

# Country Report: Bulgaria



2019  
Update



БЪЛГАРСКИ  
ХЕЛЗИНСКИ  
КОМИТЕТ

## Acknowledgements & Methodology

This report was written by Iliana Savova, Director, Refugee and Migrant Legal Programme, Bulgarian Helsinki Committee and was edited by ECRE.

This report draws on information provided by monthly immigration and asylum statistical analyses published by the national authorities, regular information sharing utilised by the National Coordination Mechanism in the area of asylum and international protection, established since 2013 and chaired by the State Agency for Refugees (SAR), as well as monthly border, detention and refugee status determination (RSD) monitoring implemented by the refugee assisting non-governmental organisations.

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 3 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also 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.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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## Glossary & List of Abbreviations

<b>Closed reception centre</b>	Detention centre for asylum seekers managed by the SAR
<b>Humanitarian status</b>	Subsidiary protection under the recast Qualification Directive
<b>Zero integration</b>	Period during which all beneficiaries of international protection have been left without any integration support in Bulgaria
<b>ACET</b>	Assistance Centre for Torture Survivors
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ASA</b>	Agency for Social Assistance   Агенция за социално подпомагане
<b>BHC</b>	Bulgarian Helsinki Committee
<b>CERD</b>	Committee on Elimination of Racial Discrimination
<b>CRF</b>	Closed reception facilities
<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>EC</b>	European Commission
<b>ЕСГРАОН</b>	Civil national database
<b>ЕГН</b>	Unique identification number   Единен граждански номер
<b>ЛНЧ</b>	Unique identification number for short-term or long-term residents, including asylum seekers   Личен номер на чужденец
<b>Eurodac</b>	European fingerprint database
<b>Frontex</b>	European Border and Coast Guard Agency
<b>LAR</b>	Law on Asylum and Refugees
<b>LARB</b>	Law on Aliens in the Republic of Bulgaria   Закон за чужденците в Република България
<b>MOI</b>	Ministry of Interior
<b>NLAB</b>	National Legal Aid Bureau
<b>NPIR</b>	National Programme for the Integration of Refugees
<b>RRC</b>	Refugee reception centre
<b>RSD</b>	Refugee status determination
<b>SGBV</b>	Sexual and Gender based Violence
<b>SOP</b>	Standard Operating Procedures
<b>SANS</b>	State Agency for National Security   Държавна агенция "Национална сигурност"
<b>SAR</b>	State Agency for Refugees   Държавната агенция за бежанците
<b>SIS</b>	Schengen Information System
<b>UNICEF</b>	United Nations Children's Fund
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

The State Agency for Refugees (SAR) publishes monthly statistical reports on asylum applicants and main nationalities, as well as overall first instance decisions.<sup>1</sup> Further information is shared with non-governmental organisations in the context of the National Coordination Mechanism. The Ministry of Interior also publishes monthly reports on the migration situation, which include figures on apprehension, capacity and occupancy of reception centres.<sup>2</sup>

### Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	2,152	1,101	181	300	1,134	11%	19%	70%

Breakdown by top 10 countries of origin of the total numbers

Afghanistan	997	351	11	27	631	2%	4%	94%
Syria	487	282	142	193	9	41%	56%	3%
Iraq	303	235	12	38	233	4%	14%	82%
Pakistan	96	31	4	0	80	5%	0%	95%
Iran	93	59	0	21	63	0%	25%	75%
Stateless	31	19	7	14	7	25%	50%	25%
Algeria	22	14	0	0	18	0%	0%	100%
Morocco	20	5	0	0	16	0%	0%	100%
Russia	14	16	0	0	11	0%	0%	100%
Lebanon	12	7	0	4	3	0%	57%	43%

Source: SAR.

<sup>1</sup> SAR, *Statistics and reports*, available at: <https://bit.ly/2ur0Y1a>. Only the latest available statistics are published at any given time.

<sup>2</sup> Ministry of Interior, *Migration statistics*, available at: <https://bit.ly/372jvz7>.

### Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
<b>Total number of applicants</b>	<b>2,152</b>	100%
Adult men	1,220	86%
Adult women	201	14%
Children	207	9%
Unaccompanied children	524	24%

Source: SAR

### Comparison between first instance and appeal decision rates: 2019

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	1,615	100%	165	10%
Positive decisions	481	30%	:	:
<i>Refugee status</i>	181	11%	:	:
<i>Subsidiary protection</i>	300	19%	:	:
Negative decisions	1,134	70%	:	:

Source: SAR.



## Overview of the legal framework

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

Title in English	Original Title (BG)	Abbreviation	Web Link
Law on Asylum and Refugees	Закон за убежището и бежанците	LAR	<a href="https://bit.ly/2lfdwMi">https://bit.ly/2lfdwMi</a> (BG)
Law on Aliens in the Republic of Bulgaria	Закон за чужденците в Република България	LARB	<a href="https://bit.ly/2Z7e4ee">https://bit.ly/2Z7e4ee</a> (BG)

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

Title in English	Original Title (BG)	Abbreviation	Web Link
Regulations on the implementation of the Law on Aliens in the Republic of Bulgaria <i>Amended by: CoM № 129 of 5 July 2018</i>	Правилник за приложение на Закона за чужденците в Република България (ППЗЧРБ)	LARB Regulations	<a href="http://bit.ly/2DpJHHK">http://bit.ly/2DpJHHK</a> (BG)
Ordinance № 332 of 28 December 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	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	ORD 332/08	<a href="http://bit.ly/1IJ1CI5">http://bit.ly/1IJ1CI5</a> (BG)

Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000	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 отпечатьци с оглед ефективното прилагане на Дъблинската конвенция и Регламент (ЕО) № 407/2002 на Съвета от 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 отпечатьци с оглед ефективното прилагане на Дъблинската конвенция		
Ordinance № I-13 of 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	ORD I-13/04	<a href="https://bit.ly/2RnPVxr">https://bit.ly/2RnPVxr</a> (BG)
Internal Rules of Procedure in immigration detention centers under the Migration Directorate of the Ministry of Interior, adopted on 16 June 2016 (№5364p-20628)	Правилник за вътрешния ред в специалните домове за временно настаняване на чужденци при Дирекция "Миграция" при Министерството на вътрешните работи, утвърден с № 5364p-20628 от 16.06.2016 г. от директора на дирекция "Миграция" - МВР	Detention Rules	<a href="https://bit.ly/2RnPVxr">https://bit.ly/2RnPVxr</a> (BG)
Ordinance № 208 of 12 August 2016 on rules and conditions to conclude, implement and cease integration agreements with foreigners granted asylum or international protection	Постановление № 208 от 12 август 2016 г. за приемане на Наредба за условията и реда за сключване, изпълнение и прекратяване на споразумение за интеграция на чужденци с предоставено убежище или международна закрила	Integration Ordinance	<a href="http://bit.ly/2jtVsTE">http://bit.ly/2jtVsTE</a> (BG)

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

The report was previously updated in **January 2019**.

### *Asylum procedure*

- ❖ **Draft amendments:** In response to the European Commissions' (EC) letter of formal notice on 8 November 2018 concerning the incorrect implementation of European Union (EU) asylum legislation in Bulgaria,<sup>3</sup> the government tabled for public consultations a draft proposal to amend the Law on Asylum and Refugees (LAR).<sup>4</sup> However, the core of the proposal does not address the issues raised by the EC, namely the accommodation and legal representation of unaccompanied minors; the correct identification of and support to vulnerable asylum seekers; the provision of adequate legal assistance; and safeguards for detention. Moreover, while the draft proposal introduces additional provisions on the access to information for unaccompanied children, it deletes the present safeguards that outline the obligations relating to their legal representatives, thereby raising additional concerns in this regard.
- ❖ **Access to the territory:** Push backs at the main entry point of the country, which borders Turkey, persisted in 2019. Moreover, the Turkish authorities reported that 90,000 individuals were held in the first nine months of the year in the Edirne Province, which borders both Bulgaria and Greece.<sup>5</sup> In 2019, the national border monitoring registered 337 alleged pushback incidents which affected 5,640 individuals. Those who are able to access the territory are also able to transit and exit the country without being detected by the authorities, which is a strategy operated by the latter so as to avoid any responsibility under the Dublin Regulation or under readmission arrangements. As a result, the official statistics on new arrivals are at the lowest since the first influx in 2013.<sup>6</sup>
- ❖ **Determination and recognition:** Notwithstanding the low number of new arrivals, the recognition rate of asylum applicants remained much lower compared to other European countries, namely 11% for the refugee status and 19% for the subsidiary protection status. One of the most disputed administrative arrangement relates to the possibility for the caseworkers' superior to request a re-examination of an asylum claim where he or she disagrees with the proposed decision. This request does not need to be motivated, nor to follow a specific written procedure.<sup>7</sup> Moreover, in cases where a re-examination has been ordered, there will not be any trace or record in the applicant's file, thus raising concerns as regards transparency and compliance with relevant safeguards against bias and corruption.
- ❖ **Legal aid:** Since the end of 2017 the National Legal Aid Bureau provides legal aid to vulnerable asylum seekers at first instance. The pilot project, funded by the Asylum, Migration and Integration Fund (AMIF) was extended until 31 January 2021.

### *Reception conditions*

- ❖ **Accommodation of unaccompanied children:** A safe zone for unaccompanied children in the refugee reception centre (RRC) of Sofia at the Voenna Rampa shelter has been established in mid-

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<sup>3</sup> European Commission, 'November infringements package: key decisions', MEMO/18/6247, 8 November 2018, available at: <https://bit.ly/2RETZfR>.

<sup>4</sup> Draft proposal of the Law on Asylum and Refugees, Public Consultations Portal, 13 December 2019, available at: <https://bit.ly/2Nxg4sz>.

<sup>5</sup> Anadolu Agency, 'Over 90,000 irregular migrants held in northwest Turkey', 24 October 2019, available at: <https://bit.ly/2RnuM6M>.

<sup>6</sup> Ministry of Interior, Migration Statistics, available at: <https://bit.ly/2NyeTJo>.

<sup>7</sup> SAR, Internal Rules of Status Determination Procedure on LAR, Article 89 (5) and (8).

2019.<sup>8</sup> Children are provided appropriate care and support is tailored to their needs. However, only unaccompanied children originating from Afghanistan are accommodated in this centre, while unaccompanied children from other nationalities remain in mixed dormitories in other reception centers. Moreover, despite the availability of places in the operational safe-zone, some Afghan children were also accommodated in other reception centres such as the RRC Harmanli in 2019. A second safe-zone at the RRC Sofia, in the Ovcha Kupel shelter, opened on 20 January 2020 and meant to accommodate children originating from Arab speaking countries. Both safe-zones are operated by the International Organisation for Migration (IOM) Bulgaria and funded by AMIF. However, the government has not proposed new measures yet which would foresee the durability and expansion of the safe-zones upon the termination of the AMIF project.

- ❖ **Reception capacity:** During most of 2019 and at the time of writing, the national reception centers operated around or below 10% of their capacity.<sup>9</sup> The Vrazhdebna shelter in Sofia, which re-opened in May 2019 for the visit of Pope Francis, began to regularly accommodate asylum seekers only as of the end of June 2019. With the exception of this centre, the conditions in national reception centres remained poor; i.e. either at or below the foreseen minimum standards.

#### *Detention of asylum seekers*

- ❖ **Duration of detention:** The delays in the release and registration of asylum seekers applying for international protection while in pre-removal detention centres significantly increased. While delays in the release amounted to 1 day in 2018, it reached 4 days in 2019 and registrations took around 12 calendar days / 10 working days.<sup>10</sup>
- ❖ **Status determination in closed reception facilities:** Since the introduction of closed centres for asylum seekers in 2015, 32 asylum seekers have been subject to detention orders pending their status determination. However, the length of detention in these cases exceeded by far the purpose and limits laid down in law. While the duration of detention decreased from 196 to 150 days on average during the period 2016 - 2019, it remained very long by reaching 109 days on average in 2019.
- ❖ **Status determination in pre-removal centres:** The Migration Directorate within the Ministry of Interior (MOI) continued to refuse to release first-time asylum applicants from pre-removal centers in cases where they are deemed “deportable”, i.e. when they possess valid documents or such documents can be obtained without great obstacles. As a result, the State Agency for Refugees (SAR) continued to conduct asylum procedures in pre-removal centres in violation of national law, and courts continued to ignore such violations. In total, 2.8% of first-time applications for international protection were examined in the MOI’s pre-removal centers in 2019,<sup>11</sup> which marks a 0.3% increase compared to 2018.<sup>12</sup> Although this percentage might seem insignificant, it indicates a serious violation whereby the authorities are able to organise the deportation of applicants even though the determination procedure is still pending. The fairness and legality of these procedures is highly questionable as it seems like the SAR is expected to reject these applications for international protection for the sole purpose of deportation. In fact, 100% of asylum seekers whose applications have been examined in MOI’s pre-removal centers are subject to a negative decision in accelerated procedure.

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<sup>8</sup> IOM, ‘Official opening of the first Safety Zone for unaccompanied asylum-seeking children in Bulgaria’, 29 May 2019, available at: <https://bit.ly/2RnAG7N>.

<sup>9</sup> SAR, 91<sup>st</sup> Coordination meeting, 31 October 2019.

<sup>10</sup> Article 6(1) recast Asylum Procedures Directive (2013/32/EU) foresees that the registration shall take place no later than three working days after the application is made.

<sup>11</sup> Out of the 1,331 asylum applications lodged in detention in 2019, 36 have been examined in the immigration detention centres of Busmantsi and Lyubimets.

<sup>12</sup> In 2019, this reached 2.5%, compared to 0.9% in 2018 and 1.2% in 2017.

- ❖ **Refoulement of first-time applicants:** In 2019 the malpractice visible in the context of detention and status determination procedures of “deportable” first-time applicants downgraded to actual *refoulement*. Four cases of *refoulement* were documented during that year, whereby the Migration Directorate returned first-time applicants to their countries or origin prior to the end of their asylum procedures, namely to Iran, Algeria and Nigeria. In another case, two Syrian asylum seekers who reached the reception center in Harmanli have been handed over by the centre’s security guards to the Svilengrad Border Police precinct, where their valid passports were torn with applicants pushed back to Turkey later that day.

#### *Content of international protection*

- ❖ **Cessation of protection:** Although there is no systematic review of protection status in practice, cessation procedures are initiated by the SAR when the MOI provides information indicating that status holders have either returned to their country of origin, obtained residence or citizenship in a third country, or have not renewed their Bulgarian identification documents for a period exceeding 3 years. The latter broadened interpretation of the recast Qualification Directive *de facto* introduces an additional cessation ground in violation of national and EU legislation.<sup>13</sup> The undue cessation of protection status affected a total of 3,378 status holders in 2018 and 2019; i.e. 770 persons in 2018 and 2,608 persons in 2019 respectively. Out of the 2,608 cessations in 2019, 1,981 concerned Syrians, 267 concerned stateless persons, 177 Iraqis, 81 Afghans and 102 other nationalities).<sup>14</sup>
- ❖ **Integration:** No integration activities are planned, funded or made available to recognised refugees or subsidiary protection holders; thus marking the sixth consecutive year of the national “zero integration” policy.

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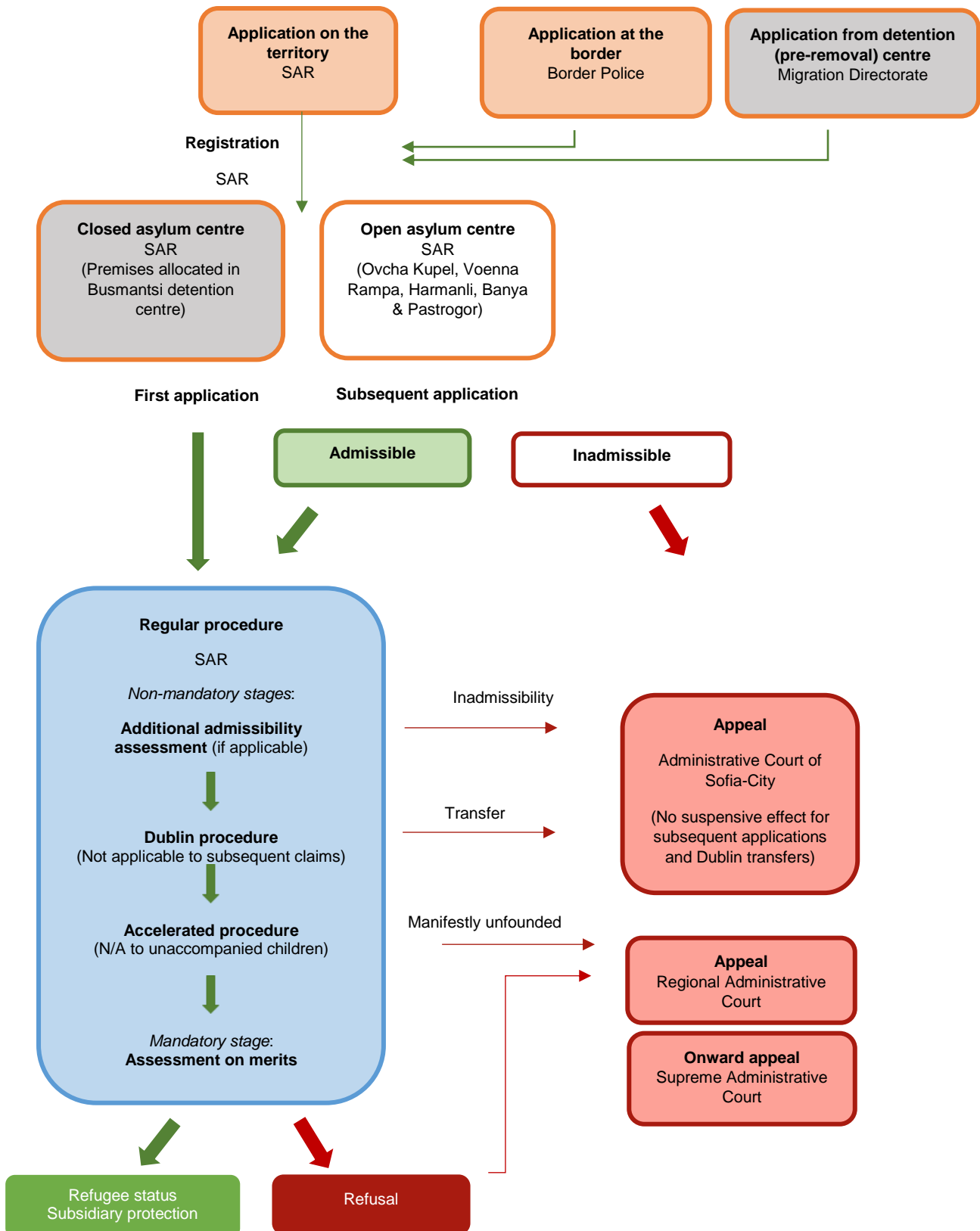
<sup>13</sup> Article 11 and 16 recast Qualification Directive.

<sup>14</sup> SAR, Exh. No. PД05-28/14.01.2020

# 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>15</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>16</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                      | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>17</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 (EN)	Competent authority (BG)
Application	State Agency for Refugees (SAR) & any state authority	Държавна агенция за бежанците (ДАБ) и друг държавен орган
National security clearance	State Agency for National Security (SANS)	Държавна агенция "Национална сигурност"
Dublin procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Admissibility procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Accelerated procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Refugee status determination	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
First appeal	Regional Administrative Court	административен съд по местоживееене
Onward appeal	Supreme Administrative Court	Върховен административен съд

## 4. Determining authority

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?
State Agency for Refugees (SAR)	402	Council of Ministers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<sup>15</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>16</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>17</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

The SAR is competent for examining and deciding on applications for international protection. It is thus the authority competent for granting or not the two existing types of international protection; namely the refugee status or the subsidiary protection (“humanitarian status”).<sup>18</sup>

In case of mass influx where individual asylum applications cannot be processed, a temporary protection status is granted by the government following a collective decision made by the EU Council.<sup>19</sup> The SAR has an advisory role to the government in this respect when it decides whether to communicate to the EU Council a request for temporary protection decisions to be taken 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. These forms of individual or collective protection can be applied without prejudice to the authority of the Bulgarian President to grant asylum to any foreigner based on the national constitution if he or she is persecuted for convictions or activities undertaken in order to protect internationally recognised rights or freedoms.<sup>20</sup>

Moreover, the chairperson of the SAR who is responsible for taking the first instance decision on the asylum claim is also in charge of the appointment of the SAR officials responsible for taking decisions in the Dublin procedure<sup>21</sup> and in the accelerated procedure.<sup>22</sup>

In 2018, the total budget of the SAR amounted to approximately € 4,3 million, out of which €3.7 million was allocated to the staff costs.<sup>23</sup> Most of the staff is permanent staff. As regards the profile of caseworkers as of June 2019, 47% were women and 53% were men and a majority of them had more than 3 years of experience.<sup>24</sup>

Internal guidelines provide an extensive description of each procedural step and activity to be undertaken by all SAR staff involved in processing applications for international protection (e.g. registrars, social workers, caseworkers, officials of the legal department etc.) They do not regulate, however, how to conduct interviews. These guidelines are not made public but, if requested, they are usually shared with UNHCR and/or NGOs providing legal assistance.<sup>25</sup>

In terms of quality assurance and control, UNHCR is authorised by law to monitor every stage of the asylum procedure. The Agency’s implementing partner, the Bulgarian Helsinki Committee, also exercises this right on behalf of UNHCR. The quality monitoring activities carried out by the Bulgarian Helsinki Committee on behalf of UNHCR involve evaluation of the following stages of the procedure: registration, interviews, first instance decisions, and appeal hearings in court.

As regards the decision-making process, the SAR has an *ex ante* review mechanism in place whereby the caseworker, the head of the respective reception centre and the legal department of the SAR must agree on a draft decision that is then transferred to the SAR’s chairperson for the final decision.

The SAR has further established a Quality of Procedure Directorate which controls the quality of the procedure through regular and random sampling of decisions. On the basis of its findings, the Quality of Procedure Department issues guidance on the interpretation of legal provisions and the improvement of different stages of the procedure.

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<sup>18</sup> Article 2(3) LAR.

<sup>19</sup> Article 2(2) LAR.

<sup>20</sup> Article 27(1) in conjunction with Article 98(10) Bulgarian Constitution.

<sup>21</sup> Chapter VI, Section 1a LAR.

<sup>22</sup> Article 79 LAR.

<sup>23</sup> ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2NV7yUB>, 27-28.

<sup>24</sup> Out of the total 34 caseworkers in June 2019, 22 have between 5 years and 10 years of experience; see: ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2NV7yUB>, 39-40.

<sup>25</sup> Ibid. 48.



## 5. Short overview of the asylum procedure

Asylum can be claimed on the territory, at borders before the Border Police staff, or in detention centres before the Migration Directorate staff, either of which are obligated to refer it immediately to the SAR.<sup>26</sup> The SAR is required to formally register the referred applications no later than 6 working days from their initial submission before another authority. 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,<sup>27</sup> otherwise it could be ruled out as manifestly unfounded.<sup>28</sup> If the asylum application is made before a state authority other than the SAR, status determination procedures cannot legally start until the asylum seeker is physically transferred from the border or detention centre to any of the SAR's reception centres for the so-called registration to lodge the claim "in person".<sup>29</sup>

The asylum procedure stages are unified in one, single regular procedure. Dublin and accelerated procedures are now considered as non-mandatory phases of the status determination, applied only by a decision of the respective caseworker, if and when information or indications are available to either engage the responsibility of another Member State to determine the asylum application in question,<sup>30</sup> or to consider the asylum application as manifestly unfounded respectively.<sup>31</sup>

**Admissibility procedure:** An application can be deemed inadmissible if the applicant has been granted protection or a permanent residence permit in another EU Member State or "safe third country". An admissibility assessment is also conducted with respect to subsequent applications which provides the opportunity to consider their admissibility based on a preliminary examination whether new elements or findings have arisen or been presented by the applicant relating to his personal situation or country of origin.<sup>32</sup>

**Accelerated procedure:** The accelerated procedure is presently applied by a decision of the respective caseworker, if and when there is information or indications to consider the application as manifestly unfounded based on a number of different grounds.<sup>33</sup> A decision should be taken within 10 working days from lodging, otherwise the application has to be examined under the regular procedure. The accelerated procedure is not applicable to unaccompanied children.

