



БЪЛГАРСКИ  
ХЕЛЗИНСКИ  
КОМИТЕТ

## LEGAL PROTECTION OF REFUGEES & MIGRANTS PROGRAMME

2014

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### ANNUAL MONITORING REPORT ON STATUS DETERMINATION PROCEDURES IN BULGARIA<sup>1</sup>

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<sup>1</sup> This Report was drafted on the grounds of Art. 3 (2) of the Law on Asylum and Refugees, and pursuant to Art. 2.8 (5) of the Agreement between the Bulgarian Helsinki Committee and the UNHCR Representation in Bulgaria of 10 March 2014;

This Report is based on a monitoring with a focus on the institutional framework and the practical cooperation among the various state authorities, as well as on the legal and practical standards for conducting the procedures regulated in the national asylum legislation<sup>1</sup> and the conformity of these standards to the generally accepted principles of international protection and the minimum legal standards of the European Union in the area of asylum (acquis communautaire). The Report also reflects the monitoring of asylum court proceedings conducted jointly with the Association for Refugees and Migrants under a project implemented with the financial support of the EEA Financial Mechanism 2009-2014

The monitoring which covers the period 1 January-31 December 2014 was carried out in respect of 491 procedural actions at the territorial units of the State Agency for Refugees with the Council of Ministers where procedural actions are conducted – Transit Centers (TC) and Registration-and-Reception Centers (RRC). The procedural actions monitored correspond to an equal number of applicants for international protection, of whom 310 men, 120 women, 24 children, and 37 unaccompanied children. The types of procedural actions monitored include: 132 registrations (12 at TC-Pastrogor, 20 at RRC-Harmanli, and 132 at RRC-Sofia), 163 Dublin interviews (45 at TC-Pastrogor, 34 at RRC-Harmanli, and 84 at RRC-Sofia), 9 interviews in the accelerated procedure (1 at TC-Pastrogor, 2 at RRC-Harmanli, and 6 at RRC-Sofia), 157 interviews in the general procedure (39 at TC-Pastrogor, 84 at RRC-Harmanli, and 34 at RRC-Sofia), and 30 negative decisions by SAR on applications for international protection.

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

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<sup>1</sup> Law on Asylum and Refugees, in force as from 1 December 2002 (Prom. SG No 54/2002);

## CHAPTER I.

### GENERAL OVERVIEW

#### 1.1. Principles and standards of international protection

##### 1.1.1. General principles

The *non-refoulement* principle, regulated in Art. 33 (1) of the Geneva Convention relating to the Status of Refugees of 1951, 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, regulated in Art. 31 of the Geneva Convention relating to the Status of Refugees of 1951, stipulates that the Contracting States shall not impose penalties, on account of their irregular entry or presence, on refugees who, coming directly<sup>1</sup> 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 irregular entry or presence. This principle has been transposed into the national legislation in Art. 275 (5) of the Criminal Code of the Republic of Bulgaria.

The *access to justice* principle, regulated in Art. 16 of the 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/she has his/her habitual residence the same treatment as a national of that state in matters pertaining to access to the courts, including legal assistance and exemption from payment of court fees (*cautio judicatum solvi*).

The benefit of the doubt principle (*in dubio pro fugitivo*) principle, regulated in §.203 of the Handbook on Procedures and Criteria for Determining Refugee Status<sup>2</sup> of the Office of the UN High Commissioner for Refugees, Art. 75 (2) of the Law on Asylum and Refugees (LAR), and Art. 4 (5) of Directive 2011/95/EU (Qualification Directive -recast), 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.

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<sup>1</sup> 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 (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 aliens whose countries of origin are outside the territory of Europe. Therefore, from the legal point of view any asylum seekers transiting Turkey as a third-country are considered by Bulgarian authorities to be asylum seekers who come directly from the territory of a state where their life or freedom was threatened;

<sup>2</sup> <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>

### 1.1.2. EU common legal standards in the area of asylum (acquis)

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 legislation”. The regulations, directives and framework decisions are adopted by the EU institutions which have legislative powers in conformity with the Treaties; these 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<sup>1</sup>.

Bulgaria, in its capacity of an EU member state is bound by the EU acquis both by force of the primary EU treaties – TEU and TFEU –, and the provisions of the national Constitution<sup>2</sup>, which stipulate 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. Pursuant to the EU law<sup>3</sup> the legal acts of the European Union consist of regulations, directives, decisions, recommendations, and positions. The regulation is a legal act with general application which is binding for and is directly implemented by all the member states. The directive is a legal act which binds the member states in respect of a specific legal outcome (minimum standard), and the national authorities ensure the transposition of these minimum standards in their domestic legislation in view of achieving the relevant outcome.

All the main treaties, regulations, and directives regulating the whole range of matters related to granting asylum in the EU constitute the EU minimum asylum standards (EU asylum acquis). Following the call of the Hague Programme to establish “a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection”, a recast version of the five building blocks has been adopted.

*Directive 2011/95/EU<sup>4</sup> (Recast Qualification Directive)* lays down the common 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 2013/32/EU<sup>5</sup> (Recast Asylum-Procedure Directive)* lays down the common procedures for granting and withdrawing international protection.

*Directive 2013/33/EU<sup>6</sup> (Recast Reception Conditions Directive)* lays down the common standards for the reception of applicants for international protection and asylum in the EU Member States.

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<sup>1</sup> Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, signed on 13 Dec. 2007 (publ. OJ, No c-306 of 17 Dec. 2007, in force as from 1 Dec. 2009);

<sup>2</sup> Art. 5 (4) of the Constitution;

<sup>3</sup> Art.288 (1) of the TFEU (former Art. 249 of TEC);

<sup>4</sup> 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);

<sup>5</sup> 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);

<sup>6</sup> 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);

*Regulation (EU)604/2013<sup>1</sup> (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.

The Eurodac Regulation constitutes the legal basis for an EU database for comparing fingerprints to ensure the effective implementation of the Dublin system

In addition to the above mentioned building blocks, another legal instrument, the Temporary Protection Directive has been adopted in 2001.

The [European Commission](#) (COM) has the exclusive right to initiate new laws, the so called "right of initiative". COM is also the "Guardian of the Treaties, it makes sure that Member States apply EU legislation properly.

The 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 Justice of the European Union<sup>2</sup> (CJEU), which used to exist under the name of Court of Justice of the European Communities (ECJ). CJEU's rulings on the interpretation of the EU decisions, regulations and directives are binding for the administrative bodies and courts of the Member States.

## **1.2. Methodology of the monitoring**

The monitoring covers the procedural actions conducted under the terms and procedure of the Law on Asylum and Refugees (LAR) by the State Agency for Refugees (SAR) with the Council of Ministers. The procedural actions are monitored at all the 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 substance); in addition, the monitoring covers the acts (decisions) issued by the administrative body in these procedures.

The monitoring methodology includes monthly ad hoc gathering of data about the ways, means and practices of conducting the procedures under LAR, which are entered in standard forms for interview evaluation (Annex 1) and decision evaluation (Annex 2). The monitoring takes place at the territorial units of the State Agency for Refugees: the Registration-and-Reception Centers (RRC) in the city of Sofia, the village of Banya (Nova Zagora municipality), and the town of Harmanli, as well as at the Transit Center (TC) in the village of Pastrogor (Svilengrad municipality) and at the Distribution Center in the town of Elhovo in relation to any potential registration. The monitoring of the acts (decisions) issued by the administrative authority in the procedures takes place at the relevant regional administrative courts and the Supreme Administrative Court.

