in reception centres and social assistance in cash. The law does not limit the length of stay in a reception centre. Asylum seekers can remain in the centre pending the appeal procedure against a negative decision issued in any of the existing status determination procedures. Asylum seekers have access to the labour market if no final decision

<sup>107</sup> Bulgarian Council on Refugees and Migrants, *Annual Monitoring Report on Integration of Beneficiaries of international protection in Bulgaria*, Sofia, December 2014

<sup>108</sup> Over the period 1 Jan. 2014 – 31 Oct. 2014, 8,205 persons sought protection in Bulgaria (source: SAR).

<sup>109</sup> Over the period 1 Jan. 2014 – 31 Oct. 2014, refugee status was granted to 4,073 persons, and humanitarian status to 1,766 persons (source: SAR).

<sup>110</sup> Bulgarian Council on Refugees and Migrants, *Annual Monitoring Report on Integration of Beneficiaries of international protection in Bulgaria*, Preface and Chapter 1, Sofia, December 2014

<sup>111</sup> As of early December 2014.



(including the appeal procedure in case of a negative decision at first instance) has been taken within 1 year since the registration. In draft amendments proposed in November 2013, the period is shortened to 9 months<sup>112</sup> in order to comply with Article 15(1) of 2013/33/EU Recast Reception Conditions directive.

The amount of the cash assistance is not provided in the law, but it is equal to the minimum social aid, granted to nationals on the basis of monthly minimum wages, which as of 31 March 2014 is BGN 65 (33.23 €) monthly (adult or child). The amount is unanimously criticised by UNHCR and refugee assisting NGOs<sup>113</sup> as fully insufficient to meet even the most basic needs for nutrition. The situation is particularly serious for unaccompanied children who are not accommodated in specialised children facilities, but in common asylum reception centres, where they have to manage on their own and take care of shopping, cooking, cleaning, etc. Very few unaccompanied children manage to cover their expenses with the cash provided and many report that they are undernourished. The situation was improved in the beginning of 2014 as since February SAR had started to provide two meals per day in reception centres, previously not available.

Asylum seekers are not requested to contribute to the cost of their reception. In general, asylum seekers are not treated less favourably than nationals with regard to the monthly monetary assistance available, however the reception arrangements do not take into account the fact that asylum seekers do not have any other means of support which are at the disposal of nationals, such as savings, property, family/relative networks, etc.

In 2014, the government continuously postponed adoption of a much needed annual integration programme, which was unduly delayed throughout the whole year. The responsibility for its adoption was shifted from SAR to the Ministry of Labour and Social Policy, when the latter decided that the programme should be preceded by an adoption of a strategy. It was not before mid-2014 when the Integration Strategy 2014-2020<sup>114</sup> was finally endorsed. In practice, local integration remained inaccessible to asylum seekers as if the annual integration programme was never adopted. Among other factors, it additionally motivated many recognised individuals to leave Bulgaria in search of adequate integration conditions and better prospects. As of the end of the year, SAR had received 7851 information requests from other EU member states under the Dublin Regulation, which referred not only to Dublin transfers of asylum seekers, but also to verification of granted statuses relating to possible readmission of recognised individuals (see, B. Procedures, 3. Dublin)

In the situation of absent initial integration, newly recognised individuals had no other option but to remain in asylum centres/shelters for a period up to 6 months after the recognition, which was their only accessible accommodation solution as derived directly from the law<sup>115</sup>. However, the asylum authority, SAR, is repeatedly undertaking eviction campaigns even to those refugees, whose eligible accommodation period after recognition has not yet expired. Among them without any exclusion were also vulnerable categories of individuals, such as sick, disabled and elderly, single parents, families with many under-aged children, etc. As of 15 January 2014 only 3675 individuals<sup>116</sup> were accommodated in the national asylum centres and shelters, at a total accommodation capacity of 5650 places, of whom only 850 were recognised refugees or humanitarian status holders. Therefore, UNHCR and NGOs criticized the eviction campaigns for having no justification at all, besides the creation of deterrence factors. Nonetheless, the asylum administration continued relentlessly its efforts to evict as many recognised individuals, as possible from the centres.

The massive increase of newly recognised individuals in Bulgaria resulted in turnaround of already achieved positive policies with respect to some social rights. In November 2013, the Agency for Social

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<sup>112</sup> Article 29 (3), §18 of Law on Asylum and Refugees Draft Amendments.

<sup>113</sup> Bulgarian Council on Refugees and Exiles, *Advocacy Paper: Reception of Asylum Seekers in Bulgaria*, September 2011, Chapter 5: Social Assistance.

<sup>114</sup> 2 July 2014, <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1327> /BG/

<sup>115</sup> Article 32 (3) of the Law on Asylum and Refugees.

<sup>116</sup> National Coordination Meeting, 20 March 2014.