**Regular procedure:** The regular procedure (titled under the law as a "general procedure") requires detailed examination of the asylum application on its merits. A decision should be taken within 4 months from the lodging of the asylum application but this deadline is indicative, not mandatory. The deadline can be extended by 9 additional months with an explicit decision in this respect by the Head of the SAR,<sup>34</sup> but in any case the SAR must conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.<sup>35</sup>

**Appeal:** The appeal procedure mirrors the non-mandatory stages of administrative status determination:

- ❖ Dublin / Subsequent application: A non-suspensive appeal must be submitted within 7 days to the Administrative Court of Sofia, which has exclusive competence, in one instance;<sup>36</sup>

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<sup>26</sup> Article 58(4) Law on Asylum and Refugees (LAR).

<sup>27</sup> Article 4(5) LAR.

<sup>28</sup> Article 13(1)(11)-(12) LAR.

<sup>29</sup> Article 61(2) LAR.

<sup>30</sup> Article 67b(2) LAR.

<sup>31</sup> Article 70(1) LAR.

<sup>32</sup> Articles 75a to 76c LAR; Article 76d in conjunction with Article 13(2)(4) LAR.

<sup>33</sup> Article 70(1) LAR. The 14 applicable grounds are set out in Article 13(1) LAR.

<sup>34</sup> The State Agency for Refugees is managed by a Chairperson: Article 46 et seq. LAR.

<sup>35</sup> Article 75(4) and (5) LAR.

<sup>36</sup> Article 84(4) LAR.

- ❖ Accelerated procedure: A suspensive appeal must be submitted within 7 days to the territorially competent Regional Administrative Court, in one instance.
- ❖ Inadmissibility / Regular procedure: A suspensive appeal must be submitted within 14 days to the territorially competent Regional Administrative Court.

An onward appeal to the Supreme Administrative Court is possible for inadmissibility decisions and negative decisions taken in the regular procedure. In Dublin cases, subsequent applications and decisions taken under the accelerated procedure, only one appeal instance is applicable.

Legal aid can be granted by the court, if requested. 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. However, the courts do not have powers to grant protection directly or to sanction the SAR, if their instructions are not observed while reverted asylum applications are re-considered. The courts can only proclaim the re-issued decision as null and void after a new appeal procedure, if it ignores the previous instructions of the court.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. 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
2. Is there a border monitoring system in place? ☒ Yes ☐ No

No institutional or practical arrangements or measures exist to ensure a differentiated approach to border control that gives access to the territory and protection for those who flee from war or persecution.

#### 1.1. Push backs at land borders

Access of asylum seekers to the territory remained severely constrained in 2019. The Ministry of Interior reported that it had apprehended a total of 2,495 third-country nationals, out of which 2,184 were new arrivals:

Irregular migrants apprehended in Bulgaria: 2016-2019				
Apprehension	2016	2017	2018	2019
Irregular entry	4,600	743	689	489
Irregular exit	4,977	2,413	353	494
Irregular stay on the territory	9,267	1,801	1,809	1,201
<b>Total apprehensions</b>	<b>18,844</b>	<b>4,957</b>	<b>2,851</b>	<b>2,184</b>

Source: Ministry of Interior, Migration Statistics, December 2016: <http://bit.ly/2Fx9hIY>; December 2017: <http://bit.ly/2ntEXaR>; December 2018: <https://bit.ly/2sBEJ4z>; December 2019: <https://bit.ly/372jvz7>.

This represents a 23% decrease in comparison with the previous year, which indicates similar levels of migration pressure and prevention.<sup>37</sup> This decrease, however, as well as the generally low levels of registered new arrivals, cannot be attributed to usual border control measures, nor to the preventive

<sup>37</sup> During 2018, 3,132 irregular third-country nationals were apprehended, out of which 2,851 were new arrivals.

qualities of the wall along the Bulgarian-Turkish border. Asylum seekers and government officials have both admitted that the border fence can easily be crossed,<sup>38</sup> e.g. by using blankets, ladders or by passing through damaged sections of the fence, which is a persisting and frequently reported problem.<sup>39</sup>

Since 1 January 2017, the Ministry of Interior no longer discloses the number of prevented entries in its publicly available statistics. Thus, in 2019, only 309 asylum seekers were able to apply for international protection at the national entry borders and only 2% of them (i.e. 12 individuals) had access to the asylum procedure. The remaining 98% who were able to apply at entry borders were sent to the Ministry of Interior's pre-removal centres.

## 1.2. Border monitoring

Under the 2010 tripartite Memorandum of Understanding between the Border Police, UNHCR and the Bulgarian Helsinki Committee,<sup>40</sup> with funding provided by UNHCR, all three parties have access to any national border or detention facility at land and air borders, including airport transit zones, without limitations on the number of monitoring visits. Access to these facilities is granted without prior permission or conditions on time, frequency or circumstances of the persons detained.

In 2019, the Bulgarian Helsinki Committee carried out 580 border monitoring visits at border with Greece and Turkey, as well as at Sofia Airport transit hall. During these visits, the Bulgarian Helsinki Committee can also obtain information from police records when needed to cross-check individual statements, but has access only to border detention facilities, not to border-crossing points *per se*.

## 2. Registration of the asylum application

### Indicators: Registration

- |   |   |
|---|---|
| 1. Are specific time limits laid down in law for making an application?<br>❖ If so, what is the time limit for lodging an application?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Are specific time limits laid down in law for lodging an application?<br>❖ If so, what is the time limit for lodging an application? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Are registration and lodging distinct stages in the law or in practice?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Is the authority with which the application is lodged also the authority responsible for its examination?                            | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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>41</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, except in cases of irregular entry or residence when it ought to be made immediately.<sup>42</sup> Failure to make an application within a reasonable time or immediately in those cases can be a ground for rejecting it as manifestly unfounded under the **Accelerated Procedure**.<sup>43</sup>

<sup>38</sup> Дневник, 'Каракачанов призна, че мигранти преминават оградата с Турция чрез стълби', 20 October 2017, available in Bulgarian at: <http://bit.ly/2EteNNA>; BBC, 'Bulgaria on the Edge', 2 August 2017, available at: <http://bbc.in/2ezp5U2>.

<sup>39</sup> Mediapool, 'Великата българска стена' отново не успя да устои на лошото време', 6 December 2018, available in Bulgarian at: <https://bit.ly/2T7kSph>; Elena Yoncheva, 'Граница', 14 November 2017, available at: <http://bit.ly/2DPcuTY>.

<sup>40</sup> The Bulgarian Helsinki Committee had an agreement with the Border Police from 2004 to 2010.

<sup>41</sup> Article 58(4) LAR.

<sup>42</sup> Article 4(5) LAR.

<sup>43</sup> Article 13(1)(11)-(12) LAR.

If the asylum application is made before an authority different than the SAR, then status determination procedures can not legally start until the asylum seeker is transferred from the border / detention centre and accommodated in any of the SAR's premises for registration to lodge the claim in person.<sup>44</sup> Under the law, this personal registration is to be implemented in any of the territorial units (see [Types of Accommodation](#)) of the SAR and within 3 working days after the making of the asylum application. Exceptions to this deadline are allowed only in cases where the asylum application is lodged before a different government authority or institution, in which case the deadline is set at 6 working days.<sup>45</sup>

No significant delays were noted with respect to the release and registration of asylum seekers who applied while in immigration detention centres. After rising from 9 days in 2016 to 19 days in 2017 despite the substantial decrease in new arrivals, and then decreasing back to 9 days on average in 2018, the average [Duration of Detention](#) in 2019 increased again to 12 calendar / 10 working days. Registration took place with 4 days delay compared to the established EU minimum standard.<sup>46</sup>

At the end of the process, the asylum seeker receives a registration card (регистрационна карта) in paper format. The registration card is not issued to subsequent applicants, however.<sup>47</sup>

Moreover, the SAR must inform the State Agency for National Security (SANS - Държавна агенция "Национална сигурност") of the registration of every asylum application. The SANS then conducts security assessments based on interviews with applicants, which are often held as soon as they are arrested by police, border and immigration officers. In practice, the SAR follows these assessments without conducting further investigations and rejects applications accordingly, even when the information is classified. However, in two recent decisions, the Administrative Court of Sofia has ordered the SAR to assess and verify the facts and the security concerns based on which the applications were rejected.<sup>48</sup>

## C. Procedures

### 1. Regular procedure

#### 1.1. 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:     | 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 at first instance of 31 December 2019:   | 1,101   |

The LAR sets a 6-month time limit for deciding on an asylum application admitted to the regular procedure.<sup>49</sup> The LAR requires that, within 4 months of the beginning of the procedure,<sup>50</sup> caseworkers 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 also be considered and decided upon.

<sup>44</sup> Article 61(2) LAR.

<sup>45</sup> Article 61(2) LAR in conjunction with Article 45b LAR.

<sup>46</sup> Article 6(1) recast Asylum Procedures Directive.

<sup>47</sup> Article 76b(3) LAR.

<sup>48</sup> Administrative Court of Sofia, 9<sup>th</sup> panel, Decision 2814, 24 April 2019; 14<sup>th</sup> panel, Decision 4841, 10 July 2019.

<sup>49</sup> Article 75(1) LAR.

<sup>50</sup> Article 74 LAR.

The interviewer's position is reported to the decision-maker, who has another 2 months for consideration and decision.

If evidence is insufficient for taking a decision within 6 months, the law allows for the deadline to be extended for another 9 months, but it requires the whole procedure to be limited to a maximum duration of 21 months. Determination deadlines are not mandatory, but only indicative. Therefore even if these deadlines are exceeded, this does not affect the validity of the decision.

According to monitoring activities in 2019, the general decision-taking 6 months deadline was observed in 89% of the cases, leaving 11% of the cases with prolonged determination duration.<sup>51</sup> According to the SAR, the average duration of asylum procedures on the merits ranges from 3 to 6 months, including for nationalities such as Syria, Afghanistan and Iraq.<sup>52</sup>

Whereas the number of asylum applications has constantly decreased in recent years,<sup>53</sup> the percentage of already registered asylum seekers who abandoned their asylum procedures in Bulgaria continued to be high in 2019, reaching 64% of all decisions<sup>54</sup> and 72% of all caseloads.<sup>55</sup> Out of the decisions taken, 40% of asylum procedures were terminated (discontinued) and 24% suspended *in absentia*:

First instance SAR decisions on asylum applications: 2019		
In-merit decisions		
Refugee status	181	1,694
Subsidiary protection	300	
Unfounded	306	
Manifestly unfounded	828	
Inadmissible	79	
Abandoned applications		
Terminated	1, 041	1,858
Suspended	817	
Total	3,552	

Source: SAR.

## 1.2. Prioritised examination and fast-track processing

Prioritised examination is applied neither in law nor in practice in Bulgaria, although a specific procedure is applied with respect to [Subsequent Applications](#).

<sup>51</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Report*, 31 January 2020, based on a statistical quota of 90 cases examined on the merits.

<sup>52</sup> SAR, Exh. No. PД05-28/14.01.2020

<sup>53</sup> From 20,391 in 2015, to 19,418 in 2016, to 3,700 in 2017, to 2,536 in 2018, to 2,152 in 2019.

<sup>54</sup> This is calculated on the basis of a total of 3,552 decisions taken in 2019 i.e. 1,694 decisions (181 refugee statuses, 300 humanitarian statuses, 306 refusals, 828 manifestly unfounded, 79 inadmissible) and 1858 suspended and terminated (817 suspensions and 1,041 terminations).

<sup>55</sup> This is calculated on the basis of a total of 2,873 cases i.e. 1,822 persons with pending claims at the end of 2018 plus 2,152 new applicants, minus 1,101 persons with pending claims at the end of 2019.

### 1.3. 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?  
❖ If so, are interpreters available in practice, for interviews?  
☒ Yes ☐ No  
☒ 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

After registration has been completed, a date for an interview shall be set. The law requires that asylum seekers whose applications were admitted to the regular procedure be interviewed at least once with regard to the facts and circumstances of their applications.<sup>56</sup> The law requires that the applicant be notified in due time of the date of any subsequent interviews. Decisions cannot be considered in accordance with the law if the interview is omitted, unless it concerns a medically established case of insanity or other mental disorder.<sup>57</sup> In practice, all asylum seekers are interviewed at least once in order to determine their eligibility for refugee or subsidiary protection (“humanitarian status”). Further interviews are usually only conducted if there are contradictions in the statements or if some facts need to be clarified. No particular issues have been reported in 2019.

#### 1.3.1. Interpretation

The presence of an interpreter ensuring interpretation into a language that the asylum seeker understands is mandatory according to the LAR. 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.<sup>58</sup> In practice, all asylum seekers are asked explicitly whether they would like to have an interviewer or interpreter of the same sex in the beginning of each interview.

Both at first and second instance, interpretation continued to be difficult in 2019, and its quality was often poor and unsatisfactory. Interpretation in determination procedures remains one of the most serious, persistent and unsolved problems for a number of years. Interpretation is secured only from English, French and Arabic languages, and mainly in the reception centres in the capital **Sofia**. Interpreters from other key languages such as Kurdish (Sorani or Pehlewani), Pashto, Urdu, Tamil, Ethiopian and Swahili are largely unavailable.

With respect to those who speak languages without interpreters available in Bulgaria, the communication takes place in a language chosen by the decision-maker, not the applicant. Cases where the determination was conducted with the assistance of another asylum seeker are still monitored, although extremely rare. In both cases it is done without the asylum seeker’s consent or evidence that he or she understands it or is able to communicate clearly in that language. It has to be noted however that, in 2019, this represented only 1% of the cases.<sup>59</sup>

27% of the monitored court hearings were assisted by interpreters. However; national courts continued to omit conducting a verification of interpreter’s qualifications in such cases, which created serious problems with respect to the level of understanding and communication between the court and the appellants, and thus seriously undermined this legal safeguard.<sup>60</sup>

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<sup>56</sup> Article 63a(3) LAR.

<sup>57</sup> Article 63a(6) LAR in conjunction with Article 61(3) LAR.

<sup>58</sup> Article 58(8) LAR.

<sup>59</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

<sup>60</sup> *Ibid.*



The quality of interpretation is insufficient. Interpreters' Code of Conduct rules adopted in 2009 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. This problem is exacerbated by the fact that interview protocols are not based on the audio recording of the interview but on the caseworker's notes. Therefore the interpreters encounter difficulties to provide a full report of applicants' statements and answers.

Since January 2019, the SAR abandoned the standard set of questions used during eligibility interviews and relied entirely on caseworkers' ability to structure the interview on open questions. However, there are no guidelines or a code of conduct for asylum caseworkers to elaborate on the methodology for conducting interviews specifically. Similarly, there are currently no gender-sensitive mechanisms in place in relation to the conduct of interviews, except for the asylum seekers' right to ask for an interpreter of the same gender.<sup>61</sup> This has resulted in a poor quality of examination of asylum claims; i.e. little investigation of the individuals' statements and refugee stories.

Moreover, while interviewers used to have the opportunity to ask applicants open questions and to allow them to clarify potential contradictions, a unified interviewing process was put in place in 2019, limiting to a great extent the possibility for the caseworker to investigate in depth the grounds for their applications.<sup>62</sup>

### 1.3.2. Recording and report

The law provides for mandatory audio or audio-video tape-recording of all eligibility interviews as the best safeguard against corruption and for unbiased claim assessment.<sup>63</sup> The practice in this regard continued to improve in 2019, as 100% of all monitored interviews were tape-recorded. This being said, the benefits of such a procedure are biased by the fact that, in practice, caseworkers take a decision based on their own notes rather than the actual audio recording.

Videoconference interpretation is also used, usually in **Pastrogor**, **Harmanli** and **Banya**, the reception centres outside the capital **Sofia**, where interpreters are harder to find and employ, in which case interviews are conducted with the assistance of the interpreters who work in **Ovcha Kupel**, **Vrazhdebna** and **Voenna Rampa**, the reception centres and shelters in Sofia. The Bulgarian Helsinki Committee's experience finds this type of interpretation to create additional difficulties for the applicants to make their statements, as video communication is often disrupted or unclear due to connection problems.

All interviews are conducted by staff members of the SAR, whose competences include interviewing, case assessment and preparing a draft decision on the claim. In practice, almost all interviews continue to be recorded also in writing by interviewers by summarising and typing questions / answers in the official protocol. A report of the interview is prepared and it shall be read to, and then signed by the applicant, the interpreter and by the caseworker.

However, in 46% of the procedures monitored, the interview or the registration reports were not read out to asylum seekers before being served for signature,<sup>64</sup> in clear violation of EU standards.<sup>65</sup> Therefore practices in 2019 continue to worsen in comparison with previous years, as this omission was made in 36% of monitored cases in 2018 and in 26% of the cases in 2017. Under such circumstances, the information recorded in the report of the interview could be prone to potential manipulation, and the applicant would require a phonetic expertise requested in eventual appeal proceedings in order to validly

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<sup>61</sup> Article 63a(4) LAR.

<sup>62</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

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

<sup>64</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

<sup>65</sup> See Court of Justice of the European Union (CJEU), Case C-348/16 *Sacko*, Judgment of 26 July 2017, para 35; Case C-249/13 *Boudjlida*, Judgment of 11 December 2014, para 37; Case C-166/13 *Mukarubega*, Judgment of 5 November 2014, para 47.

contest the content of the report in case of inaccuracies. Court expertise expenses in asylum cases have to be met by the appellants, however.<sup>66</sup>

Notwithstanding the small number of asylum seekers who presented any evidence to support their claims, caseworkers continued to omit their obligation to collect these pieces of evidence with a separate protocol, a copy of which should be served to the applicant. In 20% of the monitored cases in 2019, the evidence submission was not properly protocolled as one of the safeguards for proper credibility assessment.

#### 1.4. Appeal

##### Indicators: Regular Procedure: Appeal

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

<ul style="list-style-type: none"><li>❖ If yes, is it</li><li>❖ If yes, is it suspensive</li></ul>	<table border="0"><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Judicial</td><td><input type="checkbox"/> Administrative</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> Some grounds <input type="checkbox"/> No</td></tr></table>	<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"/> Some grounds <input type="checkbox"/> No
<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"/> Some grounds <input type="checkbox"/> No						
2. Average processing time for the appeal body to make a decision: Up to 3 months

A negative decision taken in the regular procedure on the 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 SAR is obligated to, and actually does, provide information to rejected asylum seekers as to where and how they can receive legal aid when serving a negative decision, in the form of a list (see [Regular Procedure: Legal Assistance](#)).

The law establishes two appeal instances in the regular procedure, in contrast to appeal procedures for contesting decisions taken in [Dublin: Appeal](#), [Accelerated Procedure: Appeal](#) and inadmissibility of [Subsequent Applications](#) procedures, where first instance decisions are reviewed in only one court appeal instance.<sup>67</sup>

Appeal procedures are only judicial; the law does not envisage an administrative review of asylum determination decisions. Since a 2014 reform, competence for appeals in the regular procedure is distributed among all Regional Administrative Courts, designated as per the residence of the asylum seeker who has submitted the appeal.<sup>68</sup> Six years later, however, the reform has not succeeded in significantly redistributing the caseloads among the national courts, as the majority of asylum seekers reside predominantly in reception centres or at external addresses in **Sofia** and **Harmanli**. Therefore the **Sofia** and **Haskovo** Regional Administrative Courts continue to be the busiest ones, dealing with the appeals against negative first-instance decisions.

Both appeals before the first and second-instance appeal courts have automatic suspensive effect.

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,<sup>69</sup> but also served personally to the appellant.

If the first instance appeal decision is negative, 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. In

<sup>66</sup> Article 92 LAR.

<sup>67</sup> Article 90(3) LAR; Article 85(4) LAR.

<sup>68</sup> Article 133 Administrative Procedure Code.

<sup>69</sup> The Court decisions are available at: <https://bit.ly/2OZU62r>.



September 2018, amendments were made to the Administrative Procedure Code,<sup>70</sup> which, if not abolished by the Constitutional Court in the pending conformity procedure,<sup>71</sup> would subject the access to this highest instance of all individuals, including asylum seekers, to the unfettered and sole discretion of the judge rapporteur. These amendments were strongly criticised by the National Bar Association, the Judges Union, the Ombudsperson, the President and many opposition parties and members of the academia as evidently anti-constitutional and undermining core democratic and judicial principles.

Both appeal courts have to issue their decisions within one month. However, this deadline is indicative and therefore regularly not respected. The 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. If the court finally reverts the first instance decision back, the SAR has 10 to 14 days to issue a new decision, complying with the court's instructions on the application of the law. As in previous years however, SAR continues to disregard these deadlines, and in many cases refuses again the asylum application despite the court's instructions. Repeated appeal procedures against the second negative decision can cause some asylum procedures to extend for over 2-3 years. This duration can be shortened, but unduly, if the access to the Supreme Administrative Court remains conditioned upon the sole discretion of the judge rapporteur.

## 1.5. 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 type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ 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 checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	---	-----------------------------

  - ❖ Does free legal assistance cover:
 

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

The legal aid system was introduced in Bulgaria in 2005, extending it to court representation beyond the criminal, child protection and tort disputes. Since 2013, the Law on Legal Aid provides mandatory legal aid for asylum seekers at all stages of the status determination procedure, sponsored under the state budget.<sup>72</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. This “means” test is fulfilled on the basis of an applicant’s declaration that he or she does not work and does not have sufficient resources.

### 1.5.1. Legal assistance at first instance

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. However, legal aid in first-instance procedures had still not been implemented.

At the end of 2017, the National Legal Aid Bureau, the national body assigned to provide state sponsored legal aid, received funding under the AMIF national programme to commence for the first time ever in Bulgaria the provision of legal aid to asylum seekers during the administrative phase of the asylum

<sup>70</sup> Law amending the Administrative Procedure Code, State Gazette № 77, 18 September 2018, available in Bulgarian at: <https://bit.ly/2HqJrcr>.

<sup>71</sup> Constitutional Court, Case No 12/2018.

<sup>72</sup> Article 22(8) Law on Legal Aid.

procedure.<sup>73</sup> Legal aid under this 80,000 € pilot project had to be implemented until 31 January 2020 and is limited to the vulnerable categories among applicants for international protection.<sup>74</sup> The project was extended until 31 January 2021.

The National Legal Aid Bureau and the SAR agreed and adopted formal rules and conditions for the provision of legal aid in practice, including individual and third-party complaint mechanisms, anti-discrimination and anti-corruption measures, which took effect on 31 December 2017.

The provision of legal aid for vulnerable asylum applicants commenced in March 2018 and was secured to 507 asylum seekers until the end of 2019 at first instance.<sup>75</sup> Other asylum seekers did not enjoy access to legal aid at the first instance of the asylum procedure.

