

2016

ANNUAL REPORT

ON

STATUS DETERMINATION

PROCEDURE IN BULGARIA¹

Bulgarian Helsinki Committee

Refugees & Migrants Legal Programme



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 legislation¹, and the compliance of these standards with the universal principles of international protection and the minimum legal standards in the asylum acquis of the European Union (acquis communautaire).

The monitoring during the period 1 January – 31 December 2016 was carried out with respect to a total of 675 procedural actions at the transit centres (TC), registration-and-reception centres (RRC) of the State Agency for Refugees (SAR) with the Council of Ministers, decisions issued on applications for international protection, and the quality of the court proceedings for examining appeals against SAR's decisions.

The number of procedural actions monitored conforms to the number of persons seeking international protection, including 408 men, 166 women, 37 minors, and 64 unaccompanied minors.

The types of procedural actions monitored include:

- 236 registrations (87 at Pastrogor TC & at Harmanli RRC, 31 at Banya RRC, 118 at Sofia RRC);
- 203 interviews in the general procedure (114 at Pastrogor TC and at Harmanli RRC, 76 at Banya RRC and 13 at Sofia RRC);
- 197 decisions on applications for international protection issued by SAR ;
- 39 court hearings on appeals against SAR's decisions.

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

¹ Law on Asylum and Refugees (LAR), effective as from 1 December 2002 (Prom. SG No. 54/2002), last supplemented, SG No. 103/27.12.2016;

Content

1. Part One: Methodology of the monitoring
2. Part Two: Results and findings
 - 2.1. Status determination procedure
 - 2.1.1. Access to registration and the procedure
 - 2.1.2. Vulnerable groups
 - 2.1.3. Provision of information
 - 2.1.4. Evidence
 - 2.1.5. Quality of the actions for examining the applications for international protection
 - 2.1.6. Legal assistance
 - 2.1.7. Procedures in respect of unaccompanied minors
 - 2.1.8. Procedures in respect of applicants returned under the Dublin Regulation
 - 2.1.9. Reception conditions
 - 2.2. Quality of the acts issued on the applications for international protection
 - 2.2.1. Issuing in due time of the decisions on the applications for international protection
 - 2.2.2. Country of origin information
 - 2.2.3. Factual findings
 - 2.2.4. Legal findings
 - 2.2.5. Legal assistance at the serving of negative decisions
 - 2.3. Court proceedings in relation to refugee cases
 - 2.3.1. General profile
 - 2.3.2. Equal treatment and non-discrimination
 - 2.3.3. Translation/Interpretation
 - 2.3.4. Involvement of the prosecutor's office
 - 2.3.5. Procedural representation
3. Part Three: Recommendations

Part One: Methodology of the monitoring

The monitoring covers the procedural actions conducted under the terms and the procedure laid down in the Law on Asylum and Refugees by the State Agency for Refugees (SAR) with the Council of Ministers. Pursuant to the Law² SAR is the competent national authority which carries out registration, examines individual applications for international protection lodged on the territory of the Republic of Bulgaria, and takes decision on these applications.

All the phases of the procedural actions carried out by the administration from the registration of the person seeking international protection, through the individual stages within the procedure, to the serving of the decision fall within the scope of the monitoring. As some stages of the procedure (Dublin procedure, accelerated procedure) are no longer mandatory as a result of the latest amendments to the Law³, they are carried out, and respectively monitored, only where the data available requires the procedure. The quality of the acts (decisions) issued by SAR in the administrative procedure is also subject to the monitoring.

The monitoring methodology includes weekly ad hoc gathering of 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 administrative stage takes place at SAR's territorial units: the Registration-and-Reception Centres (RRC) in the city of Sofia, the village of Banya (Nova Zagora municipality), and the town of Harmanli, as well as at the Transit Centre (TC) in the village of Pastrogor (Svilengrad municipality). Pursuant to the Law⁴ the only difference between transit centres and registration-and-reception centres is the possibility to accommodate persons who have applied for asylum before the President of the Republic in RRCs.

The latest amendments of the Law made in late 2015 and effective as from 1 January 2016 allow SAR to open under its responsibility closed-type centres or spaces where the procedure for international protection is conducted under the conditions of detention and deprivation of liberty, and for the shortest period possible. The first such space was opened in the former 3rd block of Sofia detention center under the Directorate of Migration with the Ministry of Interior (Special Home for Temporary Accommodation of Foreigners) in Busmantsi neighbourhood on 10 September 2016. A second such space was opened in the former sports facility of Elhovo RDBP (Regional Directorate of Border Police) on 25 November 2016, which operated temporarily till 30 December 2016. The monitoring of the acts (decisions) issued by the administrative authority in these procedures and in the court proceedings on appeals against negative decisions is carried out on the premises of the relevant regional administrative courts and the Supreme Administrative Court.

² Art. 2 (3) in conjunction with Art.1A (2) of LAR;

³ SG, issue 101 of 22 December 2015, effective as from 25 December 2015;

⁴ Art. 47 (2), items 1 and 2 of LAR;

Part Two: Results and findings

2.1. Status determination procedure

2.1.1. Access to the procedure and registration of the application for international protection

The national law regulates⁵ the right to lodge an application for international protection before an official of the State Agency for Refugees with COM, and before other state authorities who are obliged to immediately forward the application to SAR. The claim for international protection may be made in an oral, written or another form, and, where needed, translation/interpretation is provided. An application which is not made in writing is recorded by the competent official and is signed or otherwise authenticated by the applicant and by the translator/interpreter.

The applications for international protection lodged before an official of the State Agency for Refugees shall be registered within 3 working days from the lodging thereof. Where the application is submitted before other state authorities that are not competent to conduct registration under the national law but may receive such applications, the time limit for registration shall be 6 working days from lodging the application. These other state authorities in Bulgaria are most often MOI's bodies, in particular General Directorate Border Police and Migration Directorate whose staff receive applications for international protection from foreigners detained in the deportation centres (the so-called Special Homes for Temporary Accommodation of Foreigners, SHTAF) on the grounds of a lack of valid identity documents or irregular stay on the national territory. The Law sets out the obligation⁶ for SAR to register the applicant for protection in person, take fingerprints, carry out personal search actions, and open a personal file for the applicant. Therefore, the law requires that the time limit of 3, respectively, 6 working days shall be applied with respect to the personal registration of the applicant for international protection, and this time limit shall run as from the lodging of the application.

In 2016, 93% of the applications for international protection were lodged before a state authority other than the State Agency for Refugees with COM which is the competent authority for registering and examining such applications. In 2016 SAR's administration registered the applications for international protection of 19,419 persons out of the total 20055 applicants on the territory of the Republic of Bulgaria. 34% of them (6,635 persons) made their applications before Border police at the border, and 55% (10,914 persons) before the Migration Directorate at the deportation centres (detention centers) - SCTAFs.

⁵ Art. 58 (3 and 4) of LAR;

⁶ Art. 61 (2) of LAR;

62% (2,226 persons) of the persons lodging applications at the border were ensured direct access to the procedure by being immediately transferred to SAR by Border Police. For the sake of comparison, in 2015 this share stood at only 8%. The remaining 38% (885 persons) of those making an application at the border were sent to the Distribution Centre (DC) with the Migration Directorate in the town of Elhovo; after an average 16-day stay at the DC⁷ they were transferred to SAR's transit or registration-and-reception centres for registration, issuing of documents and all the relevant actions involved in the refugee procedure for examining their claim and issuing a decision on their application for protection.

