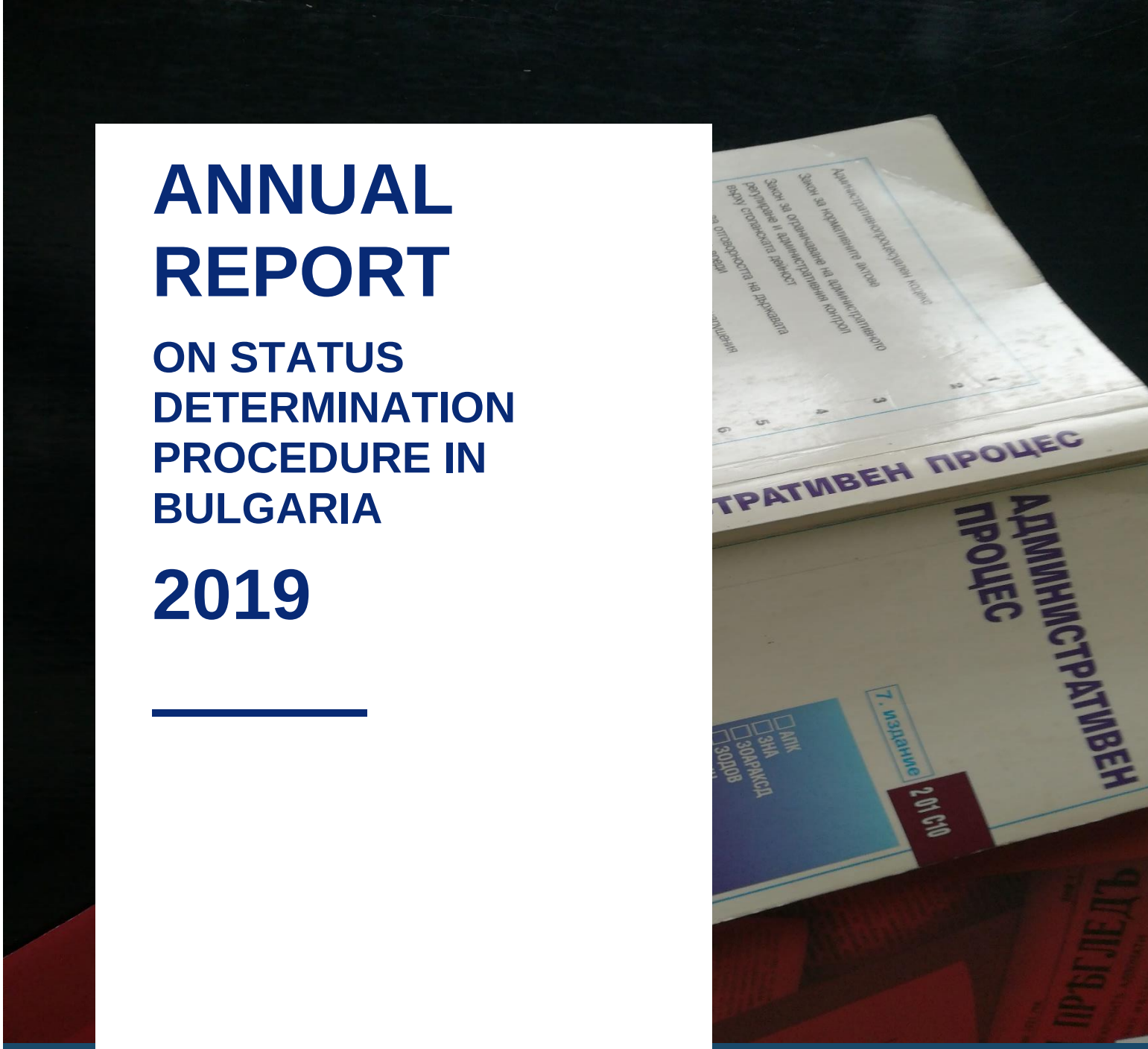

ANNUAL REPORT

ON STATUS DETERMINATION PROCEDURE IN BULGARIA

2019

31 JANUARY 2020

Bulgarian Helsinki Committee
Refugees and Migrants
Legal Programme

БЪЛГАРСКИ
ХЕЛЗИНКСКИ
КОМИТЕТ

Introduction

This report is based on monitoring with a focus on the institutional framework and the effective interaction among the various state authorities, as well as on the legal and practical standards for conducting the procedures, as they are regulated in the national asylum and refugee legislation[1], and the compliance of these standards with the principles of international protection and the general legal standards in the asylum acquis of the European Union (acquis communautaire).

During the period 1 January – 31 December 2019 the monitoring was carried out by three lawyers and it focussed on the procedural actions at the territorial units of the State Agency for Refugees with the Council of Ministers, the individual administrative decisions issued on applications for international protection and the court proceedings for examining appeals against such acts. A total of 595 procedural actions were subject to monitoring, which conform to the same number of applicants for international protection, including 424 men, 98 women, 31 accompanied children (9 boys and 22 girls), and 42 unaccompanied children (37 unaccompanied underage and 5 unaccompanied minor persons). All the cases of unaccompanied children are boys.

The types of procedural actions monitored include:

- 205 registrations (Pastrogor TC: 6; Harmanli RRC: 151; Banya RRC: 21; Ovcha Kupel-Sofia RRC: 4; Vrazhdebna-Sofia RRC: 10; Voenna Rampa-Sofia RRC: 7; Busmantsi SHTAF: 6).
- 170 interviews in the general procedure (Pastrogor TC: 3; Harmanli RRC: 123; Banya RRC: 0; Ovcha Kupel-Sofia RRC: 16; Vrazhdebna-Sofia RRC: 13; Voenna Rampa-Sofia RRC: 7; Busmantsi SHTAF: 8).
- 89 decisions on applications for international protection issued by SAR
- 131 court hearings on appeals against SAR's decisions

The monitoring was conducted on an ad hoc basis till April 2019 due to the lack of an accessible weekly schedule of the procedural actions planned by SAR, and after April 2019 on the basis of weekly schedules provided by the TC and RRC administrations in respect of which it was established, however, that they were not always complete and did not include all the registrations and interviews scheduled and conducted.

[1] Law on Asylum and Refugees, effective as from 1 December 2002r. (prom. SG No 54/2002);

Content

Part I. Methodology

The monitoring covers the procedural actions conducted by the State Agency for Refugees with the Council of Ministers (SAR) under the terms and the procedure laid down in the Law on Asylum and Refugees. Pursuant to the Law[2] SAR is the competent national authority which carries out the registration and examination of individual applications for international protection lodged on the territory of the Republic of Bulgaria, and takes decisions on these applications.

The monitoring encompasses all the phases of the procedural actions conducted by the administration starting with the registration of asylum-seekers, through the individual stages within the procedure, to serving the decision issued. The quality of the acts (decisions) delivered by SAR in the administrative procedure and in the court proceedings against negative decisions on applications for international protection are also part of the monitoring.

The monitoring takes place on a weekly ad hoc basis, and consists of gathering data about the ways, means and practices for conducting the procedures under LAR, which is entered in standard forms for interview evaluation (Annex 1), decision evaluation (Annex 2), and monitoring of court proceedings (Annex 3).

The monitoring of the procedure at the administrative stage takes place at SAR's territorial units, namely the Registration-and-Reception Centres (RRC) in the city of Sofia, the village of Banya, Nova Zagora municipality, and the city of Harmanli; the Transit Centre (TC) in the village of Pastrogor, Svilengrad municipality; SAR's closed-type unit[3] opened in 2016 in the 3rd block Special Home for the Temporary Accommodation of Foreigners (SHTAF) in Sofia (Busmantsi neighbourhood) for the purpose of conducting the procedure in detention within the shortest possible time, as well as at SHTAF with MOI's Migration Directorate where procedural actions for examining applications for international protection were still carried out in 2019.

