



# aida

Asylum Information  
Database

## Country Report: Bulgaria



October 2015



БЪЛГАРСКИ  
ХЕЛЗИНСКИ  
КОМИТЕТ

Edited by:



## ACKNOWLEDGMENTS

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## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary & List of Abbreviations

<b>BCP</b>	Border-crossing point
<b>BHC</b>	Bulgarian Helsinki Committee
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>EASO</b>	European Asylum Support Office
<b>ERF</b>	European Refugee Fund
<b>LAR</b>	Law on Asylum and Refugees
<b>MOI</b>	Ministry of Interior
<b>NBLA</b>	National Bureau for Legal Aid
<b>NPIR</b>	National Programme for the Integration of Refugees
<b>SGBV</b>	Sexual and Gender based Violence
<b>SOP</b>	Standard Operating Procedures
<b>SANS</b>	State Agency for National Security
<b>SAR</b>	State Agency for Refugees
<b>RSD</b>	Refugee Status Determination
<b>UAM(s)</b>	Unaccompanied minor(s)

## Statistics

**Table 1: Applications and granting of protection status at first instance: 2015 (January – September)**

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Rejection <sup>1</sup>	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	12,738	Not available	4,123	722	546	77%	13%	10%

Breakdown by countries of origin of the total numbers<sup>2</sup>

Syria	4,611	Not available	3,592	605	61	84%	14%	1%
Iraq	2,648	Not available	92	29	162	33%	10%	57%
Afghanistan	2,520	Not available	1	4	75	1%	4%	94%
Pakistan	388	Not available	0	0	42	0%	0%	100%
Iran	112	Not available	1	0	12	8%	0%	92%
Stateless	100	Not available	65	11	13	73%	12%	15%
Ukraine	52	Not available	0	1	34	0%	3%	97%
Bangladesh	42	Not available	0	1	1	0%	50%	50%
India	37	Not available	2	0	1	67%	0%	33%
Lebanon	17	Not available	0	0	10	0%	0%	100%
Eritrea <sup>3</sup>	1	0	0	0	1	0%	0%	100%
Somalia	1	Not available	0	0	2	0%	0%	100%
Kosovo	0	-	-	-	-	-	-	-

Source: State Agency for Refugees, <http://bit.ly/1JzTvYn>.

<sup>1</sup> Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

<sup>2</sup> Ranking based on applications submitted for the period 1 January – 31 August 2015.

<sup>3</sup> The following countries should be included if they are *not* among the top 10 countries of origin.

**Table 2: Gender/age breakdown of the total number of applicants in 2015 (January – September)<sup>4</sup>**

	Number	Percentage
<b>Total number of applicants</b>	12,738	100%
Men	7,697	60%
Women	1,649	13%
Children	2,283	18%
Unaccompanied children	1,109	9%

Source: State Agency for Refugees

**Table 3: Comparison between first instance and appeal decision rates in 2015 (January – September)**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	5,387 <sup>5</sup>	100%	Not available	100%
Positive decisions	4,845	90%	Not available	
• <i>Refugee status</i>	4,123	75%	Not available	
• <i>Subsidiary protection</i>	722	15%	Not available	
• <i>Humanitarian protection</i>	0	0%	-	
Negative decisions	542	10%	Not available	

Source: State Agency for Refugees

**Table 4: Applications processed under the accelerated procedure: 2015 (January – September)**

	Number	Percentage
<b>Total number of applications</b>	12,738	100%
Applications treated under accelerated procedure at first instance	63	0.4%

Source: State Agency for Refugees

**Table 5: Subsequent applications lodged in 2015**

Statistics are not available.

<sup>4</sup> Statistics based on applications submitted for the period 1 January – 31 August 2015.

<sup>5</sup> Total number 14,542, including 7,277 terminations and 1,878 suspensions of asylum procedures on account of applicants' disappearance from Bulgaria.

**Table 6: Number of applicants detained per ground of detention: 2013 – 30 September 2015**

<b>Ground for detention</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Removal order on account of irregular entry and/or residence	5,464	5,992	9,530
<b>Total number of applicants detained</b>	5,464	5,992	9,530

Source: Bulgarian Helsinki Committee

**Table 7: Number of applicants detained and subject to alternatives to detention:**

Not applicable

## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title in English	Original Title (BG)	Abbreviation	Web Link
Law on Asylum and Refugees	Закон за убежището и бежанците	LAR	< <a href="http://bit.ly/1NgljU8">http://bit.ly/1NgljU8</a> > (EN)
Law on Aliens in the Republic of Bulgaria	Закон за чужденците в Република България	LARB	< <a href="http://bit.ly/1C9tvG5">http://bit.ly/1C9tvG5</a> > (EN)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Title in English	Original Title (BG)	Abbreviation	Web Link
Ordinance № 332 from 28.12.2008 for the responsibilities and coordination among the state agencies, implementing Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, Council Regulation No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000	Наредба приета с ПМС №332 от 28.12.2008 за отговорността и координацията на държавните органи, осъществяващи действия по прилагането на Регламент (ЕО) № 343/2003 на Съвета от 18 февруари 2003 г. за установяване на критерии и механизми за определяне на държава членка, компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 1560/2003 на Комисията от 2 септември 2003г. за определяне условията за прилагане на Регламент (ЕО) № 343/2003 на Съвета за установяване на критерии и механизми за определяне на държавата членка, която е компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 2725/2000 на Съвета от 11 декември 2000г. за създаване на система "ЕВРОДАК" за сравняване на дактилоскопични отпечатъци с оглед ефективното прилагане на Дъблинската конвенция и Регламент (ЕО) № 407/2002 на Съвета от	ORD332/08	< <a href="http://bit.ly/1U1Cl5">http://bit.ly/1U1Cl5</a> > (BG)

	28 февруари 2002 г. за определяне на някои условия за прилагането на Регламент (ЕО) № 2725/2000 относно създаването на системата "ЕВРОДАК" за сравняване на дактилоскопични отпечатащи с оглед ефективното прилагане на Дъблинската конвенция		
Ordinance № I-13 from 29 January 2004 on the rules for administrative detention of aliens and the functioning of the premises for aliens' temporary accommodation	Наредба № I-13 от 29 януари 2004 за реда за временно настаняване на чужденци, за организацията и дейността на специалните домове за временно настаняване на чужденци	ORD1-13/04	< <a href="http://bit.ly/1du962t">http://bit.ly/1du962t</a> > (BG)

## Overview of the main changes since the previous report update

The report was previously updated in **January 2015**.

### *General context*

- During the first half of 2015 Bulgaria continued to experience a sharp increase of asylum applications which has risen from 3,541 applications in the first half of 2014 to 7,342 asylum applications for the same period of 2015, thus marking a 107% increase.<sup>6</sup> Notwithstanding Bulgaria remained in general a country of transit as the vast majority (99%) of those who applied for asylum did it after being apprehended by the police,<sup>7</sup> and almost half of them (44%) – upon their attempt to exit irregularly from the country.<sup>8</sup>
- The top country of origin remained Syria (with 47% of all applications; 3,453 applications) followed by Afghanistan (22%; 1,671 applications) and Iraq (21%, 1,599 applications).<sup>9</sup> However, the relative share of Syrian applicants diminished in comparison with 2014 (59%, or 2,103 out of total 3,541 applicants until 30 June 2014) on account of increased shares of Afghan and Iraqi applications (respectively: 17% or 618 Afghan applications and 4% or 144 Iraqi applications in 2014). The fourth and fifth main countries of origin in the first half of 2015 were Pakistan (4,6%; 342 applications) and Iran (1,1%; 81 applications), thus replacing respectively Stateless persons (4,5% or 161 applications) and Algerians (3,9% or 139 applications) for the same period in 2014.

As of 30 September 2015 the number of asylum applicants in Bulgaria reached 12,738 individuals.

### *Procedure*

- Access to Bulgaria remained difficult. In the period between May to July 2015 different groups of asylum seekers were reported to have suffered multiple push-backs and mistreatment both by the Bulgarian and the Turkish border guards, including looting of cash and expensive personal belongings. It was reported that many were only able to enter Bulgaria/EU territory after several consecutive attempts. As a consequence, the number of asylum seekers who entered through areas of official border crossing points (BCP) increased to 60% or 1,686 individuals out of all 2,817 border applicants, who applied on entry during the first six months of the year.<sup>10</sup> Although by the end of 2014 the government announced the withdrawal of all additional police forces dispatched along the national border with Turkey, this has not happened in practice. Additional forces consisted mainly of regular police staff who have not received any training or guidance on how to deal with refugee populations. Almost all who reported mistreatment at the national land borders pointed out the regular policemen as principal culprits, rather than the usual border police staff, although the latter were also said to have done nothing to interfere and stop their colleagues from wrongdoing. On exit, asylum applications almost equalled those submitted at the borders on entry. In the first half of 2015, out of 5,016 border applicants, 56% or 2,817 asylum seekers applied at entry borders (Turkey, Greece) and 44% or 2,199 when caught while trying to leave the country at exit borders (Serbia, Romania, FYR Macedonia). It proved the controversial government position that the border fence built at a section of the Bulgarian-Turkish land border has significantly decreased irregular entries into Bulgaria and the EU.<sup>11</sup>
- Instead of improving, the determination procedures gradually deteriorated. During the period February-April 2015 the reinstated management of the national decision-maker, the State Agency

<sup>6</sup> Statistics as per 31 December 2014, source: State Agency for Refugees.

<sup>7</sup> Bulgarian Helsinki Committee, Monthly Border & Detention Monitoring Report, August 2015.

<sup>8</sup> Bulgarian Helsinki Committee, Mid-Year Monitoring Report, 15 July 2015.

<sup>9</sup> Statistics as per 31 August 2015, source: State Agency for Refugees.

<sup>10</sup> 1,622 applicants at BCP Kapitan Andreevo (Turkish border); 64 applicants at BCP Kapitan Petko Voivoda (Greek border).

<sup>11</sup> Reg. №812100-27496 from 23 December 2014 of the Minister of Interior to National Security Council on necessity for building of engineering installation at the Bulgarian-Turkish border, <http://bit.ly/1jMopHw>.

for Refugees (SAR), sacked and replaced most of the staff responsible for taking the decision on asylum applications at the first instance, who were appointed and trained in 2014 with the support of UNHCR Emergency Measures Scheme and EASO Operating Plan.<sup>12</sup> SAR also failed to secure funding for interpretation services during the asylum procedure. As a result the status determination and asylum application process slowed significantly. This situation was temporarily ameliorated by the European Commission's Urgent Measures Agreement, signed on 29 May 2015 and allocating 4,1 million euro to Bulgaria to be used in 12 months for translation services, administrative capacity to speed up asylum procedures, shelters and technical aid as well as for improvement of refugees' living conditions and health insurance. Financial support for immediate interpretation services was provided also by UNHCR through its partner in social mediation Bulgarian Red Cross. Nonetheless, as of 30 September 2015 despite the financial support of EU and UNHCR, the asylum authority was still unable to provide interpretation services to asylum seekers during their determination. The duration of the determination procedure has been increasing continuously, rising from the average of 3 months in 2014, to 6 months by the beginning of autumn 2015, and it is still growing.

- Including terminations and suspensions of asylum procedures on account of applicants' disappearances from Bulgaria, the overall recognition rate decreased to 40% between January and June 2015 in comparison with a 55% recognition rate for the same period in 2014. It was on account of the drastic decrease of the granting of subsidiary protection (humanitarian status), which was granted in only 5% of case (365 out of 7,520 decisions) in comparison with 2014, when it was granted in 15% of decisions (1,838 out of 12,787 decisions). The granting of refugee status continued to be relatively high with 35% (2,652 out of 7,520 decisions) of applicants given such status, as compared to 40% in 2014. The rejection rate did not change significantly as it saw just a slight increase to 9% (337 refusals out of 7,520 decisions) in comparison with 6% in 2014 (738 refusals out of 12,787 decisions).

Refugee status was granted to non-Syrian nationals in only 4% of decisions (109 out of 2,652 refugee statuses), while 8% of applicants were granted subsidiary protection rate (31 out of 365 humanitarian statuses), and 91% of asylum applications rejected (349 refusals out of 380 refusals). Resultantly, 90% of those who had applied for asylum left Bulgaria prior to receiving their decision; 95% of determination procedures were stopped (1,218 out of 1,269 suspensions) and 88% (3,462 out of 3,915 terminations) were terminated *in absentia*.

- The provision and quality of the legal aid during status determination procedures remain of great concern (see, below 6.4). In 2015 this legal aid was provided under the ERF, but only in the refugee reception centre (RRC) in Sofia, Ovcha Kupel, and even there this legal aid was provided sporadically, rather than regularly. The quality of legal representation was also highly questionable and proved to be quite formal and indifferent. The available ERF funding for legal aid ended on 30 June 2015, but the new AMIF funding is not yet available and it is not expected to be, at least not before the end of 2015. Hence, as of 1 July 2015, asylum seekers were left without any state provided legal aid (advice and representation) at the first instance of status determination procedures.

#### *Reception conditions*

- Accommodation capacity in transit and reception centres is 5,130 places, although the national asylum agency claim to be able to accommodate 7000 individuals and to have additional 800 places in mobile modules in case of emergency influx.<sup>13</sup> Material conditions in the centres and the services provided were, and still are, unsatisfactory. After the improvements made during 2014, from the beginning of 2015 conditions gradually deteriorated. Registration and documentation, especially to those who approach asylum agency units on their own, is never carried out within the mandatory

<sup>12</sup> On 8 January 2015 the government re-appointed the asylum agency's former management, sacked at the end of 2013 on account of congested determination procedures and deplorable reception conditions (see: <http://bit.ly/1FULwtr>).

<sup>13</sup> Nikola Kazakov, Chair, State Agency for Refugees, 18 August 2015, <http://bit.ly/1NjsqbB>.

3-6 day deadline,<sup>14</sup> but is unduly postponed with the evident purpose of deterring asylum seekers from continuing to pursue their official registration in Bulgaria. Basic services are scarce and provided unevenly. Food in reception centres is provided only twice a day, except to children under 18 to whom breakfast is also provided in spite of its varying quantity and quality. Medical assistance is limited to emergency health care with more costly medicines being basically provided either by the Red Cross or other NGOs and benefactors. Access to interpretation services outside eligibility interviews is virtually impossible and asylum seekers rely for information and communication entirely on NGO interpreters, social mediators and legal advisors, whose ability to assist however is quite constrained. Finally, in March 2015 the asylum agency terminated retroactively<sup>15</sup> the provision of BGN 65,00 monthly social allowance (equal to €33.00) to asylum seekers, accommodated in reception centres, thus fully stripping them from their right to material assistance.<sup>16</sup>

#### *Detention of asylum seekers*

- The average detention duration in 2015 for those who apply for asylum from removal centres slightly increased to 12 days from 11 days in 2014. Among the main reasons was the 107% rise in the number of first time applicants, but also the delayed registration in SAR centres (see, the paragraphs above). Individuals from certain nationalities,<sup>17</sup> who apply from removal centres are clearly discriminated against with regard to their registration and determination as both are conducted in conditions of detention in violation of national legal provisions.<sup>18</sup> In June 2015, the government deported to their country of origin a group of rejected asylum seekers from Côte d'Ivoire who still had status determination court procedures pending. As of mid-2015, the average duration of detention for people with discriminated-against-nationalities was 6.5 months.

#### *Integration*

- In 2015 the total lack of any initial integration or support continued to be, alongside deteriorating reception conditions, an additional reason for asylum seekers and recognised individuals to leave Bulgaria. The government continued to invent a variety of new reasons and pretexts to postpone voting of the 2015 Integration Plan budget, which as of end-June 2015 was still not prepared, and far from being adopted. All newly recognised individuals have been finding themselves without accommodation, social support, medical insurance and vocational training just a few days after their recognition. Many vulnerable categories such as unaccompanied minors, elderly, ill and disabled are exposed to a real risk of homelessness and destitution. As of mid-August 2015 the asylum agency started short-term accommodation of newly recognised refugees and humanitarian status holders. However as it is implemented as an emergency measure under the EU funds its aim is to vacate space for accommodation in reception centres for new arrivals, therefore this support does not extend over 3 months in total and many other incumbent expenses such as rent deposits, clothing, mattresses and bed linen, kitchenware and utilities (heating, electricity, water) are not covered.

#### *Onward / secondary movement*

- The available reception conditions shaped the decision of many individuals, including beneficiaries of international protection, to seek durable solutions abroad. This has seen attempts to exit Bulgaria in an irregular manner. During 2015 the pressure on national exit borders with Romania, Macedonia and, especially - Serbia, increased drastically with 3,485 irregular migrants attempting to exit Bulgaria illegally, of which 2,199 individuals who were prevented from exiting the territory, applied

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<sup>14</sup> Article 6(1) recast Asylum Procedures Directive; Article 6(1) recast Reception Conditions Directive.

<sup>15</sup> Order №03-310 of 31 March 2015 of the Chairperson of the State Agency for Refugees, enforced as of 1 February 2015.

<sup>16</sup> Article 29(1)(2) LAR; Article 17 recast Reception Conditions Directive.

<sup>17</sup> Pakistan, Bangladesh and Côte d'Ivoire. Source: Bulgarian Helsinki Committee, *Monthly detention monitoring reports*, January - August 2015.

<sup>18</sup> Law on Asylum and Refugees, §5 Additional Provisions.

for asylum.<sup>19</sup> Statistics on how many registered asylum seekers or recognized individuals attempted irregular exits were not available. Irregular exit attempts resulted in criminal convictions and imprisonment, but also in pre-trial detention for periods of up to 2 months.<sup>20</sup> This detention included women and underage children, although in some areas the prosecutors opted for alternative measures to avoid the detention of accompanied minors (0-14 years old) and unaccompanied (0-18 years old) children.<sup>21</sup>

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<sup>19</sup> Statistics as of 31 June 2015, Source: MOI, Border Police General Directorate.

