AGENDA

ON ALTERNATIVES TO DETENTION

RELATING THE THIRD COUNTRY NATIONALS IN BULGARIA

Bulgarian Helsinki Committee

Legal Protection of Refugees & Migrants Programme

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I. INTRODUCTION

In 2015 Europe was visited by over 50 million third-country nationals who crossed the external borders of the European Union more than 200 million times. In addition to these regular travels, armed conflicts worldwide brought about another 1.8 million irregular crossings of the borders of the European states.

Due to the drastically rising numbers of migrants irregularly crossing Bulgaria’s national borders over the last several years, the issues of migration flows management and regulation have become part of the national security agenda. The legislative and practical solutions, however, should conform to the requirement for achieving a balance between immigration control and the fundamental human rights which belong to all human beings.

Numerous research findings show that detention in itself is not efficient enough as a tool to prevent illegal migration and lower the number of foreigners who enter or reside irregularly on the territory.

On the other hand, the legitimate purpose of detention, namely securing the return of the relevant irregular foreigner to their country of origin, is not achieved in practice, and the return procedure is not executed, which makes the application of detention pointless. 24,684 foreigners had deportation orders issued in conformity with the national legislation in Bulgaria in 2015. Out of them only 736 (3%) measures in respect of illegally residing persons have been carried out.

This is why during the last decade Europe has witnessed a more intensive use of alternatives to detention measures for administrative control over foreign nationals. The main reason behind this trend is the high cost of administrative detention in all its aspects – food, healthcare, security, and other administrative staff of detention centres (Special Homes for Temporary accommodation of Foreigners, SHTAF), as well as judicial expenses for translation/interpretation and procedural representation within the regular ex-officio judicial review of the need to continue the detention. On the other hand, in purely humane terms detention, especially if prolonged, has durable negative consequences for the detainee’s personality, which inter alia may give rise to processes of alienation and radicalization to the detriment of the national and Pan-European security.
At the same time the existing national alternative to detention – weekly reporting to the authorities at the police department with jurisdiction over the area of residence (the so-called signed promise of appearance) – cannot be applied to newly arrived immigrants due to objective reasons, namely the absence of relatives or friends on the national territory who could act as their guarantors by providing them with accommodation and subsistence during the return (deportation) procedure. This circumstance is breeding ground for corruption and fraudulent practices in terms of issuing false guarantees or assistance against payment in lodging unnecessary applications for international protection, which, in addition to the criminal nature of such actions, undermines the efficiency of immigration control.

Two large-scale studies of the practice in terms of applying administrative detention of foreign nationals in Bulgaria and of the European practices in this area have been conducted with the support of the European Programme for Integration and Migration (EPIM) and in cooperation with the Migration Directorate and the Legal Affairs Directorate of the Ministry of Interior.

In parallel with the research activity, court proceedings were conducted with the aim to establish legal standards for the application of detention as a measure of administrative control over foreign nationals.

In addition, an inter-agency working group has been set up with expert representatives of the legislative, executive and judicial powers and the civil society who ensured administrative guidance in carrying out the research and the analysis, summarizing the results, and drafting the recommendations. Special contribution was provided by the National Assembly¹, the Ministry of Interior², the State Agency for National Security, the Association of Prosecutors in the Republic of Bulgaria, the Academy with the Ministry of Interior, the National Legal Aid Bureau, and organizations: the UN High Commissioner for Refugees, the International Organisation for Migration, the Bulgarian Red Cross, the Association on Refugees and Migrants, ACET, the Centre for Legal Aid – Voice in Bulgaria, and the Foundation for Access to Rights.

A Detention Mapping Report³ has been drafted on the basis of the outcomes achieved. The report contains an analysis of the efficiency of the national practice in terms of applying administrative detention of foreign nationals, and the potential new alternatives to detention which, when introduced, would improve the efficiency of immigration control and would reduce the financial and human cost.

