2017
ANNUAL MONITORING REPORT
ON STATUS DETERMINATION PROCEDURES IN BULGARIA

Bulgarian Helsinki Committee
Refugees and Migrants Legal Protection Programme
Introduction

This Annual Report is based on monitoring focused on the institutional set up and the actual interaction between the various government bodies as well as on the legal and practical standards on the conduct of proceedings as stipulated in the national refugee law ¹ and their compliance with the generally recognised principles for international protection and the common legal standards of the European Union in the field of asylum (acquis communautaire).

From 1 January to 31 December 2017 monitoring was carried out with respect to a total of 702 procedural actions in the transit centres (TCs), registration and reception centres (RRCs) of the State Agency for Refugees (SAR) with the Council of Ministers (CM), monitoring of decisions rendered on applications for protection and monitoring of the quality of the legal proceedings considering appeals against SAR's decisions.

The monitored procedural actions correspond with the same number of persons seeking protection, 453 of which are men, 158 are women, 21 are children and 70 are unaccompanied children.

The types of procedural actions that have been monitored include:

- 163 registrations (84 in Pastogor TC and in Harmanli RRC, 51 in Banya RRC and 28 in Sofia RRC);
- 202 interviews in the general procedure (121 in Pastogor TC and Harmanli RRC, 32 in Banya RRC and 49 in Sofia RRC);
- 244 decisions by SAR on lodged applications for international protection;
- 93 court hearings on appeals against decisions by SAR.

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The report is drafted by Legal Defence of Refugees and Migrants Programme at the Bulgarian Helsinki Committee.

¹ Asylum and Refugees Act, with entry into force on 1 December 2002 (prom. SG, No.54/2002);
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3. Part Three: Recommendations
Part One: Monitoring methodology

The monitoring subject is the procedural actions carried out by the State Agency for Refugees with the Council of Ministers under the Asylum and Refugees Act (ARA). Pursuant to the act\(^2\) SAR is the competent national authority that carries out the registration, the examination of individual applications for asylum and protection lodged within the territory of the Republic of Bulgaria and the issuance of decisions on them.

The monitoring covers all phases of the procedural actions of the administration beginning with the registration of the person applying for protection through the various stages of the proceedings and until the delivery of a decision on it. Monitoring is also carried out on the quality of SAR’s rulings (decisions) issued in the administrative proceedings and in the legal proceedings on appeals against negative decisions on applications for international protection.

The monitoring is carried out at random on a weekly basis and includes the collection of data about the manner, methods and practices in conducting the proceedings under ARA which are reflected in standard forms for interview assessment (Annex 1), decision assessment (Annex 2) and monitoring of legal proceedings (Annex 3).

The monitoring of the procedure in the administrative phase is carried out in the territorial units of SAR, namely:

- the registration and reception centres (RRCs) in the city of Sofia, the village of Banya in the municipality of Nova Zagora and town of Harmanli;
- the transit centre (TC) in the village of Pastrogor in the municipality of Svilengrad; and
- the centre or the closed-type facility opened in 2016 in the 3rd block of Special Centre for Temporary Accommodation of Foreigners (SCTAF) Sofia (“Busmantsi” district) under the authority of the SAR in which the procedure for granting international protection is conducted under the conditions of detention and restriction of the freedom of movement but with the restriction that it should be applied under certain conditions and for as short a period as possible.

Monitoring of the rulings (decisions) issued in these proceedings by the administrative authority is carried out at the territorial units of SAR while monitoring of the legal proceedings in appeals against negative decisions is conducted at the respective regional administrative courts and the Supreme Administrative Court.

\(^2\) Art.2, para.3 in connection with art.1A, para.2 of the Asylum and Refugees Act (ARA);
Part Two: Results and findings

2.1. Procedure of granting international protection

2.1.1. Access to procedure and registration

The national law provides for the right to lodge and an application for international protection both before an official of the State Agency for Refugees with the Council of Ministers and to other state authorities which are obliged to immediately forward the application to SAR with MS. In Bulgaria these other state authorities are most often bodies of the Ministry of Interior (MoI), in particular the Chief Directorate 'Border Police' or Directorate 'Migration', whose staff receive requests for protection from foreigners located at the border or in the border areas; and, respectively, by foreigners detained in immigration centres (so-called special homes for temporary placement of foreigners, SCTAF) due to the lack of valid identity documents or irregular residence on the territory of the country.