Support instructed its local departments to reject onward monthly child support allowances, which previously had been provided to recognised individuals without any restrictions or limitations. Restrictions continued during 2014 as well.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 5650
- Type of accommodation most frequently used in a regular procedure :  
☒ Reception centre      ☐ Hotel/hostel      ☐ Emergency shelter      ☐ private housing      ☐ other (please explain)
- Type of accommodation most frequently used in an accelerated procedure :  
☒ Reception centre      ☐ Hotel/hostel      ☐ Emergency shelter      ☐ private housing      ☐ other (please explain)
- Number of places in private accommodation: 0
- Number of reception centres: 7
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?      ☒ Yes      ☐ No
- What is, if available, the average length of stay of asylum seekers in the reception centres? 6 to 8 months
- Are unaccompanied children ever accommodated with adults in practice?      ☒ Yes      ☐ No

Reception centres are managed by the State Agency for Refugees (SAR). Alternative accommodation outside the reception centres is allowed under the law,<sup>117</sup> but only if it is paid by the asylum seekers themselves and if they have consented to waive their right to the monthly social allowance. Until September 2013 there were 2 reception centres existing in Sofia (Ovcha Kupel suburb), Banya (Central Bulgaria) and one transit centre in Pastrogor (South-Eastern Bulgaria, next to Bulgarian-Turkish border).

In order to address the lack of reception capacity, in 2013 the SAR rapidly opened new accommodation facilities. During the period end-September to mid-October 4 new centres were opened, namely - Vrazhdebna (a suburb in Sofia with capacity of 420 places), Voenna Rampa (again in Sofia with capacity of 700 places), Harmanli (in South-Eastern Bulgaria with planned capacity of 1450 places) and in Kovachevtsi village (350 places). At the moment of their opening neither the infrastructure, nor the material conditions in these centres met even the minimum EU standards for adequate living conditions for applicants,<sup>118</sup> i.e. to guarantee their subsistence and to protect their physical and mental health. In 2014, with the support of the UNHCR, national refugee-assisting and community NGOs and many other national and international institutions and organisations, SAR undertook a variety of emergency measures in order to improve the conditions of reception, registration and determination. Reconstruction, renovation and refurbishment were undertaken to achieve in mid-2014 the minimum standards for reception in all asylum centres/shelters and an accommodation capacity of 6000 individuals.<sup>119</sup> The established National Coordination Mechanism (a set of regular meetings in committees and sub-committees,) assisted to put forward solutions and to mobilise the existing means and resources.

<sup>117</sup> Law on Asylum and Refugees, Article 29 (6).

<sup>118</sup> Art. 13 of Directive 2003/9/EO, recast text in Art. 17 (2) of Directive 2013/33/EU laying down the standards for the reception.

<sup>119</sup> Kovachevtsi shelter (350 places) was closed on 1 November 2014, present accommodation capacity -5650 individuals;

Separate facilities for families, single women, unaccompanied children or traumatised asylum seekers do not exist. The SAR announced in January 2014 its plan to designate the existing reception centre in Banya village, Central Bulgaria for accommodation of unaccompanied children and families with little children. In practice, all unaccompanied children up to 14 years of age who do not have any relatives in the country are accommodated in orphanages. In the draft amendments to the Law on Asylum and Refugees (LAR)<sup>120</sup> the government purposed unaccompanied children to be accommodated in families of relatives, foster families, child shelters of residential type, specialised orphanages or other facilities with special conditions for unaccompanied children. In the draft law of November 2013 amending the LAR<sup>121</sup>, the government also envisaged accommodation of unaccompanied asylum seeking children in closed facilities, although under exceptional circumstances and in separate premises within the closed centre.

#### **4. Conditions in reception facilities**

As mentioned in the section on types of accommodation, the main form of accommodation used is reception centres. Further to the description of the recent developments and ongoing renovation of the reception centres, all centres provide two hot meals per day and basic medical care, either through own medical staff or by referral to emergency care units in local hospitals. Wherever possible there is a genuine effort to accommodate nuclear families together and in separate rooms. Single asylum seekers are accommodated together with others, although conditions vary considerably from one centre to another.

Since 2 February 2014 food is cooked and delivered to asylum seekers in the reception centres two times per day from the National Army's field kitchens, therefore in all centres cooking is no longer allowed. The food provided in the centres generally meets the required nutritional values and meat (without pork) is included in the diet at least 3 days per week.

Places for religious worship are now available in all of the centres. Activities to organise language training and leisure activities for children are presently not undertaken in any of the reception centres after UNHCR ceased its financial support for it in 2015. UNHCR funded an Information Centre, located in the capital city, for urban asylum seekers and refugees living in the Sofia region.

Some level of standardisation has taken place in the intake procedure and registration procedure. There is a basic database of residents in place. An information leaflet regarding the asylum procedure is provided upon registration in the centre and other information with regard to rights and procedures are provided by UNHCR or NGOs. Social workers and social mediators from the Bulgarian Red Cross assist SAR staff to ensure that individuals with specific needs are taken care of. However, due to ongoing refurbishment and open access to the centres of all kinds of service providers, measures to prevent sex and gender based violence are still not sufficient to properly guarantee safety and security of the population in the centres.

Recognised refugees do also have the right to receive financial support up to 6 months after the positive decision<sup>122</sup>. As the National Integration Programme 2011-2013 ended without being replaced for the whole of 2014, presently the only option for recognised refugees and humanitarian status holders is to remain in the reception centres during this period (see, Forms and levels of material reception conditions).

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<sup>120</sup> Law on Asylum and Refugees Draft Amendments, Article 34 (4).

<sup>121</sup> Law on Asylum and Refugees Draft Amendments, Article 45e and Article 47 (4).

<sup>122</sup> Law on Asylum and Refugees Draft Amendments, Article 32 (3).