In the cases of applications lodged before the Migration Directorate by foreigners apprehended on the national territory or in attempting to leave it, the average duration of detention at detention center in 2016 was 9 calendar days before the release of the applicants for international protection and their transfer to SAR's registration-and-reception centres. Therefore, an average delay by 1 calendar day against the 6-working day time limit for registration under the Law has been established for the year 2016. For the sake of comparison, this delay was 10 calendar days in 2015, 11 calendar days in 2014, and 45 calendar days in 2013. Just 0.6%⁸ of those applying for international protection in the deportation centres were detained for more than 3 months, and 0.3%⁹ spent more than 6 months in detention before being released and transferred to one of SAR's centre for registration and opening a procedure. In respect of 66% of the applicants¹⁰ the access to registration and the procedure was ensured only after a complaint was filed before the court in relation to detention at detention center exceeding the 6-working day time limit.

The arrangements for the registration of applications outside working hours – shifts till 8.00 p.m. on working days – implemented by SAR in mid-2015 was by and large observed in 2016. It should be noted, however, that the system of officers available on call at weekends and on bank holidays was not operational at Sofia RRC – Ovcha Kupel Centre, Harmanli RRC, and Pastrogor TC.

Forwarding the documents¹¹ collected or issued by other state authorities to SAR, together with the application for international protection, was generally ensured in due time and without serious violations. The monitoring has found that the accompanying documents were not forwarded and received by SAR in due time only in 2% (8 cases monitored).

⁷ 7 days on average in 2015;

⁸ 75 persons seeking protection out of the total of 10,914 persons applying for international protection in the deportation centres of MD-MOI in 2016;

⁹ 43 persons seeking protection out of the total of 10,914 persons applying for international protection in the deportation centres of MD-MOI in 2016;

¹⁰ 78 persons out of the total of 118 long-term detentions;

¹¹ Art. 60 (1 and 2) of LAR in conjunction with Art. 10, items 2 and 3, and Art. 16, item 3 of Ordinance on the Organisation and Coordination of State Authorities;

2.1.2. Vulnerable groups

SAR's staff are obliged to take into consideration¹² the specific situation and the special needs of applicants from vulnerable groups in each phase of the status determination procedure. According to the definition laid down in the Law¹³ "persons from a vulnerable group" include minor persons, unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parents with minor children, victims of human trafficking, people with serious health problems, persons with mental disorders, and persons who are victims of torture, rape or other serious forms of mental, physical or sexual violence.

The 2016 monitoring has established the absence of a mechanism for early identification and referral of vulnerability amongst applicants for international protection and their specific needs. The standards in place¹⁴ require that such identification be done as early as possible, which, in the context of the Bulgarian procedure, means identifying vulnerabilities during or right after the applicants' personal registration at SAR's centres. Some of SAR's centres introduced the practice of group consultations with newly accommodated applicants for international protection with a view to identifying their urgent social needs. Other centres ensured more social workers from SAR's pay-roll staff for the purpose of attending the registration of applicants for international protection. In almost half of the cases monitored, however, the applicants shared that their vulnerability had not been identified, while the monitoring has found that a social interview with the applicants for protection was conducted in 41% (179 cases monitored). UNHCR and its partners continued their efforts to update the existing Standard Operating Procedures (SOP)¹⁵ for response in the event of sexual and gender-related violence throughout the year.

UNHCR, BHC, BRC and other non-governmental organisations continued insisting, even though without substantial results, that such mechanisms should also be introduced for the identification, referral, protection and support of vulnerable persons, in particular unaccompanied refugee children. This endeavour, however, failed to achieve its aim till the end of the year – which was the fourth successive year since 2013 – due to the lack of support from the relevant directorate within SAR. This is why, vulnerable persons were identified on an *ad hoc* basis, and, in most cases, as a result of alerts from non-governmental organisations working with refugees at SAR's RRCs, in most case social workers of the State Agency for Refugees, and social mediators of the Bulgarian Red Cross, as well as individual advocates and lawyers.

¹² Art. 30a of LAR;

¹³ §1, item 17 of the Additional Provisions of LAR;

¹⁴ <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/caring-for-the-vulnerable-in-asylum.html> , as well as <http://www.unhcr.org/4371fa162.pdf>

¹⁵ Standard Operating Procedures for Prevention of and Response to Sexual and Gender-Related Violence, UNHCR, Reg. No 630 of 27.02.2008 at SAR with COM;

2.1.3. Provision of information

The Law stipulates¹⁶ that an applicant for international protection shall be informed in writing in a language he/she understands about the terms for lodging the application, the procedure to be followed, and his/her rights and obligations, as well as the organisations providing legal and social assistance to third country nationals within a maximum of 15 days from lodging the application. Where the circumstances so require, the information may be provided in an oral form. Furthermore, in late 2015 the Law introduced the requirement¹⁷ that if there are signs indicating that an alien who is in a detention facility, a special home for the accommodation of aliens or 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, translation shall be ensured in order to facilitate access to the procedure. In terms of the implementation of this obligation, the monitoring has found that SAR's staff provided the applicants for international protection with initial information about their procedure, and their rights and obligations in 63% (275 cases monitored). The monitoring has found that the obligation to provide information in writing or, in the case of illiterate applicants, in an oral form has been met in 66% (289 cases monitored). SAR has failed to deliver on this obligation in the remaining 34% (150 cases monitored), the explanation and the argument being the need to save resources for translation and printing of the information materials, and the fact that many of the applicants abandon their procedures in Bulgaria, which results in suspending and, subsequently, terminating them.

2.1.4. Evidence

The Law¹⁸ does not allow that data about third country nationals who seek or have received international protection be gathered by and provided to agents of persecution. Except for this explicit prohibition laid down in the Law, SAR has the right to gather any written¹⁹, oral²⁰ or other types of evidence, including by means of expert examinations²¹ which are regulated and admissible in administrative proceedings²². On the other hand, the applicants for protection themselves are obliged²³ to present, in a timely manner, any written or other evidence they have in order to substantiate their claim for international protection. The Law limits the time-frame for the submission of evidence to the point of deciding on the application; the applicant's failure to meet this obligation may have a negative effect on the decision, as such potential evidence will not be taken into consideration.

¹⁶ Art. 58 (8) of LAR, Art. 8 and Art. 12 of Directive 2013/32/EC (Asylum Procedures Directive);

¹⁷ Art. 58 (6) of LAR, Art. 8 and Art. 12 of Directive 2013/32/EC (Asylum Procedures Directive);

¹⁸ Art. 63 (4) of LAR;

¹⁹ Art. 63a (1) of LAR;

²⁰ Art. 63a (5) of LAR;

²¹ Art. 61(3 and 4) of LAR;

²² Art. 37 – 46 of the Administrative Code of Procedure (ACP);

²³ Чл. 63a (2) of LAR;

The monitoring of the status determination procedures has found that in 2016 documents in support of their statements were presented by the applicants in 21% (91) of the cases monitored. In 82 of these cases a record was drawn up to guarantee that the documents presented will be taken into consideration in making the decision on the application, while in the other 9 cases the evidence was not duly gathered and the act of gathering the evidence was not recorded in a take-over record. In spite of being low, this percentage is still inadmissible, as the failure to meet the obligation for drawing up a record for evidence gathering constitutes a violation of the principle of veracity²⁴ in administrative proceedings, and, in particular, in the procedure for granting international protection²⁵.

