1. National legal framework on the asylum and international protection

1.1. Forms of protection

Article 27, paragraphs 2 and 3, of the Constitution of the Republic of Bulgaria stipulates that asylum shall be granted to aliens persecuted for their opinions or activity in defending internationally recognized rights and freedoms, and the conditions and procedure for granting asylum shall be established by law. In 1992 Bulgaria ratified the UN Geneva Convention relating to the Status of Refugees of 1951 and the New York Protocol relating to the Status of Refugees of 1967.2

While the first national law3 used the generic term “asylum” as laid down in the Constitution, the present Law on Asylum and Refugees (LAR)4 defines a new generic term: “special protection”, which pursuant to Art. 1, paragraph 2 of that law consists in the following types of protection – asylum, refugee status, humanitarian status, and temporary protection.

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1 This report has been drafted on the grounds of Art. 2.8(5) of the Tripartite Memorandum of Understanding of Mutual Cooperation and Coordination to Support the Access of Person Seeking Protection to the Territory of, and the Procedure for Granting Protection in the Republic of Bulgaria of 2 February 2012 among the Directorate General Border Police, the UNHCR Representation in Sofia and the Bulgarian Helsinki Committee, and pursuant to Art. 3, para 2 of the Asylum and Refugee Act.


3 Art. 3 of the Law on Asylum and Refugees (SG, issue 53/1999, repealed SG, issue 54 of 31 May 2002): “Asylum shall refer to the protection which the Republic of Bulgaria grants to aliens persecuted due to their convictions or activity in advocating internationally recognized rights and freedoms. This protection shall consist in refugee status, humanitarian protection and asylum under Art. 98, item 10 in relation to Art. 27, paras 2 and 3 of the Constitution of the Republic of Bulgaria”.

As a result of the above, the Law distinguishes different types of protection on account of asylum, as laid down in Art. 27, paragraph 2 of the Constitution, and attributes it to the relevant asylum authority. The authority which has the powers to grant asylum on the grounds of Art. 98, item 10 of the Constitution shall be the President of the Republic. Refugee status and humanitarian status, as laid down in the Law, shall be granted in an administrative procedure by the Chairperson of the State Agency for Refugees\(^1\), while temporary protection shall be granted by virtue of an act by the Council of Ministers\(^2\). Individuals recognized as refugees by UNHCR within its mandate on the territory of another state shall be automatically recognized as refugees in Bulgaria.\(^3\) In addition to the competent authority, the types of protection are also distinguished with respect to the grounds for granting the respective protection form.

Thus, the asylum granted by the President shall be issued on the grounds defined in the assumption of the provision of Art. 27, paragraph 2 of the Constitution – to aliens persecuted due to their convictions or activity in advocating internationally recognized rights or freedoms;

Refugee status shall be granted by an administrative authority – the State Agency for Refugees with the Council of Ministers – established for that specific purpose. Refugee status shall be recognized on the grounds of Art. 8 of the Law on Asylum and Refugees. This Law implements in the national legislation the international obligation assumed by Bulgaria in terms of recognizing and granting protection to refugees in conformity with the UN Geneva Convention relating to the Status of Refugees of 1951 and the New York Protocol relating to the Status of Refugees of 1967 signed and ratified by Bulgaria\(^4\), which, pursuant to Art. 5, paragraph 4 of the Constitution, prevail over any norms of the domestic legislation that contravene them;

Humanitarian status shall be granted also by the State Agency for Refugees with the Council of Ministers (SAR) on the grounds of Art. 9 of LAR; thus, Bulgaria has met its obligations assumed under Art. 2 and Art. 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms\(^5\);

Temporary protection shall be granted in conformity with Art. 11 of LAR and on the same grounds as the those of Art. 9, paragraph 1, item 3 of LAR regarding humanitarian status; the difference being the group approach in the event of a mass influx of asylum seekers. The Law stipulates\(^6\) that temporary protection shall be applied by virtue of a decision of the Council of the European Union at the request of the Council of Ministers of the Republic of Bulgaria.

1.2. Definitions

Refugee status, pursuant to Art. 1A of the UN Geneva Convention of 1951 and Art. 8 of LAR, shall be granted to an alien who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

\(^1\) Art. 48 in relation to Art. 2, para 3 of LAR.
\(^2\) Art. 2, para 2 of LAR in relation to Art. 80 and following articles of LAR.
\(^6\) Art. 11 in relation to Art. 80 and following articles of the Law on Asylum and Refugees.
**Humanitarian status**, pursuant to Art. 9 of LAR, shall be granted to an alien forced to leave, or to stay outside his/her country of origin because of facing a real danger of severe encroachment in such state, such as death penalty or execution; torture or inhuman or degrading treatment, or punishment; severe and personal threats to his/her life or his/her person as an individual with civil legal status as a result of violence arising out of situations of a domestic or international armed conflict.