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<sup>1</sup> 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);

<sup>2</sup> Court of Justice of the European Union (CJEU) [http://curia.europa.eu/jcms/jcms/Jo2\\_6999/](http://curia.europa.eu/jcms/jcms/Jo2_6999/);

Since 1998 the BHC has also conducted regular weekly monitoring of the detention centers for irregular migrants, Special Centre for the Temporary Accommodation of Foreigners - SCTAF (detention centers) with the Migration Department of MOI, in the city of Sofia, Busmantsi neighborhood, and in the town of Lyubimets, close to the Bulgarian-Turkish border. This monitoring is aimed at ensuring access to the procedure for individuals who have lodged an application for international protection via the administration of a detention center; providing these individuals with information about their rights and obligations during the procedure and after the completion thereof; and, first and foremost, making sure that SAR delivers on its obligations in terms of the release, registration and accommodation of the applicants.



**Pastrogor Transit center**



**Sofia Reception center**



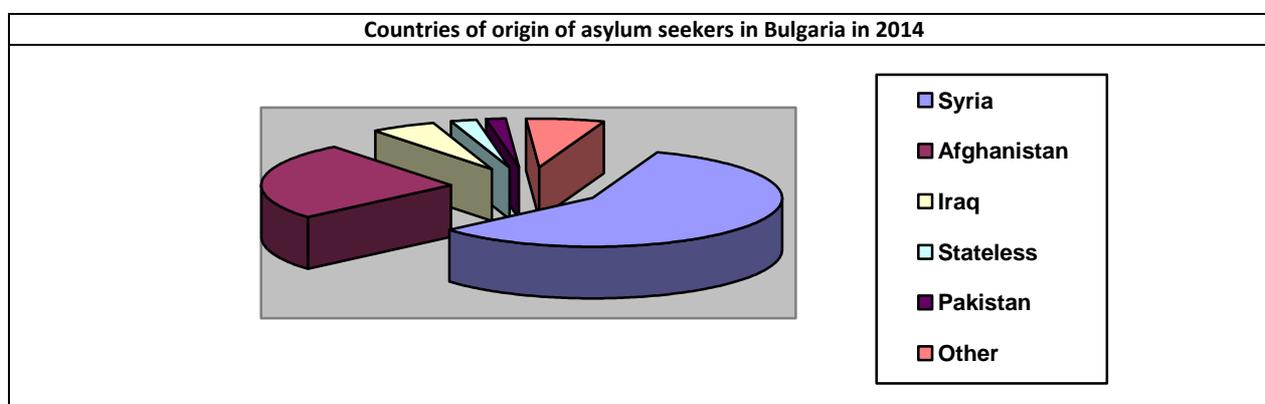
**Busmantsi detention center**

## CHAPTER II.

### ANNUAL REVIEW

#### 2.1. Access to territory and procedure

During 2014 Bulgaria witnessed a gradual and steady increase in the number of individuals seeking international protection, which peaked<sup>1</sup> in particular after the middle of the year, compared to the previous months. While 7,144<sup>2</sup> persons had lodged applications for international protection in 2013, a total of 11,081 persons lodged applications in 2014, which constitutes a 35% rise on an annual basis. In terms of the countries of origin, Syria maintains its leading position (58% of the total, individuals or 6592 individuals for protection), followed by Afghanistan (26%; 2,968 individuals), Iraq (5.4%; 608 individuals), stateless persons (2.4%; 268 individuals, mainly of Palestinian origin), and Pakistan (1.6%; 183 individuals).



Following the crisis situation in late 2013, in the context of the growing numbers of refugees and asylum-seekers in Bulgaria, both the government and the specialized administrative authority in the area of international protection – the State Agency for Refugees (SAR) with the Council of Ministers, – had to face the fact that the events in the previous autumn had been neither an isolated nor a one-time phenomenon. This understanding stemmed from the unfolding conflicts in regions close to Bulgaria – both the ongoing civil war in Syria and the emerging conflicts in Iraq and other countries in the regions of the Middle East and Sub-Saharan Africa. An objective factor determining the ever rising number of asylum seekers in Bulgaria is the substantial number Syrian refugees displaced in the neighboring Republic of Turkey which exceeded 1.6 million in 2014.

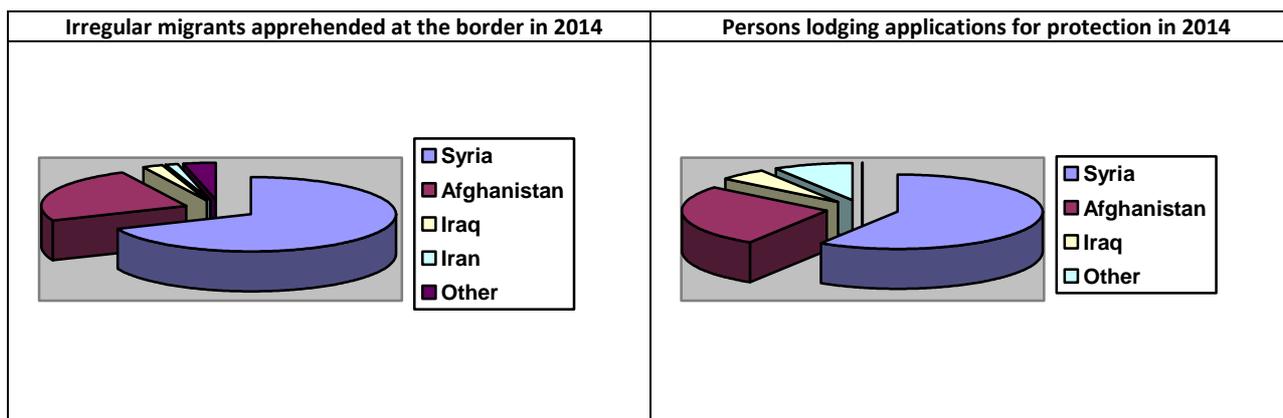
As of late 2014, Bulgaria is yet to introduce short-term and long-term measures in order to ensure a sustainable enhancement of its reception capacity and a maximum efficiency of the status determination procedures. Such measures would typically, but not exhaustively, include ensuring additional funds from either national or available EU resources in this area. Such restrictive practices are likely to have further contributed to compelling asylum-seekers (or beneficiaries of international protection) to move on to other European countries during or after the asylum procedure.

<sup>1</sup> Statistical data about the number of applications lodged by months: January - 822; February - 776; March - 433; April - 320; май - 545; June - 645; July - 911; August – 1,104; September – 1,220; October – 1,429. Source: State Agency for Refugees;

<sup>2</sup> Source: State Agency for Refugees;

In 2014 altogether 1250 border officers and 1350 regular policemen remained dispatched and patrolling along the Bulgarian-Turkish border. The MOI reported<sup>1</sup> that 6400 third-country nationals who had been officially refused access to the national territory in 2014 and returned, mainly to Turkey<sup>2</sup>. Another 28,000 individuals were reported to have been surveyed on the Turkish territory in close proximity with the Bulgarian border, but who have not attempted to cross the borderline. The top countries of origin of officially non-admitted 6400 individuals were stated to be Syria, Iraq and Afghanistan.

The analysis of the number of applicants for international protection (Syria – 6,529; Afghanistan – 2,968; Iraq – 602) does not indicate any substantial differences between the profiles of third-country nationals attempting to enter Bulgaria and the profiles of third-country nationals seeking international protection in Bulgaria. Thus, the profile of third-country nationals entering or attempting to enter Bulgaria consists, for the most part, of persons fleeing conflict zones, insecurity or large-scale indiscriminate violations of human rights. Therefore, the impact of the enhanced border control and prevention measures in terms of access to the Bulgarian territory via the “green border” in 2014 has mostly affected those in need of international protection as a part of mixed-migratory movement, not the inflows of voluntary migration due to economic reasons.



