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**ANNUAL REPORT
ON THE MONITORING OF THE STATUS DETERMINATION PROCEDURE IN THE
REPUBLIC OF BULGARIA¹**

¹ This Report was drafted pursuant to Art. 3, paragraph 2 of the Asylum and Refugee Act, and on the grounds of Art. 3(3) of the Memorandum of Understanding between the Bulgarian Helsinki Committee and the UNHCR Representation in Sofia on 15 January 2015.

This Report is based on monitoring with a focus on the institutional framework and the effective interaction among the various state authorities, as well as on the legal and practical standards for conducting the procedures, as they are regulated in the national asylum and refugee legislation¹, and the compliance of these standards with the universal principles of international protection and the minimum legal standards in the asylum acquis of the European Union.

The monitoring during the period 1 January – 31 December 2015 was carried out with respect to a total of **529** procedural actions at the transit centres (TC), registration-and-reception centres (RRC) of the State Agency for Refugees (SAR) with the Council of Ministers, decisions issued on applications for international protection, and the quality of the court proceedings for examining appeals against SAR's decisions.

The number of procedural actions monitored corresponds to the number of persons seeking international protection, including 336 men, 126 women, 19 minors, and 48 unaccompanied minors.

The types of procedural actions monitored include 87 registrations (48 at Pastrogor TC, 0 at Harmanli RRC, and 50 at Sofia RRC), 119 Dublin interviews (17 at Pastrogor TC, 54 at Harmanli RRC, 23 at Sofia RRC, 5 at Voenna Rampa RRC, and 5 at Vrazhdebna RRC), 132 interviews in general procedures (7 at Pastrogor TC, 9 at Harmanli RRC, 1 at Voenna Rampa RRC, and 1 at Vrazhdebna RRC), 114 decisions on applications for international protection issued by SAR, and 58 judgements on appeals against SAR's decisions.

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The Report was drafted by the Legal Protection of Refugees and Migrants Program of the Bulgarian Helsinki Committee.

¹ Law on Asylum and Refugees, effective of 1 December 2002 (Prom. SG No. 54/2002);

PART I.

GENERAL OVERVIEW

1.1. Legal principles and standards of asylum and international protection

1.1.1. General asylum principles

The *non-refoulement* principle is regulated in Art. 33 (1) of the Geneva Convention relating to the Status of Refugees of 1951. This principle stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. The provision of Art. 33 (2) allows a derogation from this prohibition, but only in cases where there are reasonable grounds to consider that the refugee is a danger to national security or where, the refugee having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the host country.

The *non-punishment* principle is regulated in Art. 31 of the Geneva Convention relating to the Status of Refugees of 1951. This principle stipulates that the governments of the states that have ratified the Convention shall not impose penalties, on account of their irregular entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their irregular entry or presence. The national legislation has introduced this principle in Art. 279 (5) of the Criminal Code of the Republic of Bulgaria. The concept of "directly from a territory where their life or freedom was threatened" is a legal term, not a geographic one, and implies the absence of the possibility *de iure* or *de facto* to seek and receive asylum and protection in the transit state or states through whose territory or territories the refugee has crossed and which, due to these reasons, shall not be designated as "safe third countries".¹

The *access to justice* principle (*cautio iudicatum solvi*) is regulated in Art. 16 of the Geneva Convention relating to the Status of Refugees of 1951. This principle stipulates that any refugee shall have free access to the courts of law on the territory of all Contracting States. Hence, on the territory of the host state in which he/she has his/her habitual residence any refugee shall benefit

¹ "Safe third country" concept – Art. 38 of Directive 2013/32/EU (Procedure Directive). In view of the legal definition established, the EU does not consider the Republic of Turkey as a "safe third country", as it has ratified the Geneva Convention relating to the Status of Refugees of 1951 with a declaration in conformity with Art. 1C (1) of the Convention, which has also been applied in the ratification of the New York Protocol relating to the Status of Refugees of 1967 (the so-called **geographical clause**); this is why Turkey does not examine asylum applications and does not grant refugee status to third country nationals whose countries of origin are outside the territory of Europe. Therefore, in legal terms, any asylum seekers transiting Turkey before entering Bulgaria are considered to be refugees coming directly from the territory of a state where their life or freedom was threatened.

from the same treatment as a national of that state, including access to legal assistance and exemption from payment of court fees.

The benefit of the doubt principle in respect of refugees (*in dubio pro fugitive*) is regulated in §.203 of the Handbook on Procedures and Criteria for Determining Refugee Status¹ of the Office of the UN High Commissioner for Refugees. The national legislation has introduced this principle in the provision of Art. 75 (2) of the Law on Asylum and Refugees (LAR). The 2015 amendments to the Law² have supplemented this legal definition by transposing the provision of Art. 4 (5) of Directive 2011/95/EU (Qualification Directive). The principle stipulates that where the applicant's statements are not substantiated with evidence, such statements shall be accepted as credible if the applicant has made efforts to substantiate his/her claim and has provided satisfactory explanations for the lack of evidence and his/her statements are assessed as consistent and credible.

1.1.2. Common legal standards in the *acquis communautaire*

The law of the European Union is based on the legal norms laid down in the EU Treaties – the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – which have been endorsed by all the EU Member States; these are known as the “EU primary law”. The regulations, directives and framework decisions adopted by the EU institutions are known as the “EU secondary law”. Bulgaria, in its capacity of a Member State, is bound by the EU *acquis* both by force of the primary EU treaties, TEU and TFEU, as well as by the provisions of the national Constitution³ stipulating that international treaties that have been ratified in accordance with the constitutional procedure, promulgated and having come into force shall have primacy over any conflicting provision of the domestic legislation.

The authority which is competent to exercise control over the transposition and application of the provisions of the EU asylum *acquis* is the Court of Justice of the European Union⁴ (CJEU), which functioned under the name of Court of Justice of the European Communities (ECJ) till 2009. CJEU's rulings on the interpretation of the EU decisions, regulations and directives are binding for the administrative authorities and the courts of the Member States.

All the main treaties, regulations, and directives regulating the whole range of matters related to granting international protection in the EU constitute the so-called EU common asylum standards (*asylum acquis*).

Six major legal acts in the area of asylum and international protection – one regulation and five directives – have been adopted by and applied within the European Union:

¹ <http://www.unhcr-centraleurope.org/bg/pdf/resursi/pravni-dokumenti/narchnici-preporki-i-nasoki-izdadeni-ot-vkboon/narchnik-s-proceduri-i-kriterii-za-opredelyane-na-bezhanski-statut-vkboon-1979g-redakciya-1992.html> ;

² SG No. 80/2015, effective of 16.10.2015;

³ Art. 5 (4) of the Constitution;

⁴ Court of Justice of the European Union (CJEU) http://curia.europa.eu/jcms/jcms/Jo2_6999/;

Regulation (EU) No 604/2013¹ (Dublin Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged by a third-country national or a stateless person in one of the Member States, in particular:

- The application for international protection shall be examined by one single Member State (Art. 3);
- The State responsible shall be the first State in which the application for international protection was lodged or where the applicant for international protection has members of the family already residing therein (Art. 3 (2), Articles 9-11);
- Unaccompanied minors shall reunite with their parents or relatives (Art. 8);
- The State which has assumed responsibility for the applicant or has consented to take him/her back onto its territory shall examine his/her application on the merits (Art. 18 (2));

Directive 2013/32/EU² (Procedure Directive) lays down the general procedures for granting or withdrawing international protection, in particular:

- Registration within 3 to 6 working days of the lodging of the application for international protection (Art. 6);
- The right to interpretation in a language the applicant understands (Art. 12 (1) (b));
- The right to information about the rights and the procedure to be followed (Art. 12 (1) (a));
- Reading out the transcript of the personal interview to the applicant, and the applicant's right to make observations, comments and objections (Art. 17);
- Free legal assistance at the administrative stage, and for the purpose of appealing and representation in appeals procedures (Articles 19-23);
- Special safeguards for unaccompanied minors (Art. 25);
- Notice in reasonable time of the decisions on the application for international protection (Art. 12 (1) (d));

Directive 2013/33/EU³ (Reception Conditions Directive) lays down the common standards for the reception of applicants for international protection and asylum in the EU Member States, in particular:

- issuing a document certifying the applicant's status within 3 days of his/her registration (Art. 6);
- accommodation and material reception conditions providing an adequate standard of living, which guarantees the applicants' subsistence, physical and mental health (Art. 17);

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (publ. OJ No L 180 of 29 June 2013);

² Directive 2013/32/EU of the European Parliament and of the Council of 26 June on common procedures for granting and withdrawing international protection (publ. OJ, No L 180 of 29 June 2013);