## 5. Reduction or withdrawal of reception conditions

### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
☐ Yes      ☒ No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes      ☐ No

Reduction of material reception conditions is not possible under the law. Withdrawal is admissible under the law<sup>123</sup> in cases of disappearance of the asylum seeker and subsequent asylum applications. However, the latter cannot be a ground for withdrawal if the asylum seeker lodging a subsequent application could be considered vulnerable. Under the law,<sup>124</sup> as vulnerable categories are considered: children, pregnant women, elderly, single parents, if accompanied by their children, people with disabilities and those, who suffered severe forms of physical or psychological harm or sexual abuse. In this case, the asylum seeker lodging a subsequent application should be granted all available reception conditions. In practice this does not happen due to continuously increasing numbers of newly arriving asylum seekers. As a result, asylum seekers lodging a subsequent application, including those that are vulnerable do not get any reception conditions in practice.

In case accommodation in a reception centre is refused, this can be appealed before the court. Legal aid is available with respect of representation before the court once the appeal is submitted. Bulgaria does not apply sanctions for serious breaches of the rules of accommodation centres and violent behaviour, except for destruction of accommodation centre's property, which is sanctioned with a fine between BGN 50 to 200. The grounds laid down in Article 20 (2) of the Recast Reception Conditions Directive are not yet transposed into the national legislation. Under the law,<sup>125</sup> the directors of transit/reception centres are competent to decide on accommodation. These decisions should be issued in writing as all other acts of administration.<sup>126</sup> However, in practice asylum seekers are informed orally. Nonetheless, the refusal still can be appealed before the relevant regional administrative court in 7 days from its communication to the respective asylum seeker. In this case, however, asylum seekers are having difficulties to prove before the court when they have been informed about the accommodation refusal, which may result in cessation of the court proceedings.

## 6. Access to reception centres by third parties

### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
☒ Yes      ☐ with limitations      ☐ No

The law does not provide explicitly for access to reception centres for family members, legal advisers, UNHCR and NGOs, but no limitations are applied in practice. NGOs and social mediators from refugee community organisations are allowed to operate advice centres within the reception premises in all national reception centres. Access to reception centres is limited only during the night.

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice? ☒ Yes ☐ No

<sup>123</sup> Law on Asylum and Refugees, Article 29 (5).

<sup>124</sup> Law on Asylum and Refugees, Article 30a.

<sup>125</sup> Law on Asylum and Refugees, Article 51 (2).

<sup>126</sup> Administrative Procedure Code, Article 59 (2).

The law provides a definition<sup>127</sup> of vulnerability. According to the provision, the following categories of asylum seekers are considered as vulnerable: unaccompanied children, pregnant women, elderly people, single parents, if accompanied by their underage children, individuals with disabilities and those who have been subjected to severe forms of psychological, physical or sexual abuse. The recast Reception Conditions Directive's definition of vulnerable categories is not yet transposed into the national legislation.

There are no specific measures neither in law nor in practice to address the specific needs of these vulnerable categories. The law only requires that vulnerability is taken into account when deciding on accommodation, but due to restricted reception capacity and poor material conditions, this is only exceptionally applied, if at all. In 2008 the SAR and UNHCR agreed<sup>128</sup> on standard operation procedures (SOPs) to be followed with respect to treatment of victims of Sexual and Gender-based Violence (SGBV). However, these were never applied in practice and therefore a process for revision<sup>129</sup> of the SOPs is currently ongoing, which also aims to include new categories or vulnerable groups (see, Special procedural guarantees).

## **8. Provision of information**

There are no specific rules for information provided on rights and obligations relating to reception conditions. Asylum seekers obtain the necessary information on their legal status and the access to the labour market through the information sources with regard to their rights and obligations in general (see Information for Asylum Seekers). The SAR has an obligation<sup>130</sup> to provide information in a language comprehensible to the asylum seekers within fifteen days from filing their application, which has to include information on the terms and procedures and rights and obligations of asylum seekers during procedures, as well as the organisations providing legal and social assistance. However, in reality this was not provided within the 15 day time period laid down in Article 5 of the Reception Conditions Directive and in Article 5 of Directive 2013/33/EU. In practice, prior the increased number of asylum seekers, this information was given upon the registration of the asylum seeker in SAR territorial units by way of a brochure. However, NGO monitoring<sup>131</sup> shows that oral guidance on determination procedures is not being provided by case-workers in the majority of the cases.

In 2014, with the support of UNHCR an abundance of information materials (boards, leaflets and a web-accessible tool) were produced to enable the access of asylum seekers to coherent and credible information on status determination procedures and their rights and obligations during and after the recognition or the rejection. The leaflets and the boards covered the most important topics of inquiry<sup>132</sup>, translated in most common languages<sup>133</sup> and distributed in all asylum centres and shelters.

An RSD e-handbook was drafted, translated and put into operation on-line<sup>134</sup> thus providing correct and comprehensive legal information to asylum seekers in a sustainable manner beyond the end of 2014

## **9. Freedom of movement**

Asylum seekers are not restricted in their freedom of movement to any particular area within Bulgaria. Restrictions apply only in relation to the requirement for the asylum administration (SAR) to be duly

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<sup>127</sup> Law on Asylum and Refugees, Article 30a.

<sup>128</sup> SGBV SOPs, Exh. №630 from 27.02.2008.

<sup>129</sup> UNHCR Representation in Sofia, SGBV Task Force, established on 15 February 2014.

<sup>130</sup> Law on Asylum and Refugees, Article 58(6).