**Temporary protection**, pursuant to Art. 11 of LAR, shall be granted in the event of a mass influx of aliens who are forced to leave their country of origin or residence as a result of an armed conflict, civil war, foreign aggression, large-scale violations of human rights or violence within the territory of that state or in a specific area thereof and who, for those reasons, cannot return there.

**Asylum**, pursuant to Art. 7 of LAR, shall be granted to aliens persecuted due to their convictions or activity in advocating internationally recognised rights and freedoms, while the President of the Republic of Bulgaria shall also grant asylum on the grounds of Art. 98, item 10 in relation to Art. 27, paragraph 2 of the Constitution when, in his/her judgement, this is necessitated by state interests or special circumstances. As the President is not an executive authority (central or local administration) but the head of state, he/she is entitled to grant asylum without being duly seized to this end, without being, however, obliged to either pass a resolution within a specific time limit or to pass any resolution.

**Mandate status** shall be granted by the Office of the UN High Commissioner for Refugees in conformity with the refugee definition laid down in Art. 1A of the 1951 Convention and by virtue of its mandate (competences) regulated in the UNHCR Statute1. UNHCR shall establish the facts and shall decide on granting refugee status in respect of individuals who have fled and have sought protection in states that are not parties to the 1951 Convention and have not put in place a national system for granting international protection.

1.3. **Asylum and protection principles**

The **non-refoulement** principle is laid down in Art. 33, para 1 of the Geneva Convention relating to the Status of Refugees of 1951; it stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The **non-punishment** principle is regulated in Art. 31 of the Geneva Convention relating to the Status of Refugees of 1951; it stipulates that the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly2 from a territory where their life or freedom was threatened in the sense of Art. 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal

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2 The Republic of Turkey has ratified the Geneva Convention relating to the Status of Refugees of 1951 with a declaration in conformity with Art. 1C, para 1 of the Convention, which was also 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 aliens whose countries of origin are outside the territory of Europe. Therefore, any asylum seekers transiting Turkey as a third country are considered to be asylum seekers who come directly from the territory of a state where their life or freedom has been threatened.
entry or presence. This principle has been transposed into the national legislation in Art. 275, paragraph 5 of the Criminal Code of the Republic of Bulgaria.

The access to courts principle, regulated in Art. 16 of the UN Geneva Convention relating to the Status of Refugees of 1951, stipulates that any refugee shall have free access to the courts of law on the territory of all Contracting States, and shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from court fees (cautio judicatum solvi).

The in dubio pro fugitivo principle is regulated in §.203 of the Handbook on Procedures and Criteria for Determining Refugee Status\(^1\) of the Office of the UN High Commissioner for Refugees, Art. 75, paragraph 2 of the Law on Asylum and Refugees (LAR), and Art. 4, paragraph 5 of Directive 2011/95/EC (Qualification Directive); this 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.

### 1.4. Asylum acquis of the European Union

The acquis 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 signed by all the EU Member States; they are known as the “EU primary legislation”. The regulations, directives and framework decisions are adopted by the EU institutions which have the relevant powers in conformity with the Treaties; they are known as the “EU secondary legislation”. Following the Treaty of Rome of 1950, several consecutive revisions have expanded the competences of the European Community (EC), at present the European Union (EU), in the area of asylum and migration, the latest one being the Treaty of Lisbon\(^2\). The whole set of intergovernmental agreements, regulations and directives within the EU relating asylum issues, constitute the EU asylum acquis.

**Directive 2011/95/EU\(^3\) (Qualification Directive)** lays down the common minimum standards for granting international protection to third-country nationals or stateless persons, and the content of the uniform European status for refugees or beneficiaries of subsidiary protection.


**Directive 2013/33/EU\(^5\) (Reception Conditions Directive)** lays down the common minimum standards for the reception of applicants for international protection and asylum in the EU Member States.

**Regulation (EU) No.604/2013\(^6\) (Dublin Regulation)** establishes 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.

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3. 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 Dec. 2011)


The community body which is competent to exercise judicial review over the transposition and implementation of the provisions of the EU asylum acquis is the Court of the European Union\(^2\) (CJEU), which used to exist under the name of Court of Justice of the European Communities (ECJ). CJEU’s ruling on the interpretation of the EU decisions, regulations and directives are binding for the administrative bodies and courts of the Member States.

1.5. **Safe countries of origin and safe third countries**

Pursuant to Art. 13, paragraph 1, item 13 of the Law on Asylum and Refugees (LAR), an alien’s application for refugee status or humanitarian status shall be refused as manifestly unfounded where the conditions for granting such statuses are not met, and the alien comes from a safe country of origin or a third safe country included either on the list adopted by the Council of the European Union or on the national lists adopted by the Council of Ministers.