³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (publ. OJ, No L 180 of 29 June 2013);

- schooling for applicants who are under the legal age (Art. 14);
- access to the labour market in the event of a longer duration of the procedure (Art. 15);
- the right to residence for the duration of the procedure, and freedom of movement (Art. 7)
- detention in case any of the grounds on the restrictive list applies, and for the shortest period of time possible (Art. 8-11);

Directive 2011/95/EU¹ (Qualification Directive) lays down the common standards for granting international protection and the content of the uniform EU status for refugees or for holders of subsidiary protection, in particular:

- two types of individual status – refugee status under Art. 1A of the Geneva Convention, and subsidiary protection on the grounds of Articles 2 and 3 of the ECHR (Art. 2);
- protection from refoulement (Art. 21);
- maintaining family unity (Art. 23);
- residence permits (Art. 24)
- freedom of movement (Art. 33) and travel documents (Art. 25);
- access to employment, education, recognition of qualifications, social and medical care, and accommodation (Art. 26-30, Art. 32);
- access to integration facilities (Art. 34);
- assistance for repatriation (Art. 35);

Directive 2001/55/EC² (Temporary Protection Directive) lays down the common standards for giving temporary protection in the event of a mass influx of refugees, in particular:

- duration of temporary protection – up to 3 years (Art. 4);
- residence permits for the entire duration of temporary protection (Art. 8);
- involvement in employment (Art. 12);
- access to housing and social assistance (Art. 13, (1 and 2));
- medical care in cases of emergency and essential treatment of illness (Art. 13 (2));
- access to the educational system for persons aged under 18 (Art. 14);
- family reunification (Art. 15);

1.2. Methodology of the monitoring

The monitoring covers the procedural actions conducted under the terms and procedure laid down in the Law on Asylum and Refugees by the State Agency for Refugees (SAR) with the Council of Ministers.

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (publ. OJ No L 337 of 20 December 2011);

² Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (publ. OJ No L 212 of 7 August 2001);

The procedural actions are monitored at all stages: registration (access to the procedure); Dublin procedure (establishing the Member State responsible for examining the application for international protection under Regulation (EU) 604/2013); accelerated procedure (admissibility of the application for international protection); and general procedure (examination of the application on the merits); as well as the acts (decisions) issued by the administrative authority in these procedures.

The monitoring methodology includes weekly ad hoc gathering of data about the ways, means and practices for conducting the procedures under ARA, which are entered in standard forms for interview evaluation (Annex 1), decision evaluation (Annex 2), and monitoring of court proceedings (Annex 3).

The monitoring of the administrative stage takes place at SAR's territorial units: the Registration-and-Reception Centres (RRC) in the city of Sofia, the village of Banya (Nova Zagora municipality), and the town of Harmanli, as well as at the Transit Centre (TC) in the village of Pastrogor (Svilengrad municipality).

The monitoring of the acts (decisions) issued by the administrative authority in these procedures and of the court proceedings on appeals against negative decisions takes place at the relevant regional administrative courts and the Supreme Administrative Court.

PART TWO.

RESULTS AND FINDINGS

2.1. Status determination procedure

2.1.1. Access to the procedure and registration of the application for international protection

The national law regulates¹ the right to lodge an application for international protection before an official of the State Agency for Refugees with COM, and before other state authorities who are obliged to immediately forward the application to SAR. The claim for international protection may be made in an oral, written or another form, and, where needed, translation/interpretation is provided. An application which is not made in writing is recorded by the competent official and is signed or otherwise authenticated by the applicant and by the translator/ interpreter.

¹ Art. 58 (3 and 4) of LAR;

The Law did not set forth an explicit time limit for the registration of the application by SAR's administration before the entry into force of the amendments to the Law passed at the end of 2015.¹ As the deadline for the transposition² of Directive 2013/32/EU (Procedure Directive) into the domestic legislation had meanwhile expired, henceforth its provisions had a direct, vertical effect in the national law, including the time limits for the registration of applications for international protection, as laid down in the Directive.

Hence, as from 20 July 2015 any application for international protection submitted before an official of the State Agency for Refugees had to be registered within 3 working days of lodging the application. When the application was filed before another state authority – which are not competent to make registrations under the national law, but are, nevertheless, likely to receive such applications – the time limit was 6 working days as from lodging the application. Such other state authorities in Bulgaria are in most cases agencies of the Ministry of Interior, in particular General Directorate Border Police whose officials receive applications for protection by third country nationals at the border or in the border areas; or Migration Directorate which receives applications for protection by third country nationals detained in the so-called Special Centres for Temporary Accommodation of Foreigners (SCTAF) on the grounds of not having valid IDs or irregular stay on the national territory.

However, the Law³, even after the amendments to it of December 2015, stipulates that SAR shall be obliged to carry out not registration of the application for international protection but personal registration of the third country national lodging the application, which includes filling in a registration form, taking fingerprints, conducting a personal search and a check of personal belongings, as well as opening a personal file for the third country national. Hence, the time limits of 3, respectively 6 working days are applied, under the national law, in respect of the personal registration of the third country national who has declared and has lodged an application, and these time limits run as from the day of lodging the application.

The 2015 monitoring has found that in 83% (296 cases) the applications for international protection were declared and lodged before a state authority, other than the one competent for registering and examining these applications, the State Agency for Refugees with COM.

In 2015 SAR's administration registered the applications for international protection of 20,350 persons out of a total of 26,961 persons lodging applications on the territory of Bulgaria. 55% of them (14,790 persons) lodged their applications before Border Police, and 45% (12,161 persons) lodged their applications at SCTAF before officials of the Migration Directorate.

It is only 8% (1,252 persons) of the applications declared and lodged at the border that were ensured direct access to the procedure, as they were immediately forwarded by Border Police to

¹ Art. 58 (4) and Art. 61 (2)2 of LAR, respectively §9 and §10 of the Law amending LAR (SG No 101 of 22.12.2015);

² 20 July 2015, laid down in Art. 51 (2) of Directive 2013/32/EU;

³ Art. 61 (2) of LAR;

SAR. 39% (5,752 cases) of the persons lodging applications for international protection at the border were sent to the Elhovo Distribution Centre (DC) with the Migration Directorate where, after spending an average of 7 days, were transferred to SAR's transit or registration-and-reception centres for registration, accommodation, issuing of documents, and all the follow-up actions within the procedure for examining the claim and taking a decision on the application for protection. The remaining 53% (7,786 persons) lodged applications before Border Police after being detained at the exit in an attempt to leave the country.

In the autumn of 2015, the monitoring detected several cases of persons with serious physical or mental illnesses whom SAR had initially denied direct reception at one of its territorial units on the grounds of mandatory accommodation at the Elhovo DC, even though the legislation¹ provides for the contrary.

In 2015 the individuals who lodged applications before the Migration Directorate after being apprehended on the territory or in attempting to leave the country spent an average of 10 days in SCTAF before their release and transfer to SAR's registration-and-reception centres.

In 100 cases access to the procedure was not provided before the court was approached with a complaint in relation to detention in SCTAF exceeding 1 month. These persons seeking protection detained for a long time spent an average of 6.5 months in SCTAF.

In mid-2015, SAR implemented some arrangements for the registration of applications outside of working hours – during work days: shifts till 8 p.m., and weekends and bank holidays: on call. The system of shifts for registration outside of working hours is operational at Sofia RRC, Sofia RRC: Ovcha Kupel Accommodation Centre (AC) and Voenna Rampa AC, Harmanli RRC, and Pastrogor TC, while Banya RRC ensures registration outside of working hours if the administrative authority deems this necessary. Vrazhdebna AC does not have registration shifts.

The forwarding of the documents² gathered or issued by other state authorities to SAR, together with the applications for international protection was ensured in due time and without any substantial violations. The monitoring has found that only in 0.5% (2 cases monitored) the accompanying documents were not dispatched to and received by SAR in due time.

2.1.2. Vulnerable groups

SAR's staff are obliged to take into consideration³ the specific situation and the special needs of applicants from vulnerable groups in each phase of the status determination procedure.

¹ Art. 16, item 3 in conjunction with Art. 7 (3), item 4 of the Ordinance on the Responsibility and Coordination of the State Authorities (ORCSB) Carrying out Activities in Implementing the Dublin Regulation and the Eurodac Regulation, adopted by a COM Decree No 332 of 28.12.2007;

² Art. 60 (1 and 2) of LAR in conjunction with Art. 10, items 2 and 3, and Art. 16, item 3 of ORCSB;

³ Art. 30a of LAR;

According to the definition laid down in the Law¹ "persons from a vulnerable group" include minor persons, unaccompanied minors, elderly people, pregnant women, single parents with minor children, victims of human trafficking, people with serious health problems, people with mental disorders, and people who are victims of torture, rape or other serious forms of mental, physical or sexual violence.

