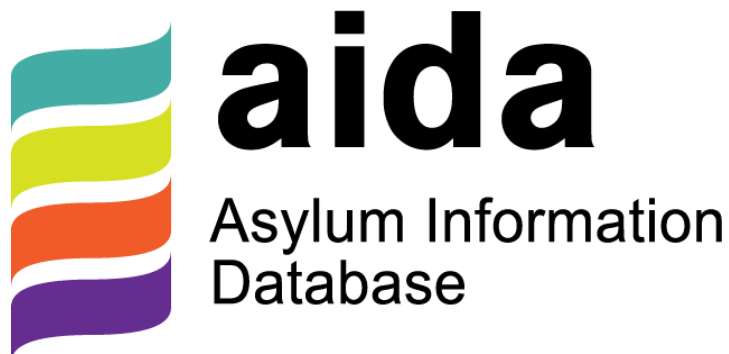




Asylum Information Database

National Country Report

Bulgaria



ACKNOWLEDGMENTS

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

The information is up-to-date as of 25 April 2013.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Statistics

Table 1: Applications and granting of protection status at first instance in 2012¹

	Total applicants in 2012	Refugee status	Humanitarian Protection	Rejections (in-merit and admissibility)	Otherwise closed / discontd	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	D	E	F	$B/(B+C+D+E)$ %	$C/(B+C+D+E)$ %	$D/(B+C+D+E)$ %	$E/(B+C+D+E)$ %
Total numbers	1387	18	159	445	253	3%	0%	26%	72%
Breakdown by countries of origin of the total numbers									
Top 10									
Syria	449	0	57	27	52	0%	0%	68%	32%
Iraq	323	4	67	174	70	2%	0%	27%	71%
Stateless	157	6	13	44	22	10%	0%	21%	70%
Afghanistan	109	6	9	31	25	13%	0%	20%	67%
Algeria	73	0	0	6	12	0%	0%	0%	100%
Iran	37	2	2	34	8	5%	0%	5%	89%
Morocco	34	0	0	6	14	0%	0%	0%	100%
Pakistan	27	0	2	23	5	0%	0%	8%	92%
Rwanda	14	0	0	0	0	-	-	-!	-
Russia	9	0	0	4	3	0%	0%	0%	100%
Somalia	2	0	7	16	2	0%	0%	30%	70%
Others²									
Russia	160	50	0	80	10	38%	0%	0%	62%
Somalia	680	360	15	160	25	65%	3%	3%	29%

Source: State Agency for Refugees

¹ All statistics are taken from the State Agency for Refugees, *2012 Annual Statistical Overview*, February 2013.

² Other main countries of origin of asylum seekers in the EU.

Table 2: Gender/age breakdown of the total numbers of applicants in 2012

	Number	Percentage
Total number of applicants	1387	
Men	942	68
Women	176	12,6
Unaccompanied children	64	4,6

Source: State Agency for Refugees

Table 3: Comparison between first instance and appeal decision rates in 2012

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	622		-	
Positive decisions				
<i>Total</i>	177	28,5%	-	
<i>Refugee Status</i>	18	3%		
<i>Subsidiary protection</i>	-	-	-	-
<i>Hum/comp protection</i>	159	25,5%	-	-
Negative decision	445	71,5%	362	58,1%

Source: State Agency for Refugees

Table 4: Applications processed under an accelerated procedure in 2012

	Number	Percentage
Total number of applicants	1.387	
Number of applications treated under an accelerated procedure at first instance	47	3,4%%

Source: State Agency for Refugees

Table 5: Subsequent applications submitted in 2012³

	Number of subsequent applications submitted
Total number	809
Top 5 countries of origin	
Iraq	33
Stateless	15
Syria	15
Armenia	16
Afghanistan	13

Source: Eurostat

³ This refers only to those which have been accepted as constituting a fresh claim. This is an estimated 10% of the total number of those who make further submissions.