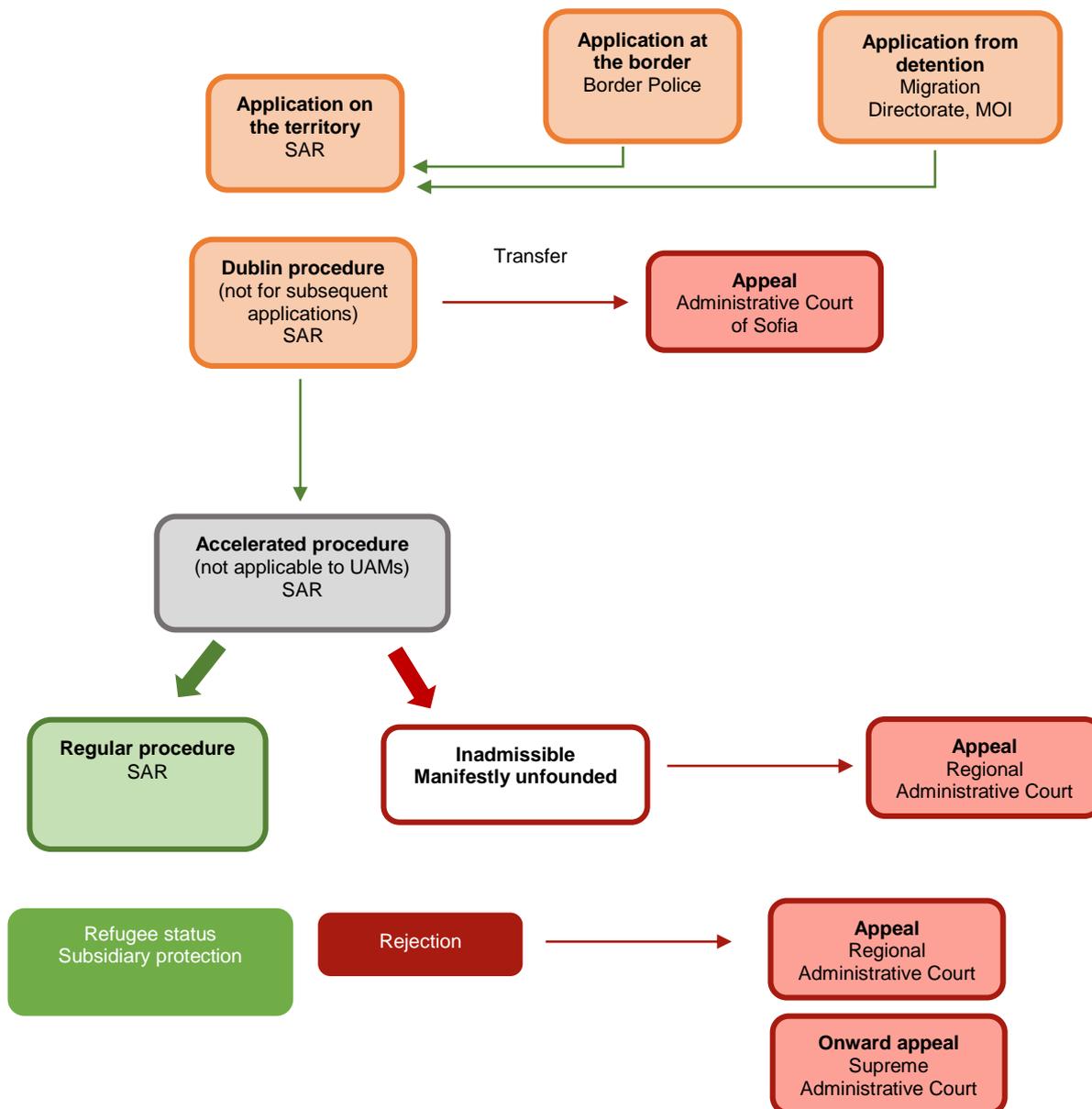
<sup>20</sup> Article 279 Criminal Code (reflecting Article 31 Refugee Convention) de-penalised irregular entries of asylum seekers, but not irregular exits.

<sup>21</sup> Prosecutor offices in Vidin and Ruse refused to initiate criminal charges against children and mothers with children, Source: UNHCR/Bulgarian Helsinki Committee Northern border mission, 3-4 June 2015.

# Asylum Procedure

## A. General

### 1. Flow Chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |  |   |  |
|--|---|--|
| ❖ Regular procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                          |
| ▪ Prioritised examination: <sup>22</sup> | <input type="checkbox"/> Yes            | <input type="checkbox"/> No                          |
| ▪ Fast-track processing: <sup>23</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                          |
| ❖ Dublin procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                          |
| ❖ Admissibility procedure:               | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No <sup>24</sup> |
| ❖ Border procedure:                      | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No               |
| ❖ Accelerated procedure: <sup>25</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                          |
| ❖ Other:                                 |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

## 3. List of the authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (TR)
<b>Application</b>	State Agency for Refugees (SAR) & any state authority	Държавна агенция за бежанците (ДАБ) и друг държавен орган
<b>National security clearance</b>	State Agency for National Security (SANS)	Държавна агенция "Национална сигурност"
Dublin procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
<b>Accelerated procedure</b>	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
<b>Refugee status determination</b>	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
<b>Appeal procedures</b>		
• <b>First appeal</b>	• Regional Administrative Court	• административен съд по местоживееене
• <b>Second (onward) appeal</b>	• Supreme Administrative Court	• Върховен административен съд
<b>Subsequent application (admissibility)</b>	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?

<sup>22</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

<sup>23</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>24</sup> Pending adoption, see section Fast-track processing.

<sup>25</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

State Agency for Refugees	303 (32) <sup>26</sup>	Council of Ministers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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## 5. Short overview of the asylum procedure

An asylum application may be lodged either before the specialised asylum administration, the SAR, or before any other state authority which will be obligated to refer it immediately to the SAR. Thus, asylum can be claimed on the territory, at borders (before the Border Police staff) or in detention centres (before the Migration Directorate staff). The asylum application should be made within a reasonable time after entering the country, except in the case of irregular entry/residence when it ought to be made immediately, otherwise it could be ruled out as inadmissible. If the asylum application was made before a state authority other than the SAR, status determination procedures cannot legally start until the asylum seeker is transferred from the border/detention centre to any of the SAR's premises for the so-called 'personal' registration.

Asylum applications in Bulgaria are examined in 3 stages:

- ❖ Dublin procedure (whether the asylum application will be examined by Bulgaria or another EU member state);
- ❖ Accelerated procedure (combined examination of both admissibility and manifestly unfounded grounds); and
- ❖ Regular procedure (status determination on the merits of the application).

If the asylum application is rejected at a former phase, the latter is inapplicable unless the rejection is revoked by a court. The decision-maker, the SAR, is a single central administrative authority, which has the rank of a ministry, but whose budget is assigned through the Ministry of Interior. SAR is competent to decide on all individual asylum applications and to grant/reject refugee or subsidiary protection (humanitarian) status. In case of mass influx where individual asylum applications cannot be processed, a temporary protection status is granted by the government by a collective decision.

The Dublin procedure is not applicable to subsequent asylum applications. If the asylum application of an applicant returned to Bulgaria was already decided on its merits by a final negative decision, the applicant is re-admitted to the country, but then treated as an irregular migrant. The criteria, rules and deadlines of the Dublin Regulation are applied directly without transposition into national legislation. In recently proposed amendments to the asylum law drafted to transpose the recast Asylum Procedure Directive, the application of the Dublin procedure is no longer envisaged as mandatory, but rather as applicable and implemented only when there are established or stated facts or circumstances which give reasons to invoke an examination relating to the eventual responsibility of another EU member state(s).<sup>27</sup>

The first instance procedure starts mandatorily with an accelerated procedure. However, the latter is not applicable to unaccompanied children, who after a decision has been taken that Bulgaria is the State responsible for examining their asylum application are admitted directly to determination on the substance in the regular procedure. Notwithstanding its name, the accelerated procedure combines the examination of both admissibility and manifestly unfounded grounds. The examination can result in finding the asylum application inadmissible, if the applicant is granted protection or permanent residence permit in another EU Member state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can be found manifestly unfounded, if the applicant did not state any grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. The decision within an accelerated procedure should be issued in 3 days from its registration, otherwise the application is automatically transferred for status determination in a regular procedure on the merits. However, the law requires the State Agency for National Security (SANS)

<sup>26</sup> 20 case-workers in Sofia registration centre, 8 in Harmanli registration centre and 4 in Pastrogor transit centre. As of 31 July 2015 under the EU funded Emergency measures SA was planning to employ additional staff of 100 registrars, interviewers and technical support to operate until 30 June 2016. As of 30 September 2015 none is yet appointed.

<sup>27</sup> §13. Article 67a (1) and (2) of the draft amendments, 502-01-68/06.08.2015, available at: <http://bit.ly/1j3XqXl>.

to provide an opinion in every asylum application that has been determined to be the responsibility of Bulgaria. If such opinion has not been provided, a decision can be issued neither in the accelerated, nor in the regular procedure. Therefore, in practice the 3 day deadline of the accelerated procedure is rarely observed and the majority of the asylum applications are automatically transferred for determination in the regular procedure. Hence, in practice the accelerated procedure is applied only with regard to subsequent applications, where the opinion of the SANS has been already collected during the first examination of the claim. The regular procedure (labelled under the law as a 'general' procedure) requires detailed examination of the asylum application on its merits. The regular procedure is a single procedure as far as the asylum application is decided upon both with regard to the need of international protection and the type of protection that should be granted - refugee status or subsidiary protection (humanitarian) status. The decision should be issued in 4 months from the registration of the asylum application but this deadline is indicative not mandatory.

The appeal procedure mirrors the phases of the administrative stage of status determination, namely: (1) an appeal procedure against Dublin decisions, heard by the Administrative Court of Sofia only; (2) an appeal procedure against the decisions rejecting asylum applications as inadmissible or manifestly unfounded, heard by the administrative court from the relevant district where the appellant is residing; and (3) an appeal procedure against decisions rejecting the asylum application on its merits, heard on two court instances by the regional administrative court as per the territorial unit of the SAR, where the asylum seeker is residing (1<sup>st</sup> instance) and the Supreme administrative court (2<sup>nd</sup> instance). All appeals have a suspensive effect, except in Dublin cases unless the Dublin appellant asked the court explicitly to suspend the transfer to the other EU Member State concerned. Legal aid can be granted by the court, if requested. The time limit for lodging an appeal against a first instance decision of the SAR is 14 calendar days as of the notification of the decision in the regular procedure, 7 calendar days in the accelerated and Dublin procedure.

All courts in all types of appeal procedures can revoke entirely the appealed administrative decisions and give mandatory instructions as to how the case must be decided at the first instance by the SAR. The court cannot itself grant protection, but can instruct the administration to do so. If an administrative decision issued in an accelerated procedure was reverted by a court, the SAR has to re-consider the asylum application in 3 days after the judgement was served. If the reverted decision was made in a general procedure, the re-consideration should not take longer than 14 days after the judgement. However, the courts do not have powers to sanction the SAR, if their instructions were not observed while reverted asylum applications were re-considered. They can only proclaim the re-issued decision that ignores the instructions of the Court as null and void (in a new appeal procedure). Additionally, the court has the right to review and revoke two other types of administrative decisions. Firstly, the rejection of a request to be accommodated in a transit/reception asylum centre and the rejection of requests for family reunification permits. The former type of decisions is subjected to the control of the administrative court in the district where the respective asylum seeker resides or has stated residence. Secondly, the rejection of a request for family reunification can be appealed and revised on two court instances by the regional administrative court as per the territorial unit of the SAR, where the asylum seeker is residing (as 1<sup>st</sup> instance) and the Supreme administrative court (as 2<sup>nd</sup> instance).

Ever since the establishment of the national asylum system in Bulgaria, asylum seekers have enjoyed liberty and freedom of movement. However, at the end of 2013 the government pushed for draft amendments of the law, which if adopted will allow for the detention and other limitations of the freedom of movement of asylum seekers pending their status determination. The draft amendments were not put to vote before 42<sup>nd</sup> Parliament, but were again re-introduced to 43<sup>rd</sup> Parliament in December 2014 and presently pending a final plenary voting.<sup>28</sup> Another draft amendment,<sup>29</sup> aimed at the transposition of the recast Asylum Procedure Directive was introduced to the Parliament in August 2015.

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<sup>28</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1LfkedB>.

<sup>29</sup> 502-01-68 from 6 August 2015, available in Bulgarian at: <http://bit.ly/1j3XqXl>.

## B. Procedures

### 1. Registration of the asylum application

#### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  Yes  No
2. If so, what is the time-limit for lodging an application?
3. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

An asylum application may be lodged either before the specialised asylum administration, the SAR, or before any other state authority, which will be obligated to refer it immediately to the SAR.<sup>30</sup> Thus, asylum can be requested on the territory, at the borders (before the Border Police staff) or in detention centres (before the Migration Directorate staff of the Ministry of Interior). The asylum application should be made within a reasonable time after entering the country,<sup>31</sup> except in cases of irregular entry or residence when it ought to be made immediately, otherwise it could be rejected as inadmissible.<sup>32</sup> If the asylum application was made before an authority different than the SAR, then status determination procedures could not legally start until the asylum seeker was transferred from the border/detention centre and accommodated in any of the SAR's premises for registration in person. In practice, until mid-2013 the national reception capacity was not able to accommodate more than 1,000 new arrivals, as places were available only for 805 individuals in total. In 2015, the asylum agency announced it was ready to accommodate 7000 individuals, however it is not clear how this can be achieved vis-à-vis the presently existing capacity of 5130 individuals in asylum reception centres (less than in 2014 with 6000 individuals) and another 800 individuals in emergency mobile modules, yet to be purchased and equipped.<sup>33</sup>

Following a total collapse of status determination procedure after the first ever sharp increase in the number of people entering the country and applying for asylum, registration and determination procedures remained constricted for a substantial period of time until the spring of 2014.<sup>34</sup> The majority of newly arriving asylum seekers were living outside reception centres at so-called "external addresses" at their own expense. Their registration and documentation have been postponed from 3 to 6 months, leading to situations where in mid-2014 there were still some individual cases without registration and issued documents. Being undocumented and without any access to accommodation, social assistance or medical care, these asylum seekers opted to leave Bulgaria and seek protection elsewhere. In 2015, registration and documentation, especially to those who approach on their own asylum agency's units, are not being carried out within the mandatory 3/6-days deadlines.<sup>35</sup> Registration of asylum seekers who applied from the national removal centres, a process which was hugely delayed in 2013 with an average duration of 45 days,<sup>36</sup> decreased significantly in 2015 (see section on Detention of Asylum Seekers). However, the first time applicants from certain nationalities are clearly discriminated against with regard to their release from detention centres and access to procedure.<sup>37</sup> Compared to all other asylum seekers, who are usually released from detention centres within 12 days on average,<sup>38</sup> the applicants from these

<sup>30</sup> Article 58(4) LAR.

<sup>31</sup> Article 13(1)(11) LAR.

<sup>32</sup> Article 13(1)(12) LAR.

<sup>33</sup> RRC Sofia-2030 places (860 in Ovcha Kupel shelter, 800 in Voenna Rampa shelter and 370 in Vrazhdebna shelter), RRC Banya 70 places, RRC Harmanli – 2710 places and Pastrogor Transit centre-370 places.

<sup>34</sup> 11,618 persons apprehended at borders, EASO *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.1. Asylum Registration Process.

<sup>35</sup> Article 6(1) recast Asylum Procedures Directive; Article 6(1) recast Reception Conditions Directive.

<sup>36</sup> Bulgarian Helsinki Committee, *2013 Annual Human Rights Report*, March 2014.

<sup>37</sup> In 2014 these nationalities were predominantly from Maghreb region and sub-Saharan Africa (Algeria, Morocco, Tunisia, Mali and Côte d'Ivoire, but in 2015 discrimination was applied mainly towards applicants from Pakistan and Bangladesh.

<sup>38</sup> Bulgarian Helsinki Committee, *2015 Annual Mid-Year Situation Report*, 15 July 2015.

nationalities are registered, interviewed and determined in conditions of detention in violation of the law.<sup>39</sup> The main reasons for this are due to the recommendations of the National Security Agency to exercise vigilance towards individuals from certain countries, considered as terrorist producing ones.

### **Push backs and access to procedure from borders and detention centres**

In 2014, 1,250 border officers and another 1,350 regular policemen were dispatched and patrolled along the Bulgarian-Turkish border. Although that by the end of 2014 the government announced the withdrawal of all additional police staff dispatched along the national border with Turkey, in practice this was not implemented. In 2015 the MOI reported that 6,400 third-country nationals who had been officially refused access to the national territory in 2014 had returned, mainly to Turkey.<sup>40</sup> Another 28,000 individuals were reported to have been sighted on the Turkish territory in close proximity to the Bulgarian border, but who did not attempt to cross the border. The top countries of origin of officially non-admitted 6,400 individuals were stated to be Syria, Iraq and Afghanistan. The above figures indirectly corroborated the allegations of *refoulement* and push-back practices of potential asylum seekers, published by various international organizations and observers.<sup>41</sup> The comparative analysis with the top countries of origin of asylum seekers registered in 2014 in Bulgaria (Syria, Iraq and Afghanistan) indicated that the COI profile of non-admitted individuals, for the most part, coincided with the profile of the persons seeking protection. Similar reports have not been made or published in 2015 so far. In September 2015 MOI stated that a total of 17,048 irregular third country nationals were apprehended since the beginning of the year. Of these 17,048 third country nationals 6,798 were arrested at the border upon entry, of whom 3,717 Syrians, 1,309 Afghans, 1,417 Iraqis, 171 Pakistani nationals, 45 Turkish nationals and 139 from other nationalities. On exit, the majority of the third country nationals, trying to leave Bulgaria irregularly were the Afghan nationals (2,479 individuals), followed by the Syrian nationals (1,942 individuals) and Iraq (1,572 individuals). In 2015, asylum seekers continued to report push-backs and mistreatment both by Bulgarian and Turkish border guards, including looting of cash and pricey personal belongings, e.g. smartphones and similar items. Many reported to be able to enter Bulgaria only after several attempts. Therefore, intensified border control and prevention measures continue to affect mostly the inflows of forced migration from countries of origin which are characterized by persecution, armed conflicts and indiscriminate human rights violations.