The reason is that it allows a situation where SAR might not assess and take into consideration these facts and circumstances in making the decision on the application for protection, while the applicant does not have safeguards whereby he/she can prove the timely submission of the relevant evidence to the administrative authority. This violation acquires a serious nature in the status determination procedure. The applicants are unable to gather the necessary evidence relevant to the circumstances stated in their claim, as these circumstances are presumed to have occurred in an extraterritorial jurisdiction, and the official gathering of evidence from the authorities of the country of origin is explicitly prohibited. This is the reason why the benefit of the doubt principle in respect of the applicant (*in dubio pro fugitivo*) has also been established in status determination procedures²⁶. Therefore, SAR's failure to ensure that the evidence presented by applicants for protection is duly gathered by drawing up a take-over record in all cases constitutes a serious violation of the procedural safeguards for the rights of applicants for international protection as it undermines the substantiation of the reasoning of the decision on the merits issued in the respective cases.

2.1.5. Quality of the actions for examining the application for international protection

The interview in the status determination procedure is a tool to gather oral evidence by taking due note of the applicant's statements and his/her explanations regarding the reasons why he/she fled the country of origin to seek international protection. Hence, the correct performance of these actions by observing the procedural safeguards established by law is crucial to the subsequent proper assessment of the application for international protection. The only cases when an interview may not be conducted²⁷ is where the applicant is unable to manage his/her affairs because of weak-mindedness or a mental disease or is unable to make oral or written statements due to objective reasons. At the end of 2015 a rule was introduced²⁸ according to which the absence of an interview shall not be a reason for not making a decision on the application for international protection. Nevertheless, the Law stipulates²⁹ that the lack of sufficient evidence due to the failure to conduct an interview shall not serve as independent grounds for rejecting the application.

²⁴ Art. 7 (2) of Administrative Procedures Code (ACP);

²⁵ Art. 75 (2) of LAR;

²⁶ Art. 75 (3) of LAR;

²⁷ Art.63a (6) of LAR;

²⁸ Art.63a (12) of LAR;

²⁹ Art.75 (3), item second LAR;

The national legal framework stipulates³⁰ that a date for the interview shall be appointed right after registration, and the applicant for international protection shall be notified in due time of the date of any subsequent interview. The monitoring has found that in the first several months of 2016 the practice of serving an invitation for an interview to be held with applicants for international protection was discontinued in some of SAR's territorial units³¹, and the invitation signed by the applicant, instead of being handed over to the applicant, was stored in his/her personal file. The failure to fulfil the obligation for duly notifying the applicant of the date of the interview scheduled resulted in the applicant's failure to appear for the interview for the sole reason of being unaware of the interview scheduled. Moreover, the applicant's failure to appear for the interview is interpreted by the decision-making officers as a tacit withdrawal of the application for international protection in Bulgaria, and is used as grounds for suspending and, subsequently, terminating the refugee procedure. The monitoring of the procedures for international protection has found that in 2016 in 40% of the cases monitored the applicant signed the invitation to an interview but was not handed over a copy of the invitation, the only copy of the invitation being, instead, attached to the applicant's personal file. This practice was ceased at the end of 2016 at Sofia RRC, Harmanli RRC and Pastrogor TC, the applicants being served invitations with the date and time of the interview scheduled. The problem persisted at Banya RRC till the end of the monitored period, 31 December 2016. An exception to the positive change in the practice of all of SAR's centres in this respect was the failure to serve invitations on the applicants in the cases of rescheduling the interview, which happened often due to the lack of interpreters with some languages.

The Law stipulates³² that if the applicant wishes so, he/she shall be interviewed by a case worker and a translator/ interpreter of the same gender. The findings of the monitoring show that this legal provision was by and large observed by SAR with respect to the interviewers, but not always with respect to the interpreters/translators involved in the interview because of the lack of translation capacity with all the necessary languages in 2016³³, including the lack of translators/interpreters of both genders for all the languages. It has furthermore been established that the applicants were not generally informed of the right to have an interviewer or a translator/interpreter of the same gender.

The interview has to be held³⁴ in a language declared by the applicant, and, when possible, in a language the applicant understands. As noted above³⁵, in 2016 SAR did not have a pool of interpreters/translators with the main languages spoken by the applicants due to the lack of interest in participation in the tender procedures for the provision of translation services in the procedures for international protection for reasons of low tariffs and overdue payment of remunerations during previous years. The monitoring has found that in 3% (12 cases monitored) the procedural actions with the applicants were conducted from and into a language they did not

³⁰ Art. 63a (1) et al. of LAR;

³¹ Banya RRC and Voenna Rampa accommodation centre with Sofia RRC of SAR;

³² Art.63a, ал.5 of LAR;

³³ See paragraph 2.1.3;

³⁴ Art. 63a, ал. 7 of LAR;

³⁵ See paragraph 2.1.3;

speak. This approach was applied – in breach of the Law – with the help of other applicants for international protection who speak the applicant’s language and the language of the interpreter ensured. Most of these are cases where interpretation was done into the Arabic language with the help of a person speaking Kurdish or into Dari with the help of a person speaking Pashto. Three of these cases monitored involve unaccompanied minors.

The Law requires³⁶ that audio- and audio-visual recording be made and minutes be taken during the interview. The requirement for mandatory audio- and audio-visual recording was introduced in mid-October 2015 as a result of repeated recommendations made in previous years for the introduction of this approach³⁷ as the best standard which ensures the full, objective and impartial recording of the applicant’s statements about the reasons to seek protection, and serves as a safeguard against corruption. The monitoring has found that 90% (183) of the cases monitored had audio-recording, and only 10% did not have audio-recording. Despite the low degree of the violation, this constitutes a breach of an explicit and peremptory rule laid down in the Law, which may generate potential doubts as to the proper way of conducting the interview and the correctness of the oral statements recorded in the written minutes, and may hinder the court’s actions in the judicial review in case the records are challenged in a court procedure.

The minutes of the interview held shall be read to the applicant, and shall be signed by him/her, by the translator or interpreter and by the interviewing authority³⁸. The applicant has the right to make comments on the minutes and to provide clarifications in relation to mistakes in the translation or imprecisions in the minutes. The 2016 monitoring has found that in 34% (150 cases monitored) of the procedures monitored the minutes of the interview conducted or the registration list drawn up at the initial registration of the application for international protection were not read out to the person seeking international protection before being signed by him/her. Under such circumstances, the information recorded in the minutes of the interview could be prone to potential manipulation.

On the other hand, it is not possible for the applicants to make sure that their statements and the facts and circumstances presented by them have been correctly recorded in the minutes. Reading out the minutes is an important safeguard for detecting and clarifying any inconsistencies between the statements made in different interviews, and, first and foremost, for taking into account all the facts and circumstances presented in their logical sequence when making the decision on the application for international protection.

Within up to four months³⁹ from initiating the general procedure, the interviewing authority shall draw up a position which, together with the personal file, shall be submitted to the Chairperson of the State Agency for Refugees for taking a decision.

³⁶ Art. 63a (3) of LAR;

³⁷ See UNHCR, 2011 ASQAEM Report and BHC Recommendations, 2014 Annual Report on the Monitoring of the Status Determination Procedure, paragraph 4.5; and 2013 Annual Report on the Monitoring of the Status Determination Procedure, paragraph 4.8;

³⁸ Art.63a, ал.8 of LAR;

³⁹ Art. 74 of LAR – the time limits applicable as from 25 December 2015, amended SG No 101/2015;

Within up to six months⁴⁰ from initiating the general procedure, the Chairperson of the State Agency for Refugees shall decide on either granting or refusing refugee or humanitarian status. The six-month period may be extended by SAR's Chairperson by another 9 months, or a total of up to 21 months, but only where the evidence gathered for the particular case is considered insufficient. The applicant shall, under such circumstances, be notified of the extension of the time limit either in person or by means of a notice with a receipt of acknowledgement.