The 2015 monitoring has established the absence of a mechanism for early identification of vulnerability amongst applicants for international protection and their specific needs. The standards in place² require that such identification has to be done as early as possible, which, in the Bulgarian context, means identifying vulnerabilities during or right after the applicants' personal registration at SAR's centres. In 2015, within the framework of the National Coordination Mechanism in place, an agreement was reached in terms of the need to update the existing Standard Operating Procedures (SOP)³ in order to ensure their effective implementation, and to introduce similar SOPs with respect to other categories of vulnerable persons. This had not been achieved by the end of the year. This is why, the identification of vulnerable persons was an ad hoc action, and, in most cases, was done due to the assessment and notification made by non-governmental organisations working with refugees at SAR's centres, in particular social workers and social mediators of the Bulgarian Red Cross, as well as individual advocates and lawyers.

2.1.3. Provision of information

The Law stipulates⁴ that an applicant for international protection shall be informed in writing in a language he/she understands about the terms for lodging the application, the procedure to be followed, and his/her rights and obligations, as well as the organisations providing legal and social assistance to third country nationals within 15 days of lodging the application. Where the circumstances so require, the information may be provided in an oral form. In terms of meeting this obligation, the monitoring has found that SAR's staff provided the persons seeking protection with such initial information about their procedure and their rights and obligations in 69% (245 cases monitored). However, the period April-June 2015 marked an overall deterioration in the delivery of this legal obligation by SAR's staff, in particular the provision of oral information to applicants for protection whose level of literacy is either low or absent, the main reason being the lack of interpreters in the status determination procedures. The monitoring has further found, however, that, even after interpretation was ensured in October 2015, SAR still failed to meet its obligation to provide information either in writing or in an oral form to illiterate applicants, the argument being the need to save resources for the translation and dissemination of information materials.

¹ §1, item 17 of the Additional Provisions of LAR;

² <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/caring-for-the-vulnerable-in-asylum.html> , as well as <http://www.unhcr.org/4371fa162.pdf> ;

³ Standard Operating Procedures for Prevention of and Response to Sexual and Gender-Related Violence, UNHCR, Reg. No 630 of 27..02.2008 at SAR with COM;

⁴ Art. 58 (6) of LAR, Articles 8 and 12 of Directive 2013/32/EC (Procedure Directive);

2.1.4. Evidence

The Law¹ does not allow that data about third country nationals who seek or have received international protection be gathered by and provided to prosecution bodies and organisations. Except for this explicit prohibition laid down in the Law, SAR has the right to gather any written², oral³ or other types of evidence, including by means of expert examinations,⁴ which are regulated and admissible in administrative proceedings⁵. On the other hand, the applicants for protection themselves are obliged⁶ to present, in a timely manner, any written or other evidence they have in order to substantiate their claim for international protection. The Law limits the time-frame for the submission of evidence to the point of deciding on the application; the applicant's failure to meet this obligation may have a negative effect on the decision, as such potential evidence will not be taken into consideration.

The monitoring of the status determination procedures has found that in 2015 documents in support of their statements were presented by the applicants in 10% (35 cases monitored). In 5 of these cases a record was drawn up to guarantee that the documents presented will be taken into consideration in making the decision on the application, while in the other 35 cases the evidence was not duly gathered and the act of gathering of the evidence was not recorded in a take-over certificate. This constitutes a violation of the principle of veracity⁷ in administrative proceedings, and, in particular, in status determination procedures,⁸ as it allows a situation where SAR might not assess and take into consideration these facts and circumstances in making the decision on the application for protection, while the applicant does not have safeguards whereby he/she can prove the timely submission of the relevant evidence to the administrative authority. This violation acquires a serious nature in the status determination procedure, in which, by way of principle, it is not possible to gather evidence relevant to the circumstances stated in the applicant's refugee story due to the fact that these circumstances occurred in an extraterritorial jurisdiction and the explicit prohibition to officially gather evidence from the authorities of the country of origin. This is the reason why the benefit of the doubt principle in respect of the applicant⁹ (*in dubio pro fugitivo*) has also been established in the status determination procedures. Therefore, SAR's failure to ensure that the evidence presented by applicants for protection is duly gathered by drawing up a take-over certificate constitutes a serious violation of the procedural safeguards for the rights of applicants for international protection.

¹ Art. 63 (4) of LAR;

² Art. 63a (1) of LAR;

³ Art. 63a (5) of LAR;

⁴ Art. 61 (3 and 4) of LAR;

⁵ Art. 37 – 46 of the Administrative Code of Procedure;

⁶ Art. 63a (2) of LAR;

⁷ Art. 7 (2) of the Administrative Code of Procedure;

⁸ Art. 75 (2) of LAR;

⁹ Art. 75 (3) of LAR;

2.1.5. Quality of the actions for examining the application for international protection

The interview in the status determination procedure is a tool for gathering oral evidence by taking due note of the applicant's statements regarding the reasons why he/she fled the country of origin to seek international protection. Hence, the correct performance of these actions by observing the procedural safeguards established by law is crucial to the subsequent proper assessment of the application for international protection. The only cases when an interview may not be conducted is where the applicant is unable to manage his/her affairs because of weak-mindedness or a mental disease or is unable to make oral or written statements due to objective reasons.

The national legal framework stipulates¹ that right after registration a date for the interview shall be appointed, and the applicant for international protection shall be notified in due time of the date of any subsequent interview. The monitoring has found that the practice of serving an invitation for an interview to be held with applicants had been discontinued in some of SAR's territorial units² – either such an invitation was not drawn up or the invitation signed by the applicant, instead of being given to him/her, was attached to and kept in his/her personal file. The non-observance of this rule results in the applicant's failure to appear for the interview, being unaware that the interview was scheduled for a specific date. Thus, the applicant's failure to appear for the interview is assessed by case workers as a formal renunciation of the application for international protection lodged in Bulgaria, which is used as grounds for suspending and, subsequently, ceasing the procedure, this being most often the case with the procedures conducted at Voenna Rampa AC with Sofia RRC and the RRC in the village of Banya, Nova Zagora municipality.

The Law stipulates that if the applicant wishes so, he/she shall be interviewed by a case worker and a translator/ interpreter of the same gender. The findings of the monitoring show that this legal provision was by and large observed by SAR with respect to interviewers, but not always with respect to the interpreters/translators involved in the interview because of the lack of translation capacity with all the necessary languages over a certain period of time in 2015³, and the lack of translators/interpreters of both genders for all the languages. It has furthermore been established that the applicants were not generally informed of the right to have an interviewer or a translator/interpreter of the same gender.

¹ Art. 63a (1) and following of LAR;

² Banya RRC and Voenna Rampa Accommodation Centre with Sofia RRC;

³ See paragraph 2.1.3;

The interview has to be held¹ in a language declared by the applicant, and, when possible, in a language the applicant understands. As noted above,² SAR did not have contracts concluded with translators/interpreters with the main languages spoken by applicants for a long period of time in 2015, as the tender procedures conducted by the Agency were appealed against and reopened several times during the period April - October 2015. In parallel, some additional issues with the payment of the remuneration due to translators/interpreters for the current and previous year³ resulted in a situation where most translators/interpreters refused to provide services to SAR over a certain period of time,⁴ which caused serious delays in conducting both the interviews for assessing the applications for international protection and the preceding registration of applicants.

The Law requires⁵ that audio- and audio-visual recording should be made and minutes should be taken during the interview. The requirement in terms of the obligation to ensure audio- and audio-visual recording was introduced in mid-October 2015 after this approach had been repeatedly recommended in previous years⁶ as the best standard which ensures the full, objective and impartial recording of the applicant's statements regarding the reasons to seek protection, and serves as a safeguard against corruption. The monitoring has found that by mid October 2015 audio-recording had been done in 10% (37 cases monitored) of the procedures monitored, while in the remaining 90% the applicants either had not been informed of this possibility or had been informed by SAR's staff in a way provoking reluctance to accept audio-recording or objections against it. An additional reason was pointed out by Harmanli RRC: the general lack of recording devices available to the staff of the centre.