As a consequence, the number of asylum seekers who entered through the area of official border crossing points (BCP) increased to 60% or 1,686 individuals out of all 2,817 border applicants, who applied on entry until mid-2015.<sup>42</sup> All border applicants, except those who arrived openly at BCPs, are being sent by the border police to Elhovo Allocation (triage) centre, which violates the present national legal arrangements. Additionally, the referral is conducted without detention orders, thus can be qualified as an illegal deprivation of liberty. As a result, 42% or 2139 out of the asylum seekers, apprehended by the Border Police, were not able to submit their applications before they were transferred to Elhovo Allocation centre, from where they have been sent to a reception centre of State Agency for Refugees at a later stage. As of mid-2015 the average detention duration in Elhovo Allocation centre is 6 days.

Until mid-2015, a total of 5016 asylum applications were made at the national borders, of which 3697 were adults (3,118 male, 579 female), 974 children and 345 unaccompanied children. The countries of origin of unaccompanied children were Afghanistan (228 children), Iraq (61 children), Syria (47 children), India (4 children), Pakistan (4 children) and Bangladesh (1 child). The border police continued referrals

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<sup>39</sup> Law on Asylum and Refugees, §5 Additional Clauses.

<sup>40</sup> 6000 non-admissions of individuals arriving from Turkey and 400 non-admissions of individuals arriving from Greece.

<sup>41</sup> Human Rights Watch, Bulgaria: New Evidence about Syrians Forced back to Turkey, 18 September 2014, available at: <http://bit.ly/1stVTXW>.  
Amnesty International, *The Human Cost of Fortress Europe*, July 2014, Index: EUR 05/001/2014, available at: <http://bit.ly/1jeeCIP>.  
ProAsyl, *Bulgaria – Brutal Push-backs at the Turkish Border*, 25 April 2014, available at: <http://bit.ly/1FMV9mO>.

<sup>42</sup> 1,622 applicants at BCP Kapitan Andreevo (Turkish border); 64 applicants at BCP Kapitan Petko Voivoda (Greek border).

of unaccompanied children to local child protection services, which assisted them in applying for asylum. However, NGO monitoring in the removal centres reported that the border as well as the immigration police regularly "attach" unaccompanied children to unrelated adults,<sup>43</sup> in many cases – from different nationality – in order to be able to detain the children in the removal centres circumventing the explicit prohibition of the law in this respect.<sup>44</sup>

## 2. Regular procedure

### 2.1. General (scope, time limits)

#### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 3 to 6 months   |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 August 2015:  | Not available   |

The national authority competent to take decisions on asylum applications at first instance - the SAR - is an administration with a rank of a Ministry, responsible directly to the government alone. However, as far as its budget is allocated through the Ministry of Interior (MOI), in practice the SAR is dependent on the decisions of the MOI when making requests for additional or emergency funding. The SAR's only competence is to decide on individual applications for international protection by recognising or refusing refugee status or, granting or refusing humanitarian status (subsidiary protection). SAR also has an advisory role to the government when it decides whether to apply temporary protection on a group basis in cases of a mass influx of asylum seekers who flee from a war-like situation, gross abuse of human rights or indiscriminate violence.

The Law on Asylum and Refugees (LAR) sets a 3 month time-limit for deciding on an asylum application admitted to the regular procedure.<sup>45</sup> The LAR requires that within 2 months of the beginning of the regular procedure, at least one eligibility interview is conducted with the asylum seeker to allow the interviewer to draft a proposal for a decision on the asylum application concerned. The asylum application should firstly be assessed on its eligibility for refugee status. If the answer is negative, the need for subsidiary protection on account of a general risk to the applicant's human rights should be also considered and decided upon. The interviewer's position is reported to the decision-maker, who has another month for consideration and decision. If evidence is insufficient for taking a decision the law allows for the 3 months deadline to be extended for another 3 months at most, thus providing the SAR with a possibility to take 6 months in total to decide in the regular procedure.

Determination deadlines are not mandatory, but only indicative. Therefore if these deadlines are exceeded, this does not affect the validity of the decision. In the past the asylum procedure usually lasted between 4 to 6 months approximately, with some cases lasting up to 12 months. However, as the number of new arrivals continued to rise at a steady pace in 2014,<sup>46</sup> it challenged SAR to seek long-term institutional solutions with regard to asylum registration and status determination. SAR staff was expanded significantly. Along with it, as the majority of the asylum seekers in Bulgaria are Syrian nationals, SAR started to apply a *prima facie* approach and assessed their applications with priority as "manifestly well-founded". This enabled SAR to shorten status determination procedures to an average duration up to 6 months.

<sup>43</sup> Bulgarian Helsinki Committee, Mid-Year Situation Report, 15 July 2015.

<sup>44</sup> Article 44(9) LARB.

<sup>45</sup> Article 75(1) LAR.

<sup>46</sup> 35% increase of newly arriving asylum seekers in 2014 (2013 - 7144 asylum seekers; 2014 - 11081 asylum seekers).

In one of the proposed amendments to the law these 3 plus 3 months' time-limits are extended respectively, to 6 plus another 9 months, 15 months altogether with explicitly set maximum first instance decision time-limit of 21 months.<sup>47</sup> The aim of the amendment is to transpose the relevant recast Asylum Procedure Directive provisions. However, non-governmental organisations criticised the draft provisions stating that if adopted the proposed extension of determination time-limits will lower the present national procedural standards as it will prolong without any objective necessity the time of legal insecurity for asylum seekers, thus creating susceptibility to extortion and conditions for corruption practices.<sup>48</sup>

If the decision is negative, the appeal and court proceedings can add up to 12 more months in case the decisions in the regular procedure are reviewed by the courts on two instances. If the court finally reverts the first instance decision back, the determining authority SAR has 14 days to issue a new decision, complying with the court's instructions on the application of the law. SAR however, continued to disrespect this 14 days deadline, and in many cases rejected the asylum application despite the court's instructions. Repeated appeal procedures against the second negative decision can cause the asylum procedure to extend for over two years. In an attempt to reduce the workload of the Administrative Court of Sofia, previously responsible for handling all Dublin appeals as well as all appeals in the regular procedure as the first instance of appeal, in 2014 the law was changed to distribute the competence for the latter among all regional administrative courts, designated as per the residence of the asylum seeker who has submitted the appeal.<sup>49</sup> A year after the amendment's adoption however, it did not succeed in significantly redistributing the cases among the national courts as the majority of asylum seekers reside predominantly in reception centres or at external addresses in Sofia and Harmanli, therefore Sofia and Haskovo regional administrative courts continue to be the most busy ones, dealing with the appeals against negative first instance determination decisions.

## 2.2. Fast-track processing

The draft amendments, referred to the national parliament in August 2015 envisage the introduction of a new type of fast-track processing of subsequent applications as an admissibility phase prior to their registration, documentation and determination on the substance.<sup>50</sup> In a section, titled "Preliminary admissibility examination of a subsequent application" the draft puts forward a set of rules and criteria to determine on admissibility of all subsequent claims within a time-limit of 14 days.<sup>51</sup> According to the proposed draft, if a decision on the admissibility is not issued within 14 days then the subsequent application should be automatically considered as admissible and referred for registration. If the subsequent application is considered inadmissible the determination procedure should not be started and the applicant is not registered and documented. The stated aim of the draft proposal is to limit possibilities for the misuse of the asylum system by chain-filing multiple applications without presenting any new documents, facts or circumstances, but for the mere sake of obtaining a temporary document as an asylum seeker for the duration of the following cycle of subsequent status determination.

## 2.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

<sup>47</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>.

<sup>48</sup> Bulgarian Helsinki Committee, Comment on LAR draft proposal to transpose APD, Exh. №Б-21/22 May 2015.

<sup>49</sup> Article 133 Administrative Procedure Code (State Gazette №104 from 2013, enforced on 1 January 2014).

<sup>50</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>.

<sup>51</sup> Draft Section III, Chapter Six of the Law on Asylum and Refugees, 502-01-68 from 6 August 2015.

The law requires that asylum seekers whose applications were admitted to the regular procedure should be interviewed at least once with regard to the facts and circumstances of their applications.<sup>52</sup> Decisions cannot be considered in accordance with the law if the interview was omitted, unless it concerns a medically established case of insanity or other mental disorder. In practice, all asylum seekers are interviewed at least once in order to determine their eligibility for refugee or humanitarian (subsidiary protection) status. In practice, further interviews are usually only conducted if there are contradictions in the statements or if some facts need to be clarified.

The presence of an interpreter ensuring interpretation into a language that the asylum seeker understands is mandatory according to the national legislation. The law provides for a gender sensitive approach as interviews can be conducted by an interviewer and interpreter of the same sex as the asylum seeker interviewed upon request. In practice, all asylum seekers are indeed asked explicitly whether they would like to have an interviewer or interpreter of the same sex in the beginning of each interview. Videoconference interpretation is usually used in reception centres outside the capital Sofia,<sup>53</sup> where interpreters are harder to be found and employed, in which case interviews are conducted with the assistance of the interpreters who work in the reception centres and shelters<sup>54</sup> in Sofia. Training of interpreters and monitoring on application of Interpreters' Code of Conduct<sup>55</sup> rules are not applied in practice. As a result, quite often the statements of asylum seekers are summarised or the interpreters provide comments on their authenticity or likelihood.

In principle, interpreters from key languages such as Arabic, Dari, Farsi, Pashto, Urdu, Kurdish, English, French and Russian are available. However, starting from January 2015 the asylum administration SAR failed to secure funding for interpretation services during the asylum procedure. Interviewers were encouraged by the management to conduct interviews with asylum seekers in any other available language, even though the level of asylum seeker/s' knowledge of the language in question may prove poor or close to non-existent.<sup>56</sup> SAR was found indebted for interpretation fees due as of November 2014 and onward. Attempts were made in order to address the problem and on 29 May 2015 the government signed with European Commission an Urgent Measures Agreement, allocating €4.1 million to Bulgaria to be used in 12 months for translation and interpretation services, along other measures for improvement of reception conditions. Financial support for immediate interpretation services was provided also by UNHCR through its partner in social mediation Bulgarian Red Cross. Nonetheless, until the end of September 2015 the asylum administration was still unable to put in place the necessary institutional arrangements to pay the accumulated interpretation fees. In September 2015 the last remaining in place interpreters also stopped working until due payment. Therefore, interpretation to asylum seekers during the determination procedure remained irregular and unsecured for the most part of the year. As a result registration and asylum applications processing slowed significantly, if at all implemented (see section Registration).

All interviews are conducted by staff members of the SAR, whose competences include interviewing, case assessment and preparing a draft decision on the claim. Audio recording is possible and equipment is available in all interviewing rooms, however in practice the interviewers opt not to use it and systematically try quite hard to convince asylum seekers that it is not necessary.<sup>57</sup> As a result, audio recording has not been used in practice at all, despite the fact that UNHCR and NGOs have repeatedly insisted on it as a solid safeguard against malpractice and corruption and that the SAR included audio recording as a priority

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<sup>52</sup> Article 63a(3) LAR.

<sup>53</sup> Pastrogor transit centre (near Bulgarian-Turkish border), Harmanli reception centre (South-Eastern Bulgaria) and Banya reception centre (Central Bulgaria).

<sup>54</sup> In fact, in Sofia there is just one asylum reception administration, Sofia Reception centre, which however manages three shelters, where asylum seekers are accommodated, namely Ovcha Kupel, Vrazhdebna and Voenna Rampa.

<sup>55</sup> Adopted in 2009.

<sup>56</sup> Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2013, par. 3.2.2.

<sup>57</sup> Bulgarian Helsinki Committee, *2014 Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3. 4.

in its strategic objectives.<sup>58</sup> In 2014 NGO determination monitoring reported that in 100% of monitored cases asylum seekers were presented by the case-worker with a standard declaration to consent to not having the interview audio-recorded without being given explanations about its advantages.<sup>59</sup> As a result in 2015 interviewers started to use tape-recording more frequently with the stated intention of the asylum administration to make it universally applied in practice as a rule (see, the next paragraph).<sup>60</sup> Despite this positive change, in practice almost all interviews continue to be recorded also in writing by interviewers by summarising and typing questions/answers in the official protocol. It has to be noted that in practice most of the transcripts, even if properly recorded are not read and interpreted to the asylum seeker, but simply presented for signing. Hence an interview report is created, printed immediately after the end of the interview and served to asylum seekers for signing without reading and opportunity to make corrections, if necessary. In this way, any possible inaccuracies can be addressed not sooner than the court appeal and revision of negative decisions, when asylum seekers can request from the court a phonographic expertise to contest the protocol from the interview. Court expertise expenses however in asylum cases have to be met by the appellants.<sup>61</sup>

Refugee Status Determination (RSD) NGO monitoring, implemented in the first half of 2015 demonstrated that the safeguards that asylum seekers' statements during interviews were properly recorded continue to be largely ignored in practice.<sup>62</sup> In 70% (136) of 195 monitored cases the protocols from eligibility interviews were either not read and/or not interpreted for verification to the interviewed asylum seeker before being served for signing. It enables manipulation of the information in the protocol and prevents asylum seekers from observing whether their statements are properly written, and from knowing what will be taken into account when the asylum claim is being decided. Concerns continue to be raised with regard to tape-recording of eligibility interviews as the best safeguard for correct and unbiased determination as in just 10% (19) of the monitored cases, the case-workers applied it in practice. This anti-corruption safeguard is still applied sporadically, mainly in some reception facilities in Sofia (Voenna Rampa shelter), Banya and Pastrogor transit centre. In asylum facilities in Ovcha Kupel, Vrazhdebna and Harmanli reception centre the case-workers avoid tape-recording at any cost, including by manipulating asylum seekers to refuse consent. The monitoring also showed that in 70% of the monitored cases the case-workers provided in practice introductory information on procedures, rights and obligations of asylum seekers. In cases where proofs and evidences are submitted by asylum seekers (14% or 27 monitored cases) only in 2 of them (7%) were they properly collected with a separate protocol as a safeguard that they will be considered during the credibility assessment of the asylum claim. The NGO monitoring of eligibility decisions showed that in 51% the decision-taking was within the legal guidelines. In the other 49%, the decision was taken with a month or two delay. However, decisions suffered poor country of origin analysis as in 55% of monitored decisions COI information was either irrelevant to the facts and circumstances of the particular case or it was not of the kind to support the findings in the eligibility decision, which was tantamount to a decision without due reasoning. In 7% of the monitored decisions the country of origin information was obsolete as it referred to events that have occurred before one or more years prior the decision's date; therefore the COI reports in these cases although formally new, were actually outdated as a content.

Legal aid was not provided in general as only in 3% of the 195 monitored cases asylum seekers had appointed legal aid lawyers (see section Regular Procedure: Legal Assistance).

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<sup>58</sup> State Agency for Refugees, *Strategic objectives*, 2012, available at: <http://bit.ly/1jMns1O>.

<sup>59</sup> Bulgarian Helsinki Committee, *2014 Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3. 4.

<sup>60</sup> State Agency for Refugees, 38th National Coordination Meeting.

<sup>61</sup> Article 92 LAR.

<sup>62</sup> Bulgarian Helsinki Committee, Mid-Year Project Performance Report, 15 July 2015.

## 2.4. Appeal

### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive
2. Average processing time for the appeal body to make a decision: 15 months<sup>63</sup>

The negative decision taken in the regular procedure on the substance (merits) of the asylum application can be appealed within 14 days from its notification. In general, this time-limit has proved sufficient for rejected asylum seekers to get legal advice, prepare and submit the appeal within the deadline. The decision-maker (SAR) is obligated to, and actually does, provide information to rejected asylum seekers as to where and how they can receive legal aid (see Regular Procedure: Legal Assistance) when serving a negative decision.

The law establishes two appeal instances in the regular procedure,<sup>64</sup> in contrast to appeal procedures for contesting decisions taken in Dublin and accelerated procedures, where first instance decisions are reviewed in only one appeal instance.<sup>65</sup> Appeal procedures are only judicial; the law does not envisage an administrative review of asylum determination decisions, at all. Both appeals before the 1<sup>st</sup> and 2<sup>nd</sup> appeal courts have suspensive effect. The first appeal is held before the regional administrative court, where the respondent party (SAR) has its territorial unit where the appellant (the person lodging the appeal) resides.<sup>66</sup> The first appeal instance conducts a full review of the case, both on the facts and the points of law. Asylum seekers are summoned and questioned in a public hearing as to the reasons they applied for asylum. Decisions are published, but also served personally to the appellant. If the first instance appeal decision is negative, the asylum seekers can bring their case to the second (final) appeal court, the Supreme administrative court, 3<sup>rd</sup> Department, but only with regard to points of law. Both appeal courts have to issue their decisions within one month. However this deadline is indicative, not mandatory and therefore regularly not respected. Average duration of an appeal procedure before the court at both judicial instances is 15 months, although in more complex cases it can last up to 18 months.

## 2.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ Does free legal assistance cover:

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:

<input checked="" type="checkbox"/> Representation in courts
<input type="checkbox"/> Legal advice

In 2013, the national legislation concerning legal aid was amended to introduce mandatory legal aid for asylum seekers at all stages of the status determination procedure, sponsored under the state budget.<sup>67</sup> In the law, the provision of legal aid to asylum seekers is subject to the condition that legal aid is not already provided on another basis. According to the amendment, asylum seekers have the right to ask for the appointment of a legal aid lawyer from the moment of the registration of their asylum application.

<sup>63</sup> 3 months on average at the first court instance (regional administrative courts) and 12 months on average at the final court instance (Supreme administrative court), source: Association for Refugees and Migrants, Analytical Report, 18 September 2014, available in Bulgarian at: <http://bit.ly/1eggBe3>.

<sup>64</sup> Article 90(3) LAR.

<sup>65</sup> Article 85(4) LAR.

<sup>66</sup> Article 133 Administrative Procedure Code.

<sup>67</sup> Article 22(8) Law on Legal Aid, State Gazette №28/13, enforced on 23 March 2013.

