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## Bulgaria

### 2015 Annual Border Monitoring Report

#### ACCESS TO TERRITORY AND INTERNATIONAL PROTECTION

Sofia, 30 July 2016

## CHAPTER I

### NATIONAL FRAMEWORK FOR BORDER MONITORING

#### 1.1. MONITORING METHODOLOGY

##### 1.1.1 Memorandum

Bulgaria is among the first countries in Central Europe to have an official agreement concluded between Border Police and the Bulgarian Helsinki Committee in 2004 which formalizes the arrangements for border monitoring in relation to refugees' access to the territory. In April 2010 this agreement was expanded to become a tripartite Memorandum of Understanding (MOU) among the General Directorate Border Police with the Ministry of Interior, the Bulgarian Helsinki Committee and the Office of the UN High Commissioner for Refugees<sup>1</sup>. The Memorandum sets out additional coordination and cooperation mechanisms to be applied in border monitoring for the main purpose of ensuring the observance of the non-refoulement principle. This cooperation is the most valuable achievement at the national level in terms of access to the territory and the procedure for individuals in need of international protection, and the establishment of the core legal and practical arrangements to safeguard their access to the territory and the procedure.

Border monitoring with respect to access to international protection in 2015 was conducted on the basis of this Memorandum of Understanding.

##### 1.1.2 Tri-Partite Working Group

The MOU<sup>2</sup> requires that the Parties set up a Tripartite Working Group (TWG) which shall supervise its implementation and shall hold meetings to address current issues throughout the year. The meetings of the TWG may be attended by representatives of other relevant institutions engaged in the field of migration and asylum; however, such participation has not been registered so far.

This report was drafted on the grounds of Article 4.2, Section IV of the Internal Rules of Procedure of the Tripartite Working Group consisting of representatives of the General Directorate Border Police with MOI, the UN High Commissioner for Refugees, and the Bulgarian Helsinki Committee.

##### 1.1.3 Monitoring methodology

The rules laid down in the MOU stipulate that any national border and/or 24-hour detention facility at the land or air border may be subject to monitoring, including transit halls at

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<sup>1</sup> Tripartite Memorandum of Understanding on modalities of mutual cooperation and coordination to support the access of persons seeking protection to the territory of, and the procedure for granting protection in the Republic of Bulgaria among the General Directorate Border Police with the Ministry of Interior of the Republic of Bulgaria, the UNHCR Representation in Sofia and the Bulgarian Helsinki Committee, signed on 14 April 2010.

<sup>2</sup> Article 22 of the MOU.

international airports, without limitation to the number of monitoring visits. Access to monitoring shall be granted to monitors without prior permission or conditions set in terms of time, frequency, duration or individual circumstances related to the particular detainee/s (Art. 15 of the MOU).

#### **1.1.4 Monitored places and facilities**

The facilities for the accommodation of detainees within GDBP's structures have been established in conformity with Instruction No I3-1711 of 15 Sept. 2009<sup>3</sup> regarding the equipment of the premises for the accommodation of detainees within MOI's structures. The monitoring consists of regular weekly visits by BHC and target visits by UNHCR to the facilities and the premises in order to monitor the observance of the standards for ensuring *de jure* and *de facto* access to the territory and the procedure for granting protection to aliens in need of international protection.

The border monitoring in 2015 had a priority focus on the main entry points at the Bulgarian-Turkish border: Svilengrad Border Police Station (BPS), Elhovo BPS, Bolyarovo BPS, Sredets BPS, and Malko Tarnovo BPS; at the Bulgarian-Greek Border: Ivailovgrad BPS; the exit points at the Bulgarian-Serbian border: Bregovo BPS, Kalotina BPS, and Oltomantzi BPS; as well as the air border at Sofia Airport, Terminals 1 and 2, and at Burgas Airport during the relevant summer season.

In 2015 BHC conducted a total of 449 monitoring visits, of which approx. 75% (337 visits) at the main entry points along the borders with Turkey and Greece in the area of Kapitan Andreevo BCP, and Novo Selo BCP in the area of the cross-border triangle Svilengrad-Kapikule-Ormenion. As regards the exit points, 72 visits were made at the borders with Serbia and FYROM, of which 18 visits at the "green" border, and 54 visits at the relevant detention facilities where third-country nationals are accommodated after being detained by the police. The access to the territory for persons in need of international protection in cases of readmission of such persons back into Bulgaria from third countries was monitored mostly at the arrival point at Sofia Airport: 32 monitoring visits. The sea route via the Black Sea was also subject to limited monitoring: 8 monitoring visits took place at the police detention facilities at Burgas sea port. This route, however, was not used by mixed migration flows in 2015, as there was not a single case of an applicant for international protection who had reached the Bulgarian border by sea.

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<sup>3</sup> Issued by the Minister of Interior, SG, No 78/2 Oct. 2009.

## 1.2. LEGAL FRAMEWORK REGULATING THE ACCESS TO THE TERRITORY AND THE PROCEDURE

Foreigners who do not hold valid travel documents and visas do not have the right to enter into the territory of Bulgaria<sup>4</sup>. Furthermore, the law stipulates<sup>5</sup> that the Border Police authorities can, under certain circumstances set out in the law<sup>6</sup>, refuse entry into the territory to a foreigner even though the latter has a valid travel documents and a visa. In both cases Border Police shall issue a written refusal<sup>7</sup> stating the specific reasons why entry was not allowed.

However, foreigners who enter Bulgaria in order to seek asylum and international protection have the right to declare their wish to do so before the Bulgarian state authorities irrespective of how they entered or reside on the territory (regularly or irregularly). This right is laid down in Art. 6 of the 1951 Geneva Convention relating to the Status of Refugees which stipulates that refugees shall not be required to meet legal conditions or requirements that by their nature refugees are incapable of fulfilling. Given the fact that refugees, having fled the country of origin, might not have valid travel documents or the validity of such documents may have expired and cannot be renewed, it is assumed that refugees cannot be required to meet the regular conditions for being granted permission to enter or reside in a particular state.

This is the reason why the national legislation<sup>8</sup> explicitly prescribes that *any* foreigner may apply for protection in the Republic of Bulgaria under the terms and the procedure laid down in the law. On the grounds of this legal provision, the application for protection is exempt from any conditions or circumstances, including legal entry, sojourn or residence requirements with respect to the applicant for protection, which are otherwise mandatory under the general regulation of aliens' entry and residence in Bulgaria.

The law stipulates<sup>9</sup> that the application for protection may be lodged before the State Agency for Refugees, as well as before any other state authority, including GDBP. In the latter case, GDBP is obliged to immediately forward the application to the State Agency for Refugees. Henceforth the non-refoulement principle shall apply<sup>10</sup> and the alien shall not be returned to the territory of a state where his/her life is threatened.

In view of the above, the law explicitly regulates the alien's right to remain on the territory<sup>11</sup> of Bulgaria till the completion of the administrative procedure for examining his/her application with a final decision. This entitlement, by its nature, is a kind of short-term residence (stay) which is special compared to the types of residence under the general regime

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<sup>4</sup> Art. 8 of the Aliens in the Republic of Bulgaria Act (ARBA).

<sup>5</sup> Art. 16 of ARBA.

<sup>6</sup> Articles 10 and 19 of ARBA.

<sup>7</sup> EU refusal of entry standard form.

<sup>8</sup> Art. 4 (1) of the Law on Asylum and Refugees (LAR).

<sup>9</sup> Art. 58 (4) of LAR.

<sup>10</sup> Art. 4 (3) of LAR.

<sup>11</sup> Art. 29 (1) (1) of LAR.

applicable to foreigners, as regulated in Aliens in the Republic of Bulgaria Act. Its duration depends on the overall duration of the procedure for examining the application for protection with all its stages<sup>12</sup>.

The illegal entry into the territory of the country as such is a punishable act. However, the national law decriminalizes this act in cases where the perpetrator has done so in order to exercise his/her right to seek international protection, as provided for in the Constitution<sup>13</sup>. The Constitution explicitly refers<sup>14</sup> to the law regulating the terms and the procedure for granting asylum and international protection. The effective applicable national law to this end is the Law on Asylum and Refugees under which the Republic of Bulgaria grants the following types of protection<sup>15</sup>: asylum granted by the President within the remit of his/her powers, international protection (refugee status and humanitarian status), and temporary protection.

## **CHAPTER II**

### **REFUGEES IN THE CONTEXT OF MIXED MIGRATION FLOWS<sup>16</sup>**

#### **2.1 Migration flows**

##### **2.1.1 Migration flows towards the EU along the Eastern Mediterranean route**

According to data of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU – FRONTEX, in 2015 the Member States reported the detection of over 1,820,000 irregular crossings of the EU external borders. This is an extremely high influx which exceeds by 6 times the number of irregular crossings in 2014. The highest number of irregular entries detected is along the Eastern Mediterranean route (885,386, i.e. 49% of the EU total) starting from the Middle East, transiting through Turkey towards Greece or Bulgaria, and heading for Western Europe. The active movement along this route is due to the ongoing armed conflict in Syria, the situation and the lack of security in Afghanistan, the expansion of the actions of ISIL/ISIS in Iraq, the insecurity, poverty, and wide spreading rumours about better life in Europe. The most affected area is Greece's sea border: 99% (872,938) of the total number of third-country nationals (TCNs) moving irregularly along this route in 2015 reached the Greek Aegean islands from Turkey. While a substantial part of these TCNs claim to be Syrian, Afghani and Iraqi, the screening interviews show a high percentage of false identities. Most of them do not apply for international protection in Greece. Syrians receive special permission for staying up to 6 months and many of them benefit from this possibility in order to reach the Greek-Macedonian border and move on along the route via the Western Balkans towards other Member States. According to the analysis of the situation at the external EU borders made by the Frontex Agency, the number of illegal TCNs apprehended at the land borders with Bulgaria and Greece has risen by 80% compared to 2014.