The minutes of the interview held shall be read to the applicant, and shall be signed by him/her, by the translator or interpreter and by the interviewing authority. The 2015 monitoring has found that in 71% (254 cases monitored) of the procedures monitored the minutes of the interview conducted or the registration list drawn up at the initial registration of the application for international protection were not read out to the person seeking international protection before being signed by him/her. Under such circumstances, the information recorded in the minutes of the interview could be prone to potential manipulation. On the other hand, it is not possible for the applicants to make sure that their statements and the facts and circumstances presented by them had been correctly recorded in the minutes. Reading out the minutes is an important safeguard for detecting and clarifying any inconsistencies between the statements made in different interviews, and, first and foremost, for taking into account all the facts and circumstances presented in their logical sequence when making the decision on the application for international protection.

¹ Art. 63a (7) of LAR;

² See paragraph 2.1.3;

³ <http://www.mediapool.bg/bunt-na-prevodachi-v-dab-zaradi-neizplateni-zaplati-news241414.html> ;

⁴ 6 - 12 October 2015;

⁵ Art. 63a (3) of LAR;

⁶ See BHC, 2014 Annual Report on the Monitoring of the Procedure for Granting International Protection, paragraph 4.5; and 2013 Annual Report on the Monitoring of the Status Determination Procedure, paragraph 4.8;

Within two months of initiating the general proceedings, the interviewing authority shall draw up a position¹ which, together with the personal file, shall be submitted to the Chairman of the State Agency for Refugees for taking a decision. Within three months² of initiating the general procedure, the Chairman of the State Agency for Refugees shall take a decision whereby he/she grants or refuses refugee or humanitarian status. The three-month period may be extended by SAR's Chairman by another three months, or a total of 6 months, but only where the evidence gathered for the particular case is considered insufficient. The applicant shall, under such circumstances, be notified of the extension of the time limit either in person or by means of a notice with a receipt of acknowledgement. Based on the positive and negative decisions monitored in 2015 the findings show that in 80% (92 cases monitored) the legal time limit was observed, while in the remaining 20% the taking of the decision was overdue by one month or more. In 100% of the cases in which the decision was issued beyond the 3-month time limit the applicant was not duly notified of the extension of the period for taking the decision on his/her application. The timely decision-making on the application for international protection is a fundamental procedural safeguard for applicants, as it prevents both the legal uncertainty applicants have in terms of their status and prospects and potential prerequisites for irregularities and corruption in the course of the status determination procedure.

2.1.6. Legal assistance

The state has to ensure conditions³ for third country nationals seeking protection in Bulgaria to receive legal assistance. By way of principle, any natural person who, due to the lack of financial means, is unable to hire a lawyer for the purpose of legal assistance and support, is entitled to legal aid financed by the state. The state provides legal assistance through the National Legal Aid Bureau (NLAB) with the Ministry of Justice. The applicants for international protection have been part⁴ of the category of individuals entitled to legal aid financed by the state since March 2013. However, thereafter, including in 2015, as no state budget resources were allocated for legal aid to applicants for international protection, NLAB was not able to arrange for the provision of legal assistance in the course of the procedural actions conducted by SAR at the administrative (first-instance) stage of the status determination procedure. The applicants for protection received legal aid only at the judicial instance when court proceedings were instituted in relation to appeals against a negative decision on the application for international protection; the access to the court for the applicants, however, was facilitated by non-governmental organisations which drew up and registered their complaints (on the issue of legal assistance at the court instance, see paragraph 2.2.5 below).

¹ Art. 74 of LAR;

² Art. 75 (1) of LAR;

³ Art. 23 (2) of LAR;

⁴ Art. 22 (8) of the Legal Aid Act;

This is why, in 2015, legal assistance was provided at the administrative stage of the status determination procedure only within the framework of ERF-funded projects implemented by SAR. The implementation of the legal assistance projects, and, in particular, the quality of the legal assistance rendered to applicants under these projects raised concerns. In 2015 legal assistance was provided with ERF funding only to the applicants for international protection accommodated at the Ovcha Kupel AC with Sofia RRC. As for the other centres in Sofia (Vrazhdebna, Voenna Rampa) and SAR's territorial units in Harmanli, Banya and Pastrogor¹, legal assistance was not ensured under any form; thus, the applicants for international protection did not have the possibility to use free legal counsel, consultations and representation. In terms of Ovcha Kupel AC with Sofia RRC itself, the monitoring has found that for the most part of project implementation the reception room was closed, instead of being open and operational on working days and within working hours. According to the findings in 98% (351 cases monitored) the registration, the interviews or the serving of decisions on the applicants for international protection were done without representation or assistance by a lawyer. In terms of the procedural actions carried out in the presence of a lawyer under the ERF-funded project, the monitoring has established that in 100% (6 cases monitored) of the interviews monitored which were conducted with legal representation, the lawyers' attendance was formal – they did not introduce themselves to the applicant for international protection whom they represented, did not give him/her guidance as to the type and purpose of the procedural actions performed, his/her rights and obligations; neither did they ask clarifying or additional questions, when needed.

The legal assistance provided at Ovcha Kupel AC came to an end on 30 June 2015 after the expiry of the programme period for the implementation of the 2014 Annual Programme under ERF. This means that legal assistance was no longer provided to the applicants for international protection at the administrative stage of the procedure conducted by SAR during the period 30 June – 31 December 2015.

2.1.7. Procedure in respect of unaccompanied minors

The year 2015 marked a growing number² of unaccompanied minors arriving on the territory of Bulgaria without a parent or another adult responsible for them by law or custom.³ Given these circumstances, unaccompanied minors who seek or have been granted protection can be defined as children at risk in conformity with the legal definition.⁴ Similar to the situation in the previous 16 years, however, the most serious issue, still unresolved, in terms of the status determination procedure was conducting the procedure in respect of unaccompanied minors who do not have a guardian or a custodian appointed, which constitutes a violation of the

¹ With the exception of 2% (6 cases monitored) where legal aid was provided in the first quarter of 2015;

² 1816 unaccompanied minors (1706 boys and 110 girls) lodged applications for international protection in Bulgaria in 2015, which compared to 940 unaccompanied minors in 2011 constituted an increase by 51%. The main countries of origin of these children were Afghanistan (940 children), Iraq (532 children), and Syria (284 children);

³ § 1, item 4 of the Additional Provisions of the Law on Asylum and Refugees;

⁴ §1, item 11, "a", "c" and "e" of the Child Protection Act;

peremptory requirements set out in the Law.¹ According to the established case law,² such procedures are not lawful; neither are the procedures in respect of unaccompanied minors conducted without assistance by a lawyer providing procedural representation for them and defending their best interest.

Nevertheless, in 2015 all of SAR's procedures with unaccompanied minors continued to be conducted only in the presence of a social worker.³ Legal assistance at the administrative stage was not provided to unaccompanied minors seeking international protection, either, as in 100% of the monitored procedures with unaccompanied minors at SAR the applicants did not have a lawyer as their legal representative, which was also in violation of the EU common standards⁴ for international protection applicable in the EU Member States. The 2015 monitoring has found that in 18% (7 cases monitored) the registration of unaccompanied minors was carried out in the absence of a social worker, which was rather the rule than the exception. In terms of another 7.5% (3 cases monitored) the findings show that the registration was attended by a social worker from SAR's Social Activity and Adaptation Directorate, instead of one from the Child Protection Department with the respective Social Assistance Directorate of the Social Assistance Agency. This constitutes a conflict of interest due to the official legal relations between the attending social worker from SAR's staff, who is expected to safeguard the child's best interest, and his/her employer as the authority issuing the decision on the application for international protection of the relevant child seeking protection. The 2015 monitoring has found that in 100% (40 cases monitored) the unaccompanied minors were not appointed a guardian or a custodian. In 5% (2 cases monitored) the social workers appointed to the case provided support or intervened, when needed, in the course of the interviews held with the children. The unaccompanied minors were not represented by a lawyer in any of the cases monitored.