The monitoring of the acts (decisions) issued by the administrative authority in these procedures takes place at SAR's territorial units, while the monitoring of court proceedings on appeals against negative decisions takes place at the relevant administrative courts and the Supreme Administrative Court as the last instance of cassation. In the comments made on the present report

In its comments on the present report, the State Agency for Refugees contested the basis for comparability between the results contained in the report and the situation in previous years.

[2] Art. 2 (3) of the Law on Asylum and Refugees (LAR);
[3] Art. 45б in conjunction with Art. 47 (4) of LAR;

BHC has acknowledged that an objective possibility for a statistical comparison requires that the findings in terms of deterioration or amelioration should, indeed, be based on the monitoring of an equal number of actions of a particular type. This is why as from 1 January 2020 the monitoring will be conducted on the basis of absolute quantitative indicators determined in advance by using a methodology developed by means of a statistical analysis.

Part II. Findings

2.1. Status determination procedure

2.1.1. Access to the procedure and registration

a). Time limit for registration

The national legislation regulates[4] the right to lodge an application for international protection both before an official from the State Agency for Refugees with the Council of Ministers (SAR) and before other state authorities who are obliged to immediately forward the application to SAR. The latter are usually MOI bodies involved in the administrative control of borders (General Directorate Border Police, GDBP) or the administrative control of foreign nationals (Migration Directorate, MD).

By way of rule, the applicants who have lodged a claim for international protection before an official of SAR shall be registered within 3 working days[5] from the lodging of the application.

When the application has been lodged before another state authority – in most cases MOI's bodies – the applicant shall be registered by SAR within 6 working days[6] from the lodging of the application.

SAR is obliged to carry out the personal registration[7] of the foreigner lodging an application for international protection by filling out a registration form, taking fingerprints, carrying out a personal search and a check of personal belongings, and opening an individual file for the applicant.

The 2019 monitoring established once again a failure to observe the registration time limit of 6 working days: the registration took 12 calendar days which equals to 10 working days, i.e. a delay by 4 working days. By way of comparison, registration in 2018 took 9 calendar days or 7 working days, with a delay of only 1 working day.[8] The main reason for the failure to observe the time limit was the practice of MOI's Migration Directorate not to release in due time those foreigners who had lodged a first application before the administration of SHTAF under the procedure laid down

[4] Art. 58, (3 and 4) of LAR;
[5] Art. 61 (2) of LAR;
[6] Art.58 (4) of LAR;
[7] Art. 61 (2-6) of LAR;
[8] Data about compliance with the registration time limit in previous years: 2017 - 9 working days, with a delay by 1 working day; 2016 – a delay by 1 working day; 2015 - 10 calendar days or 8 working days, with a delay of 2 working days; 2014 - 11 calendar days or 9 working days, with a delay of 1 working day; 2013r. - 45 calendar days or 33 working days, with a delay of 27 working days;

in Art. 58, paragraph 4 of LAR. This practice of MOI's MD resulted in the finding about deterioration in terms of the standards for the timely registration of the applications for international protection lodged before another state body, which made SAR put in place additional measures for the registration of these foreigners outside its territorial units in breach of the law[9]. As a result of this, out of all the foreigners filing an application at SHTAF, 25.5%[10] were released after the expiry of the 6-working day time limit laid down in the law, and 0.15%[11] were unlawfully detained for over 6 months.

b). Violation of non-refoulement

A considerably more serious violation of the Law, which was still observed in 2019, is the practice of SAR's bodies conducting status determination procedures in the centres for the administrative detention of foreigners (Special Homes for Temporary Accommodation of Foreigners, SHTAF). The monitoring at MOI's SHTAF in 2019 has established the unlawful detention of 36 foreign nationals in respect of whom SAR conducted procedural actions in violation of the national law. Out of these, 14 procedures were monitored, including 6 registrations and 8 interviews in the general procedure.

In terms of the detention grounds, SAR indicated the refusal to release the relevant applicants from the deportation centres by the administration in charge of them, namely the Migration Directorate of the Ministry of Interior (see the above 2.1.1.a).

The Migration Directorate of the Ministry of Interior, in turn, pointed out the need to detain the applicants for international protection for the purpose of additional personal checks and screening.

Similar to the findings for the previous year, a direct correlation was established between the valid identity documents held by these applicants and their unlawful detention by MOI in SHTAF after the 6-day time limit from the lodging of their applications. This shows that the purpose of the unlawful detention of applicants for international protection by MOI is the enforcement of their deportation, which is substantially facilitated by the possession of valid identity documents. Hence, the monitoring established a situation where applicants without documents and with indisputable identification were allowed access to the procedure and registration within the time limit prescribed by the Law, while applicants with valid documents and with identification were unlawfully detained by MOI.

[9] § 5 of the Additional provisions of the Law on Asylum and Refugees.
[10] 334 asylum-seekers out of a total of 1,331 foreigners lodging applications at MOI's SHTAF.
[11] 2 asylum-seekers out of a total of 1,331 foreigners lodging applications at MOI's SHTAF.

Detention for the purpose of the removal of an illegally residing foreigner[12], and the detention of an applicant[13] are subject to different legal regulations (Judgement of 30.11.2009, case К., C-357/09 P., EU: C: 2009:741, p. 45).

The coercive measures for the forced return (deportation) and detention of an illegally residing foreigner imposed by MOI shall *ex lege*[14] be suspended automatically from the time of lodging the application for international protection till the completion of the procedure with a final decision on the application by SAR and by the court.

The above is also confirmed by the case law of the courts, including the Supreme Administrative Court[15], which hold that the lodging of an application for international protection results in changing the applicant's status from an illegally residing foreign national into a person seeking international protection, the change of the legal status being automatic pursuant to Art. 6 (1) of Directive 2013/33/EU (Reception Conditions Directive).

In view of the above, the courts hold that as a result of the change in the legal status of applicants for international protections the legal basis for their detention in SHTAF ceases to exist, and MOI shall review the detention orders (Judgement of CJEU of 30.05.2013, case M. A., C-534/11, EU: C: 2013:343).

Nevertheless, in 2019 the Migration Directorate continued to carry out preparatory actions for the deportation of some applicants with first asylum claims in parallel with their asylum procedures while the applicants concerned were still in detention in the deportation centres for illegally residing foreigners. This has contributed to a substantial deterioration in terms of the safeguards for the applicants' entitlement to a correct and, above all, unbiassed examination of their applications for international protection.

In 2019 this unlawful practice of MOI escalated to reach the effective enforcement of the deportation of 4 applicants with first asylum claims in flagrant breach of the ***non-refoulement principle*** laid down in Art. 33 (1) of the Geneva Convention, Art. 9 of Directive 2013/32/EU (Procedure Directive), and Art. 4 (3), (b) "b", Art. 5 *in fine* of 2008/115/EU (return Directive), as well as Art. 4, Art. 3, and Art. 67 (1) of the Law on Asylum and Refugees.

[12] Laid down in Art. 44 (6) of the Foreigners in the Republic of Bulgaria Act (FRBA), respectively in Art. 15 of Directive 2008/115/EU;
[13] Laid down in Art.45b (1) of LAR, respectively in Articles 7 and 8 of Directive 2013/33/EU and Art. 26 of Directive 2013/32/EU;
[14] Art.67 (1) of LAR;
[15] Ruling No 12 of 17.01.2017 of the Supreme Administrative Court, 7th Division, in adm. case No 14218/2016;

c). Procedure at MOI's deportation centres

Pursuant to the national law, in cases of a real need to detain certain applicants for the purpose of their identification or a check in relation to a potential threat to the national security or public order[16], the Chairperson of the State Agency for Refugees can order detention at a detention centre or a closed-type facility of SAR[17].