Based on the positive and negative decisions monitored in 2016 the findings show that the legal time limit was observed in 96% (189 cases monitored), while in the remaining 4% the taking of the decision was overdue by one month or more. In 100% of the cases in which the decision was issued beyond the 6-month time limit the applicant was not duly notified of the extension of the period for taking the decision on his/her application.

The timely decision-making on the application for international protection is a fundamental procedural safeguard for applicants, as it prevents the legal uncertainty applicants have in terms of their status and prospects, as well as potential prerequisites for irregularities and corruption in the course of the status determination procedure. The monitoring has found that in 2016 the reasons in the decision issued were in line with the facts and circumstances presented in 61% (131 cases monitored). In the remaining 34% of the cases monitored the decision was based on standard legal provisions for refusing protection without conformity to the facts and circumstances relevant to the applicant's refugee claim.

2.1.6. Legal assistance

The state shall ensure conditions⁴¹ for third country nationals seeking protection in Bulgaria to receive legal assistance. By way of principle, any natural person who, due to the lack of financial means, is unable to hire a lawyer for the purpose of legal assistance and support, is entitled to legal aid financed by the state. The state provides legal assistance through the National Legal Aid Bureau (NLAB) with the Ministry of Justice. The applicants for international protection have been part⁴² of the category of individuals entitled to legal aid financed by the state since March 2013.

The monitoring has found that no legal aid was ensured in any of the cases monitored, i.e. of the cases the applicants for international protection were not provided with legal assistance in 100% of the cases monitored; neither was the mandatory legal assistance and support for minors, in particular for unaccompanied children, as required by the Law, provided.

⁴⁰ Art. 75 (1) of LAR;

⁴¹ Art. 23 (2) of LAR;

⁴² Art. 22 (8) of the Legal Aid Act;

2.1.7. Procedures in respect of unaccompanied minors

The year 2016 marked a growing number⁴³ of unaccompanied minors arriving on the territory of Bulgaria without a parent or another adult responsible for them by law or custom⁴⁴. Given these circumstances, unaccompanied minors who seek or have been granted protection can be defined as children at risk in conformity with the legal definition⁴⁵. Similar to the situation in the previous 17 years, however, the most serious issue, still unresolved, in terms of the status determination procedure was conducting the procedure in respect of unaccompanied minors who do not have a guardian or a custodian appointed, which constitutes a violation of the peremptory requirements set out in the Law⁴⁶. According to the established permanent case law⁴⁷, such procedures are not lawful; neither are the procedures in respect of unaccompanied minors conducted without the presence of a legal representative appointed by the municipal administration and without assistance by a lawyer providing procedural representation for them and protecting their best interest.

Nevertheless, in 2016 all of SAR's procedures with unaccompanied minors continued to be conducted without the presence of a representative appointed by the municipal administration, and in some cases – in the absence of a social worker⁴⁸. Legal assistance at the administrative stage was not provided to unaccompanied minors seeking international protection, either, as in 100% of the monitored procedures with unaccompanied minors the applicants did not have a lawyer as their legal representative, which was also in breach of the EU common standards⁴⁹ for international protection applicable in the EU Member States. The 2016 monitoring has found that in 96% (48 cases monitored) the registration of unaccompanied minors was carried out in the absence of a social worker, which was rather the rule than the exception. The monitoring has also found that the unaccompanied minors were not appointed a guardian or a custodian in 100% (64 cases monitored). The social workers appointed provided support or intervened, when needed, in the course of the interviews conducted with the children only in 6% (3 cases monitored). The unaccompanied minors were not represented by a lawyer in any of the cases monitored.

The amendments to the Law on Asylum and Refugees transposing Directive 2011/95/EU (Qualification Directive) came into force in mid-October 2015.

⁴³ 2,772 unaccompanied children lodged applications for international protection in Bulgaria in 2016; for the sake of comparison - in 2015 this number stood at 1,816;

⁴⁴ § 1, item 4 of the Additional Provisions of the Law on Asylum and Refugees;

⁴⁵ §1, item 11, "a", "c" and "e" of the Child Protection Act;

⁴⁶ Art. 25(1) of LAR;

⁴⁷ Thus, Judgement No 5137/14.04.2014 under a.c.No 13176/2013, 3 div., Supreme Administrative Court (SAC) ; Judgement No 5930/09.10.2014 under a.c.No 13176/2013, 3, SAC; Judgement No 8570/23.06.2014 under a.c.No 490/2014, 3, SAC; Judgement No 4453/30.06.2014 under a.c.No 3132/2014, 42, Sofia City Administrative Court (SCAC); Judgement No 5068/21.07.2014 under a.c.No 5346/2014, 44, SCAC; Judgement No 5014/18.07.2014 under a.c.No 5283/2014, 11, SCAC; Judgement No 5307/04.08.2014 under a.c.No 8635/2013, 6, SCAC; Judgement No 4731/08.07.2014 under a.c.No 5054/2014, 20, SCAC; Judgement No 4230/24.06.2014 under a.c.No 3900/2014, 45, SCAC; Judgement No 8570/23.06.2014 under a.c.No 490/2014, 3, SCAC; Judgement No 3833/10.06.2014 under a.c.No 1995/2014, 16, SCAC; Judgement No 2418/10.04.2014 under a.c.No 8526/2014, 12, SCAC; Judgement No 33/06.01.2014 under a.c.No 10102/2013, 44, SCAC; Judgement No 360/20.01.2014 under a.c.No 12298/2013, 43, SCAC, etc;

⁴⁸ Art.25 (5) of LAR;

⁴⁹ Art. 25 of Directive 2013/32/EC;

The amendments⁵⁰ stipulate that unaccompanied minors who seek or have been granted international protection shall be appointed a representative from the municipal administration, designated by the mayor of the municipality or by an official empowered thereby. The representative of the unaccompanied minor who seeks or has been granted international protection shall have the following powers in the procedure till the minor person becomes of age: 1) safeguard his/her legal interests in the procedures for granting international protection till the completion thereof with a final decision; 2) represent him/her before any administrative bodies, including social, healthcare, educational, and other institutions in the country with a view to safeguarding the child's best interest; 3) perform the role of a procedural representative in all the procedures before administrative bodies; 4) take actions for ensuring legal assistance. This legal framework replaced the proposals submitted to the Parliament by SAR⁵¹ which provided for the appointment of a guardian or custodian from the staff of the respective units of the Social Assistance Agency whose functions include, by way of competence, the task to conduct child protection activities and take measures for ensuring such protection. This explains why the municipal administrations in the cities/towns where SAR's centres are located had not put in place any arrangements for designating, training and appointing their own employees to act as representatives of unaccompanied minors during the procedure or after receiving a status.

In 2016 a number of meetings were held among the municipal administrations, the local child protection departments, SAR's management, UNHCR and non-governmental organisations; the result achieved by the end of the year was the introduction of a mechanism for appointing the representatives, as provided for in LAR, and defining their real duties. Due to these efforts, the mayors of districts on whose territory there are SAR centres started appointing staff of their municipal administration as representatives of unaccompanied children during the procedures for international protection. The monitoring has found that in December 2016 Sofia RRC, Voenna Rampa shelter (which is within the area of Serdika neighbourhood of Sofia Municipality) were still having an issue with the appointment of a municipal representative. At the end of the year, however, the problem was solved, and the mayor ensured the presence of a municipal representative during the interviews with unaccompanied children. The issue with the unlawful way of carrying out the registration of unaccompanied children seeking international protection without the presence of either a legal representative of the municipal administration or a social worker from the Child Protection Department with the local Social Assistance Directorate with the Social Assistance Agency persisted till the end of 2016. This practice constitutes a breach of both the provisions of refugee law and the principle of ensuring full support and safeguards for a child who is in a procedure, as prescribed in the Child Protection Act.