The amendments to the Law on Asylum and Refugees transposing Directive 2011/95/EU (Qualification Directive) came into force in mid-October 2015. The amendments⁵ stipulate that unaccompanied minors who seek or have been granted international protection shall be appointed a representative from the municipal administration, designated by the mayor of the municipality or by an official empowered thereby. The representative of the unaccompanied minor who seeks or has been granted international protection shall have the following powers in the procedure till the minor person becomes of age: 1) safeguard his/her legal interests in the

¹ Art. 25 (1) of LAR;

² Thus, Judgement No 5137/14.04.2014 under a.c.No 13176/2013, 3 div., Supreme Administrative Court (SAC) ; Judgement No 5930/09.10.2014 under a.c.No 13176/2013, 3, SAC; Judgement No 8570/23.06.2014 under a.c.No 490/2014, 3, SAC; Judgement No 4453/30.06.2014 under a.c.No 3132/2014, 42, Sofia City Administrative Court (SCAC); Judgement No 5068/21.07.2014 under a.c.No 5346/2014, 44, SCAC; Judgement No 5014/18.07.2014 under a.c.No 5283/2014, 11, SCAC; Judgement No 5307/04.08.2014 under a.c.No 8635/2013, 6, SCAC; Judgement No 4731/08.07.2014 under a.c.No 5054/2014, 20, SCAC; Judgement No 4230/24.06.2014 under a.c.No 3900/2014, 45, SCAC; Judgement No 8570/23.06.2014 under a.c.No 490/2014, 3, SCAC; Judgement No 3833/10.06.2014 under a.c.No 1995/2014, 16, SCAC; Judgement No 2418/10.04.2014 under a.c.No 8526/2014, 12, SCAC; Judgement No 33/06.01.2014 under a.c.No 10102/2013, 44, SCAC; Judgement No 360/20.01.2014 under a.c.No 12298/2013, 43, SCAC, etc;

³ Art. 25 (5) of LAR;

⁴ Art. 25 of Directive 2013/32/EU;

⁵ Art. 25 of LAR, SG No 80 of 16.10.2015, pursuant to §83 of the TFP of the Law Amending LAR – effective as of the date promulgation in SG;

procedures for granting international protection till the completion thereof with a final decision; 2) represent him/her before any administrative bodies, including social, healthcare, educational, and other institutions in the country with a view to safeguard the child's best interest; 3) perform the role of a procedural representative in all the procedures before the administrative bodies; 4) take actions for ensuring legal assistance. This legal framework replaced the proposals submitted to the Parliament by SAR¹ which provided for the appointment of a guardian or custodian from the staff of the respective units of the Social Assistance Agency whose functions include, by way of competence, the task to conduct child protection activities and take measures for ensuring such protection. This explains why the municipal administrations in the cities/towns where SAR's centres are located had not made any arrangements for designating, training and appointing their own employees who would act as representatives of unaccompanied minors who are in the procedure or have received a status. Hence, the monitoring has found that after the amendments to the Law came into force in mid-October 2015 representatives of unaccompanied minors were appointed only by the administration of Harmanli municipality for the registration-and-reception centre in the same town. As regards the other cities and towns with refugee centres – Sofia, the village of Banya, Nova Zagora municipality, and the village of Pastrogor, Svilengrad municipality – such representatives were not appointed till the end of the year.

Moreover, the Law stipulates² that SAR shall exercise control and take measures for the protection of minors seeking international protection against physical or psychological violence, cruel, inhuman or degrading treatment. The monitoring has found that for the most part of 2015 the accommodation of children at SAR's RRCs was not in conformity with the special accommodation conditions required by the Law.³ Instead, unaccompanied minors were accommodated in rooms with adult unmarried applicants; hence, the monitoring has detected several cases where children were exposed to unfavourable influence and environment, and one case of mental and physical harassment suffered by the child. In early December 2015 SAR designated a separate floor for unaccompanied minors in Ovcha Kupel AC with Sofia RRC, and announced measures for the renovation of the building and restricted access into it, which would be implemented as from early 2016.

Finally, the monitoring has found that unaccompanied minors accommodated in SAR's territorial units were not provided with food three times a day, as required by the Law.⁴ In addition, at the end of March 2015, SAR ceased the payment of the individual monthly benefits regulated in the Law⁵ for both adults and unaccompanied minors.

2.1.8. Procedures in respect of applicants returned under the Dublin Regulation

¹ §20 of the Draft Law Amending LAR, ref. No 454-01-37 of 7 November 2014, <http://parliament.bg/bills/43/454-01-37.pdf>

² Art. 25 (4) of LAR;

³ Art. 29 (7), item 2 of LAR;

⁴ Art. 29 (1), item 3 of LAR in conjunction with Ordinance No 37 of 21 July 2009 on the Healthy Nutrition of School children, and Ordinance No 23 of 19 July 2005 on the Physiological Norms for the Nutrition of the Population of the Ministry of Health with respect to Children Deprived of Parental Care; and, under the assumption of a legal gap – applicable by analogy to unaccompanied minors seeking protection;

⁵ Art. 29 (1), item 4 of LAR;

Regulation (EU) №604/2013 (Dublin Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection. The Dublin Regulation stipulates that when a person seeking international protection lodged an application in a Member State but then left its territory and lodged an application in another Member State, the State where the first application for international protection was made shall take back into its territory the applicant for protection and shall examine his/her application.¹

The findings of the 2015 monitoring show that the applicants for international protection who were returned to Bulgaria on the grounds of a take-back decision under the Dublin Regulation were detained only if, after they had left Bulgaria, a negative decision on the application had been made and served *in absentia*, and this negative decision had become final in the absence of an appeal before the court. The Law stipulates that if the decision cannot be served within the 14-day time limit as from issuing the decision – such are the cases when the applicant leaves the country during the procedure – a notice with a receipt of acknowledgement shall be sent to the applicant's last known address. If the notice with the receipt of acknowledgement is returned to the State Agency for Refugees due to failed delivery, the decision shall be deemed served and the time limits for the appealing the decision before the court shall start running. After these time limits have expired,² such applicants for international protection shall be considered to have received a final decision refusing international protection in respect of whom the legal safeguards³ for the suspension of coercive administrative measures, including administrative detention, are no longer applicable and are lifted. This is why, this category of applicants for international protection who are returned under the Dublin regulation, right after their transfer are usually taken directly from Sofia Airport to the Special Home for Temporary Accommodation of Foreigners (Sofia SHTAF in Busmantsi neighbourhood or Lyubimets SHTAF) for resuming the return procedure, and for preparing and enforcing their return to the country of origin by means of deportation or expulsion. Detention in SHTAF is a safeguard measure for the return (deportation or expulsion)⁴, and under the law it can be applied for up to 6 months.⁵ This time limit, however, can be extended by the court to a total of 18 months under the conditions⁶ regulated in the EU common standards on return.

The practice in respect of applicants leaving the territory of Bulgaria before the issuing of the decision on the application differed from the one in respect of applicants in respect of whom a decision had been issued. Pursuant to the Law⁷ the status determination procedure shall be suspended when the applicant, after having been duly invited to do so, fails to appear for an

¹ Art. 18 (1 and 2) of Regulation (EU) No 604/2013;

² 7-day time limit when the application is rejected as manifestly unfounded in the accelerated procedure (Art. 84 (2) of LAR), and a 14-day time limit when the application is refused on the substance (Art. 87 of LAR);

³ Art. 67 (1) of LAR;

⁴ Art. 44 (6) of Aliens in the Republic of Bulgaria Act (ARBA);

⁵ Art. 44 (8) of ARBA;

⁶ Art. 15 (6) of Directive 2008/115/EU;

⁷ Art. 14, items 1 and 2 of LAR;

interview within 10 working days without good reason or changes his/her address¹ without notifying the State Agency thereof. The invitation may be either oral or written, in the latter case being served against a signature under the procedure for serving decisions.² If the invitation cannot be served in person, as is the case when the applicant leaves the country during the procedure, the applicant shall be sent a notice with a receipt of acknowledgement. If this notice is returned to the State Agency for Refugees due to failed delivery, the decision shall be considered served. The status determination procedure suspended may be resumed³ where the applicant appears before SAR and submits evidence proving objective reasons for changing the address or objective reasons for his/her failure to appear. If, however, the applicant fails to appear before the relevant official of the State Agency for Refugees within three months as from the suspension of the procedure⁴ and to present evidence excusing his/her absence, the procedure shall be ceased.