¹ Legislative Affairs Directorate of the National Assembly
² Legislative Affairs Directorate, EU and International Cooperation Directorate, Chief Directorate Border Police, and Migration Directorate of the Ministry of Interior
II. REASONS FOR INTRODUCING ALTERNATIVE MEASURES

2.1. NATIONAL PRACTICE IN TERMS OF THE DETENTION OF FOREIGNERS

2.1.1. Administrative practice (police authorities)

Both migrants and asylum-seekers consider Bulgaria a transit country, and do not wish to remain on its territory or lodge an application for international protection (99.6% of the newly arrived ones). The prevailing majority of irregular foreigners are apprehended by the police authorities not at the entry (12%) but inland (54%) or in their attempts to exit (34%). This explains why all return orders (100%) are issued on the grounds of illegal entry or residence on the territory of the Republic of Bulgaria. While this implies readmission into the neighbouring countries from which the foreigners entered, it is inapplicable in both legal and practical terms, as the majority of the foreigners are not detained right after their entry from the relevant neighbouring country. Moreover, the main migrant inflow comes from neighbouring Turkey which does not discharge its obligations under the readmission agreement concluded with the EU and the bilateral readmission protocol with Bulgaria signed on the basis of that agreement.

In almost all cases (99.9%) the police authorities do not consider and do not apply the one single existing national alternative to detention – weekly reporting to the authorities at the police department with jurisdiction over the area of residence, as the legal provisions make it entirely inapplicable to newly arrived foreigners. Over 99% of the persons detained are not appointed legal aid, which points to the failure to ensure safeguards for access to judicial control upon detention.

The detention of vulnerable persons, in particular the detention of unaccompanied children, is considered as highly undesirable by the immigration authorities themselves due to the impossibility to provide them with adequate care at the detention centres (SHTAF). A regular practice is including unaccompanied minors in the detention orders of adults who are not related to them in order to circumvent the prohibition to detain them. The main reason is the prevailing failure of the social services for child protection to assist in providing accommodation for these children in other appropriate facilities.

Most of the foreign nationals detained do not have IDs (74%) and do not want to voluntarily return to their country of origin which they left. The majority of those who stay in detention till the sixth month explicitly refuse to communicate with their embassy. This makes it impossible to execute the order for their forced removal from Bulgaria for the purpose of which detention is applied as a protection measure. The most frequent ground for release is not the execution of return but the lodging of an application for international protection, as 90% of the foreigners detained are released on this ground. Bulgaria being considered a transit country, detainees lodge an application for protection with the aim
to ensure their release from the detention centres (SHTAF), given the absence of any other legal alternative for release. The above circumstances in their cumulative form constitute the reason why the average duration of detention is less than 1 (one) month (97%) within the initial six-month time limit of detention. Out of all the foreigners detained, a total of 1% remain in detention till the 12th month, and a total of 2% till the 18th month.

The return measure has been executed in respect of only 3% of the foreigners detained, most of whom lodged an application for voluntary return after spending, however, an average of approx. 3 months in detention before their removal from the country with all the pertinent costs.

2.1.2. Case law (appeals and ex-officio judicial review)

Out of all the foreigners detained an insignificant number have succeeded in lodging themselves an appeal against the detention order within the time limit (13%); most of them (84%) did so with the help of a non-governmental organisation, and only few of them hired a lawyer at their expense (16%).

In more than half of the cases opened on the basis of a personal appeal, the claim was dismissed (54%). In terms of the cases related to the ex-officio judicial review of the need to extend detention, the court ordered the extension of detention in all the cases of review at the 6th month (100%), and in the majority of the cases of review at the 12th month (75%). In relation to either type of review, in most of the cases the court did not check the presence of the prerequisites for detention upon issuing the order (initial lawfulness), neither did it assess, as required by the law, the need to extend detention and the relevant time limit of the extension (subsequent lawfulness).

As the court does not appoint legal aid for the foreigners detained during the ex-officio judicial review, their right to an effective remedy is not guaranteed. None of the foreigners detained – both those who appealed and those who did not appeal (100%) – has been provided with access to the national legal aid system (National Legal Aid Bureau). While the predominant practice is that the court does not appoint legal aid for the purpose of ex-officio judicial review (83%), in most cases legal aid either was not requested by the foreigners detained (44%) or the foreigners refused being brought to the court (55%) or were represented by their own lawyer (1%).