As a rule the persons who lodge an application for international protection before an official of the State Agency for Refugees should be registered within 3 working days of lodging the application. As an exception, when the application is lodged before other government authorities which under the national law are not competent to register the applicants the registration should be made within 6 working days of lodging the application. Under the law SAR is obliged to personally register the alien who lodged the application for protection by filling in a registration form, taking fingerprints, searching and reviewing their belongings, and opening a personal file of the alien.

In 2017 there was a non-compliance with the registration deadline of 6 working days with 19 calendar days on average which equal 15 working days, i.e. a delay with an average of 9 working days. In comparison, in 2016 this period is 1 calendar day, in 2015 it is 10 calendar days, in 2014 it is 11 calendar days and in 2013 it is 45 calendar days. 2,5% of those applying for protection in the deportation centres were detained for more than 3 months and 1.66% were subject to detention for more than 6 months before being released and transferred to a SAR centre for registration and procedure. To 100% of them the access to registration and procedure is provided only after submitting the case to a court because of a prolonged detention in a SHTPR exceeding the period of 6 working days.

As a reason for the non-compliance with the detention limit, the State Agency for Refugees states a delay in the administrative procedures for the release of the asylum seekers by the Directorate 'Migration' with the Ministry

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3 Art. 58, para. 3 and 4 of the ARA;
4 Art. 61, para. 2 of the ARA;
5 47 persons seeking protection out of a total of 2 292 persons who applied for protection in 2017 in the deportation centres of DM with MoI;
6 38 asylum seekers out of a total of 10 914 persons who applied for protection in 2016 in the deportation centres of DM with MoI;
of Interior. For its part, the Directorate 'Migration' of the Ministry of Interior states as the reason for the non-compliance a delay by the State Agency for National Security and non-compliance with the statutory time limit of 6 working days while the conducting the individual inspections and screening.

Another and a far more significant violation of the law that was monitored in 2017 was conducting the proceedings for granting international protection in the centres for the administrative detention of foreigners (SCTAF) by the SAR authorities. In 2017 the monitoring in the SCTAF of the Ministry of Interior ascertained that a total of 72 refugee proceedings were carried out in detention centres for illegally staying foreigners.

According to the court practice, including the one of the Supreme Administrative Court⁷, by lodging an application for protection the status of the applicant is changed from an illegally staying foreigner to an applicant seeking international protection. The change in the legal status occurs automatically pursuant to art. 6, para1 Directive 2013/33/EU (Reception Directive). In addition, in recital 9 of Directive 2008/115/EU (Return Directive) it is explicitly stated that 'a third-country national who has applied for asylum in a member state should not be regarded as staying illegally on the territory of that member state until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force'. Article 9, para.1 of Directive 2013/32/EU (Procedures Directive) establishes the right of a person seeking international protection to remain in the state solely for the purposes of the procedure until the decision-making authority has given its ruling in accordance with the first instance procedures. This right does not constitute a right of residence, but it transforms the illegal residence into a legal, albeit limited residence within the specified time frame. An exception to this rule is provided for with regard to subsequent applications. The right of remaining in the country for the person who has submitted a first application for protection is also explicitly regulated in the national law - in art. 29, para. 1, item 1 of the ARC. Therefore, the courts accept that by changing of the legal status of the persons who have lodged an application for protection before the MoI authorities the legal grounds for their detention in the SCTAF are no longer valid and the MoI should review the orders for the detention (Court of Justice of the European Union ruling of 30.05.2013, Case number C-534/11, EU:C:2013:343).

With the changed legal status of the persons who have applied for protection, the competent authority - the chairperson of the State Agency for Refugees, could apply a coercive measure and order a temporary placement in a closed-type centre. Article 7, para.1 and 2 of Directive 2013/33/EU grants Member States the right to determine the place of residence of the person seeking protection. Article 8, para.1 of Directive 2013/33/EU grants Member States the right to detain a person seeking international protection when this is necessary and no lighter coercive administrative measures can be applied effectively and paragraph 3 stipulates in a limitative manner the purposes of a person's detention. Detention with the purpose of removal, as stipulated in art. 44, para. 6 of the Foreigners in the Republic of Bulgaria Act (FRBA), and respectively art. 15 of Directive 2008/115/EC and the detention rendered in respect of a person seeking international protection which is stipulated in art. 7 and 8 of Directive 2013/33/EU and art. 26 of Directive 2013/32/EU, and respectively in art.45b, para. 1 of the ARA are subject to different legal regimes (Ruling of 30.11.2009, Case number C-357/09 P., EU:C:2009:741, p. 45.)

