



БЪЛГАРСКИ
ХЕЛЗИНСКИ
КОМИТЕТ

BULGARIA

2014 Annual Border Monitoring Report

ACCESS TO TERRITORY AND INTERNATIONAL PROTECTION

Sofia, 25 May 2015

Chapter I

BORDER MONITORING FRAMEWORK

1.1. METHODOLOGY

1.1.1 Memorandum

Bulgaria was one of the first countries in Central Europe to reach in 2004 an official agreement between the Border police and Bulgarian Helsinki Committee formalising their practical cooperation and the existing monitoring methods and arrangements. In April 2010 this agreement was expanded to a tripartite Memorandum of Understanding, signed among the General Directorate of the Border Police with the Ministry of Interior (GDBP), Bulgarian Helsinki Committee (BHC) and the Office of the United Nations High Commissioner for Refugees (UNHCR)¹. The memorandum has set additional mechanisms for coordination and cooperation to implement border monitoring aimed primarily to safeguard the non-refoulement principle. To this day the cooperation proved to be the most valuable national achievement regarding the individuals in need of international protection vis-à-vis the establishment of those core legal and practical arrangements to guarantee their access to the territory and to the asylum procedure.

In 2014 the border monitoring with respect to access to territory and international protection in Bulgaria was implemented based on the modalities of the said memorandum.

1.2.1 Tri-Partite Working Group

The MOU² requires the parties to set up a Tripartite Working Group (TWG) with the main task of supervising its implementation. In 2014, the TWG, comprised of representatives of each party to the MoU met four times in conformity with the rules adopted for the TWG internal proceedings. The meetings of the TWG may also be attended by representatives of other relevant institutions engaged in the field of migration and asylum, however no such participation has been requested or taken place so far.

This report was drafted based on Article 4.2, Section IV of Internal Proceeding Rules of the Tripartite Working Group consisting of representatives of General Directorate Border Police with the Ministry of Interior, the UN High Commissioner for Refugees, and the Bulgarian Helsinki Committee.

1.1.3 Monitoring methodology

Pursuant to memorandums provisions, any national border and/or 24-hour land or air border detention facility can be subjected to monitoring, including any transit hall at international airports, without limitation to the number of monitoring visits.

¹ Tripartite Memorandum of Understanding on Modalities of Mutual Cooperation and Coordination to Support the Access of Persons Seeking Protection to the Territory of, and the Procedure for Granting Protection in the Republic of Bulgaria, signed on 14.04.2010 among General Directorate "Border Police" with the Ministry of Interior of Bulgaria, the United Nations High Commissioner for Refugees Representation in Bulgaria and Bulgarian Helsinki Committee

² Article 22 of the Tripartite Memorandum

Access was granted to observers without any prior permission or without any conditions set in terms of time, frequency, duration or individual circumstances related to the detainee/s (Art. 15 of the MOU).

1.1.4 Description of monitored places and facilities

The facilities for the accommodation of detainees have been established in conformity with Instruction Із-1711 of 15 Sept. 2009¹ regarding the equipment of the premises for the accommodation of detained persons within MOI structures. The monitoring consists of BHC's systematic weekly visits and UNHCR's periodic visits to the facilities and the premises, the purpose being to establish the level of observance of the standards for ensuring *de jure* and *de facto* access to the territory and the protection-granting procedure for aliens in need of international protection.

In 2014, the border monitoring activities covered the border facilities for the 24-hour police detention at the land border with a priority focus on the main entry points – Svilengrad Border Police Station (BPS), Elhovo BPS, Bolyarovo BPS along the Bulgarian-Turkish border; Ivailovgrad BPS at the Bulgarian-Greek Border; as well as the air border at Sofia Airport: Terminals 1 and 2.

1.2. LEGAL FRAMEWORK

1.2.1 Non-admission and forced return

In principle, third-country nationals do not have a right to enter in the territory of Bulgaria², if they do not have a valid travel document and visa. According to the law³ under certain conditions⁴ the Border Police services can refuse to authorize a foreigner's entry in Bulgaria, even when s/he has valid travel documents and visa. In both hypotheses, the Border Police is obligated to issue a written entry refusal⁵, which has to indicate the particular reasons for the non-admission to the Bulgarian territory.

If the foreigners who lack travel documents and/or visa nonetheless cross the border irregularly outside of the designated places (border checkpoints) they do not have a right to stay in the country's territory as far as they do not have a leave to enter or leave to remain. If arrested, irregular foreigners are served by the immigration services of MOI an order for a forced removal to the national border and deportation outside the country⁶. The forced removal order in fact substantiates the forced return to the country of origin or the neighbouring country from where the foreigner has entered into Bulgaria.

However, those foreigners who are refugees and who enter Bulgaria in order to seek asylum and international protection do have the right to claim it before the Bulgarian national authorities irrespective of their mode of entry (regular or irregular). This right, provided for in Article 6 of the

¹ Issued by the Minister of Interior, prom. SG, issue 78 of 2 Oct. 2009.

² Art.8 Law on Aliens

³ Art.16 Law on Aliens

⁴ Art.10 and 19 Law on Aliens

⁵ EU non-admission form

⁶ Art.41 Law on Aliens

1951 Convention Relating to the Status of Refugees, stipulates that refugees cannot be asked to fulfil any requirements, including as to the length and conditions of sojourn or residence, which by nature a refugee is incapable of fulfilling it. Due to the nature of their flight from their country of origin, refugees may not possess valid travel documents or, are incapable to obtain such documents or to extend or renew their validity, it is accepted that refugees cannot be required to fulfil the usual conditions and requirement in order to receive permission to enter or remain in another country.

Therefore, national law¹ explicitly provides that *any* foreigner can ask for protection from Bulgaria following the legal arrangements in place. Based on this provision, the application for protection is exempted from any kind of conditions or requirements – including regular entry, sojourn or residence requirements, which otherwise are mandatory under the general immigration regime.

Under the law² the application for international protection can be made before a State Agency for Refugees' (SAR) official, as well as before any other government official, including the Border Police. In such case, BP officials are obligated to immediately refer the asylum application to the SAR. From this very moment, the principle of non-refoulement enters into force prohibiting³ the return of the foreigner 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 (non-refoulement principle).