### 1.5.2. Legal assistance in appeals

The aforementioned AMIF-funded pilot project on legal aid also covered assistance in the preparation of appeals before the court. Otherwise, for regular applicants on appeal, 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, namely for drafting and lodging the appeal. Presently, the Bulgarian Helsinki Committee provides this type of assistance independently of EU funding.<sup>76</sup> In 2019, BHC assisted 3,974 asylum seekers during their status determination procedures, of whom 2,152 were new applicants in 2019 and 1,822 were asylum seekers with cases pending from previous years.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	80	30	Total	3,088	73
Take charge	53	29	Take charge	154	
Germany	21	8	Czech Rep.	69	
United Kingdom	11	3	France	24	
Belgium	6	3	Germany	22	
France	5		Netherlands	14	
Italy	4		Ireland	7	
Malta	3	14	Austria	6	
Netherlands	1		Romania	5	
Finland	1	1	Croatia	3	
Spain	1		Belgium	1	
			Denmark	1	
			Sweden	1	

<sup>73</sup> National Legal Aid Bureau, 'Обява за конкурс за адвокати за работа по проект', 29 January 2018, available in Bulgarian at: <http://bit.ly/2DP376C>.

<sup>74</sup> *Ibid.*

<sup>75</sup> SAR, Exh. No. PД05-28/14.01.2020.

<sup>76</sup> Since 1994, UNHCR has supported and partnered with the Bulgarian Helsinki Committee with regard to protection and legal assistance to asylum seekers in Bulgaria.

			United Kingdom	1	
Take back	27	1	Take back	2,934	73
Austria	2		Austria	291	15
Belgium	2		Belgium	200	
Switzerland	2		Croatia	49	
Germany	4		Czech Rep.	13	4
Denmark	2		Denmark	10	
Spain	2		Finland	3	
France	1		France	1140	7
Hungary	1		Germany	628	21
Italy	1	1	Greece	44	
Netherlands	2		Hungary	58	
Romania	3		Ireland	9	
Sweden	2		Italy	95	
Slovenia	1		Malta	2	
United Kingdom	2		Netherland	25	8
			Norway	1	
			Poland	18	8
			Portugal	4	
			Romania	92	3
			Slovakia	7	5
			Slovenia	100	
			Sweden	19	1
			Switzerland	19	1
			United Kingdom	107	

Source: SAR.

Outgoing Dublin requests by criterion: 2019		
Dublin III Regulation criterion	Requests sent	Requests accepted
<b>"Take charge": Articles 8-15:</b>	49	:
Article 8 (minors)	35	:
Article 9 (family members granted protection)	6	:
Article 10 (family members pending determination)	2	:
Article 11 (family procedure)	0	:
Article 12 (visas and residence permits)	6	:
Article 13 (entry and/or remain)	0	:
Article 14 (visa free entry)	0	:
"Take charge": Article 16	4	:
"Take charge" humanitarian clause: Article 17(2)	0	:
<b>"Take back": Article 18</b>	27	:
Article 18 (1) (b)	23	:
Article 18 (1) (c)	4	:
Article 18 (1) (d)	0	:
Article 20(5)	0	:

Incoming Dublin requests by criterion: 2019		
Dublin III Regulation criterion	Requests received	Requests accepted
<b>“Take charge”: Articles 8-15</b>	150	:
Article 8 (minors)	6	:
Article 9 (family members granted protection)	1	:
Article 10 (family members pending determination)	0	:
Article 11 (family procedure)	8	:
Article 12 (visas and residence permits)	110	:
Article 13 (entry and/or remain)	19	:
Article 14 (visa free entry)	6	:
“Take charge”: Article 16	0	:
“Take charge” humanitarian clause: Article 17(2)	4	:
<b>“Take back”: Articles 18 and 20(5)</b>	2,934	:
Article 18 (1) (b)	2,929	:
Article 18 (1) (c)	1	:
Article 18 (1) (d)	3	:
Article 20(5)	1	:

Source: SAR

The LAR does not establish criteria to determine the state responsible, but simply refers to the criteria listed in the Dublin Regulation.

### 2.1.1. 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** and **Greece**, therefore cases when the responsibility of another EU Member State can be engaged under any other of the Dublin criteria, except the family provisions, are scarce.

The most common criteria that continue to be applied in incoming cases are previously issued documents and first Member State of entry, as well as “take back” cases. Bulgaria accepts responsibility for the examination of asylum applications based on the humanitarian clause, and mostly vis-à-vis document and entry reasons. In 2019, Bulgaria received 3,088 incoming requests and made 80 outgoing requests, compared to 3,448 incoming requests and 125 outgoing requests in 2018 and compared to 7,934 incoming requests and 162 outgoing requests in 2017.

### 2.1.2. The dependent persons and discretionary clauses

In the past, the sovereignty clause under Article 17(1) of the Regulation was used in few cases, mainly for family or health condition reasons. The sovereignty clause has never been applied for reasons different from humanitarian ones. Similarly to 2017 and 2018, Bulgaria did not apply the sovereignty clause in 2019.

During 2019, Bulgaria issued 0 “take charge” requests based on the humanitarian clause of Article 17(2) and received 4 requests based on the humanitarian clause, which were rejected.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
☒ Yes ☐ No
2. On average, how long does a transfer take after the Dublin Unit has sent a request? 15 months<sup>77</sup>

The LAR establishes the Dublin procedure as a non-mandatory stage, which is applied only by a decision of the respective caseworker, if and when there is information or indications to either engage the responsibility of another Member State to determine the asylum application in question.<sup>78</sup> The Dublin procedure is not applicable to [Subsequent Applications](#).<sup>79</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.

Following recommendations from the European Asylum Support Office (EASO), information relevant to Dublin procedures is gathered during the initial registration interviews with asylum seekers in a separate checklist, which mainly focuses on eventual family members in other Member States. Many problems are still 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 located in the headquarters of the SAR in **Sofia**.<sup>80</sup> This creates problems with respect to observation of the 3-month deadline under the Dublin Regulation for issuing a request, as sometimes the congested communication between the Dublin Unit and the local reception centre where applicants are accommodated can consume time before all relevant documentation is prepared in order to make a proper Dublin request. The draft proposal of the LAR tabled at the end of 2019 aims to address this problem by removing the requirement of a formal decision at different phases of the Dublin procedure and rendering an automatic legal effect to the majority of acts.

### 2.2.1. Individualised guarantees

Bulgaria does not seek individualised guarantees ensuring that the asylum seekers will have adequate reception conditions upon transfer in practice. Outgoing transfers relating to vulnerable groups were only carried out with respect to unaccompanied children in the course of 2016, 2017, 2018 and 2019. Since all transfers were based on family reunification and consent from the children and family members, the Dublin Unit did not request guarantees from receiving countries.

It is also a general understanding within the national stakeholders that the reception conditions in the countries of transfer, e.g. such as Germany, Sweden, UK in 2019 are better in most aspects than those in Bulgaria.

### 2.2.2. Transfers

In cases where another Member State accepts the responsibility to examine the application of an asylum seeker who is in Bulgaria, the outgoing transfer is implemented within 3 months on average. If incoming transfer is being organised, however, the duration of actual implementation varies up to 15 months.

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<sup>77</sup> SAR, Exh. No. PД05-28/14.01.2020

<sup>78</sup> Article 67a(2)(1) LAR.

<sup>79</sup> Article 67a(3) LAR.

<sup>80</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

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

In 2019, 33 outgoing transfers were carried out compared to 80 requests, indicating a 41% outgoing transfer rate.

### 2.3. 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 conduct 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 relevant circumstances and evidence.<sup>81</sup> If an interview is conducted, it is not different from any other eligibility interviews in the [Regular Procedure: Personal Interview](#), except relating to the type of questions asked in order to verify and apply the Dublin criteria. Similar to the regular procedure, an audio or audio-video recording is now mandatory and applied in the majority of the caseload.<sup>82</sup>

### 2.4. Appeal

#### Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
  - ☒ Yes ☐ No
  - ❖ If yes, is it ☒ Judicial ☐ Administrative
  - ❖ If yes, is it suspensive ☐ Yes ☒ No

Contrary to appeal against other decisions, appeals against decisions in the Dublin procedure are heard only before the Administrative Court of Sofia and only at one instance. Dublin appeals do not have automatic suspensive effect, but it can be awarded by the court upon an explicit request from the asylum seeker.

<sup>81</sup> Article 67b(2) LAR.

<sup>82</sup> Article 63a(3) LAR.

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](#). 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 of reception conditions and procedural guarantees to substantiate its decision. The court's 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 as to whether the Administrative Court of Sofia takes into account the reception conditions, procedural guarantees and recognition rates in the responsible Member State when reviewing the Dublin decision.

## 2.5. 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 type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ 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 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

The Law on Legal Aid provides for state-funded representation at first instance and appeal. As a result, legal aid financed by the state budget should have become available to asylum seekers during the Dublin procedure since 2013, in addition to the already available legal aid during an appeal procedure before the court. However, in practice, legal aid was only provided to vulnerable asylum seekers in 2019 (see section [Regular Procedure: Legal Assistance](#)). This concerned 13 unaccompanied minors who were reunified with their relatives or family members in other European countries under *ad-hoc* arrangements established jointly by BHC and SAR's Dublin Unit since August 2019. This includes the establishment of an early identification mechanism for children, the provision of adequate and child-friendly information as well as a better management of their cases. These *ad-hoc* arrangements are funded by UNICEF.

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

Bulgaria had suspended all Dublin transfers to **Greece** in 2011, thereby assuming responsibility for examining the asylum applications of the asylum seekers concerned. On 8 December 2016, the European Commission issued a Fourth Recommendation in favor of the resumption of Dublin returns to Greece, starting from 15 March 2017, without retroactive effect and only regarding asylum applicants who have entered Greece from 15 March 2017 onwards or for whom Greece is responsible from 15 March 2017 onwards under other Dublin criteria.<sup>83</sup> Persons belonging to vulnerable groups such as unaccompanied minors are to be excluded from Dublin transfers for the moment, according to the Recommendation. However, until the end of 2019, Bulgaria has not ruled out or implemented any Dublin transfer to Greece in practice.

<sup>83</sup> Commission Recommendation on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525, 8 December 2016.



Suspensions of transfers are not automatic, as there might be cases of “take charge” requests 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.

## 2.7. The situation of Dublin returnees

In 2019, Bulgaria received 3,097 incoming requests under the Dublin Regulation and 73 incoming transfers.<sup>84</sup> The number of Dublin returns actually implemented to Bulgaria decreased by 15% compared to 2018 (see table below). Overall, the percentage of actual transfers remains quite low (2.3%) compared to the number of incoming requests:

Incoming Dublin requests and transfers: 2014-2019						
	2014	2015	2016	2017	2018	2019
Requests	6,884	8,131	10,377	7,934	3,448	3,097
Transfers	174	262	624	446	86	73

Source: Eurostat, migr\_dubro and migr\_dubto; SAR.

Asylum seekers who are returned from other Member States in principle do not face any obstacles in accessing the asylum procedure in Bulgaria upon their return. Prior to the arrival of Dublin returnees, the SAR informs the Border Police of the expected arrival and indicates whether the returnee should be transferred to a reception centre or to immigration pre-removal detention facility. This decision depends on the phase of the asylum procedure of the Dublin returnee as outlined below:

- ❖ If the returnee has a pending asylum application in Bulgaria, he or she is transferred to a SAR reception centre because the SAR usually suspends an asylum procedure when an asylum seeker leaves Bulgaria before the procedure was completed;<sup>85</sup>
- ❖ If the returnee's asylum application was rejected *in absentia*, but not served to the asylum seeker before he or she left Bulgaria,<sup>86</sup> the returnee is transferred to a SAR reception centre;
- ❖ If, however, the returnee's asylum application was rejected with a final decision before he or she left Bulgaria, or the decision was served *in absentia* and therefore became final,<sup>87</sup> the returnee is transferred to one of the immigration detention facilities, usually to the **Busmantsi** detention centre in Sofia, or to the **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 threat to national security is issued to any of the parents.

Since 2015, the LAR explicitly provides for the mandatory reopening of an asylum procedure with respect to an applicant who is returned to Bulgaria under the Dublin Regulation.<sup>88</sup> The SAR's practice following this particular amendment is in line with the law so far and returnees do not face obstacles in principle to have their determination procedures reopened.

In principle, no “take back” requests have been made so far to under the Dublin Regulation with regard to individuals with special needs. In the few cases where the return of two parents' families with minor

<sup>84</sup> SAR, Exh. No. PД05-28/14.01.2020.

<sup>85</sup> Articles 18(1)(c) and (2) Dublin III Regulation.

<sup>86</sup> Articles 18(1)(d) and (2) Dublin III Regulation.

<sup>87</sup> Articles 18(1)(d) and (2) Dublin III Regulation.

<sup>88</sup> Article 18(2) Dublin III Regulation.



children and a family of three with their spouse and parent have been sought, the requesting states usually asked for assurances on the provision of accommodation and adequate reception conditions and services as well as the nature of the services that will be provided. Usually, these individual guarantees are not made via DublinNet, but by using the available diplomatic channels, in most cases by the respective state's embassy in Bulgaria.

In 2019, the courts in some Dublin States, as well as the European Court of Human Rights, have continued to rule suspension of Dublin transfers to Bulgaria with respect to certain categories of asylum seekers due to poor material conditions and lack of proper safeguards for the rights of the individuals concerned:

Suspensions of Dublin transfers to Bulgaria in 2019			
Country	Judicial authority	Case	Date of decision
Switzerland	Federal Administrative Court	E-26/2016	16 Jan 2019
Germany	Administrative Court of Lüneburg	8 B 23/19	14 Feb 2019
Germany	Administrative Court of Lüneburg	8 A 123/18	22 Mar 2019
Greece	Piraeus Administrative Court of Appeal	69/2019	15 May 2019
Germany	Administrative Court of Kassel	7 L 1165/19.KS.A	24 May 2019
Germany	Administrative Court of Karlsruhe	A 13 K 6939/18	25 Jun 2019
Germany	Administrative Court of Lüneburg	8 A 6/18	10 Jul 2019
Germany	Administrative Court of Cologne	20 K 14819/17.A	26 Sep 2019
Czech Republic	Regional Court of Ostrov	72 A 41/2019 - 28	19 Nov 2019

Other countries' jurisdictions have upheld Dublin transfers to Bulgaria in 2019, however.<sup>89</sup>

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

The admissibility assessment is no longer part of the [Accelerated Procedure](#) but a separate procedure that could be applied during the status determination.<sup>90</sup>

The examination can result in finding the asylum application inadmissible, where the applicant:<sup>91</sup>

1. Has been granted international protection in another EU Member State;
2. Has been granted and can still enjoy refugee status or other effective protection in a third country, including protection from *refoulement*, provided that he or she can be returned to that country;
3. Comes from a safe third country, provided that he or she can be returned to that country;
4. Has submitted a subsequent application with no new elements;
5. Has already an open asylum application or been granted asylum in Bulgaria.

Out of all inadmissibility grounds set out in the LAR and mirroring the recast Asylum Procedures Directive, Bulgaria applies solely the ground relating to [Subsequent Applications](#). It provides the opportunity to consider them based on a preliminary examination whether new elements or findings have arisen or been presented by the applicant relating to his personal situation or country of origin.<sup>92</sup> The admissibility

<sup>89</sup> See e.g. (Austria) Federal Administrative Court, Decision W239 2217177-1, 26 April 2019; (Belgium), Council of Alien Law Litigation, Decision 215 675, 24 January 2019; (Germany) Administrative Court Cottbus, Decision 5 L 696/18.A, 22 January 2019; (Netherlands) Regional Court Middelburg, Decision NL19.2646, 18 March 2019; (Switzerland) Federal Administrative Court, Decision E-26/2016, 16 January 2019.

<sup>90</sup> Article 13(2) LAR.

<sup>91</sup> Article 13(2)(1)-(5) LAR.

<sup>92</sup> Articles 75a to 76c-76d LAR.

assessment of subsequent applications differs in many aspect from the rules, deadlines and guarantees applicable when an inadmissibility decision is taken on the basis of the other admissibility grounds.

In 2019, 103 subsequent applications were dealt with in an admissibility procedure, of which 79 were declared inadmissible and 24 were granted access to further determination.

### **3.2. Personal interview**

The same rules and guarantees apply as in the [Regular Procedure: Personal Interview](#).

### **3.3. Appeal**

The same rules and guarantees apply as in the [Regular Procedure: Appeal](#).

### **3.4. Legal assistance**

The same rules and guarantees apply as in the [Regular Procedure: Legal Assistance](#).

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

There is no border procedure in Bulgaria.

## **5. Accelerated procedure**

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

The accelerated procedure is designed to examine the credibility of the asylum application, but also the likelihood of the application being fraudulent or manifestly unfounded.<sup>93</sup> 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 his or her statements were unspecified, implausible or highly unlikely.

In accordance with the transposition of Article 31(8) of the recast Asylum Procedures Directive, the asylum application can be found manifestly unfounded, if:

1. The applicant raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection;<sup>94</sup>
2. The applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict country-of-origin information, thus making his or her claim clearly unconvincing;<sup>95</sup>
3. The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents or destroying documents with respect to his or her identity and/or nationality;<sup>96</sup>
4. The applicant refuses to comply with an obligation to have his or her fingerprints taken;<sup>97</sup>
5. The applicant entered or resides the territory or stays lawfully and, without good reason, has not presented himself or herself within a reasonable time to the authorities to submit an application for international protection;<sup>98</sup>

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<sup>93</sup> Article 13(1)(1)-(4) and 13(1)(6)-(14) LAR.

<sup>94</sup> Article 13(1)(1)-(2) LAR.

<sup>95</sup> Article 13(1)(3)-(4) LAR.

<sup>96</sup> Article 13(1)(6)-(9) LAR.

<sup>97</sup> Article 13(1)(10) LAR.

<sup>98</sup> Article 13(1)(11) LAR.

6. The applicant entered the territory or stays unlawfully and, without good reason, has not presented himself or herself immediately to the authorities to submit an application for international protection as soon as possible;<sup>99</sup>
7. The applicant arrives from a safe country of origin;<sup>100</sup> or
8. The applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal.<sup>101</sup>

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. The accelerated procedure is a non-mandatory phase of the status determination, applied only by a decision of the respective caseworker, if and when information or indications are available to consider the asylum application as manifestly unfounded.<sup>102</sup>

This decision should be taken within 10 working days from applicants' formal registration by the SAR. If the decision is not taken within this deadline the application has to be examined fully following the rules and criteria of the [Regular Procedure](#), with all respective safeguards and deadlines applied.

The law provides that, upon receiving the asylum application, caseworkers are obliged to request a written opinion from the State Agency for National Security (SANS) which, however, is to be taken into consideration if and when a decision on the substance of the claim is taken within the regular ("general") procedure.<sup>103</sup> The law explicitly provides that such an opinion should not be requested in the accelerated procedure.

All grounds are applied in practice. In 2019, 828 asylum applicants have been rejected under the accelerated procedure. Of those, 566 came from Afghanistan, 76 from Iraq, 74 from Pakistan, 45 from Iran and 67 from other nationalities. More notably, 50 of them were processed in conditions of detention, of which 14 concerned asylum seekers in closed reception facilities, but 36 related to asylum seekers in pre-removal detention centres, in violation of the law (see [Detention of Asylum Seekers](#)).

## 5.2. 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? ☒ Yes ☐ No
  - ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
  - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The questions asked during interviews in the accelerated procedure aim at establishing facts relating to the individual story of the applicant, although in less detail in comparison with the interviews conducted during the 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.

<sup>99</sup> Article 13(1)(12) LAR.

<sup>100</sup> Article 13(1)(13) LAR.

<sup>101</sup> Article 13(1)(14) LAR.

<sup>102</sup> Article 70(1) LAR.

<sup>103</sup> Article 58(9) LAR.

### 5.3. 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

❖ If yes, is it suspensive

☒ Yes

☐ No

☒ Judicial

☐ Administrative

☒ Yes

☐ Some grounds ☐ 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: Appeal](#). 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.

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 Regional Administrative Court of the county in which the appellant resides. The court has the obligation to ascertain whether the assessment of the credibility 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. The obstacles referred to under the regular procedure appeal apply, e.g. lack of legal aid and interpretation issues.

### 5.4. Legal assistance

The same rules and guarantees apply as in the [Regular Procedure: Legal Assistance](#).

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

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. Does the law provide for an identification mechanism for unaccompanied children?

☒ Yes

☐ No

Applicants who are children, unaccompanied children, disabled, elderly, pregnant, single parents taking care of underage children, victims of trafficking, persons with serious health issues, psychological disorders or persons who suffered torture, rape or other forms of psychological, physical or sexual violence are considered as individuals belonging to a vulnerable group.<sup>104</sup>

<sup>104</sup> Additional Provision 1(17) LAR.

## 1.1. Screening of vulnerability

The law does not envisage any specific identification mechanisms for vulnerable categories of asylum seekers, except for children. 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>105</sup> These SOPs were never applied in practice, however. 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 31 December 2019, the SOPs revision was still not finalised nor adopted by the SAR.<sup>106</sup>

In April 2017, the national expert working group, headed by the State Agency for Child Protection developed a set of SOPs addressing the protection needs of all categories of unaccompanied children in Bulgaria, both migrant and asylum seekers. In May 2017, UNICEF communicated a concept for the establishment of interim care facility for unaccompanied children. Although these two documents were approved in July 2017 by the National Child Protection Council, nothing has been done by the government to forward the process. As of 31 December 2019 no SOPs whatsoever were implemented in practice.

Against that backdrop, BHC, UNICEF and UNHCR worked together with the Ministry of Interior on amendments of the primary and secondary immigration legislation. These amendments aim at creating a legally binding referral mechanism,<sup>107</sup> as well as a new procedure allowing for the regularisation of rejected and migrant unaccompanied children until they reach adulthood,<sup>108</sup> with a possibility for an indefinite extension after it on humanitarian grounds. These amendments, however, do not address the lack of identification mechanism of vulnerability at an earlier stage of the procedure and do not apply to all other categories of persons with special needs.

Given that the screening of persons with special needs was carried out in a fragmented and non-systematic way and lacked timely intra-institutional exchange of information, identification and referral, EASO cooperated with Bulgaria in an attempt to improve the capacity to identify and refer vulnerable applicants and to improve exchange between relevant institutions. EASO's Special Support Plan to Bulgaria was originally in place from December 2014 until June 2016, but was extended until 31 October 2018.<sup>109</sup> The identification and referral mechanism was set to build on the Quality tool for the Identification of Persons with Special Needs (IPSN). The SAR affirms the tool to be put in use, but in practice the vulnerability assessment is implemented sporadically and collectively rather than regularly and individually.

From 2014 to 2018, the SAR applied two main approaches regarding vulnerability assessments. The first one consisted in conducting consultations in groups to identify vulnerable applicants prior to their registration, which did not meet the legal standards and criteria necessary for such an assessment. The second one consisted in an identification by the caseworker during the initial registration of the applicant, and referral to the SAR's social expert for an in-depth interview to identify probable vulnerability. However, a formal assessment was not made or added to the applicant's file, nor were specific guarantees assigned to meet the EU minimum standard in this respect.<sup>110</sup>

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<sup>105</sup> Standard Operating Procedures on sexual and gender-based violence, Exh. No 630, 27 February 2008.

<sup>106</sup> UNHCR, *SGBV Task Force*, established on 15 February 2014.

<sup>107</sup> Article 28a Regulations for Implementation of the Law on Aliens in the Republic of Bulgaria (LARB Regulations), State Gazette (St.G.) №34/2019, enforced on 24 October 2019.