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<sup>12</sup> Art. 41 of LAR.

<sup>13</sup> Art. 279 (5) of the Criminal Code.

<sup>14</sup> Art. 27 (2) of the Constitution.

<sup>15</sup> Art. 1 (2) of LAR.

<sup>16</sup> Chapter II has been drafted by General Directorate Border Police of MOI.

### **2.1.2 Migration flows at the entry into the Republic of Bulgaria**

The territories of Turkey and Greece are currently hosting large groups of TCNs many of whom are believed to make their way to Western European countries along two main routes:

- By land, from Greece via the Western Balkans or from Turkey via Bulgaria towards Serbia, and then the route towards Germany;
- By sea, from Greece towards Italy.

The route preferred by irregularly moving TCNs is the one through the Western Balkans.

In spite of the security measures taken by Bulgaria, the active mixed-migratory movement across Europe have adversely affected the situation along Bulgaria's state border.

The global refugee crisis and the unprecedented influx into Europe have substantially increased the migration pressure on Bulgaria, still along the Bulgarian-Turkish border.

Bulgaria's analysis of the data over recent years shows that the situation becomes more complicated in parallel with the improvement in meteorological conditions, and reaches its peak in the months of August, September and October. The highest migration pressure was registered in September: 15,896 persons (1,741 intercepted at the entry by the Bulgarian border authorities; 572 detained by the neighbouring border authorities, and 13,582 deterred to enter and returned to Turkey and Greece), the migration pressure along the Bulgarian-Turkish border being 94% of the overall migration pressure along the borders of the Republic of Bulgaria: 15,420 persons. The lowest migration pressure was registered in January: 3,204 persons, of whom 3,106 at the Bulgarian-Turkish border.

In 2015 a total of 22,705 persons attempted to irregularly cross the Bulgaria's border, which is an increase by 2.4 times against the year 2014 (9,508). Out of this total, 10,900 persons have been apprehended at the entry (7,617 at the green border, and 3,283 at the BCP), and 11,805 persons at the exit (11,016 at the green border, and 789 at the BCP). The highest interception rates registered are: at the entry – the Bulgarian-Turkish border: 10,406 persons, and at the exit – the Bulgarian-Serbian border: 11,406 persons.

It was for the first time that the number of detentions for irregular crossing at the exit (11,805) had exceeded the number of such apprehensions at the entry (10,900).

The gradual increase in the attempts at irregular entry through the internal border with Greece persisted as a trend throughout the year. The closing of the borders of FYROM and Serbia resulted in reduced movement along the route through the Western Balkans and in the gathering of large groups of TCNs near the Bulgarian-Greek border who might be seeking alternative routes from Greece into Serbia via Bulgaria.

A sizeable number of TCNs do not apply for international protection immediately upon entering Bulgaria and they aim to reach Western Europe, preferably through the Bulgarian-Serbian border. This is explained by the drastic growth by 477% of irregular exit attempts.

Meanwhile, the attempted irregular exit attempts at the Bulgarian-Romanian border have dropped by 22%.

The apprehension of large groups of TCNs inland has become increasingly frequent (3,050). The composition of these groups is heterogeneous – persons of various nationalities (mostly Syrians, Afghans, and Iraqis) and age groups; while most of them are young men (aged 20-30), while at the same time, cases of women and children are not rare. All of them have irregularly entered Bulgaria with the aim of making it to the Bulgarian-Serbian border without being registered in Bulgaria.

The arrangements and support for the TCNs' irregular movement along the route from Turkey to the border with Serbia is ensured by smuggler networks involved in trafficking or smuggling of the TCNs from their countries of origin to the destination country.

Bulgaria has assessed that this change in the situation and the new critical peaks in terms of numbers, which adversely affected the border authorities, have raised new challenges in terms of addressing the issue and preventing further deterioration of the situation.

**a). Situation at the Bulgarian-Turkish border**

The pressure from Turkey has substantially grown in 2015 compared to the previous year – the number of TCNs apprehended at the entry via the green border stands at 7,617, which is an increase by 71% against 2014 when this number was 4,467.

The upward trend starting in 2014 in terms of attempts at irregular entry through the Border Check Points (BCP) has been maintained – the number of apprehension is 3,051, an increase by 74% compared to the previous year (1,752).

The apprehension at the BCP at the Bulgarian-Turkish border represent 98% of the total number of detentions at the entry points (2,998).

There has been a drop by 17% in the attempted irregular crossings with the use of false IDs/travel documents or fake identities. The number of such attempts is relatively small against the total number of apprehension at the entry – only 232 (280 in 2014).

Two of Bulgaria's borders were used as the main entry points by TCNs for irregular entry in 2015: the Bulgarian-Turkish land border (95% of all apprehensions at the entry), and the Bulgarian-Greek land border (4% of all apprehensions at the entry).

The mixed-migration pressure on Europe has contributed to a drastic change in the number of persons apprehended in irregular crossing of the Bulgarian-Turkish border – an increase from 6,023 in 2014 up to 10,406 in 2015, which is almost the critical value reached in 2013: 11,254 illegal crossing. The peak in apprehension was registered in September: 1,742 immigrants, and the lowest number in March: 643.

The substantial drop in the pressure in 2014 as a result of the border control measures taken by Bulgaria was followed by a drastic rise in the attempted irregular crossings from Turkey in 2015 due to the unprecedented wave towards Europe.

A total of 90,315 attempts by TCNs to irregularly cross the Bulgarian-Turkish border were registered, which is an increase by 135% compared to 2014 (38,502).

Based on information provided by the Bulgarian border patrols to the Turkish border authorities, 5,091 persons were detained by the latter on the neighbouring territory, and 74,818 deterred to enter and returned to the Republic of Turkey after establishing the presence of Bulgarian patrols and posts along the border line.

A part of those voluntarily returning inland in the Republic of Turkey without crossing the state border line may have attempted to enter Bulgaria more than once.

A total of 10,406 TCNs have been apprehended in irregular crossing of Bulgaria's state border: 7,193 at the green border (+ 79% against 2014), 2,998 at the BCP (2,970 hidden in vehicles: + 74% against 2014, of whom the highest numbers in trucks – 1,947, and in trains – 899), and 215 in attempted use of false documents or fake identities (-20%).

Syrian nationals rank first in terms of apprehensions – 5,331, followed by Iraqis – 2,481, Afghans – 2,132, Pakistanis – 216, and other nationalities – 246.

No changes have been registered in the modus operandi applied by the TCNs crossing the green border – they gather in Istanbul, get in touch with the smugglers who facilitate their movement to the border, according to the analysis of the Border Police. The Bulgarian-Turkish border is crossed by following precise instructions given by the smugglers. Other members of the trafficking network receive the TCNs on the Bulgarian territory and transport them to the cities of Sofia, Plovdiv, and Haskovo.

No changes have been established in the modus operandi applied by the third-country nationals hidden in vehicles, either – most of them get on board on their own will at parking lots at night while the truck drivers are asleep. They get inside the vehicle by cutting a slash in the canvas roofing of the trailer; thus, the opening is by far less visible to the controlling border officers at the BCP, and fresh air flows into the cargo department reducing the efficiency of gas detectors which do not register higher CO<sup>2</sup> values.

A new method of hiding persons in trucks is by means of a “double-layer canvas” as a result of which gas detectors do not register higher CO<sup>2</sup> values, as the device probe penetrates into the space between the two layers instead of the cargo compartment.

The trend of almost all TCNs crossing the border without IDs/travel documents has persisted: when apprehended, most of them claim to be Syrians fleeing to save their lives in order to also avoid being returned to the country of origin. This hinders and delays their identification, and creates risks for abuses of the system for international protection.



In the course of the interview conducted by the Border Police, the TCNs stated the following as the ***main reasons for migration***:

- The ongoing armed conflict in Syria and the resulting fear for their lives, humanitarian issues, and the lack of staple foodstuffs. Due to the EU family reunion policy, a growing number of men, before leaving their country of origin, empower their wives to take the children on their own to the country where they intend to settle, and travel alone to the destination country where they lodge an application for protection and an application for family reunion. The refugee flows from Syria also include representatives of minority (Christian) groups who fear persecution for ethnic reasons;
- socio-economic reasons – stated by Afghan nationals;
- the expanding influence of ISIL – stated by Iraqi nationals;
- socio-economic and religious reasons – stated by asylum-seekers from Africa;

Bulgaria is perceived as a transit country on the way to Western Europe by most asylum-seekers; they indicate as destination countries Germany, Austria, France, Sweden, and the Netherlands.