In relation to it, the law arranges explicitly the right of the applicant for protection to remain in the territory⁴ of Bulgaria until the status determination procedure ends with a final decision. This right in fact provides for a special type of short term residence (sojourn), additional to the general immigration arrangements under the Law on Foreigners in the Republic of Bulgaria. Its continuation depends on the overall period of time during which the application for international protection is being determined in its various phases⁵.

Thus, automatically by virtue of the law itself⁶ (ex lege) the implementation of the forced removal order is suspended for the duration of the status determination procedure. As long as detention orders are issued to secure⁷ the implementation of the forced removal, the execution of these orders is also suspended until the conclusion of the status determination procedure. Consequently, despite the lack of an explicit provision in the law, the applicants for protection are released and transferred to the premises of the SAR. The provisions of the Ordinance for Responsibility and Cooperation Among Government Institutions⁸, which regulates the interaction between the General Directorate Border Police, Migration Directorate and the State Agency for

¹ Art.4, Para 1 Law on Asylum and Refugees (LAR)

² Art.58, Para 4 LAR

³ Art.4, Para 3 LAR

⁴ Art.29, Para 1, item 1 LAR

⁵ Art.41 LAR

⁶ Art.67, Para 1 LAR

⁷ Art.44, Para 6 Law on Aliens

⁸ Ordinance №332/28.12.2007, enforced on 14.01.2008 relating the coordination and responsibilities of the State Agency for Refugees, Migration Directorate and Border Police with respect to asylum applications submitted at the national borders (Prom. SG 3/2008)

Refugees when an application for international protection has been made at the national borders, are in the same sense as above. (See, below 2.4.)

1.2.2 Dublin Regulation

The Council Regulation (EC) №604/2013 establishes the criteria applied to identify the member state responsible to determine and decide on the application for international protection, claimed and registered in the territory of the European Union by a third country national (foreigner). The aim of this community act is to avoid multiple determination of the application for protection from a same applicant in more than one member state of the European Union.

The criteria to determine the member state responsible for certain applications for protection are listed in the Dublin Regulation¹. The criteria include, inter alia, the country of first arrival, the physical presence or legal residence of a family member/s in another member state, issued visa, residence permit or forcible measures in another member state, etc. The determination of these criteria is assisted by the EURODAC system for fingerprinting of applicants for international protection as well as irregular migrants.

The Border Police takes fingerprints only under Eurodac Category 2 (individuals arrested during irregular crossing of an EU external border) and Category 3 (individual check of irregular migrants residing in a member state). Upon registration of an application for international protection, the Border Police immediately forwards the application by fax, email or regular mail to the central administration of SAR in Sofia and applicants have to be handed over to SAR's officials, predominantly in Pastrogor Transit Centre (near Bulgarian-Turkish border) or Registration and Reception Centre in the town of Harmanli (South-Eastern Bulgaria).

Additionally, the national Border Police is responsible for the implementation of the agreed transfers of applicants for international protection under the Dublin Regulation, respectively – from, or, to another EU member state. These transfers are based on two types of decisions – take back and take responsibility decisions. The “take back” decision basically is taken when the applicant for international protection has claimed asylum and protection in another member state after s/he has already applied in, or passed through Bulgaria. The “take responsibility” decision is made with respect to an applicant for international protection who is on the territory of another member state and who has never applied or have been in Bulgaria, but to whom are applicable some other of the Dublin criteria engaging the responsibility of Bulgaria to look at and determine the application (for example, parent or other family member in Bulgaria).

According to the Ordinance for Responsibility and Cooperation Among Government institutions², if the foreigner is on the territory of another Member State and Bulgaria is the competent State to take charge or take back under the Dublin Regulation, the responsible authorities of the Border Police and transfer receive the foreigner and his/her documents to the territorial units of SAR for which a protocol is prepared. In case the applicant is transferred from Bulgaria to another member state which is determined to be responsible to look at his application, the

¹ Art. 3, Para 1 Dublin Regulation

² Art.17 Ordinance №332/28.12.2007, enforced on 14.01.2008 relating the coordination and responsibilities of the State Agency for Refugees, Migration Directorate and Border Police with respect to asylum applications submitted at the national borders (Prom. SG 3/2008)

Border Police hand over the applicant to Migration Directorate, which makes the necessary arrangements relating to transfer outside Bulgaria.

1.2.3 Readmission

The national laws do not provide for a legal definition of readmission. The readmission concept is drawn from the numerous bilateral readmission agreements signed by Bulgaria as well as from many other mandatory or instructive legal documents of the European Union¹.

Readmission consists of the obligation of a certain state to accept back into its territory its national or a third-country national who no longer fulfils the conditions to stay or reside on the territory of another state (returning state) where this national or third country national is currently present. This obligation for readmission derives from the Constitution of the Republic of Bulgaria with respect to Bulgarian nationals². Regarding the third country nationals, the readmission obligation derives from the readmission agreement signed between Bulgaria and the returning state. Readmission criteria in this respect are defined by the provisions of the agreement consented between the signatory states, but mainly they relate to certain prior actions taken by Bulgaria with respect to the third country national, such as the visa issued, the residence permit or previous irregular entry in the EU territory from Bulgaria.

1.3. PROTECTING REFUGEES WITHIN BROADER MIGRATION MOVEMENTS

1.3.1 Migratory flows³

During 2014, the refugee and migration flows in the Eastern-Mediterranean route were formed on the basis of the political and humanitarian crisis in the Middle East and Africa.

The geographical position of the Republic of Bulgaria and the constant increase in the number of third country nationals entering Bulgaria through Turkey in an attempt to, mostly irregularly, proceed to other EU Member States makes the Bulgarian-Turkish border one of the most affected European external borders in the area of the Eastern Mediterranean route.

Throughout 2014, there was no change in the main methods used by third-country nationals for irregular entry in the country – through the “green border” zone, through BCCPs by hiding in vehicles and through usage of falsified documents. Only in a few cases some individuals had attempted to circumvent the border control without any documents.