## 2.2. Reception capacity

In the first half of 2014, the priority of the State Agency for Refugees (SAR) was to overcome the blockage of the national asylum system as a result of the sharp increase in the number of arrivals starting in the autumn of 2013. With the emergency measures and resources provided by the United Nations High Commissioner for Refugees (UNHCR), the technical support from the European Asylum Support Office (EASO), and the assistance rendered by some foreign governments, non-governmental organizations, and the Bulgarian civil society, SAR was able to considerably improve, within a relatively short period (by mid-April 2014) the reception conditions in its registration-and-reception centers. SAR recruited additional staff<sup>3</sup> which strengthened the Agency’s administrative capacity for registering asylum seekers, clearing backlogs, providing the asylum-seekers with temporary documents, and conducting the

<sup>1</sup> Data provided by the General Directorate Border Police, Readmission Sector, TWG focal point on 15 January 2015;

<sup>2</sup> 6000 non-admissions of individuals arriving from Turkey and 400 non-admissions of individuals arriving from Greece

<sup>3</sup> 160 persons, of whom 50 payroll staff, and 110 temporary staff;

procedural actions for examining their applications for protection, and issuing decisions on granting or refusing a status.

With the support of UNHCR, SAR instituted a national coordination mechanism, supported by sectorial Working Groups whereby, within the framework of the inter-agency platform of governmental, non-governmental and international organizations, including UNHCR, specific actions were taken to address the existing legislative, institutional, and practical issues in the area of reception, the procedure and the integration of beneficiaries of international protection in Bulgaria.

Thus, in 2014 SAR ensured a reception capacity consisting of Transit Center (TC), Registration-and-Reception Centers (RRC), and temporary accommodation centres, with the capacity to accommodate up to 6,000<sup>1</sup> people at a given time (300 at TC-Pastrogor (Svilengrad municipality); 3,340 at RRC-Harmanli; 860 at RRC-Sofia; 150 at RRC-Banya (Nova Zagora municipality); 300 at the TAC Vrazhdebna Sofia); 700 at the TAC-Voenna Rampa, Sofia); and 350 at the TAC-Kovachevtsi, Pernik municipality). SAR closed the TAC-Kovachevtsi in early November 2014 citing financial constraints..

In February 2014, SAR took over from UNHCR the task of providing food to the applicants for international protection accommodated at the reception facilities and took measures to ensure medical care for the inmates. As a result of the improved conditions and the resumed issuance of temporary documents, in mid-March 2014 RRC-Harmanli changed its regime from a closed to an open facility. In early June 2014 all of SAR's reception facilities provided the minimum conditions for the reception and accommodation of applicants for international protection.

### **2.3. Registration**

In parallel, the administrative procedures for examining the applications for protection lodged with SAR were almost paralyzed from December 2013 till the end of February 2014. What raised particular concern was the absence of any registration and issuance of temporary documents to applicants for international protection. Under the pressure of the influx, and instead of issuing the registration cards due to the applicants, SAR served them with a slip of paper carrying notification of the date on which the applicant was to present himself/herself for the purpose of registration (the so-called "white notes"). The usual period of the pending registration varied between 3 to 6 months. This resulted in postponing the procedures of the applicants for international protection living at external addresses for an uncertain period of time, while their access to the rights in the course of the procedure as provided for by law was entirely blocked. The individuals worst affected by the absence of registration turned out to be those who had filed an application to reside in an external address at their own expenses (the so-called "persons with external accommodation) which entails waiving off their entitlements (provision of accommodation and social assistance by the State) as per the law. The majority of them, had been directly referred from the border or the border regions to either of the two detention centers of the MoI in Busmantsi and Lyubimets in the autumn of 2013 due to SAR's lack of reception capacity and the paralysed registration procedure. As such, these individuals, many of whom were women and children, were detained and deprived of their freedom of movement for a considerable period of an average of 45 days<sup>2</sup>. Under such circumstances, most

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

<sup>2</sup> Data as of 31 Dec. 2013, source: DGBP, MD-MOI, BHC;

of them resorted to filing declarations to reside in an external address. Contrary to the reality, such declaration officially indicated that they possessed the necessary financial means and indicated an external address. While in most of such cases the addresses indicated reportedly did not meet the legal requirements, SAR approved their release. The measures taken by the Migration Department appeared ineffective to counter the fraudulent actions carried out on the premises of the detention centers by individuals, Bulgarian nationals, who made multiple offers with the same address to the asylum-seekers against the payment of high fees in violation of the law. The number of asylum-seekers residing in external addresses reduced from 4,421 in early January 2014 to 410 at the end of December 2014. It is generally believed that most of those residing in "external addresses" have most probably left Bulgaria for other European countries by any means at their disposal.

Based on an order issued by the Ministry of Interior on 25 September 2013,<sup>1</sup> the the Directorate of Migration set up the so-called "Distribution or Allocation Center" in Elhovo with a capacity of 300 people at a time. As the border police detention facilities were seriously overcrowded and asylum-seekers remained in protracted detention, the Ministry of Interior set up this temporary detention facility to receive irregularly entered third country nationals from the border police and distribute those seeking asylum, to a SAR centre.<sup>2 3 4 5 6 7</sup>SAR continued to carry out the "initial registration" of the applicants for international protection detained at the Distribution or Allocation Center-Elhovo although it constituted a breach of the relevant provisions of the LAR<sup>8</sup>. From the time SAR opened up the Transit Centre of Pastrogor (Svilengrad Municipality) as one of its territorial units in 2012, the law does not allow SAR to conduct any procedures or individual procedural actions at places other than its territorial units<sup>9</sup>. The transfer of applicants for international protection to detention facility (the Distribution or Allocation Centre) instead of TC-Pastrogor for the purpose of the initial registration constitutes an unlawful practice in breach of the national, regional and international legal provisions.

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<sup>2</sup> On 25 September 2013 by an order of the Minister of Interior, the Directorate of Migration set up the so-called "Distribution Center" with a capacity of 300 people, in Elhovo, to primarily address the serious overcrowding of and protracted detention of asylum-seekers in the border police detention. From 7 October 2013, on the grounds of another order<sup>1</sup> issued by the National Operational Center, all the applicants for international protection detained at the border in the region of responsibility of the RDBP-Elhovo (at the Bulgarian-Turkish border) were handed over to the newly established Distribution Center-Elhovo, wherefrom, within a short time, the relevant individuals were to be referred to SAR's reception facilities. In 2014 the applicants for international protection at DC-Elhovo were handed over by GDBP's authorities to SAR by means of a written protocol. This practice was in violation of the effective immigration and refugee legal norms. The Distribution Center-Elhovo itself functions as an administrative structure in subordination to the Directorate of Migration (as from 1 July 2014<sup>1</sup> - Migration Department within MOI's General Directorate of Border Police -GDBP); The existence of such a detention facility, practically a structure for the administrative detention of third-country nationals, lacks any grounds of a legislative act as required by the national legal order<sup>1</sup>. Moreover, the detention of asylum seekers at DC-Elhovo and the restriction of their freedom is in violation of the regulations adopted<sup>1</sup>. Irrespective of their " short stay," their detention at DC-Elhovo under the above conditions constitutes a breach of Art. 5f of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF), besides it being in violation of the effective national legislation in the area of asylum and international protection.