Moreover, the Law stipulates⁵² that SAR shall exercise control and take measures for the protection of minors seeking international protection against physical or psychological violence, cruel, inhuman or degrading treatment.

⁵⁰ Art. 25 of LAR, SG No 80 of 16.10.2015, pursuant to §83 of the TFP of the Law Amending LAR – effective as from the date promulgation in SG;

⁵¹ §20 of the Draft Law Amending LAR, ref. No 454-01-37 of 7 November 2014, <http://parliament.bg/bills/43/454-01-37.pdf>

⁵² Art. 25 (4) of LAR;

The monitoring has found that for the most part of 2016 the accommodation of unaccompanied children seeking protection at SAR's RRCs was not in conformity with the special accommodation conditions required by the Law⁵³. Instead, unaccompanied children were accommodated in rooms with adult unmarried applicants where they were exposed to unfavourable influences and an environment without any control or prevention ensured by a social worker appointed for that purpose. In the middle of 2016, as a result of an order by SAR's Chairperson, unaccompanied children seeking protection were transferred to the Ovcha Kupel shelter of Sofia RRC where in 2015 one of the storeys of the shelter had been separated to accommodate unaccompanied children. Despite the measures taken to improve the conditions in that particular shelter, in 2016 the accommodation conditions still did not conform to the requirements set out in the child protection legislation⁵⁴, and did not provide safeguards for the protection of the best interest of the children accommodated in the shelter. The children received neither 24-hour care by a person responsible for raising them nor the due care for their overall well-being. The children were left on their own and without supervision after the working hours of SAR's pay-roll staff. In practice, there was no one designated to take care of the children's upbringing or to ensure that they go to school. At the Ovcha Kupel shelter the food for the three meals was distributed twice a day, including to unaccompanied children, which is contrary to the legal requirements⁵⁵. At the end of March 2015, the payment of the individual monthly benefits provided for in the Law⁵⁶ was discontinued; hence they were deprived of any means for physical survival, the provision of which is an obligation of the state.

2.1.8. Procedures in respect of applicants returned under the Dublin Regulation

Regulation (EU) №604/2013 (Dublin Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection. The Dublin Regulation stipulates that when a person seeking international protection lodged an application in a Member State but then left its territory and lodged an application in another Member State, the State where the first application for international protection was made shall take back into its territory the applicant for protection and shall examine his/her application⁵⁷.

The findings of the 2016 monitoring show that the applicants for international protection who were returned to Bulgaria on the grounds of a take-back decision under the Dublin Regulation were detained only if, after they had left Bulgaria, a negative decision on the merits had been made and served *in absentia*, and this negative decision had become final in the absence of an appeal before the court. If the decision cannot be served within the 14-day time limit as from the issuing thereof – such are the cases when the applicant leaves the country during the procedure – a notice with a receipt of acknowledgement shall be sent to the applicant's last known address. If the notice with the receipt of acknowledgement is returned to the State Agency for

⁵³ Art. 29 (7), item 2 of LAR;

⁵⁴ Art.29 (10), item 1 and 2 LAR in conjunction with Art.27 -28 Law on Child Protection;

⁵⁵ Art. 29 (1), item3 of LAR in conjunction with Ordinance No 37 of 21 July 2009 on the Healthy Nutrition of School Children, and Ordinance No 23 of 19 юли 2005 on the Physiological Norms for the Nutrition of the Population of the Ministry of Health with respect to Children Deprived of Parental Care; and, under the assumption of a legal gap – applicable by analogy to unaccompanied minors seeking protection;

⁵⁶ Art. 29 (1), item 4 of LAR;

⁵⁷ Art. 18 (1 and 2) of Regulation (EU) No 604/2013;

Refugees due to failed delivery, the decision shall be deemed served and the time limits for the appealing the decision before the court shall start running. After these time limits have expired⁵⁸ such applicants for international protection shall be considered to have received a final decision refusing international protection in respect of whom the legal safeguards⁵⁹ for the suspension of coercive administrative measures, including administrative detention, are no longer applicable and are lifted. This is why, this category of applicants for international protection who are returned under the Dublin regulation, right after their transfer are usually taken directly from Sofia Airport to a deportation centre (Sofia detention center in Busmantsi premises or Lyubimets detention center) for resuming the return procedure, and for preparing and enforcing their return to the country of origin by means of deportation or expulsion. Detention in deportation centers is a safeguard measure for the return⁶⁰ (deportation or expulsion), and under the law it can be applied for up to 6 months⁶¹. This time limit, however, can be extended by the court to a total of 18 months under the conditions⁶² regulated in the EU common standards on return.

The practice in respect of applicants leaving the territory of Bulgaria before the issuing of the decision on their application for protection differed from the one concerning applicants in respect of whom a decision had been issued. Pursuant to the Law⁶³ the status determination procedure shall be suspended when the applicant, after having been duly invited to do so, fails to appear for an interview within 10 working days without good reason or changes his/her address⁶⁴, without notifying the State Agency for Refugees thereof. The invitation may be either oral or written, in the latter case being served against a signature under the procedure for serving decisions⁶⁵. If the invitation cannot be served in person, as is the case when the applicant leaves the country during the procedure, the applicant shall be sent a notice with a receipt of acknowledgement. If this notice is returned to the State Agency for Refugees due to failed delivery, the decision shall be considered served. The status determination procedure suspended may be resumed⁶⁶ where the applicant appears before SAR and submits evidence proving objective reasons for changing the address or objective reasons for his/her failure to appear. If, however, the applicant fails to appear before the relevant official of the State Agency for Refugees within three month as from the suspension of the procedure⁶⁷ and to present evidence excusing his/her absence, the procedure shall be ceased.

The Law stipulates⁶⁸ that where an applicant for international protection whose procedure has been ceased is returned under the Dublin Regulation, SAR shall resume the procedure and shall issue a decision on the

⁵⁸ 7-day time limit when the application is rejected as manifestly unfounded in the accelerated procedure (Art. 84 (2) of LAR), and a 14-day time limit when the application is refused on the substance (Art. 87 of LAR);

⁵⁹ Art. 67 (1) of LAR;

⁶⁰ Art. 44 (6) of Aliens in the Republic of Bulgaria Act (ARBA);

⁶¹ Art. 44 (8) of ARBA;

⁶² Art. 15 (6) of Directive 2008/115/EU;

⁶³ Art. 14, items 1 and 2 of LAR;

⁶⁴ Art. 30 (1), item 5 of LAR;

⁶⁵ Art. 76 (2-5) of LAR;

⁶⁶ Art. 77 (2) of LAR;

⁶⁷ Art. 15, item 7 of LAR;

⁶⁸ Art. 67e (2) of LAR, and Art. 18 (2) of Regulation (EU) No 604/2013 (Dublin Regulation);

application for protection. The monitoring has found that in 2016 the procedures ceased were not resumed after the return under the Dublin Regulation; instead, the applicants returned were required to lodge a new, subsequent application within the meaning of the Law, and to indicate a residence address in rented lodgings at their expense outside SAR's accommodation facilities. This predetermined, in violation of the Law⁶⁹ the rejection of the application based on the objective absence of new circumstances or evidence⁷⁰. On the other hand, the applicants returned under the Dublin Regulation, were deprived of their right to shelter and food⁷¹. This practice was discontinued in 2016. The applicants returned under the Dublin Regulation were admitted into the procedure, and their procedures were resumed without any particular hinders or serious delays. In 2016 Bulgaria received 10,388 information requests from other Member States under the procedure laid down in the Dublin Regulation. The number of the applicants taken back, however, was by far smaller and was only 6%⁷² of the total number of the requests received. All the applicants taken back, except for the ones with a final negative decision, were freely admitted into the territory upon their arrival.