The enhanced measures undertaken by Bulgaria to limit the pressure of mixed-migratory flow via Turkey led to a significant reduction in the number of third country nationals detained along the green border zone in 2014. A total of 4467 third country nationals were detained for irregular

¹ Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country(not published); Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements (not published); Initiative of the Republic of Finland with a view to the adoption of a Council Regulation determining obligations as between the Member States for the readmission of third-country nationals (Official Journal, C 353 , 07/12/1999 P. 0006 – 0009)

² Art.35, Para 2 Bulgarian Constitution

³ Paragraphs 1.3.1 and 1.3.2 of this report were prepared by the General Directorate Border Police, MOI

entry. This figure is a 60% reduction compared to 2013 when 11243 third country nationals were detained for irregular entry.

At the same time, there has been a sharp increase of arrivals at BCPs where a total of 1752 third-country nationals were detained for irregular entry. This is an increase of 884% compared to 178 in 2013. Persons detained at the BCPs across the Bulgarian-Turkish border in 2014 represent 98.5% of all apprehended along BCPs.

Despite the relatively small number of detected attempts (280) in 2014, there has been a 50% increase in the attempts of irregular entry using falsified or “borrowed” documents, compared to 187 in 2013.

In 2014, the pattern of mixed-migratory flow along Bulgarian state borders has changed due to Bulgaria’s introducing additional security measures and reinforcements consisting of both personnel and equipment from within the country, and the creation of a ‘temporary hampering installation’ (fence) in the riskiest area of Lesovo checkpoint, near the village of Kraynovo.

People in mixed-migratory flow used three major routes to enter Bulgaria in an irregular manner:

Through the Bulgarian-Turkish land border (93% of all detainees at entry)

The number of persons detained at the Bulgarian-Turkish border (6023) remains high, because of the arrival of a large number of migrants and refugees from the Middle East, Asia and Africa. The Eastern Mediterranean route is where a fourth of all attempts for irregular entry towards the EU are detected, according to FRONTEX. In almost all cases, the third-country nationals apply for international protection immediately after apprehension. Afterwards many leave Bulgaria for countries of Central, Western Europe and the Scandinavian Peninsula.

Through the Bulgarian-Greek land border (5% of all detainees at entry)

According to FRONTEX, the detections alongside the Greek-Turkish border are very low (1000 in 2013 and in 2014 they are roughly 1000) while in 2012 they were more than 30 000. Bulgaria considers that this reduction is a result of the measures that Greece has undertaken in order to decrease the mixed-migratory flows – building a fence along the 12 km Greek-Turkish land border, the deployment of additional patrols in the area of the Evros (Maritsa) River, and changes in the area of international protection and the policy of deportation.

Bulgaria further assesses that despite all these measures taken by Greece, many third country nationals have managed to irregularly enter Greece from Turkey without being detected. While many of them later leave Greece through the Western Balkan route, others choose to continue their journey through Bulgaria, relying on the lowered border control along internal EU borders. In 2014, a total of 324 third-country nationals were detained for attempting to irregularly enter Bulgaria from Greece. This figure is almost 10 times higher compared to 2013 when 34 such individuals were detained. As assessed by Bulgaria, one of the often used modes of irregular movement is leaving Turkey, entering Greece and then entering Bulgaria in the areas where the three borders meet, namely the Maritsa River and the two BCPs of Kapitan Andreevo and Novo Selo.

Through the Black Sea (2% of all detainees at entry)

Until 2013, there were no cases of detained irregular migrants along Bulgaria's sea border. However, the mixed-migratory movement at a European level and the measures undertaken on the Eastern-Mediterranean route forced the mixed-migrants and the alleged smugglers to look for ways to avoid detention along Bulgaria's land border, thus leading to attempts of irregular entry into Bulgaria through the Black Sea. Bulgaria considers that the situation on the country's sea border in 2014 was also influenced by the pressure of mixed-migratory movement via Turkey and the measures undertaken for its reduction. Bulgaria apprehended, in its territorial waters, 123 third country nationals (in four attempts) assisted by Turkish smugglers and aiming to irregularly reach Romanian coast. The attempts, despite being low in number, indicate that the immigration pressure via Turkey through the Black Sea is being considered and tested by both mixed-migrants and smugglers. Bulgaria views these attempts as likely connected with the increased surveillance over the Eastern-Mediterranean route and the increased number of mixed-migrants in Turkey attempting to irregularly reach the EU.

Nationalities

As to the nationalities, Syrians, Afghans and Iraqis cumulatively represent 90% (5,891) of the total number of the third-country nationals intercepted in 2014. Syrians (3,955) represent 58% of the total number. Compared to 2013, the number of Syrians arriving in Bulgaria decreased in 2014. This decrease appears in line with the general decrease of irregular entry of third-country nationals. As in previous years, Syrians make up the highest number of third-country nationals Bulgaria detected in their attempts to irregularly enter Bulgaria via its border with Turkey. This reflects the disastrous situation in Syria and the desperate circumstances of Syrians fleeing their country seeking asylum in the EU.

A significant number of the mixed-migrants cross Bulgaria's border without identity documents, and upon apprehension claim to be Syrians fleeing the hostilities. Bulgarian authorities suspect that they claim to be Syrians in order to minimize the risk of being returned to their country of origin. Such claims complicate the works of the Bulgarian authorities, delay the process of establishing their identities, and can lead to the possibility for abuse of the system for granting of international protection. The majority, at a later stage, is established to be originating in the Northern African countries.

According to the observation of Bulgaria's relevant institutions, mixed-migrants originally from the Middle East and North Africa reach Turkey by either land or air. They use Turkey as a transit point before illegally trying they attempt to irregularly enter cross the EU border.

According to information collected by the Bulgarian authorities, third-country nationals gather in Istanbul and get in touch with smugglers' networks and with their aid, move to the city of Edirne, near the border with Bulgaria. Reportedly, they cross the border following precise instructions given to them by the alleged smugglers. Once inside the Bulgarian territory, they meet other

members of the smuggling networks who transport them to the cities of Sofia, Plovdiv and Haskovo.

The enhanced border control measures implemented alongside Bulgaria's green border zones forced mixed-migrants and the alleged traffickers and smugglers to seek other ways of irregular entry to Bulgaria. With the decrease in the number of third-country nationals arriving at the green border in 2014, Bulgaria observed an increase in the number mixed-migrants irregularly arriving through the BCP including concealed in vehicles passing through BCPs. The majority of those arriving are concealed in the vehicles (trucks) while they are parked for the night and the drivers are sleeping in Turkey. Very often they would enter the truck by cutting the tarpaulin on the top of the trailers, according to the findings of Bulgarian authorities.