Before the law was amended, state funded legal aid was only available to asylum seekers at the appeal stage before the Administrative Court or Supreme Court, according to the law on legal aid. However, the National Bureau for Legal Aid (NBLA), an institution within the Ministry of Justice designated to manage legal aid funding, does not have any resources planned for legal aid to asylum seekers during status determination at first instance. The Bureau applied for funding for these activities from European Refugee Fund (ERF), but the application was rejected by SAR in its capacity as ERF responsible authority on account of other private legal aid providers.<sup>68</sup> Legal aid, provided under ERF projects from private legal aid providers consists of legal advice and representation during eligibility interviews as well as assistance to appeal negative decisions before the court. Interpretation costs are also covered as a part of legal aid projects to facilitate the communication between lawyers and asylum seekers. Remuneration for both lawyers and interpreters is calculated in accordance with the generally applicable official rates for the respective professions. However, NGO status determination monitoring found that the quality of the legal services of the private legal aid providers was poor, and that in practice during 2014 and 2015 the legal representation of asylum seekers in eligibility interviews was occasional rather than being the rule.<sup>69</sup> In 2015 the legal aid given under ERF by the selected by the asylum administration private legal provider, was available only at a reception centre in Sofia, Ovcha Kupel, and even there rarely and sporadically. The NGO monitoring during the first half of 2015 noted that legal aid was provided only in 3% (6 of all 195 monitored cases).<sup>70</sup> The monitoring also find the quality of legal representation to be highly questionable, quite formal and indifferent. ERF funding for legal aid ended on 30 June 2015, but the new AMIF funding is not yet available and it is not expected to be, at least not before the end of 2015. Hence, as of 1 July 2015 asylum seekers were left without any state provided legal aid (advice and representation) at the first instance of status determination procedures.

Beyond the framework of the abovementioned ERF-projects, under the law the legal aid at first instance is accessible to all asylum seekers, including those submitting a subsequent asylum application, if funds are available. However, as indicated, such funds are not secured by the State budget to the National Bureau for Legal Aid for the administrative phase of status determination procedure. Legal aid before the court at both judicial instances (regional administrative courts and Supreme administrative court) is funded under the State budget and is systematically granted to asylum seekers, unless the asylum application was a subsequent one without new evidence or facts involved. It has been criticized only with relation to the quality of the legal representation, which is a general flaw of the legal aid system in Bulgaria.<sup>71</sup> NGO monitoring reported that in more than one-third of the court hearings asylum seekers were not represented by a lawyer.<sup>72</sup> In 44% of the cases there was a private lawyer hired by the asylum seeker, while legal aid lawyers were used to a lesser extent (21%). As regards unaccompanied asylum-seeking children, procedural representation by a lawyer was ensured in 60% of the cases, in 20% of them the legal representative being a legal aid lawyer. In the remaining 40% the unaccompanied children did not have legal representation during court proceedings. While the legal representation is generally assessed as adequate, the relatively high percentage of lack of case's preparation (over one-quarter of the cases) is an indication of concern for the quality of provided legal assistance. A low-level of preparedness has been found in one-third of the cases with legal aid lawyers, and in a quarter of the cases with privately-engaged lawyers.

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<sup>68</sup> See SAR, *Information Notes*, 1 July 2013, available in Bulgarian at: <http://bit.ly/1JrVHG> and 5 July 2014, available in Bulgarian at: <http://bit.ly/1jMnyGY>

<sup>69</sup> Bulgarian Helsinki Committee, *2014 Annual RSD Monitoring Report*, January 2015.

<sup>70</sup> Bulgarian Helsinki Committee, *Mid-Year Project Performance Report*, 15 July 2015.

<sup>71</sup> Open Society Institute-Sofia, *Implementation Evaluation of the Law on Legal Aid 2007-2011*, par. 8.

<sup>72</sup> Association for Refugees and Migrants, *Analytical Report on refugee court proceedings monitoring*, Sofia, October 2014, available in Bulgarian at: <http://bit.ly/1eggBe3>.

### 3. Dublin

#### 3.1. General

Indicators: Dublin: General		
1. Number of outgoing requests in 2015 (January-September):		7
❖ Top 3 receiving countries:	DE	4
	SE	2
	DK	1
2. Number of incoming requests in 2015 (January-September):		6,963
❖ Top 3 sending countries:	DE	3,561
	AT	1,449
	FR	297
3. Number of outgoing transfers in 2015 (January-September):		8
❖ Top 3 receiving countries:	DE	4
	SE	3
	DK	1
4. Number of incoming transfers in 2015 (January-September):		200
❖ Top 3 sending countries:	AT	49
	DE	34
	CH	18

Under the law and in practice the Dublin procedure is applied systematically to all asylum applications, except in the case of subsequent applications.<sup>73</sup> The law does not establish criteria to determine the state responsible, but simply refers to the criteria listed in the Dublin Regulation.

#### **Application of the Dublin criteria**

Family unity criteria are applied fully, though in practice the prevailing type of cases relate to joining family members outside Bulgaria, not the opposite. If the family link cannot be established or substantiated with relevant documents some EU member states (Germany, Austria) require DNA tests in cases of unaccompanied children in order to prove their origin. In such cases the parent or parents are usually advised to travel to Bulgaria and provide blood samples to be matched, tested and compared with the unaccompanied child or children's DNA. It has to be noted that the vast majority of asylum seekers arrive in Bulgaria via Turkey therefore cases when the responsibility of another EU member state can be engaged under any other of the Dublin criteria, except the family ones, are scarce.

The most common criteria applied in both taking charge and taking back cases are previously issued documents and first Member State of entry. Bulgaria accepts responsibility for the examination of asylum applications based on the humanitarian clause, and mostly vis-à-vis document and entry reasons.<sup>74</sup> In 2015, Bulgaria received 7,199 Dublin information requests and implemented 210 incoming and 11 outgoing transfers.<sup>75</sup>

#### **The discretionary clauses**

In the past the sovereignty clause has been used in few cases in combination with the humanitarian clause, mainly for family or health condition reasons. The sovereignty clause has never been applied for reasons, different from humanitarian ones. So far during 2015 Bulgaria has applied neither.

<sup>73</sup> Article 67a(3) LAR.

<sup>74</sup> State Agency for Refugees, *2012 National EUROSTAT Report*, Dublin Chapter, Annex 1 and 2.

<sup>75</sup> As of 30 September 2015.

## 3.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 2 months<sup>76</sup>

EURODAC has been used as an instrument for checking the previous status records of all irregular migrants. Fingerprints taken by the border or immigration police are uploaded automatically in the Schengen Information System (SIS) and can be used for the purpose of implementing the Dublin Regulation. Nonetheless, all asylum seekers are systematically fingerprinted again by the Dublin Unit of the SAR for technical reasons.

In 2015 the number of asylum seekers who decided to drop their claims prior the fingerprinting and personal registration increased. These were mainly asylum seekers who apply at the borders, both on entry and on exit after being apprehended as well as those who were transferred from the removal centres. NGO RSD monitoring showed that by mid-2015, of 9,581 individuals who had applied for asylum, 5,016 individuals had applied at the borders and 4,565 individuals in removal centres, but those who were officially registered by the asylum administration during the same period of time were just 7,342 individuals.<sup>77</sup> NGO lawyers and social workers share the observation that asylum seekers usually flee immediately after their transfer from border or removal detention facilities, mainly in order to avoid the fingerprinting.<sup>78</sup> Under the law, the determination procedure is not officially commenced until the fingerprinting is effectuated.<sup>79</sup> Therefore, if caught after the escape prior to their fingerprinting, the third country nationals are not considered by the asylum administration, SAR, to be asylum seekers, but irregular migrants. However, unless they explicitly and in writing denounce their asylum claims, immigration and border police consider them as asylum seekers based on their initial statements and hand them over to SAR by transporting them directly to asylum reception centres instead of detaining them for removal.

### Individualised guarantees

Bulgaria does not seek individualised guarantees that the asylum seekers will have adequate reception conditions upon transfer in practice. It is a general understanding within the national stakeholders that the reception conditions in the countries of transfer, e.g. in 2015 – Germany, Denmark, Sweden, are much better in most aspects than the local ones.

### Transfers

In cases where another Member State accepts the responsibility to examine the application of an asylum seeker who is in Bulgaria, the transfer is implemented within 2 months on average.

Asylum seekers are usually not detained upon the notification of the transfer. However in certain cases, transferred asylum seekers can be detained for up to 5 days before the transfer as a precautionary measure to ensure their timely boarding of the plane. In all cases the transfer is carried out without an escort. It should be noted that in practice asylum seekers sometimes agree to be detained for a couple of days before the flight to the responsible Member State as this is the only way for them to avoid any procedural problems that can delay their exit.

Asylum seekers to be transferred under the Dublin Regulation to another Member State are given a written decision stating the grounds for applying the Dublin Regulation and the right to appeal the transfer to the other Member State before the court. However, asylum seekers are not informed of the fact that requests

<sup>76</sup> Source: State Agency for Refugees, Dublin Unit, 15 September 2015.

<sup>77</sup> Bulgarian Helsinki Committee, Mid-Year Project Performance Report, 15 July 2015.

<sup>78</sup> Bulgarian Red Cross, Refugee and Migrant Service, which representatives in 2015 provide social support and mediation in reception centres in Sofia, Harmanli and Pastrogor.

<sup>79</sup> Article 63(1) LAR.

have been made for taking back/taking charge to the Member State deemed responsible, nor of any progress made with regard to such requests, unless the applicant themselves requested the transfer and/or provided due evidence in this respect.

### **The situation of Dublin returnees**

On 2 January 2014 the UNHCR issued a paper that assesses the prevailing reception conditions and asylum procedures in Bulgaria, including the situation for people transferred to Bulgaria under the Dublin Regulation.<sup>80</sup> The paper noted that existing gaps in the national asylum system had worsened following an exponential rise in the numbers of the new arrivals in Bulgaria since the autumn of 2013, with a serious impact on affected asylum seekers. UNHCR concluded that asylum seekers in Bulgaria faced a real risk of inhuman or degrading treatment, due to systemic deficiencies in both the reception conditions and asylum procedures and urged other EU Member States to halt all transfers of asylum seekers to Bulgaria pursuant to the Recast Dublin Regulation where it applied. On 15 April 2014, UNHCR lifted its call for all Dublin transfers to Bulgaria to be suspended in light of the improvements in the asylum system and reception conditions that were achieved with the support of UNHCR, EASO and non-governmental stakeholders. Nevertheless, it continued to raise concerns with respect to access to the territory, inadequate reception conditions in two of the centres; the lack of systematic identification of vulnerable asylum seekers, and in particular (unaccompanied) children, and of a system to respond to their needs; the quality of decisions on asylum applications and procedures; and the absence of an integration programme for those who have been granted a protection status. UNHCR expressed particular concern that “in the absence of a solid strategy and sustainable programme to ensure access to livelihoods, affordable housing, language acquisition and effective access to formal education for children, beneficiaries of international protection may not have effective access to self-reliance opportunities and thus may be at risk of poverty and homelessness”.<sup>81</sup> UNHCR therefore acknowledged that, despite the improvements, there may be reasons that preclude transfer to Bulgaria under the Dublin Regulation “for certain groups or individuals”. In particular, UNHCR recommends particular vigilance with respect to the transfer of asylum seekers with specific needs and vulnerabilities. It also remains concerned over the sustainability and the consolidation of the efforts undertaken in the medium and longer-term.

Both ECRE and Amnesty International called for the continued suspension of transfers of asylum seekers to Bulgaria in light of the fact that inadequate conditions in parts of the reception system and deficiencies in the asylum procedure continue to remain, while also the sustainability of improvements to the asylum system in Bulgaria in the longer term is questionable.<sup>82</sup>

According to SAR as of 30 September 2015, 6963 requests under Dublin Regulation are pending.<sup>83</sup> In comparison, 7851 requests were made in 2014.<sup>84</sup> The number of Dublin returns actually implemented to Bulgaria remain quite low in 2015 as it consists just 2.6% (178 returns) of all requests made since the beginning of the year.

Asylum seekers who are returned from other Member States in principle do not have any obstacles to access the asylum procedure in Bulgaria upon their return. Prior to the arrival of Dublin returnees, SAR informs the Border Police of the expected arrival and whether the returnee should be transferred to asylum reception centre or to an immigration detention facility. This decision depends on the phase of the asylum procedure of the Dublin returnee as outlined below. Hence, if the returnee has a pending asylum application in Bulgaria, he is transferred to a SAR reception centre because SAR usually suspends an asylum procedure when an asylum seeker leaves Bulgaria before the procedure was completed. If a

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<sup>80</sup> UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: <http://bit.ly/1dsMr2Y>.

<sup>81</sup> UNHCR, *UNHCR observations on the current asylum system in Bulgaria*, April 2014, available at: <http://bit.ly/1eJxjfN>.

<sup>82</sup> See ECRE, *ECRE reaffirms its call for the suspension of transfers of asylum seekers to Bulgaria under the recast Dublin Regulation*, 7 April 2014; Amnesty International, *Suspension of Returns of Asylum-Seekers to Bulgaria must continue*, March 2014.

<sup>83</sup> State Agency for Refugees, 47<sup>th</sup> National Coordination Meeting, 10 September 2015.

<sup>84</sup> UNHCR, *UNHCR observations on the current asylum system in Bulgaria*, April 2014.

Dublin returnee’s asylum application was rejected in absentia, but not served to the asylum seeker before he had left Bulgaria, the returnee is transferred to an asylum reception centre. If, however, the Dublin returnee’s asylum application was rejected with a final decision before he had left Bulgaria, or the decision was served in absentia and therefore became final, the returnee is transferred to one of the detention immigration facilities, usually to the detention centre in Sofia (Busmantsi), or to Lyubimets detention centre (near the Turkish border). Parents are usually detained with their children. In exceptional cases children may be placed in child care social institutions while their parents are detained in immigration facilities, in cases when an expulsion order on account of national security threat is issued to any of the parents.

Even when a Dublin returnee is formally accepted into Bulgaria under Article 13 of the Dublin Regulation (indicating no prior asylum application in Bulgaria), it could be the case that this person most probably has already been given an “application number” by SAR in Bulgaria but the application had not been formally registered, as had happened during the “emergency period” of late 2013 – early 2014 when registration of individuals who entered Bulgaria during the said period was usually delayed for a period longer than 6 months. According to the national legislation, there is a practical gap of an unspecified period of time between the lodging of an asylum application and the physical registration of the applicant by SAR, contrary to the Article 6 of the Reception Conditions Directive.

There are situations where asylum seekers, including Dublin returnees, forfeit their right to social assistance and accommodation. Usually, it is on the request of the asylum seeker in order to be allowed to live outside the reception centres, effectuated before they travelled to the returning country. This right can be forfeited by SAR, if asylum seekers have left the reception centre for more than three days without prior and due notice, which is a common Dublin cases situation. However, vulnerable applicants, especially families with small children, are generally accommodated upon the Dublin return in spite of this. There is no procedure to assess vulnerability, and the term ‘vulnerable applicants’ in practice is applied in general to families with small children and individuals with disabilities. For those who had opted to reside in an external address at their own expense by signing a declaration to this effect forfeit their right to accommodation and social benefits during the asylum procedure. If a Dublin returnee had signed such a declaration, it still applies when he is returned to Bulgaria and he will normally not be able to access accommodation in SAR reception centres or social benefits upon return.

### 3.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The law does not require the organisation of a personal interview in the Dublin procedure, rather it gives an opportunity to the interviewer to decide whether an interview is necessary or not in light of all other related circumstances and evidence.<sup>85</sup> If an interview is conducted it is not different from any other eligibility interviews in the asylum procedure except relating to the type of questions asked in order to verify and apply the Dublin criteria. Similar to the regular procedure, an audio recording is possible and equipment is available in all interviewing rooms. However, in practice, the interviewers opt not to use it and systematically try to convince asylum seekers that it is not necessary. As a result, the audio recording has not been used in Dublin procedures either.

The Dublin interview template repeats many of the questions and queries listed in the registration form as it focuses on entry routes, previous visits, or residence in other Member States or establishment of family members in these states. This approach proved inadequate in a situation of growing numbers of new

<sup>85</sup> Article 67b(2) LAR.

arrivals. In practice it takes one month on average to organise a Dublin interview, which may lead to further delays in the asylum procedure in a situation of an increased influx. Additional problems are created by the fact that the decision-making process remains multi-staged and centralised as far as the Dublin decisions are concerned as such decisions can be issued only by the SAR's Dublin Unit, which is in the headquarters of the SAR in Sofia.<sup>86</sup> Therefore, the EASO mission in Bulgaria recommended that Dublin interviews should be combined with the registration of asylum seekers; thus use only one form instead of two similar forms, as well as competences to issue Dublin decisions to be delegated or distributed from SAR Dublin Unit to the local staff at the reception/transit centres around the country.

There are no guidelines or a code of conduct for asylum officers, elaborating on the manner interviews should be conducted. There are currently no gender sensitive mechanisms in place in relation to the conduct of interviews, except the asylum seekers' right to ask for an interpreter of the same gender.<sup>87</sup>

The SAR does not exclude any caseloads or nationalities from interviews.

The date of the Dublin interview is determined by those responsible for registration at the SAR at the moment of registration (mostly a week to ten days after the registration). The caseworkers are not informed about these dates as they receive the list of the interviews to be conducted the evening before or at the same day of the interview. The reports of the Dublin interviews are hand written and added to the hardcopy file. A certain time is needed to process all the Dublin decisions at the SAR head office before handing back the file to the caseworker. There have been so far no complaints about the quality of transcripts of interviews.

Prior to the first influx in the autumn of 2013, the SAR conducted Dublin interviews in all cases, not only when it was established from other statements (during the registration) or already collected evidence (e.g. documents, tickets, visas, EURODAC hits) that it was likely that another Member State would be responsible for the examination of the asylum application. In recently proposed amendments to the law<sup>88</sup> it is suggested that the Dublin procedure should be implemented onwards as non-mandatory stage and only if and when information is gathered to presume the eventual responsibility of another member state. All other provisions relating the standards and safeguards applied in the Dublin procedure, including the personal interview and legal guarantees during it, remain unchanged.

### 3.4. Appeal

**Indicators: Dublin: Appeal**

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No
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Appeals against decisions in the Dublin procedure are heard only before the Administrative court of Sofia and only at one instance. All other appeals against decisions rendered at first instance are heard before the respective administrative court located in the region where the asylum seeker is residing. Dublin appeals do not have a suspensive effect, but it can be awarded by the court upon an explicit request from the asylum seeker.