The Law\(^3\) defines the “safe country of origin” as the country of origin\(^4\) where the established rule of law and compliance therewith within the framework of a democratic system of public order do not allow any persecution or acts of persecution, and there is no danger of violence in a situation of domestic or international armed conflict.

The “safe third country” is a country other than the country of origin where the alien who has applied for status determination has resided prior to his/her arrival in the Republic of Bulgaria and where the following cumulative conditions are met under which:

a) there are no grounds for him/her to fear for his/her life or freedom because of race, nationality, membership of a specific social group, or political opinion or belief;

b) the alien is protected against the refoulement to the territory of a country where conditions for persecution and danger to his/her rights exist;

c) the alien is not endangered by persecution, torture or inhuman or degrading treatment or punishment;

d) it is possible to request refugee status and, upon being granted such status, to benefit from protection as a refugee;

e) there are sufficient reasons to believe that the alien will be admitted onto the territory of that country.

2. **Scope and methods of the RSD monitoring**

The monitoring covered the procedural actions conducted by the State Agency for Refugees with the Council of Ministers under the rules and conditions of the Law on Asylum and Refugees.

The monitoring included procedural actions in all the relevant phases: registration (access to the procedure), Dublin procedure (determining the Member State responsible for examining the application for international protection under Regulation 2003/343/EC under Section Ia, Chapter Six of LAR); accelerated procedure (eligibility of the application for protection under Section II, Chapter Six of LAR), and general procedure (examination of the application for protection on the substance under Section III, Chapter Six of LAR), as well as the acts (decisions) issued by the administrative body in these procedures.

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1 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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)


3 §.1, item 8 of the Additional Provisions of the Law on Asylum and Refugees (SG, issue54/2002)

4 §.1, item 7 of the Additional Provisions of LAR: "Country of origin" shall refer to the state of which the alien is a citizen, or if he/she has no citizenship, the state of his permanent residence.
The monitoring methodology included monthly gathering on an *ad hoc* basis of data on means and practices of RSD procedures implementation; the data were entered in standard forms for interview evaluation (Annex 1) and decision evaluation (Annex 2).

The monitoring took place at the territorial units of the State Agency for Refugees: reception centers in the city of Sofia and the village of Banya, Nova Zagora Municipality, and the transit center in the village of Pastrogor, Svilengrad Municipality. Since September 2013 the so-called centers for temporary accommodation in the neighbourhoods of Vrajdebna and Voenna Rampa in Sofia have also been monitored in relation to potential procedural actions.

During the period 1 January – 15 October 2013 at the territorial units of SAR, 484 procedures were monitored with respect to generally recognised standards for fair and efficient refugee status determination.

3. Monitoring results

3.1. Registration

The Law on Asylum and Refugees\(^1\) stipulates that any alien may state his/her wish to be granted a status in person, before an official at the State Agency for Refugees. However, pursuant to another provision\(^2\) of the same law, where the application is filed with another government authority, the latter must forthwith forward it to the State Agency for Refugees. Hence, the Law contains provisions which generate *inconsistency in terms of the time of application's registration and the time of the registration of the applicant as an asylum seeker*. This inconsistency ensued from the 2007 amendments to the Law; the justification for the amendment provided by its drafter, SAR, was based on the insufficient capacity to accommodate newly arriving asylum seekers. Thus, instead of taking measures to enhance the capacity for the reception and accommodation of newly arriving asylum seekers, SAR opted for a legislative amendment whereby the access to the refugee status determination procedure was limited by virtue of law. Under these circumstances, SAR established the practice of indefinitely postponing the personal registration under Art. 61, paragraph 2 of LAR; in some individual cases, this delay may last up to 6 months from the date on which the application is filed and registered before the authorities of the Migration Directorate or the Border Police General Directorate.

The issue with the delayed applicants’ registration was seriously aggravated in mid August 2013, which marked the beginning of a drastic and substantial increase in the inflow of asylum seekers into the country, the majority of whom are persons fleeing the civil war in Syria.

SAR’s capacity to ensure the reception and accommodation of newly arriving asylum seekers which is assessed as highly insufficient even in a situation with fewer than 1,000 newcomers per year, has proved to be unacceptably inadequate and below the critical threshold under the emerging circumstances. In less than 25 days, the existing two reception centers in the city of Sofia with a capacity of 800 persons and the one in the village of Banya with a capacity of 70 persons, as well as the transit center in the village of Pastrogor, Svilengrad municipality, with a capacity of 300 persons, were severely overcrowded and overloaded to an extent that caused an utter institutional collapse of SAR. SAR’s reception facilities management had to accommodate from 8 to 15 newly arriving asylum seekers in rooms equipped for a maximum of 2 to 4 persons. In order to save space, families, including families with minor children were separated in violation of the provisions\(^3\) of the European Convention on the Protection of Human Rights.