During interviews by the Border Police, the third-country nationals cited the following as the main reasons for their mixed-migratory movement:

- *The continuing conflict in Syria* as it sparks fear for their life, safety and security. Most Syrians entered Turkey legally - through land or air borders. Most get in touch with alleged human smugglers in Istanbul, while others head to the Bulgarian-Turkish border on their own. Those who use the services of the human smugglers pay between US\$ 300 to \$ 500 per person and US\$500 to Euro 3,000 per family. Their ultimate destination is Sweden, Germany and the Netherlands.

-Socio-economic and political reasons

While most Afghans interviewed by Border Police cited economic reasons and mentioned Germany, Norway, Austria, the Netherlands and Sweden as their final destinations, a very small number stated that they wished to obtain protection and settle in Bulgaria. They organize their trip from their country of origin.

The citizens of Iraq cite political reasons and fear of life, safety and security as the reasons for their movement to Europe. For them Bulgaria is a transit country and they organize their journey from Iraq to the Bulgarian-Turkish border.

Third-country nationals of African origin arrive to Turkey via air or sea, get in touch with human smugglers in Istanbul and pay roughly US\$ 250 to be brought near the Bulgarian border. A leader of the group shows them the way to go into Bulgaria and disappears. Many of them mention social, economic and religious reasons for their movements to Europe where they desire to settle to live and work in peace (for the majority in France, Italy, Sweden, Switzerland), a small number identify Bulgaria as their final destination. The number of third-country nationals of African origin asking for protection in Bulgaria is increasing; however, afterwards, they attempt to leave Bulgaria in an irregular manner.

The situation on "exit"

The situation on the exit borders (Serbia, Romania and the former Yugoslav Republic of Macedonia) of the country remained stable in 2014 when a total of 3009 third country nationals were detained for their attempt to irregularly exit Bulgaria (compared to 3,019 in 2013). The modes of attempting to exit Bulgaria remain the same as in 2013; – after entering Bulgarian

territory, they move individually or in groups. They try to avoid detection by the Bulgarian authorities including fingerprinting so as to prevent their eventual return to Bulgaria if they would be caught in other EU countries where they intended to go. According to the findings of the Border Police, when detected by Bulgarian authorities, these individuals apply for asylum in order to avoid detention, and afterwards look for ways to leave exit Bulgaria in an irregular manner mostly through the green border with Serbia or through BCPs concealed in vehicles or with falsified documents.

In 2014, 1907 third-country nationals trying to leave Bulgaria in an irregular manner used the Bulgarian-Serbian border, as was the situation in 2013 (when 1975 were intercepted).

Attempt to irregularly exit Bulgaria via (internal EU border with) Romania increased by 67%; from 501 third-country nationals intercepted in 2013, to 839 in 2014.

The exit is less prominent along the borders with Greece and the Former Yugoslav Republic of Macedonia as well as the air borders where numbers have been decreasing, respectively by (?) 64%, 58% and 43%.

1.3.2 Trends

The Border Police has determined the following trends in 2014:

The developing conflicts in the Middle East, the political instability and the so called "Islamic State" growing influence in the region, are major factors generating mixed-migratory flows to the EU. Citizens of Syria continue to leave the country to seek security for their lives in neighbouring countries or in Bulgaria to move to Western Europe.

Turkey continues to be a transit country for mixed-migratory movement of third country nationals arriving to or passing through Bulgaria with many heading to other EU Member States. As a result of the intensified access control measures implemented by Bulgaria along its border with Turkey, the pressure of mixed-migratory flow on Bulgaria decreased in 2014. However, the Bulgarian-Turkish land border remained the most active in terms of irregular movement of third country nationals in mixed-migratory flow.

The intensified access control measures undertaken by Bulgaria along its green border led to increased attempts of irregular border crossing by concealing in cars, trucks and trains.

The number of application for asylum increased with Syrians being the top nationality of asylum seekers.

The Bulgarian-Serbian border remains the main route for exiting/attempting to exit Bulgaria in an irregular manner.

There has been an increase in the number of human smugglers that assist citizens of third countries in their attempts to cross both the 'entry' and the 'exit' borders.

The situation on Bulgaria's sea border changed as compared to previous years. Human smugglers began searching for and developing a possible sea route for smuggling third-country nationals from Turkey via Bulgaria's territorial water in the Black Sea. However, Bulgaria is not the ultimate destination of these third-country nationals, who were trying to reach the Romanian coastline.

Due to enhanced security measures at the Bulgarian international airports, there was no change in the indicators showing any increase of irregular movement through the air borders of Bulgaria.

1.3.3 Forecast

Third-country nationals will continue to arrive to Bulgaria in mixed-migratory flow to seek international protection.

The Border Police anticipates the following:

Third-country nationals originally from the Middle East in mixed migratory movements in the Eastern Mediterranean route will continue to transit through Bulgaria to Western Europe,

The intense mixed-migratory pressure will continue along Bulgaria's borders, and the attempts to irregularly cross the Bulgarian-Turkish border will most likely increase under improved weather conditions. There will be a stable trend of asylum-seekers attempting to exit Bulgaria in an irregular manner towards other EU Member States.

Undocumented third-country nationals will continue to claim to be citizens of high risk countries in order to secure the process of receiving a refugee status, and this will impede the proper identification of their nationality and possible deportation if permitted by the law,

The mixed-migratory pressure of third-country nationals concealed in trucks and international freight trains entering from Turkey at Bulgaria's border crossings will likely increase.

Chapter II ACCESS TO TERRITORY AND ASYLUM PROCEDURE

2.1. Respect of non-refoulement principle

The principle of *non-refoulement* is laid down in Art. 33, Para 1 of the 1951 Convention Relating to the Status of Refugees (hereafter 1951 Convention) and 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.

Bulgaria's obligation to respect this principle derives from 1992 ratification¹ of the 1951 Convention, based on which the Convention's provisions supersede² all contradictory national legal arrangements. In addition, the principle of non-refoulement is also explicitly regulated in Bulgaria's national law as well³.