Instead, SAR continued conducting procedures under LAR at MOI's deportation centres (SHTAF) in 2019 in violation of the legal provisions regarding the place for the detention of applicants who are in a status determination procedure[18], and the time limits set out in the law for detention during RSD[19].

All cases of status determination proceedings at MOI's deportation centres have been conducted by means of the accelerated procedure and have ended with a refusal to grant international protection. This is the real reason why the share of applicants with a first asylum claim detained by MOI for a period exceeding 6 months constitutes only 0,15%[20] of the applicants lodging asylum claims at MOI's deportation centres. In spite of the lower number of applicants affected compared to previous years[21], this decrease is actually due to the fact that SAR used the less favourable accelerated procedure with respect to them, alongside their unlawful detention by MOI. Even though the national courts have found this practice to be unlawful, the majority of them consider this violation of procedural rules as a minor one and refuse to punish it.

The above situation does not involve and does not affect individuals with a subsequent application for international protection, as the Law does not allow them to remain on the national territory[22], and such applicants can lawfully be subject to enforcement procedures for return/deportation.

d). Refusal of registration at SAR's registration centres

In 2019 SAR continued its unlawful practice, introduced in 2014, of refusing the registration of applicants for international protection when the latter appear in person and directly at one of its RRCs. While these are very few cases against the background of the also substantially reduced number of applicants, SAR continues to alert the local police department in view of the applicant's detention, as a result of which the applicant is detained at a MOI detention centre (SHTAF). It is only after being detained by MOI that the individual is allowed to lodge an application for international protection in writing which is forwarded to SAR. The monitoring has also established 2 cases where the potential applicants were even allowed to stay for the weekend at SAR's RRC,

[16] Art. 45b (2), p.3 of LAR in conj. with Art.8 (3), b."e" of Directive 2013/33/EC (Reception Conditions Directive);
[17] Art.45b in conj. with Art.47 (4) of LAR;
[18] Art.45b in conj. with Art.47 (4) of LAR;
[19] Art.45b (1) in conj. with Art.45d (5) of LAR;
[20] 2 of the total of 1,331 asylum-seekers lodging an application in detention in 2019;
[21] 2018: 0,5%; 2017: 1,66%;
[22] Art.76c (2) of LAR;

and on Monday morning they were arrested and detained by the police. In 2019 the court initiated 12 proceedings on appeals against SAR's refusal to register applicants for international protection upon appearing in person at one of SAR's RRCs; these cases relate to SAR's RRC in the city of Sofia[23]. The proceedings have been initiated against the Migration Directorate for repealing the unlawful orders for detention (forced accommodation) at SHTAF in respect of applicants meeting their obligations under Art. 13, paragraph 1, point 12 of LAR.

2.1.2. Vulnerable groups

SAR's staff are obliged to take into consideration the specific situation and the special needs of foreigners belonging to a vulnerable group at each stage of the asylum procedure[24].

LAR defines[25] "persons from a vulnerable group" as minor and underage persons, unaccompanied minor and underage persons, people with disabilities, elderly people, pregnant women, single parents with underage children, victims of human trafficking, persons with serious health conditions, persons with mental disorders, and survivors of torture, rape or other serious forms of mental, physical or sexual violence.

According to the standards set out[26], the early identification of an applicant's vulnerability or special needs should be done at the earliest stage possible, which in the context of the asylum procedure means that this identification should take place during or right after the personal registration at SAR's centres. SAR's position on this issue is that in conformity with the internal rules there are arrangements in place ensuring the identification of the applicant's potential belonging to a vulnerable group. In conformity with SAR's rules[27], experts from the Social Activities and Adaptation Directorate shall attend the initial medical screening with the aim to establish if the applicant belongs to a vulnerable group and if he/she has special needs, and the findings therefrom shall be attached to the registration form.

The monitoring has established that in 2019 SAR's social inspectors at all RRCs have effectively attended either the medical screenings or the registration of applicants for international protection. In addition, group sessions are held with newly accommodated applicants with the aim to brief them on the internal rules at the RRC and their rights and obligations during the procedure, this occasion being also used to carry out an initial identification of their health or social needs and potential vulnerabilities.

[23] 10 cases at Voenna Rampa and 2 cases at Ovcha Kupel.
[24] Art. 30a of LAR;
[25] §1, p. 17 of the Additional Provisions of LAR;
[26] http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/caring-for-the-vulnerable-in-asylum.html , and http://www.unhcr.org/4371fa162.pdf
[27] Art.29 (2) of SAR's Internal Rules;

According to SAR, a questionnaire is used whereby information is gathered for early identification[28] of applicants with traumatic experience in order to determine their special needs and refer them to adequate psychological or medical care. The monitoring has established that a social interview for identifying the needs for medical care and clothes was conducted in 72% (273 cases) of all cases monitored. While it has been established that in 7% (25 cases) of the cases monitored an assessment of the applicants' vulnerability was conducted according to the criteria laid down in LAR and SAR's internal rules for vulnerable persons, none of the files in the monitored cases contained information in writing about the vulnerability of the relevant applicant drafted by using one the approved forms and attached to the file by SAR's social experts.[29] As of today, the form for needs identification and assessment, the form for an individual support and referral plan, and the form for social counselling are drawn up by a social expert, and are kept in a social file, separately from the administrative file on the application for protection. According to SAR the proposed draft law on amendments to LAR will contain a new provision stipulating that these documents shall be included in the administrative file. If approved, this obligation will allow the determining authority to also assess vulnerability in parallel with the other factors and circumstances relevant to making the decision on granting or refusing international protection.

In 100% of the monitored cases of accompanied and unaccompanied children, the files in their cases do not have an attachment with the mandatory[30] social report from the Child Protection Department (CPD) within the relevant Social Assistance Directorate (SAD). The monitoring of court proceedings has found that such reports in respect of unaccompanied children are compiled by CPD in all cases; however, by way of principle, they are submitted only to the director of the relevant SAD, without being communicated to SAR, which is the reason why they were not included in the administrative file. This does not allow examining the reports and taking them into consideration in decision-making.

In 2018 MOI and the National Bureau for Legal Aid (NBLA) concluded a partnership agreement financed from the Asylum, Migration and Integration Fund, under which NBLA provides legal aid and administrative assistance for vulnerable groups in status determination procedures within a time frame till 31 January 2020.

By means of a bilateral protocol for the implementation of the Agreement[31], SAR and BNLA set out the ways to identify vulnerable persons in respect of whom legal aid is to be ensured. It has thus been agreed that SAR will identify a person as belonging to a "vulnerable group" based on

[28] Form for needs identification and assessment, form for an individual support plan and referral, and form for social counselling;
[29] See the above footnote 24;
[30] Art.15 (6) of the Child Protection Act;
[31] Protocol on implementing the activity "Providing legal assistance to vulnerable groups of third-country nationals" under Grant Agreement HOME/2016/AMIF/AG/EMAS/0046 "Enhancing the national capacity of the Republic of Bulgaria in the area of asylum, migration, and return" concluded on 1 March 2018;

the data gathered during the applicant's registration[32], the initial[33] or subsequent[34] medical screening, psychiatric consultation[35] or expert examination for age determination[36], as well as by any other means laid down in SAR or the Administrative Code of Procedure. When belonging to another vulnerable group has been identified and if the applicant expresses their wish, the responsible official from SAR will immediately draft and send an information note to the director of SAR's relevant territorial unit where the applicant is accommodated. If the applicant from a vulnerable group expresses their wish to receive legal aid, the director of SAR's relevant territorial unit where the applicant is accommodated or a person authorized thereby will send, within 3 days from receiving the information note, a letter by post, fax or e-mail to NBLA's Chairperson with the request to designate a lawyer who will provide legal aid within the framework of the agreement.