To SUM-UP, the application of detention (forced accommodation) in the national practice is not in conformity with its legitimate purpose to serve as a protective measure for the enforcement of return, as in reality the return procedure has been executed in respect of only 3% of the irregular migrants detained – 2.5% have been returned to their countries of origin, and 0.5% have been readmitted into third countries.
The national judicial review is not conducted in compliance with the standards in terms of the right to an effective remedy of the foreigners detained, which is a prerequisite for judgments of conviction against Bulgaria by the relevant international courts.

2.2. EUROPEAN STANDARDS

The European legal framework sets forth some basic principles which serve as a good basis for applying detention as a measure of last resort and for putting in place alternatives.

Researches shows that the probability for the foreigner to be returned is at its highest during the first three months of detention (up to 80%); if foreigners do not express their wish to return and do not cooperate with the immigration authorities to this end, they do not change their mind at a later stage. Cooperation by foreigners is a substantial prerequisite for either the success or the failure of the return procedure. Therefore, unless the immigration authorities manage to gather the relevant documents and make all the formal arrangements during this initial period, the probability of this happening at a later stage of detention is rather low. Thus detention cannot achieve its aim and becomes entirely pointless, not to speak of the considerable financial costs for its practical execution.

All the EU Member States have set out alternatives to detention in their national legislation. The alternatives to detention, in addition to being a more humane measure, are also a pragmatic tool for illegal migration control, as the application of all its types is more advantageous in financial terms for the particular state.

It is the risk of absconding that is considered to be the biggest drawback of the alternatives to detention. This is why the successful application of detention requires an individual approach and choosing the appropriate measure for each case. Risk assessment in each individual case should be based not on formal criteria but on a real examination of the case – by means of an interview and evaluation of the data gathered. This assessment is crucial to the successful application in practice of the alternatives to detention.

In CONCLUSION, detention (forced accommodation) should be applied only when: i) the person has made real attempts to frustrate the immigration control or there is sufficient data suggesting imminent absconding or transit into another state; or ii) the person’s removal is due very soon by means of either readmission into a third country or return to the country of origin, for which the necessary documents, visas and tickets have been ensured.

In any other case an alternative to detention should be applied as a more humane and more cost effective coercive measure of immigration control over illegally entering or residing third-country nationals.
III. RECOMMENDATIONS OF THE NATIONAL CORE GROUP

3A. Short-term measures

3.1. Procedure for taking a decision on return: within the time limit of short-term detention and in the event of absence of valid documents, the specialized authorities for security and administrative control of foreigners should gather data with the aim to establish the identity (identification), as well as data allowing to determine the foreigner’s legal status (profiling), based on which a reasoned assessment will be made of the possibility in law and in fact to execute the return, which will determine the type of the order issued by the authority.

3.2. Imposing a protective measure: if and when a return order is issued, whereby the return procedure is initiated, a separate order should be issued containing a separate and reasoned assessment of the risk of absconding and frustrating the return depending on the individual specifics of the case in order to decide on the applicability of an alternative to detention and what the alternative should be in view of the specific circumstances; detention as a protective measure of last resort should be applied only where it is not possible to apply any alternative.

3.3. Prerequisites for detention: setting forth, in an explicit and cumulative manner, the prerequisites for ordering detention which should take into account whether: a) the person has attempted to frustrate the immigration control or there is sufficient evidence suggesting a risk of absconding or transit to another state; b) the person’s removal from the territory by means of readmission into a third country or return to his/her country of origin is immediate or imminent.

3.4. Initial judicial review: introducing changes in the now effective ex-officio judicial review of the lawfulness of detention by prescribing that it shall be conducted as soon as possible after detention, instead of at the 6th month, with an explicit provision laying down the right to a personal hearing before the court (habeas corpus) and legal aid in the court proceedings.

3.5. Alternativeness of the alternatives: the current alternatives (identity document as a guarantee forfeiture, open regime of an external residence address, local guarantor, and signed promise of appearance) should be amended in such a way as to become applicable under the conditions of alternativeness, instead of the now applicable cumulativeness, with the aim to also cover newly arrived foreigners.