The time limit for lodging the appeal is 7 calendar days, which is equal to the time limit for appeal in the accelerated procedure. Appeal procedures are held in an open hearing, and legal aid can also be awarded. The court accepts in practice all kind of evidence in support of the appeal, including on the level

<sup>86</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>87</sup> Article 63a(4) LAR.

<sup>88</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>

of reception conditions and procedural guarantees to substantiate its decision, which was the case for all Dublin transfers to Greece until they were discontinued under the sovereignty clause in 2011. The court practice however is quite poor as very few Dublin decisions on transfers to other Member States are challenged. For this reason, no clear conclusions can be made whether national courts take into account the reception conditions, procedural guarantees and recognition rates in the responsible Member State when reviewing the Dublin decision.

### 3.5. Legal assistance

#### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Representation in courts
<input type="checkbox"/> Legal advice

Amendments to the Law on Legal Aid now provide for state funded representation in procedures before the administration. As a result, legal aid financed by the state budget became available to asylum seekers during the Dublin procedure in 2013, in addition to the already available legal aid during an appeal procedure before the court. However, in practice, due to financial constraints and deficiencies, the legal aid during the Dublin procedure is highly dependent on the available ERF funding and projects (see section Regular Procedure: Legal Assistance).

The same conditions and the same problems as for legal aid provided during the regular procedure apply to legal aid provided during the Dublin procedure.

### 3.6. Suspension of transfers

#### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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  - ❖ If yes, to which country or countries?
 

Greece
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Bulgaria suspended all Dublin transfers to Greece in 2011, thereby assuming responsibility for examining the asylum applications of the asylum seekers concerned. The suspension of Dublin transfers to Greece was decided by the SAR as a matter of overall policy and was based on the UNHCR's position on the matter.<sup>89</sup> As a result, all asylum seekers who otherwise would have been returned to Greece on the basis of the Dublin Regulation were admitted to the next stages of the status determination procedure (accelerated and, after, regular procedure) with full access to all available rights and entitlements. This policy has been applied since 1 August 2011, but it has been reported that for some months after the *M.S.S. v Belgium and Greece* judgment of the European Court of Human Rights in January 2011, Dublin transfers to Greece were still carried out.<sup>90</sup>

Suspensions of transfers are not automatic, as there might be cases of “take charge”, where applicants have family members in other EU Member States, or other circumstances that engage the responsibility of another state. Due to the level of material reception conditions in Bulgaria, there have been no appeals against Dublin transfer decisions to any other EU Member State.

<sup>89</sup> State Agency for Refugees, Order № 419 from 29 July 2011.

<sup>90</sup> See Dublin Transnational Project, *Dublin II Regulation: Lives on Hold: Bulgaria*, available at: <http://bit.ly/1GWMF0z>, 42.

## **4. Admissibility procedure**

### **4.1. General (scope, criteria, time limits)**

National legislation provides for a combined initial examination of the asylum application on both admissibility and manifestly unfounded grounds, which is to be distinguished from the regular procedure, where the examination is focused on the merits of the asylum application. The initial examination can result in finding the asylum application inadmissible if the applicant has already been granted protection in another EU state or safe third country,<sup>91</sup> or if the application is a subsequent asylum application without any new facts or evidence submitted.<sup>92</sup>

The first ground is rarely applied due to lack of such hypotheses, but inadmissibility is systematically ruled out in practice on subsequent applications. However, during the initial examination the asylum application could be found admissible but manifestly unfounded, if the applicant did not state any grounds for persecution at all, or, if their statements were unspecified, implausible or highly unlikely. This combined initial stage of the examination of the asylum application is according to the law considered as an "accelerated procedure" (see section on Accelerated Procedure).

Recently proposed draft amendments also envisage a special examination on admissibility of subsequent applications.<sup>93</sup> According to the draft, if a subsequent application is considered inadmissible the determination procedure will not be started and the applicant will not be registered and documented (see section on Registration).

## **5. Border procedure (border and transit zones)**

There is no border procedure in Bulgaria.

## **6. Accelerated procedure**

### **6.1. General (scope, grounds for accelerated procedures, time limits)**

The accelerated procedure is designed to examine the admissibility of the asylum application, but also the likelihood of the application being fraudulent or manifestly unfounded.<sup>94</sup> The examination can result in finding the asylum application inadmissible, if an applicant has already been granted protection or a permanent residence permit in another EU state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can also be found manifestly unfounded if the applicant did not state any reasons for applying for asylum related to grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. All grounds are applied in practice.

The authority responsible for taking decisions at first instance on asylum applications in the accelerated procedure is the SAR, through caseworkers specially appointed for taking decisions in this procedure. Before 2015 all asylum applications were channelled first through the accelerated procedure as a mandatory phase of the status determination, except the explicitly exempted claims of unaccompanied children.<sup>95</sup>

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<sup>91</sup> Article 13(2) LAR.

<sup>92</sup> Article 13(1)(5) LAR.

<sup>93</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>.

<sup>94</sup> Article 13(1)(1)-(4) and (6)-(14) LAR.

<sup>95</sup> Article 71(1) LAR.

The decision within an accelerated procedure should be issued within 3 days from the decision that Bulgaria is responsible to examine the asylum application concerned.<sup>96</sup> If the decision is not taken within this timeframe, the asylum application is automatically transferred for examination on the merits under the regular procedure. Most recent draft amendments envisage an extension of the present time-limit for accelerated procedure's implementation from 3 calendar days to 10 working days.<sup>97</sup>

However, the law requires the State Agency for National Security (SANS) to provide an opinion as to whether the person concerned constitutes a threat to national security in every asylum application, which as a result of the Dublin procedure was determined to be of the responsibility of Bulgaria. If an opinion has not been provided, a decision can be issued in the accelerated, or in the regular procedure. Therefore, in practice the 3 days deadline of the accelerated procedure is rarely observed and the majority of the asylum applications are automatically transferred for determination in the regular procedure. Hence, in practice the accelerated procedure is applied only with regard to subsequent applications, where the opinion of the SANS has already been collected during the first examination of the claim. In 2010 and in 2014, BHC communicated to the SAR a suggestion to amend the law and remove the security checks from status determination procedure stages, which are prior to the regular procedure because, even if established, any circumstances relating to a national security threat can be taken into account as an exclusion ground only if the inclusion clauses have been met in the particular case and such assessment can be done only in the regular procedure and not earlier than that.<sup>98</sup> A similar recommendation was also made by the EASO in its 2014 mission report on Bulgaria.<sup>99</sup> However, in the most recent draft amendments, proposed in August 2015 these recommendations are not reflected at all.<sup>100</sup>

As a result of this procedural impediment, in a combination with the profile of newly arriving asylum seekers, the majority fleeing from COI characterized by persecution, armed conflicts and indiscriminate human rights violations, in 2015 the accelerated procedure became almost inapplicable in practice. As of 30 September 2015, out of total 13,473 first instance decisions just 0.4% (63 decisions) were taken within accelerated procedure vis-à-vis asylum seekers with multiple subsequent applications.

Therefore, the most recent draft amendments propose that the accelerated procedure is arranged as a non-mandatory phase of a unilateral status determination procedure, which is to be developed if the asylum application is not being dismissed as inadmissible or the responsibility of another EU member state is not being engaged.<sup>101</sup>

## 6.2. Personal Interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> If so, are interpreters available in practice, for interviews?	<input type="checkbox"/> Yes <input type="checkbox"/> No
  
2. Are interviews conducted through video conferencing?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
-------------------------------------	---------------------------------	---

The questions asked during interviews in the accelerated procedure aimed at establishment of facts relate the individual refugee story, although in less detail in comparison with the interviews conducted within the

<sup>96</sup> Article 70(1) LAR.

<sup>97</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §18 of the draft.

<sup>98</sup> Bulgarian Helsinki Committee, *2010 Annual Comment and Proposal for Draft Amendments to the Law on Asylum and Refugees*, Exh.№Б-01/15.01.2010 and *2014 Comments on the Draft Amendments to the Law on Asylum and Refugees*, February 2014.

<sup>99</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>100</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>.

<sup>101</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §18 of the draft

regular procedure. Facts such as travel routes, identity and nationality are in principle exhaustively addressed prior to the accelerated procedure at the stages of registration and/or the Dublin procedure.

### 6.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

- |                            |  |   |
|----------------------------|--|---|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
|                            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |

Appeals in the accelerated procedure have to be submitted within 7 calendar days (excluding public holidays) after notification of the negative decision, as opposed to the 14 calendar day deadline in the regular procedure. Another major difference with the regular asylum procedure is related to the number of judicial appeal instances. In the accelerated procedure there is only one judicial appeal possible, whereas in the regular procedure there are two appeal instances (a 1<sup>st</sup> instance appeal to the Court competent to review both to facts and legality of the first instance decision and an onward appeal in which only points of law are considered).

Lodging an appeal has automatic suspensive effect *vis-à-vis* the removal of the asylum seeker. The court competent to review first instance decisions in the accelerated procedure is the administrative court of the county in which the appellant resides. The court has the obligation to ascertain whether the assessment of the admissibility or the manifestly unfounded character of the claim is correct in view of the facts, evidence and legal provisions applicable. Asylum seekers have to be summoned for a public hearing and in practice are asked to shortly summarise their reasons for fleeing their country of origin and seek protection elsewhere.

In general, asylum seekers do not face significant obstacles to lodging an appeal in the accelerated asylum procedure within the 7 day deadline. However, national legal aid arrangements only provide for state funded legal assistance and representation after a court case has been initiated, i.e. after the appeal has been drafted and lodged. As a result, asylum seekers rely entirely on NGOs for their access to the court, i.e. for drafting and lodging the appeal. Presently, only one NGO provides this type of assistance independently from EU funding.<sup>102</sup>

### 6.4. Legal assistance

#### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |  |   |                             |
|-------------------------------------|--|---|-----------------------------|
|                                     | <input type="checkbox"/> Yes                         | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview |   |                             |
|                                     | <input type="checkbox"/> Legal advice                |   |                             |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

- |                                    |   |  |                             |
|------------------------------------|---|--|-----------------------------|
|                                    | <input type="checkbox"/> Yes                      | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input type="checkbox"/> Representation in courts |  |                             |
|                                    | <input type="checkbox"/> Legal advice             |  |                             |

The same rules apply as in the regular procedure.

<sup>102</sup> Since 1994, UNHCR has been supporting and partnering BHC with regard to protection and legal assistance to asylum seekers in Bulgaria.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
  - ❖ Is tailored information provided to unaccompanied children?  Yes  No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

The law explicitly mentions the obligation of the SAR to provide information to asylum seekers within 15 days from the submission of the application.<sup>103</sup> The information should cover both rights and obligations of asylum seekers and the procedures that will follow. Information on existing organisations that provide social and legal assistance has to be given as well. The information has to be provided in a language the asylum seeker declared that he understands or, when it is impossible – in a language the asylum seeker may be reasonably supposed to understand. The law does not specify whether the information should be provided orally or in writing, but in practice the information is always provided to asylum seekers in writing in the form of a leaflet translated in the languages spoken by the main nationalities seeking asylum in Bulgaria, such as Arabic, Farsi, Dari, Urdu, Pashto, Kurdish, English and French.

However, the common leaflet and the specific leaflet for unaccompanied minors drafted by the Commission as part of the Dublin Implementing Regulation are not being used in Bulgaria or being provided to asylum seekers.<sup>104</sup>

Information by leaflets – or where needed, in other ways (UNHCR or NGOs info boards) – is usually provided by the SAR from the initial application (e.g. at the border) until the registration process is finished.<sup>105</sup> However, the leaflets are quite long and the explanations are deemed by most of the asylum seekers to be complex and difficult to understand. NGOs, in particular UNHCR's implementing partners develop and distribute other leaflets and information boards that are simpler and easier to read and some do operate reception desks where this kind of information is also provided orally to the asylum seekers.<sup>106</sup> In addition, in 2014 UNHCR funded the development of online accessible tool ([asylum.bg](http://asylum.bg)) with information about the key institutions, procedures and rights before, during and after the status determination in several most spoken languages (Arabic, Farsi, Dari, Urdu, English and French). As far as the tool functions on-line it aims to providing correct and comprehensive legal information to asylum seekers in a sustainable manner wherever they are present and accommodated, including outside the reception centres, at the borders, in detention centres and other remote locations.

Among all types of different status determination procedures, the Dublin procedure proved to be the most difficult for asylum seekers to comprehend despite the considerable amount of written materials produced to inform them about it. Another difficult issue has been detention and the reasons why a person who applied for asylum can remain detained without a transparent and fixed maximum period of detention.

<sup>103</sup> Article 58(6) LAR.

<sup>104</sup> Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

<sup>105</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>106</sup> Red Cross, Helsinki Committee.

NGOs, lawyers and UNHCR staff have unhindered access to all border and inland detention centres and try to provide as much information as possible related to detention grounds and conditions.<sup>107</sup> Despite that, the subject of detention remains hard to explain as an extremely high percentage of asylum seekers claim that they do not understand the reasons why they are kept in detention.<sup>108</sup>

The draft amendments proposed in August 2015 envisage more obligations of the asylum administration to provide information to individuals who have expressed intention to seek asylum or requested information and advice in relation to it.<sup>109</sup> The information should at least include how one can apply for asylum and procedures to be followed, including in immigration detention centres.

## D. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

The law deals with subsequent asylum applications within the context of the accelerated procedure. Such applications are considered inadmissible if the asylum seeker did not state any new facts or circumstances or did not provide new evidence in their subsequent asylum application.<sup>110</sup> Within 3 calendar days (excluding public holidays) of lodging the subsequent asylum application, the SAR has to establish these facts and if this deadline is not met, the subsequent application should be automatically referred to a regular procedure. Automatic referral of the asylum application to a regular procedure is regulated in the law to encourage SAR's interviewers to make a decision within the 3-day deadline.<sup>111</sup> Thus, a subsequent application can be examined in the regular procedure, but not because it was considered admissible, but because the case worker missed the deadline to declare it inadmissible within the strict terms of the accelerated procedure.

Decisions on subsequent asylum applications can be appealed under the same terms as any other decision made in the accelerated procedure, i.e. within a 7-day deadline and before the respective county court in the area of residence of the asylum seeker. The appeal has automatic suspensive effect. The court's decision is final. Legal aid can be requested, but it is rarely provided by the court to asylum seekers lodging a subsequent asylum application, unless there are new facts and circumstances related to the subsequent asylum application.

The draft amendments from August 2015 propose an entirely new approach towards subsequent applications.<sup>112</sup> Firstly, the draft amendments envisage fast-track processing of subsequent applications as an admissibility phase prior their registration, documentation and determination on the substance. In a section titled "Preliminary admissibility examination of a subsequent application",<sup>113</sup> the draft puts forwards set of rules and criteria to determine on admissibility all subsequent claims within a time-limit of 14 days.

<sup>107</sup> For more information, see: 2012 Tri-Partite Annual Border Monitoring Report by UNHCR, General Directorate Border Police and Bulgarian Helsinki Committee.

<sup>108</sup> JRS Europe, *Becoming Vulnerable in Detention (Detention of Vulnerable Asylum Seekers - DEVAS Project)*, 2010, National Chapter on Bulgaria, 147 - points. 3.1 and 3.2.

<sup>109</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §18 of the draft.

<sup>110</sup> Article 13(1)(5) LAR.

<sup>111</sup> Article 70(2) LAR.

<sup>112</sup> 502-01-68 from 6 August 2015 <http://bit.ly/1j3XqXI>, §26 from the draft.

<sup>113</sup> Draft Section III, Chapter Six of the Law on Asylum and Refugees, 502-01-68 from 6 August 2015.

According to the proposed draft if the decision on the admissibility is not issued within 14 days then the subsequent application should be automatically considered as admissible and referred for registration. If the subsequent application is considered inadmissible the determination procedure should not be started and the applicant is not registered and documented. The aim of the draft proposal is to limit possibilities for a misuse of the asylum system by chain-filing multiple applications without presenting any new documents, facts or circumstances in order a temporary asylum document to be obtained for the duration of the next, subsequent status determination cycle. Inadmissibility decisions on a subsequent application will be a subject of an appeal before the court within 7 days deadline, without a suspensive effect.

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special procedural guarantees

#### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No  
 ❖ If for certain categories, specify which:
2. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No  
 ❖ If for certain categories, specify which: Unaccompanied children, mentally disabled

The law does not envisage any specific identification mechanisms for vulnerable categories of asylum seekers, except for children. The legal provisions exclude the application of accelerated procedure with regard to unaccompanied asylum seeking children, but not to torture victims.<sup>114</sup> The identification of vulnerability is stated to be mainstreamed in the training of caseworkers, but special trainings are rarely provided. In 2008, the SAR and UNHCR agreed on standard operating procedures (SOPs) to be followed with respect to treatment of victims of Sexual and Gender-based Violence (SGBV).<sup>115</sup> These SOPs however were never applied in practice. A process for the revision of the SOPs has been pending since the end of 2013, which also aims to include new categories or vulnerable groups. However, as of 30 September 2015, the SOPs revision are not even close to being finalised and adopted by SAR.<sup>116</sup>

Neither guidelines, nor practice exist to accommodate the specific needs of these groups. NGOs are very concerned by the lack of procedural guarantees for vulnerable asylum seekers in the Bulgarian asylum procedure.

### 2. Use of medical reports

#### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  Yes  In some cases  No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  Yes  No

Presently, the law does not explicitly provide for the possibility of proving past persecution or harm by medical reports, but does not prohibit any type of any expert opinion, written or oral evidence in this respect. Therefore medical reports can be and are used to support the assessment of the asylum application. However, such reports are only exceptionally commissioned by caseworkers of the SAR. In most, if not all, of the cases where medical reports were provided, this was at the initiative of the asylum

<sup>114</sup> Article 71(1) LAR.

<sup>115</sup> SGBV SOPs, Exh.№630 of 27 February 2008.

<sup>116</sup> UNHCR Representation in Sofia, SGBV Task Force, established on 15 February 2014.

seeker or his or her legal representative. The costs of such medical report are covered by legal aid, which is awarded in the majority of cases. If no legal aid is awarded, the costs of the medical report are borne by the asylum seeker.