2.1.9. Reception conditions

The monitoring has established that the reception conditions for applicants for international protection in 2016 had improved compared to the previous year 2015. The spaces in most urgent need of rehabilitation were renovated. The living and sanitary conditions of reception were still around or below the minimum standard threshold in most of SAR's centres, with the exception of Vrazhdebna hotels with Sofia RRC and Pastrogor TC. SAR's accommodation centres provided medical services for the most time, while not in the same volume throughout the year. While the main groups of medication were secured, including due to donations through BCR, corporate and private donors, the access and distribution of the medicines among those in need was not always done in a timely manner. The long-standing issue with the dissemination of scabies and pyoderma resulted in Harmanli RRC being put under quarantine in November 2016, and caused riots amongst the applicants accommodated in the centre. As a result of this incident 3,000 persons accommodated at Harmanli RRC were subject to regular medical checks which established 300 diseased persons who were duly treated. Meals were served only twice a day at RRCs, including the meals for unaccompanied minors.

The access to interpretation in a language the applicants understand was not ensured outside the interviews in the procedure; in terms of information and communication, the applicants for protection relied mostly on the interpreters, the social workers and the lawyers from non-governmental organisations whose capacity, however, is limited. The monitoring has found that the interviews requiring interpretation with Kurdish, Pashto and Urdu were substantially delayed due to the lack of interpreters with these languages in all of SAR's centres.

⁶⁹ Art. 18 (2) of Regulation (EC) No 604/2013 (Dublin Regulation);

⁷⁰ Previous Art. 13, (5) of LAR (repealed SG No 101/2015), current Art. 76b of LAR (effective 26 December 2015);

⁷¹ Art. 29 (1), item 3 and (4) of LAR;

⁷² 624 returns under the Dublin procedure in 2016;

The monthly social benefit in the amount of 65.00 BGN provided to applicants which was discontinued in February 2015⁷³ was not restored in 2016, which was in breach of the right to material assistance laid down in the law⁷⁴.

The Law regulates two types of assistance – shelter and food, as well as social welfare under the terms and procedure applicable to Bulgarian nationals. The provision of assistance in kind such as food, even if ensured three times a day, does not substitute social welfare. Discontinuing the provision of social benefits deprived the applicants for international protection of the possibility to buy additional foodstuffs, including special food for infants aged 0-3, medication, sanitary items, clothes and other staple commodities for meeting their basic needs.

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

2.2.1. Issuing in due time of the decisions on the applications for international protection

The Law stipulates⁷⁵ that SAR's decision shall be issued within up to 6 months from initiating the general procedure for examining the application for international protection on the merits. This time limit may be extended by another 9 months by virtue of an explicit order of SAR's Chairperson in case the data gathered for the particular case is considered insufficient, of which the applicant shall be notified in person or by means of a notice with a receipt of acknowledgement. The 2016 monitoring has found that the procedures for examining the applications for international protection were completed within the legal time limit in 96% (189 cases monitored). In 3% (6 cases of refusal to grant protection) the administrative files were forwarded in due time to the court approached with an appeal for reviewing negative decisions on applications.

2.2.2. Country of origin information

In conformity with the legal framework⁷⁶, in deciding on an application for international protection, all the relevant facts, statements or documents pertinent to the applicant's individual circumstances, his/her country of origin or the possibility to avail himself/herself of the protection of another state whose citizenship he/she may acquire, including whether the applicant has performed activities for the sole purpose of being granted international protection, shall be taken into consideration. Therefore, the accurate and current information about the applicant's country of origin is crucial to the correct assessment of his/her claim and the decision on it.

⁷³ Order No 03-310/31.03.2015 of the Chairperson of the State Agency for Refugees with COM, effective 1 February 2015;

⁷⁴ Art. 29 (1), item 2 of LAR; Art. 17 of Directive 2013/33/EC (Reception Conditions Directive);

⁷⁵ Art. 75 of LAR (SG No 52/2007);

⁷⁶ Art. 75 (2) of LAR;

The findings of the monitoring show that in 46% (90 cases monitored) of the cases examined during the year the decisions on the applications for international protection took into consideration current COI prepared by SAR with correct reference to the information sources. In 24% (48 cases monitored) the COI quoted was in line with the content of the decision issued. Nevertheless, the information quoted in most cases consisted of general facts, data and circumstances which were not related to the specific case, and were, therefore, irrelevant to the correct decision on the case.

2.2.3. Factual findings

In 2016 the decisions on the applications for international protection identified correctly the grounds for granting protection in conformity with the legal definitions laid down in the Law⁷⁷ only in 16% (32 cases monitored), and the main elements of the refugee story were included and examined in the decisions only in 26% (52 cases monitored).

The facts and circumstances conformed to the legal conclusions in the decision in 67% (131 cases monitored). On the other hand, however, the decisions examined all the substantive legal issues only in 16% (32 cases monitored).

In none of the cases monitored (0%) did the decisions indicate clearly which facts were accepted and which were not accepted as ascertained in the specific case. Similarly, in none of the cases monitored (0%) did the determining authority present arguments for the reasons to assess the applicant's explanations concerning ambiguities or inconsistencies in the refugee story as incredible; instead this was done in a formal manner and without any reasoning.

The only improvement against previous years relates to sharing the burden of proof in the status determination procedure. Hence the burden of proof was correctly determined and shared in 79% (155 cases monitored). The same is the share of cases, 79% (155 cases monitored), where the *in dubio pro fugitivo* principle was applied in practice.

2.2.4. Legal conclusions

The monitoring has established no cases where international protection was refused in contradiction with the opinion of the case worker who had conducted the procedure.

At the same time, the decisions on the applications for protection made a correct identification of the existence of grounds under the 1951 Convention for granting refugee status only in 20% (40 cases monitored), and the decisions made a correct identification of the existence of grounds for granting humanitarian status only in 14% (27 cases monitored).

⁷⁷ Art.8 and Art.9 of LAR;

In addition, the decision presented a correct analysis of the existence of effective protection in the country of origin or habitual residence only in 7% (12 cases monitored). The incorrect identification of the application's legal grounds, the lack of understanding of the link between factual and legal findings, and the conclusions drawn inconsistently and by analogy stand out as the most serious and substantial issues in the assessment made in the procedures conducted under LAR and in the decisions on the merits.

2.2.5. Legal assistance at the serving of negative decisions

In 2016 legal aid through representation and assistance by a lawyer appointed ex-officio or by SAR under the ERF-funded project was not provided upon serving negative decisions in any of the cases monitored (0%).

The observance of this legal standard is crucial in terms of the access to the court and the exercise of the applicants' right to make, in due time and within the time limit, arrangements for their defence against a negative decision issued on their application for international protection.