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\(^1\) Art. 58, para 3 of LAR.

\(^2\) Art. 58, para 4 of LAR.

\(^3\) Art. 8, para 1 of the ECHRFF.
and the Family Code\(^1\). In early September 2013, when all the possibilities for accommodation in rooms had been exhausted, SAR started to "accommodate" newly arriving asylum seekers on mattresses in the corridors of its reception facilities.

Meanwhile, the number of newly arriving asylum seekers in the area of jurisdiction of the Regional Border Police Directorate - Elhovo was growing, which exhausted the capacity of the premises for police detention. Hence, the need for the Directorate General Border Police (BP) to adapt all kinds of additional premises for reception purposes. BP mobilized and seconded additional border officers in order to ensure the processing of all the applications filed; nevertheless, the lack of interpreters with the relevant languages, the lack of preparedness of all the border officers involved and the lack of adequate arrangements, in addition to the ever growing number of newcomers, caused regular and substantial delays in the registration of applications for protection conducted by BP under the procedure of Art. 58, paragraph 4 of LAR. This resulted in exceeding the 24-hour time limit of the police detention, as defined by law\(^2\); this situation, however, was mostly due to the objective impossibility for the Border Police to refer asylum seekers to SAR’s territorial units. Under these circumstances, BP’s authorities were forced, irrespective of the applications lodged and in violation of the law\(^3\), to refer the newly arriving asylum seekers to the detention centers for irregular immigrants (detention centers) with the Migration Directorate of MOI. Thus, while the detention centers are facilities for the detention of irregular migrants for the purpose of deportation – a measure that cannot be executed with respect to asylum seekers, they were used for the accommodation of elderly, sick and wounded people, as well as many families with underage and minor children, including infants aged between 0 and 12 months. On 8 October 2013 a new detention center with a capacity of 300 persons, which was provisionally named “distribution center”, was opened in the town of Elhovo; its capacity was immediately exhausted.

The practice of referring asylum seekers to police structures, such as the detention centers, instead of accommodating them in refugee centers, has resulted in numerous applications for renunciation of the right to accommodation, financial and material assistance, as warranted by law\(^4\), with a view to a more expeditious release from the detention centers. Such applications were granted by SAR and asylum seekers were allowed the discretion to choose their accommodation at the so-called “external addresses”. This practice is unlawful and in violation of Art. 29, paragraph 6 of the Law on Asylum and Refugees; the latter provides for the admissibility of such accommodation only at the stage where a general procedure has been initiated under Chapter Six, Section II of LAR – for the purpose of examining the application on the substance. This implies that the permissions granted by LAR for accommodation at external addresses are null and void due to the absence of legal grounds for the issuance thereof before the asylum-seeker has been registered\(^5\) and before the Dublin and accelerated procedures have been conducted.

In terms of measures taken to address the lack of reception capacity, SAR’s first additional accommodation facility with a capacity of 420 persons was opened on 18 September 2013 as a “temporary accommodation center” (TAC) in Vrajdebna neighbourhood, in the building of the former socio-pedagogical center “Prof. P. Mutafchiev” with the Ministry of Education at 270, Botevgradsko shosse, Sofia. A few weeks later, a similar TAC with a capacity of 500 persons was opened in a building of the Ministry of Agriculture in Voenna Rampa-Iztok neighbourhood, at 11, Lokomotiv street, Sofia. The very first monitoring, however, established that the infrastructure and the material conditions in both

\(^1\) Art. 2, para 1 of the Family Code.

\(^2\) Art. 64 of the Ministry of Interior Act.


\(^4\) Art. 29, para 1, item 2 of LAR.

\(^5\) Under the terms and procedure laid down in Art. 61, para 2 of LAR.
centers do not meet the minimum EU criteria\(^1\) for adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health; moreover, these conditions are **entirely contrary to the most basic reception standards to such an extent that they constitute inhumane and degrading treatment**\(^2\). The conditions in the next TAC with a capacity of 450 persons which was recently opened on 13 October 2013 in the town of Harmanli on the premises of former military barracks turned out to be even worse – asylum seekers are accommodated under a closed regime in tents and in wagons of the “container” type, without electricity and sewerage, under extremely poor living and hygienic conditions, and obvious prerequisites for a high epidemiological risk. The exception to this development is the fourth TAC with a capacity of 300 persons, opened on 21 October 2013 in the village of Kovachevtsi, Pernik Municipality, where the living conditions meet the European and national standards for reception and accommodation.