<sup>108</sup> Article 63k and 63l LARB Regulations, St.G. №23/2019, enforced on 26 November 2019.

<sup>109</sup> EASO, *Special support plan to Bulgaria – Amendment No 3*, 27 October 2017, available at: <https://bit.ly/2U58pCF>; 'EASO successfully completes its special support in Bulgaria', 27 November 2018, available at: <https://bit.ly/2S9FwUQ>.

<sup>110</sup> Article 24(1) recast Asylum Procedures Directive.

Recently the SAR adopted<sup>111</sup> new internal rules of procedure<sup>112</sup> whereby social experts provide assistance to its staff during the initial medical examination so as to enable the early identification of vulnerable applicants and their special needs. If an applicant is identified as vulnerable, the new rules foresee that the vulnerability will be added to the registration form, including a detailed explanation and a follow-up assessment to be described in an appendix.

Additionally, a new early identification questionnaire was established for applicants who experienced traumatising experiences in order to determine their special needs and to facilitate the referral to adequate psychological or medical care.<sup>113</sup> In many reception shelters however, and mostly in Sofia, group consultations continue to be applied to new arrivals in order to identify their potential medical or social issues.

Nevertheless, monitoring in 2019 indicated improvements in the identification of vulnerable applicants in practice.<sup>114</sup> In 72% of the 271 monitored cases, the applicants confirmed that they went through needs assessment during a social interview, while a follow-up assessment was ordered in 7% of the cases (i.e. 25 cases). However, complete assessment forms or templates could not be found in the applicants' individual files. In 100% of the monitored cases concerning unaccompanied children, the files completely lacked the mandatory social report by the respective statutory child protection service. It has been confirmed, however, ascertained<sup>115</sup> that these reports are prepared in practice, but that they are never shared with the asylum authority SAR, which renders their preparation purely formal and useless.

Thus in 2019 significant progress was made with regard to the introduction of early vulnerability identification mechanisms, but their results and implementation were often not reported to case workers and therefore not taken into consideration during the assessment of the asylum claim.

The improvement of vulnerability identification mechanism resulted in a notable increase in the absolute number of asylum seekers formally recognised to have special needs. While this concerned 179 asylum seekers in 2016, 122 asylum seekers in 2017, and 99 asylum seekers in 2018; the number rose to 797 asylum seekers considered as vulnerable in 2019 (37% of all new applicants)<sup>116</sup>.

The SAR collects statistics on the number of asylum seekers identified as vulnerable at the end of any given month rather than cumulative data on the number of vulnerable persons applying for asylum in a given year. At the end of December 2019, the following groups were identified among asylum seekers:

Asylum seekers identified as vulnerable in Bulgaria: 2017-2019			
Category of vulnerable group	end 2017	end 2018	end 2019
Unaccompanied children	60	52	524
Accompanied children	not included	not included	207
Single parents	21	16	20
Pregnant women	4	0	8
Elderly persons	1	3	4
Disabled persons	11	3	10
Persons with chronic or serious illnesses	20	19	13

<sup>111</sup> SAR, Internal Rules of Procedure for assessing and granting international protection, adopted on 17 December 2018.

<sup>112</sup> Article 29(2) SAR Internal Rules of Procedure.

<sup>113</sup> Early Identification and Needs Assessment form (ФНОН), Individual Support and Referral Plan form (ФИПП) and Social Consultation form (ФСК).

<sup>114</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

<sup>115</sup> Ibid.

<sup>116</sup> SAR, Exh. No. PД05-28/14.01.2020.



Persons with serious psychiatric issues	0	0	8
Victims of physical, psychological or sexual violence	5	6	3
<b>Total</b>	<b>122</b>	<b>99</b>	<b>797</b>

Source: SAR.

NGOs continue to play key role in early identification and assessment of applicants' vulnerability and their referral and according treatment. Organisations specialise in specific groups and issues, namely: poverty, destitution and social inequality (Red Cross; Council of Refugee Women); health issues and disabilities (Red Cross); mental and psychological problems (Nadya Centre, replacing ACET which ceased activities at the end of 2016) and unaccompanied children (Bulgarian Helsinki Committee).

## 1.2. Age assessment of unaccompanied children

The caseworker is not obligated to request an age assessment unless there are doubts as to whether the person is a child.<sup>117</sup> In practice, age assessment is used only to rebut the statements of asylum seekers that they are under the age of 18.

The law does not state the method of the age assessment which should be applied. As a rule, 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>118</sup> which is also explicitly laid down in the LAR.<sup>119</sup>

The age assessment cannot be contested by means of a separate appeal to the one lodged against a potential negative decision. Therefore, if a positive decision is issued, but the age is wrongly indicated to be 18 years or above, it cannot be appealed on that account as a part of the status determination process and the child granted the protection will be treated as an adult. The sole legally available option in such case is to initiate lengthy and usually costly civil proceedings to establish the actual age, but unless documentary or other irrefutable evidence is provided these proceedings are doomed to failure.

In 2019, the SAR conducted age assessments in 18 cases, in all of them (100%) concluding applicants to be adults. The monitoring of the status determination procedures demonstrated that the SAR continues to conduct age assessment by means of X-ray expertise of the wrist bone structure and without any evidence of prior consent by the children's representatives.<sup>120</sup> If the children are considered to be of age they are not appointed statutory municipality representatives to assist them to contest the refusal of their asylum claims nor of their age assessments. Reports from medical organisations consider the X-ray as invasive but, more importantly, inaccurate with an approximate margin of error of 2 years.<sup>121</sup>

In 2019, an expert group representing both governmental and non-governmental organisations was established to create a national age assessment procedure based on a multidisciplinary approach. The aim is also to lay down some basic legal safeguards to be applied by asylum, immigration and/or other administrations that request age assessment in practice. Some of these legal safeguards were thus

<sup>117</sup> Article 61(3) LAR.

<sup>118</sup> Supreme Administrative Court, Decision No 13298, 9 November 2009.

<sup>119</sup> Article 75(2) LAR.

<sup>120</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

<sup>121</sup> Doctors of the World, *Age assessment for unaccompanied minors*, 28 August 2015. See also UNHCR, UNICEF and International Rescue Committee, *The way forward to strengthened policies and practices for unaccompanied and separated children in Europe*, July 2017, available at: <http://bit.ly/2BHGXLo>.

included by the SAR to its LAR amendments proposal.<sup>122</sup> The draft on age assessments was finalised and referred for adoption to the government, but still not endorsed as of 31 December 2019.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ For certain categories ☐ No  
❖ If for certain categories, specify which: Unaccompanied children

In 2018, the SAR adopted internal rules of procedure which foresee the assistance from social experts during the initial medical examination so as to enable an early identification of vulnerable asylum applicants and their special needs.<sup>123</sup> If identified as such, the vulnerability must be duly noted into the registration form of the applicant, i.e. it must include a detailed explanation of the special needs identified as well as the necessary follow-up required in an appendix. Although monitoring was carried out and seems to indicate that 72% of asylum applicants have undergone an interview with social experts in practice, it appears that the information collected by the latter was not included to the applicants files and was thus not taken into consideration by caseworkers in their decision-making process.

The law excludes the application of the [Accelerated Procedure](#) to unaccompanied asylum-seeking children, but not to torture victims.<sup>124</sup> There have not been cases of victims of torture processed under the accelerated procedure in practice, however.

Despite the 2015 reform of the law which stripped the statutory social workers of the child protection services from the responsibility to represent unaccompanied children in asylum procedures (see [Legal Representation of Unaccompanied Children](#)), their obligation to provide a social report with an opinion on the best interests of the child concerned in every individual case remains nonetheless under the provisions of general child care legislation.<sup>125</sup> In all of the cases monitored in 2019, these reports were produced but not included to the files nor shared with the SAR's caseworkers for further consideration.<sup>126</sup>

The only positive development with regard to special procedural guarantees for vulnerable groups remains the pilot legal aid project, commenced in March 2018 by the National Legal Aid Bureau and the SAR to provide sponsored legal aid and representation at all stages of the status determination procedure to vulnerable asylum seekers (see [Regular Procedure: Legal Assistance](#)). Altogether 507 vulnerable applicants received legal aid in 2019 during the first-instance asylum procedure, out of whom 472 were unaccompanied children, 32 were accompanied children, single parents or families with minor or underage children, 1 was a pregnant woman and 2 concerned sexual and gender based violence cases.

## 3. 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 ☐ No ☒ In some cases  
2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

<sup>122</sup> Draft amendments of the LAR, Public Consultations Portal, 13 December 2019, available at: <https://bit.ly/2u4mFUy>.

<sup>123</sup> SAR, Internal Rules of Procedure for assessing and granting international protection, adopted on 17 December 2018. See in particular: Article 29(2) SAR Internal Rules of Procedure.

<sup>124</sup> Article 71(1) LAR.

<sup>125</sup> Article 15(4) and (6) Law on Child Protection.

<sup>126</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020



The LAR includes a provision, according to which the caseworker, with the consent of the asylum seeker, can order a medical examination to establish evidentiary statements of past persecution or serious harm.<sup>127</sup> If such consent is refused by the asylum seeker, this should not be an impediment to issuing the first instance decision. The law also envisages that the medical examination can be initiated by the asylum seeker, but in this case he or she should bear the medical expert's cost.

However, such reports are only exceptionally commissioned by caseworkers of the SAR. In most of the cases where medical reports were provided - if not all - this was at the initiative of the asylum seeker or his or her legal representative. The costs of such medical reports are covered by legal aid, which is awarded in the majority of cases which concern vulnerable applicants. 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>128</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.

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?  
☒ Yes ☐ No

Status determination of unaccompanied children without the presence of a legal representative remains illegal.

The 2015 reform mandated the local municipalities to act as legal representatives of unaccompanied children.<sup>129</sup> Under the law, the municipality representative has a responsibility to safeguard the child's interests during the procedure, to represent the child before administration with respect to his or her best interests, to represent the child in all types of administrative or courts proceedings, as well as to take actions to ensure appointment of legal aid.<sup>130</sup> Representation of unaccompanied children by statutory social workers during the asylum procedure was abolished.

Highly criticised when adopted, since then this approach of the law proved to be indeed even more inadequate than previous arrangements. The municipalities lack not only qualified staff, but also any basic experience and expertise in child protection. In addition to that, the number of legal representatives appointed – one or two per reception facility – is clearly insufficient to meet the need of the population of unaccompanied children who, albeit significantly decreased in 2019, remain considerable in number.

In 2016 an expert group of representatives of the SAR, UNICEF, UNHCR, the Bulgarian Helsinki Committee and many other refugee-assisting NGOs re-introduced a draft proposal to the government to amend the Family Code in relation to the appointment of guardians.<sup>131</sup> However, the amendment never took place. In 2019 it was again omitted in the legislative agenda of the government.

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<sup>127</sup> Article 61(6) LAR.

<sup>128</sup> Article 61(4) LAR.

<sup>129</sup> Article 25(1) LAR.

<sup>130</sup> Article 25(3) LAR.

<sup>131</sup> Draft Law amending the Family Code, Public Consultations, 29 August 2016, available in Bulgarian at: <http://bit.ly/2bUdOKp>.

The only positive development with respect to representation of unaccompanied children is the pilot legal aid project, commenced in March 2018 by the NLAB and the SAR to provide sponsored legal aid and representation at all stages of the status determination procedure to vulnerable asylum seekers (see [Regular Procedure: Legal Assistance](#)). The NLAB and the SAR agreed and adopted formal rules and conditions for the provision of legal aid in practice, including individual and third-party complaint mechanisms, anti-discrimination and anti-corruption measures, which took effect on 31 December 2017. Legal aid under this 80,000 € pilot project will be implemented until 31 January 2020, although an extension until 31 January 2021 has been formally requested.<sup>132</sup> It has to be noted that in **Sofia** and **Harmanli** the municipal representatives started to file legal aid requests for unaccompanied children as soon as the end of 2017 and the NLAB responded positively even before the beginning of the pilot project.

The number of unaccompanied child applicants rose by 8% as 524 unaccompanied children applied in 2019, compared to 481 in 2018, 440 in 2017 and 2,772 in 2016:

Unaccompanied asylum-seeking children: 2019	
Country of origin	Number
Afghanistan	412
Iraq	53
Syria	22
Pakistan	20
Iran	8
Egypt	4
Morocco	3
Stateless	2
<b>Total</b>	<b>524</b>

Source: SAR.

The absence of guardians, proper legal representation and care for the best interests of unaccompanied children in asylum procedures, coupled with poor reception conditions in mixed dormitories with unrelated adults, has resulted in high rates of absconding and related protection and safety risks.

## E. Subsequent applications

### Indicators: Subsequent Applications

- Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
- Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance ☐ Yes ☒ No
  - ❖ At the appeal stage ☐ Yes ☒ No
- 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 provides the opportunity given by the recast Asylum Procedures Directive to consider subsequent applications as inadmissible based on a preliminary examination whether new elements or findings have arisen or been presented by the applicant relating to his or her personal situation or country of origin.<sup>133</sup>

<sup>132</sup> Information provided by SAR, 15.01.2020.

<sup>133</sup> Articles 75a to 76c LAR; Article 76d in conjunction with Article 13 (2)(4) LAR.

The inadmissibility assessment can be conducted on the sole basis of written submissions without a personal interview. The national arrangements, however, do not envisage the related exceptions of this rule as provided in the recast Asylum Procedures Directive.<sup>134</sup>

Within the hypotheses adopted in national legislation, subsequent applications are not examined and the applicants are stripped from the right to remain when the first subsequent application is considered to be submitted merely in order to delay or frustrate the enforcement of a removal decision; or where it concerns another subsequent application, following a final inadmissibility / unfounded decision considering a first subsequent application.

If the subsequent application is declared inadmissible, this decision can be appealed within a deadline of 7 days. The appeal has no suspensive effect.<sup>135</sup> The competent court is only the Administrative Court of Sofia, which hears the appeal case in one instance. If the court rules the admission of the subsequent application, the SAR has to register the applicant within 3 working days from the date the admission has taken place (entered into force).

In 2018, 70 asylum seekers in total submitted subsequent applications:

Subsequent applicants: 2018	
Country of origin	Number
Afghanistan	36
Iraq	18
Syria	7
Iran	7
Iran	3
Stateless	2
<b>Total</b>	<b>70</b>

Source: SAR.

In 2019, 103 subsequent applications were dealt with in an admissibility procedure, out of which 79 were declared inadmissible and 24 were granted access to further determination. A breakdown per country of origin was not made available in 2019, however.

Subsequent applications supported by individualised evidence have been admitted to determination at the first instance. Albeit encouraging, this approach of the SAR can still not be considered as a steady practice, but mainly attributed to the continuing and significant decrease of the new arrivals.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- Does national legislation allow for the use of "safe country of origin" concept?
  - ❖ Is there a national list of safe countries of origin?
  - ❖ Is the safe country of origin concept used in practice?
- Does national legislation allow for the use of "safe third country" concept?
  - ❖ Is the safe third country concept used in practice?
- Does national legislation allow for the use of "first country of asylum" concept?

☒ Yes ☐ No  
☐ Yes ☒ No  
☐ Yes ☒ No

☒ Yes ☐ No  
☐ Yes ☒ No

☒ Yes ☐ No

<sup>134</sup> Article 42(2)(b) recast Asylum Procedures Directive.

<sup>135</sup> Article 84(4) LAR.

The amendments proposed by the SAR at the end of 2019 regarding the LAR re-establish safe country concepts as inadmissibility grounds.<sup>136</sup>

## 1. Safe country of origin

The LAR defines “safe country of origin” as a “state where the established rule of law and compliance therewith within the framework of a democratic system of public order do not allow any persecution or acts of persecution, and there is no danger of violence in a situation of domestic or international armed conflict.”<sup>137</sup> This concept is a ground for rejecting an application as manifestly unfounded in the *Accelerated Procedure*.<sup>138</sup>

National legislation allows for the use of a safe country of origin and safe third country concept in the asylum procedure.<sup>139</sup>

Prior to 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>140</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 insofar as such a common EU list has never been adopted.

The law allows the SAR to propose to the government national lists of safe countries of origin and third safe countries, which are considered to establish a rebuttable presumption.<sup>141</sup> When approving the lists, the government has to consider information sources from other Member States, EASO, UNHCR, the Council of Europe and other international organisations in order to take into account the degree of protection against persecution and ill-treatment ensured by the relevant state by means of:

- The respective laws and regulations adopted in this field and the way they are enforced;
- The observance of the rights and freedoms laid down in the ECHR or the International Covenant on Civil and Political Rights, or the Convention against Torture;
- The observance of the non-*refoulement* principle in accordance with the Refugee Convention;
- The existence of a system of effective remedies against violations of these rights and freedoms.

Notwithstanding, the SAR has not made use of this opportunity so far, hence, no national safe countries of origin or safe third countries lists are adopted and applied.

## 2. Safe third country

A “safe third country” is defined in the LAR as “a country other than the country of origin where the alien who has applied for international protection has resided and:

- (a) There are no grounds for the alien to fear for his/her life or freedom due to race, religion, nationality, belonging to a particular social group or political opinions or belief;
- (b) The alien is protected against the *refoulement* to the territory of a country where there are prerequisites for persecution and risk to his/her rights;

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<sup>136</sup> Draft amendments on the Law on Asylum and Refugees, Public Consultations Portal, 13 December 2019, available at: <https://bit.ly/2u4mFUy>.

<sup>137</sup> Additional Provision 1(8) LAR.

<sup>138</sup> Article 13(1)(13) LAR.

<sup>139</sup> Article 13(1)(13) LAR.

<sup>140</sup> See e.g. Supreme Administrative Court, Decision No 4854, 21 May 2002.

<sup>141</sup> Articles 98-99 LAR.

- (c) The alien is not at risk persecution or serious harm, such as torture, inhuman or degrading treatment or punishment;
- (d) The alien has the opportunity to request refugee status and, when such status is granted, to benefit from protection as a refugee;
- (e) There are sufficient reasons to believe that aliens will be allowed access to the territory of such state.”<sup>142</sup>

The “safe third country” concept is a ground for inadmissibility (see [Admissibility Procedure](#)). As detailed in the section on [Safe Country of Origin](#), Article 98 LAR provides for the possibility of safe third country lists as well as safe country of origin lists.

Since the concept has not been applied in recent years in practice, implementation setting standards in this respect, both administrative and judicial, are limited to non-existent. In principle, refusals based on the “safe third country” concept relate to countries where the applicant lived or resided for prolonged period of time before departure. Transit or short stay in countries are not considered as sufficient for safe third countries.

The LAR has not transposed the requirement in Article 38(3)(b) of the recast Asylum Procedures Directive for an applicant to be granted a document in the language of the safe third country, stating that his or her claim was not examined on the merits.

### 3. First country of asylum

According to Article 13(2)(2) LAR, an application can be dismissed as inadmissible where the asylum seeker has been granted and can still enjoy refugee status or other effective protection in a third country, including protection from *refoulement*, provided that he or she can be returned to that country.

National asylum legislation does not envisage the first country of asylum concept separately from, or, in addition to, the “safe third country” lists.

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

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

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

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>143</sup> The SAR must provide the information orally, if necessary, in cases where the applicant is illiterate.

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 or she understands or, when it is impossible, in a language the asylum seeker may be reasonably supposed to understand.

<sup>142</sup> Additional Provision 1(9) LAR.

<sup>143</sup> Article 58(6) LAR.

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. Information by leaflets or, where needed, in other ways (UNHCR or NGO info boards) is usually provided from the initial application (e.g. at the border) until the registration process is finished.<sup>144</sup> Since end of 2017 information boards are placed in all reception centres, indicating the respective movement zones applicable for the asylum seekers accommodated in to reflect the needs following the 2015 reform of the LAR (see [Freedom of Movement](#)).<sup>145</sup> SAR centers also display information boards which indicate the place and time where applicants can obtain information from the agency's staff about the development of their status determination procedures.

The written information, however, is complicated and not easy to understand. This opinion is shared by all NGO legal aid providers active in the field.<sup>146</sup> The common leaflet and the specific leaflet for unaccompanied children drafted by the Commission as part of the Dublin Implementing Regulation are not being used in Bulgaria or being provided to asylum seekers.<sup>147</sup> The same applies to the information provided on the SAR's website, which is also available only in Bulgarian.

Since 2018 several animated videos provided by UNHCR are made available in the reception centres. This includes a video targeting children which provides information on their daily routine and the importance of school attendance. The video is 1 hour and 40 minutes long and is available in Urdu, Pashto and Dari. Another video of 7 minutes, available in English, Arabic, Dari, Pashto and Kurdish Kurmanji, provides introductory information relating to the asylum procedure as well as rights and obligations during the procedure. Four other videos are dedicated to information on human trafficking and sexual exploitation. They are available in English with Pashto subtitles and address targeted messages to unaccompanied children. However, practice indicates that these videos are not screened on a regular basis. This being said, the obligation to deliver written information is fulfilled in 91% of monitored cases.<sup>148</sup>

The applicants who are placed in closed centres should further receive information about the internal rules applicable to the respective centre as well as about their rights and obligations. Under national law, this information should be provided in a language that they understand.<sup>149</sup> This obligation was not met in 2019, however.

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 by BHC or the Red Cross. In addition, in 2014 UNHCR funded the development of online accessible tool ([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 online, 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. In 2018 the information on [asylum.bg](#) was revised and made available in audio version for illiterate users.

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<sup>144</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>145</sup> Article 29(1)(1) LAR.

<sup>146</sup> Information provided by the Protection Working Group, 29 November 2016.

<sup>147</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>148</sup> Bulgarian Helsinki Committee, *2019 Annual RSD Monitoring Report*, 31 January 2020.

<sup>149</sup> Art. 45e (1) LAR.



## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. 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

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>150</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>151</sup>

The LAR provides that where there are indications that the individuals in detention facilities or at border crossing points may wish to make an asylum application the government shall provide them with information on the possibility to do so.<sup>152</sup> The information should at least include how one can apply for asylum and procedures to be followed, including in immigration detention centres and interpreted in the respective language to assist asylum seekers' access to procedure. This obligation is not fulfilled in practice as none of the SAR staff is visiting or consulting potential asylum seekers who are apprehended at the border or in immigration detention centres, where the provision of information depends entirely on legal aid NGOs' efforts and activity.

In those detention facilities and crossing points, Bulgaria is also legally bound to make arrangements for interpretation to the extent necessary to facilitate individual access to the asylum procedure. Such interpretation, however, is not secured and the only services in this respect are provided by the Bulgarian Helsinki Committee under UNHCR funding. Although Article 8(2) of the recast Asylum Procedures Directive, allowing organisations and persons providing advice and counselling to asylum applicants to have effective access to applicants present at border crossing points, including transit zones at external borders, is transposed in the national law,<sup>153</sup> in practice there are no other NGOs besides the Bulgarian Helsinki Committee which provide regular legal assistance in these areas. Other NGOs such as Center for Legal Aid – Voice in Bulgaria and Bulgarian Lawyers for Human Rights provide project-based and targeted legal assistance in the **Busmantsi** pre-removal detention centre. At the end of 2016 the International Organisation for Migration (IOM) Bulgaria received AMIF funding among many others to also provide legal counselling on status determination procedure to asylum seekers in reception centres and to irregular migrants in detention centres with regard to assisted voluntary return. This assistance is not conditioned by requirements about the qualifications of assistance providers and is ensured by shifting mobile teams on a weekly schedule.

As regards urban asylum seekers and refugees living in the **Sofia** region, UNHCR has funded an Information Centre, located in Sofia, which will be maintained throughout 2020.