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⁷ Ruling 612 of No. 612/17.01.2017 of the Supreme Administrative Court, Seventh Division on case No. 14218/2016
Therefore, in all cases, when an application for protection is lodged in the special homes for temporary placement of foreigners (SCTAF) the MoI authorities should annul the detention orders issued beforehand on the grounds of art. 44, para. 6 and 8 of the Foreigners in the Republic of Bulgaria Act due to the removal of the provisions of the law. The competent authority - the chairperson of the State Agency for Refugees, may order the detention of applicants for international protection if the chairperson considers that there are provisions pursuant to art.45b, para. 1 ARA, but cannot conduct proceedings under ARA at SCTAF as this constitutes a violation of the rules of the national and the European Union legislation.

2.1.2. Vulnerable groups

At every stage in the refugee procedure the employees of SAR are obliged to take into consideration the special situation and the special needs of the foreigners from a vulnerable group.

Under the definition of the law "persons from a vulnerable group" are considered children and juvenile persons, unaccompanied children and juvenile persons, disabled people, elderly people, pregnant women, single parents with juveniles, victims of human trafficking, people with severe health issues, people with mental disorders and persons who have suffered torture, rape or other serious forms of psychological, physical or sexual abuse.

The monitoring in 2017 also found the continuing lack of and established mechanism for an early identification of any vulnerability in the applicants for protection and of their specific needs. According to established standards such identification should be carried out at the earliest possible stage which in the context of the refugee procedure means that the identification of the vulnerability must be done during or immediately after the personal registration at the SAR centres. At some of the SAR registration and reception centres in 2017 there were again group consultations with newly-placed applicants for protection for establishing the most acute social needs of the individuals. At other centres an increased presence of social experts from the SAR staff was provided during the registration of the applicants for protection.

As a result, the monitoring found that a social interview with the applicants for protection was conducted in 36% of the cases (out of a total of 132 monitored cases). Therefore, it can be noted that in 2017 the identification of the vulnerable persons was carried out in a more unsystematic manner than in 2016 when that percentage was 41% of all monitored cases of vulnerable persons. Since in the majority of cases the referral for the need of conducting a social interview in order to identify a potential vulnerability is done ad hoc by the SAR officials conducting the registration or due to a report by a non-government organisations, social mediators, advocates or lawyers, it is necessary to regulate the aforementioned process as obligatory for all registered applicants for protection in SAR’s internal rules for conducting the procedure.

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8 Art. 30a of the ARA;
9 §1, item 17 of the Additional Provisions of the ARA;
11 179 persons;
2.1.3. Procedures for unaccompanied children

The unaccompanied children seeking or having received protection fully comply with the legal definition of children at risk as they have remained on the territory of the Republic of Bulgaria without the care of their parents. Thus, the measures for protection stipulated in the Child Protection Act should be applied to them.

The monitoring in 2017 revealed that such measures were adopted only in the most serious cases involving children at a very young age as well as children in a situation with domestic violence. As in previous years the most significant unresolved issue in the refugee procedure continued to be the conducting of the procedure with unaccompanied children without an appointed guardian or trustee in violation of the imperative requirements of the law. Under the established constant judicial practice such proceedings are unlawful as are the proceedings brought against unaccompanied children without the presence of a legal representative appointed by the municipal administration and without the assistance of a lawyer as their judicial representative and an advocate of their best interests. UNHCR, UNICEF, BHC and other non-government organisations continue to insist on amending the Family Code so that a "special guardianship" can be stipulated in it for unaccompanied children seeking protection which will correspond with the specifics of their situation and in particular with the complete absence of family members who could be appointed as guardians and members of a guardianship council.

In 2017 there were 6 monitored cases of registrations of unaccompanied children seeking protection without the presence of a representative appointed by the municipal administration, designated by the mayor of the municipality or by an official authorised by the mayor as required by the Asylum and Refugees Act. In contrast with the previous year, the presence of a social worker from the Child Protection Department from the corresponding Regional Social Assistance Directorate (CPD-RSAD) was ascertained in 100% of the monitored registrations. This represents a significant progress in improving the child protection services for unaccompanied children in 2017.

On the other hand, only in 19% (4 monitored cases) there was any support or intervention by the social workers from the CPD-RSAD for the benefit of the unaccompanied children or there was any other intervention when necessary during the interviews conducted with the children or during the other procedural actions. It is necessary to improve the knowledge and qualifications of the social workers on the specifics of working with unaccompanied children and the on the existing long-term solutions in order to improve the quality of the protection in accordance with the standards of protection of their best interest.