These TACs have an **unclear legal status**, as pursuant to Art. 47 of the Law on Asylum and Refugees, SAR’s territorial units are transit, reception and integration centers which are opened by a decision of the government following a number of coordination procedures\(^3\) aimed at ensuring that the conditions in these units meet the relevant living and hygienic standards. No coordination procedures were established to have taken place before the opening of the TACs. The TACs do not employ staff from SAR’s administration for the purpose of the administrative procedural actions in relation to registration, interviewing and determination the asylum applications under LAR. The security and the overall management of these centers has been assigned, for the most part, to current or former employees of the Ministry of Defence who are not on SAR’s pay-roll list and have not been duly trained to deal with refugees, vulnerable groups and humanitarian crises.

According to the official statistical data\(^4\) as of 30 October 2013, the total number of asylum seekers who have entered the territory of Bulgaria stands at 9,567. Out of these, 695 are in Border Police’s detention facilities and 4,053 have been accommodated in SAR’s units, while 3,741 asylum seekers reside at external addresses at their own expense.

As of the same date, the capacity of each of MOI’s detention facilities or SAR’s reception facilities had been exceeded by 45-230%.

### 3.2. Introduction of closed reception facilities

In early November 2013 the government declared\(^5\) that the Law on Asylum and Refugees was to be amended to provide for accommodation of asylum seekers at closed reception facilities only.

The draft amendments of LAR provide for the possibility to determine a regime of limited movement within a certain area\(^6\), which shall be indicated on the ID issued – a registration card or the new temporary document certifying the individual’s status\(^7\). In addition, the draft amendments envisage detention measures similar to the coercive administrative measure with respect to irregular migrants under the conditions and procedure of the Law on Foreigners in the Republic of Bulgaria\(^8\), who are subjected to deportation procedures, such as regular reporting to the police offices or detention.

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\(^3\) Art. 47, para 3 of LAR.

\(^4\) [http://press.mvr.bg/NEWS/news131106_08.htm](http://press.mvr.bg/NEWS/news131106_08.htm)

\(^5\) [http://press.mvr.bg/NEWS/news131106_08.htm](http://press.mvr.bg/NEWS/news131106_08.htm)

\(^6\) Art. 29, para 1, т.2 of the Draft Law on amending LAR.

\(^7\) Art. 40, para1, т.10 of the Draft Law for amending LAR.

\(^8\) Art. 44 and following articles of the Aliens in the Republic of Bulgaria Act.
The proposed draft amendments and their indiscriminate application with respect to all the categories of asylum seekers contravene the provisions of Art. 26 of Directive 2013/32/EU, which stipulates that the Member States shall not hold a person in detention for the sole reason that he or she is an applicant for international protection. The very fact that this particular provision of the Directive has been introduced verbatim into the draft amendment of LAR does not constitute in itself a safeguard for the efficient enforcement of this prohibition, as the remaining amendments proposed downgrade the prohibition to the level of a pure formality, a declaration on paper and absolute absence of any safeguards against arbitrariness in detaining asylum seekers.

The detention grounds and conditions proposed, as well as the safeguards for the detainees should be in line with the provisions of Directive 2013/33/EU laying down standards for the reception of applicants for international protection.

Pursuant to Art. 8, paragraph 3 of Directive 2013/33/EU laying down standards for the reception, applicants for international protection may be detained only:

1) in order to make a decision in the course of a procedure related to the applicant’s right to enter the territory (at the border checkpoints, or, at the land borders (so called "green borders");

2) in order to determine or verify their identity or nationality - or, in conformity with the stages, as defined in the national law, LAR (at the stage of registration);

3) in conformity with Art. 28 of Regulation (EU) No 604/2013 of 26 June 2013 establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (at the stage of the Dublin procedure under LAR);

4) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant (at the stage of the accelerated procedure under LAR);

5) when protection of national security or public order so requires (at the stage of the general procedure, but only where there are serious grounds to presume the exclusion clause, i.e. detention shall be applied only as an exception in general procedures under LAR);1

6) when the applicant is detained subject to a return procedure under Directive 2008/115/EC – after the application has been examined and protection has been refused in a due procedure under the provision of Art. 67, paragraph 1 of LAR (at the stage of a final decision for refusing protection).

The above mentioned provisions form the EU acquis explicitly show that the detention of asylum seekers is admissible only for a specific purpose and within the short time limits for achieving the aim of each of the above assumptions as provided for in the law. Any other detention of person who have entered the territory of the Republic of Bulgaria in order to seek protection would be inadmissible and in violation of the common European asylum norms and standards.

3.3. Documents

The law stipulates2 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 fiction3 according to which the registration

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1 Art. 1F of the Geneva Convention relating to the Status of Refugees of 1951 and Art. 12 of LAR.
2 Art. 25, para 1, item 6 of LAR;
3 Art. 40, para 3 of LAR;
card does not certify the alien’s identity due to its temporary nature and the specifics in establishing the facts and circumstances in the 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 card is an absolute prerequisite for the access to the rights enjoyed by the asylum seeker during the RSD procedure, namely – remaining on the territory, receiving shelter and subsistence, social assistance (under the conditions and in the amount regulated for Bulgarian nationals), health insurance, access to health care, psychological support, education.