***Measures taken by Bulgaria to counter the migration pressure from Turkey:***

The protection of the security of the EU external border is a priority for Bulgaria, in particular for the Ministry of Interior and the General Directorate Border Police. The extremely complicated situation along the border with Turkey required taking complex measures to enhance border control efficiency in order to limit the migration pressure and maximize the prevention of potential security risks.

- Joint specialized police operations:

A joint specialized police operation (JPO) with the participation of MOI's GDBP and Regional Directorates (RDs) was initiated in November 2013. The JPO continued in 2015 by deploying additional forces and equipment and by expanding the operational coverage along the whole Bulgarian-Turkish border. In April 2015 the Ministry of Defence joined the operation by providing logistical support allowing enhanced mobility of the participating officers.

Due to the drastic increase in the migration pressure along the Bulgarian-Turkish border in July 2015 and the real threat of large groups transiting from Turkey through Bulgaria on their way to destination countries in Central and Western Europe, in September 2015 MOI and military units of the Armed Forces took joint measures for protecting the state border. The joint plan endorsed by the Prime Minister allows increasing the numbers of the military staff and the equipment and devices deployed, when needed.

- Building barrier walls at the border:

The results (a drastic drop by almost 7 times in the attempted illegal crossings) from the 30-kilometer barrier wall along the most vulnerable sections from Lessovo BCP to the village of Kraynovo, which was commissioned in September 2014 show, in the assessment of the Border Police, that this is a practical solution to counter the migration pressure on the green

border. A decision was made to extend the facility by another 132.6 km in order to cover the whole land border; the construction started in September 2015. Border Police has asserted that the building of new barrier walls aims to strengthen MOI's capacity to counteract irregular migration and to redirect the mixed-migration flows toward BCPs, which will contribute to minimizing the risks to the migrants' life and health ensuing from their attempts to enter into the Bulgarian territory through areas that are unknown and difficult to cross.

- Putting in place an integrated surveillance system:

The second part of the second stage of the Integrated Surveillance System (ISC) has been put in place, including the sections of the state border between Lesovo BCP and the mouth of the Rezovska River; the implementation of ISC's third stage has started. The first two stages of ISC consist of 11 stationary posts for technical surveillance, 117 km of signal-and-security systems, 9 mobile posts for technical surveillance, 2 CCTV systems at the BCP, 5 local coordination centres, and 1 regional coordination centre. The system has an internally integrated imaging capability for the video information received from the vision sensors on board the 3 helicopters.

The integrated surveillance system put in place is operational despite some occasional interruptions, allows gathering in real time video information about violations at the state border, and substantially facilitates achieving the aims of the joint police operation, as well as the general management of the forces and the equipment depending on the situation.

- Support by Frontex:

Bulgaria has received support from the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU – FRONTEX in relation to the successful countering of illegal migration through the EU external Bulgarian-Turkish border. The Joint Operation *Flexible Operational Activities – Land Borders 2016* ensures forces and logistical support from other EU Member States; joint police patrols consisting of FRONTEX officers and MOI officers are involved in border surveillance tasks, which is an important safeguard for observing the international rules in respect of third-country nationals apprehended in the border areas.

#### **b). Situation at the Bulgarian-Greek border**

As the Bulgarian-Greek border is an internal EU border, the border control is at the minimum level. The good infrastructure in the border area allowing easy access to the line of the state border on the Greek territory, the lack of preventive devices, and GDBP's insufficient resources in terms of forces and surveillance devices needed to respond to a potential migration pressure make this border very vulnerable in case the migration flows get redirected towards Bulgaria.

A total of 467 third-country nationals (TCNs) have been apprehended at the Bulgarian-Greek border in 2015: 416 at the green border, and 51 at the BCP. No attempts by TCNs to use false documents or fake identities have been detected. The increase in the number of apprehensions for illegal crossing, even though small compared to the pressure along the

Bulgarian-Turkish border, stands at 44% against the year 2014 and is an indication of potential redirecting to and growing migration pressure on the Bulgarian-Greek border.

The rise in the numbers of TCNs apprehended at the entry from Greece is due, in addition to the measures taken to enhance protection along the Bulgarian-Turkish border, to the large number of migrants on the Turkish territory near the border who are waiting for the opportunity to get into the EU, according to the Border Police. In most cases the individuals apprehended crossed the land border from Turkey into Greece and continued their movement along the Maritza River to enter Bulgaria at the merging point of the three borders – the landmarks used are the Maritza River and the two border-crossing points Kapitan Andreevo and Novo Selo.

Border Police has assessed that a large number of third-country nationals who are seeking ways and routes to reach Western Europe are staying in Bulgarian territory, and that 2015 the TCNs preferred leaving Greece via the Western Balkans. This contributed to an escalation in the tension along the route and required Bulgaria to take additional measures to lower the pressure.

***Bulgaria's counter actions at the border with the Republic of Greece:***

- The expected increase in attempted irregular entries into Bulgaria through the Bulgarian-Greek border requires taking a number of measures and ensuring considerable human, technical, and financial national resources for their implementation.
- The JPO conducted along the border with Turkey also covers a part of the Bulgarian-Greek border – the area of Novo Selo BPS where GDBP has strengthened its contingent and the necessary technical equipment.
- Bulgaria has taken measures at the national level aimed to foster the efficiency of border control and prevent an emergency situation resulting from a potential rise in the migration pressure along the border with the Republic of Greece. An action plan for an emergency resulting from an increased migration pressure along the Bulgarian-Greek border has been put in place; the focus is on optimal arrangements and interaction aimed at enhancing MOI's capacity in close coordination with MOD in order to ensure efficient surveillance of the state border in the event of an emergency due to a mass influx of irregular into Bulgaria's national territory which is either an imminent threat or is already taking place.

**2.1.3 Migration flows at the exit – routes and counter actions**

Border Police observed a drastic change in terms of the situation at the exit from the country – an increase by almost 4 times in the number of illegal crossings detected; 11,805 third-country nationals detained (3,009 in 2014).

The modus operandi has remained unchanged: the TCNs do their best to avoid being apprehended in order not to be registered and, subsequently, returned into Bulgaria. This is the reason why they seek the services of traffickers [smugglers??] who smuggle them through the national border at the entry and at the exit by providing reception, transportation, and

temporary accommodation. The persons who have irregularly entered into the territory are usually transported to Sofia (rarely to Plovdiv, Pazardzhik and Haskovo) and then smuggled out of the country through the green border into Serbia where they become part of the flow along the route through the Western Balkans or Romania; they cross borders through the BCP either hidden in vehicles or by means of fraudulent IDs/travel documents.

In spite of the measures taken in 2015, the frequency of the cases of third-country nationals apprehended at the exit who had not been intercepted at the entry, increased. Out of the total population of TCNs apprehended in attempted illegal exits from the country, 3,299 had registration in AFIS, and 8,481 did not have such registration. It was, however, for the first time that the persons apprehended and detained at the exit (11,805) had exceeded in numbers the ones apprehended at the entry (10,900). These two changes are indicative of a lasting trend in terms of successful attempts at irregular entry, as assessed by Border Police.

As regards exiting the country via FYROM, Greece, and the air border, there were very few cases. There were no attempts of irregular exits via the sea.

The number of TCNs attempting to illegally leave Bulgaria by crossing the borders with FYROM, Greece and through the air border was insignificant: just 1% of the all the cases established at the exit. This number has dropped (63) by more than 3 times compared to 2013 (191).

Against the background of the overall migration situation in Bulgaria and across Europe, the number of cases and persons apprehended is negligible.

According to the Border Police's analysis, smugglers and TCNs do not prefer the following borders, as each of them has a specific "inconvenience" in terms of unhindered crossing:

- The border with FYROM is remote from Sofia; TCNs are confronted with a high-mountain terrain which is not easily accessible; they have to cross yet another border and the territory of yet another third state before reaching the Schengen space, which makes their route longer and more costly.

After the situation in FYROM became complicated, MoI undertook joint measures together with MOD, at the border check points. The tasks in the border area and along the access routes to the BCP were delivered by the personnel within mixed border police groups "Control Crossing Points" with a view to ensuring deterrence and prevention with respect to individuals attempting to illegally cross the state border.

- The air border: the security measures put in place at Bulgaria's international airports make irregular movement difficult. In 2015 there were only 31 attempts (35 in 2014) of irregular entry through the air BCPs: 27 by means of false documents or fake identities, and 4 attempts to avoid border.

- Greece is also a transit state for irregular migration and the TCNs do their best to leave it. Only 13 irregular crossings have been apprehended at the Greek border: 4 at the green border, and 9 at the BCP.

### **c). Situation at the Bulgarian-Serbian border**

The trend of the Bulgarian-Serbian border being preferred by TCNs for exiting Bulgaria, which started in 2013, was further strengthened in 2015. The route Turkey – Bulgaria – Serbia continued to be preferred by TCNs, as it is easy, fast and cheap due to its proximity to the city of Sofia and the link to the route via the Western Balkans, according to the Border Police's assessment. This is why the situation at the exit into Serbia marked a drastic change: out of the total of 11,805 attempted irregular exits, 11,012 (93%) have been registered at this border.

The majority of the attempted irregular exits were once again at the green border: 10,817, which is an increase by 535% compared to 2014 when the persons apprehended were 1,703.