Legal aid was not provided to the unaccompanied children seeking protection at the administrative stage since in 100% of the monitored cases the unaccompanied children were not represented by a lawyer as their judicial representative in violation of the European common standards of international protection in the member states of the European Union. A judicial representative was also not provided during the delivery of the decisions on the applications for international protection lodged by unaccompanied children. That included the delivery of negative decisions refusing to grant international protection to minors.

Only at the end of 2017 the representatives of the municipal administration, mainly in the region of Sofia, began to lodge applications for legal aid at the National Legal Aid Bureau (NLAB) when they were previously notified by SAR that a date has been scheduled for the delivery of a negative decision for international protection to the
unaccompanied children represented by them. In these cases the NLAB provided for and financed the provision of legal aid to unaccompanied children on time.

Under the law SAR should exercise control and take measures to protect minors or juveniles seeking international protection from physical or psychological violence, cruel, inhuman or degrading treatment. The monitoring revealed that in 2017 the unaccompanied minors seeking international protection were placed in the Ovcha Kupel dormitory at the RRC in Sofia where a separate floor was designated for the unaccompanied children on the territory of the centre and the unaccompanied minors at the Voenna Rampa dormitory were placed in a separate corridor with restricted access for the adults placed there. Despite the adopted measures to improve the conditions in these dormitories, in 2017 the conditions of accommodation still did not meet the requirements of the child legislation and did not provide any guarantees for protection of the best interests of the children placed there. The unaccompanied children were not provided with continuous 24-hour care, outside the working hours of the social experts from SAR’s staff as a rule the children were left alone and unattended. For example, until the middle of 2017 the food for the three meals a day was distributed twice a day, including to the unaccompanied children which violates the requirements of the law, but by the end of the year this problem was gradually solved in all of SAR’s territorial units. Since the end of March 2015 asylum seekers have not received individual monthly allowances regulated by law and therefore the unaccompanied children are practically deprived of additional resources for their physical survival which is entirely a responsibility of the state. In practice in 2017 no agreement was reached as to which is the competent governmental authority whose responsibility it is to provide staff to monitor the situation of unaccompanied children and, if necessary, to give recommendations on the necessary actions which should be taken in order to ensure their livelihood, health status, education and overall welfare. With funds provided by the Asylum, Migration and Integration Fund the International Organisation for Migration was entrusted with the task of creating safe zones for unaccompanied children with 24-hour care in the territorial units of SAR, but by the end of 2017 no such zones were created or designated, nor was 24-hour care provided.

At the end of 2017 it was established that in the Harmanli RRC when there was any doubt about the age of unaccompanied minors an X-ray study of the bone age was done without the consent of the their appointed representative by the municipal administration. To the children who according to the study were deemed to be adults no representative was appointed as required by the law, so if the child did not agree with the assessment of their age a representative could not assist them in challenging the results of the study. In addition, the bone study as a method of age assessment is internationally recognised by the medical community as inaccurate and producing a deviation of up to 2 years which is unsatisfactory. In this respect, it is advisable to develop and implement a methodology for a comprehensive age assessment based on non-invasive medical, cognitive and sociopsychological markers.

2.1.4. Provision of information

Under the law the foreigner who has lodged an application for international protection shall be informed in writing in a language which they understand about the manner of lodging the application, the

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12 Art. 58, para. 8 of the ARA, art. 8 and art. 12 of Directive 2013/32/EU (Procedures Directive);
procedure to be followed and their rights and obligations as well as about organisations providing legal and social aid to foreigners no later than 15 days after lodging the application.

If circumstances so require such information may be provided orally. Moreover, by the end of 2015 the law introduced a requirement in respect of foreigners detained in detention facilities, special homes for the temporary placement of foreigners or at border crossing points, including in transit zones, that if there are indications that the foreigner may wish to lodge an application for international protection they should be given information about the possibility to do so. To this end, translation/interpretation is provided to facilitate the access to the procedure.

In connection with the fulfilment of this obligation the monitoring found that in 74% (273 monitored cases) the SAR staff provided introductory information to the persons seeking protection about their procedure and their rights and obligations. The monitoring found that the obligation to deliver written information was fulfilled in 72% instances (265 monitored cases). In the remaining 28% (100 monitored cases) this obligation of SAR was not fulfilled using the explanation and the pretext of saving resources for translation and printing of the information materials as well as the statement that the candidates massively abandon their procedures in Bulgaria which leads to their suspension and subsequent termination.

The persons seeking protection who are placed in closed-type centres should receive information about the internal rules of the respective centre as well as about their rights and obligations and under the law that information should be provided in a language that is understandable to them. In 2017 this obligation was not fulfilled.