<sup>3</sup> Order reg. No 1887/07.10.2014 of the Deputy Minter of Interior and the Deputy Head of the National Operational Center;

<sup>4</sup> The law on the Ministry of Interior, SG, No 53 of 27 June 2014;

<sup>5</sup> Art. 1a of the Law on Legislative Acts;

<sup>6</sup> Art.16 of the Ordinance on the Responsibility and Coordination of State Authorities, endorsed by COM Decree No 332 of 28 Dec. 2007, prom. SG No 3 of 11 January 2008, amended SG No 5 of 19 January 2010, amended SG No 91 of 18 November 2011;

<sup>7</sup> Art.16 of the Ordinance on the Responsibility and Coordination of State Authorities, endorsed by COM Decree No 332 of 28 Dec. 2007, prom. SG No 3 of 11 January 2008, amended SG No 5 of 19 January 2010, amended SG No 91 of 18 November 2011;

<sup>8</sup> § 5 of the Transitional and Final Provisions of LAR; (Worth elaborating on this point)

<sup>9</sup> Transit or Registration-and-Reception Centers, Art. 47 (2) of the Law on Asylum and Refugees;

In September 2014, BHC observed a new administrative measure by SAR in relation to registration, which was introduced and applied in violation of the law. 65 individuals<sup>1</sup> voluntarily presented themselves directly at SAR's units and declared their wish to seek international protection and submitted asylum applications. Instead of registering such persons, SAR alerted MOI's regional authorities who subsequently detained the asylum-seekers in the relevant police departments, wherefrom, after the expiry of the 24-hour detention limit, they were transferred to and detained at the detention centers of the Directorate of Migration. Authorities explained that since these asylum-seekers had irregularly entered or had been irregularly present in Bulgaria, their identity verification and medical checks were necessary, as in the cases of others who enter in an irregular manner. Subsequently, orders for forced accommodation at the detention centers (SCTAFs) were issued in respect of 65 asylum-seekers (38 adult male, 8 adult female and 19 children including families with children some of whom aged 0-12 months), and all of them submitted asylum applications. This approach was applied in breach of the right to access to the status determination procedure, regulated in Art. 6 (1) of Directive 2013/32/EU<sup>2</sup>, which explicitly stipulates that the registration of the applicant for international protection shall take place within 3 working days from the point of making the application in a written or oral form before the competent national authority. Pursuant to the provision of paragraph 2 of the same article, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, the member states shall ensure that the registration shall take place no later than six working days after the application is made. In addition, this inappropriate practice is likely to have added to the financial and human resources constraints being faced by the relevant institutions.

Initial identification of persons with special needs was not carried out in practice during the registration. .



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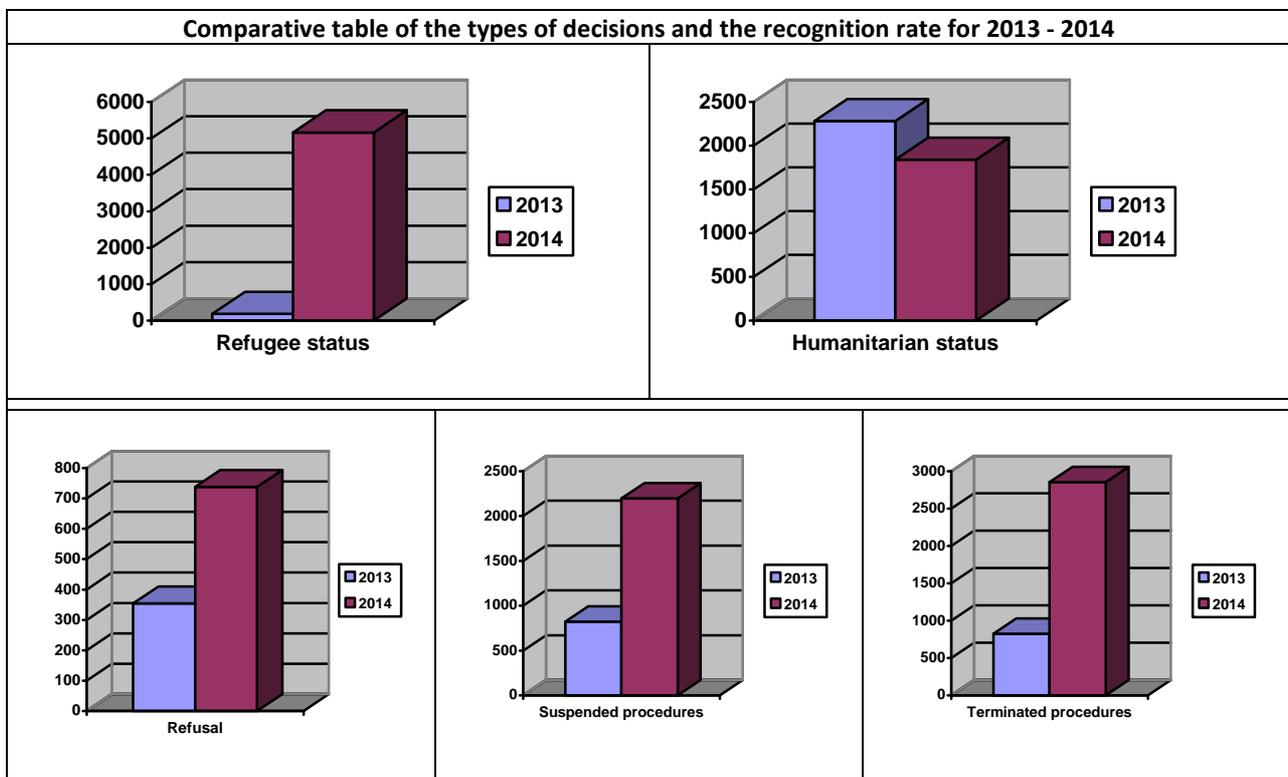
<sup>1</sup> 65 asylum seekers of whom 38 men, 8 women and 19 children

<sup>2</sup> Not yet transposed into the domestic legislation

## 2.4. Status determination

As the majority of the asylum seekers in 2014 were Syrian citizens, the national refugee administration applied the so-called *prima facie* approach<sup>1</sup> to assessing their applications for protection as “manifestly well-founded”. This approach enabled SAR to examine, within a relatively short period of time from February till April 2014, the applications and to issue decisions for a total of 3,642 Syrian citizens seeking protection, of whom 2,154 were granted refugee status, and 1,488 humanitarian status.

As of the end of 2014, SAR reported the highest recognition rate, i.e. positive decisions on applications for protection, ever since 1993: 55% overall recognition rate and 6% rejection rate (in total 12,787 decisions, of which 40% or 5,162 refugee statuses, 15% or 1,838 humanitarian statuses/subsidiary protection, 6% or 738 refusals, 17% or 2,196 suspended and 22% or 2;853 terminated procedures).



The comparison of the recognition and refusal rates in respect of Syrian citizens seeking protection shows clearly that in 2014 the recognition rate in respect of other third-country nationals seeking protection hardly reaches 7% for refugee status (341 decisions of a total of 5,162 refugee statuses), and 14% for subsidiary protection (253 decisions of a total of 1,838 humanitarian statuses), while the refusal rate stands at 97% (485 refusals of a total of 500 refusal decisions), 79% of the suspended procedures (2,236 of a total of 2,853 decisions), and 78% of the terminated procedures (1,704 of a total of 2,196 decisions). The monitoring reconfirmed previous observations that SAR needs to further improve in ensuring an in-depth analysis of the claims of the asylum seekers from countries other than Syria. In purely practical terms, the priority given to Syrian nationals in conducting the status determination procedure

<sup>1</sup> Latin, legal: proved at first sight;

contributed to tension among the communities of different countries of origin, including causing some incidents<sup>1</sup> in SAR's reception facilities.

Finally, in 2014 SAR resumed a highly disputed practice (abandoned six years before) of conducting Dublin procedures and accelerated procedures in the SCTAFs (DoM's detention centres) under the conditions of detention. Conducting status determination procedures at the detention centers constitutes a direct breach of the effective legislation<sup>2</sup>. Pursuant to the law, such procedures on the premises of the detention centers were admissible only till the opening of SAR's transit center<sup>3</sup>. In 100% of the procedures carried out under the conditions of detention, the applicants for international protection do not have a legal representative, neither are they provided with legal aid in cases where they receive a refusal, which violates their right to remedy<sup>4</sup> and access to justice<sup>5</sup> (see, also 3.7. Legal aid).

## 2.6. Integration

Monitoring of the situation of asylum-seekers in 2014 shows that the absence of any integration support in 2014 has prevented the access of the newly recognized beneficiaries of international protection to a number of basic civil and social rights in Bulgaria<sup>6</sup>.