Due to the lack of capacity to ensure the timely registration of applicants by the staff available, since October 2013 SAR has issued the so-called “notifications” instead of the regular identification cards. In addition to the attached photograph, the applicant’s name, the country of origin and the date of issuance, the note also contains instructions as to the next appearance before SAR for the purpose of note also contains instructions as to the next appearance before SAR for the purpose of application under Art. 61, paragraph 2 of LAR. The periods between the date of issuing the notification and the date planned for registration presently exceed 6 months. Thus, SAR has institutionalized its administrative inaction and its absolute refusal of delivering on its obligations in terms of registration, accommodation and status determination within a reasonable timeframe.

The EU acquis\(^1\) provide for a short 3-day time limit for issuing a document to the applicant for international protection, which, however, has not been transposed into the national legislation. The provisions of LAR do not explicitly regulate a similar time limit for the registration of applications. Given this fact, the general regulation of the Administrative Procedure Code (APC) as to the terms to be observed by the administrative bodies shall apply. Pursuant to the APC\(^2\) the date of opening an administrative procedure shall be the date on which the application is lodged before the competent authority, and the administrative act shall be issued within 14 days from the date of opening the administrative procedure\(^3\). The maximum legal time limit for issuing a decision is 1 month\(^4\); the entire time limit is used only where evidence on important circumstances needs to be gathered. Where the opinion of another body is required\(^5\), the term shall be presumed as extended but only by 14 days. Therefore, the law obliges SAR to issue its decision in the procedure under LAR within a maximum time limit of 45 days from the opening of the procedure. The only possibility for extending the time limit for the decision is under Art. 67d of LAR – in the procedure for determining the state responsible for examining the application (the so-called Dublin procedure); however, even in such cases the possibility for extension concerns the time limit for the decision after the registration has been made, not the time limit for registration under Art. 61, paragraph 2 of LAR.

Therefore, the registration under Art. 61, paragraph 2 of LAR should take place by far earlier than the expiry of the 45 days from the filing of the application in order for the administrative procedural actions to be conducted and the decision on the application to be made within the relevant time limit. Thus, even if it is assumed that some time is needed from registration of the application for protection until registration of the applicant within the meaning of Art. 61, paragraph 2 of LAR, this period cannot be unreasonably long, as it is subject to the general time limits prescribed in APC. In other words, the absence of an explicit legal deadline for the registration of the applicant under the procedure of Art. 61, paragraph 2 of LAR does not amount to the absence of any time limit whatsoever and the possibility for an indiscriminate delay. Pursuant to Art. 11 of APC the underlying principle of the administrative procedure is expeditiousness and procedural economy: any procedural actions shall be carried out within the time limits prescribed by law and within the shortest time needed depending on the specific circumstances and the purpose of the relevant action or administrative act.

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\(^1\) Art. 6, para 1 of Directive 2013/33/EU;
\(^2\) Art. 25, para 1 of Administrative Procedures Code (APC).
\(^3\) Art. 57, para 1 of APC.
\(^4\) Art. 57, para 5 of APC.
\(^5\) LAR: the assumption under Art. 58, para7, where an opinion is requested from the State Agency for National Security.
By failing to take the actions prescribed by law for the purpose of registering applications and thus violating the basic principles of the administrative procedure, SAR commits a flagrant breach of law. Moreover, this practice of a manifest refusal of access to the procedure for an unacceptably long period of time is most probably intended to serve the unlawful objective of dissuading asylum seekers from staying on the territory of Bulgaria. This objective is obvious, as during the 6-month period after the registration of the application, applicants are denied personal registration and proper documentation, which adversely affects their ability to exercise their entitlements to shelter, subsistence and health care. In addition to being a breach of the law and the European norms\(^1\), this practice is contrary to the ordinary human ethics, as it creates a situation of destitution, homelessness and full deprivation of rights for vulnerable individuals such as refugees – who seek refuge from persecution and protection of their life and personal safety.

3.4. Information about the rights and obligations

In relation to the practice, described in the above item 3.3, in respect of asylum seekers who are denied timely registration, SAR does not meet its obligation\(^2\) to provide, within 15 days from filing the application in a comprehensible language, guidance to asylum seekers about the terms and procedures to be applied and their rights and obligations in the procedures, as well as the organizations rendering legal and social assistance.

The above constitutes a breach of the law and the common European standards under Art. 5 of Directive 2013/33/EU laying down the standards for the reception of applicants for international protection.