2.1.5. Evidence

The monitoring of refugee proceedings found that in 2017 in 26% (97 monitored cases) the persons seeking protection have submitted documents in support of their refugee history. In 81% (79 cases) a protocol was drawn up by the decision-making or interviewing body of SAR in form of acceptance as a guarantee that they will be taken into consideration while making the decision on the application for protection, but in the other 19% (18 cases) the evidence was not properly collected and their collection was not established by drawing up a delivery-acceptance protocol. There is a deterioration in this indicator in comparison with 2016 which, although insignificantly, degrades the quality of the procedure, in so far as the failure to comply with the obligation to draw up a record of evidence violates the principle of veracity in the administrative process and in particular in the international protection proceedings.

In this regard, the SAR’s practice of not providing the necessary guarantee of proper collection of the evidence submitted by the applicant by drafting the delivery-acceptance protocols in any case constitutes a violation of the

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13 Art.58, para. 6 of the ARA, art. 8 and art. Article 12 of Directive 2013/32/EU (Procedures Directive);
14 Art.45e, para.1, item 5 of the ARA;
15 In 2016 in 90% (82 of these cases) a protocol was drawn up but in the remaining 10% (9 cases) the evidence was not properly collected and the collection was not established by drawing up a delivery/acceptance protocol;
16 Art. 7, para. 2 of Administrative Procedure Code (APC);
17 Art. 75 para. 2 of the ARA;
procedural safeguards for the rights of the applicants for protection and for the validity of the merits of the decision for protection.

Conformity with the evidence presented as a copy however marked a significant decline in 2017. In practice the persons seeking protection are often deprived of the opportunity to collect and present all their evidence in the original, for example in the case of threatening letters from non-state persecution agents and civil status statements issued by no longer functioning administrations. These circumstances were not taken into consideration by SAR which is in violation of the benefit of the doubt principle in respect of the refugee (principle of *in dubio pro fugitivo*)\(^{18}\).

### 2.1.6. Interview

Through the interview during the refugee procedure oral evidence is collected by recording the claims made by the applicant for protection well as their reasons for leaving their country of origin and seeking international protection.

The national legislation stipulates \(^{19}\)that immediately after the registration a date for conducting an interview is scheduled and that the foreigner applying for international protection should be duly informed about the date of each subsequent interview.

The monitoring found that in 2017 in 59% (215 monitored cases) the applicant signed the invitation for an interview, but a copy of it was not given to them and instead the only copy was kept in the applicant’s personal file. The failure to comply with the obligation to duly inform the candidate about the date of the scheduled interview leads to a failure to appear at the interview solely because of a lack of knowledge about its scheduling. At the same time the non-appearance at the interview by the applicant for protection is interpreted by the officials responsible for making the decision as a silent withdrawal of the lodged application for protection in Bulgaria and is used as the basis for the discontinuation and subsequent termination of the refugee proceedings. At the end of 2016 this practice was discontinued at the Harmanli RRC and at the Pastrogor RRC and the candidates for protection were given invitations stating the date and time of the scheduled interview. The problem continued to exist in all units of the Sofia RRC and at the Banya RRC until the end of the monitored period which was 31 December 2017. In all of SAR centres there is a failure to fulfil the obligation of giving the candidates invitations in case the interview is rescheduled for another date. That is often a result of the lack of sufficient translators from certain languages.

The interview itself should be conducted\(^{20}\) in the language requested by the applicant and when this is not possible - in a language that is understandable to the applicant. The monitoring found that in 2% (8 monitored cases) the procedural actions with the candidates were conducted in a language they do not understand. The aforementioned actions are performed in violation of the law and with the help of other persons seeking protection who speak the candidate’s language and the language of the provided interpreter.

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\(^{18}\) Art. 75 para. 3 of the ARA;

\(^{19}\) Art. 63a, para. 1 and the following of the ARA;

\(^{20}\) art. 63a, para. 7 of the ARA;
The law requires that an audio or audio-visual recording should be done during the interview and a protocol should be drawn up. The monitoring found that throughout the year audio recordings were made in 94% (191 monitored cases) of the monitored procedures and there was no audio recording made only in 6% of the cases. Despite doing so to a small degree, this violates an explicit and binding requirement under the law and creates prerequisites not only for doubting the correctness of the interview and the oral statements recorded in the written protocol but also for the inability of the court to carry out any review in contesting the protocols of the interview during the judicial phase.