The provision of any support to those who are granted protection ('Refugee' or 'Humanitarian' status) ceases in legal as well as in practical terms from the very day when the decision about granting a status in Bulgaria becomes effective. This implies a situation wherein while asylum-seekers enjoy a number of social, health and procedural rights, the individuals who are granted protection, on the other hand, face serious obstacles in accessing such rights. The lack of funding caused difficulties also for the issuing of Bulgarian identity documents, the absence of which renders the exercise of any rights (social, labor or health) impossible. Considerate of such constraints faced by the beneficiaries of international protection (especially those with specific needs, vulnerability or without other viable alternative options), SAR, in an attempt to address the practical challenges within its resources and limitations, exceptionally tolerated the continued accommodation (as well as access to food and basic medical care) of the beneficiaries of international protection in its territorial units for up to 6 months after receiving a status<sup>7</sup>.



<sup>1</sup> [http://www.dnevnik.bg/bulgaria/2014/11/05/2413301\\_masov\\_boi\\_mejdu\\_bejanci\\_unishtoji\\_noviia\\_korpus\\_na/](http://www.dnevnik.bg/bulgaria/2014/11/05/2413301_masov_boi_mejdu_bejanci_unishtoji_noviia_korpus_na/)

<sup>2</sup> §5 of the Transitional and Final Provisions of LAR: "Pending the opening of transit centres, the proceedings provided for in Chapter Six, Sections Ia and II shall be conducted at registration-and-admission centres or places designated by the Chairperson of the State Agency for Refugees.";

<sup>3</sup> SAR'S Transit Center in the village of Pastrogor, Svilengrad municipality, was opened on 3 May 2012;

<sup>4</sup> Art.56 of the Constitution of the Republic of Bulgaria;

<sup>5</sup> Art.16 of the Convention relating to the Status of Refugees of 1951;

<sup>6</sup> As the National Integration Programme (NIP) of 2013 (for xxx beneficiaries) came to an end in December 2013, Bulgaria did not adopt or implement a new integration program in 2014. In early July 2014, the Government of Bulgaria adopted the "Strategy on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria (2014-2020)"<sup>6</sup>. The Strategy, however, lacked a program and the required financial resources, and hence, Bulgaria did not implement refugee integration programme in 2014.

<sup>7</sup> Art. 32 (3) of the Law on Asylum and Refugees;

## CHAPTER III.

### FINDINGS

#### 3.1. Access to the procedure

The analysis of the procedural actions monitored shows that in 78% of the cases (358 of a total of 461 monitored) the applications were lodged with a state authority other than the specialized State Agency for Refugees. In 92% of them (423 cases) the accompanying documents gathered by the other state authority (DGBP or MD) were dispatched to, and received by SAR. In 8% of the cases monitored (37 cases) the opening of the procedure was delayed by more than 1 month from the date on which the application was made with the other state authority (DGBP or MD).

According to MOI<sup>1</sup> the number of third-country nationals accommodated at a detention center (SCTAF) or DC-Elhovo has been on the decrease. These conclusions are confirmed by the monitoring on the access to the procedure for those who make their applications at DC-Elhovo or a detention center. The average duration in DC-Elhovo (since its opening in early October 2013) increased (from an average of 6 days in 2013) to 8 days in 2014. On the other hand, the period of detention at the SCTAFs considerably decreased in 2014<sup>2</sup> to an average of 20 days (compared to 45 days in 2013).

Nevertheless, this duration is still in violation of the EU legal norms<sup>3</sup> which stipulate that registration of asylum-seekers shall take place within 6 working days from the lodging of the application if the latter is made to other authorities which are likely to receive such applications, but not competent for the registration under national law.

In terms of some asylum seekers with a first application for protection, who come from countries in Northern Africa (Algeria, Tunisia, Morocco) and Sub-Saharan Africa (Mali, Cote D'Ivoire, Ghana), the average duration of their detention in one of the SCTAFs exceeded 6 months, which implies discrimination on grounds of nationality. Taking into account the legal provision<sup>4</sup> which stipulates that the coercive administrative measure "deportation" shall not be enforced before the proceedings have been completed with a decision which has come into effect. Thus, the detention of asylum-seekers in a detention/removal center for irregular migrants is unlawful. The same is implied in the EU legal standards<sup>5</sup> which explicitly require that a person shall not be held in detention for the sole reason that he/she is an applicant for international protection. Detention during the procedure may be applied only on a number of limited grounds, as explicitly listed, for the period of conducting one-time procedural actions<sup>6</sup> or in respect of individuals posing a threat to national security or public order<sup>7</sup>; and the grounds for such detention shall be laid down in the national law.

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<sup>1</sup> Analysis of the security environment and the situation within MOI structures over the period January – June 2014, <http://press.mvr.bg/Akcenti/Analysis.htm>;

<sup>2</sup> Data as of 31 Oct. 2014, source: DGBP, MD-MOI, BHC;

<sup>3</sup> Art. 6 (1) of Directive 2013/32/EU;

<sup>4</sup> Art.67 (1) of the Law on Asylum and Refugees;

<sup>5</sup> Art.8 (1) of Directive 2013/33/EU;

<sup>6</sup> Art.8 (3) (a, b, c, f) of Directive 2013/33/EU;

<sup>7</sup> Art.8 (3) (d) of Directive 2013/33/EU;

In terms of the access to the procedure, the monitoring in 2014 detected some practices constituting a set-back from some procedural standards that had been introduced and established in SAR's practice. In September 2014, the first cases occurred where SAR's staff refused to receive and register applications for international protection unless the applicant submitted either a rental contract for accommodation "at an external address" or a valid national identity document. Moreover, due to the lack of arrangement to receive applications and ensure accommodation for asylum seekers after working hours, at weekends and during national holidays, in some cases, asylum seekers together with their families had to spend the night(s) in the open in front of SAR's facilities.

An additional obstacle to the access to the procedure in 2014 was the practice as described above (see 2.5.) of conducting Dublin and accelerated procedures in the detention centers (SCTAFs) for irregular migrants in closed conditions. Moreover, this practice escalated to an extent where the decisions in the procedure were served on the applicants in these detention centers, while the latter had not been released and accommodated at one of SAR's reception facilities. An implication of conducting the procedure under circumstances of detention is the impossibility for the applicants concerned to exercise their rights during the procedure as safeguarded by law. This constitutes a violation of, inter alia, the right to freedom of movement and the right to a fair trial<sup>1</sup>. In breach of the law, the applicants for international protection are limited in the exercise of their entitlement as asylum seekers to shelter and food, social assistance, health insurance, full medical care package and psychological support<sup>2</sup>. The right of access to the labor market during the status determination procedure under specific conditions as provided in the law<sup>3</sup> is also affected. Another implication is the impeded possibility for those applicants who have subsistence means available to request and be granted the permission to have accommodation at their expense during the general procedure. In 2014 a total of 40 applicants for international protection had their Dublin/accelerated procedure conducted in a detention environment in breach of the rights they have in administrative and court proceedings as regulated by law.

Finally, the access to the procedure was refused *de facto* to asylum seekers who were denied registration and accommodation when they, having arrived to Bulgaria in an irregular manner but without having been identified or arrested and presented themselves directly at SAR territorial units (see 2.3 above.).

### **3.2. Provision of information on rights and obligations**

The common EU standards<sup>4</sup> require that the member states shall inform applicants, within a reasonable time not exceeding 15 days after they lodged their application for international protection, of at least the benefits they are entitled to and the obligations with which they must comply in terms of reception conditions.

The monitoring shows that in 70% (323) of the monitored cases, the applicants did not receive from SAR information on the asylum-procedure or their rights and obligations, while in 30 % of the cases (138 cases) such guidance has been provided.

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<sup>1</sup> Art. 5 and Art.6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

<sup>2</sup> Art.29 (1) of the Law on Asylum and Refugees;

<sup>3</sup> Art.29 (3) of the Law on Asylum and Refugees;

<sup>4</sup> Art.5 of Directive 2013/33/EU;

### **3.3. Documents**

The EU legal standards<sup>1</sup> require that the member states shall ensure that, within three days of the lodging of an application for international protection, the applicant is issued a document in his/her own name certifying his/her status as an applicant or the permission given to him/her to stay on the territory of the member state while his/her application is pending or being examined.