<sup>131</sup> Bulgarian Helsinki Committee, *2014 RSD Monitoring Report*, January 2014

<sup>132</sup> Leaflet topics covered: "Who is a refugee", "Documents", "Rights and Obligations", "Dublin procedure", "Accelerated procedure", "General procedure", "Appeal", "Family reunification" and "Voluntary return".

<sup>133</sup> English, French, Arabic, Farsi, Dari, Urdu and Pashto.

<sup>134</sup> See, [www.asylum.bg](http://www.asylum.bg)

notified<sup>135</sup> in advance with regard to any change of the address of residence of asylum seekers. They can freely move within the State, no restrictions are applied with regards to the area of residence.

However, it must be noted that on 19 November 2013, the government presented to Parliament a bill for amending the Asylum Law.<sup>136</sup> The proposals include among others the introduction of a general detention regime for all categories of asylum seekers, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances and irrespective of the stage of their status determination procedure as set in the Law on the Asylum and Refugees (LAR). For further details on the proposal see the section detention (general).

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
- If applicable, what is the time limit after which asylum seekers can access the labour market:  
1 year from the registration as asylum seeker
- Are there restrictions to access employment in practice? ☐ Yes ☒ No

National legislation allows for access to the labour market for asylum seekers,<sup>137</sup> if the determination procedure takes longer than 1 year from the submission of the asylum application. The permit is issued by the asylum administration (State Refugee Agency - SAR) itself in a simple procedure that verifies only the duration of the status determination procedure and whether it is still pending.

The draft amendments of the LAR<sup>138</sup> provides for the amendment of Article 29(3) LAR, which reduces the suspension period for access to the labour market for asylum seekers from one year to nine months. The proposal is entirely consistent with Article 15(1) of Directive 2013/33/EU, whereby Member States shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

Once issued, the permit allows access to all types of employment and social benefits, including assistance when unemployed. Under the law<sup>139</sup> they also have access to vocational training. In practice, however it is difficult for asylum seekers to find a job, due to the general difficulties resulting from their language skills, the recession and high national rates of unemployment.

### 2. Access to education

#### Indicators:

- Does the legislation provide for access to education for asylum seeking children? ☒ Yes ☐ No
- Are children able to access education in practice? ☒ Yes ☐ No

Access to education for asylum-seeking children is provided explicitly by the national legislation without an age limit. The provision not only guarantees full access to free of charge education in regular

<sup>135</sup> Law on Asylum and Refugees, Article 30, item 5.

<sup>136</sup> [Parliament bill of 19 November](#).

<sup>137</sup> Law on Asylum and Refugees, Article 29 (3).

<sup>138</sup> See Reception conditions, *Access and forms of reception conditions, Freedom of movement*.

<sup>139</sup> Law on Asylum and Refugees, Article 39 (1), item 2.



schools, but also for vocational training under the rules and conditions applicable to Bulgarian children. In practice there were some obstacles related to the methodology used to identify the particular school grade that the child should be directed to, but this problem should be solved by appointment of special commissions by the Educational Inspectorate with the Ministry of Education and Science. Presently, asylum seeking children accommodated in Pastrogor transit centre are deprived in practice from this right as the SAR did not provide the necessary school arrangements in this remote area.

No preparatory classes are offered to facilitate access to the national education system. Asylum seeking children with special needs do not enjoy alternative arrangements, other than those provided for Bulgarian children<sup>140</sup>.

Adult refugees and asylum seekers have a right to a vocational training. Practical obstacles may be encountered by asylum seekers in relation to access to universities as they have difficulties to prove diplomas already acquired in their respective countries of origin. This is due to a lack of relevant information on diplomas.

The draft amendments of the LAR<sup>141</sup> introduce a new provision<sup>142</sup>, according to which asylum seeking children may be detained in closed centres. This will deprive children from their right to education as the accommodation in closed centres would effectively prevent them from access education, a right that is presently guaranteed by law.<sup>143</sup>

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
☒ Yes      ☐ No
- In practice, do asylum seekers have adequate access to health care?  
☐ Yes      ☒ with limitations      ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?      ☐ Yes      ☐ Yes, to a limited extent      ☒ No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care? ☒ Yes      ☐ No

Asylum seekers are entitled to the same health care as nationals. Under the law, the asylum administration (SAR) has the obligation to cover the health insurance of asylum seekers. In practice, asylum seekers have access to available health care services, but do face the same difficulties as the nationals due to the generally deteriorated national health care system that suffers great material and financial deficiencies<sup>144</sup>. In this situation special conditions for treatment of torture victims and persons suffering mental health problems are not available. According to the law, the medical assistance cannot be affected, if the reception conditions are reduced or withdrawn.

Medical assistance is being provided by a nurse and a doctor on a daily basis only in the reception centre in Sofia (Ovcha Kupel suburb); by a doctor in Vrazhdebna; in Banya and Pastrogor transit centre it is provided by a nurse. In Vrazhdebna, Voenna Rampa and Harmanli the medical care is provided on a voluntary basis.

<sup>140</sup> National Integration Plan for Children with Special Needs and/or Chronic Illness, adopted with Ordinance №6 from 19 August 2002 of the Council of Ministers.

<sup>141</sup> See, Detention of asylum Seekers, *General*.

<sup>142</sup> Article 45e of the draft

<sup>143</sup> Article 26 (1) of the Law on Asylum and Refugees

<sup>144</sup> Open Society Institute, *Legal Standards and Arrangements for the Protection of Individual Health Rights and Entitlements*, Sofia, October 2011.