The Law stipulates⁵ that where an applicant for international protection whose procedure has been ceased is returned under the Dublin Regulation, SAR shall resume the procedure and shall issue a decision on the application for protection. The monitoring has found that in 2015 the procedures ceased were not resumed after the return under the Dublin Regulation; instead, the applicants returned were required to lodge a new, subsequent application within the meaning of the Law, and to indicate a residence address in rented lodgings at their expense outside SAR's accommodation facilities. In case they failed to do so, SAR would not re-issue the applicant's registration card and would not conduct further actions for examining the application for protection on the merits. This practice constitutes a violation of the Law along two lines. On the one hand, the application for protection is examined as a subsequent one, instead of being examined as a first application in respect of which the procedure has been resumed. This predetermines, in violation of the Law,⁶ the rejection of the application based on the objective absence of new circumstances or evidence.⁷ On the other hand, the applicants returned under the Dublin Regulation, are deprived of their right to shelter and food⁸, a right which the Law neither limits or nor revokes regardless of whether the procedure on the application for protection was suspended or ceased, till the return or take-back to Bulgaria under the procedure of the Dublin Regulation.⁹

2.1.9. Reception conditions

The monitoring has found that the reception conditions for applicants for international protection are unsatisfactory. Following the improvements made in 2014, as from early 2015 the

¹ Art. 30 (1), item 5 of LAR;

² Art. 76 (2-5) of LAR;

³ Art. 77 (2) of LAR;

⁴ Art. 15, item 7 of LAR;

⁵ Art. 67e (2) of LAR, and Art. 18 (2) of Regulation (EU) No 604/2013 (Dublin Regulation);

⁶ Art. 18 (2) of Regulation (EC) No 604/2013 (Dublin Regulation);

⁷ Previous Art. 13, (5) of LAR (repealed SG No 101/2015), current Art. 76b of LAR (effective 26 December 2015)

⁸ Art. 29 (1), item 3 and (4) of LAR;

⁹ *Argumentum a contrario* of Art. 29, (7) of LAR;

reception conditions were gradually deteriorating in several main areas. Registration and the issuing of documents¹, in particular for those directly lodging their applications in person at SAR's territorial units, was not done within the time limit of 3 to 6 working days, as provided for in the Law.² The basic services were scarce and at irregular intervals. The living and sanitary conditions of reception deteriorated compared to the year 2014. The registration-and-reception centres provided food twice a day, the sole exception being Harmanli RRC but only with respect to children aged under 18. Medical services were limited to emergency care by means of medication provided mostly by the Bulgarian Red Cross and other individual or corporate donors. Access to interpretation/translation in a language the applicants understand was ensured only in the interviews within the procedures for examining the applications for international protection; thus, in terms of information and communication, the applicants relied mostly on interpreters/translators, social workers and lawyers from non-governmental organisations whose support capacity, however, is limited.

Last but not least, in March 2015, SAR retroactively cancelled³ the provision of social benefits in the amount of 65.00 BGN (the equivalent of 33.00 euro) to the applicants for protection accommodated at SAR's centres, thus depriving them of the right to material assistance.⁴ The Law provides for the two types of assistance – shelter and food and social welfare under the terms and procedure applicable to Bulgarian nationals – in a cumulative, not in an alternative manner. The provision of assistance in kind such as food, even if ensured three times a day, does not substitute social welfare. As a result of being deprived of social welfare in 2015, the applicants for international protection were thus deprived of the possibility to buy additional foodstuffs, including special food for infants aged 0-3, medication, sanitary items, clothes and other staple commodities for meeting their basic needs.

2.2. Quality of the acts issued on the applications for international protection

2.2.1. Issuing in due time of the decisions on the applications for international protection

The Law stipulates⁵ that SAR's decision shall be issued within 3 months of initiating the general procedure for examining the application for international protection on the merits. This time limit may be extended by an explicit order of SAR's Chairman in case the data gathered for the particular case is considered insufficient, of which the applicant shall be notified in person or by means of a notice with a receipt of acknowledgement. The 2015 monitoring has found that in 80% (92 cases monitored) the procedures for examining the applications for international protection were completed within the legal time limit. In 20% (23 cases monitored) the administrative files were forwarded to the court approached with an appeal for reviewing

¹ Art. 40 (2) in conj. with (1), item 1 of LAR;

² Art. 6 (1) of Directive 2013/32/EU (Procedure Directive), and Art. 6 (1) of Directive 2013/33/EU (Reception Conditions Directive);

³ Order No 03-310/31.03.2015 of the Chairman of the State Agency for Refugees with COM, effective 1 February 2015;

⁴ Art. 29 (1), item 2 of LAR; Art. 17 of Directive 2013/33/EC (Reception Conditions Directive);

⁵ Art. 75 of LAR (SG No 52/2007);

negative decisions on applications (refusals) – this prevents the judge, as well as the lawyer representing the applicant concerned from preparing for the hearing in advance, in particular where the latter is appointed ex-officio to provide legal aid after the appeal was lodged and the court proceedings was instituted.

2.2.2. Country of origin information

In conformity with the legal framework,¹ in deciding on an application for international protection, all the relevant facts, statements or documents pertinent to the applicant's individual circumstances, his/her country of origin or the possibility to avail himself/herself of the protection of another state whose citizenship he/she may acquire, including whether the applicant has performed activities for the sole purpose of being granted international protection, shall be taken into consideration. Therefore, the accurate and current information about the applicant's country of origin is crucial to the correct assessment of his/her claim and the decision on it. The findings of the monitoring show that in 80% (91 cases monitored) of the cases examined during the year the decisions on the applications for international protection took into consideration current COI prepared by SAR with correct reference to the information sources. In 69% (79 cases monitored) the COI quoted was in line with the content of the decision issued. Nevertheless, the information quoted in most cases consisted of general facts, data and circumstances which were not related to the specific case, and were, therefore, irrelevant to the correct decision on the case. In 3% (3 cases monitored) the COI quoted in the decisions was not current, as it included facts and circumstances which had occurred a year and more before the date of issuing the decision on the application for international protection. This is why, in these cases, in spite of the current date of the COI note whereby the information had been gathered, the very content of the COI note was not current, it was outdated and unfit for the purpose of drawing correct factual conclusions.

2.2.3. Factual findings

In 2015, in 10% (9 cases monitored) the decisions on the applications for international protection were in line with the specific refugee story, facts and circumstances declared in the particular individual claim, the grounds for granting protection being correctly identified in 7% (8 cases monitored); in 79% (90 cases monitored) the decisions also included and considered the main elements of the refugee story; in 9% (10 cases monitored) the facts and circumstances conformed to the legal conclusions in the decision; in 7% (8 cases monitored) the decisions examined all the substantive legal issues; in 0% (0 cases monitored) the decisions were clear in terms of which circumstances in the particular case were accepted as established and which not; in 0% (0 monitored cases) the determining authority presented arguments for the reasons to assess the applicant's explanations concerning ambiguities or inconsistencies in the refugee story as incredible; in 76% (87 cases monitored) the burden of proof was correctly determined and shared; in 75% (86 cases monitored) the *in dubio pro fugitive* principle was applied; and, finally, in

¹ Art. 75 (2) of LAR;

2% (2 cases monitored) the applicant's individual circumstances and situation were taken into account in assessing the credibility of the application for international protection (in taking into consideration the specifics of vulnerable groups).

2.2.4. Legal conclusions

The monitoring has found that in 20% (23 cases monitored) the refusal to grant international protection was not consistent with the need for such protection identified during the procedure, and in 0% (0 cases monitored) protection was refused in contradiction with the opinion of the case worker who had conducted the procedure for examining the application for protection; in 75% (86 cases monitored) the refusal to grant international protection was based on an erroneous assessment against the applicable grounds of the 1951 Convention; in 88% (100 cases monitored) the refusal to grant international protection was based on an erroneous assessment of the applicable grounds for humanitarian status; in 98% (112 cases monitored) the decision did not present a correct analysis of the existence of effective protection in the country of origin or habitual residence.

In 88% (100 cases monitored) the applicants for international protection were granted refugee status, instead of humanitarian status based on the existing grounds for it, which was the result of a wrong assessment of the applicable grounds of the 1951 Convention.

2.2.5. Legal assistance at the serving of negative decisions

In 2015, legal aid through representation and assistance by a lawyer appointed ex-officio or by SAR under the ERF-funded project was not provided upon serving negative decisions in any of the cases monitored. The observance of this legal standard is crucial in terms of the access to the court and the exercise of the applicants' right to make in due time arrangements for their defence against a negative decision issued on their application for international protection.

2.3. Court proceedings in relation to refugee cases

2.3.1. General profile

In 2015, the monitoring of court proceedings related to appeals against negative decisions covered 58 applicants for international protection, including 45 men, 11 women, 1 accompanied and 1 unaccompanied minor seeking international protection from the following countries of origin:

- Iraq-16
- Ukraine-8
- Afghanistan-6

- Syria-2
- Iran-2
- Palestine-1
- India-1
- Mali-1
- Pakistan-2
- Turkey-1
- Georgia-1
- Ruanda-2
- Cameroon-2
- Lebanon-3
- Congo-1
- Sudan-1
- Cote d'Ivoire-8

2.3.2. Equal treatment and non-discrimination

Discrimination or unequal treatment of the applicants for international protection by the court or the prosecutors participating in the administrative process was not detected in any of the court proceedings monitored.

2.3.3. Translation/Interpretation

In 74% (43 cases monitored) the court hearings monitored were attended by an interpreter who provided assistance with a language spoken by the applicant for international protection on whose appeal the relevant proceedings had been instituted. In 17% (10 cases monitored) the interpreters appointed from the court's list were not sufficiently competent either in the use of the respective foreign language or the Bulgarian language or in the translation of the specific legal terms used, which hinders the communication between the court and the appellant – the applicant for international protection.