<sup>150</sup> For more information, see General Directorate Border Police, UNHCR and BHC, *2015 Annual Border Monitoring Report: Access to territory and international protection*, July 2016, available at: <http://bit.ly/2jsyglh>, para 1.1.3.

<sup>151</sup> This has been a systematic concern. See 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>152</sup> Article 58(6) LAR; Article 8(1) recast Asylum Procedures Directive.

<sup>153</sup> Article 23(3) LAR.

## H. Differential treatment of specific nationalities in the procedure

### 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>154</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Afghanistan, Algeria, Bangladesh, Pakistan, Sri Lanka, Turkey  
Ukraine

Out of a total of 1,615 decisions taken on the merits in 2019, 30% resulted in a positive decision.<sup>155</sup> This represents a slight decrease compared to 2018 where recognition rates remained at 35%. Subsidiary protection in 2019 also decreased to 19% of the cases decided on the substance compared to 20% in 2018. Similarly the refugee status recognition rate decreased to 11% compared to 15% in 2019.

### 1. Afghanistan

As of the end of 2016, Afghan nationals started to be arbitrarily considered as manifestly unfounded cases. They were issued negative decisions in the regular procedure, except for cases where they were – unlawfully – determined in pre-removal detention centres where the accelerated procedure is the only one applied. Out of the 828 asylum seekers whose cases were examined under the accelerated procedure in 2019, 566 were originating from Afghanistan.

The recognition rate for Afghan asylum seekers remained very low in recent years, reaching only 2.5% in 2016 and 1.5% in 2017.<sup>156</sup> Similarly to 2018, the recognition rate stagnated at 6% in 2019. In the majority of cases protection was granted following court decisions overturning refusals. The “striking discrepancy between the Bulgarian and the EU average recognition rate for Afghans” has been raised by the European Commission,<sup>157</sup> as well as jurisdictions in other Member States, as a matter of concern.<sup>158</sup>

The recognition of Afghan applicants in 2019 remained at 6% overall; 2% refugee status and 4% subsidiary protection, although still far below the 46% average recognition rate across the EU.<sup>159</sup>

### 2. Iraq

For many years Iraqi applicants enjoyed relatively fair assessments and an overall recognition rate ranging between 40% to 55%,<sup>160</sup> with respective refusal rate variations. In 2017, however, their recognition dropped drastically to 21% overall recognition (10.2% refugee status, 10.8% subsidiary protection), and then to 11% (3% refugee status, 9% subsidiary protection) in 2018.

The situation slightly improved in 2019 by increasing to an overall recognition rate of 18% (4% refugee status, 14% subsidiary protection), which remains low however. In general, the arguments in the negative decisions of both the SAR and the Courts refer to the defeat of ISIS and to improvements in the safety

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<sup>154</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>155</sup> 79 inadmissibility and 24 admissibility decisions are not included.

<sup>156</sup> AIDA, ‘Bulgaria: Developments in the treatment of asylum claims from Afghanistan’, 6 August 2018, available at: <https://bit.ly/2ALvpC3>.

<sup>157</sup> European Commission, *Measures for improvement of the Bulgarian asylum system*, 6 July 2017, available at: <http://bit.ly/2EudWMH>, 7.

<sup>158</sup> See e.g. (Switzerland) Federal Administrative Court, Decision E-3356/2018, 27 June 2018; (Belgium) Council of Alien Law Litigation, Decision No 185 279, 11 April 2017.

<sup>159</sup> Eurostat, ‘EU Member States granted protection to more than half a million asylum seekers in 2017’, 6/7/2018, 19 April 2018, available at: <https://bit.ly/2PJ1ZXN>.

<sup>160</sup> 2015: 22% refugee status, 20% subsidiary protection; 2016: 33% refugee status, 10% subsidiary protection.



and security across the country's conflict areas and war zones. Claims by applicants from Central and Southern Iraq are considered manifestly unfounded in general.

### 3. Syria

Between 2014 to mid-2015, the SAR applied the so-called *prima facie* approach to assessing Syrian applications for protection as “manifestly well-founded”. This approach is no longer applied. Nevertheless, in 2019, Syrians continued to be the nationality with the highest overall recognition rate, reaching 97% - out of which 41% concerned the granting of refugee status and 56% the granting of the subsidiary protection.

### 4. Turkey

Applications for international protection lodged by Turkish nationals are treated as manifestly unfounded as they are considered as originating from a “safe country of origin”, notwithstanding the fact that the Bulgarian asylum system presently does not officially apply any of the safe country concepts. Bulgaria has not adopted a list of “safe countries or origin” since 2001.<sup>161</sup> As a result, the “safe country of origin” concept is not formally listed as a ground for rejection, i.e. as a ground for considering the application as manifestly unfounded, thus hindering an effective access to appeals.

The rejection rate of Turkish asylum seekers reached 100% both in 2018 and 2019. Moreover, despite settled case-law whereby the lodging of an application for international protection entitles the asylum seeker to apply for an immediate release from detention, many Turkish asylum seekers are kept in immigration detention centers for the duration of their entire asylum procedure, in violation of national law. They are subsequently subject to negative decisions and deported back to Turkey. In such cases, the immigration police makes every effort to prevent Turkish detainees from accessing lawyers and legal advice.

This practice has been publicly recognised and acknowledged by the current Prime Minister and<sup>162</sup> seems to be the result of an informal political agreement between the Bulgarian and Turkish governments.<sup>163</sup>

### 5. Other nationalities

Nationalities from certain countries such as **Turkey, Ukraine, Russia, China, Morocco** and **Algeria** are discriminatorily treated as manifestly unfounded applications with zero recognition rates. To many of these nationalities, the status determination is mostly conducted under an **Accelerated Procedure** in pre-removal detention facilities, in violation of the law.<sup>164</sup>

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<sup>161</sup> The last national annual lists were adopted with Decision №205/19.04.2000 of the Council of Ministers, in which Turkey was not enlisted as a safe country of origin nor as a third safe country.

<sup>162</sup> Businessinsider, ‘Strasbourg Court Quizzes Bulgaria over Gullenists Extradition’, 25 April 2018, available at: <https://bit.ly/2S0ZPGU>.

<sup>163</sup> Businessinsider, ‘Turkey's plan to flood Europe with millions of refugees is a real and dangerous threat, officials warn’, 11 October 2019, available at: <https://bit.ly/31szogj>.

<sup>164</sup> Article 45b LAR.

## 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 type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" 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?
 

	<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No
--	---	--	-----------------------------

Asylum seekers are entitled to material reception conditions according to national legislation during all types of asylum procedures.<sup>165</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 restricted capacity to accommodate all new arrivals. Among all, circumstances such as specific needs and risk of destitution are assessed in each case. The destitution risk assessment criteria are set to take into account the individual situation of the asylum seeker of concern, such as resources and means of self-support, profession and employment opportunities if work is formally permitted, and the number and vulnerabilities of dependent family members. Nevertheless, 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 provides that every applicant shall be entitled to receive a registration card in the course of the procedure.<sup>166</sup> In addition, the law implies a legal fiction, according to which the registration card does not certify the foreigner'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>167</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 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. Since the end of 2015 during the procedure asylum seekers enjoy only shelter, food and basic health care as none of the other entitlements is secured or provided by the government in practice.

In 2017 the Committee against Torture raised concerns around substandard material conditions in reception centres, the absence of an adequate identification mechanism for persons in vulnerable situations, the removal of their monthly financial allowance, and insufficient procedural safeguards regarding the assessment of claims and the granting of international protection.<sup>168</sup>

<sup>165</sup> Article 29(1)(2)-(3) LAR.

<sup>166</sup> Article 29(1)(6) LAR.

<sup>167</sup> Article 40(3) LAR.

<sup>168</sup> Committee against Torture, *Concluding observations on the sixth periodic report of Bulgaria*, CAT/C/BGR/CO/6, 15 December 2017, available at: <http://bit.ly/2rV4mzR>.

**Dublin procedure:** Certain asylum seekers to whom an outgoing Dublin procedure is undertaken cannot necessarily enjoy any of the material reception conditions, as the only rights reserved for them are to stay in the territory of the country, to interpretation and to be issued a registration card. The LAR distinguishes between persons applying for asylum in Bulgaria, who have access to full reception conditions,<sup>169</sup> and persons found irregularly on the territory in Bulgaria and who have not claimed asylum, but to whom the Dublin procedure might be applied following a request by the arresting police department or security services.<sup>170</sup>

With regard to Dublin returnees, the treatment depends on how their individual case has developed in Bulgaria while they were away:

- If cases where the asylum claim under the Dublin procedure has been rejected *in absentia*, the applicant is treated as any other rejected asylum seeker upon his/her return to Bulgaria. This means that access to accommodation and medical assistance is unavailable, but also that the Dublin returnee faces a risk of immigration detention in order to secure his/her deportation. In very few cases, applicants manage to restore their appeal deadlines and to bring the negative decisions before the court, but in such cases the chances of success remain extremely limited given the low recognition rates in Bulgaria (except for Syrian nationals).
- In cases where the Dublin returnees' procedure in Bulgaria has only been suspended or terminated while he or she was abroad, the asylum procedure continues upon his/her return. In 2019 due to the low number of new arrivals in Bulgaria, the reception centers were occupied at 10% of their capacity. Dublin returnees for whom the procedure continued were therefore usually accommodated in an asylum reception center, if so requested.

**Subsequent applications:** Subsequent applicants are excluded not only from all material conditions, but also from the right to receive a registration card. They only have a right to interpretation during the fast-track processing of the admissibility assessment prior to their registration, documentation and determination on the substance.<sup>171</sup> In cases where the first subsequent application is considered to be submitted merely in order to delay or complicate the enforcement of a removal decision, or where it concerns another subsequent application following a final inadmissibility / unfounded decision considering a first subsequent application, the applicants are also stripped from the right to remain on the territory. The law has set a 14-day time limit for the admissibility determination. If the subsequent application is considered inadmissible, the determining authority should not open a determination procedure and the applicant is not registered and documented (see section on [Subsequent Applications](#)).

## 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 2019 (in original currency and in €): | None |
|---|------|

According to the law, reception conditions provided include accommodation, food, social assistance, health insurance and health care and psychological assistance. These rights, however, can be enjoyed only by asylum seekers accommodated in the reception centres. Asylum seekers who have either opted on their own will to live outside reception centres or to whom the accommodation is refused (see [Reduction or Withdrawal of Reception Conditions](#)) do not have access to food or psychological assistance. Access to the basic health care is otherwise ensured as health insurance is in principle covered by the budget to all asylum seekers regardless of their place of residence.

<sup>169</sup> Article 67a(2)(1) LAR.

<sup>170</sup> Article 67a(2)(2) LAR.

<sup>171</sup> Article 76b LAR.

As of February 2015, the SAR has ceased the provision of the 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>172</sup> In 2019, three meals per day were thus distributed to all asylum seekers accommodated in reception centres, with special attention to unaccompanied children.

The cessation of the monthly financial allowance is in contradiction with the law, as the LAR does not condition its provision depending on whether food is provided or not. These two material rights are regulated separately under the law. The cessation of the monthly financial allowance was appealed by several NGOs before the court.<sup>173</sup> However, the court rejected the appeal on the basis of a lack of legitimate interest in the case and suggested that appeals on an individual basis could be admissible. However, the appeals against the cessation of the financial allowance can no longer be validly submitted, since the 14-day time limit for appealing the decision has long lapsed, as it is counted from its issue date.

### 3. Reduction or withdrawal of 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 when the procedure is suspended.<sup>174</sup>

The SAR applies this ground of withdrawal in practice to persons returned under the Dublin Regulation. In their majority they are refused accommodation in the reception centres, although this approach is usually not applied to families with children, unaccompanied children and other vulnerable applicants, who are provided shelter and food.

Under the law, the directors of transit / reception centres are competent to decide on whether an asylum applicant should be provided accommodation.<sup>175</sup> These decisions should be issued in writing as all other acts of administration,<sup>176</sup> but in practice asylum seekers are informed orally. Nonetheless, the refusal to provide accommodation can be appealed before the relevant Regional Administrative Court within 7 days from the notification. Legal aid is available with regard 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.

Destitution is defined on the basis of the monetary indicator of the national poverty threshold. Presently, this threshold is at to BGN 363, equalling to 185.59 € monthly.<sup>177</sup> The law defines as “basic needs” sufficient food, clothing and housing provided according to the national socio-economic development.<sup>178</sup> The risk of destitution is not formally assessed but the SAR takes it into account in the majority of cases.

Bulgaria does not apply sanctions for serious breaches of the rules of accommodation centres and violent behavior, except for destruction of a reception center's property, which is sanctioned with a fine between

<sup>172</sup> SAR, Order No 31-310, 31 March 2015, issued by the Chairperson Nikola Kazakov.

<sup>173</sup> Bulgarian Helsinki Committee, Bulgarian Council on Refugees and Migrants, and Council of Refugee Women.

<sup>174</sup> Article 29(8) LAR.

<sup>175</sup> Article 51(2) LAR.

<sup>176</sup> Article 59(2) Administrative Procedure Code.

<sup>177</sup> Council of Ministers, Decision No 275 of 1 November 2019 adopting the 2020 national poverty threshold.

<sup>178</sup> Article 1(1) Law on Social Assistance.

50 to 200 BGN (25.50-102 €) plus the value of the destroyed property.<sup>179</sup> The grounds laid down in Article 20(2) and (3) of the Recast Reception Conditions Directive are not transposed into national legislation.

Relating to subsequent applicants, see [Criteria and Restrictions to Access Reception Conditions](#).

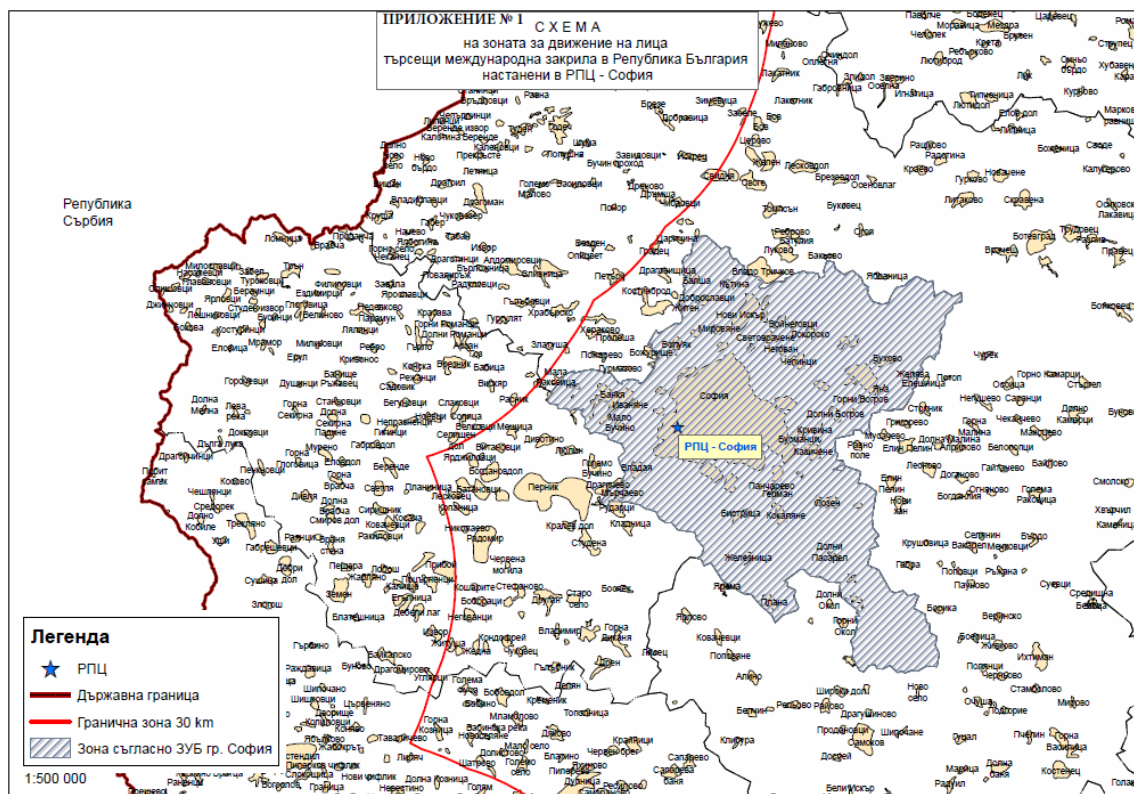
#### 4. Freedom of movement

##### 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' freedom of movement can be restricted to a particular area or administrative zone within Bulgaria, if such limitations are deemed necessary by the asylum authority, without any other conditions or legal prerequisites.<sup>180</sup> The asylum seeker can apply for a permission to leave the allocated zone and if the request is refused, it must to be motivated. Such a permission is not required when the asylum seeker has to leave the allocated zone in order to appear before a court, a public body or administration or if he is in need of emergency medical assistance. The permitted zones of free movement should be indicated in each individual asylum identification card.<sup>181</sup>

Consecutive failure to observe the zone limitation can result in placement in a closed centre until the asylum procedure ends with a final decision.<sup>182</sup> It was not before September 2017 when the government formally designated the movement zones.<sup>183</sup> These consist of zones covering designated geographical areas around the respective reception centres. The following map illustrates the zone around **Sofia**:



<sup>179</sup> Article 93 LAR.

<sup>180</sup> Article 30(2) and (3) LAR.

<sup>181</sup> Article 44(1)(11) LAR.

<sup>182</sup> Article 95a LAR.

<sup>183</sup> Council of Ministers, Decision No 550 of 27 September 2017.



However, since then, the SAR has not applied this as a ground for detention in a closed centre. At the end of 2017 information boards were placed in all reception centres indicating the respective movement zones applicable for the asylum seekers accommodated therein. In 2019, the SAR applied asylum detention on account of the person's attempts to leave Bulgaria in two cases.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>184</sup> 4
2. Total number of places in the reception centres: 5,190
3. Total number of places in private accommodation: 140
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. As of the end of 2019, there were 4 reception centres in Bulgaria. The total capacity as of 31 December 2019 was as follows:

Reception centre	Location	Capacity	Occupancy end 2019
Sofia	Sofia	2,030	346
<i>Ovcha Kupel shelter</i>		860	124
<i>Vrazhdebna shelter</i>		370	164
<i>Voenna Rampa shelter</i>		800	48
<i>Closed 3<sup>rd</sup> Block Busmantsi</i>		60	10
Banya	Central Bulgaria	70	0
Pastrogor	South-Eastern Bulgaria	320	0
Harmanli	South-Eastern Bulgaria	2,710	115
<b>Total</b>		<b>5,130</b>	<b>461</b>

Source: Ministry of Interior. Note that the occupancy rate includes the closed centre in "3<sup>rd</sup> Block" in Busmantsi, which is a closed centre.

The SAR **Vrazhdebna** shelter in Sofia, which was closed from December 2018 to May 2019, re-opened.

461 asylum seekers resided in reception centres as of the end of 2019, thereby marking an occupancy rate of 9%.

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 or nationalities. For example, prior to its closure, **Vrazhdebna** shelter in Sofia accommodated predominantly Syrians and Iraqis, **Voenna Rampa** shelter in Sofia accommodates almost exclusively Afghan and Pakistani asylum seekers, while the other reception centres accommodate mixed

<sup>184</sup> Both permanent and for first arrivals. Note that the Refugee Reception Centre Sofia has 3 reception shelters, namely Ovcha Kupel, Vrazhdebna and Voenna Rampa. The SAR closed down **Vrazhdebna** shelter on 17 December 2018 for an indefinite period and transferred its residents to other centres.

nationalities, such as in **Harmanli** reception centre, **Banya** reception centre and **Ovcha Kupel** shelter in Sofia.

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>185</sup> They must submit a formal waiver from their right to accommodation and social assistance, as warranted by law, and declare to cover rent and other related costs at their own expenses.<sup>186</sup> Except for the few asylum seekers who are able to finance private accommodation on their own, other group of individuals living at external addresses include Dublin returnees, to whom the SAR applies the exclusion from social benefits, including accommodation, as a measure of sanction in accordance with the law (see [Withdrawal of Reception Conditions](#)).<sup>187</sup> As of 31 December 2019 only 140 asylum seekers lived outside the reception centres under the conditions as described above.<sup>188</sup>

## 2. 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? Varies
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

### 2.1. State of the facilities

Apart from the **Vrazhdebna** shelter in Sofia and the safe-zone for unaccompanied children in **Voenna Rampa**, living conditions in national reception centres remain poor, i.e. either below or at the level of the foreseen minimum standards and despite some partial renovations periodically conducted by the SAR. Regular water, hot water, repair of utilities and equipment in bathrooms, rooms and common areas remain problematic. Occupants from all reception centres, except in **Vrazhdebna**, have complained about the poor sanitary conditions, especially with regard to bedbugs which regularly cause health issues, i.e. constant skin inflammations and allergic reactions. This problem arose after the 2013 influx and has been continuously neglected since.

### 2.2. Food and health

Since 2018 three meals per day are provided in all centres (i.e. packaged food), except to unaccompanied children to whom three hot meals are served a day. Both the quality and quantity of the food is regularly criticised by asylum seekers.

As already mentioned, the individual monthly allowance provided for in the law is not provided in practice. The only other assistance provided by the government are sanitary packages. The costs of prescribed medicines, lab tests or other medical interventions which are not covered in the health care package, as well as for purchase of baby formula, diapers and personal hygiene products, are still not covered, thereby raising concerns despite the efforts of the SAR to address them through different approaches.<sup>189</sup>

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<sup>185</sup> Article 29(6) LAR.

<sup>186</sup> Article 29(9) LAR; Article 29(1)(2) LAR.

<sup>187</sup> Article 29(4) LAR.

<sup>188</sup> Ministry of Interior, *Migration statistics*, 31 December 2019.

<sup>189</sup> Bulgarian Red Cross, *Refugee and Migrant Service: Annual Report*, February 2020.

### 2.3. Activities in the centres

Places for religious worship are now available in all of the reception centres, but not properly maintained. Activities for children are organised in the reception centres, but not regularly and entirely on volunteer and NGO initiatives and projects. Thus, in 2019 Caritas continued to carry out unprofessional language training and leisure activities for the children in the reception centres in **Sofia** and **Harmanli** with the support of UNICEF. The Red Cross also conducted language courses and social adaptation classes to relocated asylum seekers in the **Vrazhdebna** shelter throughout the year. Psychological support and treatment was provided in centers in **Harmanli** (Red Cross) and **Sofia** and **Banya** centers (Nadya Center). Volunteers, organised by Cooperation for Voluntary Service (CVS) provided language, school preparatory classes, study circles and cultural orientation.

### 2.4. Physical security

Some level of standardisation has taken place in the intake and registration procedure in reception centres. There is a basic database of residents in place, which is updated on a daily basis.

However, measures to prevent sexual and gender-based violence (SGBV) are not sufficient to properly guarantee the safety and security of the population in the centres. Except for **Vrazhdebna** shelter in Sofia, the security of asylum seekers accommodated in reception centres is not fully guaranteed, but least in the case of those accommodated in **Voenna Rampa** shelter. Asylum seekers from this centre report that during night hours outsiders have access to dormitories without any major obstacles, leading to alcohol consumption, gambling, drug distribution and other illicit trades or disturbances.<sup>190</sup> Verbal and physical abuse, attacks and robbery committed against asylum seekers in the surroundings of **Voenna Rampa** shelter, usually not investigated or punished, escalated in 2017 to an extent to provoke a joint letter by numerous non-governmental organisations, requesting the Sofia Police Directorate to step in and take effective preventive and investigative measures as prescribed by the law.<sup>191</sup> No response or measures have been announced by the police in this respect and the situation did not improve in 2019.