3.6. Financial pledge (cash guarantee): introducing it as a new alternative measure. The amount of the guarantee should be determined depending on the guarantor. If the guarantee is lodged by the foreigner detained, its amount should be calculated by taking into account the return costs, while
if the guarantee is lodged by a third person-guarantor, it should be calculated by taking into account the amount of the sanctions for administrative violation of the residence regime. In either case the law should provide for the possibility to appeal before the court the amount of the financial guarantee and the possibility to request a fixed-percentage reduction of its amount upon the submission of an identity document as a pledge.

3.7. Accommodation of unaccompanied minors: setting up a specialized facility with an open regime (a crisis centre) for the accommodation of unaccompanied minors where adequate care will be taken of them and an assessment will be made with the aim to determine the protection measures to be taken in view of their best interest – for example, return to the country of origin to reunite with a parent, reunification with a family member in a third country, allowing residence and inclusion in the system of social services for children deprived of parental care.

3б. Long-term measures

3.8. Access to legal employment: regulating the possibility for foreigners, who have an alternative measure to detention imposed and for whom the return procedure is either delayed beyond a certain time limit or is impossible in law and in fact, to acquire the right to temporary access to the labour market in order to ensure that they provide for their subsistence and raise funds for voluntary return, and to prevent criminality.

3.9. Regularization: introducing a legal option to legalize the residence of foreigners with an alternative measure to detention imposed in respect of whom the return procedure has not been executed or is impossible in law and in fact and who provide for their subsistence based on the work permission granted, are staying in Bulgaria for a long time and have not committed another infringement of the law or an offence within the meaning of the law.
IV. PROPOSED AMENDMENTS

Amendments

to the Aliens in the Republic of Bulgaria Act

§ 1. Article 44 shall be amended, as follows:

1. Paragraph 5 shall be amended to read:

“(5) Where there are obstacles to an alien leaving Bulgaria immediately or to entering another country, and if these obstacles have not ceased to exist and no actions have been scheduled for the alien’s forthcoming removal, by virtue of an order issued by the authority who ordered the return or expulsion an assessment shall be made of the alien’s individual circumstances and of the risk of absconding or otherwise frustrating the return, and the execution – in an individual or a cumulative manner – of one/some of the following protective measures shall be ordered:

1. the alien shall be obliged to report weekly at the territorial structure of the Ministry of Interior with jurisdiction over his/her residence area under the terms laid down in the Regulation for the application of the Law.

2. the alien shall lodge, in person or via a third person, a cash guarantee whose amount shall be determined by the authority issuing the protective measure under the terms and following the procedure laid down in the Regulation for the application of the Law.

3. the alien shall submit as a temporary pledge a valid passport or another travel document which he/she shall receive back after being removed from the country in the procedure of executing the return or expulsion order.

4. the alien shall be obliged to reside at a specific address designated by him/her, by a third person-guarantor or by the authority issuing the protective order.”

2. Paragraph 6 shall be amended to read:

“(6) In the cases where the alien who has been imposed a coercive administrative measure under Article 39a, paragraph 1, items 2 and 3, and whose identity is not established, obstructs the execution of the order or there is a risk of his/her absconding or frustrating otherwise the return, the authority which has issued the order or the head of the Migration Directorate may issue an order for the alien’s detention in a special home for temporary accommodation of foreigners with the aim to make arrangements for return or expulsion. This order may also be issued in cases where the alien does not abide by or systematically violates the conditions of the protective measures imposed on him/her under Article 5.”
3. Paragraph 9 shall be amended to read:

“(9) By way of exception, where the circumstances under paragraph 6 exist, an order shall be issued for the detention of accompanied minors in a special home for a period of up to three months. The special homes under paragraph 7 shall be reorganized to have separate premises for the accommodation of minor aliens where the conditions are appropriate for their age and needs. Detention shall not be applied with respect to unaccompanied minors. The body issuing the coercive administrative measure shall issue an order under Art. 39, paragraph 1, item 2 of the Child Protection Act and shall accommodate unaccompanied minors in a specialised institution or social service of a residential type, and shall also notify the relevant Social Assistance Directorate which shall take follow-up protection measures in conformity with the same law.”