2.3.4. Involvement of the prosecutor's office

The findings of the monitoring show that the prosecutor's office participated in the court hearings on refugee cases in 71% (41 cases monitored) of cases. In 31% (18 cases monitored) of cases, however, the presence of the prosecutor's office was formal, without any reasoned opinion being submitted in relation to the particular appeal or case.

2.3.5. Procedural representation

In 78% (45 cases monitored) the applicants for international protection involved in the court proceedings monitored were represented by a lawyer hired by themselves; in 9% (5 cases

monitored) they had a lawyer appointed ex-officio by the court at their request, while in 12% (7 cases monitored) the proceedings was conducted without a lawyer. 2% (1 case monitored) of these cases concerned unaccompanied minors for whom the involvement of a procedural representative is mandatory at both the administrative and the judicial stage. In 2% (1 case monitored) the applicants for international protection involved in the court procedures monitored were represented by a lawyer appointed by SAR under the ERF-funded project for the provision of legal aid.

In 72% (42 cases monitored) the lawyers acting as legal representatives in the court procedures manifested preparation in advance for the hearing and presented detailed arguments in support of the appeal against the refusal to grant international protection.

In terms of the results from the refugee court proceedings, the cases monitored were a total of 58, including 0 cases against Dublin transfers, 1 appeal against refusal to grant protection to unaccompanied minors, 11 appeals against refusals in the accelerated procedure, and 47 cases related to appeals against decisions in the general procedure (46 cases at the appeal instance and 1 at the cassation instance before the Supreme Administrative Court). In 16 of these cases the courts quashed the decisions issued and returned the files to the administrative authority, SAR, with instructions on the application of the procedural rules and the special legislation regulating international protection.

PART THREE.

RECOMMENDATIONS

3.1. Put in place arrangements for shift work in all the territorial units of the State Agency for Refugees in order to ensure the observance of the 6-day time limit for registration in cases when the application for international protection was lodged before another state authority.

Authority: State Agency for Refugees

Legal act: Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

SAR submits the following position on Recommendation 3.1¹:

Under the current conditions and in the current refugee situation, SAR with COM has both administrative capacity and a working mechanism for conducting the procedural actions related to the examination of applications for protection in conformity with the legal requirements. At present there are arrangements in place which allow calling in staff of the territorial units at

¹ Outgoing No ПД 13-225 / 26.04.2016 of the Chairperson of the State Agency for Refugees with COM;

weekends and on bank holidays for the purpose of carrying out the reception and registration of persons seeking international protection.

It should be noted that in cases when the applications for international protection are declared and submitted before a state authority, other than SAR with COM, the applicants' registration can take place only after the latter have been transferred to one the Agency's territorial units. Therefore, the timely transfer of the persons concerned to the territorial units of SAR with COM is a prerequisite for the observance of the legal time limit for registration. The Agency has been actively contributing to efficient cooperation, interaction and coordination with the other institutions.

3.2. Ensure that the applicants for international protection have free access to the registration offices on a daily basis in all the territorial units of the State Agency for Refugees under the conditions of explicitly defined working hours and the presence of interpreters with the main languages spoken who can facilitate communication, the submission and serving of documents and acts, and receiving individual information about the actions carried out in the administrative procedure.

Authority: State Agency for Refugees

Legal act: Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

SAR submits the following position on Recommendation 3.2¹:

In relation to BHC's recommendation regarding the need to ensure that the applicants for protection have free access on a daily basis to all the territorial units for the purposes indicated, our position is that at present the applicants' rights are not subject to any limitations whatsoever.

Pursuant to Art. 29a of LAR the applicants for protection or their representatives shall have the right to file an application for access to the information collected on the basis of which the decision will be made, except for the cases explicitly listed in the Law. Hence, there are no obstacles to receiving individual information. Each territorial unit has put in place arrangements for submitting and serving papers and documents.

3.3. Develop and incorporate in an annex standard operating procedures (SOP) regarding the initial and subsequent identification of categories of vulnerable persons, and the designation of the responsible administrative authorities and their functions in providing support to these categories.

Authority: State Agency for Refugees

Legal act: Order, a general administrative act under Art. 65 and following of the Administrative Code of Procedure

SAR submits the following position on Recommendation 3.3:

In terms of carrying out procedural actions with applicants from vulnerable groups, SAR with COM has taken the following actions:

¹ Ibid. et etc.

The Internal Rules of 16 March 2016 regarding the Procedure for Granting International Protection – in conformity with Art. 29 (4) of LAR – provide for the possibility for the staff of the Social Activities and Adaptation Directorate to attend the initial medical screening aimed at establishing whether the person seeking international protection belongs to a vulnerable group and has special needs. The findings are entered in an annex to the registration form. Such identification at the initial stage also allows the provision, as required by law, of follow-up care depending on the applicant's needs.

Furthermore, each territorial unit of SAR with COM has determined, by virtue of an order, the interviewing authorities that conduct the procedure for granting international protection with applicants belonging to a vulnerable group. The interviewing authorities at all the territorial units have been trained in working with persons from vulnerable groups, which meets the requirement set forth in Art. 6 (3) of LAR; the trainings were conducted by SAR's experts who have been through EASO's special training module and are certified as trainers at the national level.

The standard operational procedures for the identification and referral of vulnerable persons developed by the European Asylum Support Office (EASO) are now being translated into the Bulgarian language. The Bulgarian version of the identification mechanism is planned to be provided by EASO by the end of June 2016; after the management of SAR with COM has approved the mechanism, training of SAR's staff on its application will start.

3.4. Implement in practice the possibility, laid down in the Law, to introduce a measure to ensure that applicants for international protection, including those with subsequent applications who cannot indicate a real external residence address, appear on a regular basis at a territorial unit of the State Agency; this measure would curb the practice of indicating or paying for a fake address.

Authority: State Agency for Refugees

Legal act: Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

SAR submits the following position on Recommendation 3.4:

SAR with COM has put in place arrangements for preventing abuses with fictitious residence addresses. The Internal Rules of 16 March 2016 regarding the Procedure for Granting International Protection lay down the procedure to be applied in respect of cases when applicants wish to have accommodation at an external address at their own expense.

Pursuant to Art. 29 of LAR the right to accommodation in SAR's centers shall be enjoyed by applicants who are in a procedure. An alien who does not belong to a vulnerable group and who files a subsequent application for protection, as well as an alien whose procedure based on his/her application for protection was suspended under the terms laid down in LAR shall not be entitled to the right to accommodation. In such cases, in order for the procedure to be resumed, the person concerned shall indicate an address at which he/she can be contacted in relation to procedural actions.

3.5. Ensure that the status determination procedures which were ceased and the applicants concerned were returned under Regulation (EU) No 604/2013 in implementing the take-back

procedure are resumed based on the initial application for international protection lodged, instead of initiating new procedures based on a subsequent application.

Authority: State Agency for Refugees

Legal act: Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

SAR submits the following position on Recommendation 3.5:

The new legal arrangements for resuming the procedures terminated in respect of applicants for protection taken back under the Dublin Regulation have been explicitly regulated in LAR by means of the amendments thereto of 22 December 2015. As this matter was regulated at the end of 2015, the procedure conducted throughout the year 2015 should not be considered as having been unlawful.

Following the amendments to LAR of 22 December 2015 trainings were organized for the staff of SAR's territorial units in order for them to get familiar with the new procedural rules. Explanations have been provided to clarify that these cannot be considered cases of subsequent applications, as the prerequisites for examining an application as a subsequent one within the meaning of the definition of a subsequent application in LAR's Additional Provisions are not present in a cumulative form.

At present the instructions are observed and the procedures in such cases are resumed.

3.6. Introduce a legal requirement for drawing up a record of the gathering of any written and other evidence submitted by applicants for international protection.

Authority: State Agency for Refugees

Legal act: Law on Asylum and Refugees

SAR submits the following position on Recommendation 3.6:

In terms of the recommendation about introducing a legal obligation for drawing up a record of any written and other types of evidence adduced by the applicant for protection, it should be noted that this matter is regulated in Art. 22 of the Internal Rules regarding the Procedure for Granting International Protection approved by an order of 16 March 2016.

3.7. Introduce a mandatory requirement for negative decisions on applications for international protection to be served in the presence of a lawyer providing the applicant with advice and support regarding the appeal and access to the court.