The law only requires the caseworker to order a medical examination in one particular case, which is when there are indications that the asylum seeker might be mentally ill.<sup>117</sup> In this case, if the result of the medical examination report shows that the asylum seeker suffers from disease or mental illness, the caseworker approaches the decision-maker, the SAR's chairperson, who refers the case to the court for appointment of a legal guardian to the asylum seeker which is required in order to be able to continue with the examination of the asylum application.

The draft amendments from August 2015 propose new provisions according which the caseworker with the consent of the asylum seeker can appoint medical examination to establish evidentiary statements past persecution or serious harm.<sup>118</sup> If such consent is refused by the asylum seekers this should not be an impediment to issue the first instance decision. The draft also envisage that the medical examination can be initiated by the asylum seeker, but in this case s/he should bear the expert's cost.

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes                       No
2. Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes                       No

Presently, neither the law nor the practice provide any mechanisms for identification of unaccompanied children. The caseworker is not obligated to request an age assessment unless if there are doubts as to whether the person is a child.<sup>119</sup> In practice, age assessment is used only to rebut the statements of asylum seekers that they are under age of 18.

The law does not state the method of the age assessment, which should be applied. In principle, the wrist X-rays method is applied systematically in all cases based on the assumption that this method is more accurate than a psycho-social inquiry. The Supreme Administrative Court, however, considers this test as non-binding and applies the benefit of the doubt principle,<sup>120</sup> which is also explicitly laid down in the LAR.<sup>121</sup> Social workers have an obligation to provide a social report with an opinion on the best interests of the child concerned in every individual case.

#### *Guardianship*

Legal guardians have the right and obligation to represent the children during their status determination procedure and actively support the establishment of facts and circumstances, ask questions, appeal negative decisions, and – most importantly – to ensure that a lawyer is appointed for all these activities. The law provides that a legal guardian needs to be appointed immediately.<sup>122</sup> However, if a guardian is not appointed, whatever the reason may be, the law allows a social worker to be appointed instead to assist the child during the examination.<sup>123</sup> Thus, the law stipulates the right of the SAR to disregard the standard for the protection of the child and to determine the child's asylum application without a guardian if the interviews are conducted in the presence of a social worker. Social workers, however, cannot legally

<sup>117</sup> Article 61(4) LAR.

<sup>118</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI> , §10 from the draft.

<sup>119</sup> Article 61(3) LAR.

<sup>120</sup> Supreme Administrative Court, *Nuokedi Michael Oniebuchi*, Case №7749/2009, 3<sup>rd</sup> Department, Decision №13298 of 9 November 2009.

<sup>121</sup> Article 75(2) LAR.

<sup>122</sup> Article 153(3) Family Code.

<sup>123</sup> Article 25(5) LAR.

replace guardians and assume their functions. The special Law on Child Protection explicitly envisages that any administration conducting any type of hearing with a child should be done in the presence of a parent, guardian or other person who provides direct care and who is familiar with the child concerned.<sup>124</sup> Notwithstanding, in addition the law also requires the assistance of a social worker during the hearing.<sup>125</sup> Thus, the law itself explicitly distinguishes the functions of guardians and social workers who cannot replace one another.<sup>126</sup> The expert group appointed by the Parliamentary Commission on Human Rights to provide an analysis of the November 2013 draft amendments to the LAR unanimously advised the Commission to amend the draft with provisions relating to the mandatory appointment of guardians to unaccompanied asylum seeking children.<sup>127</sup>

In practice, for the time being this legal opportunity is applied extensively by the asylum administration and in all cases status determination is carried out with the assistance of social workers instead of appointed guardians. However, the law does not provide for any mandatory training of the social workers relating to the special situation of unaccompanied asylum-seeking children or even relating to the aim and modalities of the asylum procedure in general. Lacking basic skills and knowledge the social workers cannot and do not properly assist or advise the unaccompanied asylum-seeking children, especially in a situation where legal aid is not secured (as described in the section on Regular Procedure: Legal Assistance). UNHCR and NGO reports raised concerns related to cases where the lack of training of the social workers assisting unaccompanied children impacted negatively on the outcome of their asylum procedures.<sup>128</sup>

More importantly, jurisprudence of the Administrative Court Sofia City has ruled that status determinations in the absence of an appointed guardian are unlawful, but this has had no impact yet on practice.<sup>129</sup>

In the still pending amendment of the law, introduced in 2013, UNHCR, NGOs and the judiciary suggested additional provisions to the draft for mandatory appointment of guardians and legal representatives for unaccompanied children during the determination procedure at all stages.<sup>130</sup> Although initially accepted by the MPs in the end these provisions were rejected, thus cementing the *status quo* as described above.<sup>131</sup>

With regard to appeal and court representation, theoretically there are a sufficient number of legal representatives – 1,273 registered alone in Sofia – available to represent all unaccompanied children, if the law is actually and properly enforced. However, training would need to be provided to legal aid lawyers with respect to the specific needs of unaccompanied asylum seeking children during the status determination procedures. NGO monitoring in 2014 reported that 60% of unaccompanied asylum-seeking children were represented during court appeal procedures in case of a refusal.<sup>132</sup> In 20% of these cases the legal representative was a state legal aid lawyer. The unrepresented 40% of unaccompanied children did not have legal representation during court proceedings, either because they failed to request it explicitly, or because the court failed to observe this safeguard on their behalf. While legal representation is generally assessed by the NGO monitoring as adequate, the relatively high percentage of lack of case preparation (over 1/4 of the cases) is an indication of concern for the quality of provided legal assistance. A low level of preparedness has been found in 1/3 of the cases with legal aid lawyers, and in 1/4 of the cases with privately hired lawyers. It is only in half of the cases that the lawyer submitted evidence in the

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<sup>124</sup> Article 15(5) Law on Child Protection.

<sup>125</sup> Article 15(5) Law on Child Protection.

<sup>126</sup> Article 3(3) Law on Child Protection.

<sup>127</sup> National Parliament, Human Rights Commission, Communication of 16 December 2013.

<sup>128</sup> Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2015, par. 3.5.

<sup>129</sup> Administrative Court Sofia City, *Omar Jumaa Hadji*, Case N7294/2012, Section 42, Decision N5882 of 5 November 2012; *Jaqueline Almasa Planic*, Case N8251/2012, Section 42, Decision N6063 of 12 November 2012; *Mohammed Sabar Khalaf*, Case N7342/2012, Section 3, Decision N6297 of 23 November 2012; *Anuar Bedar Naso*, Case N9090/2012, Section 16, Decision N6737 of 10 December 2012.

<sup>130</sup> 454-01-37 from 7 November 2013, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

<sup>131</sup> Legal Committee, Protocol of the hearing on 8 July 2015, available in Bulgarian at: <http://bit.ly/1PgAQY5>.

<sup>132</sup> Association for Refugees and Migrants, *Analytical Report on refugee court proceedings monitoring*, Sofia, October 2014, available in Bulgarian at: <http://bit.ly/1eggBe3>.

course of the court hearing: in 50% of the cases with a legal aid lawyer and in over 52% of the cases with a lawyer hired by the asylum seeker. Nevertheless, only in 15% of cases is a formal approach registered on behalf of the lawyer involved in the particular case, while in 85% of cases the legal representation is based on evident careful preparation and probing into the specifics of the individual case.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |  |
|--|---|--|
| 1. Does national legislation allow for the use of “safe country of origin” concept?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Is there a national list of safe countries of origin?                              | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Is the safe third country concept used in practice?                                | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

### Safe country of origin and safe third country

National legislation allows for the use of a safe country of origin and safe third country concept in the asylum procedure.<sup>133</sup> Prior to the EU accession, national lists of safe countries of origin and third safe countries were adopted annually by the SAR and applied extensively to substantiate negative first instance decisions. The national courts adopted a practice that the concepts can only be applied as a rebuttable presumption that could be contested by the asylum seeker in every individual case.<sup>134</sup>

In 2007, the national law was amended to regulate the adoption of national lists on the basis of EU common lists under Article 29 of the 2005 Asylum Procedures Directive. As a result, ever since the adoption of this amendment, the safe country of origin concept became inapplicable in practice as far as such a common EU list has never been adopted.

In draft amendments<sup>135</sup> from August 2015 and reflecting the recast provisions of Asylum Procedure Directive,<sup>136</sup> the government envisages rules for national adoption of safe countries of origin and safe third country lists. Conditions provide that the lists should be based on a range of sources of information, including in particular information from other member states, EASO, UNHCR, Council of Europe and other relevant international organisations in order to take into account the level of protection rendered in the countries in concern with respect to legal arrangements and their application in practice, security of the person and protection from torture, inhuman and degrading treatment and punishment, observation of the non-refoulement principle as well as whether there is an effective system in place for safeguarding the individuals rights and freedoms from harm. The draft explicitly regulate the right of asylum seekers to rebut the national lists’ presumptions.

### First country of asylum

National asylum legislation does not envisage the first country of asylum concept separately from, or, in addition to, the third safe country lists. The only provision in the law which can be read as a kind of a first country of asylum concept is the draft provision that arranges the jurisdiction of the asylum administration to dismiss an asylum application as inadmissible if the asylum seeker is arriving from a third safe country, where he can be readmitted (see section Treatment of specific nationalities).<sup>137</sup>

<sup>133</sup> Article 13(1)(13) LAR.

<sup>134</sup> Supreme Administrative Court, *Bekka Aley Bakari*, Case N646/2002, Five members Session, Decision № 4854 of 21 May 2002, and others.

<sup>135</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §32 from the draft.

<sup>136</sup> Articles 36(2) and 37 recast Asylum Procedures Directive.

<sup>137</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §1 from the draft relating Article 13(2), item 3.

## G. Treatment of specific nationalities

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>138</sup>  Yes  No  
❖ If yes, specify which:

In 2014 the SAR applied the so-called *prima facie* approach to assessing Syrian applications for protection as “manifestly well-founded”. This approach enabled SAR as of the end of 2014 to report the highest recognition rate ever in the history of its existence since 1993: respectively - 55% overall recognition rate and 6% rejection rate (in total 12,787 decisions, of which 40% or 5,162 refugee statuses, 15% or 1838 humanitarian statuses, 6% or 738 refusals, 17% or 2,196 suspended and 22% or 2,853 terminated procedures).

This approach changed in the beginning of 2015 when the asylum administration started to issue negative decisions to Syrian nationals, most commonly substantiated with internal flight alternative arguments or protection available in third safe country (Northern Iraq). For the time being this approach is applied to a limited number of Syrian applicants,<sup>139</sup> but the plans of the administration to extend it are overt - if the national courts uphold the approach in the final decisions within commenced appeal procedures.

In the first half of 2015, the overall recognition rate decreased to 40%. It was mainly on account of drastic decrease with 10% of subsidiary protection (humanitarian status) granting, which was only 5% (365 out of 7,520 decisions) in comparison with 2014, when it was 15% (1,838 out of 12,787 decisions). Refugee recognition rate remained relatively high – 35% (40% in 2014) as 2,652 out of 7,520 decisions were refugee statuses. Rejection rate did not change significantly as it marked just a slight increase to 9% (337 refusals out of 7,520 decisions) in comparison with 6% in 2014 (738 refusals out of 12,787 decisions).

Refugee recognition rate of non-Syrian nationals was 4% (109 out of 2,652 refugee statuses), 8% subsidiary protection rate (31 out of 365 humanitarian statuses), 91% rejection rate (349 refusals out of 380 refusals) and – as a result of it, altogether 90% of them left Bulgaria prior their decision-taking as 95% of determination procedures were stopped (1,218 out of 1,269 suspensions) and 88% (3,462 out of 3,915 terminations) were terminated *in absentia*.

<sup>138</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>139</sup> Less than 30 individuals.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

Asylum seekers are entitled to material reception conditions according to national legislation during all types of asylum procedures.<sup>140</sup> Although there is no explicit provision in the law, asylum seekers without resources are accommodated with priority in the reception centres in case of lack of capacity to accommodate all new arrivals. Among all, circumstances such as specific needs and risk of destitution are assessed in each case. A destitution risk assessment criteria are set to take into account the individual situation of the asylum seeker of concern, such as – but not exhaustively – resources and means for self-support, profession and employment opportunities if work is formally permitted, and the number and vulnerabilities of dependent family members.

The sole category of asylum seekers that is excluded from these material reception conditions is that of asylum seekers who have lodged a subsequent asylum application. However, if they fall under one of the categories of vulnerable asylum seekers they can enjoy these entitlements without restrictions. Competence to decide on vulnerability in these cases lies with the head of the respective reception unit. Notwithstanding, asylum seekers have the right to withdraw from these benefits, if their application is pending in the regular procedure and they declare that they are in possession of means and resources to support themselves and chose to live outside reception centres.

The law stipulates that every applicant shall be entitled to receive a registration card in the course of the procedure.<sup>141</sup> In addition, the law implies a legal fiction, according to which the registration card does not certify the alien's identity due to its temporary nature and the specific characteristics of establishing the facts and circumstances during the refugee status determination (RSD) procedures which are based, for the most part, on circumstantial evidence.<sup>142</sup> Hence, the registration card serves the sole purpose of certifying the identity declared by the asylum seeker.

Nevertheless, this document is an absolute prerequisite for the access to the rights enjoyed by asylum seekers during the RSD procedure, namely remaining on the territory, receiving shelter and subsistence, social assistance (under the same conditions as Bulgarian nationals and receiving the same amount), health insurance, access to health care, psychological support and education.

The draft amendments from August 2015 envisage fast-track processing of subsequent applications as an admissibility phase prior their registration, documentation and determination on the substance.<sup>143</sup> The draft puts forwards set of rules and criteria to determine on admissibility all subsequent claims within a time-limit of 14 days. If the subsequent application is considered inadmissible the asylum administration

<sup>140</sup> Article 29(1)(2)-(3) LAR.

<sup>141</sup> Article 29(1)(6) LAR.

<sup>142</sup> Article 40(3) LAR.

<sup>143</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §26.

should not open a determination procedure and the applicant is not being registered and documented (see section Subsequent Applications). A provision of the draft amendments explicitly excludes to subsequent applicants who are pending admissibility assessment the most core group of material rights, namely food, shelter, social support, medical insurance and free health care, psychological assistance as well as the absolute prerequisite to enjoy all these rights, a temporary identification document (registration card).<sup>144</sup>

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2015 (in original currency and in €): 0,00 BGN / 0,00 €

Rights provided include food, accommodation, social assistance in cash, health care and psychological assistance.

In the spring of 2015 the asylum administration SAR ceased retroactively as of 1 February 2015 the provision of monthly financial allowance to asylum seekers accommodated in reception centres under the pretext that food was to be provided in reception centres three times a day.<sup>145</sup> The latter proved untrue as until 30 September 2015 the food in the reception centres has been and is provided three times a day only to children under 18 years of age. Even this is done irregularly, not in all centres and with gaps in services for couple of months when on account of managerial irregularities relating food supply arrangements, the asylum administration depended, as in autumn of 2013, entirely on donations in order to secure the nutrition of asylum seekers (see section Conditions in reception facilities). Additionally, the cessation of monthly financial allowance is in contradiction with the law as it does not condition its provision depending on whether food is provided or not, to the contrary both material rights are regulated separately and without any correlation. The cessation of monthly financial allowance is presently being appealed by several refugee-assisting NGOs before the court, which is expected to deliver its ruling in the beginning of 2016.<sup>146</sup>

Previously, the amount of the cash assistance was delivered as regulated in the law and equal to the minimum social aid granted to nationals on the basis of monthly minimum wages, which as of 31 March 2014 is BGN 65 (€33.23) monthly, for both adults and children. This amount, when still provided, was unanimously criticised by UNHCR and refugee-assisting NGOs as fully insufficient to meet even the most basic needs for nutrition.<sup>147</sup> The situation was particularly serious for unaccompanied children who are not accommodated in specialised children facilities, but in common asylum reception centres, where they have to manage on their own and take care of shopping, cooking, cleaning etc. Very few unaccompanied children manage to cover their expenses with the cash provided and many report that they are undernourished. It has to be also noted that this assistance was provided under the law only to asylum seekers who were accommodated in reception centres as far as in order to be able to live outside them asylum seekers needed to declare in written that they had enough resources to support themselves, which automatically stripped them from the right to monthly financial assistance.

### *2014 and 2015 as “zero integration years”*

2015, as was 2014, was a “zero integration year”. Since the adoption of the first National Programme for the Integration of Refugees (NPIR) in 2005, in the last 2 years all beneficiaries of international protection have been left without any integration support. It resulted in extremely limited access or ability to enjoy

<sup>144</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §26, Article 76c(3).

<sup>145</sup> State Agency for Refugees, Order №31-310 issued on 31.03.2015 by the chairperson Nikola Kazakov.

<sup>146</sup> Helsinki Committee, Bulgarian Council on Refugees & Migrants and Council of Refugee Women.

<sup>147</sup> Bulgarian Council on Refugees and Exiles, *Advocacy Paper: Reception of Asylum Seekers in Bulgaria*, September 2011, Chapter 5: Social Assistance.

even the most basic social, labour and health rights by these individuals, while their willingness to permanently settle in Bulgaria was reported to be decreased to a minimum.<sup>148</sup>

Until 30 September 2015, out of a total 12,732 asylum seekers who applied since the beginning of the year, 8,013 individuals,<sup>149</sup> or 62%, abandoned their status determination procedures in Bulgaria, which as a consequence were terminated shortly after the end of the legal 3 months time-limit since the disappearance was duly established. For the same period of time the SAR had received 7,199 information requests from other EU member states under the Dublin Regulation, which referred not only to Dublin transfers of asylum seekers, but also to the verification of granted statuses relating to possible readmission of recognised individuals (see section on Dublin).<sup>150</sup>

### 3. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>151</sup> 4<sup>152</sup>
2. Total number of places in the reception centres: 5,130
3. Total number of places in private accommodation: N/A
4. Type of accommodation most frequently used in a regular procedure:
  - Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
5. Type of accommodation most frequently used in an accelerated procedure:
  - Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other

Reception centres are managed by the SAR. Alternative accommodation outside the reception centres is allowed under the law, but only if it is paid for by the asylum seekers themselves and if they have consented to waive their right to the monthly social allowance.<sup>153</sup> Until September 2013, there were 2 reception centres existing in **Ovcha Kupel**, a Sofia suburb, and **Banya** in Central Bulgaria, and one transit centre in **Pastrogor** in South-Eastern Bulgaria, next to the Bulgarian-Turkish border.