§ 2. Article 46а shall be amended and supplemented, as follows:

1. Paragraph 2 shall be amended to read:

“(2) In the cases where the order has not been appealed under the terms and within the time limit laid down in paragraph 1, but not later than 14 days from the expiry of the time limit for the appeal thereof, the order shall be sent by the head of the Migration Directorate or an official empowered thereby to the administrative court with jurisdiction over the alien’s area of location in order for the court to rule on its lawfulness.”

3. Paragraph 3 shall be amended to read:

“(3) Where the alien continues to be detained in a special home due to the existence of obstacles to his/her removal from the country, the court with jurisdiction over the alien’s area of location shall examine the grounds for the extension, replacement or termination of detention ex-officio or at the request of the alien concerned before the expiry of each 6-month period after the detention of the alien concerned. The above circumstances shall be notified to the court with jurisdiction over the alien’s area of location by the head of the Migration Directorate or an official empowered thereby.”

4. The current paragraph 4 shall be deleted.

5. The current paragraph 2 shall become paragraph 4 and shall be amended to read:

“(4) The court under the above paragraphs shall examine the lawfulness and the reasonableness of the initial or the extended detention in open court and shall adjudicate within up to one month from initiating the procedure. The alien detained shall be entitled to a personal hearing by the court. The judgment of the first-instance court shall be appealable before the Supreme Administrative Court which shall adjudicate within a two-month time limit.”
REASONNING

for Draft Amendments on the Aliens in the Republic of Bulgaria Act

The Draft Law aims to introduce several groups of changes in the Aliens in the Republic of Bulgaria Act.

Firstly, additional protective measures are introduced with the aim to secure the return of third-country nationals in conformity with Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008. The provisions of the Directive (paragraph 16 of the Preamble) stipulate that the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

Article 7, paragraph 3 of the Directive prescribes that certain obligations aimed to avoid the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of the period for voluntary departure.

The now effective national legislation sets forth one single protective measure – weekly reporting to the authorities at the police department with jurisdiction over the foreigner’s residence area under the terms laid down in Art. 44, paragraph 5 of ARBA.

This protective measure does not suffice to ensure applicability in the variety of cases and assumptions where the other measures set out in the Directive could provide a more efficient administrative control over foreigners who have an order issued for forced removal to the border (return) or expulsion. Introducing such measures has become a necessity due to the substantial rise in the number of migrants irregularly crossing Bulgaria’s national borders over the last several years, and the need to put in place more legal tools for the management and regulation of migration flows, including in view of the protection of national security and public order.

In addition to the above, forced removal to the border (return) can be executed in practice in relatively few cases due to unestablished identity, the lack of travel documents, and the main countries of origin to which return is either difficult or impossible in law and in fact. While 24,684 foreigners had deportation orders issued in conformity with the national legislation in Bulgaria in 2015, the measures have been enforced in respect of only 3% (736) of the illegally residing foreign nationals. This fact requires limiting the scope of application of detention, mostly for reasons of the high costs due to the need to provide a large number of detainees with food, healthcare, security and other administrative...
staff at the special homes for temporary accommodation of foreigners with the Migration Directorate of the Ministry of Interior.

The purpose of the proposed amendments is putting in place some additional protective measures such as cash guarantee, identity document forfeiture and the obligation to observe the regime for crossing the state borders and protecting public order. The introduction of a cash guarantee will have an additional positive effect, as in the event of confiscation the sum of the guarantee deposit will be paid into the state budget, and will thus contribute to financing the coercive administrative measures for control over foreign nationals in the Republic of Bulgaria.

Secondly, amendments are proposed in relation to the time frame for the ex-officio judicial review of the administrative detention of third-country nationals and the rules for exercising this control. The now effective legal framework does not ensure the legal standard for a speedy judicial review in conformity with the provision of Art. 15, paragraph 2 (a) of the Directive – namely, deciding on the lawfulness of detention as speedily as possible from the beginning of detention. The provision of Art. 46a of ARBA stipulates that the ex-officio judicial review shall take place after the six-month period from the accommodation at a special home for temporary accommodation of foreigners (SHTAF) expires. According to the amendment proposed, the judicial review of detention shall take place within a period of up to one month after accommodation, which ensures conformity with both the provisions of the EU acquis and the standard laid down in Art. 5, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Lastly, amendments are proposed with the aim to broaden the powers of police authorities in cases of apprehending illegally residing unaccompanied minor foreigners in conformity with the prohibition for the detention of such persons and in the context of aligning the measures under the Child Protection Act. This will ensure the legal basis for observing the prohibition to detain unaccompanied minors in the special homes, as provided for in the law, and will specify the rules for interaction with the child protection departments with the Social Assistance Directorates of the Ministry of Labour and Social Policy. The amendment will also contribute to limiting the possibilities for diverging interpretation of the legal framework by the authorities applying it.