## Detention of Asylum Seekers

### A. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): 9843
- Number of asylum seekers detained or an estimation at the end of the previous year: 418
- Number of detention centres: 3
- Total capacity: 1000

There are 3 detention centres for irregular migrants in the country - Busmantsi and Lyubimets detention centres. The Busmantsi centre is near the capital, Sofia, the Lyubimets centre is located in the border area with Turkey and Greece. Although designed for the return of irregular migrants, the centres are also used for detention of undocumented asylum seekers, who crossed the border irregularly, but were unable to apply for asylum before the border police officers and therefore apply for asylum only when they are already in the detention centres. Most common reason for these late asylum applications is the lack of 24 hours interpretation services from all languages at national borders.

On 8 October 2013 a new detention centre with a capacity of 300 persons, provisionally called "distribution" or "allocation" centre, was open in the town of Elhovo, managed by the Migration Directorate, MOI. Designated for pre-registration of asylum seekers<sup>145</sup>, in practice it is used to detain asylum seekers, apprehended at the land borders outside the official border checkpoint for a period of 20 days approximately until arrangements are made for their further transfer to any of the SAR asylum centres. The total capacity of these three detention centres is 1000 places. In recent years the detention centres were quite often overcrowded<sup>146</sup> due to the gradual increase of the number of asylum applications on the one hand and, on the other hand, the delayed release for registration of detained asylum seekers.

On 19 November 2013, the government presented to Parliament a bill for amending the Asylum Law<sup>147</sup>. The proposals included among others the introduction of a general detention regime for all categories of asylum seekers, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances and irrespective of the stage of their status determination procedure, as set out in the Law on Asylum and Refugees (LAR).

The draft law proposes that as a rule all persons seeking protection are subjected to wide, overall and unconditional detention in closed-type centres and that accommodation in centres of an open type remain exceptional (Article 45b(2) of the proposals). As a result, the proposal is violating the principle enshrined in Article 8(1) of the recast Reception Conditions Directive 2013/32/EU, according to which Member States may not detain a person solely on the basis that they are an applicant for international protection.

<sup>145</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>146</sup> JRS Europe, *Becoming Vulnerable in Detention*, Detention of Vulnerable Asylum Seekers - DEVAS Project, 2010, National Chapter on Bulgaria; Open Society Institute, *Civil Monitoring in Detention centers*, Sofia, February 2012.

<sup>147</sup> [Parliament bill of 19 November](#).

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory: ☒ Yes ☐ No
- at the border: ☒ Yes ☐ No
- Are asylum seekers detained in practice during the Dublin procedure?  
☐ Frequently ☒ Rarely ☐ Never
- Are asylum seekers detained during a regular procedure in practice?  
☐ Frequently ☐ Rarely ☒ Never
- Are unaccompanied asylum-seeking children detained in practice?  
☒ Frequently ☐ Rarely ☐ Never
  - o If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
- Are asylum seeking children in families detained in practice?  
☒ Frequently ☐ Rarely ☐ Never
- What is the maximum detention period set in the legislation (incl. extensions): 18 months
- In practice, how long in average are asylum seekers detained? 45 days

In general, detention of third country nationals can be ordered by the border or immigration police on account of their unauthorised entry, irregular residence or lack of valid identity documents. The maximum detention period is 18 months, including extensions. Extensions after 6 months can be ordered only by the court. Presently, the law does not include specific provisions on the detention of asylum seekers. In the end of 2011, after 4 years of strategic litigation, the secondary legislation<sup>148</sup> that was providing a legal basis for detention of asylum seekers was amended to prohibit the border police from detaining undocumented asylum seekers, arrested at the national borders in detention centres for irregular third country nationals. Out of all 11,081 persons who applied for asylum in 2014, 9843 persons applied for asylum in detention facilities of the Migration Directorate, of whom 3851 asylum seekers applied in Elhovo Allocation centre at the Bulgarian-Turkish border and another 5992 in detention centres in Busmansti and Lybimets. Out of all 4041 asylum seekers who applied before the Border Police, only 4% or 190 persons were referred directly to SAR reception centres, the rest were transferred to Elhovo Allocation centre. The average detention duration in 2014 in Elhovo Allocation centre was 6 days. The average duration of detention in Busmantsi and Lyubimets detention centres decreased to 11 days (in comparison with 22 days during the first half of 2014 and 45 days in 2013). In total, average detention duration for both categories of applicants - at border custody and in detention centres - was 9 days in 2014<sup>149</sup>

The law does not allow<sup>150</sup> the SAR to conduct the Dublin and accelerated procedures in the detention centres, except until the opening of transit centres in border areas. In May 2012, Pastrogor transit centre started to function, however the asylum administration (SAR) continued to conduct, in violation of the law, EURODAC fingerprinting in detention centres and to release asylum seekers with a delay. During 2014 first time applicants from certain nationalities, predominantly from Maghreb region and sub-Saharan Africa (Algeria, Morocco, Tunisia, Mali and Cote D'Ivoire) were clearly discriminated with regard to their release from detention centres and access to procedure. In distinction with all other asylum seekers who were usually released from detention centres within 11 days on average<sup>151</sup>,

<sup>148</sup> State Gazette, issue N91 from 18 November 2011 amending the Ordinance on the Responsibility and Coordination of the State Bodies.