A drop by 4% was registered at the exit via border check points: 195 persons apprehended (204 in 2013), of whom 94 hidden in vehicles, and 30 with false IDs/travel documents. While the share of all the attempted exits through the Bulgarian-Serbian border apprehended at the BCP was 11% in 2014, this percentage stood at only 2% in 2015.

The mixed-migration flow at the exit into Serbia consisted mostly of nationals of Afghanistan – 5,023 (942 in 2014), followed by Syria – 3,016 (574), Iraq – 2,599 (112), Pakistan – 181 (68), and 210 others.

The highest risk routes for the irregular migration along the Bulgarian-Serbian border have been identified.

#### ***Bulgaria's counter actions at the border with the Republic of Serbia:***

- Due to the drastic worsening of the operational situation, in 2015 GDBP started, on its own and in coordination with other MOI services and competent state authorities, planning and conducting local specialized police operations for intensifying police checks and enhancing the presence of police officers in the border area.

- In implementation of the Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Serbia regarding police cooperation, control and surveillance of the common state border between Bulgaria and Serbia, arrangements have been put in place for an optimal number of joint patrols and enhanced operational efficiency.

- Following Bulgaria's request for FRONTEX support, a Joint Operation *Flexible Operational Activities – Land Borders 2016* started in February 2016: forces and equipment from other Member States were deployed within the framework of a local coordination centre Kalotina.

### **d). Situation at the Bulgarian-Romanian border**

The border with Romania ranks second after the Bulgarian-Serbian border in terms of vulnerability to the irregular exit of third-country nationals. Due to the measures Bulgaria

took to limit the attempted irregular exits through the BCP, the year 2015 registered a drop in such attempts by 23%. A total of 650 persons have been apprehended, none of whom at the entry. The main nationalities of the TCNs detected along this route are Syrians (292), Iraqis (159), Afghans (146), and others (53). The majority of them – 540 (83%) were apprehended at the BCP (458 hidden in vehicles, and 64 with fraudulent IDs/travel documents).

No change has been established in terms of the modus operandi – TCNs enter Bulgaria from Turkey and do their best to avoid detention by the border authorities or, if detained and accommodated at a closed-type centre, they lodge applications for international protection and then attempt to illegally cross the national border at the exit, as analysed by the Border Police.

The violations registered are mainly at the Rousse-Danube Bridge BCP (300), and the Vidin-Danube Bridge BCP (132). Hiding in vehicles for the purpose of irregular exit through the Bulgarian-Romanian border in 2015 (458) has gone down by 21% against 2014 (581) as a result of redirection to the border with Serbia. The most frequent means used for crossing the border through the BCP are cars and trucks equipped with hiding compartments for the transportation of irregular migrants.

The state border is crossed in two ways:

- Via the BCP: TCNs are hidden in specially designed hiding compartments or in the hollows of truck cabins and trailers, in vans and cars. In most cases the irregular crossing of the border is organized on the territory of Bulgaria. Those smuggled are illegally residing persons, most often nationals of Afghanistan, Syria, Iraq and others. The smugglers recruit the TCNs who wish to leave the country and make arrangements for getting them into the hiding compartments of trucks. The smuggling through the border takes place after midnight through any of the BCPs at the Bulgarian-Romanian border.

- Via the land border with Romania, outside the areas of mandatory border control: TCNs are hidden in vehicles.

The cases of using false IDs have decreased by almost 2 times: 64 third-country nationals apprehended (120 in 2014). Mixed migrants use authentic documents with resemblance with the holder's photo or forged EU documents. The fraudulent documents used are of various nationalities and types: Bulgarian – 23, Greek – 8, German – 5; Spanish – 5, and others.

Mixed migrants get hold of Bulgarian documents in Bulgaria, mostly in the city of Sofia, and of documents issued in other EU states – in Turkey. Their goal is reaching the Schengen states, in particular Germany and Sweden. In terms of the use of fraudulent documents or fake identities, Syrians rank first – 28% of the persons apprehended, followed by Iraqis – 24%, and Turks – 10%.

#### **2.1.4 Aiding irregular migration**

Bulgaria considers aiding irregular migration a considerable threat on a national and European scale. According to FRONTEX data the number of smugglers detected in the EU has

risen from 10,234 in 2014 to 12,023 in 2015, the highest increase being reported by Spain, France and Italy.

The number of smugglers detected in Bulgaria in 2015 stands at 569, of whom 248 Bulgarians, 95 Turks, 31 Iraqis, 1 Romanian, 14 Afghans, and others.

They are part of organized international smuggling networks which recruit TCNs in the countries of origin and organize their irregular movement (legal or illegal) along the whole route to the destination country or make arrangements for the TCNs who have entered Turkey on their own and want to move on to Western Europe. Those involved in the smuggling networks share their responsibilities for the various border areas and transit states and permanently keep in touch.

Their activity consists of assisting the irregular movement of third-country nationals along the route from Turkey through Bulgaria into Serbia towards other EU Member States, as well as the secondary movement through Bulgaria's internal EU border with Greece (at the entry) and Romania (at the exit) into the EU. Information collected by Border Police show that following are the services offered by the smugglers' networks to TCNs: arrangements, transportation and smuggling through the borders, reception, provision of temporary stay, fraudulent documents, tips about avoiding potential detention, instructions about behaviour, etc., determine the high demand for them and, respectively, the large profits generated by the perpetrators.

In 2015, Bulgaria took additional legal and operational measures to detect and curb the actions of persons aiding third-country nationals in their irregular crossing of the border and the national territory. Bulgaria amended its Criminal Code to criminalize the aiding of aliens' irregular stay and transportation across the national territory against payment (for financial gain).

Enhancing the interaction among the law enforcement authorities responsible for preventing and countering illegal migration – GD Border Police, GD National Police, GD Combatting Organized Crime, Migration Directorate, and the State Agency for National Security.

Fostering the operational cooperation between GDBP and its counterparts in the neighbouring countries and the EU (Frontex, Europol, SELEC).

Receiving intelligence about organized criminal groups which are active on Bulgaria's national territory and are shifting their focus to activities for aiding irregular migration.

The growing migration pressure on the Bulgarian-Turkish border in 2015 resulted in a substantial increase in the number of applications for international protection lodged by third-country nationals before GDBP by 40% compared to 2014. 4,751 persons stated their wish to seek international protection upon detention in the border area.

## **2.2 Trends**

Insecurity, poverty, armed conflicts, and the expanding activity of Islamic State are the main triggers generating mass mixed-migratory flows towards Europe. Mixed migrants flee their countries in search of security in the EU.

- Turkey continues to be the crossing point for irregular migration along the Eastern Mediterranean route and the gathering point for TCNs from the Middle East and Africa on their way to the EU.
- Despite the measures Bulgaria took for the protection of the Bulgarian-Turkish border, the migration pressure towards Bulgaria has been growing. The border most affected by the migration movement is the Bulgarian-Turkish border.
- The effective protection measures Bulgaria took to limit the pressure from Turkey have redirected a part of the flows towards the Bulgarian-Greek border in the area of responsibility of Novo Selo BPS – Smolyan RDBP.
- The joint specialised operation conducted by Bulgaria, at the green border, the building of the barrier wall and the optimal use of the integrated surveillance system have triggered an increase in the attempted irregular crossings of via the border check points by hiding in cars and trucks and freight trains.
- The enhanced migration pressure through the Bulgarian-Turkish border has resulted in a drastic rise in the number of applications for international protection lodged by third-country nationals.
- The trend of persons without documents claiming to be nationals of high-risk countries with the aim of receiving refugee status in Bulgaria has been maintained.
- The number of third-country nationals who entered Bulgaria without being apprehended and the number of illegally residing foreigners has grown.
- The Bulgarian-Serbian border is the main route for TCNs at the exit from Bulgaria.
- The number of smugglers facilitating the irregular movement of third-country nationals through Bulgaria has risen.
- Due to the enhanced security measures at the airports there is no change in the indicators showing increased illegal migration via the air border.

## **2.3 Bulgaria's Forecasts for 2016**

Given the ongoing armed conflict and the activity of the terrorist group ISIL, it can be assumed that the risk of an increase in the mixed-migration flows towards Bulgaria will be maintained in the short term.

- The risk of intensive migration pressure will persist and the attempted irregular crossings of the Bulgarian-Turkish border will most probably be growing in numbers as the weather conditions improve.



- Bulgaria will continue to be a transit country for many TCNs along the Eastern Mediterranean route from the Middle East towards Western Europe; the trend of such persons doing their best to avoid detention in order not to be registered will persist.
- The migration pressure at BCPs as a result of attempted crossings by hiding in vehicles and in international freight trains entering from Turkey will continue.
- The measures Bulgaria has taken for the protection of the Bulgarian-Turkish border may result in a drastic increase in the migration pressure from Greece into Bulgaria through the area of responsibility of Novo Selo BPS, with a more complicated situation along the land border and to a lesser extent in the area of the Maritza river.
- The attempted illegal crossing via the Black Sea may be resumed after the barrier wall is built along the whole Bulgarian-Turkish land border.