The law does not limit the length of asylum seekers' stay in a reception centre. Asylum seekers can remain in reception centres pending the appeal procedure against a negative decision.<sup>192</sup> In December 2019, the SAR reported to have its reception occupancy at 9%, i.e. 461 occupants out of 5,190 available places,<sup>193</sup> compared to 542 occupants at the end of 2018 and 977 occupants in the end of 2017.

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<sup>190</sup> Information provided by the Bulgarian Red Cross and the Refugee and Migrant Service, Protection Working Group, 18 January 2018.

<sup>191</sup> Caritas, Bulgarian Helsinki Committee, Council of Refugee Women, Nadya Centre, Cooperation for Voluntary Service and Lumos Foundation, *Letter to the Ministry of Interior, Sofia Regional Police Directorate*, 22 December 2017.

<sup>192</sup> Article 29(4)-(9) LAR.

<sup>193</sup> SAR, Exh. No. PД05-28/14.01.2020; MOI, Migration Statistics, December 2019, available in Bulgarian at: <https://bit.ly/372jvz7>.



## C. 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?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>3 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors                                    | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |

Currently, the LAR allows for access to the labour market for asylum seekers, if the determination procedure takes longer than 3 months from the lodging of the asylum application.<sup>194</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.

In January 2018 the Ministry of Labour and Social Policy attempted to amend the law and condition the asylum seekers' access to the labour market on numerous additional and unfeasible requirements,<sup>195</sup> but the joint lobbying of the SAR, UNHCR and non-governmental organisations prevented the amendment from being voted, and preserved the status quo.

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>196</sup>

In 2019, the SAR issued 101 labour permits to asylum seekers pending status determination and reported 72 asylum seekers to have engaged in employment following the issue of the permit.<sup>197</sup>

In practice, it is still 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. No national agency collects statistics on the number of asylum seekers in employment.

### 2. Access to education

#### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Access to education for asylum-seeking children is provided explicitly in national legislation without an age limit.<sup>198</sup> The provision not only guarantees full access to free of charge education in regular schools, but also to vocational training under the rules and conditions applicable to Bulgarian children.

<sup>194</sup> Article 29(3) LAR.

<sup>195</sup> National Parliament, Law on Amendment of the Law on Labour Migration and Labour Policy, 802-01-1, 2 January 2018, available in Bulgarian at: <https://bit.ly/2FGQ0sK>.

<sup>196</sup> Article 39(1)(2) LAR.

<sup>197</sup> Information provided by SAR, 15 January 2019.

<sup>198</sup> Article 26(1) LAR.

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 the appointment of special commissions by the Educational Inspectorate with the Ministry of Education and Science.

No preparatory classes are offered to facilitate access to the national education system except those organised by NGO volunteers. In 2019 the Red Cross organised licensed trainings in Bulgarian language to 50 people at their Information Centre in **Sofia** as well as in **Harmanli** and **Banya** centers. Similar language trainings were provided by Caritas to asylum seekers and recognised refugees and subsidiary protection holders in their Integration Centre in Sofia, tailored in groups for adults, children, mothers with children, employed individuals, etc.

Asylum-seeking children with special needs do not enjoy alternative arrangements other than those provided for Bulgarian children.<sup>199</sup>

Moreover, asylum-seeking children may be detained in closed reception centres or facilities following the detention of their parents.<sup>200</sup> This could deprive children of their right to education as accommodation in closed centres would effectively prevent them from accessing education, unless arrangements are put in place to secure their transportation to the public schools. No practice is yet applied in this respect.

Adult refugees and asylum seekers have a right to a vocational training. 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.

## D. 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
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes ☐ Limited ☒ No
4. 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.<sup>201</sup> 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. 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.

Until 31 December 2018, Dublin returnees faced significant obstacles in accessing medical care upon return, mainly resulting from the delay for the asylum and health care administration to restore their

<sup>199</sup> National Integration Plan for Children with Special Needs and/or Chronic Illness, adopted with Council of Ministers Ordinance No 6, 19 August 2002.

<sup>200</sup> Article 45e LAR.

<sup>201</sup> Article 29(1)(5) LAR.

insurance coverage in the national health care database. These delays could vary from a couple of days to several weeks or even months in certain cases. Since 1 January 2019 the health care database has been re-organised to automatically restore the Dublin returnees' health care status and register them as individuals with uninterrupted medical insurance as soon as their asylum procedures is being reopened at the SAR. However, this applies only to those who left Bulgaria in 2019 and were subsequently returned back. Access to healthcare for asylum applicants who left Bulgaria prior to 1 January 2019, and who are now being returned under Dublin III, is still not ensured. In order for them to access medical care, the SAR must issue a written notification to the national IRS. Only then can the access to the medical care be restored, which takes couple of days in the majority of the cases, although there have been cases in which it took longer periods of time.

Presently, all reception centres are equipped with consulting rooms and provide basic medical services, but their scope varies depending on the availability of medical service providers in the particular location.

Basic medical care in reception centres is provided either through own medical staff or by referral to emergency care units in local hospitals.

## E. 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 “applicant in need of special procedural guarantees” means an applicant from a vulnerable group who needs special guarantees to be able to benefit from the rights and comply with the obligations provided for in the law.<sup>202</sup> Applicants who are children, unaccompanied children, disabled, elderly, pregnant, single parents taking care of underage children, victims of trafficking, persons with serious health issues, psychological disorders or persons who suffered torture, rape or other forms of psychological, physical or sexual violence are considered as individuals belonging to a vulnerable group.<sup>203</sup>

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 this is applied discretionary and without any written criteria.

An applicant’s belonging to a vulnerable group has to be taken into account by the authorities when deciding on accommodation.<sup>204</sup> In practice, separate facilities for families, single women, unaccompanied children or traumatised asylum seekers do not exist in the reception centres.

### 1. Reception of unaccompanied children

In July 2017 the State Agency for Child Protection and national stakeholders developed SOPs to safeguard unaccompanied migrant and refugee children identified to be present in Bulgaria. Although the SOPs for unaccompanied children were endorsed by the National Child Protection Council,<sup>205</sup> the final

<sup>202</sup> Additional Provision 1(16) LAR.

<sup>203</sup> Additional Provision 1(17) LAR.

<sup>204</sup> Article 29(4) LAR.

<sup>205</sup> State Agency for Child Protection, ‘Тридесет и шестото редовно заседание на Националния съвет за закрила на детето се проведе в зала „Гранитна“ на Министерски съвет’, 11 July 2017, available in Bulgarian at: <http://bit.ly/2FzwLxk>.

formal endorsement by the government has not been formally given yet, which makes the developed SOPs for unaccompanied children inapplicable in practice. As of 31 December 2019 no progress has been achieved in this regard. (see section on [Identification](#)).

The LAR provides that unaccompanied children are accommodated in families of relatives, foster families, child shelters of residential type, specialised orphanages or other facilities with special conditions for unaccompanied children.<sup>206</sup> In practice, none of these opportunities are used or applied.

A safe zone for unaccompanied children in the refugee reception centre (RRC) of Sofia at the **Voenna Rampa** shelter is available since mid-2019,<sup>207</sup> where children are provided round-the-clock care and support tailored to their needs. However, only unaccompanied children originating from Afghanistan are accommodated in this centre, while unaccompanied children from other nationalities remain in mixed dormitories in other reception centers. This being said, despite the availability of places in the operational safe-zone, some Afghan children were also accommodated in other reception centres such as the RRC of **Harmanli** in 2019. A second safe-zone at the RRC Sofia, in the **Ovcha Kupel** shelter, opened on 20 January 2020 and is supposed to accommodate children originating from Arab speaking countries. Both safe-zones are operated by the International Organisation for Migration (IOM) Bulgaria and funded by AMIF. However, the government has not yet proposed new measures which would foresee the sustainability and expansion of the safe-zones upon the termination of the AMIF project.

Moreover, at the end of 2017, the EEA Grants secured considerable funding for the State Agency for Child Protection as well as for the Bulgarian Red Cross to jointly establish and run an Interim Care Center for unaccompanied children, proposed and endorsed by UNICEF and UNHCR. As of 31 December 2019, however, this centre was still not established.

Many unaccompanied asylum-seeking children in Bulgaria continue to be accommodated in mixed dormitories and in many cases in rooms with unrelated adults. These children often complain to be deprived of sleep on account of noise, gambling or alcohol consumption during the night by the adults accommodated in their rooms, or by being forced to run errands for them such as shopping, laundering or cleaning.

## 2. Reception of victims of violence

Back in 2008, the SAR and UNHCR adopted standard operating procedures (SOPs) with respect to treatment of victims of Sexual and Gender-based Violence (SGBV).<sup>208</sup> In 2014 both agencies agreed that the SOPs need to be updated,<sup>209</sup> as they have never been applied in practice, but also to include other categories applicants with special needs. The SOPs revision process is still ongoing, however.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

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 access to the labour market through the information sources with regard to their rights and obligations in general (see section on [Information on the Procedure](#)).

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<sup>206</sup> Article 29(9) LAR.

<sup>207</sup> IOM, 'Official opening of the first Safety Zone for unaccompanied asylum-seeking children in Bulgaria', 29 May 2019, available at: <https://bit.ly/2RnAG7N>.

<sup>208</sup> Standard Operating Procedures on sexual and gender-based violence, Exh. No 630, 27 February 2008.

<sup>209</sup> UNHCR, *SGBV Task Force*, established on 15 February 2014.

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>210</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, monitoring from the Bulgarian Helsinki Committee in 2018 shows that oral guidance on determination procedures is not being provided by caseworkers in the majority, if not all of the cases, although information brochures have been delivered in 100% of the cases.<sup>211</sup> Similar observations were noted in 2019.

Since 2018, some animated video information is available at the reception centres of the SAR to provide introductory information relating the rights and obligations during determination procedures. The animated videos are available in Arabic, Pashto, Dari and Kurdish Kurmanji. The law also envisages that additional information relating to the internal regulations applied in the closed centres have to be provided to asylum seekers detained therein, but this has not been delivered in practice (see [Conditions in Detention Facilities](#)).<sup>212</sup> The web platform [asylum.bg](#), which provides legal and practical information on national determination procedures is available also in audio format to ensure the access to credible information to illiterate asylum seekers.

## 2. 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 expressly provide for access to reception centres for family members, legal advisers, UNHCR and NGOs. The law provides, however, that asylum seekers have the right to seek assistance from UNHCR and other government or non-governmental organisations.<sup>213</sup> Until the beginning of 2015, no limitations were applied in practice.

Presently, NGOs and social mediators from refugee community organisations who have signed cooperation agreements with the SAR are allowed to operate within the premises of all reception centres. Access to reception centres for other organisations and individuals requires a formal authorisation and is formally prohibited during the night. However, asylum seekers regularly report that traffickers and smugglers as well as drug dealers and prostitutes have almost unlimited access to reception centres, except for the **Vrazhdebna** shelter in **Sofia** (see [Conditions in Reception Facilities](#)).

## G. Differential treatment of specific nationalities in reception

For the time being there are no nationalities discriminated against in the area of reception. However, some of the reception centres are used for accommodation predominantly of a certain nationality or nationalities. For example, prior to its closure, **Vrazhdebna** shelter in Sofia accommodated predominantly Syrians and Iraqis, **Voenna Rampa** shelter in Sofia accommodates almost exclusively Afghan and Pakistani asylum seekers, while the other reception centres accommodate mixed nationalities, such as in **Harmanli** reception centre, **Banya** reception centre and **Ovcha Kupel** shelter in Sofia. The government had also assigned **Vrazhdebna** shelter in Sofia to host applicants coming through the relocation scheme in 2015-2017 as well as for those resettled from Turkey.

<sup>210</sup> Article 58(6) LAR.

<sup>211</sup> Bulgarian Helsinki Committee, *2018 Annual RSD Monitoring Report*, January 2019.

<sup>212</sup> Article 45e(1)(5) LAR.

<sup>213</sup> Article 23(1) LAR.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2019: <sup>214</sup>	1,331
2. Number of asylum seekers in detention at the end of 2019: <sup>215</sup>	12
3. Number of detention centres:	3
❖ Pre-removal detention centres	2
❖ Asylum detention centres	1
4. Total capacity of detention centres:	760

Not all asylum seekers who apply at national borders are sent directly to a detention centre, especially in cases where family members of the border applicants are already in Bulgaria, in cases where persons provide valid documentation, as well as cases which required specific needs such as individuals with disabilities and families with infants. As of July 2018, the exception is also applied to unaccompanied children below the age of 14.

The main reason for this situation results from the fact that the State Agency for National Security (Държавна агенция “Национална сигурност”, SANS) is concerned 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 SAR to enable registration and accommodation of asylum seekers after 17:00 or during the weekends. Since September 2015, the SAR operates with shift schemes and on-call duty during the weekends in order to assist with the reception of asylum seekers referred by the police. In practice, however, these arrangements are not sufficient and the police has no other option but to refer and detain asylum seekers in pre-removal detention centres.

Out of a total of 2,152 applicants registered in 2019, 1,343 individuals applied for asylum at border and immigration detention facilities.<sup>216</sup>

Detention of first-time applicants from the making of their application until their personal registration is systematically applied in Bulgaria and the majority of asylum seekers apply from pre-removal detention centres for irregular migrants.<sup>217</sup> Nevertheless, in 2019 there has been a further decrease in the number of detentions ordered:

Immigration detention in Bulgaria: 2015-2019					
Year	2015	2016	2017	2018	2019
Total detentions ordered	11,902	11,314	2,989	2,456	2,184

Out of the 119 persons being detained in immigration detention centers at the end of 2019, 11 were asylum seekers.<sup>218</sup>

There are two pre-removal detention centres in operation: **Busmantsi** and **Lyubimets**. The **Elhovo** allocation centre ceased its regular operation in April 2018.

<sup>214</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention. 1,876 asylum seekers were subject to pre-removal detention and 10 to asylum detention.

<sup>215</sup> At the end of the year, 11 asylum seekers were in pre-removal detention and 10 asylum seekers were in closed reception centres.

<sup>216</sup> Bulgarian Helsinki Committee, *Monthly Monitoring Report: December 2019*, 10 January 2020.

<sup>217</sup> CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports to Bulgaria*, CERD/C/BGR/CO/20-22, 31 May 2017, available at: <http://bit.ly/2wSzlpq>, para 21(e).

<sup>218</sup> Bulgarian Helsinki Committee, *2019 Performance Report*, 31 January 2020.



Asylum seekers can also be placed in closed reception centres i.e. detained under the jurisdiction of the SAR for the purposes of the asylum procedure. In 2019, 16 asylum seekers have been detained in the asylum closed facility, situated in the premises of the **3<sup>rd</sup> Block** in the **Busmantsi** pre-removal centre, the only closed centre for that purpose. 12 asylum seekers were held there at the end of the year 2019.

## B. Legal framework for detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |   |   |  |
|---|---|--|
| 1. In practice, are most asylum seekers detained                        |   |  |
| ❖ on the territory:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                |
| ❖ at the border:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input type="checkbox"/> Frequently     | <input checked="" type="checkbox"/> Rarely |
|   |   | <input type="checkbox"/> Never             |
| 3. Are asylum seekers detained during a regular procedure in practice?  | <input type="checkbox"/> Frequently     | <input checked="" type="checkbox"/> Rarely |
|   |   | <input type="checkbox"/> Never             |

#### 1.1. Pre-removal detention upon arrival

Under Article 44(6) of the Law on Aliens in the Republic of Bulgaria (LARB), 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.

The different grounds are often used in combination to substantiate detention orders in practice. According to an analysis of jurisprudence of the Administrative Court of Sofia and the Administrative Court of Haskovo in the period 2012-2015, the Centre for Legal Aid – Voice in Bulgaria found that the majority of detention orders were based on grounds of identity, often combined with a risk of absconding.<sup>219</sup> The ground of safeguarding the implementation of a return order was found to be rarely, if ever, applied.<sup>220</sup> In the Bulgarian Helsinki Committee's experience, however, detention orders are issued based on a combination of all three grounds for detention.

In practice, detention of third-country nationals is ordered by the Border or Immigration Police on account of their unauthorised entry, irregular residence or lack of valid identity documents. After the amendments of the LARB in the end of 2016,<sup>221</sup> these authorities can initially order a detention of 30 calendar days within which period the Immigration Police should decide on following detention grounds and period or on referral of the individual to an open reception centre, if he or she has applied for asylum.

In 2019, the number of persons issued a pre-removal detention order was 2,184. This included 1,331 asylum seekers.

<sup>219</sup> Centre for Legal Aid – Voice in Bulgaria, *Who Gets Detained?*, available at: <http://bit.ly/2jui7fo>, September 2016, 21.

<sup>220</sup> *Ibid.*

<sup>221</sup> Law amending the Law on Aliens in the republic of Bulgaria, No 97/2016, 2 December 2016, available in Bulgarian at: <http://bit.ly/2kJoYpi>.

The law does not allow the SAR to conduct any determination procedures in the pre-removal detention centres.<sup>222</sup> However, as of 2018 and presently, the SAR continues to register, fingerprint, and determine asylum seekers in pre-removal detention centres and to keep them there after issuing them asylum registration cards. Their release and access to asylum procedure is usually secured only by an appeal against detention and a court order for their release. In principle, this affected individuals who are deemed deportable for having valid passports or other original national identity documents. Since the beginning of 2019 a total of 36 applicants – 1.7% of all new applicants – had their cases determined by the SAR in the detention centres of **Busmantsi** and **Lyubimets**.

All asylum seekers processed in pre-removal detention centres are being determined by the SAR in an **Accelerated Procedure**, which strips them of the right to an onward appeal and thereby prevents them from challenging the practice further before the Supreme Administrative Court.

For the time being, this malpractice is mostly supported by the courts, which find that the asylum procedure in pre-removal centres is a violation of procedural standards but an insignificant one as the rights of the asylum seekers during the status determination are not severely affected.<sup>223</sup> In some limited cases, courts have ruled that the conduct of the personal interview in an immigration detention centre amounts to a serious breach of procedural rules.<sup>224</sup> The Supreme Administrative Court also ruled in 2018 that the lodging of an asylum application entitles the asylum seeker to apply for immediate release from detention.<sup>225</sup>

The detention of asylum seekers and failure to observe procedural safeguards form part of the concerns expressed by the European Commission in the letter of formal notice sent to Bulgaria on 8 November 2018 relating to non-compliance with the EU asylum *acquis*.<sup>226</sup>

The most negative development in 2019 related to the *refoulement* implemented by the MOI Migration Directorate with regard to 4 asylum seekers. Despite being first-time applicants in possession of valid documents and cleared from the security services, they were deported to their countries of origin Iran, Algeria and Nigeria in violation of Article 33 of the Refugee Convention.<sup>227</sup>

## 1.2. Short-term detention

At the end of 2016, the LARB introduced “short-term detention” to be used for security checks, profiling and identification.<sup>228</sup> The law entered into force on 6 June 2018. This did not lead to a change in practice except for the fact that all initial detention orders issued to persons apprehended for irregular entry since then were short-term for 30 days. In practice, after their expiry, the Migration Directorate extends detention to pre-removal detention for up to 6 months. Asylum seekers who applied in detention centres are usually within the initial short-term duration.

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<sup>222</sup> Additional Provision 5 LAR; Article 45b LAR.

<sup>223</sup> Bulgarian Helsinki Committee, *2018 Performance Report*, January 2019. See e.g. Administrative Court of Sofia, Decision No 5378, 17 September 2017; Decision No 4740, 14 July 2017; Decision No 5105, 2 August 2017; Decision No 193, 14 March 2017; Administrative Court of Haskovo, Decision No 187, 16 March 2017; Administrative Court of Haskovo, Decision No 93, Case No 1322/2017, 29 January 2018; Administrative Court of Sofia, 21<sup>st</sup> Division, Decision No 806, Case No 4161/2017, 12 February 2018; Administrative Court of Haskovo, Decision No 996, Case No 14229/2017, 19 February 2018; Administrative Court of Sofia, 57<sup>th</sup> Division, Decision No 7499, Case No 11273/2018, 11 December 2018.

<sup>224</sup> Administrative Court of Sofia, Decision No 977, 16 February 2018.

<sup>225</sup> Supreme Administrative Court, Decision No 77, 4 January 2018.

<sup>226</sup> European Commission, ‘November infringements package: key decisions’, MEMO/18/6247, 8 November 2018, available at: <https://bit.ly/2RETZfR>.

<sup>227</sup> Article 58 (9) LAR – all applicants must be vetted by the State Agency for national Security.

<sup>228</sup> Article 44(13) LARB.



However, this is not applied to the asylum seekers who are deemed to be “deportable” on account of having valid identity documents or to whom the SANS issued expulsion orders and whose asylum claims are determined in immigration detention centres, in violation of the law (see [Accelerated Procedure](#)).

### 1.3. Asylum detention

Asylum seekers can also be placed in closed reception facilities i.e. detention centres under the jurisdiction of the SAR during the determination of their claim. The national grounds transpose Article 8(3)(a), (b), (d) and (f) of the recast Reception Conditions Directive, according to which an applicant may be detained:<sup>229</sup>

- a. In order to determine or verify his or her identity or nationality;
- b. 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;
- c. When protection of national security or public order so requires;
- d. 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 or a stateless person.

In 2019, 15 asylum seekers were placed in asylum detention. The grounds applied were verification of identity or nationality, and protection of national security or public order. In only 2 cases, the SAR applied the additionally introduced ground of consecutive violation of designated movement zones.

## 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

Alternatives to pre-removal detention in the LARB do not specifically target asylum seekers, rather all third-country nationals. The LARB was amended in 2017 to introduce new alternatives, namely:

1. Surrendering documents;<sup>230</sup>
2. Financial guarantee;<sup>231</sup>
3. Weekly reporting, already existing prior to the reform.<sup>232</sup>

The latter, however, may not be appropriate for new arrivals who do not have a place of residence.

In practice, in the overwhelming majority of cases, alternatives to detention are not considered prior to imposing detention.<sup>233</sup> The situation has not changed in 2019.

The LAR, for its part, envisages bi-weekly reporting to the SAR as a measure to ensure “the timely examination of the application” or to ensure “the participation” of the asylum seeker.<sup>234</sup> The LAR also envisages a limitation of freedom of movement in certain areas in the territory of the state by a decision

<sup>229</sup> Article 45b(1) LAR.

<sup>230</sup> Article 44(5)(3) LARB.

<sup>231</sup> Article 44(5)(2) LARB.

<sup>232</sup> Article 44(5)(1) LARB.

<sup>233</sup> Bulgarian Helsinki Committee, *Detention Mapping report Bulgaria*, October 2016, available at: <http://bit.ly/2jluOxS>, 21.

<sup>234</sup> Article 45a LAR.

of the SAR's Chairperson, where asylum seekers can be obligated not to leave and reside in other administrative regions (district or municipality) than the prescribed one (see [Freedom of Movement](#)).