In order to address the lack of reception capacity, in 2013 the SAR rapidly opened new accommodation facilities. During the period end-September to mid-October 2013, 2 new shelters of Sofia reception centre were opened, namely: **Vrazhdebna**, and **Voenna Rampa**; as well as **Harmanli** in South-Eastern Bulgaria; and in **Kovachevtzi** village (350 places). The latter however was closed in November 2014.

Therefore the total capacity as of 30 September 2015 is as follows:

Centre	Location	Capacity
<b>Sofia</b>	<b>Sofia</b>	<b>2030:</b>
Ovcha Kupel shelter	Sofia	860
Vrazhdebna shelter	Sofia	370
Voenna Rampa shelter	Sofia	800
<b>Banya</b>	<b>Central Bulgaria</b>	<b>70</b>
<b>Pastrogor</b>	<b>South-Eastern Bulgaria</b>	<b>320</b>
<b>Harmanli</b>	<b>South-Eastern Bulgaria</b>	<b>2,710</b>
<b>Total</b>		<b>5,130</b>

<sup>148</sup> Bulgarian Council on Refugees and Migrants, *Annual Monitoring Report on Integration of Beneficiaries of international protection in Bulgaria*, Sofia, December 2014.

<sup>149</sup> As of 30 September 2015 SAR suspended the procedure of 1878 asylum seekers and terminated it to another 6,135 asylum seekers, in total – 8031 individuals, who abandoned their procedures in Bulgaria.

<sup>150</sup> Source: State Agency for Refugees, Monthly Statistical Report

<sup>151</sup> Both permanent and for first arrivals.

<sup>152</sup> Please, note that Sofia reception centre has 3 reception shelters, namely Ovcha Kupel, Vrazhdebna and Voenna Rampa.

<sup>153</sup> Article 29(6) LAR.

Separate facilities for families, single women, unaccompanied children or traumatised asylum seekers do not exist. In the draft amendments from 2014,<sup>154</sup> the government proposed that unaccompanied children be accommodated in families of relatives, foster families, child shelters of residential type, specialised orphanages or other facilities with special conditions for unaccompanied children.<sup>155</sup> The government also envisaged accommodation of unaccompanied asylum seeking children in closed facilities, although under exceptional circumstances and in separate premises within the closed centre.<sup>156</sup>

#### 4. Conditions in reception facilities

##### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? 3-6 months before August 2015
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

All centres provide 2 hot meals per day since February 2014, when the food started to be cooked on spot in the reception centres; therefore in all centres cooking is not allowed. Since the beginning of 2015 quality and quantity of the food vary and rarely meeting the required nutritional values. In addition, from June to September 2015 due to managerial irregularities the food supply arrangements were cancelled, which made nutrition of asylum seekers dependant entirely on charity and donations. During this period of time the food provided to asylum seekers mainly consisted of bread and vegetables with milk, dairy and vegetables being supplied occasionally and almost no meat. As of 1 February 2015 the provision of monthly financial allowance to asylum seekers in reception centres was ceased retroactively,<sup>157</sup> (see section Forms and levels of material conditions), but as of 30 September 2015 the food is still not provided three times a day except to children in a form of pre-packed breakfast pastries.

Basic medical care in reception centres is provided either through own medical staff or by referral to emergency care units in local hospitals. As the management of the SAR failed to secure the necessary financing for the services provide to asylum seekers during the period May - September 2015 medical staff, doctor and a nurse were functioning only in Ovcha Kupel shelter, Sofia reception centre. From September 2015 different forms and levels of medical serviced are again provided in all reception centres. Wherever possible, there is a genuine effort to accommodate nuclear families together and in separate rooms. Single asylum seekers are accommodated together with others, although conditions vary considerably from one centre to another. Some of the shelters are used for accommodation predominantly of a certain nationality/ies, e.g. in Vrazhdebna shelter in Sofia are accommodated Afghan asylum seekers, Voenna Rampa shelter in Sofia accommodates Syrians; some of the reception centres accommodate mixed nationalities, such as in Harmanli reception centre, Ovcha Kupel shelter in Sofia, etc.

Places for religious worship are now available in all of the centres, but not properly maintained. Activities to organise language training and leisure activities for children are presently not undertaken in any of the reception centres. UNHCR funded an Information Centre, located in the capital city, for urban asylum seekers and refugees living in the Sofia region, which will be maintained until the end of 2015.

Some level of standardisation has taken place in the intake procedure and registration procedure. There is a basic database of residents in place, which is updated regularly on weekly basis. An information leaflet regarding the asylum procedure is provided upon registration in the centre, but it is generally acknowledged by the centres' population to be difficult to understand. Social mediators from the Bulgarian

<sup>154</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

<sup>155</sup> Article 34(4) Draft Law amending the LAR.

<sup>156</sup> Articles 45e and Article 47(4) Draft Law amending the LAR.

<sup>157</sup> State Agency for Refugees, Order №31-310 issued on 31.03.2015 by the chairperson Nikola Kazakov.

Red Cross, funded by UNHCR assist SAR staff to ensure that individuals with specific needs are taken care of. However, due to ongoing refurbishment and open access to the centres of all kinds of service providers, measures to prevent sex and gender based violence are still not sufficient to properly guarantee safety and security of the population in the centres.

The law does not limit the length of stay in a reception centre. Asylum seekers can remain in the centre pending the appeal procedure against a negative decision issued in any of the existing status determination procedures.

At the end of September 2015 the government announced that Vrazhdebna shelter in Sofia had been assigned to host the first arrivals of a total of 1,302 asylum seekers for whom the Bulgarian government will take responsibility under the agreed EU Council Decision to establish provisional measures in the area of international protection for the benefit of Italy and Greece.<sup>158</sup> It is expected that the first group of 500 asylum seekers will arrive by the end of 2015, and the rest before the summer of 2016. SAR is already moving people from Vrazhdebna to other shelters for this purpose.

## 5. Reduction or withdrawal of material reception conditions

### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes  No

The reduction of material reception conditions is not possible under the law. Withdrawal is admissible under the law in cases of disappearance of the asylum seeker and subsequent asylum applications.<sup>159</sup> However, the latter cannot be a ground for withdrawal if the asylum seeker lodging a subsequent application could be considered vulnerable. Under the law, vulnerable categories are considered to be: children; pregnant women; the elderly; single parents, if accompanied by their children; people with disabilities; and those who have suffered severe forms of physical or psychological harm or sexual abuse.<sup>160</sup> In this case, the asylum seeker lodging a subsequent application should be granted all available reception conditions. In practice this does not happen due to continuously increasing numbers of newly arriving asylum seekers. As a result, asylum seekers lodging a subsequent application, including those that are vulnerable, do not get any reception conditions in practice.

Bulgaria does not apply sanctions for serious breaches of the rules of accommodation centres and violent behaviour, except for destruction of accommodation centre's property, which is sanctioned with a fine between BGN 50 to 200 (€25.50 – 102). The grounds laid down in Article 20(2) of the Recast Reception Conditions Directive are not yet transposed into national legislation. Under the law, the directors of transit/reception centres are competent to decide on accommodation.<sup>161</sup> These decisions should be issued in writing as all other acts of administration.<sup>162</sup> However, in practice asylum seekers are informed orally. Nonetheless, the refusal still can be appealed before the relevant regional administrative court in 7 days from its communication to the respective asylum seeker. Legal aid is available with respect to representation before the court once the appeal is submitted. In this case, however, asylum seekers face difficulties proving before the court when they have been informed about the accommodation refusal, which may result in cessation of the court proceedings.

<sup>158</sup> European Union Council Decision 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, 22 September 2015, available at: <http://bit.ly/1WWAubi>.

<sup>159</sup> Article 29(5) LAR.

<sup>160</sup> Article 30a LAR.

<sup>161</sup> Article 51(2) LAR.

<sup>162</sup> Article 59(2) Administrative Procedure Code.

A draft provision envisages to exclude subsequent applicants who are pending admissibility assessment from the material rights otherwise provided during the determination procedure, namely food, shelter, social support, medical insurance and free health care, psychological assistance.<sup>163</sup>

## 6. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       With limitations       No

The law does not provide explicitly for access to reception centres for family members, legal advisers, UNHCR and NGOs. Until 2015 no limitations were applied in practice. Presently, NGOs and social mediators from refugee community organisations, who have signed cooperation agreements with the asylum administration are allowed to operate within the reception premises in all national reception centres. Access to reception centres of other organisations and individuals is conditioned upon authorisation and formally limited to everybody during the night. Notwithstanding, asylum seekers report regularly that traffickers and smugglers as well as drug dealers and prostitutes have almost unlimited access to reception centres day and night.

In the recent draft amendments non-governmental organisations' and legal aid providers' right to access to asylum seekers is explicitly regulated and expanded to also include border crossing points areas and transit zones.<sup>164</sup>

## 7. Addressing special reception needs of vulnerable persons

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes       No

The law provides a definition of vulnerability. According to the provision, the following categories of asylum seekers are considered as vulnerable: unaccompanied children; pregnant women; elderly people; single parents, if accompanied by their underage children; individuals with disabilities; and those who have been subjected to severe forms of psychological, physical or sexual abuse.<sup>165</sup> The definition of vulnerable categories in Article 21 of the recast Reception Conditions Directive is not yet transposed into national legislation.

There are no specific measures either in law or in practice to address the specific needs of these vulnerable categories except some additional arrangements in practice to ensure medication or nutrition necessary for certain serious chronic illnesses, e.g. diabetes, epilepsy, etc. The law only requires that vulnerability be taken into account when deciding on accommodation, but due to restricted reception capacity and poor material conditions, this is applied rarely, if at all. In 2008 the SAR and UNHCR agreed on standard operating procedures (SOPs) to be followed with respect to treatment of victims of Sexual and Gender-based Violence (SGBV).<sup>166</sup> However, these were never applied in practice and therefore a process for revision of the SOPs is currently ongoing which also aims to include new categories or vulnerable groups.<sup>167</sup> As of 30 September 2015 no progress has been achieved (see section on Special procedural guarantees).

<sup>163</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1Ojse3L>, §26, Article 76c(3).

<sup>164</sup> 502-01-68 from 6 August 2015, <http://bit.ly/1j3XqXI>, §2, Article 23(3).

<sup>165</sup> Article 30a LAR.

<sup>166</sup> SGBV SOPs, Exh. №630 from 27.02.2008.

<sup>167</sup> UNHCR Representation in Sofia, SGBV Task Force, established on 15 February 2014.

## 8. Provision of information

There are no specific rules for information provided on rights and obligations relating to reception conditions. Asylum seekers obtain the necessary information on their legal status and the access to the labour market through the information sources with regard to their rights and obligations in general (see section on Information for Asylum Seekers). The SAR has an obligation to provide information in a language comprehensible to the asylum seekers within 15 days from filing their application, which has to include information on the terms and procedures and rights and obligations of asylum seekers during procedures, as well as the organisations providing legal and social assistance.<sup>168</sup> However, in reality this was not provided within the 15 day time period laid down in Article 5 of the recast Reception Conditions Directive. In practice, prior to the increased number of asylum seekers, this information was given upon the registration of the asylum seeker in SAR territorial units by way of a brochure. However, NGO monitoring shows that oral guidance on determination procedures is not being provided by case-workers in the majority of the cases.<sup>169</sup>

## 9. Freedom of movement

### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  
 Yes  No

Asylum seekers are not restricted in their freedom of movement to any particular area within Bulgaria. Restrictions apply only in relation to the requirement for the SAR to be duly notified in advance with regard to any change of the address of residence of asylum seekers.<sup>170</sup> They can freely move within the state; no restrictions are applied with regards to the area of residence.

However, it must be noted that the proposed amendments to the LAR included the introduction of a detention regime for all categories of asylum seekers, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances and irrespective of the stage of their status determination procedure (see section on Detention).<sup>171</sup> The draft amendments also propose limitations of the freedom of movement for asylum seekers accommodated in open reception centres to certain administrative areas, if such limitations are deemed necessary by the asylum administration without any other conditions or legal prerequisites.

<sup>168</sup> Article 58(6) LAR.

<sup>169</sup> Bulgarian Helsinki Committee, *2014 RSD Monitoring Report*, January 2014 as well as Mid-Year Situation Report, 15 July 2015.

<sup>170</sup> Article 30(5) LAR.

<sup>171</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

## B. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No  
❖ If yes, when do asylum seekers have access the labour market? 12 months
2. Does the law allow access to employment only following a labour market test?  Yes  No
3. Does the law only allow asylum seekers to work in specific sectors?  Yes  No  
❖ If yes, specify which sectors
4. Does the law limit asylum seekers' employment to a maximum working time?  Yes  No  
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice?  Yes  No

Currently, the LAR allows for access to the labour market for asylum seekers, if the determination procedure takes longer than 1 year from the submission of the asylum application.<sup>172</sup> The permit is issued by the SAR itself in a simple procedure that verifies only the duration of the status determination procedure and whether it is still pending.

The draft amendments to the LAR, adopted on 2 October 2015 provide for the amendment of Article 29(3) LAR, which reduces the suspension period for access to the labour market for asylum seekers from 1 year to 3 months. This proposal is entirely consistent with Article 15(1) of the recast Reception Conditions Directive, whereby Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

Once issued, the permit allows access to all types of employment and social benefits, including assistance when unemployed. Under the law, asylum seekers also have access to vocational training.<sup>173</sup>

In practice, however it is difficult for asylum seekers to find a job, due to the general difficulties resulting from language barriers, the recession and high national rates of unemployment.

### 2. Access to education

#### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice?  Yes  No

Access to education for asylum-seeking children is provided explicitly in national legislation without an age limit.<sup>174</sup> The provision not only guarantees full access to free of charge education in regular schools, but also for vocational training under the rules and conditions applicable to Bulgarian children. In practice there are some obstacles related to the methodology used to identify the particular school grade that the child should be directed to, but this problem should be solved by appointment of special commissions by the Educational Inspectorate with the Ministry of Education and Science. Presently, however, asylum seeking children accommodated in Pastrogor transit centre are deprived in practice from this right as the SAR does not provide the necessary **school** arrangements in this remote area.

<sup>172</sup> Article 29(3) LAR.

<sup>173</sup> Article 39(1)(2) LAR.

<sup>174</sup> Article 26(1) LAR.

No preparatory classes are offered to facilitate access to the national education system. Asylum seeking children with special needs do not enjoy alternative arrangements, other than those provided for Bulgarian children.<sup>175</sup>

Moreover, the draft amendments to the LAR introduce a new provision, according to which asylum seeking children may be detained in closed centres.<sup>176</sup> This will deprive children of their right to education as accommodation in closed centres would effectively prevent them from accessing education.

Adult refugees and asylum seekers have a right to a vocational training. In one of the pending draft amendments to the law the right to a vocational training was abolished.<sup>177</sup> Practical obstacles may be encountered by asylum seekers in relation to access to universities as they have difficulties to prove diplomas already acquired in their respective countries of origin. This is due to a lack of relevant information on diplomas.

### C. Health care

#### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
2. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
3. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

Asylum seekers are entitled to the same health care as nationals. Under the law, the SAR has the obligation to cover the health insurance of asylum seekers.

In practice, asylum seekers have access to available health care services, but do face the same difficulties as the nationals due to the general state of deterioration in a national health care system that suffers from great material and financial deficiencies.<sup>178</sup> In this situation, special conditions for treatment of torture victims and persons suffering mental health problems are not available. According to the law, the medical assistance cannot be accessed if the reception conditions are reduced or withdrawn.

Medical assistance is being provided by a nurse and a doctor on a daily basis only in the reception centre in Sofia (**Ovcha Kupel** shelter); by a doctor and two paramedics in **Harmanli** reception centre; by a paramedic and a nurse in **Pastrogor** transit centre and by a paramedic in **Banya** reception centre. Asylum seekers accommodated in **Vrazhdebna** and **Voenna Rampa** shelters in Sofia have their medical care provided by the staff in Ovcha Kupel shelter.

<sup>175</sup> National Integration Plan for Children with Special Needs and/or Chronic Illness, adopted with Ordinance №6 from 19 August 2002 of the Council of Ministers.

<sup>176</sup> Article 45e Draft Law amending the LAR.

<sup>177</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

<sup>178</sup> Open Society Institute, *Legal Standards and Arrangements for the Protection of Individual Health Rights and Entitlements*, Sofia, October 2011.

## Detention of Asylum Seekers

### A. General overview

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: <sup>179</sup>	12,256
2. Number of asylum seekers in detention at 30 September 2015: <sup>180</sup>	1,500
3. Number of detention centres:	3
4. Total capacity of detention centres:	940

Currently, there is no legal framework specifically regulating the detention of asylum seekers.

The draft Law amending the LAR, presented in November 2013, included among others the introduction of a general detention regime for all categories of asylum seekers, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances and irrespective of the stage of their status determination procedure. After being vigorously criticised by human rights NGOs and UNHCR the draft was seriously revised and re-introduced November 2014.<sup>181</sup>

The draft law proposes that as a rule all persons seeking protection are subjected to a detention in closed-type centres under Article 8(3) of the recast Reception Conditions Directive grounds.

It is an exception rather a rule for asylum seekers who apply at national borders to be sent directly to a reception centre. The exception is usually applied in cases where family members of the border applicants are already living either in reception centres or outside them or in cases with specific needs such as individuals with disabilities and families with infants. The main reasons for this situation are the State Agency for National Security's concerns about transferring people to open reception centres before being screened by the security services, as well as the lack of a proper coordination mechanism between the police and the asylum administration to enable registration and accommodation of asylum seekers after 5 p.m. or during the weekends. In September 2015 the asylum agency SAR introduced new working time, shift schemes and on call duty during the weekends in order to assist the reception of asylum seekers referred by the police. In practice however these new arrangements are still not put to work mainly due to the objections on behalf of the Security Agency, therefore the police has no other options, but to refer and detain asylum seekers in the removal centres.

There are 3 detention centres for irregular migrants in the country: Busmantsi (400 places), Lyubimets (300 places) and Elhovo (240 places), a third centre opened on 8 October 2013. The total capacity of these 3 detention centres is approximately 1,000 places.