The 2014 monitoring has established that in 100% of the monitored cases, SAR did not comply with this obligation. The time limit of 3 working days for the registration of the application for international protection, which is precondition for the issuance of a document to the applicant, – has neither been introduced in the national law, nor applied in practice (see 3.1).

### **3.4. Quality of the interviews conducted**

While the overall quality of the procedure was satisfactory in 2014, there were some substantial exceptions. The main issue identified throughout the year concerns the use of audio recording devices in the interviews for examining the applications for protection. Audio recording of the interview serves as the best safeguard to ensure the full, objective and fair recording of the statements of the applicants, the correct assessment of the need to grant protection based on the facts and circumstances stated, and to serve as a safeguard against any possible corrupt practices. It was only in 0.5% (2 cases) of the procedures monitored in 2014 that the interviews conducted were recorded by means of technical devices. While all the SAR's staff who conduct interviews do have audio recording devices at their disposal, in 100% of the monitored cases the interviewees were presented with a standard declaration to sign whereby they expressed their consent to not have the interview audio-recorded by means of a technical device. Applicants were presented with such declarations for their signature without having been informed of the advantages and the purpose of having their interviews audio-recorded. Hence, the majority of the interviews (99% of the cases monitored or 459 cases) are recorded by SAR employees in a computer file but, in some cases, even by hand on paper in a draft version. In practice, in 41% of the cases monitored (189 cases) even where the interviews are duly recorded, they are not read out and translated to the applicant in a language he/she understands; instead, the records are directly submitted for signing, and the applicant is not given the opportunity to get acquainted with the content and to make clarifications or corrections. The monitoring of SAR's decision shows that even minor inconsistencies in the statements have been used as grounds for refusing protection due to the lack of credibility of the refugee claim.

However, a serious problem has been established in relation to the safeguards for collecting evidence during the status determination procedure: in cases where written or other material evidence is presented by the applicants, neither a due record, nor an inventory of such evidence is made in order to be submitted to the administrative authority. Over the period 1 July - 31 December 2014, in 8% of the cases (35 cases) applicants for international protection presented evidence during the procedure. Only in 0.8% of them (4 cases) this fact was duly recorded. This situation implies a serious risk of failure to take into consideration such evidence and, subsequently, not include it in the claim assessment and in the decision taken about granting or refusing international protection in Bulgaria.

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<sup>1</sup> Art.6 (1) of Directive 2013/33/EU;

In 74% of the cases monitored (341 cases), the case workers use the open type of questions in conducting the interview, which enables the applicants to present a full and detailed account of their refugee story. Over the period 1 July–31 December 2014, the monitoring established only in 2% of the cases (10 cases) inconsistencies in terms of the facts presented in the application or in a previous interview. In all these cases the applicants have been allowed to make clarifications in their statements. Such clarifications usually concern the precise spelling of the applicants' names, as, due to the lack of IDs upon registration at SAR, it is the interpreter that advises on the transliteration of the names in the Bulgarian language. It showed that the decision-maker focuses primarily on formalities as exemplified above, rather than the refugee story itself and the substance of the asylum claim.

Only in 8% of the cases monitored (37 cases) the applicants for international protection were provided with legal aid under ERF<sup>1</sup> during the interview. The reasons for this low number were both the lack of information provided by the interviewers to asylum seekers about the possibility to be represented during the RSD by a lawyer free of charge, as well as the lack of lawyers on duty from the non-governmental organisation providing the legal aid under ERF during 2014.

The monitoring of the procedure quality in 2014 points to an inefficient provision of legal aid during the interviews monitored. In the 8% cases monitored, the legal representatives ensuring legal aid in the course of the interview did not seem to be active either in their involvement or in providing evidence in support of the statements made by the applicants. In 100% of the cases monitored (41 cases) the attending legal representatives, appointed under ERF did not ask any additional or clarification questions in spite of the obvious imprecisions or inconsistencies in the statements made by the applicants. It was found, though in isolated cases (8 cases), that imprecise or untrue information was provided both about the procedural deadlines and the applicants' rights and obligations during the procedure or after receiving SAR's positive or negative decision

The findings point to cases where the applicants' wish that the interview be conducted in their mother tongue<sup>2</sup> was interpreted by SAR employees as the interviewee's attempt to sabotage the procedure in view of the fact that at the time of registration the applicants declared some competence in a second language for which SAR has interpreters available. Such a reaction ('attempt to sabotage the procedure') leaves the applicants with the impression that their wish to avail themselves of that right might adversely impact the decision on their claim.

In 2014 in 20% of the cases (6 of a total of 30 cases monitored) SAR's decision was issued within the time limits prescribed by LAR, although in 47 cases the initial application for protection made to another state authority was found to be missing in the file, which made it impossible to assess the observance of the relevant time limits. The monitoring also established a consistent absence of the so-called "social interview" during the procedure, which is a tool to identify urgent needs and specific problems of the applicants under the provision of Art. 29 (4) of LAR.

In terms of the decisions issued, however, another serious issue has been identified: a deterioration in the reasoning of the decisions on the application for international protection

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<sup>1</sup> In 2014 BHC provided legal aid under UNHCR funding to 18642 asylum seekers during RSD, of whom 1153 with special needs

<sup>2</sup> The right to interpreter from the same gender as stipulated by the law was fully observed in 2014

compared to the year 2013. Only in 3% of the cases (1 case) the content of the decision issued by SAR was in conformity with the facts and circumstances presented in the argumentation. In the remaining 96% of the cases (29 cases) the reasoning consisted of standard, quite vague and very generic grounds for refusal, while the facts presented and uncontested by SAR justified the need for granting protection. The decisions monitored give a clear indication that by and large the burden of proof is not correctly applied to the procedures under LAR<sup>1</sup>. For example, the applicant stated that his family was killed as a result of an attack on account of their nationality, where the decision-maker upheld that applicant did not state any reasons for well-founded fear of persecution. In none of the cases monitored were the decisions refusing international protection served in the presence of a lawyer, as a safeguard for the observance of the asylum seeker's rights. On a positive note, in 57% of the cases (17 cases) SAR's decisions were founded on current information about the applicants' countries of origin, and the sources of information were duly indicated. However, in most of the cases (28 cases) the COI quoted did not substantiate and did not conform to the legal conclusions about the lack of need to grant protection, which served as grounds for SAR's refusal decision.

### **3.5. Unaccompanied children**

Similar to the previous 15 years, the most serious concern in terms of the asylum procedure with unaccompanied children in 2014 remains the absence of safeguards for the protection of their rights – the failure to ensure that a legal guardian is assigned in conformity with the imperative legal requirements<sup>2</sup>. As a result of this, in 2014 the courts continued to regularly deliver judgments<sup>3</sup> whereby they granted the appeals lodged by unaccompanied children against refusal decisions, thus overturning the decisions issued by SAR in procedures conducted in the absence of a legal guardian assigned, and without the assistance of a lawyer ensuring procedural representation and, respectively, the defense of the child's interests in the asylum procedure.