The monitoring has found that in 2019 procedural representation was ensured in 7 of the cases monitored within the framework of the agreement between SAR and NBLA. In 15 cases the legal aid was provided by a legal representative from an NGO, and in 1 case by an authorised lawyer, outside the organisations listed.

2.1.3. Procedures for unaccompanied children

a). Representation of unaccompanied children

The monitoring has also established for the year 2019 that none of the monitored cases of unaccompanied minor and underage children had a guardian/custodian appointed during the administrative procedure for examining the applications for international protection.

The findings show that the registration of unaccompanied children was not attended in any of the monitored cases by the representative of the municipal administration who plays the role of a legal representative of unaccompanied children pursuant to the now effective provisions[37] of the Law on Asylum and Refugees.

b). Special conditions for unaccompanied children

The Law stipulates that SAR shall ensure control and take measures to protect minor and underage asylum seekers from physical or mental violence, cruel, inhuman or humiliating treatment. Substantial progress in this respect has been observed in 2019, as the so-called "safe area" in Voenna Rampa RRC in Sofia became operational on 29 May 2019 – this safe area ensured 24-hour care, accommodation and specialized services for unaccompanied minor and underage

[32] Art.61 (2) of LAR;
[33] Art.61 (6) of LAR;
[34] Art.61 (5) of LAR;
[35] Art.63a (6) of LAR;
[36] Art.61 (3) of LAR;
[37] Art.25 (1) of LAR;

children. The designation and functioning of safe areas on the premises of SAR's centres is financed from the Asylum, Migration and Integration Fund (AMIF) and is implemented by the International Organisation for Migration. The functioning "safe area" in Voenna Rampa neighbourhood can accommodate 100 children and is located on the second, third and fourth floors of unit "C" of Sofia-Voenna Rampa RRC. The rooms and the sanitary facilities have been renovated and furnished; the area also has a space for 4 children with special needs located next to the social worker's office. The "safe area" has 24/7 video surveillance. The team working in this area consists of a coordinator, social workers who work on the basis of a schedule, including night shifts, interpreters, a psychologist and a lawyer (providing on-site services hour-for-hour).

As the Voenna Rampa hostel is designated for the accommodation of applicants from Afghanistan, Pakistan and Iran, it was only unaccompanied children of Afghan origin that benefited from this safe area in the hostel in 2019, Afghan children being the majority of unaccompanied children asylum seeking in Bulgaria. In spite of this and the vacancies for accommodation in the "safe area", unaccompanied children from this nationality continued to be accommodated in the mixed hostels at Ovcha Kupel RRC in Sofia, and most often at Harmanli RRC. According to SAR this is applied only in cases when children travel with relatives of theirs with whom they have a bond in conformity with the Reception Conditions Directive[38]. The unaccompanied children of Arab or another origin continued to be accommodated in the hostel at Ovcha Kupel RRC in Sofia which has a separate floor designated for them in the mixed centre, but without 24-hour care and service provision. The second "safe area" designated for unaccompanied children of Arab origin was not commissioned in late 2019; according to IOM's data the area will be commissioned by 20 January 2020. It is designed to accommodate 138 unaccompanied children. The area is located on one floor; each room has an individual sanitary facility and is furnished in line with the cultural traditions of the children accommodated. The area will have its own security provided by a licensed company. In spite of the measures taken and the progress achieved in the reception conditions, the unaccompanied children, except for those in the "safe area" at Voenna Rampa, were not ensured the special conditions of 24-hour care and supervision. Another pending issue concerns the provision of resources and trained staff for the operation of the "safe areas" after the end of IOM's project on 31 December 2020.

The absence of 24-hour care has proved to facilitate the access to unaccompanied children for persons involved in human smuggling and trafficking, and puts at risk the children's health and life. This is also confirmed by the high share of terminated cases for unaccompanied children who have abandoned their asylum procedures and have left Bulgaria.

c). Legal assistance

[38] Art. 24, §2, in conj. with Art. 23, §2, "a" and "d" of Directive 2013/33/EU (Reception Conditions Directive).

Within the framework of the bilateral agreement[39] during the procedure, SAR has committed to informing the mayors of the relevant municipalities about the possibility to use legal aid for minor and underage persons which will be provided by lawyers from NBLA. The request to NBLA for the provision of legal aid in respect of minor and underage persons is submitted by the representative under Art. 25 (1) the Law on Asylum and Refugees, with a copy to SAR's Chairperson.

As from late 2017 the representatives of the municipal administration submit requests for legal aid to NBLA in case SAR notifies them of a date fixed for serving a negative decision on the unaccompanied children they represent. The provision of legal aid to unaccompanied children seeking protection at the administrative stage was monitored in 6 cases

d). Determination of the best interest

SAR has forms approved for an expeditious determination of the best interest of the child within 24 hours from registration, and a full determination in the event of a (high or medium) risk identified in respect of unaccompanied children. There are no observations or findings for the year 2019 in relation to the use of these forms for their practical purpose, as they were not attached to the personal files and the administrative files of unaccompanied children.

None of the registrations monitored was attended by a social worker from the Child Protection Department, in spite of SAR sending a request therefor to the relevant regional Social Assistance Directorate. Furthermore, subsequent support or intervention by CPD in favour of unaccompanied children or other interventions, if needed, during the interviews or other procedural actions conducted with unaccompanied children has not been established in any of the cases monitored. Where social reports were drawn up, they either contained some irrelevant and formal recommendations or were not at all notified to the State Agency for Refugees or both. Hence, the 2019 monitoring has once again established the need for both urgent and follow-up regular upgrading of the knowledge and qualification of CPD's social workers on the specifics of working with unaccompanied children and the existing durable solutions with a view to improving the quality of children's protection in conformity with the standards for the protection of their best interest. The monitoring has found the absence of any improvement whatsoever in 2019 in terms of the standard for the protection services for unaccompanied children provided by the Child Protection Departments with the relevant regional directorates of the Social Assistance Agency.

e). Age determination

SAR has ordered 18 X-ray expert examinations for age determination in 2019, the conclusions in 100% of them being that the persons concerned are adults. The age determination conclusion,

[39] Ibid. P. 2.1.2 of this Report;

however, is not drawn by experts certified in that area but by the radiologist making the X-ray whose conclusion is summed up in one single sentence.

An additional issue is the age determination methodology applied in Bulgaria which uses a table from the early 20th century based on measurements taken in a reservation for the indigenous population in Northern America. Moreover, the wrist bone expert examination as an age determination method has been internationally acknowledged by the medical community as imprecise and with a deviation of up to 2 years.

In view of this, a particularly positive development in 2019 is SAR's active participation in an expert working group tasked with developing a complex age determination methodology based on non-invasive medical, cognitive and socio-psychological markers and in compliance with the basic procedural safeguards of unaccompanied children. The draft is expected to be submitted for discussion and approval by the government in 2020.

2.1.4. Provision of information

Pursuant to the Law[40] a foreigner who has applied for international protection shall be informed in writing in a language which he/she understands of the procedure to be followed and of his/her rights and obligations, as well as of organisations providing legal and social assistance not later than 15 days from the lodging of the application.

When the circumstances require so, this information may be provided in an oral form. In late 2015 the Law introduced the requirement[41] that if there are indications that a foreigner who is detained in a detention facility, a special home for temporary accommodation of foreigners or is at a border check-point, including in a transit area, may wish to file an application for international protection, such an alien shall be provided with information about the opportunity to do so. For this purpose, interpretation shall be ensured to facilitate access to the procedure.