Elhovo Allocation centre's statute is not yet officially approved, although it is deemed as a triage centre for short term detention of the irregular third country nationals arrested by the police, where they can be registered, screened and allocated to a reception or a removal centre depending on their statement and whether they apply for asylum or not. In its purpose and function, Elhovo Allocation centre is very close to the definition of a Migration Management Support Teams "hotspot" operational framework, proposed in September 2015 by the European Commission as a response to the humanitarian crisis in Europe.<sup>182</sup>

Out of all 8417 asylum seekers who applied before the Border Police until 30 September 2015, only 3% (289 persons) were referred directly to SAR reception centres. The rest were transferred to Elhovo Allocation (triage) centre. In 2015 the average detention duration in Elhovo Allocation centre was 12 days.

<sup>179</sup> As of 30 September 2015, including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>180</sup> The number is an estimation based on average numbers of new asylum applications and released individuals, transferred to reception centres on a monthly basis.

<sup>181</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

<sup>182</sup> European Commission, COM (2015) 490 from 23.9.2015.

Therefore, detention of first time applicants is systematically applied in Bulgaria and the majority of asylum seekers apply from removal (deportation) centres for irregular immigrants.

Out of all the persons who applied for asylum until 30 September 2015, 9,530 persons applied for asylum in detention facilities of the Migration Directorate, of whom 4,577 asylum seekers applied in Elhovo Allocation centre at the Bulgarian-Turkish border and another 4,953 in detention centres in Busmantsi and Lyubimets. The average detention duration was 14 days.

In 2015 discrimination against certain nationalities continued to be applied in practice as asylum applicants from some countries are not released and their status determination are conducted in the detention centres. In 2014 this discriminatory approach was applied towards applicants from Maghreb region (Algeria, Tunisia, Morocco), but in 2015 it is applied predominantly towards applicants from Pakistan, India and Bangladesh. In June 2015, the government deported to their country of origin a group of rejected asylum seekers from Côte d'Ivoire, whose court procedures against the status determination held in conditions of detention were still pending. In September 2015 similar deportation was undertaken with respect to a group of 13 Pakistani nationals. In 2015 the average detention duration applied to discriminated nationalities was 196 days or 6.5 months.

## B. Legal framework for detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
2. Are asylum seekers detained in practice during the Dublin procedure?  Frequently  Rarely  Never
3. Are asylum seekers detained during a regular procedure in practice?  Frequently  Rarely  Never

Under Article 44(6) of the Aliens Act, as amended in 2013, a third-country national may be detained where:

- His or her identity is uncertain;
- He or she is preventing the execution of the removal order; or
- There is a possibility of his or her hiding.

If the now pending in the Parliament draft amendments are accepted at the end of 2015,<sup>183</sup> from 1 January 2016 the detention will be applied on following grounds:

- In order to determine or verify his or her identity or nationality;
- In order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- When protection of national security or public order so requires;
- In order to determine the Member State responsible for examining an application for international protection lodged and carry out the removal process and when there is a risk of absconding of the applicant.

<sup>183</sup> 454-01-27 from 7 November 2014, available in Bulgarian at: <http://bit.ly/1Lfkedb>.

In general, detention of third country nationals can be ordered by the border or immigration police on account of their unauthorised entry, irregular residence or lack of valid identity documents.

The law does not allow the SAR to conduct the Dublin and accelerated procedures in the detention centres as soon as transit centres have started operating in border areas.<sup>184</sup> Even though the **Pastrogor** transit centre has started functioning since May 2012, presently the SAR continue with respect to certain nationalities or individuals to conduct, in violation of the law, fingerprinting, registration, interviews and issue of asylum documents in detention centres and to release these asylum seekers with a significant delay or only following a court order.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions
2. Are alternatives to detention used in practice?  
 Yes  No

As an alternative to detention, the law envisages daily reporting to the police, but it is not specifically targeting asylum seekers, rather all irregular third-country nationals.<sup>185</sup>

The draft Law amending the LAR also envisages a limitation of freedom of movement in certain areas in the territory of the state by a decision of the SAR chairperson, where asylum seekers can be obligated not to leave and reside in other administrative regions (district or municipality) than the prescribed one. As alternatives to detention, the draft law mentions in a non-exhaustive manner all forms laid down in the recast Reception Conditions Directive, namely regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place.

## 3. Detention of vulnerable applicants

### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  
 Rarely  
 Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  
 Frequently  
 Rarely  
 Never

In March 2013, the Law on Aliens was amended to prohibit the detention of unaccompanied children in general and to introduce a maximum period of 3 months for the detention of accompanied children who are detained with their parents.<sup>186</sup>

In practice, however, unaccompanied children continued to be detained, both asylum-seeking and migrant children.

<sup>184</sup> LAR, Article 5 of the Transitional Clauses.

<sup>185</sup> Article 44(5) LARB.

<sup>186</sup> Article 44(9) LARB.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |            |
|--|------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 18 months  |
| 2. In practice, how long in average are asylum seekers detained?           | 12-14 days |
| ❖ Discriminated nationalities  | 196 days   |

The maximum detention period is 18 months, including extensions. Extensions after 6 months can only be ordered by the court.

In 2014, out of 3,851 applicants detained in **Elhovo** Allocation centre, the average duration (out of a total 24,572 days in detention) was 12 days. The average duration of detention in **Busmantsi** and **Lyubimets** detention centres increased to 14 days (in comparison with 11 days in 2014, and 45 days in 2013).<sup>187</sup>

In 2015 discrimination to certain nationalities continued to be applied in practice as asylum applicants from some countries are not released and their status determination are conducted in the detention centres. In 2014 this discriminatory approach was applied towards applicants from Maghreb region (Algeria, Tunisia, Morocco), but in 2015 it is applied predominantly towards applicants from Pakistan, India and Bangladesh. In June 2015, the government deported to their country of origin a group of rejected asylum seekers from Côte d'Ivoire, whose court procedures against the status determination held in conditions of detention were still pending. In September 2015 similar deportation was undertaken with respect to a group of 13 Pakistani nationals. In 2015 the average detention duration applied to discriminated nationalities was 196 days or 6.5 months.

#### C. Detention conditions

##### 1. Place of detention

##### Indicators: Place of Detention

- |  |                              |  |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Asylum seekers are never detained in prisons unless convicted for committing a crime.

There are 3 detention centres for irregular migrants in the country, totalling a capacity of 940 places:

- ❖ Busmantsi centre is near the capital, Sofia, capacity; 400 places
- ❖ Lyubimets centre is located in the border area with Turkey and Greece, capacity 300 places
- ❖ Elhovo, opened on 8 October 2013 as a new detention centre with a capacity of 240 places, provisionally called "distribution" or "allocation" centre, is managed by the Migration Directorate, MOI (see section Detention of Asylum Seekers: General)

Although designed for the return of irregular migrants as deportation (removal) centres, they are also used for the detention of undocumented asylum seekers, who crossed the border irregularly, but were unable to apply for asylum before the border police officers and therefore apply for asylum only when they are already in the detention centres. The most common reason for these late asylum applications was the lack of 24 hours interpretation services for all languages at national borders. Presently, almost 97% of asylum seekers who applied at national borders are transferred to Elhovo Allocation centre (see section Detention of Asylum Seekers: General), or if the latter is overcrowded, to any of the two other detention

<sup>187</sup> Bulgarian Helsinki Committee, *Mid-Year Situation Report*, 15 July 2015

centres in Busmantsi or Lyubimets to satisfy the requirements of the State Agency for National Security to avoid any release of third-country nationals, including families with children, before being screened and questioned on account of possible threats to the national security.

Designated for the pre-registration of asylum seekers,<sup>188</sup> Elhovo is being used to detain asylum seekers apprehended at the land borders outside the official border checkpoint for a period of approximately 12 days until arrangements are made for their further transfer to any of the SAR asylum centres.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |   |
|---|---|---|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No   |
| ❖ If yes, is it limited to emergency health care?       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No   |
| 2. Is access to detention centres allowed to            |   |   |
| ❖ Lawyers:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |
| ❖ NGOs:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |
| ❖ UNHCR:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No            |
| ❖ Family members:                                       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited <input type="checkbox"/> No |

In recent years, the detention centres are frequently overcrowded due to the gradual increase of the number of asylum applications on the one hand and, on the other hand, the delayed release for registration of detained asylum seekers.<sup>189</sup>

Overall conditions with respect to means to maintain personal hygiene as well as general level of cleanliness are not satisfactory. Shower and toilets available are not sufficient to meet the needs of the detention population, especially when premises are overcrowded.<sup>190</sup> Detainees are allowed to clean the premises themselves, however they are not provided with means or detergents therefore they have to buy them at their own cost. Clothing is provided only if supplied by NGOs. Bed linen is not washed on a regular basis, but usually once a month.

Nutrition is poor, no special diets are provided to children or pregnant women. Health care is a big issue as not all detention centres have medical staff appointed on a daily basis. A nurse and/or a doctor visits detention centres on a weekly basis, but the language barrier and lack of proper medication make these visits almost a formality and without any practical use for the detainees.

Separate wings are provided for families, single women and unaccompanied children. Single men are separated from single women. Other vulnerable persons are detained together with all other detainees. National legislation does not provide for access to education for children in detention centres.

Access to open-air spaces is provided twice a day for a period of one hour each, the spaces in all detention centres are of adequate size. Children in detention centres are using the common outdoor recreational facilities, but not many possibilities for physical exercise exist except the usual ball sports. Reading and leisure materials are provided if only supplied by donations. Computer/internet access is not available in any of the detention centres.

Lawyers as well as representatives of NGOs and UNHCR do have access under the law and in practice to the detention centres during visiting hours but also *ad hoc* without prior permission when necessary or

<sup>188</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>189</sup> JRS Europe, *Becoming Vulnerable in Detention*, Detention of Vulnerable Asylum Seekers - DEVAS Project, 2010, National Chapter on Bulgaria; Open Society Institute, *Civil Monitoring in Detention centres*, Sofia, February 2012.

<sup>190</sup> Open Society Institute, *Civil Monitoring in Detention Centres Report*, 7 February 2012.

requested by asylum seekers. Some NGOs signed official agreements with the Migration Directorate and do visit detention centres for monitoring and assistance once a week.<sup>191</sup> Media and politicians do also have access to detention centre, which is authorised upon written request.

There are no mechanisms established to identify vulnerable persons in detention centres. If identified there are no provisions in the law for their release on that account, unless before the court when the length of detention is reviewed after the initial 6 months period.

Staff interpreters are neither required by law, not provided in practice. Verbal abuse, both by staff and other detainees, is reported often by the detainees.

In 2010 a report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended an extensive list of improvements and adjustments that ought to be made with respect to cell occupancy, access to light, toilets, showers and personal hygiene products, quantity and quality of food and appropriate and sufficient medication.<sup>192</sup> A report of the CPT published in March 2012 included specific recommendations to the Bulgarian Government to improve the conditions in the Busmantsi detention centre. The CPT concerns related in particular to the detention of asylum seekers together with irregular migrants awaiting removal, poor hygiene conditions, a lack of interpreters which complicated communication between staff and detainees, and insufficient psychological care for those detained in the Busmantsi centre.<sup>193</sup> NGOs are not aware of any specific measures taken to implement the CPT's recommendations so far.

In February 2015 the Council of Europe Commissioner on Human Rights visited Bulgaria and corroborated NGOs' concerns by stating that during his visit he found seriously substandard material conditions in administrative detention centres and of numerous instances of ill-treatment.<sup>194</sup> In his report the Commissioner stated that detainees in both Busmantsi and Lyubimets detention centres reportedly complained of abusive, sometimes violent, treatment by guards, overcrowding and noise, tension among various nationality groups, the mixing of unaccompanied children with adults, dirty and insufficient toilets, inadequate ventilation, and the poor quality of the food. They also indicated that they had limited means to communicate with the outside world, as well as a lack of communication with guards and other authorities. This resulted in a lack of awareness about procedures relating to release or asylum procedures.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |                             |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 6 months                                |                             |

<sup>191</sup> Bulgarian Helsinki Committee, Bulgarian Red Cross, ACET Centre for Torture Victims.

<sup>192</sup> CPT, [Report](#) Bulgaria, October 2010.

<sup>193</sup> See CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010*, Strasbourg, 15 March 2012, 24-30. The Government's response published on 4 December 2012 does not address the issues raised with regard to the Busmantsi detention centre. A report by the Open Society Institute Sofia raised similar concerns about the lack of professional interpreters in the detention centres in Bulgaria resulting in asylum seekers and irregular migrants not being properly informed about their rights. See Open Society Institute, *Civil Monitoring in Detention Centres*, Sofia, February 2012 (only available in Bulgarian).

<sup>194</sup> Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Bulgaria, from 9 to 11 February 2015, <http://bit.ly/1GHj8EN>.

Asylum seekers, if detained, are treated in the same manner as the rest of the detention population, hence they are informed orally by the detention staff for the reasons of their detention and the possibility to challenge it in court, but not about the possibility and the methods of applying for legal aid. However, asylum seekers as a principle are not informed in a language they understand as none of the existing detention centres has interpreters among its staff. A copy of the detention order is usually provided to the individual. Bulgaria was one of the few EU member states not providing the legal safeguard of an automatic judicial review of the detention order. After the amendment of the law in 2009 the automatic judicial review was introduced, but not before 6 months of detention. This safeguard was available in national criminal proceedings for all individuals, irrespective of their nationality or origin, if accused of committing a crime, but until 2009 it was not guaranteed for those immigrants who were subjected to administrative detention for violation of the national immigration regime for the purpose of securing their deportation.

Presently, the law does not provide for automatic judicial review of detention orders before 6 months of detention. However, detention orders can be appealed within 14 calendar days of the actual detention before the administrative court in the area of the headquarters of the authority which has issued the contested administrative act.<sup>195</sup> The appeal does not suspend the execution of the order.<sup>196</sup> The submission of the appeal is additionally hindered by the fact that the detention orders are not interpreted or translated. In view of the fact that deportation orders in principle are always issued for immediate implementation, the short deadline for lodging an appeal proved to be highly disproportionate and usually not respected by detained individuals, including asylum seekers.

Under the law, an automatic judicial revision is provided only after 6 months from the beginning of the detention. The management of the detention centre has the obligation to submit to the court a list of the individuals who have remained in detention for a period longer than 6 months. The administrative court decides for extension, termination or substitution of detention with an alternative measure in a session behind closed doors.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

In mid-2013, the Law on Legal Aid amendments was finally adopted. Alongside the right for legal aid for asylum seekers, BHC lobbied for another amendment of the Law on Legal Aid related to detained irregular migrants. Similar to asylum seekers as of 19 March 2013, detained immigrants also gained the right to enjoy legal aid.<sup>197</sup> Notwithstanding the amendments, legal aid is not yet provided to detainees due to National Bureau for Legal Aid's budget constraints (for more information see the section on Regular Procedure: Legal Assistance).

<sup>195</sup> Article 46 LARB, as amended in March 2013.

<sup>196</sup> Article 46a LARB.

<sup>197</sup> Article 22(9) Law on Legal Aid.

## ANNEX - Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

N/A

### Pending transposition and reforms into national legislation

Directive / Regulation	Articles	Deadline for transposition	Stage of transposition	Participation of NGOs
<b>Directive 2011/95/EU</b> Recast Qualification Directive	5, 6, 7	21 December 2013	Draft debated in Parliament.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive		20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	Draft debated in Parliament.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	8-11	20 July 2015	Draft debated in Parliament.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation		Directly applicable 20 July 2013		<input type="checkbox"/> Yes <input type="checkbox"/> No

A draft bill amending the Law on Asylum and Refugees was introduced on 19 November 2013,<sup>198</sup> with the aim of partial transposition of the recast Qualification Directive and recast Reception Conditions Directive. The bill was prepared by a team of MOI experts without consulting the asylum administration, SAR. During its first session on the draft in December 2013 the Committee agreed with the criticism of UNHCR and NGOs vis-à-vis the draft as being not only over-hasty and inconsiderate, but also restrictive and unduly diminishing the established national standards with regard to the right to liberty of asylum seekers during status determination procedures. The bill was finally not voted by the previous (42<sup>nd</sup>) Parliament. The re-drafted bill was re-introduced again in November 2014 before the current (43<sup>rd</sup>) Parliament and at the time of the fourth update (30 September 2015) is pending the second (final) vote by the Parliament's plenary.

<sup>198</sup> Draft Law amending the Law on Asylum and Refugees, 19 November 2013, available in Bulgarian at: <http://bit.ly/1NuLVBE>.

In August 2015 the government referred to the Parliament another draft bill amendment aiming at the transposition of the recast Asylum Procedures Directive.<sup>199</sup> Prior to this, the draft was open for consultations with NGOs and many of the recommendations made were actually taken into account by the drafter, MOI.<sup>200</sup>

## **Main changes planned**

### *Procedure*

- Dublin procedure is no longer envisaged as mandatory, but rather as applicable and implemented if only there are established or stated facts or circumstances, which give reasons to invoke an examination relating the eventual responsibility of another EU member state/s.
- Fast-track processing introduced for assessment of subsequent applications within a time-limit of 14 days. According to the proposed draft if a decision on the admissibility is not issued within 14 days then the subsequent application should be automatically considered as admissible and referred for registration. If the subsequent application is considered inadmissible the determination procedure should not be started and the applicant is not registered and documented.
- Subsequent applications: suspensive effect is granted only for a first subsequent application, and not for further claims submitted after a subsequent application is rejected.

### *Reception conditions*

- Unaccompanied children are to be housed in specialised facilities.

### *Detention*

- Introduction of closed asylum centres where asylum seekers could be placed in order to: 1) verify his or her identity or nationality; 2) determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of the applicant absconding; 3) when protection of national security or public order so requires; and 4) determine the Member State responsible for examining an application for international protection lodged and carrying out the removal process, and when there is a risk of the applicant absconding.

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<sup>199</sup> 502-01-68/06.08.2015, available in Bulgarian at: <http://bit.ly/1j3XqXI>.

<sup>200</sup> Bulgarian Helsinki Committee, Exh. №Б-21/22 May 2015.