The year 2014 marked a substantial rise in the number of cases where asylum seeking children found themselves entirely on their own on the territory of Bulgaria without any protection, support or care by an adult family member responsible for them by law or custom<sup>4</sup>. The Law defines a child in such a situation as an unaccompanied child; hence, within this meaning, unaccompanied children who seek or have received protection fully meet the definition of children at risk<sup>5</sup>, as they are left without parental care, and their special situation puts them at risk of having their physical, mental, ethical, intellectual and social development harmed, and of dropping out of school. In 2014, 940 unaccompanied children, of whom 911 boys and 29 girls have lodged applications for international protection on the territory of Bulgaria, compared to 183 such applicants in 2013<sup>6</sup>, which is an increase by 80%. Main countries of origin of

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<sup>1</sup> Art.75 (2) of the Law on Asylum and Refugees;

<sup>2</sup> Art.25 (1) of LAR;

<sup>3</sup> Thus, Judgements No 5137/14.04.2014 a.c.No 13176/2013, 3 div., SAC; Judgement No 5930/09.10.2014 a.c.No 13176/2013, 3, BAC; No 8570/23.06.2014 a.c.No 490/2014, 3, SAC; No 4453/30.06.2014 a.c.No 3132/2014, 42, ACSC; No 5068/21.07.2014 a.c.No 5346/2014, 44, ACSC; No 5014/18.07.2014 a.c.No 5283/2014, 11, ACSC; No 5307/04.08.2014 a.c.No 8635/2013, 6, ACSC; No 4731/08.07.2014 a.c.No 5054/2014, 20, ACSC; No 4230/24.06.2014 a.c.No 3900/2014, 45, ACSC; No 8570/23.06.2014 a.c.No 490/2014, 3, ACSC; No 3833/10.06.2014 a.c.No 1995/2014, 16, ACSC; No 2418/10.04.2014 a.c.No 8526/2014, 12, ACSC; No 33/06.01.2014 a.c.No 10102/2013, 44, ACSC; Judgement No 360/20.01.2014 a.c.No 12298/2013, 43, ACSC, etc.;

<sup>4</sup> § 1 (4) of the Additional Provisions of the Law on Asylum and Refugees;

<sup>5</sup> §1 (11) (a, c, e) of the Law on Child Protection;

<sup>6</sup> Data as of 31 Oct. 2014, source: SAR;

unaccompanied asylum seeking children were Afghanistan (696 children), Syria (171 children) and Iraq (21 children).

In 2014 all of SAR's procedures with unaccompanied asylum seeking children were conducted only in the presence of a social worker<sup>1</sup>. Unaccompanied asylum seeking children were not provided with legal aid at the administrative stage: in 100% of SAR's procedures monitored unaccompanied children did not have a lawyer as their legal representative. This amounts also to a violation of the EU standards<sup>2</sup> regarding the general procedures for granting and withdrawing international protection in the EU member states.

Moreover, the findings for 2014 show that more frequent cases of procedures with unaccompanied children were carried out even in the absence of a social worker – 5% (22 cases) of the procedures monitored. It has also been established that the attending social workers do not deliver on their duty to act in the child's best interest, as they fail to provide any real assistance, neither do they interfere, where needed, in the process of interviewing the child; in other words, their involvement in the proceedings is entirely formal. In addition, during the first six months of 2014 the obligations incumbent on social workers at RRC-Sofia were performed by one single social worker, which contributed to further delays in interviewing unaccompanied children and protraction of the procedural actions.

As for the procedures at RRC-Banya, which is the facility, designated in 2014 by SAR to accommodate unaccompanied children, none of the procedural actions has been conducted (among the monitored cases) in the presence of a social worker. Hence, 100% of the (monitored) procedures with unaccompanied children at RRC-Banya were conducted without ensuring even the formal presence of a social worker, which premises the overall unlawfulness of these procedures. In terms of RRC-Harmanli and RRC-Pastrogor, the presence of a social worker was ensured in 2014; however, this presence was not backed up with preliminary preparation and training on the specifics of the asylum procedure and the particular issues of unaccompanied refugee children in the procedure.

By and large, the monitoring reveals a fairly formal approach of the social workers to performing their functions. The findings from the monitored interviews point to a lack of efforts by the social workers to foster confidence and make the child feel at its ease in order to tell its story in an atmosphere of calm and proper consideration for the child's age. Neither did the social workers make sure that the checklists drawn up for the specific purpose of interviewing this category of asylum seekers, unaccompanied children, were used. In the cases where the questions asked were not conducive to a narrative presentation of the refugee story, the social worker did not seem willing to make efforts to assist the child in telling about the persecution suffered. At RRC-Sofia, it was observed that at the end of the interview, the child was to sign the record taken by hand by the social worker and certifying the latter's attendance, which, however, was not read out and duly interpreted to the child.

The same approach has been observed in the court hearings of appeals against decisions refusing international protection to unaccompanied children. In the monitored cases, the social workers appointed either did not present themselves at the court hearing scheduled or failed to submit in due time the social report for the particular case, which prolonged both the pending

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<sup>1</sup> Art.25 (5) of LAR;

<sup>2</sup> Art.25 of Directive 2013/32/EU;

status of the court procedure and the period of legal uncertainty for the unaccompanied child. The findings show that the position notes presented by the Child Protection Departments with the Social Assistance Directorate of the Social Assistance Agency in relation to the cases had been drawn up as a copy-paste of such position notes concerning Roma children and the need to remove them from the high-risk family environment, and were in no way relevant to the refugee story and the need for international protection of the unaccompanied refugee children. Therefore, the general legal standard in terms of protecting the best interest of unaccompanied asylum seeking children was not observed.

### **3.6. Mandate refugees**

In 2014 the stateless persons including individuals of Palestinian origin and the Iraqi citizens who had been recognized as refugees under the mandate of the UN High Commissioner for Refugees (UNHCR) in third countries, such as Syria, Lebanon and Turkey, were mostly (91% or 72 cases monitored) refused a status in Bulgaria in the accelerated procedure<sup>1</sup>. Only 9% (9 cases) were granted a status (7 refugee and 2 humanitarian statuses). Most of the refusal decisions issued by SAR were upheld by the court in one-instance proceedings.

This practice of refusing protection in Bulgaria to a refugee recognized by UNHCR under its mandate in third countries is a breach of the explicit provisions of the national law. The LAR<sup>2</sup> stipulates that a third-country national who is on the territory of Bulgaria and has been recognized as a refugee under the mandate of the UN High Commissioner for Refugees shall be granted refugee status. The assumption is that the assessment of the need for international protection as a refugee has been made by the Office of UNHCR via its representation in a third country. Such assessments are carried out in states which have not ratified the 1951 Convention relating to the Status of Refugees or, even if they have ratified it, do not have either a national system in place or competent authorities to examine asylum applications within the framework of their national jurisdiction. In view of the fact that UNHCR grants refugee status under its legally regulated mandate<sup>3</sup>, it is prudent for the national administrative authority of Bulgaria to grant refugee status to the applicant in whose respect the evidence of a mandate status is presented. The law obliges SAR to grant refugee status to the relevant applicant for international protection *ipso facto* and solely on the grounds of UNHCR's decision, and the act issued to this end shall only ascertain the latter<sup>4</sup>.

### **3.7. Legal aid**

In March 2013 the legislation<sup>5</sup> introduced an explicit provision regulating legal aid under the terms and procedure laid down in the Law on Asylum and Refugees for asylum seekers, in respect of whom legal aid is not due on other legal grounds. As a result of this, it is for the first time that the national legislation and practice entitle asylum seekers to free legal aid and representation not only at the judicial stage in the event of an appeal against a refusal decision, but also at the administrative stage before the determining authority, SAR, where the first-instance examination of the application for international protection takes place. The possibility

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<sup>1</sup> In Bulgaria, accelerated procedure is applied when an application is considered manifestly unfounded.

<sup>2</sup> Art. 10 of the Law on Asylum and Refugees;

<sup>3</sup> Pursuant to Art. 6, A, (i) in conj. with Art.7, (b) of the Statute of the Office of the UN High Commissioner for Refugees, adopted by Resolution 428 (V) of 14 Dec. 1950 of the General Assembly of the Organization of the United Nations;

<sup>4</sup> Art.21 (2) of the Administrative Procedure Code;

<sup>5</sup> Art. 22, item 8 of the Law on Legal Aid (Law on Amending the LLA, prom. SG, issue 28 of 19 March 2013)

to use legal aid at the administrative stage is a substantial improvement of the standards in conducting the procedures under LAR.