<sup>149</sup> Bulgarian Helsinki Committee, *2014 Sub-project monitoring report*, 25 January 2015

<sup>150</sup> Law on Asylum and Refugees, §5 of the Transitional Clauses.

<sup>151</sup> Bulgarian Helsinki Committee, 2014 Annual SPMR, 15 January 2015.

throughout the whole of 2014 SAR persistently has been refusing to authorise the release and the registration of asylum seekers from the above mentioned countries of origin and it required a court conviction in order to be achieved.<sup>152</sup> In response to court convictions, SAR started to implement status determination procedures with respect to these asylum seekers in detention centres.

As an alternative to detention the legislation envisages daily reporting to the police, but it is not specifically targeting asylum seekers, rather all irregular third country nationals.

In March 2013 the Law on Aliens was amended<sup>153</sup> to prohibit the detention of unaccompanied children in general and to introduce a maximum period of 3 months for the detention of accompanied children who are detained with their parents. In practice, however, as of January 2014 unaccompanied children continue to be detained, both asylum-seeking and migrant children, although for short durations; average detention duration of asylum seekers in 2014 was 11 days in pre-removal centres and 9 days on average in Elhovo Allocation centre near the Bulgarian-Turkish border. The draft law amending the Law on Asylum and Refugees (LAR) also envisages a limitation of freedom of movement in certain areas in the territory of State by a decision of the SAR chairperson, where asylum seekers can be obligated not to leave and reside in other administrative regions (district or municipality) than the prescribed one. As alternatives to detention the draft law mentions in a non-exhaustive manner all forms laid down in the Recast 2013/33/EU Reception Conditions Directive, namely regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place. Staff interpreters are neither required by law, nor provided in practice. Verbal abuse, both by staff and other detainees, is reported often by the detainees. Overall conditions with respect to means to maintain personal hygiene as well as general level of cleanness are not satisfactory. Shower and toilets available are not sufficient to meet the needs of the detention population, especially when premises are overcrowded which happens quite often.<sup>154</sup> Detainees are allowed to clean the premises themselves, however they are not provided with means or detergents therefore they have to buy them at their own cost. Clothing is provided only if supplied by NGOs. Bed linen is not washed on a regular basis, but usually once a month. A 2010 report<sup>155</sup> by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended an extensive list of improvements and adjustments that ought to be made with respect to cell occupancy, access to light, toilets, showers and personal hygiene products, quantity and quality of food and appropriate and sufficient medication. A report of the CPT published in March 2012 included specific recommendations to the Bulgarian Government to improve the conditions in the Busmantsi detention centre. The CPT concerns related in particular to the detention of asylum seekers together with irregular migrants awaiting removal, poor hygiene conditions, lack of interpreters which complicated communication between staff and detainees and insufficient psychological care for those detained in the Busmantsi centre.<sup>156</sup> NGOs are not aware of any specific measures taken to implement the CPT's recommendations so far.

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<sup>152</sup> Administrative Court Sofia City, Case N630/2014, Section 15, Decision N982 from 21 February 2014; Administrative Court Sofia City, Case N631/2014, Section 19, Decision N1202 from 28 February 2014; Administrative Court Sofia City, Case N814/2014, Section 11, Decision N1446 from 10 March 2014 and many other;

<sup>153</sup> Law on Aliens, Article 44 (9).

<sup>154</sup> Open Society Institute, *Civil Monitoring in Detention Centers Report*, 7 February 2012

<sup>155</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [Report](#) Bulgaria, October 2010.

<sup>156</sup> See CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010*, Strasbourg, 15 March 2012, p.24-30. The Government's response published on 4 December 2012 does not address the issues raised with regard to the Busmantsi detention center. A report by the Open Society Institute Sofia raised similar concerns about the lack of professional interpreters in the detention centers in Bulgaria resulting in asylum seekers and irregular migrants not being properly informed about their rights. See Open Society Institute, *Civil Monitoring in Detention Centers*, Sofia, February 2012 (only available in Bulgarian).

The 2010 study on vulnerability in detention conducted by Jesuit Refugee Service (JRS) Europe includes the following information on access to medical care and services in detention centres in Bulgaria<sup>157</sup>. In terms of medical services - detention centres' medical staff (doctors and a nurse) are seen less than once a month (62.7%), although 27% of detainees who report health problems see them once per week. All detainees report to have had medical examinations upon arrival in the detention centre. Most of detained asylum seekers reported that they can understand the language that the medical care is in, however 30% cannot and feel that the staff should speak more languages to solve this problem. It could be explained by the fact that large percentage of the detainees have spent long time in the country prior detention and had learned Bulgarian. Therefore, the complaint that the medical personnel do not speak any foreign languages should be assessed higher in the problem chart reported, in terms of meeting the communication need of immigrants who were detained short after or upon their arrival in the country. 93.1% of detainees report that they have had their physical health affected (only 6.9% have not). Physical health has on average dropped from 8.45% to 3.17%. According to the detainees interviewed, this has almost nothing to do with availability of medical facilities, but is psychological (76.2%), followed by being affected physically by poor living conditions (19%). This finding demonstrate clearly that the mere fact of detention and being detained situation make people vulnerable *per se* resulting in immediate negative consequences on physical, but more significantly on the mental health of detainees (see below). 73% are negative about the quality of provided medical care, and 65.5% have specific medical needs that are not being met and need access to appropriate care for this. In terms of mental health - 96.3% of people report that their mental health has been affected. Mental health has dropped on average 9.21 to 2.68. The fact of being behind bars is the most given factor (46.7%) and the effect of it is very negative. As for other reasons for deterioration, living conditions are negligible (3.3%), while 33% say the deterioration of their mental health is because of stress and worries, 30% are specifically worried about their mental health."