3.5. Legal aid

In March 2013 the legislation\(^3\) introduced an explicit provision regulating legal aid under the terms and following the procedure laid down in the Law on Asylum and Refugees for asylum seekers, who are not entitled to legal aid on other legal grounds. As a result of this, asylum seekers are entitled for the first time not only to free legal aid and representation at the judicial stage in the event of an appeal against a negative decision, but also at the administrative stage before the decision-making body, SAR, where the first-instance examination of the application for international protection takes place. The possibility to use legal aid at the administrative stage is a substantial improvement of the standards in conducting the RSD procedure.

In practical terms, the provision of legal aid under the rules and conditions laid down in the Law on Legal Aid was not possible due to the fact that the budget of the National Legal Aid Bureau, approved during the previous year, did not include estimates for asylum seekers. In the meantime, the legal aid at the administrative stage was funded from projects under granting schemes of the European Refugee Fund\(^4\), whose implementation, however, does not meet the parameters, as declared in advance, for covering all the categories of persons concerned and in respect of all the procedures under LAR. Since October 2013 SAR’s territorial units which conduct procedural actions – RRC-Sofia, RRC-Banya and TC-Pastrogor – have not made arrangements for ensuring an office for legal consultations. Furthermore, the majority of the asylum seekers, including unaccompanied children, have not been represented during the interviews by the beneficiary organization which was assigned to provide legal aid under the 2012 ERF Annual Program for the period 1 July 2013 – 30 June 2014.

\(^1\) Art. 6, para 1 of Directive 2013/33/EU (Receptions Conditions Directive).

\(^2\) Art. 58, para 6 of LAR.

\(^3\) Art. 22, item 8 of the Legal Aid Act (Law on amending LAA, prom. SG, issue 28 of 19 March 2013)

\(^4\) [http://www.aref.government.bg/ebf/docs/info%2018713.doc](http://www.aref.government.bg/ebf/docs/info%2018713.doc)
3.6. Quality of the RSD procedures

Over the 2013 monitoring period, the total number of procedural actions monitored with respect to asylum seekers stands at 484, out of whom: 308 men, 144 women, 22 children, and 10 unaccompanied children. The types of procedures monitored include: 137 registrations (103 at TC-Pastrogor, 6 at RRC-Banya, and 28 at RRC-Sofia), 210 interviews in the Dublin procedure (157 at TC-Pastrogor, 53 at RRC-Sofia), 112 interviews in the accelerated procedure (84 at TC-Pastrogor, 25 at RRC-Sofia, 3 at RRC-Banya), and 25 interviews in the general procedure (17 at RRC-Sofia, 6 at RRC-Banya and 2 interviews at TC-Pastrogor, conducted in breach of Art. 47, paragraph 2, item 1 of LAR).

The analysis of the procedural actions monitored shows that in 89% of the procedures monitored (448 cases-93%) the applications were lodged before another government body other than the specialized State Agency for Refugees. In 6% of these cases (29 cases), the accompanying documents received by the relevant authority (DGBP or MD) either were not dispatched to or were not received by SAR. In 14% of the cases monitored (66 cases), the opening of the procedure was delayed by more than 1 month from the date of filing the application before another government body (DGBP or MD).

In 75% of the cases monitored (364 cases), the interviewers provided the asylum seekers with information about the procedures to be conducted or about their rights and obligations in these procedures; such guidance was not provided only in 25% of the cases (20 cases). As regards, however, the safeguards in terms of gathering evidence in the RSD procedure, a serious issue has been established: in 29% of the cases monitored (141 cases), where written or other material evidence was submitted by the asylum seekers, neither a due record, nor an inventory was made of such evidence in view of the submission thereof to the administrative body. This implies a serious risk of such evidence not being taken into consideration or not being included in the assessment of the claim and subsequently in the decision about granting or refusing protection in Bulgaria.

Only in 11% of the procedures monitored (53 cases), the interviews were recorded by means of technical devices, which is the highest safeguard in the decision-making process in relation to granting protection by taking into consideration the facts and circumstances presented by the applicant, and in the prevention of corruption practices. While SAR has all its interview rooms equipped with audio-recording devices, its interviewers regularly avoid the use of such devices, including by convincing the interviewees that recording is not needed. Hence, record-keeping for the majority of the interviews (89% of the cases monitored or 431 cases) is ensured by means of two options: hence, SAR’s interviewers type the text on the computer or even write down a draft version on paper. Under the latter scenario, the interview records are drafted in their final version later – sometimes, days following the interview –, which raises legitimate doubts as to the precision and correctness of the evidence. In 39% of the cases monitored (190 cases), even where the records had been duly drafted, they were not translated into a language understandable to the applicant and were not read out to him/her; instead, they were submitted directly for signing without the applicant being able to read the record or make any clarifications and corrections. In 71% of the cases monitored (344 cases), the interviewers conducted the interview by asking open questions, which allows asylum seekers to substantiate their claim by providing details; in 66% of the cases monitored (319 cases), the asylum seekers were enabled to clarify any inconsistencies in their statements during the interview.