In relation to the implementation of this obligation, the monitoring has established that in 91% (341 cases) of the cases monitored SAR's staff provided the initial information to asylum-seekers regarding the procedure and their rights and obligations by giving each asylum-seeker a copy of SAR's information brochure in a language the foreigner understands.

The monitoring shows, however, that only in 7 of the cases monitored (2%) the applicant was informed about the possibility to request that the interview be conducted by an interviewer of the same sex. It is only in 2 of the 54 monitored cases of women seeking international protection that this information was provided and the persons were acquainted with this right; the interview was conducted by a male interviewer in 22 of these cases. Furthermore, it is only in 1 of 54 cases

[40] Art. 58 (8) of LAR, Art. 8 and Art. 12 of Directive 2013/32/EU (Procedure Directive);
[41] Art. 58 (6) of LAR, Art. 8 and Art. 12 of Directive 2013/32/EU (Procedure Directive);

monitored that the female applicant was informed of the possibility to request that the interview be conducted with an interpreter of the same sex; the interpreter was a man in 41 of these cases.

This requirement with respect to SAR's staff has been introduced in the Law in order to allow the applicant to tell his/her story in a calm environment, which is particularly relevant in cases of survivors of sexual or other forms of abuse.

The applicant was duly informed that the data gathered during the registration and the interviews is confidential and will be used only for the purpose of the procedure in 319 of the cases monitored (85%).

The induction information has to be provided in writing in a language the applicant understands during registration and has to contain guidance regarding the applicants' rights and obligations. According to SAR, the applicants are acquainted with the regulation for accommodation and the internal rules of RRCs applicable to the applicants accommodated there, as well as with the instructions under the EURODAC Regulation regarding taking fingerprints, and the instructions about the rights and obligations of beneficiaries of international protection.

The monitoring has established that the obligation to provide information in writing upon the registration of asylum-seekers was met in 84% (172 cases) of the cases monitored. This obligation was not met in the remaining 16% (33 cases) of the cases monitored. The reason for this, as indicated by SAR's interviewers, is the availability of the information boards and the video monitors installed at places accessible to the applicants, which show animated videos with general information about the procedure conducted by SAR.

In 2019, SAR's territorial units did continue to show information video materials with explanations regarding the main aspects of the asylum procedure, as well as explanations about restrictions on movement in specific areas, the rules for exiting such an area and the consequences from the failure to observe the rules. In addition, video materials about the prevention of human trafficking produced by the National Commission for Combating Human Trafficking were shown on a daily basis. Under a joint initiative of SAR and UNHCR, coloured flyers in the main languages intended for children seeking international protection on the topics "*Hygiene*" and "*Who is who at the centre*", as well as information in a cartoon format on the topic "*My daily regime*" were distributed.

SAR's territorial units have boards with information about the place and the working hours within which the applicants can receive information about the state of their asylum procedure from SAR's staff.

The asylum-seekers who are accommodated in closed-type facilities receive information about the internal rules of the relevant facility and about their rights and obligations; the law requires

that this information be provided in a language which they understand[42]. The 2019 monitoring established that the internal rules are displayed on an information board next to the entrance into the building of block No 3 where the closed-type facility is located.

2.1.5. Evidence

The irregular gathering of information about the applicant in the absence of take-over certificates constitutes in all cases a serious breach of the procedural safeguards for the applicant's rights and the reasoned nature of the decision taken on the merits of the claim.

The monitoring of asylum procedures has found that in 2019 the applicants submitted documents in support of their refugee story in 76 of the cases monitored. In 61 cases (80%) SAR's determining or interviewing authority drew up a record certifying the take-over of these documents as a guarantee that the relevant documents will be taken into consideration in deciding on the claim; in the remaining 15 cases (20%) such a record was not drawn up. SAR's opinion is that the submission of evidence in the course of the interview does not require drawing up a special record therefor, as this can be reflected in the record of the interview; however, the above conclusion is based on the observation of the drawing up of a separate record for the submission of evidence, as well as of the recording of the submission of evidence during registration or the interview.

In 125 (63%) of the registrations monitored the applicants were informed of the need to submit any available evidence in support of their statements, while in the remaining 37% this information was not provided.

The monitoring shows that in 29 of the cases monitored, when the application was lodged before another state authority, the documents taken away from the applicant were not forwarded in a timely manner to SAR for the purpose of their procedure; hence, the applicant did not have the opportunity to substantiate their refugee story with evidence, which often resulted in the determining authority refusing to accept the applicant's statements as credible.

The monitoring has detected 4 cases in which the evidence presented by the applicants was not translated into the Bulgarian language by SAR so that the determining authority could consider them in examining the application.

The monitoring has established an ongoing issue with the evidence submitted by the applicants in 2019: copies of evidence were not accepted as credible in taking decisions on applications. Being in a specific situation, applicants are often unable to gather and present all their evidence in the original such as, for example, intimidating letters from non-state actors of persecution, civil status records issued by administrations that are no longer operational, etc. Such circumstances were not taken into consideration in the reasons in the decisions issued by SAR, which is a

[42] Art.45e (1), p.5 of LAR;

violation of the principle *in dubio pro fugitivo*[43]. SAR's position is that the submission of copies of evidence has never been the sole reason for not giving the benefit of the doubt to the particular evidence, as all evidence is assessed in conjunction with the other relevant facts and circumstances. In support of the opinion that the administrative body has appropriately considered the written and verbal evidence gathered within the administrative procedure, and the principle *in dubio pro fugitive*, SAR refers to the low percentage of court judgments revoking its refusal decisions in appeal proceedings[44], even though the statistics provided does not distinguish between the judicial review of first claims and repeated claims for international protection.

2.1.6. Interview

The interview in asylum procedures serves to gather verbal evidence, which is done by drawing up a record with the applicant's statements and their explanations about the reasons behind fleeing the country of origin and the need to seek international protection. The national legislation stipulates[45] that a date for the interview is fixed right after registration, and the foreigner lodging an application for international protection is notified of any follow-up interview in a timely manner.

What the monitoring has found is that such an invitation to an interview was served in 10 (20%) of the cases monitored in 2019. As for the remaining 39 cases (80%), the applicants either signed the invitation to an interview but did not receive a copy thereof, the copy being attached to their personal file, or did not at all receive a written invitation to an interview. The failure to fulfil the obligation to duly notify the applicant of the interview scheduled results in the applicant not appearing at the relevant interview for the only reason of being unaware of the arrangement made. However, the applicant's failure to appear at the interview is interpreted by SAR's staff as implicit withdrawal of the asylum application lodged in Bulgaria, and is used as grounds to suspend and, subsequently, terminate the procedure. SAR's position on this issue is that the practice over recent years has been that suspension of the procedure should not be ordered for the sole reason of failure to turn up for the interview but only in the event of cumulative data about the applicant leaving without permission the premises of the territorial unit where he/she is accommodated.

The interview is required to be held[46] in a language the applicant has requested, and when this is not possible – in a language the applicant understands. The monitoring has established a

[43] Art. 75 (3) of LAR;
[44] According to the statistics provided by SAR, 487 procedures were instituted against decisions issued by SAR's Chairperson and the interviewing authority in 2019, and a total of 440 judgment were delivered in these procedures at the appeal and cassation instances – out of these, the court dismissed the appeals in 382 cases (87%), and revoked SAR's decisions in 58 cases (13%). The statistics does not provide any details regarding the number of cases related to repeated applications, not first applications for protection.
[45] Art. 63a (1) et al. of LAR;
[46] Art. 63a (7) of LAR;

substantial improvement in this respect – it is only in 3 (1%) of the cases monitored that the procedural actions took place in a language that the applicant does not understand. Two of these were registration cases when interpretation was provided with a language the applicant could hardly understand, which did not allow adequate communication and a credible record of the statements and facts presented by the applicant. In the third case the interpreter assigned by SAR to the relevant interview did not have the necessary linguistic competence.