### 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

The LARB prohibits the detention of unaccompanied children in general and imposes a maximum period of 3 months for the detention of accompanied children who are detained with their parents.<sup>235</sup> An exemption had been introduced in the beginning of 2017 to exclude from the detention prohibition unaccompanied children upon condition that it was applied as a last resort and after best interests determination.<sup>236</sup> Never applied in practice and widely criticised, including by UNHCR and UNICEF, the provision was abolished at the end of 2017.<sup>237</sup>

For its part, the LAR provides for the possibility to detain accompanied children for asylum purposes as a last resort, in view of ensuring family unity or ensuring their protection and safety, for the shortest period of time.<sup>238</sup> The position of UNHCR is that the respective provisions do not expressly refer to the primacy of the best interests of the child when ordering detention. They also do not incorporate sufficient guarantees to ensure speedy judicial review of the initial decision to detain and a regular review thereafter. Although presently expanded with additional alternative arrangements,<sup>239</sup> the law still does not envisage specific alternatives to detention appropriate for children such as alternative reception / care arrangements for unaccompanied children and families with children.

In practice, both asylum-seeking and other migrant unaccompanied children continue to be detained in pre-removal detention centres. Unaccompanied children arrested by the Border Police upon entry or, if arrested during their attempt to exit Bulgaria irregularly, are assigned ("attached") to any of the adults present in the group with which the children travelled, which has been a steady practice ongoing for last couple of years. Thus, the arrested unaccompanied children are not served with a separate detention order, but instead described as an "accompanying child" in the detention order of the adult to whom they have been assigned. The same treatment is applied by the regular police services to those unaccompanied children who are captured inside the Bulgarian territory and considered to be irregular due to the lack of identity documents. All of them without exception are transferred to the pre-removal detention centres in **Busmantsi** or **Lyubimets**. In order to do this, identical to the approach of the Border Police, the regular police authorities assigned ("attached") the children to adults without collecting any evidence or statements for a family link or relation between them.

The so-called "attachment" is implemented on the basis of a legal definition on extended relatives' circle, who could be considered as "accompanying adults"; this definition is applicable solely in asylum procedures, however.<sup>240</sup> Therefore the application of this definition in immigration procedures in order to substantiate unaccompanied children's inclusion in the detention orders of adults other than their parents is identified as yet another infringement of the law, additional to the principal violation of the detention

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<sup>235</sup> Article 44(9) LARB.

<sup>236</sup> Article 44(13) *in fine* LARB.

<sup>237</sup> Law amending the LARB, State Gazette No 97, 5 December 2017.

<sup>238</sup> Article 45f(1) LAR.

<sup>239</sup> Article 44(5) LAR.

<sup>240</sup> Article 1(4) LAR.

prohibition.<sup>241</sup> National jurisprudence has proved controversial and inconsistent in this regard, however.<sup>242</sup> Accordingly, at the end of 2017 the Ombudsperson requested the Supreme Administrative Court to deliver mandatory interpretation of the law in this respect.<sup>243</sup> The case was finally administered in 2019 but still without any scheduled hearing.<sup>244</sup>

An amendment to the LARB Regulations entered into force on 10 July 2018 to introduce rules and procedures for immediate and direct referral of unaccompanied migrant children from the police to the child protection services in order to avoid their detention.<sup>245</sup> The reform resulted in almost immediate change in the national police practices on detention of unaccompanied minor children below 14 years of age. Since the end of July 2018, Border and Immigration Police refer unaccompanied children below 14 from mixed migratory groups directly to child care services without detention of any kind. Children are assisted by the police and child care services to apply for asylum, thus ensuring their free and direct access to asylum procedure. However, in the cases of undocumented children from 14 to 18 years, whose age cannot be evidently established by their appearance, the police continue to employ detention through “attachment” to unrelated adults or registration as adults. The child protection services have refused to credit their statements about their age and commenced implementation of age assessment based solely on X-ray wrist expertise prior to any referral to child care services. Therefore, in 2019, amendments of the primary and secondary immigration legislation were adopted creating additional safeguards for a legally binding referral mechanism.<sup>246</sup> New procedures allowing regularisation of rejected and migrant unaccompanied children were also introduced with the possibility to extend their ‘leave to remain’ (i.e. their residence permit) on humanitarian grounds beyond adulthood.<sup>247</sup> The amendments are thus expected to put an end to detention of unaccompanied children, but it remains to be seen how and whether these new provision will be applied in practice.

In 2019, 216 children were detained in pre-removal detention centres. Among them, the Bulgarian Helsinki Committee identified 135 unaccompanied children, including children detained as “attached” to an adult or wrongly recorded as adults.<sup>248</sup>

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |           |
|--|-----------|
| 1. What is the maximum detention period set in the law (incl. extensions): |           |
| ❖ Short-term detention   | 30 days   |
| ❖ Pre-removal detention  | 18 months |
| ❖ Asylum detention   | n/a       |
| 2. In practice, how long in average are asylum seekers detained?           |           |
| ❖ Short-term detention   | 12 days   |
| ❖ Asylum detention   | 109 days  |

##### 4.1. Duration of pre-removal detention and short-term detention

The maximum immigration detention period is 18 months, including extensions. Initial detention order is in principle issued for a period of 6 months. Following an amendment to the LARB in 2017, extensions

<sup>241</sup> Article 44(9) LARB.

<sup>242</sup> See e.g. Supreme Administrative Court, 7<sup>th</sup> Department, Decision No 12271, 14 November 2016; Decision No 2842, 8 March 2017; Decision No 10789, 4 September 2017; Decision No 12116, 11 October 2017.

<sup>243</sup> Ombudsperson, Request No 11-78, 8 December 2017, available in Bulgarian at: <http://bit.ly/2DSflva>.

<sup>244</sup> Supreme Administrative Court, General Assembly, Case No.1/2019

<sup>245</sup> Council of Ministers, Decision No 129 of 5 July 2018, available in Bulgarian at: <https://bit.ly/2DpJHHK>.

<sup>246</sup> Article 28a LARB, St.G. №34/2019, enforced on 24 October 2019.

<sup>247</sup> Article 63k and 63l Regulations for Implementation of the Law on Aliens in the Republic of Bulgaria (LARB Regulations), St.G. №23/2019, enforced on 26 November 2019.

<sup>248</sup> Bulgarian Helsinki Committee, *December 2019 UNICEF report*, 15 January 2020.

can be now ordered by the Immigration Police instead of the court after the expiry of the initial or consecutive detention order.<sup>249</sup> Each consecutive extension is also issued for a minimum of 6 months until the 18-month limit is reached.

Short-term detention can be ordered for a maximum of 30 days.<sup>250</sup>

The LAR safeguards the registration of asylum applications and the release of the asylum applicants from pre-removal detention centres within 6 working days, in line with the recast Asylum Procedures Directive.<sup>251</sup> As a result, in 2016 the overall detention duration of first-time asylum applicants prior to their registration decreased to 9 days on average, thereby observing the abovementioned registration deadline. In 2017 this practice was reverted as the average duration of detention rose to 19 days. After the Supreme Administrative Court acknowledged the illegality of pre-removal detention after the submission of an asylum application,<sup>252</sup> the average detention duration decreased back to 9 days in 2018 but increased again to 12 days in 2019.

Average period of pre-removal detention pending registration (days)					
Year	2015	2016	2017	2018	2019
Average detention period	10	9	19	9	12

Source: SAR, MOI, Bulgarian Helsinki Committee

Out of the 1,331 persons applying from pre-removal detention, 2 asylum seekers (0.15%) were detained for more than 6 months.

The average duration of detention of wrongly detained unaccompanied children rose to 12 days in 2019.

## 4.2. Duration of asylum detention

Detention during the status determination procedure in closed reception facilities is limited by the law to the shortest period possible.<sup>253</sup> However, in practice the SAR kept asylum seekers in closed centres until the decision on their asylum applications became final, which for some of the detained asylum seekers extended to 6-7 months, and nearly 11 months in 1 case. The regular review of necessity as per the law is so far applied formally,<sup>254</sup> resulting in detained asylum seekers being released only following the engagement of legal assistance and representation.<sup>255</sup>

The average asylum detention duration in 2019 decreased to 109 days compared to 196 days in 2018, but this remains far from the legal standard set in the law according to which detention should last for the “shortest period possible”.

<sup>249</sup> Article 46a(3) and (4) LARB, repealed by Law amending the LARB, State Gazette No 97, 5 December 2017.

<sup>250</sup> Article 44(13) LARB.

<sup>251</sup> Article 58(4) LAR.

<sup>252</sup> Supreme Administrative Court, Decision No 77, 4 January 2018, available in Bulgarian at: <http://bit.ly/2rTKmO4>. The Court refers to CJEU, Case C-537/11 *M.A.*

<sup>253</sup> Article 45e LAR.

<sup>254</sup> Article 45d (2) LAR.

<sup>255</sup> Bulgarian Helsinki Committee, *Monthly Situation Report: December 2017*, 10 January 2018.

## 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)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

Asylum seekers are never detained in prisons unless they have been convicted for committing a crime. Detention is implemented both in pre-removal immigration detention centres and, more recently, in “closed reception centres” where asylum seekers are detained for the purpose of the status determination procedure.

#### 1.1. Pre-removal detention centres

There are 2 detention centres for irregular migrants in the country, totalling a capacity of 700 places:

Pre-removal detention centres in Bulgaria			
Detention centre	Location	Capacity	Occupancy end 2019
Busmantsi	Sofia	400	87
Lyubimets	South-Eastern Bulgaria	300	32
<b>Total</b>		<b>700</b>	<b>119</b>

Source: Ministry of Interior, Migration Statistics, December 2019.

Although designed for the return of irregular migrants as pre-removal centres, these are also used for the detention of undocumented asylum seekers who have 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-hour interpretation services for all languages at national borders.

Initially designated for the pre-registration of asylum seekers,<sup>256</sup> **Elhovo** was thereupon used as an “allocation centre” to detain asylum seekers apprehended at the land borders outside the official border checkpoint until its closure in February 2017. Although initially temporarily closed for refurbishment in February 2017, it was later pronounced by the Ministry of Interior to be closed indefinitely, with an option to be reopened in case of increased influx.

As regards short-term detention, which entered into force on 6 June 2018, the LARB foresees separate detention facilities for the purpose of this form of detention.<sup>257</sup> However, short-term detention orders in 2019 have been implemented in the pre-removal detention centres.

#### 1.2. Asylum detention centres (“closed reception centres”)

The law foresees the asylum detention under the responsibility of the SAR (see [Grounds for Detention](#)). The only operational centre at the moment is **3<sup>rd</sup> Block** in Busmantsi, with 60 places.

<sup>256</sup> EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

<sup>257</sup> Article 44(13) LARB.

The **Pastrogor** transit centre, situated on the Bulgarian-Turkish border can also be used as a closed facility, if necessary. Presently, it operates as an open reception facility with a capacity of 320 places.

## 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 |

### 2.1. Overall living conditions

In previous years, the detention centres were frequently overcrowded due to the increase of the number of asylum applications and to the delayed release for registration of detained asylum seekers. In 2019, the capacity of pre-removal detention centres was not exceeded, while the overall number of persons in detention gradually reduced from 204 persons at the end of January 2019, to 119 at the end of the year.<sup>258</sup>

Overall conditions with respect to means to maintain personal hygiene as well as general level of cleanliness nevertheless remain unsatisfactory. Shower and toilets available are not sufficient to meet the needs of the detention population, especially when premises are overcrowded.<sup>259</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.

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.

Similar to **Busmantsi**, communal toilets in **Lyubimets** were reported to be locked and inaccessible at night. Toilets and showers for women and families with children, though freely accessible, have been found to be dilapidated, dirty and flooded. The collective showers for men, recently refurbished and located in the basement, were accessible in groups twice a day.

Worrying conditions are also reported in police stations where newly arrived asylum seekers may be held upon entry. The European Court of Human Rights (ECtHR) condemned Bulgaria of a violation of Article 3 ECHR due to poor living conditions and insufficient and delayed food provision to children detained in the police station of **Vidin**.<sup>260</sup>

Staff interpreters are not required by law, nor provided in practice. Verbal abuse, both by staff and other detainees, is reported often by the detainees. In 2019, as in previous years, detainees have complained

<sup>258</sup> Ministry of Interior, *Migration statistics*, 2019.

<sup>259</sup> CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports to Bulgaria*, CERD/C/BGR/CO/20-22, 31 May 2017, available at: <http://bit.ly/2wSzlpq>, para 21(e); Centre for Legal Aid – Voice in Bulgaria, *Who Gets Detained?*, September 2016, 25.

<sup>260</sup> ECtHR, *S.F. v. Bulgaria*, Application No 8138/16, Judgment of 7 December 2017, paras 84-93.



about the lack of tailored and translated information and uncertainty on their situation.<sup>261</sup> This has led to risks of re-traumatisation for persons with vulnerabilities.<sup>262</sup>

With regard to material conditions, the latest report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published in July 2019 stressed that some improvements were observed by the delegation at **Busmantsi** and **Lyubimets** centers since the CPT's previous visit in 2018, but this is mainly due to the fact that both establishments were operating well below their official capacities<sup>263</sup>. However, the CPT found that the accommodation continue to be dilapidated and that the large-capacity dormitories offer no privacy. It stated the following:

"Communal toilets for men are still run down and dirty in Lyubimets. In both detention centers, the lack of access to a toilet at night for most of the detainees forces them to use bottles or buckets, or to urinate out of the windows. The accommodation areas were inadequately heated (especially in Busmantsi) and, in both detention centers detained foreign nationals complained that were not being provided with clothing and shoes adapted to the season. Many complaints also related to the food, especially its quality, and about the prohibition for detainees to cook their own meals".

Moreover, the CPT did not find any improvement in the provision of healthcare to detained foreign nationals at the **Busmantsi** and **Lyubimets** detention centers, where the only positive changes were the 24/7 staff presence and the clean infirmary in Lyubimets (as opposed to the infirmary in Busmantsi). The medical equipment was found to be very scarce and often out of order, while the range of free-of-charge medication was also very limited, with expired medicine and restricted access to specialist care. The CPT was particularly concerned by the lack of access to psychiatric care, which is limited to emergencies. The CPT thus urged for measures to address these deficiencies.<sup>264</sup>

## 2.2. Vulnerable groups in detention

There are no mechanisms established to identify vulnerable persons in detention centres. According to the last research on the topic made by the Assistance Centre for Torture Survivors (ACET), mental health professionals in **Busmantsi** have observed that persons who are socially inhibited or depressed are not being identified by the police as persons in need of assistance insofar as they do not cause problems.<sup>265</sup> If identified, there are no provisions in the law for vulnerable persons' release on that account, unless before the court.

In its July 2019 report, the CPT found insufficient access to health care and communication problems with medical staff due to the language barrier. The report highlighted the lack of access to psychiatric care, which is limited to emergencies but which also results from the lack of interpretation and the lack of health insurance of the concerned persons.<sup>266</sup> The CPT underlined that communication problems between detained foreign nationals and psychologists severely limited the possibilities to provide any psychological assistance.<sup>267</sup>

Article 45e(3) LAR envisages that vulnerable groups shall be provided with appropriate assistance depending on their special situation. Separate wings are provided for families, single women and

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<sup>261</sup> CPT, 2019 *Bulgaria report*, July 2019, available at: <https://rm.coe.int/1680966286>; Centre for Legal Aid – Voice in Bulgaria, *Who Gets Detained?*, September 2016, 25.

<sup>262</sup> CPT, 2019 *Bulgaria report*, July 2019, available at: <https://rm.coe.int/1680966286>; Cordelia Foundation et al., *From Torture to Detention*, January 2016, 19.

<sup>263</sup> CPT, 2019 *Bulgaria report*, July 2019, available at: <https://rm.coe.int/1680966286>.

<sup>264</sup> 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 10 to 17 December 2018, Executive Summary, available at: <https://bit.ly/2uFmEXu>.

<sup>265</sup> Cordelia Foundation et al., *From Torture to Detention*, January 2016, 18.

<sup>266</sup> CPT, 2019 *Bulgaria report*, July 2018, Executive summary, available at: <https://rm.coe.int/1680966287>.

<sup>267</sup> Ibid. para 35

unaccompanied children, in line with the law.<sup>268</sup> Single men are separated from single women. Other vulnerable persons are detained together with all other detainees. The LAR provides for access to education and leisure activities for children in closed asylum facilities,<sup>269</sup> but there is no relevant practice yet as children have not been placed in closed reception centres in 2019.

The lack of mechanisms for identification and support of vulnerable asylum seekers was also indicated by the European Commission in its 8 November 2018 letter of formal notice.<sup>270</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. 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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

Lawyers as well as representatives of NGOs and UNHCR 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 requested by asylum seekers.<sup>271</sup> Some NGOs have signed official agreements with the Migration Directorate and do visit detention centres for monitoring and assistance once a week.<sup>272</sup> Media and politicians also have access to detention centres, which is authorised upon written request.

NGOs' and legal aid providers' right to access to asylum seekers is explicitly regulated and expanded to also include border-crossing points and transit zones.<sup>273</sup>

## 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? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

Detained asylum seekers are treated in the same manner as the rest of the detained population, hence they are informed orally by the detention staff of 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.

Detention is also not subject to a prompt judicial review of the initial decision to detain and to a regular review thereafter. The law no longer provides for automatic judicial review of detention orders, following

<sup>268</sup> Article 45f(4) LAR.

<sup>269</sup> Article 45f(2) LAR.

<sup>270</sup> European Commission, 'November infringements package: key decisions', MEMO/18/6247, 8 November 2018, available at: <https://bit.ly/2RETZfR>.

<sup>271</sup> This has been a systematic concern. See 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>272</sup> Bulgarian Helsinki Committee, Bulgarian Red Cross, Nadya Centre, Center for Legal Aid-Voice in Bulgaria, Foundation for Access to Rights, etc.

<sup>273</sup> Article 23(3) LAR.



the abolition of judicial review upon prolongation of detention.<sup>274</sup> This reform took place against a backdrop of lack of legal aid ensured to detainees to challenge their detention.

As a result, judicial review may only be triggered at the initiative of the applicant. 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>275</sup> The appeal does not suspend the execution of the detention order.<sup>276</sup> The submission of the appeal is additionally hindered by the fact that the detention orders are not interpreted. The short deadline for lodging an appeal has proved to be highly disproportionate and usually not complied with by detained individuals, including asylum seekers.<sup>277</sup>

## 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

Detained applicants have the right to legal aid.<sup>278</sup> However, legal aid has not been provided to detainees, including asylum seekers in detention centres, as of the end of 2019 due to National Legal Aid Bureau's budget constraints, despite a pilot project financed by AMIF which provided legal aid to vulnerable asylum seekers for the first time in Bulgaria (see [Regular Procedure: Legal Assistance](#)).

In its 2019 report, the CPT highlighted that legal assistance is left entirely to various NGOs whose representatives visit both detention centers and assist detained individuals *pro bono* in their immigration and asylum procedures, including for access to courts. In this context, the CPT reiterates its recommendation that the system of legal aid run by the National Legal Aid Bureau should be extended to detained foreign nationals in all phases of the detention procedure; whereas for destitute foreign nationals these services should be provided free of charge<sup>279</sup>

Whilst legal aid is provided for appeals under the state budget, access to the courts to lodge such an appeal turns heavily on the provision of legal assistance by NGO providers in the absence of legal aid outside court procedures. This impacts most negatively on asylum seekers who have been detained in closed centre where only the Bulgarian Helsinki Committee has granted access. Consequently, effective access to legal assistance during the procedure for these applicants is completely negated.

There is also a lack of state-funded legal assistance for children detained in closed facilities to challenge the detention order, despite the general child protection legislation which envisaging the right of all children to such an assistance.<sup>280</sup> As the LARB does not envisage the appointment of guardians to unaccompanied or separated children, and since according to Bulgarian law children can only undertake legal actions through or with the consent of their guardians, they cannot challenge their detention order unless provided tailored legal support to submit an appeal without it.

<sup>274</sup> Article 46a(3)-(4) LARB, repealed by Law amending the LARB, State Gazette No 97, 5 December 2017.

<sup>275</sup> Article 46 LARB.

<sup>276</sup> Article 46a LARB.

<sup>277</sup> Bulgarian Helsinki Committee, *Detention Mapping report Bulgaria*, October 2016, para 23.

<sup>278</sup> Article 22(9) Law on Legal Aid.

<sup>279</sup> CPT, *2019 Bulgaria report*, July 2019, para 41.

<sup>280</sup> Article 15(8) Law on Child Protection.

## E. Differential treatment of specific nationalities in detention

In 2019, discrimination against certain nationalities has persisted, but has taken another form. Asylum seekers who are subject to unlawful registration and determination procedures in pre-removal centers in violation of the law are no longer selected according to their nationality, but on the basis of their potential deportability – namely when they possess valid travel documents or where such documents can easily be obtained (see [Pre-removal detention upon arrival](#)).

Recognised **refugees** are explicitly entitled to equal treatment in rights to Bulgarian nationals with just a few exclusions, such as: participation in general and municipal elections, in national and regional referenda; participation in the establishment of political parties and membership of such parties; holding positions for which Bulgarian citizenship is required by law; serving in the army and, other restrictions explicitly provided for by law.<sup>281</sup> Individuals granted **subsidiary protection** ("humanitarian status") have the same rights as third-country nationals with permanent residence.<sup>282</sup>

### 2019 as the sixth "zero integration year"

Since 2013 and including in 2019, Bulgaria followed a "zero integration year". The first National Programme for the Integration of Refugees (NPIR) was adopted and applied until the end of 2013, but since then all beneficiaries of international protection have been left without any integration support. This resulted in extremely limited access or ability by these individuals to enjoy even the most basic social, labour and health rights, while their willingness to permanently settle in Bulgaria was reported to have decreased to a minimum.<sup>283</sup> In 2019, 86% of asylum applicants abandoned their status determination procedures in Bulgaria,<sup>284</sup> which were thus subsequently terminated shortly after the end of the legal 3-month time limit since the disappearance was duly established. In comparison, this percentage was 79% in 2018, 77% in 2017, 88% in 2016, 83% in 2015 and 46% in 2014.

The necessary integration legal framework, the Integration Decree, was finally adopted in 2016,<sup>285</sup> but it remained unused throughout 2016 and 2017, as none of the 265 local municipalities had applied for funding in order to launch an integration process with any of the individuals granted international protection in Bulgaria. On 31 March 2017, on the last day of its mandate, the caretaker Cabinet fulfilled the election promise of the newly elected Bulgarian President and repealed the Decree without any reasonable justification.<sup>286</sup> A new Decree was adopted on 19 July 2017, which in its essence repeated the provisions of its predecessor.<sup>287</sup> Since its adoption, only 13 status holders benefitted from integration support, however all of them were relocated with integration funding provided under the EU relocation scheme, not by the general national integration mechanism. The national "zero integration" situation has lasted for 6 consecutive years.

In his report issued in April 2018, the Council of Europe Special Representative on migration and refugees also underlined that, while the decentralisation of integration responsibilities from the government to municipalities would in principle be a sensible step forward, the fact that the discharge of such responsibilities was not mandatory but left to the discretion of municipalities raised questions about the effectiveness of integration measures in Bulgaria. This was illustrated by fact that no municipality has

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<sup>281</sup> Article 32(1) LAR.

<sup>282</sup> Article 32(2) LAR.

<sup>283</sup> CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports to Bulgaria*, CERD/C/BGR/CO/20-22, 31 May 2017, available at: <http://bit.ly/2wSzlpq>, para 21(f); Bulgarian Council on Refugees and Migrants, *Annual Monitoring Report on Integration of Beneficiaries of international protection in Bulgaria*, Sofia, December 2014.

<sup>284</sup> Out of the 1,858 applicants, to whom in 817 cases status determination stopped and terminated in 1,041 cases.

<sup>285</sup> Ordinance No 208 of 12 August 2016 on rules and conditions to conclude, implement and cease integration agreements with foreigners granted asylum or international protection (hereafter "Integration Decree"), State Gazette No 65/19.08.2016, available in Bulgarian at: <http://bit.ly/2jJwnEi>.