Overview of the legal framework

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

Title in English	Original title	Abbreviation	Weblink
Law on Asylum and Refugees	Закон за убежището и бежанците	LAR	http://www.aref.government.bg/?cat=25
Law on Aliens in Republic of Bulgaria	Закон за чужденците в Република България	LARB	http://www.mvr.bg/NR/rdonlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPN RBGESChTS_EN.pdf

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

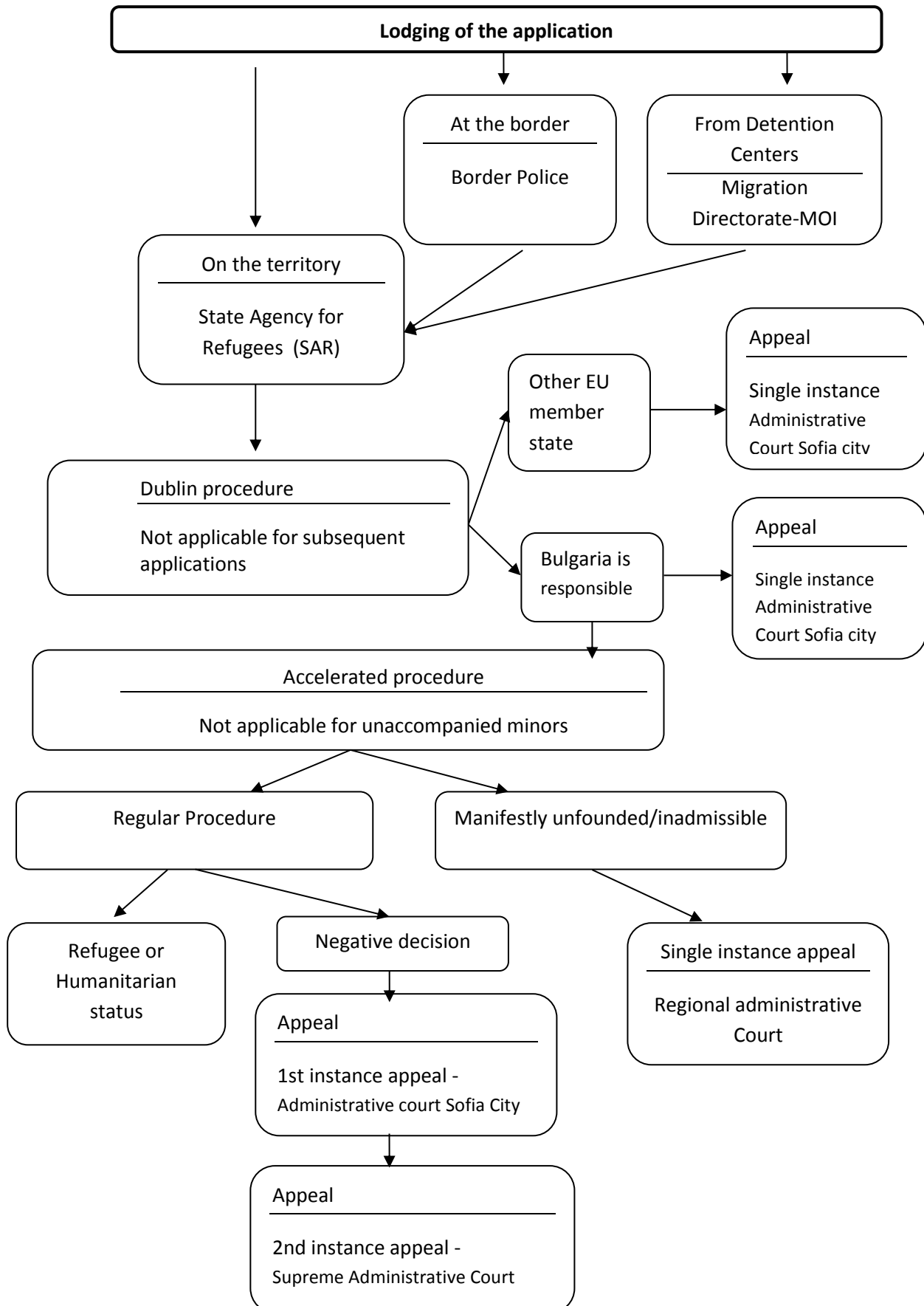
Title in English	Original title	Abbreviation	Weblink
Ordinance №332 from 28.12.2008 for the responsibilities and coordination among the state agencies, implementing Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, Council Regulation No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000	Наредба приета с ПМС №332 от 28.12.2008 за отговорността и координацията на държавните органи, осъществяващи действия по прилагането на Регламент (ЕО) № 343/2003 на Съвета от 18 февруари 2003 г. за установяване на критерии и механизми за определяне на държава членка, компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 1560/2003 на Комисията от 2 септември 2003г. за определяне условията за прилагане на Регламент (ЕО) № 343/2003 на Съвета за установяване на критерии и механизми за определяне на държавата членка, която е компетентна за разглеждането на молба за убежище, която е подадена в една от държавите членки от гражданин на трета страна, Регламент (ЕО) № 2725/2000 на Съвета от 11 декември 2000г. за създаване на система "ЕВРОДАК" за	ORD332/08	http://lex.bg/laws/ldoc/2135576190