In 2014, concerns continued to be raised regarding *de facto* and *de jure* non-admissions and refusal of entry to the Bulgarian territory which could have constituted violation of the principle of *non-refoulement*. Throughout the year, the Border Police, together with an additional 1350 regular police personnel, patrolled along the Bulgarian-Turkish border. Bulgaria's Ministry of Interior reported⁴ that 6400 third-country nationals (mostly Syrians, Iraqis and Afghans), had been officially refused access to the Bulgarian territory in 2014 and returned mainly to Turkey⁵. Another 28,000 third-country nationals were surveyed in the Turkish territory in close proximity with the Bulgarian border, but who according to the Border Police have not attempted to cross the borderline. The top countries of origin of asylum seekers registered in 2014 in Bulgaria⁶ (Syria, Iraq and Afghanistan) are similar to the top nationalities of the 6,400 non-admitted individuals. Therefore, intensified border control and the preventive measures against irregular movements of mixed-migratory flows have mostly affected the inflows of forced migration from countries of origin characterized with persecution, armed conflicts and indiscriminate human rights violations.

2.2 Respect of non-penalisation principle

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

¹ Law on ratification of 1951 Convention Related to the Status of Refugees and 1967 Protocol (Prom., SG, № 36 from 5 May 1992, Amend., № 30 from 1993)

² Art.5, Para 4 Bulgarian Constitution

³ Art.4, Para 3 LAR

⁴ Data provided by the General Directorate Border Police, Readmission Sector, TWG focal point on 15 January 2015;

⁵ 6000 non-admissions of individuals arriving from Turkey and 400 non-admissions of individuals arriving from Greece

⁶ Source: State Agency for Refugees;

been transposed into Bulgaria's national legislation in Art. 275, Para 5 of the Criminal Code of the Republic of Bulgaria.

In 2013, the *non-penalisation* principle was largely disregarded by the pre-trial investigators, prosecutors and the criminal courts situated in the area of the Bulgarian-Turkish border. As a result of the joint efforts of the judiciary and prosecutors guilds, UNHCR, BHC and Investigation Department of the Border Police General Directorate, this malpractice was basically overturned in the beginning of 2014.

In 2014, BHC continued to monitor the compliance with Article 31 with regard to asylum seekers who applied at the borders. The monitoring demonstrated that just 0,2% (11 cases out of 4041 border applicants) irregular entry convictions were issued during the year, one of which was with regard to an unaccompanied asylum seeking child. This particular border monitoring activity proved that in 2014 the depenalisation clause was properly applied by the BP investigators, prosecutor's offices and national criminal courts.

2.3 Registration, reception and Dublin returns

In 2014 the majority of asylum applications were submitted in the area of Svilengrad (1231 applications), followed by Malko Tarnovo (838 applications), Elhovo (817 applications), Sredets (654 applications) and Bolyarovo (300 applications), all on Bulgarian-Turkish border. On the border with Greece, just a few asylum (108) applications were made, the majority of them in Novo Selo, Svilengrad area (76 applications) and neighbouring Ivaylovgrad (32 applications). In 2014 only one asylum application was submitted at Sofia International Airport. A new trend was monitored with regard to entry and submissions made at Svilengrad Railway Station (56 individuals), where the Border Police received asylum claims from third-country nationals after they were apprehended during regular document/visa train checks.

Border practices with respect to unaccompanied asylum seeking children improved in 2014 as the Border Police initiated referrals of unaccompanied children to the local Child Protection Services, which assisted them to apply for asylum. This was implemented with respect to the explicit legal prohibition¹ against the detention of unaccompanied children. In the cases where the Border Police established that the applicant for international protection was an unaccompanied child, s/he was referred to the local child protection services with the Social Support Agency, which assisted the children to apply for asylum after the expiration of the 24 hours border detention in a more child friendly atmosphere.

Many of the information requests however were made with respect to establishment of already granted statuses, when only a readmission procedure could be applied, if a decision to return the individuals was taken by the other EU member state.

Applicants for international protection returned to Bulgaria under the Dublin Regulation were usually transferred via Sofia Airport. Admission to the national territory was granted to those whose status determination procedure was still pending. In such cases, asylum seekers were transferred to the reception centres of the SAR. In 2014, altogether 174 applicants for

¹ Art.44, Para 9 Law on Aliens

international protection were returned to Bulgaria under the Dublin procedure, while another 22 asylum seekers were transferred from Bulgaria to other EU member states.

Out of them, BHC monitored 184 Dublin transfers of whom 164 asylum seekers pending RSD who were admitted back to the SAR reception centres; 8 finally rejected asylum seekers who were detained in the pre-removal detention centre in Busmantsi, while in case of lack of space, the returnee may also be transferred to the other detention centre in Lyubimets (near the Turkish border); and assisted 12 asylum seekers who were returned from Bulgaria to other EU Member States under the Dublin Regulations. In 2014, the biggest number of individuals were returned to Bulgaria were from Austria (52 individuals), followed by Hungary (37 individuals), Germany (16 individuals) and Slovakia (16 individuals).

Even though the Dublin returnees were formally accepted into the country's territory on account of their prior transit with submitting an asylum application in Bulgaria¹, it could be the case that this person most probably already have been given an "application number" by SAR in Bulgaria, but the application had not been formally registered. This could have happened during the 'emergency period' of late 2013 – early 2014 when the formal registration of asylum seekers has been often delayed for a period longer than 6 months. This was possible under the arrangements of the Law on Asylum and Refugees (LAR)², where the law provided for a practical gap of unspecified period of time between the lodging of an asylum application and the formal registration of the applicant by SAR, contrary to the Article 6 of the Asylum Procedure Directive³. During this period of time the asylum seekers did not have access to accommodation, food, medical assistance and documentation. As a result of it many asylum seekers left Bulgaria prior to April 2014. During 2014 however none of these asylum seekers was returned to Bulgaria under the Dublin Regulation.

In principle asylum seekers returned to Bulgaria under the Dublin regulation lose their right to accommodation and social support on account of their unauthorized absence for more than 3 days from the asylum reception centre, where they have been accommodated in. In 2014 this rule was not strictly applied by the asylum administration with regard to families with children, although such cases were just a few. However, such opportunity was not given to those returnees who before leaving Bulgaria opted to waive the above mentioned rights in order to be allowed to live outside the reception centres (so called "external address"). If a Dublin Returnee had signed such a declaration, this declaration still applies if/when s/he is returned to Bulgaria, and s/he will normally not be able to access accommodation in SAR centres or social benefits upon return.