<sup>286</sup> Liberties.eu, 'Bulgarian caretaker government repealed regulation on refugee integration', 13 April 2017, available at: <http://bit.ly/2BLqhsS>.

<sup>287</sup> Ordinance No 144 of 19 July 2017 State Gazette No 60/25.08.2017, available in Bulgarian at: <http://bit.ly/2Ec2uHL>.

volunteered to conclude Integration Agreements, although funds would be allocated to them for every refugee participating in such agreements.<sup>288</sup>

Courts and human rights monitoring bodies have taken into account the treatment of beneficiaries of international protection in Bulgaria when assessing the legality of readmissions. In a case of 15 December 2016, the United Nations Human Rights Committee ruled against the return of a Syrian family from Denmark to Bulgaria, on the ground that their residence permit would not protect them against obstacles to accessing healthcare, or risks of destitution and hardship.<sup>289</sup> Similar arguments are found in the Human Rights Committee interim measures granted on 1 February 2017 to prevent the transfer of an Afghan family with three young children from Austria to Bulgaria.<sup>290</sup> Notwithstanding the family was returned to Bulgaria by the Austrian authorities shortly after it. National courts in some European countries have also halted transfers of beneficiaries of protection to Bulgaria on account of substandard conditions.<sup>291</sup>

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 5 years
  - ❖ Subsidiary protection 3 years

Both refugee and subsidiary protection (“humanitarian”) statuses granted are indefinitely and are not limited in duration, but differ in the duration of validity of identity documents issued to holders. The duration of validity is 5 years for **refugee status** holders,<sup>292</sup> and 3 years for **subsidiary protection** holders.<sup>293</sup> The different validity of the documents derives from the different scope of rights attributed to each of them.

The relevant identity documents are issued by the police on the basis of decisions of the SAR to grant either of the international protection statuses. However, difficulties are encountered by beneficiaries in obtaining identity documents in practice, due to the pre-condition of **Civil Registration** prior the submission of an application for identity documents; the latter preconditioned by a chosen place of domicile.

During the period 1 January 2014 to 31 December 2019, the Ministry of Interior issued 8,710 refugee identity cards and 6,427 humanitarian identity cards.

### 2. Civil registration

No identity documents can be issued unless the individual is registered in the civil national database (ЕЦПАОН) with the exception of certain categories, including asylum seekers.<sup>294</sup> Identification on the basis of a valid document is a pre-condition for exercising almost any personal right envisaged, especially relating to housing, social support or assistance, health insurance and care, access to employment etc.

<sup>288</sup> Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Bulgaria*, SG/Inf(2018)18, 19 April 2018, available at: <https://bit.ly/2HtHSgv>, 17.

<sup>289</sup> Human Rights Committee, *R.A.A. v. Denmark*, Communication No 2608/2015, 15 December 2016.

<sup>290</sup> Human Rights Committee, Communication No 2942/2017.

<sup>291</sup> See e.g. German High Administrative Court of Lüneburg, Decision 10 LB 82/17, 29 January 2018.

<sup>292</sup> Article 59(1)(2) Law on Bulgarian Identity Documents.

<sup>293</sup> Article 59(1)(3) Law on Bulgarian Identity Documents.

<sup>294</sup> Article 29(1)(7) LAR.

The registration in ЕЦГPAOH is mandatory to the beneficiaries of international protection.<sup>295</sup> Based on it they are given a unique identification number (единен граждански номер, ЕГН). Only after this registration can beneficiaries apply to be issued identity documents.

In order to be registered in the national database, any individual has to have *inter alia* a domicile.<sup>296</sup> However, newly recognised beneficiaries who have lived in reception centres are no longer permitted by the SAR to state the address of the respective reception centre as domicile. Therefore since the end of 2016 beneficiaries cannot provide a valid address or domicile, as they cannot rent a place of residence without a valid identity document. This legal ‘catch 22’ has led to continuous malpractice, including false renting and address registrations for the sake of enabling beneficiaries to obtain identity documents insofar as the valid identity document is a pre-condition to exercising their rights.

## 2.1. Child birth registration

The same rules as for nationals apply to the civil registration of birth of a descendent of an asylum seeker or beneficiary of international protection. Residency requirements do not apply with respect to birth registration. The registration of a new-born child is made within 7 days following the day of the delivery.<sup>297</sup>

The registration is made on the basis of a written notification of birth issued by the maternity hospital or clinic where the mother delivered the baby. The father declares the birth at the local municipality administration either in person or by a person authorised by him. In cases when the father is deceased, unknown or unable to appear in person for various other reasons, the statement can be made either by somebody present at the time of birth or by the mother. The required documents for birth registration and issue of the child’s birth certificate are proof of identity of both parents and the notification of birth issued by the maternity hospital.

The registration of birth is free of charge.

## 2.2. Marriage registration

Marriages in Bulgaria are subject to a residency requirement.<sup>298</sup> Therefore at least one of the spouses must be either a Bulgarian citizen or a long-term or temporary resident of Bulgaria.

Foreigners need to prove that they do not have another marriage registered in their country of origin. Only beneficiaries of international protection are exempted from this requirement, which is substituted by a civil status certificate issued by the SAR based on prior notarised statement by the beneficiary. This means that marriages cannot be registered by asylum seekers due to the lack of identity documents necessary to make notarised statements.<sup>299</sup>

According to general legislation relating to family arrangements, only civil marriages are legally valid in Bulgaria.<sup>300</sup> The religious ceremony is optional and can be performed only after a civil ceremony has taken place. The religious ceremony itself has no legal effect.

The legal age for getting married in Bulgaria is 18 years. People under that age, but who have already turned 16, may get married with the permission of the Chair of the Regional Court. An application for a

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<sup>295</sup> Articles 100-115 Law on Civil Registration.

<sup>296</sup> Article 92(2) Law on Civil Registration.

<sup>297</sup> Article 42(1) Law on Civil Registration.

<sup>298</sup> Article 76(2) Code on Private International Law.

<sup>299</sup> Article 40(3) LAR, since the asylum registration card does not certify the identity of the applicant. This follows Article 6(3) recast Reception Conditions Directive.

<sup>300</sup> Article 4 Family Code.

permit to marry must be submitted at the Regional Court where the couple resides; if they do not both reside in the same region, they may choose which court to apply to.

### 3. Long-term residence

Long-term residence is not applicable for refugees and subsidiary protection holders at all, as they get their identity cards issued automatically by the police on the basis of the SAR's decision granting status. Therefore, refugees and subsidiary protection holders are not issued additional residence permits at all. Recognised **refugees** are *ex lege* considered equal in rights with Bulgarian nationals,<sup>301</sup> subject to a few exceptions,<sup>302</sup> whereas individuals granted **subsidiary protection** enjoy the same rights as the permanent residents.

Refugees and subsidiary protection holders can apply and receive long-term residence in 5 years after their recognition.<sup>303</sup> However, in practice, this opportunity is useful only for **subsidiary protection** holders to whom the long-term residence card guarantees visa-free travel within the EU.

### 4. Naturalisation

#### Indicators: Naturalisation

- |   |         |
|---|---------|
| 1. What is the waiting period for obtaining citizenship?  |         |
| ❖ Refugee status  | 3 years |
| ❖ Subsidiary protection                                   | 5 years |
| 2. Number of citizenship grants to beneficiaries in 2019: | 2       |

**Refugees** may obtain Bulgarian citizenship if they are of over 18 years old and have been recognised for 3 or more years. **Subsidiary protection** ("humanitarian status") holders obtain Bulgarian citizenship if over 18 and if they have been granted protection for 5 or more years.

Besides the aforementioned and regardless of the status or residence, everybody has to have a clear criminal record in Bulgaria, an income or occupation which allows to self-subsistence and to have knowledge of Bulgarian language – speaking, reading and writing in Bulgarian language, proven either by a local school or university diploma or by passing an exam tailored for naturalisation applicants. Applicants are interviewed in Bulgarian language on their motive to obtain citizenship.

The application is examined within 18 months.<sup>304</sup> Citizenship is granted by the president, who issues a decree following a proposal in this respect of the Minister of Justice, the latter based on a positive opinion by the Citizenship Committee at the Ministry of Justice.

From 2014 to 2019, Bulgaria granted citizenship to 223 beneficiaries of international protection, namely 56 refugee status holders and 167 subsidiary protection holders.<sup>305</sup>

<sup>301</sup> Article 32 LAR.

<sup>302</sup> To vote and be elected in local and/or general elections, to serve in the military or as a government official, if citizenship is required to occupy the position of the latter, as well as other exceptions if such have been explicitly promulgated.

<sup>303</sup> Article 24r(4) LARB.

<sup>304</sup> Article 35(1)(1) Law on Bulgarian Citizenship.

<sup>305</sup> Ministry of Justice, Exh. N95-00-116 from 15 January 2020.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

According to Article 15(1) LAR, international protection may be ceased if the protection holder:

- (a) Can no longer refuse to avail him or herself of the protection of his or her country of origin, as the circumstances that had given rise to fears of persecution have ceased to exist and the transformation in said circumstances is substantial enough and of a non-temporary nature;
- (b) Voluntarily avails him or herself of the protection of his or her country of origin;
- (c) Voluntarily re-acquires citizenship after having lost it, or acquires new citizenship in another country;
- (d) Acquires Bulgarian citizenship;
- (e) Voluntarily settles in the country where he or she was previously persecuted;
- (f) Has been granted refugee status by the President; or
- (g) Explicitly declares that he or she no longer wishes to enjoy the international protection granted in Bulgaria.

The interviewer makes the proposal for the cessation of the international protection in case relevant data has been gathered to indicate the legal grounds for it. Both procedures ought to be initiated by a decision of the SAR's Chairperson. The protection holder is to be notified by a letter with recorded delivery that such a procedure has been initiated, the reasons thereof and the date and place for an interview in which he or she will have the opportunity to raise any objections against the cessation of the protection status. As of the date of notification, the SAR has 3 months to issue a decision. Such decision can also be taken in the absence of opinion or objections by the protection status holder if they have not been made on his own failure. When the SAR has not established the grounds for cessation, the initiated procedure must be discontinued.

The cessation can be appealed within 14 days after being notified to the individual before the respective Regional Administrative Court. The appeal can be heard at two court instances where the decision of the second instance, the Supreme Administrative Court, is final. Legal aid can be appointed by the court on a request of the appellant (see section [Regular Procedure: Legal Assistance](#)).

Although there is no systematic review of protection status in practice, cessation procedures are initiated by the SAR when the MOI provides information indicating that status holders have either returned to their country of origin, obtained residence or citizenship in a third country, or have not renewed their Bulgarian identification documents for a period exceeding 3 years. This broadened interpretation of the recast Qualification Directive introduces *de facto* an additional cessation ground in violation of national and EU legislation. The undue cessation of protection status affected 3,378 status holders in 2018 and 2019; i.e. 770 persons in 2018 and 2,608 persons in 2019 respectively. More precisely in 2019, the concerned individuals were from Syria (1,981 individuals), Iraq (177), stateless (267), Afghanistan (81), Iran (26), Somalia (34), Sudan (8), Turkey (6), Tunisia (3), Lebanon (3), Ethiopia (2), Eritrea (1), Egypt (2), Congo (2), Cuba (2), Mali (2), Jordan (2), Algeria (1), Bangladesh (1), Morocco (1), Rwanda (1), Russia (1), Ukraine (1) and Sri Lanka (1).<sup>306</sup>

<sup>306</sup> Information provided by SAR, 15 January 2020.



## 6. Withdrawal of protection status

Refugee status ought to be withdrawn where:<sup>307</sup>

- (a) There are serious grounds to assume to have committed an act defined as a war crime or a crime against peace and humanity under the national legislation and under the international treaties;
- (b) There are serious grounds to assume that he or she has committed a serious non-political crime outside the territory of Bulgaria;
- (c) There are serious grounds to assume that he or she commits or incites towards acts contrary to the goals and principles of the United Nations;
- (d) There refugee benefits from the protection or assistance provided by bodies or organisations of the United Nations other than the United Nations High Commissioner for Refugees;
- (e) The competent authorities of his or her state of permanent residence have recognized the rights and obligations resulting from the citizenship in that country;
- (f) There is serious proof for regarding him or her as a danger to national security, or, having been convicted by an enforceable sentence of a serious crime, as a danger to the society.

Refugee status shall also be ceased if the refugee used a false identity or produced a non-authentic, forged document or a document with false contents, while continuing to insist on their authenticity, or, intentionally gave, in an oral or written form, false information or withheld essential information concerning his or her case.

Subsidiary protection ("humanitarian status") ought to be withdrawn if:

- (a) The same grounds applicable for the withdrawal of a refugee status are met;
- (b) A protection holder for whom there are serious reasons to assume that he or she has committed a serious crime;
- (c) The holder committed a crime outside the territory of Bulgaria for which the national law provides for a criminal sanction such as deprivation of liberty;
- (d) The holder left his/her country of origin solely in order to avoid criminal prosecution, unless the said prosecution endangers his or her life or is inhuman or degrading;
- (e) There are serious reasons to assume that he or she constitutes a serious danger to the host society or to the national security.

The procedure for withdrawing status in the law is the same as for [Cessation](#) of status. In 2019 a total of 9 withdrawals were made. The affected individuals were from Syria, Iraq, and Stateless.<sup>308</sup>

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☒ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  
☐ Yes ☒ No

<sup>307</sup> Article 12(1) LAR.

<sup>308</sup> Information provided by SAR, 15 January 2019.

The law does not request any waiting period before a beneficiary can apply for a family reunification, nor sets a maximum time limit for submitting a family reunification application.<sup>309</sup> Both recognised **refugees** and **subsidiary protection** holders are entitled to ask to be reunited with their families in Bulgaria without any distinction in the scope of their rights or procedures applicable. The family reunification permit is issued by the SAR.

### 1.1. Eligible family members

Under the law, family reunification can be granted to the members of the extended family circle, namely:

- Spouses;
- Children under the age of 18;
- Cohabitants with whom the status holder has an evidenced stable long-term relationship and their unmarried underage children;
- Unmarried children who have come of age, and who are unable to provide for themselves due to grave health conditions;
- Parents of either one of the spouses who are unable to take care of themselves due to old age or a serious health condition, and who have to share the household of their children; and
- Parents or another adult member of the family who is responsible, by law or custom, for the underage unmarried status holder who has been granted international protection in Bulgaria.

Unaccompanied children who have been granted international protection also have the right to reunite with their parents, but also with another adult member of their family or with a person who is in charge of him/her by law or custom when the parents are deceased or missing.<sup>310</sup>

Family reunification can be refused on the basis of an exclusion clause or with respect to a spouse in cases of polygamy when the status holder already has a spouse in Bulgaria.<sup>311</sup>

If the status holder is unable to provide official documents or papers certifying marriage or kinship, the latter can be established by a declaration on his behalf.<sup>312</sup>

### 1.2. Issuance of documents for family reunification

The family members issued a family reunification permit can obtain visas by the diplomatic or consular representations. The SAR has an obligation to facilitate the reunification of separated families by assisting the issuance of travel documents, visas as well as for their admission into the territory of the country.<sup>313</sup> However, in practice the Bulgarian consular departments have stopped issuing travel documents to minor children who have not been issued national documents after their birth, under the pretext of avoiding eventual child smuggling or trafficking.

In 2019, a total of 42 family reunification applications were submitted to the SAR, out of which 32 were approved and 10 rejected.

## 2. Status and rights of family members

The family members are granted the same status as their sponsors. The procedure is almost automatic and it includes registration and in some cases, an interview to cross-establish the family link, if documents to prove it are unavailable, expired or not original.

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<sup>309</sup> Article 34(1) LAR.

<sup>310</sup> Article 34(4) LAR.

<sup>311</sup> Article 34(3) LAR.

<sup>312</sup> Article 34(5) LAR.

<sup>313</sup> Article 34(7)-(8) LAR.

## C. Movement and mobility

### 1. Freedom of movement

There are no limitations on the freedom of movement of the beneficiaries of international protection whatsoever. Also, there is no difference between the rights of refugees and subsidiary protection holders in this respect.

Beneficiaries are not dispersed according to a distribution scheme. If applied, the integration scheme foreseen under the 2017 Integration Decree would disperse those who opt to be enrolled according to the area of the municipality which provides the integration support and which was chosen by the beneficiary. The 2017 Integration Decree, however, has not been put into operation so far. Since its adoption, only 13 status holders benefitted from integration support, but within the EU relocation scheme, not under the general national integration mechanism.

### 2. Travel documents

Based on the two types of international protection in Bulgaria, refugee status and subsidiary protection (“humanitarian status”), the travel documents issued are also two types: (a) travel document for refugees and (b) travel document of foreigners granted humanitarian status.<sup>314</sup>

The validity of the **refugee** travel document is up to 5 years, but it cannot have a different validity from the national refugee identity card, which can be valid for up to 5 years. The travel document of individuals granted **humanitarian status** is up to 3 years and also mirrors the validity of the national identity card.

National law does not apply any geographical limitations or areas of permitted travel. However, travel to the country of origin may be considered as a ground for **Cessation** of the status granted.

Bulgaria also issues two other types of travel documents related to asylum and family reunification. Individuals granted asylum by the President of the Republic are issued travel documents with validity up to 5 years. Family members of refugee or humanitarian status holders granted a family reunification permit who do not have a valid national passport or other replacing documents can be issued a temporary travel document to enter Bulgaria in order to join the status holder (see **Family Reunification: Criteria and Conditions**). The law does not envisage any specific duration or validity of these travel documents and in practice their duration is decided *ad hoc* according to the individual circumstances of each case.

All identity documents in Bulgaria are issued by the Ministry of Interior, Bulgarian Identity Documents Directorate. The usual time limit for issuance is 30 calendar days, but the beneficiary can pay for a speedy delivery within 10 calendar days.

During the period 1 January 2014 to 31 December 2019, the Ministry of Interior issued 11,972 refugee travel documents and 8,021 travel documents for subsidiary protection holders.

## D. Housing

### Indicators: Housing

- |  |          |
|--|----------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | 6 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2019 | 461      |

<sup>314</sup> Article 59(1)(5) and (7) Law on Bulgarian Identity Documents.

Under the law, status holders may be provided with financial support for housing for a period of up to 6 months as from the date of entry into force of the decision for granting international protection under the terms and procedure established by the chairperson of the SAR in coordination with the Minister of Finance.<sup>315</sup> In practice due to lack of any integration support (see [General Remark](#) on Integration) the beneficiaries of international protection are allowed to remain in the reception centres up to 6 months, unless in situations of mass influx or increased new arrivals. At the end of 2019, the number of beneficiaries staying in reception centres was 461.

Beneficiaries face acute difficulties in securing accommodation due to the legal ‘catch 22’ surrounding [Civil Registration](#). Holding valid identification documents is necessary in order to enter into a rental contract, yet identification documents cannot be issued if the person does not state a domicile. The situation has been exacerbated since the SAR has prohibited beneficiaries from stating the address of the reception centre where they resided during the asylum procedure as domicile for that purpose. It led to corruption practices of fictitious rental contacts and domiciles stated by the beneficiaries of international protection in order to be able to obtain their status holders’ identification documents.

## E. Employment and education

### 1. Access to the labour market

Access to the labour market is automatic and unconditional. There is no difference between refugees and subsidiary protection beneficiaries in this respect. No labour market test is applied and access is not limited to certain sectors. Beneficiaries of international protection face the usual obstacles related to lack of language knowledge and related lack of adequate state support for vocational training, if necessary or offered.

Professional qualifications obtained in the country of origin are not recognised in general. The law does not provide for a solution with respect to refugees and subsidiary protection beneficiaries except the general rules and conditions for legalization of diplomas. On its own, the latter constitutes a complicated procedure which in most of the cases requires re-taking of exams and educational levels.

In 2019 just 8 beneficiaries of international protection<sup>316</sup> engaged in work employment.

### 2. Access to education

The access to education for refugees or beneficiaries of subsidiary status is the same as for asylum seekers (see [Reception Conditions: Access to Education](#)).

## F. Social welfare

Beneficiaries of international protection have access to all types of social assistance envisaged by the law.<sup>317</sup> The law foresees the same conditions for nationals, recognised refugees or subsidiary protection holders.

In practice, however, some types of the social assistance cannot be enjoyed by beneficiaries of international protection without additional special arrangements (e.g. interpretation, social mediation), which are not envisaged or secured to them by law or institutionally.

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<sup>315</sup> Article 31(3) LAR.

<sup>316</sup> National Employment Agency, Exh.№ РД-08-3432 from 16 December 2019.

<sup>317</sup> Article 2(1) Law on Social Assistance.

The Agency for Social Assistance (Агенция за социално подпомагане, ASA) of the Ministry of Labour and Social Policy is the authority responsible for the provision of all types of social assistance available nationally.<sup>318</sup> The ASA has territorial units in every district and municipality in Bulgaria.

The provision of social welfare is not tied to a requirement to reside in a specific place or region. However, social assistance can be requested only from the ASA territorial unit where the beneficiary has his or her registered residence and formal address registration.

In practice, the residence requirement creates great obstacle for beneficiaries who had their domicile registered in the location of the reception centre where they were accommodated during the status determination in order to speed up issue of identity documents, until this was no longer allowed by the SAR (see [Civil Registration](#)). If beneficiaries opt to move and settle in another location, they must not only re-register their new permanent domicile – and on that basis re-issue their identity documents – but they still will not be able to immediately access social assistance services or available support, as many are also conditioned on residence in the respective municipality for certain period of time.

In addition, the overwhelming red tape and other formalities related to the submission of social assistance applications are difficult to overcome even for nationals and almost impossible for beneficiaries of international protection, unless supported by tailored mediation or assistance. Such kind of assistance, however, is provided entirely by NGOs of grassroots support groups and is therefore not always available.

## G. Health care

With respect to health care, the same rules that apply for asylum seekers are also applicable for beneficiaries of international protection (see [Reception Conditions: Health Care](#)). In general, from the first day after recognition, health insurance paid until then by the SAR ceases with respect to beneficiaries of international protection and they have to cover on their own the monthly health insurance payment. This minimum fee is 44.80 BGN / 22.90 € for unemployed persons who do not receive indemnities.<sup>319</sup>

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<sup>318</sup> Article 5 Law on Social Assistance.

<sup>319</sup> Article 40(5)(1) Law on Health Insurance. 8% deducted from ½ of the minimum wage.

## ANNEX I - Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive			Article 8 of the recast Reception Conditions Directive remains the only transposed provision at national level.
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation			The national law refers directly to the provisions of the Dublin III Regulation.

On 8 November 2018 the European Commission sent a letter of formal notice to the Bulgarian government concerning the incorrect implementation of EU asylum legislation.<sup>320</sup> The Commission has found that shortcomings in the Bulgarian asylum system and related support services are in breach with provisions of the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Charter of Fundamental Rights. Concerns relate in particular to: the accommodation and legal representation of unaccompanied children; the correct identification and support of vulnerable asylum seekers; provision of adequate legal assistance; and the detention of asylum seekers as well as safeguards within the detention procedure. The Commission indicated that if Bulgaria would not act within the next two months, the Commission would proceed with sending a reasoned opinion on this matter. In January 2019 the EC delegation made a follow-up visit to Bulgaria to inquire the post-notification developments, but further information on this was not made publicly available.

<sup>320</sup> European Commission, 'November infringements package: key decisions', MEMO/18/6247, 8 November 2018, available at: <https://bit.ly/2RETZfR>.