## CHAPTER III

### ACCESS TO THE TERRITORY AND THE PROCEDURE FOR INTERNATIONAL PROTECTION

#### 3.1. Observance of the non-refoulement principle

The *non-refoulement* principle is laid down in Art. 33, para 1 of the Geneva Convention relating to the Status of Refugees of 1951, and it stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The obligation of the state authorities in the Republic of Bulgaria to observe this principle ensues from the ratification of the Geneva Convention in 1992<sup>17</sup> which has become part of the Bulgarian legislation and has primacy<sup>18</sup> over conflicting provision of the domestic legislation. In addition, the non-refoulement principle is also explicitly laid down in the Bulgarian law<sup>19</sup>.

The access to the territory for asylum-seekers continued to be difficult in 2015. The most serious concerns in terms of the difficult access were once again due to the reported push-back practice applied by the authorities with respect to prima facie refugees. Various groups of asylum-seekers reported throughout the year that the Bulgarian border police including the mixed patrols deployed for state border protection pushed them back into the Turkish territory by not only from the border line but also from inland border areas<sup>20</sup>. The most frequent push-back method allegedly applied by the Bulgarian police authorities was

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<sup>17</sup> Law on the Ratification of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (prom. SG, No 36 of 36 May 1992, suppl. No 30 of 1993).

<sup>18</sup> Art. 5 (4) of the Constitution of the Republic of Bulgaria.

<sup>19</sup> Art. 4 (3) of LAR.

<sup>20</sup> Border zone is considered to be the zone 30 km from the border line

apprehension at the border line or taking back thereto from the border area and ensuring the support of the Turkish border patrols for taking the groups or individuals into the Turkish territory. There were many reports about cash, telephones or valuables being seized without a record being drawn up upon the detention of asylum-seekers by the Bulgarian police authorities. There were individual reports about inappropriate treatment: tackling down to the ground, kicking or using rude language, and personal search of women and children in front of everyone else even though carried out by women police officers.

In June 2015, a group of three women from Syria, each of them with three minor children, and a woman from Iraq, with four minor children, reported having been pushed back twice in April and once in May 2015, a total of four times, from the territory of Bulgaria by border police officers in the area of border signs 303 and 309 of Svilengrad BPS. After their successful fifth attempt to irregularly enter Bulgaria on 18 June 2015 in a group of 30 persons from Syria and Iraq, the same women reported rude treatment and unlawful seizure of the mobile phones and cash of all the detainees' by the detaining police officers . The alert about this incident submitted to the chief of GDBP by BHC in conformity with the rules set out in the Tripartite Memorandum had not received a response by the time of drafting and publishing this Report.

In October 2015, a 19-year old national of Afghanistan was shot dead<sup>21</sup> by a border police officer near the village of Dyulevo at the Bulgarian-Turkish border after the border patrol had intercepted the group with which the relevant individual had irregularly entered into the national territory. The investigation of the case conducted by BHC within its monitoring activities, established circumstances related to the incident<sup>22</sup> which considerably differ from MOI's position<sup>23</sup>. By the end of 2015, and as of the date of publishing this Report the results of the investigation had not been announced by the prosecutor's office, including the findings of the autopsy and the ballistic expert analysis, and the criminal proceedings instituted is still against an unknown perpetrator<sup>24</sup>.

At the end of the year, MOI reported<sup>25</sup> 34,056 irregular migrants detained, of whom 10,709 at the entry and 11,710 at the exit, as well as another 11,637 persons apprehended inland. The above statistical data points to a substantial rise in the number of foreigners detained inland on the national territory and at the exit borders – 68% against 32% of apprehension at the entry border, which to some extent rebuts the argument<sup>26</sup> that the fence built along a section of the Bulgarian-Turkish border contributes to reducing the number of irregular crossings from Turkey. Furthermore, out of the 34,056 foreigners apprehended, 26,939 lodged applications for international protection before the border or immigration police, therefore almost 79% of the foreigners who enter Bulgaria irregularly identified themselves as asylum-seekers although the majority of them at a later stage after being apprehended.

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<sup>21</sup> <http://dnes.dir.bg/news/granitza-afganistanetz-migranti-bezhanskiat-natisk-20304499> ;

<sup>22</sup> <http://www.liberties.eu/en/news/inconsistencies-between-facts-and-bulgarian-government-statement>

<sup>23</sup> <http://m.novini.bg/news.php?id=311020>; <http://viarane.com/2015/10/16/граничен-полицай-застреля-агресивен/>

<sup>24</sup> Outgoing No 8386 of 10.03.2016 of the District Prosecutor's Office – Burgas.

<sup>25</sup> MOI, at: [https://www.mvr.bg/Planirane\\_otchetnost/Migracionna\\_statistika/default.htm](https://www.mvr.bg/Planirane_otchetnost/Migracionna_statistika/default.htm) ;

<sup>26</sup> Reg. No 812100-27496 of 23 Dec. 2014 of MOI to the Security Board with COM regarding the need to build a barrier wall along the Bulgarian-Turkish border., <http://bit.ly/1jMopHw>

While various representatives of the government declared several times during the year<sup>27</sup> that the purpose of building the so-called barrier wall aim was to deter asylum-seekers from illegally crossing the border and redirect them to the official border-crossing points, the regular monitoring of the border on the other hand established cases of asylum-seekers with regular national documents were refused access to the territory of Bulgaria by GDBP on the grounds of not having an entry visa or subsistence means for the duration of their stay or residence. The irregular entry through the land border also caused several incidents resulting in a deteriorated or critical health state of asylum-seekers, mostly women, due to the excessive physical strain and the harsh conditions of the route through the Bulgarian-Turkish border which caused the death of a 40-year old Iraqi woman.

### 3.2 Observance of the non-penalisation principle

The *non-penalisation* principle is laid down in Art. 31 of the Geneva Convention relating to the Status of Refugees of 1951, and it stipulates that the governments of the states which have signed and ratified the convention shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. This principle is transposed into the national legislation in Art. 279 (5) of the Criminal Code of the Republic of Bulgaria.

In 2015 the non-penalisation principle was observed with respect to third-country nationals entering the country in order to apply for asylum and international protection. After the turnabout in the practice of the investigation authorities and the prosecutor's office in 2013, the monitoring found only several individual cases of violation of this principle in 2014 and not a single one in 2015<sup>28</sup>. In 2015 Border Police handed over a total 591 persons seeking international protection to the prosecutor's office for the purpose of prosecution for acts of illegal crossing of the national border. All the cases, however, concerned the use of false or forged IDs at the entry or at the exit or attempted illegal exits from the territory (mainly at the borders with Serbia and Romania) by either not passing through the official points or not having due permission by a state authority<sup>29</sup>.

The largest number of criminal proceedings initiated was observed in the areas of responsibility of Bregovo BPS (the Bulgarian-Serbian border)<sup>30</sup> and Rousse BPS (the Bulgarian-Romanian border)<sup>31</sup> – for attempts to irregularly exit the national territory. Attempts to irregularly cross the border at the exit carry imprisonment sentences<sup>32</sup>; the other more prevalent negative consequence is preliminary detention at the pre-trial stage for a period of up to 2 months, including of women and minor children. In 2015 some prosecutor's offices,

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<sup>27</sup> <http://novanews.novatv.bg/news/view/2015/09/02/122887/бъчварова-131-км-ще-бъде-оградата-по-границата-ни-с-турция/>, and:

[http://www.dnevnik.bg/bulgaria/2016/01/15/2686405\\_ministur\\_buchvarova\\_se\\_nadiava\\_ogradata\\_po\\_granicata\\_s/](http://www.dnevnik.bg/bulgaria/2016/01/15/2686405_ministur_buchvarova_se_nadiava_ogradata_po_granicata_s/)

<sup>28</sup> 2014: 11 cases of prosecution in violation of the non-punishment principle; 2015: 0 cases;

<sup>29</sup> 2015: 591 cases.

<sup>30</sup> 289 indictments.

<sup>31</sup> 143 indictments.

<sup>32</sup> Art. 279 (5) of the Criminal Code.

however<sup>33</sup>, would rather apply alternative measures in such cases in order to avoid the detention of accompanied children aged 0 – 14, and of unaccompanied children aged up to 18.

### 3.3 Registration

The registration at the borders of persons seeking international protection who had already been allowed to enter and stay on the national territory was conducted as a whole in conformity with the legal provisions with a few issues which, however, remain recurring and persistently unresolved.

For the year 2015 MOI has reported<sup>34</sup> the detention of 34,056 irregular migrants, of whom 10,709 persons apprehended at the entry and 11,710 persons at the exit, as well as 11,637 persons apprehended inland. A total of 26,939 out of them have declared their wish to seek protection in the Republic of Bulgaria: 55% (14,789) lodged an application before Border Police, and the other 45% (12,150) did so before the Migration Directorate after being transferred to the Special Centres for Temporary Accommodation of Foreigners (SCTAF). Out of the 14,789 persons lodging an application for protection at the border before GDBP, almost 47% (7,004) lodged the application upon crossing the border at the entry, and the remaining 53% (7,794) did so upon detention in attempting to illegally cross the border at the exit.