If the Dublin returnee has been refused while being outside Bulgaria, under the law this refusal can be appealed before the court unless the decision was not only issued, but also served *in absentia* following a special procedure arranged in the national legislation. This procedure can be applied to asylum seekers who left without prior authorisation their officially permitted domicile. In 2014 this special procedure was applied to all asylum seekers who were issued refusals *in absentia*, therefore all of them were transferred after their arrival at Sofia Airport to the pre-removal detention centres for irregular immigrants (SCTAF).

¹ Article 13 of the Dublin Regulation

² Art.58, Para 3 in conjunction with Art.61, Para 2 LAR

³ Art.6 2013/32/EU Asylum Procedures Directive

Under the law¹, when the status determination procedure was firstly suspended and then terminated on account of the applicant's absence, under the Dublin Regulation the asylum procedure should be reopened upon his/her return to Bulgaria in order the application to be decided on its merits. In the end of 2014 BHC established that the asylum administration, SAR, renewed its malpractice to refuse to reopen these procedures, a practice that was abandoned by the SAR in 2008. This malpractice was in violation of the most important principle of the Dublin Regulation where the responsible Member state has the obligation to examine or to complete the examination of the application for international protection made by the applicant².

With regards to the implementation of Dublin Regulations, in 2014, SAR received 7851 information requests from other EU member states under the Dublin Regulation, but only 174 transfers of asylum seekers pending RSD were implemented in practice. The majority of them were requests for information relating the establishment of the validity of the refugee or humanitarian statuses granted in Bulgaria to which cases could eventually be applied readmission procedures.

2.4 Mechanisms for identification and referral

Pursuant to the provisions of Bulgaria's national legislation³, if a foreigner has claimed asylum while or after being arrested on account of his irregular border crossing and entry, the border officials are required to nonetheless implement all prescribed actions with regard to the irregular entry. However, the border officials are required to immediately send, by email, fax or letter, a copy of the application for international protection to SAR to fix a date, place and hour to transfer and to hand over the applicant to the SAR officials together with all related documents (national identity documents, medical documents as well as orders for arrest, search, deportation and detention). Finally, the border officials notify in writing MOI's Forensic and Criminology Institute to delete the asylum applicants' all data entered in the EURODAC system as a result of the mandatory fingerprinting implemented following his arrest after the irregular entry.

Out of 4041 individuals who applied for asylum at the border ('border applicants'), just 4% (190 individuals) were admitted directly to asylum procedure and transferred to SAR centres (80 to the Transit Centre of Pastrogor, 65 to RRC-Harmanli, 3 to RRC-Sofia and 42 to RRC-Banya).

All the rest 96% (3851 border applicants) were initially transferred by the Border Police to, and detained in, the Allocation Centre of Elhovo (temporary immigration detention facility) on the basis of their irregular entry to or presence in the Bulgarian territory. From this temporary detention facility, asylum seekers were distributed to SAR at a later stage (319 border applicants to TC Pastrogor - , 2,644 to RRC Harmanli, 424 to RRC-Sofia, 92 to RRC-Banya, 28 to Kovachevtsi⁴, 184 to Vrazhdebna, 4 to SCTAF-Lyubimets, 5 to SCTAF-Busmantsi , and 90 were awaiting transfer from the Allocation Centre as of 31 December 2014). This facility was established on the basis of

¹ Per argumentum a fortiori – Art.67d, Para 3 LAR

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

³ Ordinance №332/28.12.2007, enforced on 14.01.2008 relating the coordination and responsibilities of the State Agency for Refugees, Migration Directorate and Border Police with respect to asylum applications submitted at the national borders (Prom. SG 3/2008)

⁴ Closed on 1 October 2014

an order issued by the Minister of Interior¹, which is not the proper legal basis for the establishment (or existence) of such a facility. None of asylum seekers have been issued a detention order as they have claimed asylum at the border before the GDBP officials. In 2014, the average detention duration in 2014 in AC-Elhovo was 6 days². Their detention, regardless of the duration, unlawfully deprived the detained asylum seekers of freedom of movement and was in violation of Article 5 ECHR. SAR continued to carry out the initial part of the registration process at AC-Elhovo with regards to those who applied for protection upon being intercepted by the border police and after being transferred to the Allocation Centre. Conducting registration of asylum seekers in this facility, regardless of the duration, was in breach of the LAR which does not allow status determination outside reception centres. Given the expanded and adequate reception capacity of SAR, the continuation of the 'emergency measure' (transferring asylum seekers to this temporary immigration detention facility) cannot be justified.

2.5 Tri-partite cross-border cooperation and information exchange with neighbouring countries

In view of the fact that the border region between Bulgaria, Turkey and Greece is the busiest area of entry into the country and EU in the South-East of the continent, in 2003 Bulgaria undertook the initiative to explore the possibility for the establishment of trans-border cooperation on asylum and international protection. The initiative aimed to boost and facilitate the information exchange on individual cases of foreign nationals who cross the common borders among these countries. In the beginning the initiative included refugee assisting non-governmental organisations, later expanding to also include in the process relevant UNHCR offices as well as the respective border agencies. After a series of tripartite and regional meetings, in 2014 a decision was taken during a meeting held in Ankara to start to build a counter-part monitoring mechanism in Svilengrad-Edirne-Ormenion border area which is to be implemented by the relevant national NGOs³ with the UNHCR support.

¹ Reg. No 1887/07.10.2014

² 24572 days: 3851 applicants = 6 days average detention duration in Allocation Centre, Elhovo.

³ Bulgarian Helsinki Committee, Multeci Der, Turkish Helsinki Citizens Assembly, ASAM and the Greek Council for Refugees

Chapter III

INDIVIDUAL RIGHTS TO ACCESS IMPLEMENTATION

3.1 Right to seek asylum in practice

In 2014, the BHC implemented 279 border monitoring visits and monitored the access to territory of 4041 asylum seekers who applied at national borders, of whom - 2851 adults (2127 male, 724 female), 995 children (559 boys and 432 girls) and 195 separated children of whom - 176 boys and 19 girls. Border Police registered altogether 3046 applications (it should be noted that accompanied children are registered under their parents and therefore do not submit a separate asylum application). The total figure constituted a 10% decrease in comparison to the number of asylum application filed at Bulgaria's national border in 2013 (which was 4520 in total).