The outcomes expected from the adoption of the draft law are lowering both the costs for the execution of coercive administrative measures and the legal costs, including the costs incurred for translation and legal aid; increasing the tools for exercising an effective administrative control over foreigners; reducing the prerequisites for judgments of conviction against Bulgaria for failure to observe the standards for administrative detention and the right to free movement; and facilitating the actions related to the execution of forced removal to the border (return) and expulsion of third-country nationals illegally residing in the Republic of Bulgaria.
AMENDMENTS
of the Regulation
for the Implementation of the Aliens in the Republic of Bulgaria Act

§ 1. Article 72 shall be amended, as follows:

1. Paragraph 1 shall be amended to read:

“(1) By virtue of the order for imposing a protective measure, with the exception of the detention order, the alien shall be obliged to not make any further attempts to illegally cross the state border or commit any other violations of the restrictions of movement imposed on him/her or of public order.”

2. A new paragraph 2 shall be created:

“(2) The order under Art. 44, paragraph 5, item 1 of ARBA shall indicate the existing reasons why the alien cannot immediately leave the country, the settlement, the alien’s residence address and the time at which he/she must appear at the unit on duty of the territorial structure of the Ministry of Interior.”

3. The current paragraphs 2 and 3 shall become, respectively, 3 and 4.

4. The current paragraph 4 shall become paragraph 5 and shall be amended to read:

“(5) The alien’s residence address shall be indicated in writing by filling in an address card using the model in Annex No 1. When the alien is unable to indicate a residence address, he/she may submit, following the procedure under Art. 72b, as a temporary pledge a valid passport or another travel document which he/she shall receive back after being removed from the country in the procedure of executing the return or expulsion order. In this case the authority imposing the protective measure under Art. 44, paragraph 1, item 4 of ARBA shall issue an order with an indication of the place and time at which the alien must appear at the unit on duty of the territorial structure of the Ministry of Interior.”

5. The current paragraph 5 shall become paragraph 6:

“(6) A person providing a foreigner with an imposed coercive administrative measure with a residence address shall fill in a sample declaration and shall adduce evidence proving sufficient subsistence means of the illegally residing person in an amount not lower than the minimum social pension benefit in the country. In the event of changes in the circumstances declared, the authority which ordered the coercive administrative measure shall be notified immediately.”

6. A new paragraph 7 shall be created:
“(7) An alien who has been imposed the protective measure of staying at a designated place shall be obliged to:
1. not change the address designated in the order under Art. 44, paragraph 1, item 4 of ARBA without the permission of the authority issuing the order;
2. not enter the border area of the Republic of Bulgaria without due permission;
3. not enter other areas designated by an order of the head of the Migration Directorate of which he/she was informed upon being served the protective measure order;
4. not leave the territory of the Republic of Bulgaria without the permission of the authority issuing the return or expulsion order.”

7. A new paragraph 8 shall be created:

“(8) In the event of failure to discharge the obligation under paragraph 5 or violation of the obligation under paragraph 7, the person providing a residence address to an alien with a coercive administrative measure shall be imposed a fine in the amount determined under the terms of Art. 72a, paragraph 2 of the Regulation.”

§ 2. A new Article 72a shall be created, and it shall read:

“Art. 72a. (1) The order under Art. 44, paragraph 1, item 2 of ARBA shall indicate the amount of the cash guarantee and the budget account into which it shall be paid. The guarantee may be deposited by the alien or by a third person who has submitted to the authority issuing the protective measure a notarial declaration certifying that he/she is paying the guarantee at his/her expense to the benefit of the alien. When the alien is accommodated in a special home and has financial resources, the head of the special home shall ensure security and transportation to the financial institution where the alien can pay the guarantee in person. Payment of the guarantee via a proxy shall not be allowed unless the latter is a spouse or a relative in the direct ascending or descending line without limitation as to the degree.