The above explains why the number of applications for protection lodged at the exit exceeded the number of applications lodged at the entry into the Bulgarian territory. This fact and the substantial increase in the number of foreigners irregularly entering and residing in Bulgaria show that the barrier wall built along a 30-kilometer section at the Bulgarian-Turkish border with the aim of preventing access to the national territory through the green border has not objectively yielded the result declared by the government in adopting the measure and allocating the funds for the construction of the facility. As pointed out, MOI has reported for the year 2015<sup>35</sup> 34,056 irregular third-country nationals in Bulgaria, of whom only 31% (10,709) apprehended and detained at the entry from the Republic of Turkey, the remaining 69% (23,347) detained either inland (35% or 11,637 persons) or at the exit in their attempt to irregularly leave the country (34% or 11,710 persons), mainly at the Western border with the Republic of Serbia (10,935 persons) but also at the Northern border with Romania (649 persons), and the Southern border with the Republic of Greece (480 persons).

A major problem in 2015 continued to be the lack of adequate interpretation from the languages spoken by the main groups of individuals seeking protection. At the beginning of the year MOI substantially reduced the hourly rate for interpretation<sup>36</sup>, which resulted in a mass withdrawal of interpreters from the procedures conducted by Border Police. This resulted in difficulties in terms of the communication of GDBP's officers with the foreigners detained, the capacity to establish the detainees' legal status and conduct the applicable procedure with respect to them within the 24-hour police detention. This is why, similar to

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<sup>33</sup> Regional Prosecutor's Office-Vidin and Regional Prosecutor's Office-Rousse, UNHCR-BHC-BRC mission, 3-4 June 2015;

<sup>34</sup> Ministry of Interior, [https://www.mvr.bg/Planirane\\_otchetnost/Migracionna\\_statistika/default.htm](https://www.mvr.bg/Planirane_otchetnost/Migracionna_statistika/default.htm) ;

<sup>35</sup> Statistical data as of 31 Dec. 2015, Source: MOI.

<sup>36</sup> Order No №81213-166/13.02.2016, №81213-164/13.02.2016 and №81213-163/13.02.2016 of the Minister of Interior for adoption of BFN 15,00 per hour which can be doubled (100% rate increase) in case of complicated terminology

the situation in 2014, the interpretation needed for declaring the claim for protection and the translation needed for the application itself was provided by GDBP's officers with the relevant linguistic competence, in fewer cases by Frontex officers or in most cases by BHC's translators.

The provision of interpretation/translation at the border is a fundamental safeguard for exercising the right to lodge an application for international protection, as the lack of interpretation deprives asylum-seekers of the possibility to communicate their wish to GDBP's staff. This situation resulted in the regular practice of referring all third-country nationals detained at the border to the Allocation Centre with MOI's Migration Directorate in the city of Elhovo where the actions for establishing their identity and status were carried out (see 3.4 below) by the law enforcement authorities.

Due to the above reasons, in 2015 the State Agency for Refugees with the Council of Ministers, registered 76% (or 20,391 persons) out of the total number of 26,939 persons who had lodged applications for protection. These individuals had applied before the state authorities across the country, including the MOI bodies, in particular the General Directorate Border Police and the Migration Directorate.

Iraq became the top country of origin of aliens seeking protection with 34% (6,959 applicants) registered, followed by Afghanistan with 30% (or 6,193 applicants). It was for the first time in three consecutive years that the number of Syrians seeking protection in Bulgaria had gone down from the first to the third position in the ranking of the countries of origin, with 29% (5,993) of the total number applications registered. Pakistan ranked third with 3% (578 persons) of the total registered, and Iran ranked fourth with 0.8% (175 persons) of the total registered; the latter two replaced stateless persons and Algerian nationals who ranked on these positions in 2014 with, respectively, 2.4% or 268 and 1.3% (or 155 persons) of the total registered.

### **3.4 Identification and referral mechanisms**

As mentioned above, out of the total number of 26,939 applicants for international protection in Bulgaria in 2015, 55% (or 14,789 persons) lodged their applications before the border police authorities. Almost 47% (7,004 persons) of these 14,789 lodged their applications upon crossing the border at the entry, and the remaining 53% (7,794 persons) upon being apprehended in their attempt to cross the border at the exit. Only 17% (1,251 persons) of those applying at the border at the entry, however, had direct access to the procedure for international protection without being detained. The remaining 83% (5,753 persons) of those applying for international protection at the border at the entry had been detained and accommodated at the Allocation - Centre-Elhovo (with MOI's Migration Directorate) with a 7-day average duration of their detention for the purpose of conducting identification and profile determination before being released and transferred to the open-type centres of the State Agency for Refugees.

Pursuant to the secondary national legislation<sup>37</sup>, however, in case a foreigner detained at the border asks for international protection, GDBP staff shall immediately send a copy of the application for protection via e-mail, fax or mail to the State Agency for Refugees, shall make arrangements for the date, place and time of the hand-over, and shall hand over the applicant to SAR, together with any documents seized or drawn up upon detention (a detention warrant, an order for imposing administrative coercive measures, a search warrant, a record of the circumstances), and documents certifying the applicant's health state. The legal framework does not stipulate that foreigners who lodge an application before Border Police may be handed over to state authorities other than the State Agency for Refugees, in particular for the purpose of further administrative detention beyond the 24-hour police detention provided for by law. As already pointed out in the Report, the law explicitly regulates the right of the applicant for international protection to stay on the territory<sup>38</sup> of Bulgaria till the completion of the administrative procedure for examining his/her claim with a final decision. It is on this ground, *ex lege*<sup>39</sup>, that the execution of the removal order shall be suspended till the completion of the procedure for international protection. As the orders for coercive accommodation at SCTAF (administrative detention) are writs of prevention<sup>40</sup> for the execution of removal, they shall, therefore, also be suspended till the completion of the procedure for international protection, irrespective of the lack of an explicit legal provision within this meaning, and the aliens who have applied for protection in Bulgaria shall be released from detention and handed over to SAR. In view of the above, the transfer of persons applying for international protection at the border at the entry, to the Allocation Centre-Elhovo AC), handing them over to the Migration Directorate authorities, and their subsequent administrative detention is a practice which constitutes a violation of the law and, in particular, of the above mentioned legal rules and provisions.

Moreover, in 2015 the AC-Elhovo continued functioning without any legal status or grounds<sup>41</sup>, and the individuals detained were accommodated therein without due orders for coercive accommodation, which deprived them of the right to freedom and free movement in violation of the law. Therefore, the transfer of aliens seeking asylum and protection by Border Police to AC-Elhovo, in addition to being a violation of the special law LAR<sup>42</sup> also constituted a violation of the legal standards set out in Art. 5 (1) of the European Convention on the Protection of Human Rights and Fundamental Freedoms. This violation is a substantial one in spite of the fact that the average duration of detention at the AC-Elhovo had been reduced to 7 days compared to 11 days in 2014.

The transfer of persons applying for protection at the border to the administrative detention facilities of MOI's Migration Directorate, the AC-Elhovo, Busmantsi SCTAF and Lyubimets SCTAF, also resulted in other unfavourable consequences for the persons concerned and

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<sup>37</sup> Ordinance No 332/28.12.2007, effective as from 14.01.2008, regarding the coordination among and responsibilities of the State Agency for Refugees, Migration Directorate, and Border Police in the cases of applications for protection lodged at the national borders (SG 3/2008).

<sup>38</sup> Art. 29 (1) (1) of LAR.

<sup>39</sup> Art. 67 (1) of LAR.

<sup>40</sup> Art. 44 (6) of the Aliens in the Republic of Bulgaria Act.

<sup>41</sup> The Elhovo Distribution Center with MOI's Migration Directorate was established by Order Reg. No I3-1887/25.09.2014 of the Minister of Interior.

<sup>42</sup> Art. 67 (1 and 2) of LAR.

limited their rights as applicants for international protection laid down in the law<sup>43</sup>. The monitoring has found serious delays in releasing them for the purpose of registration on the basis of written authorization by the State Agency for Refugees. It was usually nationals of third countries other than Syria that were affected by these delays, in particular the nationals of states<sup>44</sup> which are considered by the State Agency for National Security to be a source of potential threat to national security or public order. In some of the above cases the State Agency for Refugees carried out in respect of such applicants under the conditions of detention – hence, in violation of the legal provisions<sup>45</sup> – actions related to personal registration, fingerprint taking, the Dublin and the accelerated procedures in order to observe the time limits for registration<sup>46</sup> and issuing documents<sup>47</sup>, as prescribed by the law. The unlawful detention of such persons, before being released by the court in response to appeals filed by them, had an average duration of 6.5 months in the first half of 2015, and 3.5 months in the second half of 2015.

The persons worst affected by the above practice of transfers from the border to AC-Elhovo and SCTAFs were, however, the most vulnerable category of unaccompanied and separated children seeking protection. A drastic increase has been observed in terms of the practice of MOI's authorities, including GDBP, to "attach" unaccompanied minors seeking protection to adults, who are in no relationship with them, in the orders for coercive accommodation at SCTAFs issued with respect to such children with a view to circumventing the prohibition on detention laid down in the law<sup>48</sup>. This approach, however, was conducive to a higher risk of abuse, ill-treatment, and sexual violence, as unaccompanied children were accommodated in the closed-type reception centres and SCTAFs without a parent or an adult responsible for them by law or custom. In October 2015<sup>49</sup> a case of sexual abuse against an unaccompanied child seeking protection accommodated at Busmantsi SCTAF was registered, but neither MOI<sup>50</sup>, nor the prosecutor's office conducted the due investigation and took adequate measures to detect and punish the offenders.