In practical terms, however, in 2014 the National Legal Aid Bureau did not ensure the provision of legal aid under the Law on Legal Aid in respect of applicants for international protection at the administrative stage of the status determination procedure due to lack of funding provided in the state budget.

### **3.8. Appeals and court proceedings in relation to asylum cases**

In 2014 the asylum court proceedings were monitored by BHC jointly with the Association for Refugees and Migrants under a project implemented with the financial support of the EEA Financial Mechanism 2009-2014<sup>1</sup>.

Thus, in 2014 this monitoring encompassed 204 court hearings, of which 111 sessions of the Administrative Court Sofia City and 93 sessions of the Supreme Administrative Court. Out of all the court hearings monitored, 174 were general procedures and 40 were procedures under Art. 257 of the Administrative Procedure Code in relation to denial of registration by SAR. The monitoring covered the period till 31 August 2014.

In 89% of the court proceedings monitored, the appellants were male asylum seekers, in 8% unaccompanied children, and only in 3% female asylum seekers. In most of the cases the applicants for international protection presented themselves in court.

It has been established that in more than 1/3 of the cases monitored, the court hearings were not attended by a procedural representative of the asylum seeker concerned. In 44% of the cases there was a lawyer hired by the applicant for international protection, while legal aid lawyers were used to a lesser extent (21%). As regards unaccompanied asylum seeking children, procedural representation by a lawyer was ensured in 60% of the cases, in 20% of them the legal representative being a legal aid lawyer. In the remaining 40% the unaccompanied children did not have legal representation in the court proceedings.

In terms of the quality of the interpretation at court hearings, the findings reveal that while the courts checked the interpreters' qualifications in 48% of the monitored cases, no such check seemed to have been carried out in 52% of the cases. Nevertheless, in less than 10% of the court sessions, cases of poor quality of interpretation impeding the course of the court hearing and thus violating the asylum seeker's rights have been registered. When the interpreter is the native speaker of the language (in 90% of the court sessions monitored), a the interpretation service has been of high quality during the court sessions

In 55% half of the cases monitored, the prosecutor's office is involved in the procedure in a superficially formal way and without submitting a reasoned position.

While the legal representatives are generally assessed as being prepared, the relatively high percentage of lack of preparation (over 1/4 of the cases) is an indication of concern in terms of the procedural representation of applicants for international protection. A low level of

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<sup>1</sup> <http://www.ngogrants.bg/public/portfolios/view.cfm;jsessionid=4AF2EDE4FBFFAD98912F75E44A17FBA3?id=1>

preparedness has been found in 1/3 of the cases with legal aid lawyers, and in 1/4 of the cases with a lawyer hired by the applicant for international protection. It is only in half of the cases that the lawyer submitted evidence in the course of the court hearing: in 50% of the cases with a legal aid lawyer and in over 52% of the cases with a lawyer hired by the asylum seeker. Nevertheless, only in 15% of the cases a formal approach on behalf of the lawyer involved in the particular case is registered, while in 85% of the cases monitored the legal aid and the procedural representation provided by the lawyer are based on obvious preliminary preparation and probing into the specifics of the individual case.

Thus, in 2014 the court proceedings related to asylum cases have been conducted in general observance of the procedural safeguards and in the absence of significant violations. As such, affected individuals were able to exercise their right to an efficient remedy.

On the other hand, a number of cases monitored indicate a formal approach by the prosecutor's office and the lawyer – by the lack of reasoned positions, by the formal way of sustaining the asylum seekers' appeals and demands, and by the failure to submit additional evidence substantiating the declared need for international protection.



For the full text of the Analytical Report, see  
Association for Refugees & Migrants website at:  
[http://abm-bg.org/?page\\_id=22](http://abm-bg.org/?page_id=22).

## CHAPTER IV.

### RECOMMENDATIONS

**4.1.** Introduce an explicit legal safeguard for the asylum seekers' access to the procedure in Bulgaria by regulating a time limit for registration: 3 working days from the submission of the application for international protection, and 6 working days if the application is made to an authority other than the State Agency for Refugees - in conformity with Art. 6 (1) of 2013/32/EU;

Recommended to: State Agency for Refugees

Legislation: Law on Asylum and Refugees

Related legislation: Law on Foreigners, Ordinance №13-1201/1.06.2010 of MOI, Ordinance on responsibilities and coordination from 28.12.2007 of the Council of Ministers

**4.2.** Put in place 24-hour shifts arrangements for the staff in all the territorial units of the State Agency for Refugees with the Council of Ministers where procedural actions related to the registration of applicants for international protection are carried out;

Recommended to: State Agency for Refugees/Council of Ministers

Legislation: Internal Rules for the implementation of status determination procedures by the State Agency for Refugees

**4.3.** Put an end to the practice of conducting status determination procedures in the detention centers for irregular migrants in conformity with the prohibition in Art. 67 (1) of LAR and Art. 8 (1) of 2013/33/EU and in violation of §5 from the Additional Clauses of LAR;

Recommended to: State Agency for Refugees, Migration Directorate (MOI)

**4.4.** Introduce a legal obligation for writing of a protocol if any written or other type of evidence are provided by the applicant for international protection;

Recommended to: State Agency for Refugees

Legislation: Internal Rules for the implementation of status determination procedures by the State Agency for Refugees

**4.5.** Regulate by law the audio recording of the interview as a binding rule for the procedural actions under the Law on Asylum and Refugees;

Recommended to: State Agency for Refugees

Legislation: Law on Asylum and Refugees

**4.6.** In terms of unaccompanied asylum seeking children, introduce an additional assumption regarding *ex lege* legal guardianship in the Family Code and other related legislation;

Recommended to: State Agency for Refugees

Legislation: Law on Asylum and Refugees

Related legislation: Law on Child Protection and its Regulations, Agency for Social Assistance Statute

**4.7.** Ensure that the legal aid provided during the status determination procedures is regulated in the Law on Asylum and Refugees in line with Directive 2013/32/EU and Directive 2013/33/EU by introducing an explicit requirement for the mandatory representation by a lawyer for unaccompanied children as well as to applicants for international protection whose procedures are conducted under the conditions of detention, if such procedures continue to be implemented;

Recommended to: State Agency for Refugees, National Legal Aid Bureau (Ministry of Justice)

Legislation: Law on Asylum and Refugees, Law on Legal Aid

**4.8.** Regulate a requirement that representation is allocated to legal aid lawyers under the terms and procedure of the Law on Legal Aid on the basis of their expertise in the relevant legal subject area, including refugee law;

Recommended to: State Agency for Refugees, National Legal Aid Bureau (Ministry of Justice)

Legislation: Law on Legal Aid

**4.9.** Ensure that the court proceeding instituted in relation to appeals by unaccompanied asylum seeking children are scheduled and heard in an expedited manner for the purpose of shortening the period of legal uncertainty and observing the principle of the best interest of the child;

Recommended to: State Agency for Refugees

Legislation: Law on Asylum and Refugees

**4.10.** Broaden by law the scope of court competences in deciding on the substance of the application for protection, by introducing the possibility for the court to also decide on the merits regarding the relevant type of international protection that is due to the respective appellant in case when the refusal, issued by the State Agency for Refugees, is being revoked and overturned;

Recommended to: State Agency for Refugees

Legislation: Law on Asylum and Refugees

**4.11.** Publish on the website of the State Agency for Refugees all internal regulations and instructions relating to the conducting the determination procedures under the Law on Asylum and Refugees, if such are adopted and implemented;

Recommended to: State Agency for Refugees

**4.12.** Introduce the practice of endorsing an annual inter-agency plan for training the administration staff whose competences are related to persons seeking or enjoying international protection, such as - the State Agency for Refugees, Ministry of Education and Science, Social Welfare Agency, Civil Registration Departments with the relevant municipal authorities and all other related agencies and administrations.

Recommended to: The Council of Ministers of the Republic of Bulgaria