3.3. Court proceedings in asylum cases

3.3.1. General profile

In 2016 the monitoring of court proceedings related to appeals against negative decisions covered a total of 39 applicants for international protection, including 31 men, 5 women, 2 accompanied minors and 1 unaccompanied minor seeking international protection from the following countries of origin:

- Iraq-7
- Ukraine-9
- Afghanistan-5
- Syria-1
- Iran-8
- Pakistan-1
- Morocco-1
- Lebanon-1
- Egypt-1
- Stateless-1
- Ghana-1
- Russian Federation-1
- Bangladesh-1
- Libya-1

2.3.1. Equal treatment and non-discrimination

Discrimination or unequal treatment of the applicants for international protection by the court or the prosecutors participating in the administrative process was not detected in any of the court proceedings monitored.

2.3.2. Translation/Interpretation

In 82% (32 cases monitored) the court hearings monitored were attended by an interpreter who provided assistance with a language spoken by the applicant for international protection on whose appeal the relevant proceedings had been instituted. In 30% (12 cases monitored) the interpreters appointed from the court's list were not sufficiently competent in the use of the respective foreign language or the Bulgarian language or were not familiar with the specific legal terms used, which hinders the communication between the court and the appellant – the applicant for international protection.

2.3.3. Involvement of the prosecutor's office

The findings of the monitoring show that the prosecutor's office participated in the court hearings on refugee cases in 95% (37 cases monitored) of cases. In 59% (23 cases monitored), however, the presence of the prosecutor's office was formal, without any reasoned opinion being submitted in relation to the particular appeal or case.

2.3.4. Procedural representation

The applicants for international protection involved in the court proceedings monitored were represented by a lawyer in 77% (30 cases monitored). The applicants had a lawyer appointed ex-officio by the court at their request in 5% (2 cases monitored), and the applicants involved in the court proceedings instituted on their appeal against a negative decision were not represented by a lawyer in 18% (7 cases monitored). In 7% (3 cases monitored) the applicants for international protection involved in the court proceedings monitored were represented by a lawyer hired by them who, however, acted formally and manifested lack of preparation for the hearing of the case. In the remaining 69% (27 cases monitored) the lawyers in the court procedures manifested preparation in advance for the hearing and presented detailed arguments in support of the appeal against the refusal to grant international protection. In terms of the results from the refugee court proceedings in 2016, a total of 13 cases before administrative courts were monitored, including 0 cases against Dublin transfers, 1 appeal against refusal to grant protection to unaccompanied minors, 0 appeals against refusals in the accelerated procedure, and 1 appeal against a decision on the admissibility of the application. A total of 37 cases of appeals against decisions in the general procedure were monitored (13 cases at the appeal instance and 26 at the cassation instance before the Supreme Administrative Court). In 16 of these cases the courts quashed the decisions issued and returned the files to the administrative authority, SAR, with instructions on the application of the procedural rules and the special legislation regulating international protection.

Part Three: Recommendations

Recommendation 1. SAR to draw up a preliminary monthly schedule of the staff on duty for the weekends and the bank holidays of the relevant month for each territorial unit of the State Agency for Refugees, and communicate this schedule to the other state authorities receiving applications for international protection.

State Agency for Refugees position relating recommendation 1: Under the current conditions and in the current refugee situation, SAR with COM has the administrative capacity and an effective mechanism to carry out procedural actions in relation to the applications for international protection in conformity with the legal requirements. At present an on-call regime is in place – when the need be, staff of the territorial units may be called to the office on bank holidays and at weekends for the purpose of reception and registration of persons seeking protection. It should be noted that where applications for international protection are declared and lodged with a state authority other than SAR with COM, the registration of such applicants is possible only when they have been physically handed over to a territorial unit of the Agency. In these cases, a prerequisite for observing the registration time limit is the timely transfer of the person concerned to SAR’s territorial units. The Agency has been active in ensuring good cooperation and coordination with the other institutions.

Recommendation 2. SAR to ensure that the applicants for international protection have free access to the registration offices on a daily basis in all the territorial units of the State Agency for Refugees under the conditions of explicitly defined working hours and the presence of interpreters with the main languages spoken who can facilitate communication, the submission and serving of documents and acts, and receiving individual information about the actions carried out in the administrative procedure.

State Agency for Refugees position relating recommendation 2: At present the applicants’ rights are not subject to any restrictions. Pursuant to Art. 29a of LAR the applicants for international protection shall have the right to file an application for access to the information gathered on the basis of which the decision is to be made, and such information shall not be provided only in the cases explicitly laid down in the law. Therefore, there are no obstacles to receiving individual information. Each territorial unit has also put in place arrangements for submitting and serving papers and documents.

Recommendation 3. SAR with the assistance of UNHCR and BHC to develop and introduce standard operating procedures (SOP) regarding the initial and subsequent identification of categories of vulnerable persons, and the designation of the responsible administrative authorities and their functions in providing support to these categories.

State Agency for Refugees position relating recommendation 3: The standard operating procedures are being updated, and they are to be approved; however, we still do not have the positions of most of the government institutions and NGOs.

Recommendation 4. Introduce a legal obligation for drawing up a record for the gathering of any written and other evidence submitted by applicants.

State Agency for Refugees position relating recommendation 4: In terms of the recommendation about introducing a statutory obligation for drawing up a record for any written and other evidence submitted by the applicant, it should be noted that this issue is regulated by the provision of Art. 22 of the Internal Rules on Conducting the Procedure for International Protection at SAR with COM, endorsed by virtue of an order of 16.03.2016. Paragraph 1 of Art. 22 explicitly stipulates that the documents submitted by the applicant whereby he/she certifies his/her identity shall be received by means of a take-over certificate.

Recommendation 5. Introduce a mandatory requirement that negative decisions on applications for international protection be served in the presence of a lawyer providing the applicant with advice and support regarding the appeal and access to the court.

State Agency for Refugees position relating recommendation 5: The recommendation that negative decisions on applications for international protection should be served in the presence of a lawyer is unjustified. While the state should indeed ensure conditions for aliens seeking international protection to receive legal assistance, this does not mean that a lawyer has to be present in the course of carrying out the procedural actions related to examining the application for international protection at the administrative stage, including the serving of the administrative act issued. The serving of decisions whereby international protection is refused do not constitute cases for which the law lays down a mandatory requirement for defence counsel, reserve defence counsel or representation. Defence counsel and representation are ensured upon request.

Recommendation 6. Introduce additional questions in the registration form for gathering detailed data about family members, relatives in other EU Member States, and for giving instructions about the submission of documents to prove the above circumstances, with a view to observing the time limits set out in Art. 21 of Regulation (EU) No 614/2013 (Dublin).

State Agency for Refugees position relating recommendation 6: In terms of the recommendation made, we should point out that an Annex to the applicant's registration form contains a list of the person's family members and their whereabouts.

Recommendation 7. SAR to take the necessary measures to ensure permanent availability of interpreters with all the languages spoken by the applicants in all the territorial units of the State Agency for Refugees in order to prevent situations where interpretation in the procedure is provided either by interpreters from a language the applicant does not understand or by other applicants.

State Agency for Refugees position relating recommendation 7: As for the recommendation made, we state that SAR has interpreters with the languages spoken in the asylum-seekers' main countries of origin (Arabic, Kurdish, English, Dari/Farsi, Pashto). Our practice shows that where SAR does not have an interpreter with a specific language, the latter is secured with the assistance of EASO for larger groups of foreigners (for example, from/into the Tamil and Bengalese languages) or via video conference for individual cases (for example, from/into the Somali language).

Recommendation 8. Ensure legal prerequisites for introducing "special conditions" for the accommodation of unaccompanied minors or setting up a separate centre where unaccompanied children will be accommodated during the procedure for international protection and will be provided with a 24-hour care.