The protocol of the conducted interview should be read to the applicant for protection and should be signed by them, by their interpreter, or respectively by the sign language interpreter, and by the interviewing authority. The monitoring in 2017 found that in 26% (95 monitored cases) of the monitored proceedings the protocols of the conducted interviews or the registration documents during the initial registration of the application for protection were not read before they were signed by the applicants for protection. This makes it impossible for the applicants for protection to verify that their statements about the facts and circumstances described by them are properly reflected in the protocol. Reading the protocol is an important guarantee with regard to finding out or removing any discrepancies between what was said during the various interviews, but above all with regard to compiling all of the stated facts and circumstances in their logical consistency while making the decision on the application for protection.

2.1.7. Legal aid

The state should provide conditions so that the foreigners seeking international protection in Bulgaria can obtain legal aid. In principle, individuals who are unable to engage a lawyer for legal defence and assistance due to the lack of funds may benefit from state-funded legal aid. The state provides legal aid through the National Legal Aid Bureau (NLAB) with the Ministry of Justice. As of March 2013 foreigners seeking international protection are included in the categories of persons entitled to legal aid funded by the state.

In the second half of 2017 the monitoring registered the positive practice of a cooperation by SAR with regard to the appointment of legal aid to the unaccompanied children seeking the protection when they were given the decisions on their applications for international protection.

Legal aid was not provided in any of the monitored cases to the other categories of persons as well as to the unaccompanied children during the proceedings until a decision was delivered. Thus, in 2017 in 100% of the monitored cases the applicants for protection were not provided with legal aid including with the statutory legal aid and assistance to children and especially to unaccompanied children.

In December 2017 as preparation for the organisation of legal aid to the asylum seekers the SAR and the NLAB adopted rules for the selection and the organisation of the work of the assigned lawyers as well as guarantees of the quality of the legal provided aid.

21 art. 63a, para. 3 of the ARA;
22 art.63a, para.8 of the ARA;
23 art. 23, para. 2 of the ARA;
24 art. 22 para. 8 of the Legal Aid Act;
25 art.15, para.2 of the Child Protection Act;
2.1. **Quality of the documents issued on the applications for protection**

2.2.1. **Timeliness of the decisions on the applications for protection**

Under the law\textsuperscript{26} within four months from the commencement of the proceedings under the general procedure the interviewing authority shall draw up an opinion which shall be presented together with the personal file to the chairperson of the State Agency for Refugees for resolution.

Within 6 months of the commencement of proceedings under the general procedure, the chairperson of the State Agency for Refugees must make a decision for granting or refusing a refugee status or a humanitarian status. The six-month period may be extended by the chairperson of the SAR for a further nine months or a total of up to 21 months, but only in case of insufficient data collected for that particular case. The applicant for protection must then be informed of the extension of the period either in person or by a message with acknowledgement of receipt.

In 92% (225 monitored cases) of the positive and negative decisions on applications for protection which were monitored throughout 2017 it was found that the period of time stipulated by the law was complied with but in the remaining 8% the decision was overdue with one or more than one months. In this respect, as a whole there is a compliance with the time limits for the delivery of decisions on applications for protection. A timely decision on the application for protection is a fundamental procedural guarantee for the applicants because it eliminates the legal uncertainty for the applicants with regard to their status and prospects, and any preconditions for irregularities and corruption in the course of the refugee procedure.

However, in 100% of cases when the decision on the application for protection was delivered outside of the six-month period there was no proper notification to the applicant of protection for the extension of the period for making a decision on their application.

2.2.2. **Country of origin information**

The monitoring found that only in 47% (115 monitored cases) during the year decisions on the applications for protection were based on up-to-date information on the country of origin compiled by SAR with proper citation of sources of information. In 28% (70 monitored cases) the information about the country of origin was relevant to the disposition of the decision but in the remaining 72% of the cases the information was irrelevant to the particular refugee story. In 100%, i.e. in all monitored cases, the information that was referred to was predominantly about general facts, data and circumstances, which had no connection with the specific case and in this sense are irrelevant to its proper settlement.

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\textsuperscript{26} Art. 75 of the ARA (amendment in State Gazette No.52/2007);
2.2.3. Factual findings

In 2017 in only 30% (75 monitored cases) the decisions on the applications for protection correctly identified the reasons for granting protection under the legal definitions of the law. The monitoring found that in 51% (126 monitored cases) the disposition of the monitored decision corresponded with the facts and circumstances presented in it. On the other hand, only 31% (77 monitored cases) of them examined all substantive issues. In the remaining 49% of the monitored cases a decision was made through the use of repetitive standard paragraphs for refusal of granting protection which do not correspond in any way with the presented individual story, with the facts and circumstances presented during the interviews or with other data related to the personality or the concerns of the applicant.