Thus, 36% of all 11,081 asylum seekers, registered in Bulgaria in 2014 got access to protection while arriving at the national borders. When analysing the new arrivals statistics, it has to be taken into account that a significant portion of the 11,081 asylum-seekers registered in the first trimester of 2014¹ by SAR had actually submitted applications in the autumn of 2013 before other state institutions (at the border or in the pre-removal detention centres). Therefore, the actual percentage of border applications correlated to all asylum applications registered in 2014, most probably was higher, however it was impossible to provide exact calculations due to the gaps in the SAR statistics for the respective period of 2013.

The top country of origin of applicants who applied at the border and were admitted to Bulgaria in 2014 was Syria (3494 applicants), followed by Afghanistan (257 applicants), Iraq (246 applicants), Pakistan (17 applicants), Iran (13 applicants), Myanmar – 3, Bangladesh - 2, Yemen - 2 and Morocco, Palestine, Somalia, Kuwait, Armenia, Lebanon and Turkey - with one applicant each.

3.2 Right to interpretation

In 2012, the Bulgaria established rules² for eligibility of the costs for the interpretation provided to detained foreigners. Under the rules, the costs for interpretation provided to detained foreigners have to be met not only when it was provided during a pre-trial criminal proceedings, but also when the authorities decided not to pursue criminal charges for the irregular entry against the third country national on account of a submitted by him/her asylum application.

In order to ensure the right to interpretation to asylum seekers at national borders in 2014, the General Directorate Border Police utilized the interpretation services of translation agency selected on tender and covered interpretation costs of BGN 420,177³, of which BGN 108,627 was spent for the interpretation needs at the Bulgarian-Turkish border. In the majority of the cases, however, the oral interpretation at the BCPs (for submission of an asylum application and the

¹ 2031 applications, registered during the period January - March 2014.

² Order №13-1301/27.06.2012 of the Bulgarian Minister of Interior

³ GDBP- BGN 182,045.00; RDBP Elhovo –BGN 108,627.00; RDBP Airports – BGN 5,623.00; RDBP Smolyan –BGN 17,681.00; RDBP Ruse – BGN 215.00; RDBP Dragoman – BGN 467.00; RDBP Burgas – BGN 104,389.00 and RDBP Kyustendil – BGN 1,130.00.

written translation of the applications) was provided by BP officials, if they spoke the respective language, besides occasionally by FRONTEX staff and most commonly by the BHC's interpreters.

The provision of interpretation services at the border is a basic safeguard for the right of applicants for international protection in order to submit an official asylum claim in the absence of which third country nationals will be deprived of the possibility to communicate their claims to Border Police officials. Border police officials' inability to communicate with the individuals arrested at borders would prevent the former from making a proper assessment and decision regarding whom among them has to be referred to the asylum procedure or immigration procedures.

3.3 Right to information

In principle the right to information was guaranteed in 2014 on the basis of the MoU arrangements. Information boards as well as written materials (leaflets) were distributed in main areas of entry along the Bulgarian-Turkish border – BCP Kapitan Andreevo, BPP Elhovo's detention facility where the individuals intercepted in the areas of responsibility of BCP Lesovo, BCP Sredets, BCP Bolyarovo and BCP Malko Tarnovo were apprehended. The information materials were prepared by the BHC and issued by UNHCR. They were developed in the languages spoken by asylum seekers from most common countries of origin in Bulgaria such as Arabic, Farsi, Dari, Kurdish, English and French.

More on the right to information – see, below 3.4.

3.4 Right to legal remedies

In 2013, as a result of the long-standing efforts of the BHC and the human rights community^{1,2} Bulgaria's Law on Legal Aid was amended, namely Article 22, Para 8 and 9 of it, which introduced the right to legal aid before all instances, including the administrative stage, to both asylum seekers, but also detained third country nationals as new categories of individuals eligible for state sponsored legal aid. Until then the only available legal aid outside the court stage was the mandatory legal aid provide in pre-trial criminal proceedings. In all the other cases, legal aid could be requested and received only before the court and could be awarded only by a court.

Despite the amendment in 2014, however, asylum seekers who were detained in the 24-hours border detention facilities did not receive state sponsored legal aid as the resources for it were not secured under the annual state budget. Due to that, the National Bureau for Legal Aid was unable to provide legal assistance, counselling and representation to the asylum seekers detained by the Border Police. Instead, at the border detention facilities the legal aid continued to be exclusively provided through BHC by UNHCR.

¹ JRS Europe, *Becoming Vulnerable in Detention (Detention of Vulnerable Asylum Seekers - DEVAS Project)*, 2010, National Chapter on Bulgaria;

² Open Society Institute Sofia, *Assessment of the Law on Legal Aid implementation, 2007-2011*, Sofia 24 June 2011;

3.5 Right to medical assistance

According to BHC's monitoring, only the third country nationals in BCP Kapitan Andreevo, BPP Elhovo and BCP Malko Tarnovo were medically examined upon detention since only these border facilities retained the services of general medical practitioners. In cases of medical emergency, the doctors referred asylum seekers to the emergency units of the relevant local hospitals. GDBP has maintained that every detained third country national was subjected to a medical examination, either by the general practitioner appointed with the BP, or in the relevant local hospital.

In 2014, asylum seekers received medical assistance at the borders only in urgent situations following the arrangements of the Health Act¹. Treatment of chronic illnesses or the payment for medical procedures, expendables and medicaments outside the emergency health care package were provided when possible by relevant regional offices of the Bulgarian Red Cross.

3.6 Protection of vulnerable individuals

Vulnerable categories of individuals such as unaccompanied asylum seeking children, single women, disabled persons or individuals who suffer physical or mental disorders should be treated with utmost care and attention according to the generally recognized protection rules and standards. BHC monitored the detention facilities at national borders with respect to the fulfilment of basic standards for detention of such individuals and especially with regard to their separation from the general detention population in separate compartments, adequately equipped to meet their special needs and personal safety and security. When necessary, clothing, food, sanitary and hygienic materials were provided to these individuals upon a request from the Border Police and with the assistance of the Bulgarian Red Cross. Under the emergency measures in 2014, Border Police carried out repair and refurbishment of its 24-hours detention facilities resulting in the improvement of the conditions in BPP Elhovo, BPP Malko Tarnovo and BPP Sredets.