(2) The amount of the cash guarantee shall be the equivalent of the costs for the execution of the alien’s return or expulsion. The equivalent amount of the costs for each country of origin shall be determined by an ordinance issued jointly by the Minister of Interior and the Minister of Finance, and may be recalculated on an annual basis or when the need be.

(3) The amount of the cash guarantee shall be reduced by one-third of the amount initially fixed if the alien submits to the authority issuing the order a valid passport or another travel document as a temporary pledge, which he/she shall receive back after being removed from the country in the procedure of executing the return or expulsion order. The amount of the guarantee shall be reduced by half if the alien is a member of the family of or the parent of a Bulgarian national who has assumed the obligation to provide accommodation and subsistence under Art. 72 of the Regulation.

(4) The amount of the cash guarantee and the refusal to reduce that amount may be appealed by the alien or by the persons under paragraphs 1 and 3 within a 14-day time limit as from the notification thereof following the procedure laid down in the Administrative Code of Procedure.
(5) The cash guarantee shall be released not later than 24 hours before the execution of the voluntary of assisted return or expulsion on the basis of an order issued by the body which ordered the protective measure, where evidence has been gathered to prove the purchase of a ticket, the existence of a valid passport or another travel document, and the fulfilment of visa and other conditions for carrying out the return or expulsion.

(6) The cash guarantee shall be confiscated in favour of the budget for the execution of return if the alien absconds or attempt to leave the country in an irregular manner or via a point other than the official ones. Absconding exists when the alien systematically fails to fulfil the protective measures imposed on him/her for which a record shall be drawn up by the authority which imposed the measures. The attempt to leave the country shall be certified by means of a document drawn up by the Chief Directorate Border Police or the Prosecutor’s Office. The confiscation of the cash guarantee shall be ruled by the order under Art. 44, paragraph 6 of ARBA. In case the guarantee is paid by a third person, the order with the ruling of confiscation shall also be served on the payer of the cash guarantee. The alien or the payer of the cash guarantee shall have the right to appeal the ruling of confiscation following the procedure and within the time limits laid down in the Administrative Code of Procedure before the administrative court with jurisdiction over the area of location of the alien or of the authority issuing the order.”

§ 3. A new Article 72b shall be created, and it shall read:

“Art. 72b. (1) The order under Art. 44, paragraph 1, item 3 of ARBA shall indicate the type, the serial number, the date of issuing and the date of validity of the passport or another valid travel document submitted by the alien, and a take-over certificate shall be drawn up for the de facto submission thereof.

(2) The passport or another travel document submitted as a pledge shall be given back to the alien after his/her removal from the country in the procedure of executing the return or expulsion order, and a take-over certificate shall be drawn up to this end.”

§ 4. A new Article 72c shall be created, and it shall read:

“Art. 72c. The order under Art. 44, paragraph 1, item 5 of ARBA shall indicate that the alien shall be obliged to not make any further attempts to illegally cross the state border or to not perpetrate other violations of public order, and shall be informed that in the event of failure to fulfil this obligation the protective measures imposed shall be replaced with detention in a special home for temporary accommodation of foreigners, while the cash guarantee paid shall be confiscated.”
This document is developed by a national core group, consisting of experts from the following institutions and organisations – the national Parliament (Legislation and EU Law Directorate), Ministry of Interior (directorates „Migration“, „Legislation“, „EU and international cooperation“, Chief Directorate „Border Police“ and Sofia Police Directorate), State Agency for National Security, National Legal Aid Bureau with the Ministry of Justice, MOI Academy, Administrative court Sofia City, UNHCR, UNICEF, International Organisation for Migration, ACET, Association on Refugees and Migrants, Bulgarian Lawyers for Human Rights, Bulgarian Red Cross (Refugee & Migrant Service), Access to Rights Foundation and Center for Legal Aid – Voice in Bulgaria.