Authority: Law on Asylum and Refugees

Legal act: Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

SAR submits the following position on Recommendation 3.7:

The recommendation about introducing the requirement for negative decisions on applications for protection to be served in the presence of a lawyer is groundless. The state is, indeed, obliged to ensure conditions for persons seeking international protection to benefit from legal assistance, which, however, does not imply the obligation for a lawyer to be present at the procedural

actions related to the examination of applications for international protection in the administrative phase, including the serving of the administrative acts issued. The serving of a decision whereby international protection is refused does not constitute a case in respect of which the Law requires mandatory involvement of a defense counsel, an ex-officio defense counsel or a legal representative.

3.8. With regard to unaccompanied minors who have been granted international protection, introduce an additional assumption concerning guardianship and custodianship by right in the Family Code and related laws, ordinances and regulations. Ensure that the Law explicitly determines the level of lineal and collateral kinship up to which persons accompanying children seeking protection fall within the assumption of “relatives”, and defines “custom” in relation to the assumption of §1, item 4 of the Additional Provisions of LAR.

Authority: State Agency for Refugees

Legal act: Family Code, Law on Asylum and Refugees

Related legislation: Child Protection Act

SAR submits the following position on Recommendation 3.8:

In relation to the proposal about introducing in the Family Code an additional assumption concerning guardianship and custodianship by right according to which the rules applied with respect to unaccompanied minors who have been granted international protection shall differ from the ones applicable to other children, an inter-agency working group should be set up for the purpose of an in-depth analysis of the feasibility of this proposal.

We assess as appropriate the recommendation about the need for an explicit legal definition of the level of lineal and collateral kinship in respect of the individuals falling within the assumption of “another adult who is responsible by law or custom for him/her”, as well as a definition of “custom” used in § 1, item 4 of LAR’s Additional Provisions. This will contribute to uniformity of the practice.

3.9. Ensure prerequisites for introducing “special conditions” for the accommodation of unaccompanied minors by SAR during the procedure for deciding on their applications for international protection in conformity with Art. 29 (10), item 2 of LAR and the protection of the child’s best interest.

Authority: Law on Asylum and Refugees

Legal act: Law on Asylum and Refugees, Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

Related legislation: Child Protection Act

SAR submits the following position on Recommendation 3.9:

As regards the recommendation about introducing “special conditions” for the accommodation of unaccompanied minors, consideration should be given to the possibility for migrant children, including unaccompanied minors seeking international protection in the Republic of Bulgaria, to be accommodated in special facilities for raising children deprived of parental care. Such

accommodation will also ensure the provision of care by qualified specialists in view of protecting the child's best interest.

3.10. Introduce an obligation and arrangements for the provision of 24-hour care by social workers from the Social Assistance Agency under Art. 15 of the Child Protection Act, so that unaccompanied minors are also provided with assistance as from the point when they declare being underage up to the point when they are either assessed, following the due procedure, as being of age or come of age.

Authority: State Agency for Refugees, Social Assistance Agency with the Ministry of Labour and Social Policy

Legal act: Law on Asylum and Refugees

Related legislation: Child Protection Act

SAR submits the following position on Recommendation 3.10:

In terms of the recommendation about introducing an obligation and arrangements for 24-hour care by social workers from the Social Assistance Agency, this can be achieved by means of accommodation in specialized facilities for raising children deprived of parental care under recommendation 3.9.

3.11. Ensure, in addition, conditions for access to the education system for unaccompanied minors who are in a procedure conducted by SAR and are accommodated outside a family environment in other facilities for the accommodation of minors under special conditions pursuant to LAR.

Authority: State Agency for Refugees

Legal act: Law on Asylum and Refugees, Internal Rules on Conducting the Procedure for Granting International Protection at the State Agency for Refugees with the Council of Ministers

Related legislation: Child Protection Act

SAR submits the following position on Recommendation 3.11:

As regards the recommendation about ensuring access to the educational system, it should be noted that the Ministry of Education and Science is in the process of drafting an Ordinance under Art. 26 (4) of LAR regarding the enrollment of children who seek or have been granted international protection in state and municipal schools in the Republic of Bulgaria. This Ordinance lays down the procedure for the enrollment of children who seek or have been granted international protection in state and municipal schools in cases when they do not have documents certifying the year or degree of education completed. The deadline for finalizing the Ordinance is 29 July 2016.

3.12. Ensure that the legal assistance provided in the course of the procedures under LAR is regulated in the Law on Asylum and Refugees in conformity with the rules laid down in Directive 2013/32/EU and Directive 2013/33/EU, which includes mandatory provision of a lawyer for unaccompanied minors and applicants for international protection, in particular applicants in respect of whom the procedure is conducted under the conditions of detention in a closed-type centre.

Authority: State Agency for Refugees, National Legal Aid Bureau with MoJ

Legal act: Law on Asylum and Refugees, Legal Aid Act

SAR submits the following position on Recommendation 3.12:

In terms of the recommendation that the legal assistance provided during the procedures under LAR should be regulated in LAR in conformity with the rules laid down in Directive 2013/32/EU and Directive 2013/33/EU by introducing the explicit requirement for ensuring mandatory representation by a lawyer for unaccompanied children and applicants for international protection in respect of whom the procedures are conducted under the conditions of detention, it should be noted that Art. 20 of Directive 2013/32/EU does not prescribe an obligation for the member states to ensure representation by a lawyer, but only an obligation to ensure free legal aid and representation upon request. In respect of unaccompanied minors, Art. 25 of Directive 2013/32/EU stipulates that member states shall take measures as soon as possible that a representative represents and assists the unaccompanied minor to enable him/her to benefit from the rights and comply with the obligations provided for in the Directive, and the unaccompanied minor shall be informed immediately of the appointment of a representative.

LAR, in its current wording, stipulates that not later than 15 days as from filing the application, the applicant shall be informed in writing in a language that he/she understands about the procedure to be conducted, and his/her rights and obligations, as well as the organizations providing legal aid to aliens. The applicant has the discretion to decide if he/she will benefit from the rights laid down in the law.

As for safeguarding the best interest of unaccompanied minors, a new paragraph (3) has been created in Art. 25 of LAR, which regulates the powers of the minor's representative, including the powers to take actions for ensuring legal assistance. It should be highlighted that under the Legal Aid Act persons seeking international protection can benefit from legal aid in preparing documents when filing a case. The legal aid authorities are the National Legal Aid Bureau and the bar councils.

3.13. Introduce the requirement that the allocation of cases to ex-officio lawyers involved in refugee court proceedings under the terms and procedure of the Legal Aid Act is done by applying the principle of professional experience and/or specialization in refugee law.

Authority: Law on Asylum and Refugees, National Legal Aid Bureau with MoJ

Legal act: Legal Aid Act

SAR submits the following position on Recommendation 3.13:

In terms of the recommendation about introducing the requirement that the allocation of cases to ex-officio lawyers under the terms and procedure of the Legal Aid Act is done on the basis of the principle of specialization in the relevant area of law, including refugee law, it should be noted that SAR with COM is not the competent authority for regulating such a requirement and does not have powers in respect of this matter.

3.14. Ensure that the cases initiated on appeals by unaccompanied minors are scheduled and examined in accelerated procedures, which will allow shortening the period of legal uncertainty in these cases in view of observing the child's best interest.

Authority: State Agency for Refugees

Legal act: Law on Asylum and Refugees

SAR submits the following position on Recommendation 3.14:

SAR with COM is not the competent authority, either, in respect of the next recommendation about ensuring that court procedures initiated on appeals by unaccompanied minors seeking protection are scheduled and examined in accelerated procedures in order to shorten the period of legal uncertainty by observing the principle of the child's best interest. It should be noted that the applicants are considered to be in the procedure for granting international protection till the completion of court proceedings initiated on an appeal against an administrative act, which implies that they benefit from all the rights under LAR. Therefore, the child's best interest is safeguarded.

3.15. Broaden, by law, the powers of the courts examining refugee cases in order to allow the latter to adjudicate on the merits in refugee court procedures with the possibility of granting the relevant type of international protection under the assumption of revoking an unlawful individual administrative act of the State Agency for Refugees with a view to procedural economy and enhanced efficiency of the judicial review.

Authority: State Agency for Refugees

Legal act: Law on Asylum and Refugees

SAR submits the following position on Recommendation 3.15:

As regards the recommendation about broadening by law the powers of the courts examining refugee cases in order to allow the latter to decide on the merits on the application for protection with the possibility of granting the relevant type of international protection in the event of revoking an unlawful act, we believe that at present there are sufficient safeguards which ensure that the court's instructions are observed by SAR in cases of judgments revoking administrative decisions.

In case the broadening of the court's powers is addressed as an option, it should be examined whether this might not result in taking away powers and violating the principle of the separation of powers.