Nutrition is poor, no special diets are provided to children or pregnant women. Health care is a big issue as not all detention centres have medical staff appointed on a daily basis. A nurse and/or a doctor visits detention centres on a weekly basis, but the language barrier and lack of proper medication make these visits almost a formality and without any practical use for the detainees.

Separate wings are provided for families, single women and unaccompanied children. Single men are separated from single women. Other vulnerable persons are detained together with all other detainees. National legislation does not provide for access to education for children in detention centres.

Access to open-air spaces is provided twice a day for a period of one hour each, the spaces in all detention centres are of adequate size. Children in detention centres are using the common outdoor recreational facilities, but not many possibilities for physical exercise exist except the usual ball sports. Reading and leisure materials are provided if only supplied by donations. Computer/internet access is not available in any of the detention centres.

Lawyers as well as representatives of NGOs and UNHCR do have access under the law and in practice to the detention centres during visiting hours but also *ad hoc* without prior permission when necessary or requested by asylum seekers. Some NGOs<sup>158</sup> signed official agreements with the Migration Directorate and do visit detention centres for monitoring and assistance once a week. Media and politicians do also have access to detention centre, which is authorised upon written request.

There are no mechanisms established to identify vulnerable persons in detention centres. If identified there are no provisions in the law for their release on that account, unless before the court when the length of detention is reviewed after the initial 6 months period.

Asylum seekers are never detained in prisons unless convicted for committing a crime.

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<sup>157</sup> JRS Europe, *Becoming Vulnerable in Detention*, Detention of Vulnerable Asylum Seekers - DEVAS Project, 2010, National Chapter on Bulgaria.

<sup>158</sup> Bulgarian Helsinki Committee, Bulgarian Red Cross, ACET Center for Torture Victims.

## C. Procedural safeguards and judicial Review of the detention order

### Indicator:

- Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No

Asylum seekers, if detained, are treated in the same manner as the rest of the detention population, hence they are informed orally by the detention staff for the reasons of their detention and the possibility to challenge it in the court, but not about the possibility and the methods to apply for legal aid. However, asylum seekers as a principle are not informed in a language they understand as none of the existing detention centres has interpreters among its staff. A copy of the detention order is usually provided to the individual. Bulgaria was one of the few EU member states not providing the legal safeguard of an automatic judicial review of the detention order. After the amendment of the law in 2009 the automatic judicial review was introduced, but not before 6 months of detention. This safeguard was available in national criminal proceedings for all individuals, irrespective of their nationality or origin, if accused of committing a crime, but until 2009 it was not guaranteed for those immigrants who were subjected to administrative detention for violation of the national immigration regime for the purpose of securing their deportation.

Presently, the law does not provide for automatic judicial review of detention orders before 6 months of detention. However, detention orders can be appealed within 14 calendar days<sup>159</sup> of the actual detention before the administrative court in the area of the headquarters of the authority which has issued the contested administrative act. The appeal does not suspend the execution of the order<sup>160</sup>. The submission of the appeal is additionally hindered by the fact that the detention orders are not interpreted or translated. In view of the fact that deportation orders in principle are always issued for immediate implementation, the short deadline for lodging an appeal proved to be highly disproportionate and usually not respected by detained individuals, including asylum seekers.

Under the law, an automatic judicial revision is provided only after 6 months from the beginning of the detention. The management of the detention centre has the obligation to submit to the court a list of the individuals who have remained in detention for a period longer than 6 months. The administrative court decides for extension, termination or substitution of detention with an alternative measure in a session behind closed doors.

The Law on Asylum and Refugees when adopted allowed for examination of asylum applications in detention centres until the opening of transit centres which was a condition, regulated in §5 of the Additional Clauses. In May 2012 however, the legal ground for examining asylum applications in detention centres was abolished by the fact of the opening of the first transit asylum centre in Pastrogor, i.e. the condition of §5 of the Additional Clauses of the law became a fact, making examinations of asylum applications in detention centres unlawful. Thus, the period when an asylum application was examined in detention cannot be considered as a period during which a person is held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers and to be disregarded as detention for the purpose of removal within the meaning of Article 15 of Decision 2008/115. Therefore until transposition of the Recast Reception Conditions Directive national courts should consider any detention of asylum seekers, disregarding the actual period of the detention as illegal, not only those which are extending the 18 months maximum duration of Article 15 (5) and (6). It should be reflected also in the law, providing general rules and criteria for detention.

<sup>159</sup>

Law on Aliens, Article 46, as amended in State Gazette №23/2013.

<sup>160</sup>

Law on Aliens, Article 46a.

However, the draft law of 19 November 2013 amending the Asylum Law, if adopted, will broaden the possibilities to detain asylum seekers as it proposes to transpose verbatim Article 8(3) of Directive 2013/32/EU. If adopted the detention of asylum seekers would become possible at the stages of registration, in relation to Dublin and accelerated procedures under the LAR, or, in other words, prior to the initiation of the regular procedure on the substance of the asylum application. At the regular procedure's stage, detention should not be permitted, except in exceptional cases, i.e. where there are serious grounds to believe that a person constitutes a threat to national security or public order.