In spite of the few cases of such a violation, this breach of the legal requirement has to be eliminated, as the lack of adequate communication between the interviewer and the applicant is an absolute prerequisite for an incorrect assessment and, hence, an incorrect decision on the claim.

The Law requires audio or audio-visual recording and record keeping in the course of the interview[47]. The monitoring has found audio recording in 100% of the cases monitored in 2019, which confirms SAR's compliance with the standard introduced by law.

The record from the interview shall be read back to applicant, and shall be signed by the latter, the interpreter and the interviewing authority[48]. The 2019 monitoring has found that in almost half of the cases, namely in 46% (173 cases), the record from the interview conducted or the registration form from the initial registration of the asylum application lodged were not read back to the applicant before being signed by him/her. As the facts and circumstances relevant to the applicant's refugee story that are entered in the registration form might be incorrectly written down, the read-back of the registration form before the signing thereof is a safeguard for eliminating such imprecisions. This points to a deterioration of the standard against the year 2018 when this violation was detected in only 36% of the procedures monitored. The read-back of the record is an important safeguard to detect or clarify any discrepancies and contradictions among the statements made in the interviews, but, above all, to ensure that all the facts and circumstances stated are duly taken into consideration in their logical sequencing when deciding on the application.

2.1.7. Legal assistance

The state is obliged to ensure[49] that legal aid is provided to asylum-seekers in Bulgaria. By way of principle, natural persons who, due to the lack of financial resources, cannot afford a lawyer for legal counselling and representation are entitled to receive legal aid funded by the state. The state ensures the provision of legal aid through the National Bureau for Legal Aid (NBLA) with the Ministry of Justice.

[47] Art. 63a (3) of LAR;
[48] Art.63a (8) of LAR;
[49] Art. 23 (2) of LAR;

As from March 2013 applicants for international protection are included[50] in the category of individuals who are entitled to legal aid funded by the state.

In 2018 MOI and the National Bureau for Legal Aid concluded a partnership agreement financed from the Asylum, Migration and Integration Fund, under which NBLA provides legal aid and administrative assistance for vulnerable groups in status determination procedures within a time frame till 31 January 2020, a request being made for an extension till 31 January 2021.

A bilateral protocol for the implementation of the Agreement[51] between SAR and NBLA sets out the ways to identify vulnerable persons for whom legal aid is needed. The 2019 monitoring has once again established SAR's positive practice in terms of facilitating the provision of legal aid for vulnerable persons, including unaccompanied children, for the purpose of the asylum procedure and the serving of the decision on the claim.

Legal aid at the administrative stage was provided to 507 applicants with special needs from vulnerable groups in 2019. The monitoring covered 7 of them, 5 being cases of unaccompanied children seeking international protection. In another 15 cases monitored the legal aid was provided by a legal representative from an NGO, and in 1 case by a lawyer outside the organisations specialized in rendering legal aid to refugees.

2.2. Quality of the acts issued on applications for international protection

2.2.1. Timely issuing of the decisions on applications

The monitoring encompassed 89 cases, of which 33 decisions for granting humanitarian status, 26 decisions for granting refugee status, 14 decisions for terminating the procedure, 13 decision for refusing international protection, 1 decision for family reunification, 1 decision for revoking a decision for termination of a status, 1 decision on the admissibility of the claim.

The Law requires[52] that within 4 months from initiating the general procedure the interviewing authority shall draft an opinion which is submitted, together with the personal file, to the Chairperson of the State Agency for Refugees for taking a decision.

Within 6 months from initiating the general procedure the Chairperson of SAR shall take a decision whereby refugee status or humanitarian status is either granted or refused. The 6-month time limit may be extended by SAR's Chairperson with another 9 months or a total of 21 months, which

[50] Art. 22 (8) of the Legal Aid Act;
[51] Protocol on implementing the activity "Providing legal assistance to vulnerable groups of third-country nationals" under Grant Agreement HOME/2016/AMIF/AG/EMAS/0046 "Enhancing the national capacity of the Republic of Bulgaria in the area of asylum, migration, and return" concluded on 1 March 2018;
[52] Art. 75 of LAR (version in SG No 52/2007);

is admissible only in cases of insufficient data gathered in the relevant case. Under such circumstances the applicant shall be notified of the extension of the time limit either in person or by registered mail.

Based on the 89 positive and negative decisions on applications monitored in 2019, it has been found that the time limit prescribed in the law was observed in 89% (78 cases) of the cases monitored. This shows an improvement by 2% against the practice in 2018. This time limit was past due with one or more months in the remaining 11%. Therefore, the time limits for issuing decisions on applications were, by and large, properly observed, with minimum delays. The timely manner of taking decisions on asylum claims is a basic procedural safeguard for applicants, as it prevents legal uncertainty for the applicants themselves in terms of their status and prospects, as well as prerequisites for irregularities in the course of the asylum proceedings.

In addition to the findings from the observation, SAR points out that with a view to preventing delays in the procedure for granting international protection, the Internal Rules on Conducting the Procedure[53] provide for a 2-month time limit from the registration of the foreigner, while LAR provides for a 4-month time limit within which the interviewing authority shall draft an opinion and a decision. There are arrangements in place for the heads of departments within the territorial units to submit monthly reports to SAR's central administration whereby they provide information about delayed cases and the reasons therefor. The time limit for issuing the decision is one of the indicators that are monitored by the Quality of the Procedure for International Protection Directorate within the framework of the internal monitoring of the quality of the decisions. According to the reports from the heads of departments and the findings of the Directorate for 2019, no cases of delayed files have been established.

However, in 100% of the cases when the decision on the claim was issued past the 6-month time limit, the applicants concerned were not duly notified of the extension of the time limit for taking the decision on their claims in conformity with the Law. SAR's opinion is that, in spite of the failure to inform the foreigner, the applicants concerned had the opportunity to get informed on their own initiative via the arrangements in all of SAR's units for the provision of information about the stage reached in each individual procedure.

2.2.2. Country of origin information

The monitoring has found that in 41% (18 cases) of the cases monitored in 2019 the decisions on the applications were based on up-to-date country of origin information compiled by SAR with due reference to the sources of information. The currency of the information is assessed on the

[53] Art. 133 of the Internal Rules on Conducting Procedures for Granting International Protections at SAR with COM.

basis of the date on which it was gathered and the date of issuing the individual act in view of the explicit rule therefor laid down in the law[54].

The country of origin information used in 37% (52 cases) of the cases monitored was in line with the particular content of the decision issued, while this information was either partially or entirely irrelevant to the refugee story in the remaining 63% of the cases: for instance, data regarding the quantity indicators for wheat yield in a specific state and other similar ones. In the latter the information used consisted, for the most part, of general facts, data and circumstances which were not related to the particular case and were, hence, irrelevant to the proper decision on the claim.

67 of the cases monitored did not contain any information about the applicant's country of origin. These cases include, among others, decisions for granting refugee or humanitarian status. Even a positive decision granting international protection must contain all the elements, as required by the Law. In some of the cases monitored, while the interviewer's opinion contained a detailed examination of COI in relation to the credibility of the claim, this was not reflected in the final decision issued by SAR.