In none of the monitored cases (0%) did the decisions state clearly which circumstances the specific case were deemed to be established and which were not. Also, in none of the monitored cases (0%) did decision-making authority present any grounds for the reasons to accept as invalid the explanations of the applicant with regard to the uncertainties or the contradictions in the refugee story and this is done in a blanket and unsubstantiated manner. The monitoring shows that in only 2% (6 monitored cases) there was an accurate analysis in the decision of the possibility for the applicant to benefit from effective protection in their country of origin which is directly linked to the principle of non-refoulement of an alien to the territory of a state where their freedom or right to life is threatened as stipulated in art.33 of the 1951 Convention Relating to the Status of Refugees and adopted in art.4, para.3 of the ARA.

However, in none of the monitored cases throughout 2017 was there an assessment of the vulnerability of an unaccompanied child in decision on an application lodged by an unaccompanied child with regard to granting a humanitarian protection stipulated in the law (art.9, para.8 of the ARA).

The incorrect legal classification of the application for international protection, the lack of understanding of the relationship between the factual and legal findings and the illogical and false conclusions appear to be some of the most essential and significant issues in assessing the proceedings under the ARA and the issuance of ruling on the merits.

In 2017 there was a step back in the improvement achieved during the previous year with regard to the distribution of the burden of proof in the refugee proceedings. Thus, in 61% (150 monitored cases) the burden of proof was correctly determined and distributed and in 68% (166 monitored cases) the principle of interpretation of the doubt in favour of the refugee (in dubio pro fugitivo) was applied in practice.

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27 art.8 and art.9 of the ARA;
28 In 2016 in 79% (155 monitored cases) the burden of proof was correctly determined and distributed. At an identical rate - 79% (155 monitored cases), the principle of interpretation of the doubt to benefit the refugee (in dubio pro fugitivo) was applied in practice.
2.2.4. Legal findings

The monitoring found that there were no cases in which the protection was refused contrary to the opinion of the interviewer who conducted the assessment procedure for the application for protection. At the same time in only 29% (73 monitored cases) in the issuance of the decision there was a correct identification of the existing grounds pursuant to the 1951 Convention Relating to the Status of Refugees and in only 26% (64 monitored cases) there was the right identification the existing grounds for granting a humanitarian status.

2.2.5. Legal aid after receiving negative decisions

In 2017 legal aid after receiving negative decisions was not provided in any of the monitored cases (0%). From mid-2017 representatives from the municipal administration assigned legal aid lawyers to the unaccompanied children placed in the "Ovcha Kupel" dormitory when the latter served refusals. This standard shall be applied to all unaccompanied children seeking protection in all territorial units of the SAR in light of the fact that the unaccompanied children are in a particularly vulnerable situation and it is in principle impossible for them to organise by themselves their defence against a decision refusing to grant them international protection. Compliance with this legal standard is essential to the access to court and the implementation of the right of applicants for protection to organise in due time and in a timely manner their defence against the negative decision delivered on their application for protection.

2.3. Judicial proceedings in refugee cases

2.3.1. General profile

In 2017 there was monitoring of the judicial proceedings in appealing negative decisions in 93 legal cases in total, including 64 men, 22 women, 1 accompanied child and 6 unaccompanied children.

2.3.2. Equality and non-discrimination

No instances of discrimination or unequal treatment of the applicants for protection by the court or by the prosecutors participating in the administrative process was found in any of the monitored judicial proceedings.

2.3.3. Translation/Interpretation

In 96% (90 monitored cases) of the monitored court hearings they were held with the participation and assistance of an interpreter from the language spoken by the applicant for protection whose appeal was being reviewed in the respective judicial proceedings.

In 16% (15 monitored cases) the interpreters appointed by the court demonstrated insufficient knowledge of the relevant foreign language or of the Bulgarian language or lack of knowledge of the specific legal terms used which resulted in difficulties in the communication between the court and the appellant who was also an applicant for
In 2017 the court again did not take action to establish the interpreters' qualifications and in particular when they are not Bulgarian citizens the degree of proficiency in Bulgarian is not examined. The interpreter's difficulties in properly handling specific legal terms and incomplete translation lead to depriving the one seeking legal protection from fully taking part in the legal examination of their appeal against the refusal to be granted protection.

2.3.4. Participation of the Prosecutor's Office

The monitoring established the participation of the Prosecutor's Office in the court hearings on refugee proceedings in 86% (80 monitored cases). However, in 80% (64 monitored case) the participation of the Prosecutor's Office was perfunctory, with obvious lack of knowledge of the case, and also without a reasoned opinion on the specific appeal or case.