### 3.5 Dublin returns

The Council Regulation (EC) №604/2013 establishes the criteria for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national. The aim of this act is to avoid multiple determinations of the application for protection lodged by one applicant in more than one EU Member State. The criteria laid down in the Dublin Regulation<sup>51</sup> help determine the EU Member State responsible for examining the application for protection. The GDBP bodies carry out the actions for taking back asylum-seekers into Bulgaria from another Member State and vice versa within a procedure under the Dublin Regulation (Dublin procedure). Pursuant to the Ordinance regarding the responsibility of and the coordination among State

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<sup>43</sup> Art.29 of LAR.

<sup>44</sup> India, Sri Lanka, Pakistan, Bangladesh, Algeria, Morocco, Tunisia; Source: Bulgarian Helsinki Committee, Monthly reports on the monitoring of SHTAF, January – December 2015.

<sup>45</sup> Art. 29 (1) (1) in conjunction with Art. 67 (1) of LAR.

<sup>46</sup> Art. 6 of the recast Directive 2013/32/EC (Procedure Directive).

<sup>47</sup> Art. 6 of the recast Directive 2013/33/EC (Reception Directive).

<sup>48</sup> Art. 44 (9) of the Aliens in the Republic of Bulgaria Act.

<sup>49</sup> Bulgarian Helsinki Committee, Monthly reports on the monitoring of SHTAF, October 2015.

<sup>50</sup> MOI, Migration Directorate Outgoing No УПИ 536400-28628 of 4 Nov. 2015.

<sup>51</sup> Art. 3 (1) of the Dublin Regulation.

authorities<sup>52</sup> when the foreigner is on the territory of another Member State and Bulgaria is responsible for examining his/her application for protection or for taking him/her back, GDBP's officials receive the foreigner and the accompanying documents and hand him/her over to a territorial unit of the State Agency for Refugees, which is duly recorded. In case the alien seeking protection is to be returned from Bulgaria to another Member State responsible for examining his/her application, GDBP's officials, after being informed of this, hand the foreigner over to MOI's Migration Directorate in order for the latter to organize the removal actions.

In 2015 Bulgaria remained mostly a transit state, as the majority of those applying for international protection did so only when detained by the police for illegal entry or residence, and a substantial part of them – when apprehended in attempting to illegally leave the country on their way to the destination states in Western and Northern Europe. Almost a quarter of those lodging their applications for asylum and protection before the police authorities withdrew the applications and refused to be officially registered by the State Agency for Refugees as applicants for international protection in Bulgaria. In addition to their reluctance to stay in our country and receive protection, another reason were the efforts made to avoid having their fingerprints taken and entered into the Eurodac system, as required by the Dublin Regulation, which would allow their take-back to Bulgaria by the destination states. Hence, approx. 76% (20,391 persons) of those who had initially lodged applications for protection before state authorities (26,939) in 2015 were officially registered as applicants for international protection in Bulgaria. Almost 61% of the applications for protection were made when the aliens were apprehended in their attempt to exit the country, mostly through the border with Serbia (see 3.1). Hence, 2015 was yet another consecutive year which proves that Bulgaria continues to be perceived by refugees as a transit, not as a destination state.

Nevertheless, the take-backs to Bulgaria under the Dublin Regulation amounted to only 3% (262) of the total number of 8,131 inquiries made by various EU states. The main countries of the EU and EEA from which applicants were taken back were Austria (69 take-backs), Germany (41), and Switzerland (27). While the persons returned were admitted into the national territory by Border Police and were handed over to the State Agency for Refugees without any obstructions, the monitoring found that SAR, in violation of the law<sup>53</sup>, tacitly refused to resume the procedures discontinued with respect to the returnees under the Dublin Procedure.

The situation with the readmission of status holders returned to Bulgaria as the country that had granted the status was similar in terms of the small number of transfers. The number of effective readmissions to Bulgaria out of the total of 1,000 inquiries in 2015 was 122. The top three countries from which readmission took place were Serbia with 58 persons, Germany with 24 persons, and Austria with 11 persons returned under readmission agreements.

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<sup>52</sup> Art.17 of Ordinance No 332/28.12.2007, effective as from 14.01.2008, regarding the coordination among and responsibilities of the State Agency for Refugees, Migration Directorate, and Border Police in the cases of applications for protection lodged at the national borders (SG 3/2008).

<sup>53</sup>Art. 18 (2) of Regulation (EU) No 604/2013 (Dublin Regulation)



## **CHAPTER IV RESPECT FOR INDIVIDUAL RIGHTS**

### **4.1 The right to apply for protection**

In 2015 a total of 14,789 persons applied for protection at the border before GDBP's staff or 55% of the total of 26,939 persons (16,781 men, 2,539 women, 4,600 children, and 3,019 unaccompanied children<sup>54</sup>) who applied for protection before the state authorities of the Republic of Bulgaria. 10,489 of those applying for international protection at the border were adults (8,769 men and 1,720 women), 3,173 children (1,943 boys and 1,230 girls), and 1,127 unaccompanied children of whom 1,116 boys and 11 girls. GDBP registered on their behalf 11,616 applications for protection, as accompanied children do not have an individual application registered and are included in the application of either of the parents. Thus, there was an increase by 65% against 4,041 persons lodging an application at the border in 2014, and by 61% against 4,520 persons lodging an application at the border in 2013.

The number of applications for asylum and international protection lodged at the exit exceeded the number of application lodged at the entry. Out of the total of 14,789 persons lodging applications for protection at the border in 2015 only 47% or 7,002 asylum-seekers applied at the entry (Turkey, Greece), while 53% or 7,785 persons lodged applications upon being apprehended at the border in attempting to leave the territory of the country (Serbia, Romania, FYROM). All the others applying for protection in Bulgaria were officially registered as applicants for international protection at the centres for administrative detention of foreigners (SCTAF) Busmantsi and Lyubimets and AC-Elhovo, the main reason for this being the short time limit of up to 24 hours for police detention in the border detention facilities and the lack of interpretation at the exit borders.

### **4.2 The right to interpretation/translation**

In 2012 MOI officially approved the provisions<sup>55</sup> regarding the remuneration of translators/interpreters ensuring translation/interpretation for the detainees who do not understand the Bulgarian language. The Ordinance stipulates that when interpretation/translation with the respective language is provided to an alien detained at the national border, remuneration shall be due for the services rendered irrespective of the outcome of the interrogation: initiating a criminal procedure for illegal crossing of the border or opening an administrative file for examining an application for protection lodged.

In order to ensure that asylum-seekers can exercise their right to interpretation/translation at the border, in 2015 General Directorate Border Police used consultancy services provided by a translation agency on the basis of a public contract; the amount spent is BGN 364 936, of which BGN 303 164 for the needs of the Bulgarian-Turkish border. In most cases, however, the interpretation needed for declaring the claim for protection and the translation needed

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<sup>54</sup> The countries of origin of unaccompanied children were Afghanistan (1,806 unaccompanied children), Iraq (210), and Bangladesh (1).

<sup>55</sup> Order No №81213-166/13.02.2016, №81213-164/13.02.2016 and №81213-163/13.02.2016 of the Minister of Interior for adoption of BFN 15,00 per hour which can be doubled (100% rate increase) in case of complicated terminology.

for the application itself at BCPs was provided by GDBP's officers with the relevant linguistic competence, in fewer cases by Frontex officers or in most cases by BHC's translators.

Ensuring interpretation/translation at the border is a major safeguard for the exercise of the right to apply for international protection, as the absence of interpreters/translators deprives asylum seekers of the ability of communicate their claim to GDBP's staff. If border police officers cannot understand the statements addressed to them, they will not be able to make a correct assessment and decide which third-country nationals may be returned and which have to be admitted to the territory and protection.

#### **4.3 The right to information**

The right to information was ensured as a whole in 2015 on the basis of the obligations assumed under the Memorandum. Information boards with written materials (brochures) were displayed at the main border points along the Bulgarian-Turkish border – Kapitan Andreevo BCP, Elhovo BPS in charge of the 24-hour detention of the persons apprehended in the areas of responsibility of Lesovo BCP, Sredets BPS, Bolyarovo BPS, and Malko Tarnovo BPS, as well as at the sea border – Burgas PBS (the Black Sea), and at the exit – Kalotina PBS (Bulgarian-Serbian border), Sofia Airport BCP. The information materials were developed by BHC in 2012 and republished by UNHCR. The linguistic versions of the brochures are in the languages spoken in the most frequent countries of origin of asylum-seekers in Bulgaria, such as Arabic, Farsi, Dari, Kurdish, English, and French. As regards the right to oral information, see 4.4 below.

#### **4.4 The right to legal assistance**

In 2013 the Legal Aid Act<sup>56</sup> was amended and both asylum seekers and foreigners detained in SHTAF were defined as a special category entitled to legal aid at the administrative stage. Before this amendment was introduced, besides court proceedings, legal aid at the administrative stage was provided only in criminal procedures. In any other cases, legal aid could be requested only before the court or by the court.