2.2.3. Factual findings

In 51% (45 cases) of the cases monitored in 2019 the decisions on the applications are based on a correct identification of the grounds for granting international protection in line with the legal definitions in the Law[55]. Furthermore, the monitoring has established that the substantive elements of the decision in 65% (59 cases) of the cases monitored conformed to the facts and circumstances presented therein, and in 72% (53 cases) of the cases all the substantive legal aspects were examined. In terms of the remaining 28% of the cases monitored, it has been found that the decisions consist of standard paragraphs used for the purpose of refusal, without any conformity whatsoever to the individual refugee story, the facts and circumstances from the file and the interviews or other data relevant to the applicant's personality or fears. A general improvement has been observed in terms of these indicators against the year 2018[56].

A serious regression has been observed compared to 2018, however, in terms of the decisions indicating clearly which of the circumstances are accepted as credible. In 2019 only 24% (16) of the decisions monitored [57] specify this, and only 8% (5 out of 60)[58] of the decisions monitored indicate which of the circumstances stated are not accepted as credible and for what reason. In 5 of the decisions monitored the determining authority does not indicate any reasons for not

[54] Art. 142, paragraphs 1 and 3 of the Administrative Code of Procedure.
[55] Art.8 and Art.9 of LAR;
[56] By way of comparison, in 2017 these indicators are 30%, 51%, 31% and 49%;
[57] 2018: 39%;
[58] 2018: 34%;

accepting as credible the applicant's explanations concerning the facts and circumstances in their refugee story; instead, the authority just expresses a simple denial without any arguments.

The monitoring has found that the decisions in only 3% (12 cases) of the cases monitored have a precise analysis of the possibility for the applicant to benefit from effective protection in their country of origin, which relates directly to the prohibition to return an asylum-seeker to the territory of a state where their freedom or life will be at risk – the non-refoulement principle laid down in Art. 33 of the 1951 Convention relating to the Status of Refugees, introduced in Art. 4 (3) of LAR.

In 4 out of 16 cases in 2019 where the asylum seeker was a representative of a vulnerable group, the applicant's vulnerability was taken into account in relation to the possibility to grant international protection on humanitarian grounds, as regulated by the Law[59].

The one-size-fits-all and repetitive format of presenting the situation in a particular country of origin without taking into account the specifics of each individual case, the absence of a logical correlation between the factual findings and the legal conclusions, which contributes to incorrect determination of the substantive grounds, are still the most serious issues in the process of examining claims and taking decisions on the merits in the procedures under LAR conducted by SAR.

SAR's position on the above conclusions is that if the omissions established by the monitoring had existed, the decisions would have been annulled by the court, reference being made once again to the revising judgments delivered by the court[60]. It should be noted, first and foremost, that the monitoring covers both categories of decisions: decisions that were appealed and those that were not appealed, i.e. decisions in respect of which the court was not seised for review and control. Furthermore, it should be reiterated that SAR's statistics on court judgments upholding and revoking administrative decisions in 2019 does not provide data about how many of the judgments upholding administrative decisions relate to first applications and how many relate to repeated applications, which precludes a general conclusion regarding the overall lawfulness of the procedures conducted under LAR.

The year 2019 shows a minimum regression against the previous year in terms of the approach to sharing the burden of proof in asylum procedures, and improvement has been observed in applying the principle *in dubio pro fugitivo*. Thus, in 75% (72) of the cases monitored the burden of proof was correctly determined and shared, and in 85% (71) of the cases monitored the principle *in dubio pro fugitivo* was applied in practice.

[59] Art.9 (8) of LAR;
[60] See footnote No 40.

The possibility for internal resettlement has not been addressed in any of the decisions monitored.

2.2.4. Legal conclusions

None of the files in the cases monitored has been established to contain information in writing about the decision being returned to the interviewing authority by the direct superior – the head of the relevant Procedure for Granting International Protection Department – within the so-called coordination procedure[61]. According to SAR's rules[62] in the event of a proposal for extending the time limit of the procedure, the direct superior, if in disagreement, shall draft a written opinion and shall issue specific written instructions to the interviewing authority about the necessary actions to be carried out. However, **there is no** such legal requirement in respect of the more important proposal for granting or refusing international protection. In these cases the direct superior, if in disagreement with the decision proposed, can refuse to coordinate it and can return it with instructions regarding the decision to be taken on the particular claim, without any trail being left in the administrative file as to whether and how many times the file has been returned to the interviewing authority by the direct superior, and whether the failure to fulfil the instructions of the latter has resulted in replacing the interviewer concerned. Nevertheless, the monitoring has detected cases of replacing the interviewer who had conducted the interview with the applicant, had acquired direct impressions about the case and gathered evidence relevant to the case. The negative decision on the application proposed by the second interviewer replacing the one initially assigned to the case was subsequently quashed by the court, and now the case is pending at the last cassation instance. Where the decision is returned for a repeated decisions or the interviewer is replaced, it is imperative that the file contains a reasoned written opinion with a view to the transparency of the procedure and the possibility for ex post control to be carried out by an administrative or a judicial body as a safeguard against corruption or potential administrative arbitrariness.

A correct identification of grounds under the 1951 Geneva Convention for granting refugee status was made in the decisions in only 55% (44) of the cases monitored, and a correct identification of grounds for granting humanitarian status (subsidiary protection) in 62%. The reason for these results stems from the incorrect assessment of the type of protection to be granted to the applicant, taking into consideration their statements and the factual grounds.

2.2.5. Legal assistance at the serving of negative decisions

Legal assistance at the serving of negative decisions on vulnerable applicants has not been provided in any of the cases monitored in 2019. It should be noted, however, that the majority of

[61] Art. 89, paragraph 5 of the Internal Rules on Conducting Procedures for Granting International Protections at SAR with COM.
[62] Art. 89, paragraph 8 of the Internal Rules on Conducting Procedures for Granting International Protections at SAR with COM.

the decisions monitored were served *in absentia* due to the impossibility to find the applicants at the address indicated by them.

As from the middle of 2017 representatives of the municipal administration attend the serving of decisions on unaccompanied children accommodated at Ovcha Kupel RRC in Sofia. The previous 2018 report recommended once again that this standard should also be applied with respect to all unaccompanied children seeking international protection at all of SAR's territorial units in view of the fact that unaccompanied children are in a particularly vulnerable situation and are unable to effectively take actions on their own to appeal a decision refusing international protection. Compliance with this legal standard is particularly important in terms of the access to justice for unaccompanied children seeking protection.

It should be pointed out, however, that, when legal aid is appointed, the absence of the municipal representative for an unaccompanied child will not be that relevant, as the child's rights will be duly protected, and the child will be counselled and assisted in taking the necessary legal actions in view of a potential appeal. Nevertheless, the assistance of the municipal representative of the unaccompanied child will still be required for the due signing when the decision is served or for signing the appeal claim.

Therefore, the legal assistance provided to vulnerable persons is a substantial improvement in 2019, the recommendation being that it should be ensured for all applicants or at least at the serving of a negative decision

2.3. Judicial review

2.3.1. Statistics

The 2019 monitoring of judicial reviews of negative decisions consisted of a total of 131 court proceedings, of which 100 men, 22 women, 5 accompanied children, and 4 unaccompanied children.

2.3.2. Equal treatment and non-discrimination

The monitoring has detected discrimination and unequal treatment of the applicants by the court in one of the court proceedings monitored.

2.3.4. Interpretation

In 27% (35 cases) of the cases monitored the court hearings were conducted with the participation and the support of an interpreter with the language spoken by the applicant on whose appeal the relevant court proceedings had been initiated.