2.3.5. Judicial representation

In total in 70% (66 monitored cases) of the monitored cases the applicants for protection participated in the monitored judicial proceedings with the aid of a judicial representative. However, in 7% (7 monitored cases) the lawyers authorised to provide aid and defence in the judicial proceedings demonstrated a perfunctory attitude and a lack of preparedness to argue the case. In the remaining 91% (72 cases monitored) the lawyers in the refugee proceedings demonstrated preliminary preparation of the case and provided detailed arguments in support of the appeal against the refusal of international protection.

In 13% (13 monitored cases) a lawyer was assigned by the court at their request and in 14 of the monitored cases the applicants participated in the judicial proceedings of their appeal against the refusal without a judicial representative.

The monitoring established an increase in the cases in which the assigned lawyers had no perfunctory approach to the case they were entrusted with and instead had examined the case, submitted additional evidence and looked for in organising the best defence of person seeking protection.
Part Three: Recommendations

**Recommendation 1:** There should be an amendment and supplement of the Ordinance for the responsibilities and coordination among the state authorities adopted by a Decree by the Council of Ministers No.332 of 28.12.2007 broadening the circle of responsible authorities through the inclusion of the State Agency for National Security in order to create no only legal but also factual prerequisites for the unconditional compliance with the obligatory six-day deadline for registration of the persons who have lodged and application for international protection under detention conditions in compliance with the European legal standards.

**Recommendation 2:** Conducting the procedures for granting international protection at the SCTAF with the Migration Directorate of the Ministry of Interior should be discontinued. As for the persons for whom there are prerequisites for carrying out certain procedural actions while in detention there should be actions for their lawful placement in the closed-type territorial units of SAR.

**Recommendation 3:** The referral for the necessity of conducting a social interview in order to identify a potential vulnerability should be regulated as obligatory for all registered candidates for protection in SAR’s internal rules for conducting the proceedings.

**Recommendation 4:** Standard operating procedures (SOPs) for initial and subsequent identification and referral of vulnerable categories of persons should be drawn up and implemented and they should also be about the determination of the responsible administrative organs as well as for their functions and tasks in support for this category of persons, particularly with regard to unaccompanied minors seeking protection.

**Recommendation 5:** The State Agency for Refugees should organise annual trainings for representatives of the municipal administration and for social workers from the Child Protection Departments involved in procedures for granting international protection to unaccompanied children with regard to the specifics of these procedures and the specific needs of this vulnerable category.

**Recommendation 6:** The "special conditions" stipulated in the law for the accommodation of unaccompanied juveniles and minors during the conducting of the procedure for international protection should be provided for with the presence of 24-hour care.

**Recommendation 7:** A methodology for a comprehensive age assessment based on non-invasive medical, cognitive, and socio-psychological markers should be developed in implemented when drawing up the age-related assessment reports.

**Recommendation 8:** The delivery of negative decisions on applications for protection, and especially in respect of all unaccompanied juveniles and minors in all of the territorial units of SAR should be carried out in the presence of a lawyer to provide advice and assistance to the applicant for protection about the appeal and the access to court.
**Recommendation 9:** A separate questionnaire for conducting an interview should be developed tailored to the age of the juveniles and minors seeking protection and also separate interview rooms for conducting interviews with children should be designated in order to create an environment suitable for their hearing.

**Recommendation 10:** Assistance of the administrative courts should be engaged in drawing up guidelines for SAR’s decision-making and interviewing authorities with regard to the admissible evidence and evidence methods as well as to the distribution of the burden of proof in the procedures for granting international protection.

**Recommendation 11:** Necessary steps should be made in order to continuously provide translators from all languages spoken by candidates in all territorial units of the State Agency for Refugees in order to prevent translations during the procedure by translators from a language that the applicant does not understand or through the help of some other applicants for protection.

**Recommendation 12:** The information about the countries of origin generated by the Directorate International Activities should be made available on the website of SAR for the rest of the participants in the administrative procedure—representatives of the municipal administration, social workers, lawyers and assigned lawyers, judges and prosecutors.

**Recommendation 13:** Translations of the internal order regulations in the open-type and especially in the closed-type centres of SAR should be drawn up and they should be made available to the candidates for protection placed in them.

**Recommendation 14:** A mechanism should be provided by the SAR management for effective control of the obligation to provide in a timely manner written information to those seeking protection about their rights and obligations during the conducted proceedings, about the procedure that should be followed during the examination of their application for international protection and about their right to legal aid.

**Refugees and Migrants Legal Protection Programme**

**Bulgarian Helsinki Committee, 31 January 2018**