Despite this change in the legislation, in 2015, similar to the previous year, the state budget did not allocate funds for the provision of legal aid to asylum seekers detained at the border in the 24-hour police detention facilities within GDBP's structures. This is why the National Bureau for Legal Aid did not provide any legal aid, counselling and representation for asylum seekers detained at the border in relation to their access to the territory and the procedure; legal assistance was ensured only by BHC with the financial support of UNHCR.

#### **4.5 The right to medical care**

According to BHC monitors, the foreigners detained undergo an initial medical screening only in the medical facilities at Kapitan Andreevo BCP, Elhovo BPS, and Malko Tarnovo BCP whose medical staff are general practitioners. In cases where urgent medical care was needed, the doctors contacted the local emergency hospitals. According to GDBP's position, all detainees

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<sup>56</sup> Art.22 (8 and 9) of the Legal Aid Act.

undergo an initial medical screening conducted by the general practitioners on the pay-roll, and if the BPS does not have such doctors – by the local healthcare establishment.

In 2015 asylum-seekers received medical care at the border in emergency cases under the terms and procedure laid down in the Health Act<sup>57</sup>. When treatment of chronic diseases was needed or the payment of medical procedures, consumables or medication outside the emergency medical care, it was the Bulgarian Red Cross that covered these medical expenses.

#### **4.6 Protection of vulnerable persons**

In conformity with the standards of international protection, special attention is paid to the cases of the so-called vulnerable categories: minor and underage children seeking protection, unmarried women, persons with disabilities or persons with physical or mental diseases, which make them disadvantaged. BHC monitored the observance of the main standards applicable to the detention of such persons in the police detention facilities at the border: accommodation in individual rooms which are equipped and tailored to the specific needs of this category in order to ensure their personal safety. When needed and upon request by border police officers, food, clothes, sanitary and hygienic items and medication were provided with BRC's support.

In 2015 a drastic increase was observed in terms of the practice of MOI's structures, including GDBP, to "attach" unaccompanied and separated children seeking protection, to unrelated adults, in the orders for coercive accommodation at SCTAFs issued with respect to such children with a view to circumventing the prohibition on detention laid down in the law<sup>58</sup>. This approach, however, was conducive to a higher risk of abuse, ill-treatment, and sexual violence, as the unaccompanied children were accommodated in the closed-type reception centres and SCTAFs without a parent or an adult responsible for them by law or custom. In October 2015<sup>59</sup> a case of sexual abuse against an unaccompanied child seeking protection accommodated at Busmantsi SCTAF was registered, but neither MOI<sup>60</sup> nor the prosecutor's office conducted the due investigation and took adequate measures to detect and punish the offenders.

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<sup>57</sup> Art. 99 (2) of the Health Act.

<sup>58</sup> Art. 44 (9) of the Aliens in the Republic of Bulgaria Act.

<sup>59</sup> Bulgarian Helsinki Committee, Monthly reports on the monitoring of SHTAF, October 2015.

<sup>60</sup> MOI, Migration Directorate, Outgoing No УПИ 536400-28628 of 4 Nov. 2015.

## CHAPTER V SUMMARY

### 5.1 FINDINGS

**5.1.1** The arrivals of third-country nationals into Bulgaria in a mixed-migratory flow significantly increased (71%) in 2015 when compared to 2014. The great majority of the entry took place via the Bulgarian-Turkish green borders. Irregular entry via the border check point continued to increase (74%) compared to 2014.

**5.1.2** For the first time, the number of TCNs apprehended for attempting irregular exit (mainly along the border with Serbia) exceeded (11,805) such apprehensions for irregular entry (10,900), marking a 47% increase compared to 2014.

**5.1.3** Bulgaria largely remains a ‘transit country’ for the great majority.

Border with Turkey remained the most used route to irregularly enter Bulgaria (95%).

**5.1.4** There is a potential to more increase in irregular entry from Greece to Bulgaria (44% increase in 2015 compared to 2014) due mainly to more restrictive/preventive measures along Bulgaria’s border with Turkey and the presence of a sizeable TCN population in Greek territory adjacent to Bulgaria.

**5.1.5.** Bulgaria has expanded its legislative scope in securing border by mobilising the army in case of a crisis situation.

**5.1.6** Persons who might be in need of international protection were exposed to denial of entry to Bulgaria, potential push-backs, on grounds of irregular entry or irregular presence or lacking valid identity documentation.

**5.1.7** The number of asylum-seekers arriving at the official crossing points continued to significantly increase in 2015 (74% higher) compared to 2014. At the same time the number of entries through the green border continues to prevail – 7,617 out of 10,900.

**5.1.8** On entry, Syria, Iraq and Afghanistan continued to remain the ‘top three’ countries of origin. Whereas on irregular exit attempts, Afghans are followed by Syrians and Iraqis.

**5.1.9** Most of the TCNs arriving to and exiting from Bulgaria are aided by smuggling networks within and beyond Bulgaria. Majority of those Bulgaria arrested for smuggling TCNs are Bulgarians followed by Turks, Iraqis and Afghans.

**5.1.10** Great majority of the TCNs continue to be apprehended without valid documents.

**5.1.11** The prevalent pressure of mixed-migratory flows along Bulgaria’s external borders requires the continued enhancement of the effective coordination among the partners under the Tripartite Memorandum of Understanding – UNHCR, GDBP-MOI, and BHC – in order to safeguard the efficient access to the territory for foreigners seeking international protection.

**5.1.12** The tripartite co-operation under the MoU remains an effective framework of partnership and collaboration which contributes to assisting the Government of Bulgaria in fulfilling its national, regional and international obligations on international protection.

**5.1.13** The Border Police, prosecutors and the national criminal courts continued to achieve an improvement in ensuring compliance with principle of non-penalisation of asylum-seekers on account of their irregular entry.

**5.1.14** Border practices with regards to the referral of unaccompanied or separated children to the relevant state institutions were limited to entry borders. The unaccompanied children apprehended inside the territory or on exit were detained in violation of the national law by the means of their attachment to unrelated adult individuals.

**5.1.15** Border and immigration authorities continued to lack sustainable translation/interpretation services at their disposal which lead to, among others, limiting the ability of asylum-seekers to communicate their needs in a timely manner to the border and migration authorities.

**5.1.16** The Border Police by and large guaranteed the asylum-seekers' right to information. After having received asylum-seekers under their custody in the border detention facilities, the Border Police have provided the asylum-seekers with the information brochures in multiple languages, received their application for international protection and referred them to the relevant authorities through the established channels.

**5.1.17** At the border detention facilities, the border authorities continue to rely on the support and assistance of NGO partners in meeting the specific needs of vulnerable individuals in their custody.

## **5.2 RECOMMENDATIONS**

**5.2.1** In managing the border, the Government of Bulgaria must ensure that the enhanced access control mechanisms fully respect fundamental human rights, including the principle of non-refoulement, and the right to seek asylum.

**5.2.2** The Government must consistently observe its international obligations and allow people in need of international protection to enter Bulgaria and obtain access to the asylum procedure irrespective of the mode of their entry.

**5.2.3** The Government must ensure that individuals, who have expressed or indicated their wish to apply for protection, are not transferred to the Allocation Centre in Elhovo, but are directly transferred to a SAR facility.

**5.2.4** The Government to continue to ensure that the third-country nationals who arrive at the border and may be in need of international protection, are consistently informed of when and how the applications for international protection may be lodged, including providing a proper and adequate interpretation.

**5.2.5** The Government to ensure state funds for provision of legal aid to those persons of concern entitled to it

**5.2.6** The Tripartite Working Group should undertake three joint monitoring missions a year.

**5.2.7** BHC and UNHCR to ensure updated protection information materials in multiple/rare languages so that the GDBP will make their all-time accessibility at the border areas.

**5.2.8** UNHCR and BHC to work with GDBP and other relevant Bulgarian authorities to ensure that necessary funds and expertise continue to be available in order to provide regular training support to the border police officials so that they have the relevant information and necessary skills.

**5.2.9** The Government must ensure the arrangements for a 24-hour availability of SAR's 'duty officers', for registration including during weekends and holidays, to facilitate timely communication and effective co-ordination with Border Police and other relevant authorities.

**5.2.10** The Government to ensure sustainability of the translation/interpretation services available for the relevant border and migration authorities including in the border areas so that persons in need of international protection can communicate their needs in a timely manner.

**5.2.11** The Government to amend the Criminal Code to ensure that the provision of de-penalisation, as per Article 279, para 5 under the Criminal Code, for irregular entry is applied not only to those who seek 'Asylum' but also other types of international protection.<sup>61</sup>

**5.2.12** In collaboration with GDBP, UNHCR and BHC to provide at least 1 training to the prosecutors in the border regions.

**5.2.13** The Government to join and support the long-standing efforts of UNHCR and BHC to establish a cross-border cooperation and monitoring mechanism with respect to Bulgarian-Turkish and Bulgarian-Greek borders.

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Sofia, 30 July 2016

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<sup>61</sup> According to LAR, Bulgaria provides 4 types of protection: 'Asylum' (*Office of the President of the Republic of Bulgaria*), 'Refugee Status' and 'Humanitarian Status' (*State Agency for Refugees*) and 'Temporary Protection' (*by the decision of the Council of Ministers*).