According to the findings from the monitoring of the Administrative Court-Sliven, the practice of the court is not to summon an interpreter for the first court hearing; it is when the claimant appears in person for the hearing of the case that the court schedules another date and summons an interpreter. Under these circumstances, however, the communication between the court and the applicant is not adequate, which causes the applicant's inability to properly understand what is going on in the course of the hearing and the absence of due notification of the next court hearing. As a result of this, the applicant does not appear at the hearing scheduled, which is interpreted by the court as lack of interest in the proceedings and affects the judgment that it subsequently delivers. This practice constitutes a serious breach of the rules of judicial proceedings, and does not allow applicants for international protection to fully participate in the procedure for examining their appeals against the refusal for granting protection.

2.3.5. Involvement of the prosecutor's office

The monitoring has established participation of the prosecutor's office in court hearings on asylum cases in 98% (128 cases) of the cases monitored. However, in 91% (105 cases) of the cases monitored the participation of the prosecutor's office was formal, the prosecutors were not familiar with the case and did not submit an opinion with at least a minimum level of reasoning on the particular appeal or case.

2.3.6. Procedural representation

According to the data provided by SAR[63], a total of 487 judicial proceedings were conducted in 2019, without a distinction being made based on first and repeated claims. According to SAR's data, 440 judgments were delivered in these procedures, out of which 385 judgments at the appeal instance, and 55 at the cassation instance. Out of these, 27%[64] were monitored in 2019. However, the monitoring covered only proceedings instituted on first applications, not on repeated ones. The absence of such a breakdown in SAR's data does not allow indicating the precise percentage ratio of the proceedings monitored. This does not allow, either, drawing a reliable conclusion on the predominant lawfulness of the procedures under LAR at the administrative stage, as SAR claims (see the above 2.2.3, paragraph six).

The applicants for international protection participated in the court hearings monitored with the support of a procedural representative in a total of 93% (123 cases) of the cases monitored.

In 4% (5 cases) of the cases monitored the lawyers authorized or appointed to provide support and defence in the court proceedings acted in a formal manner and were not prepared to ensure the expected defence in the particular case. As for the remaining 95% (110) of the cases

[63] SAR, Comments on the Annual Report on Monitoring the Procedures under LAR of 10 March 2020.
[64] 131 out of a total of 487 cases.

monitored, the lawyers in the asylum proceedings had prepared in advance and submitted detailed arguments in support of the appeal against the refusal to grant international protection.

In 65% (85) of the cases monitored legal aid was appointed by the court upon the applicants' request. In 8 of the cases monitored the applicants participated in the court proceedings initiated on their appeal against a negative decision without a procedural representative, and in 5 of them legal aid was appointed, but the lawyer did not appear at the court hearing.

The monitoring has established a persisting practice of appointing a considerable number of lawyers for participation in asylum cases, including lawyers from NBLA, who are not familiar with the refugee law and are, as a whole, unable to provide adequate support to asylum-seekers. Nevertheless, the monitoring has also established a stable trend in terms of the growing number of cases where the lawyers appointed from the legal aid have a professional and responsible attitude to the cases assigned to them, their legal representation shows that they familiarized themselves with the case in advance, they submit additional evidence and try to find ways to ensure the best possible defence for the asylum-seeker they represent.

According to the data provided about judicial proceedings at the appeal instance, 12%[65] of SAR's decisions have been revoked in 2019, and 88%[66] of the appeals have been rejected as unfounded. At the cassation instance, 16%[67] of SAR's decisions or the appeal judgments upholding them have been revoked, and 84%[68] of the cassation appeals have been rejected as unfounded. However, the percentage ratios of the judgments delivered at the appeal instance have been calculated taking into account all the procedures, i.e. both procedures related to lawfulness instituted on appeals against refusals on first claims for international protection, and procedures related to admissibility instituted on appeals against the refusal to initiate an administrative procedure on a repeated claim. Therefore, such judgments do not allow drawing a general conclusion on the lawfulness of the procedure under LAR at the administrative stage based on the results from the judgments delivered by the court.

[65] 27 judgments annulling administrative decisions out of a total of 217 judgments delivered at the appeal instance in 2019 (Administrative Court-Sofia – 22 out of a total of 85 judgments; Administrative Court-Haskovo – 5 out of a total of 130 judgments, and Administrative Court-Sliven – 0 out of a total of 2 judgments).

[66] 190 judgments upholding administrative decisions out of a total of 217 judgments at the appeal instance in 2019(Administrative Court-Sofia – 63 out of a total of 85 judgments; Administrative Court-Haskovo – 125 out of a total of 130 judgments, and Administrative Court-Sliven – 2 out of a total of 2 judgments).

[67] 9 judgments annulling appeal instance judgments out of a total of 55 judgments delivered by the Supreme Administrative Court.

[68] 46 judgments upholding appeal instance judgments out of a total of 55 judgments delivered by the Supreme Administrative Court.

Part III. Recommendations

Recommendation 1. Discontinue the practice of conducting asylum procedures at SHTAF with MOI's Migration Directorate, and, instead, take actions for accommodation at SAR's closed-type facilities when this is applicable in view of the grounds laid down in the Law

Recommendation 2. Merge the social interview carried out by SAR's staff with the aim to identify the asylum-seeker's needs and the initial and subsequent identification of potential vulnerabilities into one complex assessment of the case, and attach the conclusions therefrom in writing to each file, which will allow taking them into consideration in examining the case and taking a decision on the claim. The conclusion about the individual belonging to a vulnerable group should also be accessible to the competent court when hearing appeals against a refusal to grant international protection, so that the court can decide on taking into consideration the vulnerability, in particular in cases of unaccompanied children.

Recommendation 3. Supplement the Standard Operational Procedures (SOP) developed by SAR for the purpose of initial and subsequent identification and referral of vulnerable persons with the obligation for the social report drafted by the Child Protection Departments with the Social Assistance Directorates to be part of the applicant's personal file, which will allow the decision-maker to take into account all the relevant facts and circumstances.

Recommendation 4. SAR should involve the social workers from the Child Protection Departments with SADs in whose jurisdiction SAR has a territorial unit in the training organized by SAR, so that the social workers can get acquainted with the characteristics of the asylum procedure and the specific needs of this vulnerable category. It is recommended that an agreement be reached with the Social Assistance Agency on social workers complying with their obligation to regularly monitor the child outside the procedural actions in order to ensure control over the reception conditions and prescribe measures in conformity with the general child protection regime, if needed.

Recommendation 5. Ensure that underage and minor children are accommodated only in those of SAR's territorial units which have implemented, as required by the law, the "special condition" for accommodation providing 24-hour care and security.

Recommendation 6. Facilitate the development and introduction of a methodology for complex age determination based on cognitive and socio-psychological markers and non-invasive expert examinations in compliance with all procedural standards.

Recommendation 7. Ensure that the country of origin information generated by the International Affairs Directorate is made accessible on SAR's website for the other participants in the administrative procedure – representatives of the municipal administration, social workers, lawyers and legal aid, judges and prosecutors.

Recommendation 8. Discontinue the unlawful practice of approaching MOI's authorities in relation to the detention of applicants for international protection in cases when they appear in person at SAR's territorial units.

Recommendation 9. Ensure a full weekly schedule of the procedural actions planned by SAR in view of the monitoring on the procedures.

Recommendation 10. Supplement the text of the induction information presented at the beginning of interviews in order to ensure a broader coverage of the applicants' rights during the procedure.

Recommendation 11. Ensure the provision of legal assistance at the serving of negative decisions on applicants belonging to vulnerable groups.

Annexes:

I. State Agency for Refugees Comment on the Annual Report on Monitoring the Procedure from 31 March 2020.

II. Forms for monitoring the procedural actions at the administrative and judicial stages (registration, interview, serving the decision, and judicial proceedings) and for evaluating the decision of the administrative body.