¹ Art.99, Para 2 Health Act

Chapter IV SUMMARY

5.1 FINDINGS

5.1.1 The Arrivals of third-country nationals into Bulgaria in a mixed-migratory flow notably decreased in 2014 when compared to 2013. The great majority of the entry took place via the Bulgarian-Turkish borders.

5.1.2 The sustenance of enhanced measures for border surveillance and access control, in particular along the Bulgarian-Turkish border, may have negatively impacted on individuals' access to the territory of Bulgaria for seeking international protection while moving in mixed migratory flows in 2014.

5.1.3 Persons who might be in need of international protection were exposed to the risk of being denied entry to Bulgaria, potential push-backs, on grounds of irregular entry or presence or of not holding valid identity documentation.

5.1.4 Compared to 2013, the number of asylum-seekers arriving at the official crossing points notably increased in 2014.

5.1.5 The prevalent pressure of mixed-migratory flows along Bulgaria's external borders requires the continued enhancement of the effective coordination among the partners under the Tripartite Memorandum of Understanding – UNHCR, GDBP-MOI, and BHC – in order to safeguard the efficient access to the territory for foreigners seeking international protection.

5.1.6 The tripartite co-operation under the MoU remains an effective framework of partnership and collaboration which contributes to assisting the Government of Bulgaria in fulfilling its national, regional and international obligations on international protection.

5.1.7 In 2014, the Border Police, prosecutors and the national criminal courts achieved a marked improvement in ensuring compliance with principle of non-penalisation of asylum-seekers on account of their irregular entry.

5.1.8 Border practices improved with regards to the referral of unaccompanied or separated children to the relevant state institutions, thus minimizing the risk of having such children's detention.

5.1.9 Border and immigration authorities lacked sustainable translation/interpretation services at their disposal which lead to, among others, limiting the ability of asylum-seekers to communicate their needs in a timely manner to the border and migration authorities.

5.1.10 The Border Police by and large guaranteed the asylum-seekers right to information. After having received asylum-seekers under their custody in the border detention facilities, the Border Police have provided the asylum-seekers with the information brochures in multiple languages,

received their application for international protection and referred them to the relevant authorities through the established channels.

5.1.11 Conditions in some of the border detention facilities have been improved (BPP Elhovo, BPP Malko Tarnovo and BPP Sredets). At the same time, both the border and migration authorities continue to rely on the support and assistance of NGO partners in meeting the specific needs of vulnerable individuals in their custody.

5.2 RECOMMENDATIONS

5.2.1 In managing the border, the Government of Bulgaria must ensure that the enhanced access control mechanisms put in place fully respect fundamental human rights, including the principle of non-refoulement, and the right to asylum.

5.2.2 The Government must consistently observe its international obligations and allow people in need of international protection to enter Bulgaria and obtain access to the asylum procedure irrespective of the mode of their entry.

5.2.3 The Government to continue to ensure that the third-country nationals who arrive at the border and may be in need of international protection, are consistently informed of when and how the applications for international protection may be lodged.

5.2.4 The Tripartite Working Group should undertake three joint monitoring missions a year.

5.2.5 BHC and UNHCR must ensure that protection information materials in multiple/rare languages are regularly updated so that the GDBP will make their all-time accessibility at the border areas.

5.2.6 UNHCR and BHC to work with GDBP and other relevant Bulgarian authorities to ensure that necessary funds and expertise continue in order to provide with regular training support to the border police officials so that they have the relevant information and necessary skills.

5.2.7 The Government must ensure the arrangements for a 24-hour availability of SAR's 'duty officers', for registration including during weekends and holidays, to facilitate timely communication and effective co-ordination with Border Police and other relevant authorities.

5.2.8 The Government to ensure sustainability of the translation/interpretation services available for the relevant border and migration authorities including in the border areas so that persons in need of international protection can communicate their needs in a timely manner.

5.2.9 UNHCR and BHC to provide additional training to border police officials on the spot relating the methods and arrangements for identification and referral of vulnerable categories of individuals to the relevant agencies and institutions.

5.2.10 Article 61, para 2 of the Law on Asylum and Refugees to be supplemented with a 6 days maximum time limit for the personal registration of aliens in need of international protection and the accommodation thereof in a transit or registration-and-reception centre with the State Agency for Refugees where the international protection application is filed before another state authority under the terms and procedure of Art. 58, para 4 of LAR; thus, the practice of allowing persons seeking protection to get accommodation at their expense at external addresses chosen by them prior to initiating the general procedure should be put an end to.

5.2.11 Further coordinated actions to be taken by the parties to the MoU, together with the Supreme Prosecutor's Office of Cassation, in order to ensure consistent and full compliance with the prohibition of criminal prosecution of persons seeking protection in conformity with Art. 31, para 1 of the 1951 Convention and the due application of the provisions of Art. 279, para 5 of the Criminal Code.

5.2.12 The Government to amend the Criminal Code to ensure that the provision of de-penalisation, as per Article 279, para 5 under the Criminal Code, for irregular entry is applied not only to those who seek 'Asylum' but also other types of international protection.¹

5.2.13 In collaboration with GDBP, UNHCR and BHC to provide 1 training to the prosecutors in the border region.

5.2.14 The Government to join and support the long-standing efforts of UNHCR and BHC to establish a cross-border cooperation and monitoring mechanism with respect to Bulgarian-Turkish and Bulgarian-Greek borders.

5.2.15 In further enhancing the co-ordination, the Tripartite Working Group to ensure consistency in hold its regular meeting on a monthly basis and exchange information periodically.

5.2.16 UNHCR and BHC recommend the Government to ensure that individuals, who have expressed or indicated their will to apply for protection, are not transferred to the Allocation Centre, but are directly transferred to a SAR facility.

Sofia, 30 June 2015

¹ According to LAR, Bulgaria provides 4 types of protection: 'Asylum' (*Office of the President of the Republic of Bulgaria*), 'Refugee Status' and 'Humanitarian Status' (*State Agency for Refugees*) and 'Temporary Protection' (*by the decision of the Council of Ministers*).