The most serious concern in relation to the procedures conducted by SAR still remains the lack of safeguards for unaccompanied asylum seeking children. The law stipulates¹ that any unaccompanied asylum seeking minor or underage person on the territory of Bulgaria shall be assigned a legal guardian under the terms and following the procedure laid down in the Family Code. Nevertheless, all the proceedings that involve unaccompanied asylum seeking children are conducted only in the presence of

¹ Art. 25, para 1 of LAR.
a social worker\textsuperscript{1}. The presence of a social worker from the Social Assistance Directorate in their capacity of a special representative does not constitute a valid substitution of the function of the legal guardian. The Child Protection Act defines the various target groups of participants\textsuperscript{2} who have the powers to protect the child’s rights and legal interests in the course of administrative and court proceedings. Their specific functions are clearly distinguished by taking into account the underlying principle\textsuperscript{3} of ensuring the child’s best interest. Hence, the explicit obligation for SAR\textsuperscript{4} to ensure the assignment of a legal guardian who shall protect the rights and legal interests of unaccompanied asylum seeking children during the RSD procedure. \textit{In 100\% of the cases monitored no legal guardians have been assigned for the unaccompanied asylum seeking children}. Moreover, the social workers attending the interviews did not meet their obligation to act in the child’s best interest, as they neither provided any relevant support, nor intervened in the interview when needed: thus, their presence in the interview was purely formal. Furthermore, in 2013 only one single social worker performed this task; this caused further delays of the interviews with unaccompanied children and an overall protraction of procedural actions

The imperative requirements laid down in the law\textsuperscript{5} regarding the provision of legal aid to unaccompanied children have not been met, either. The provision of Art. 15, paragraph 8 of the Child Protection Act stipulates that children are entitled to legal aid and remedies in any procedures that concern their rights or interests, while the provision of Art. 23, paragraph 2 of LAR obliges the state to ensure the conditions for the provision of legal aid to asylum seekers in Bulgaria. The practice shows that no legal aid has been secured for unaccompanied children: \textit{in 100\% of the cases monitored the unaccompanied asylum seeking children were not represented by a lawyer as their procedural representative.} (see 3.5). This situation constitutes a breach of the European minimum standards\textsuperscript{6} regarding the general procedures for granting and withdrawing international protection in the EU Member States.

4. \textbf{RECOMMENDATIONS}

4.1. Submit the draft amendments to the Law on Asylum and Refugees for discussion to UNHCR, academia, judges, refugee legal practitioners and non-governmental organizations with long-standing experience and expertise in working with asylum seekers and refugees in order to coordinate an adequate response to the solution of the emerging humanitarian crisis and strike a lawful balance between refugees’ rights and the interests of the state and society;

4.2. Reconsider the proposed shift to the accommodation of asylum seekers only in closed reception facilities and introduce a differentiated approach which will be tailored to the various procedures and categories of persons in line with the European minimum standards regarding the reception condition as laid down in Directive 2013/33/EU;

4.3. Introduce a maximum 3-day time limit for the personal registration of asylum seekers;

4.4. Put in place working arrangements for the staff of the specialized institution, the State Agency for Refugees, which will ensure a 24-hour registration both at SAR’s territorial units and at the territorial units of the Directorate General Border Police and the Migration Directorate of MOI;

4.5. Ensure the timely dispatch to SAR of the documentation gathered at the lodging of applications for international protection before the bodies of Border Police and Migration Directorate;

\textsuperscript{1} Art. 25, para 5 of LAR.
\textsuperscript{2} Art. 15 of the Child Protection Act.
\textsuperscript{3} Art. 3, para 3 of the Child Protection Act.
\textsuperscript{4} Art. 15, para 8 of the Child Protection Act.
\textsuperscript{5} Art. 15, para 8 of the Child Protection Act and Art. 23, para2 of LAR.
\textsuperscript{6} Art. 25 of Directive 2013/33/EU (Receptions Conditions Directive).
4.6. Produce information materials in all the languages spoken by the refugee groups, which deliver clear and comprehensible explanations about the RSD phases and asylum seekers’ rights and obligations during the RSD procedures;

4.7. Regulate by law the obligation for protocoling all the evidence submitted to the decision-maker by asylum seekers;

4.8. Regulate by law the obligation to record the interview by means of technical devices;

4.9. Regulate the social workers’ functions under Art. 15, paragraph 7 of the Child Protection Act, who acts as special representatives of unaccompanied children, in the Family Code as an additional assumption of legal guardianship ex lege by virtue of law;

4.10. Regulate the legal aid provided during the RSD procedures in the Law on Asylum and Refugees in conformity with the rules laid down in Directive 2013/32/EU and in Directive 2013/33/EU, and introduce the obligation to ensure that unaccompanied children are mandatory represented by a lawyer.

10 November 2013

Bulgarian Helsinki Committee