Asylum seekers who applied at the border have by law to be transferred within 24 hours from the Border Police to SAR reception facilities. In practice, since October 2013 asylum seekers are transferred to the newly established Elhovo Allocation Centre, operating under a closed regime, where they spend between three to six days on average before being transferred to any of the SAR reception facilities.<sup>161</sup>

Average detention duration for those who applied from pre-removal detention centres decreased to 11 days (in comparison with 45 days in 2013). However, instead of upholding this permanent court practice and instructions<sup>162</sup>, the SAR started to register, interview and determine the applications of asylum seekers from these nationalities in the detention centres.

#### D. Legal assistance

##### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
☐ Yes      ☒ No
- Do asylum seekers have effective access to free legal assistance in practice?    ☒ Yes    ☐ No

In mid-2013 the Law on Legal Aid amendments was finally adopted.<sup>163</sup> Alongside the right for legal aid for asylum seekers, the BHC lobbied for another amendment of the Law on Legal Aid related to detained irregular migrants. Similar to asylum seekers as of 19 March 2013, detained immigrants also gained the right to enjoy legal aid (Article 22(9) of the Law on Legal Aid). Notwithstanding the amendments, legal aid is not yet provided to detainees due to National Bureau for Legal Aid's budget constraints (for more information see Asylum Procedures, Regular Procedure, Legal assistance).

<sup>161</sup> 5% or 155 asylum seekers out of all 3054 border applicants<sup>161</sup> in 2014 were admitted directly to asylum reception centers, statistics as of 25 January 2015, Source: Bulgarian Helsinki Committee,;.

<sup>162</sup> Administrative Court Sofia City, Case N630/2014, Section 15, Decision N982 from 21 February 2014; Administrative Court Sofia City, Case N631/2014, Section 19, Decision N1202 from 28 February 2014; Administrative Court Sofia City, Case N814/2014, Section 11, Decision N1446 from 10 March 2014 and many others.

<sup>163</sup> See above Asylum Procedures, *Regular Procedure, Legal assistance*.

## Annex I – Transposition of the CEAS in National legislation

### *Directives transposed*

Directive	Date of transposition (N/A if not yet transposed)	Official title of corresponding national legal act (and weblink)
Recast Asylum procedures Directive	N/A	
Recast Reception Conditions Directive	N/A	
Recast Qualification Directive	N/A	

### *Pending transposition and reforms*

Legislation	Stage of Transposition	NGOs consulted (Yes/NO)
Recast Asylum Procedures Directive	Not applicable	Not applicable
Recast Reception Conditions Directive	Vote on Article 8-11 pending in Parliament	No
Recast Qualification Directive	Vote on partial transposition pending in Parliament	No

Partial transposition of the Recast Qualification Directive (key provisions included Article 5(1) and (2) (international protection needs arising sur place); Article 6 (actors of persecution) and Article 7 (1) (a) and (b) (actors of protection)) and the recast Reception Conditions Directive (Articles 8-11 on detention of asylum seekers) was included in the Draft Amendments of the national Law on Asylum and Refugees, which however was finally not voted by the previous (42<sup>nd</sup>) Parliament. of the Recast Reception Directive

In December 2014 the same draft was re-introduced before current (43<sup>rd</sup>) Parliament and so far, agreed by the leading Legal Commission<sup>164</sup> on 16.12.2014.

- At the time of the third update of this report (February 2015) the vote on the draft law is still pending. The draft needs to be agreed by the rest of Parliamentarian Commission, then introduced for first and second vote by the Parliament. At the time of the third update there was no fixed time schedule yet.

Introduced on 19 November 2013<sup>165</sup>, the draft amendments were prepared by a team of MOI experts without consulting even the asylum administration, SAR.

During its first session on the draft in December 2013 the Committee agreed with the criticism of UNHCR and NGOs vis-à-vis the draft as being not only over-hasty and inconsiderate, but also

<sup>164</sup> <http://www.parliament.bg/bg/parliamentarycommittees/members/2331/reports/ID/5029>

<sup>165</sup> <http://www.parliament.bg/bg/bills/ID/14681/>



restrictive and diminishing unduly the established national standards with regard to the right to liberty of asylum seekers during status determination procedures.

As a result, the Committee appointed in January 2014 an Expert Working Group to provide an opinion and recommendations on the draft. Representatives of UNHCR, BHC, judges, prosecutors and academia share the same analysis of the draft and advocate for correcting most of the restrictions in the draft including additional provisions with regard to the introduction of a genuine guardianship for unaccompanied asylum seeking children, which is long overdue. However, although improved considerably, provisions relating to detention of asylum seekers during the status determination procedure, remained in the final draft of the amendments, mainly because of the MOI, as the author of the draft persisted on this issue. This is despite the SAR's resistance to these specific provision. , which on this particular matter shared BHC and UNHCR positions against detention of asylum seekers.

### ***Main changes adopted/planned***

#### Asylum Procedures

No changes are currently planned.

#### Reception conditions

The main change concerns the transposition of Articles 8 to 11 of the recast Reception Conditions Directive. The proposed amendments aim to introduce a general detention regime for all categories of asylum seekers, including children and unaccompanied children, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances. Thus, the amendments, if adopted, would result in detention of asylum seekers in closed type centres without limitation of duration specified in law, being applied as a rule. Accommodation of asylum seekers in open centers would be an exception.

#### Detention

See above under reception conditions.