State Agency for Refugees position relating recommendation 8: We support the introduction of a “social service” laid down in the Regulation for the Application of the Social Assistance Act, and the establishment of a center for the accommodation of unaccompanied children outside the reception facilities of the State Agency for Refugees.

Recommendation 9. SAR and the relevant education and social authorities to ensure, in addition, conditions for access to the education system for unaccompanied minors who are in a procedure conducted by SAR and are accommodated outside a family environment in other facilities for the accommodation of minors in special conditions in conformity with LAR.

State Agency for Refugees position relating recommendation 9: The State Agency for Refugees has created conditions and has ensured access for all children to the educational system in Bulgaria. The social experts from the Social Activities and Adaptation Directorate facilitate the enrolment of refugee children in state and municipal schools. They attend the meetings with parents in the relevant schools, and in cases of emerging issues they take remedial actions. Experts from the Social Activities and Adaptation Directorate took part in the working groups set up in 2016 for drafting an Ordinance on the Enrolment in State and Municipal Schools of children who seek or have been granted international protection jointly with representatives of the Ministry of Education and Science and the Regional Education Directorates. The Ordinance is to be adopted.

Recommendation 10. Ensure that an additional assumption for guardianship and custodianship by right (ex lege) is introduced in respect of unaccompanied children granted international protection in the Family Code and related laws and regulations/ordinances. Ensure an explicit legal definition of the collateral degree of the persons falling in the scope of the assumption of “relatives” who accompany children seeking international protection, and a definition of “custom” under the assumption of §1, item 4 of the Additional Provisions of LAR.

State Agency for Refugees position relating recommendation 10: As regards the recommendation about introducing in the Family Code an additional assumption for guardianship and custodianship by right whereby the rules in respect of unaccompanied minor and underage migrant children will differ from the ones applied to the other children requires the setting up of an inter-agency working group that will conduct an in-depth analysis of how this proposal will be applied in practice. We accept as appropriate the recommendation about an explicit legal definition of the affinity and the collateral degree of the persons falling in the scope of the assumption “another adult person who is responsible by law or custom for him/her”, and a definition of “custom” under the assumption of §1, item 4 of the Additional Provisions of LAR. This will ensure uniformity in the practice.

Recommendation 11. Ensure that the legal assistance provided in the course of the procedures under LAR is regulated in the Law on Asylum and Refugees in conformity with the rules laid down in Directive 2013/32/EU and Directive 2013/33/EU, which includes mandatory provision of a lawyer for unaccompanied minors and applicants for international protection, in particular applicants in respect of whom the procedure is conducted under the conditions of detention in a closed reception centre.

State Agency for Refugees position relating recommendation 11: In terms of the recommendation that the legal aid provided in the course of the procedures under LAR should be regulated in LAR in conformity with the rules

laid down in Directive 2013/32/EU and Directive 2013/33/EU by explicitly introducing the mandatory provision of representation by a lawyer for unaccompanied children and applicants for international protection in respect of whom the procedure is conducted in conditions of detention, it should be noted that Art. 20 of Directive 2012/32/EU does not require that the Member States shall ensure representation by a lawyer, but only that they shall ensure free legal aid and representation upon request. As regards unaccompanied minors, Art. 25 of Directive 2013/32/EU stipulates that the Member States shall take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him/her to benefit from the rights and comply with the obligations provided for in the Directive, and the unaccompanied minor shall immediately be informed of the appointment of a representative.

In its current wording, LAR (Art. 58, paragraph 8) stipulates that not later than 15 days as from filing the application, the applicant shall be informed in writing in a language he/she understands about the procedure to be conducted, and his/her rights and obligations, as well as the organizations providing legal and social assistance to aliens. It is up to the alien to decide whether they will benefit from the rights prescribed by the law.

As regards safeguarding the best interest of unaccompanied children, the applicable provision is paragraph 3 of Art. 25 of LAR which regulates the powers of the representative of the minor or underage migrant child, including the power thereof to take actions with the aim to ensure legal aid.

It should be pointed out that pursuant to the Legal Aid Act aliens seeking international protection under the procedure laid down in LAR may benefit from legal aid in preparing their documents for filing a court case. The legal aid bodies are the National Legal Aid Bureau and the bar councils.

Recommendation 12. Introduce the requirement that the allocation of cases to ex-officio lawyers involved in refugee court proceedings under the terms and procedure of the Legal Aid Act is done by applying the principle of professional experience and/or specialization in refugee law.

State Agency for Refugees position relating recommendation 12: As regards the recommendation about introducing the requirement that the allocation of cases to ex-officio lawyers involved in refugee court proceedings under the terms and procedure of the Legal Aid Act is done by applying the principle of specialization in the relevant area of law, including refugee law, it should be noted that SAR with COM is not the competent authority in terms of the introduction of such a requirement and does not have competences on this matter.

Recommendation 13. Ensure that the cases initiated on appeals by unaccompanied minors are scheduled and examined in an expedited manner, which will allow shortening the period of legal uncertainty in view of observing the child's best interest.

State Agency for Refugees position relating recommendation 13: SAR with COM is not the competent authority, either, in respect of the recommendation that the cases initiated on appeals by unaccompanied minors are scheduled and examined in an expedited manner, which will allow shortening the period of legal uncertainty in view of observing the child's best interest. It should be noted that till the completion of the procedure related to the appeal against an administrative act the applicants concerned are still in a procedure for

international protection, and hence are entitled to all the rights laid down in LAR. Therefore, the child's best interest is guaranteed.

Recommendation 14. Broaden, by law, the powers of the courts examining refugee cases in order to allow the latter to adjudicate on the merits in refugee court procedures with the possibility of granting the relevant type of international protection under the assumption of revoking an unlawful individual administrative act of the State Agency for Refugees with a view to procedural economy and enhanced efficiency of the judicial review.

State Agency for Refugees position relating recommendation 14: As regards the recommendation that the powers of the courts examining refugee cases should be broadened in order to allow the latter to adjudicate on the merits in refugee court procedures with the possibility of granting the relevant type of international protection under the assumption of revoking an unlawful individual act, we consider that at present there are sufficient safeguards to ensure that SAR observes the instructions of the court in the event of overturned decisions. The granting of statuses is regulated by law as a prerogative of the executive power.

Recommendation 15. SAR with the assistance of UNHCR and EASO to ensure regular trainings and appraisal of the staff of the State Agency for Refugees who are involved in conducting procedures and assessing the applications for international protection with a view to enhance the quality of the individual administrative acts (decisions) issued.

State Agency for Refugees position relating recommendation 15: The staff responsible for conducting the procedures for international protection have the relevant education and are trained with a view to discharging their professional duties. In addition, SAR staff, in particular the staff of the territorial units, regularly attend internal and external trainings organized by the Agency and by its partners such as EASO, UNHCR, non-governmental organizations. All of SAR's staff are subject to mandatory appraisals by their direct superiors in conformity with the Civil Service Act. The following trainings for and monitoring of the staff involved in the procedure for international protection are planned for the year 2017: drafting of guidelines on the countries of origin to be used in conducting the procedure for international protection; monitoring the interviews conducted at SAR's territorial units; regular trainings of all the interviewers in relation to the correct application of the material legal and procedural norms; the Dublin procedure – establishing indications for determining the competent Member State; facts, circumstances, analysis, and application of Articles 8 and 9 of LAR; the case law (overturned decisions); withdrawal and termination of international protection; the procedure for the admissibility of an application for international protection; application of the exclusion clauses; internal displacement; safe third country; individual administrative acts of SAR with COM – structure, legal grounds, substantive legal provisions; evidence, means of proof, and evidence assessment.