	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 from 29 January 2004 on the rules for administrative detention of aliens and the functioning of the premises for aliens' temporary accommodation	Наредба № I-13 от 29 януари 2004 за реда за временно настаняване на чужденци, за организацията и дейността на специалните домове за временно настаняване на чужденци	ORD1-13/04	http://law.dir.bg/reference.php?f=ni13vr04

Asylum Procedure

A. General

1. Organigram



2. Types of procedures

Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes ☒ no ☐
- border procedure: yes ☐ no ☒
- admissibility procedure: yes ☒ no ☐
- accelerated procedure: yes ☒ no ☐
- Dublin Procedure yes ☒ no ☐
- others: none

3. List of the authorities intervening in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (BG)
Asylum application lodging	State Agency for Refugees (SAR) & any state authority	Държавна агенция за бежанците (ДАБ) и друг държавен орган
Registration of asylum seeker	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Dublin Procedure	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Accelerated procedure (admissibility, manifestly unfounded applications, subsequent applications)	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
Regular procedure (status determination on the substance)	State Agency for Refugees (SAR)	Държавна агенция за бежанците (ДАБ)
- Dublin determination	- Administrative court Sofia	- Админ.съд София-град
- negative decisions in the accelerated procedure;	- Administrative court as per the residence of asylum seeker	- административен съд по местоживееене
- refusal of recognition/protection (on two instances): > first appeal instance > cassation instance	- Administrative court Sofia - Supreme administrative court	-Админ.съд София-град -Върховен административен съд
- refusal of accommodation	- Administrative court as per the residence of asylum seeker	- административен съд по местоживееене
- refusal of family reunification (at two instances): > first appeal instance > cassation instance	- Administrative Court Sofia - Supreme administrative court	-Админ.съд София-град -Върховен административен съд

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

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	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	133 (25)	Council of Ministers	Yes

5. Short overview of the asylum procedure

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

Asylum applications in Bulgaria are examined in 3 stages: the Dublin procedure (whether the asylum application will be examined by Bulgaria or another EU member state), an accelerated procedure (combined examination on both admissibility and manifestly unfounded grounds) and a regular procedure (status determination on the merits of the application). If the asylum application is rejected at a former phase, the latter is inapplicable unless the rejection is revoked by a court. The decision-maker, the SAR, is a single central administrative authority, which has the rank of a ministry, but whose budget is assigned through the Ministry of Interior. SAR is competent to decide on all individual asylum applications and to grant/reject refugee or subsidiary protection (humanitarian) status. In case of a mass influx where individual asylum applications cannot be processed, a temporary protection status is granted by the government by a collective decision.

The Dublin procedure is not applicable to subsequent asylum applications. If the asylum application of an applicant returned to Bulgaria was already decided on its merits by a final negative decision, the applicant is re-admitted to the country, but then treated as an irregular migrant. Criteria, rules and deadlines of the Dublin Regulation are applied directly without transposition into national legislation.

The first instance procedure starts mandatorily with an accelerated procedure. However, the latter is not applicable to unaccompanied children. Notwithstanding its name, the accelerated procedure combines the examination of both admissibility and manifestly unfounded grounds. The examination can result in finding the asylum application inadmissible, if the applicant is granted protection or permanent residence permit in another EU Member state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can be found manifestly unfounded, if the applicant did not state any grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. The decision within an accelerated procedure should be issued in 3 days from its registration, otherwise the application is automatically transferred for status determination in a regular procedure on the merits. The regular procedure (labelled under the law as a 'general' procedure) requires detailed examination of the asylum application on its merits. The asylum application is decided upon both with regard to the need of international protection and the type of protection that should be granted - refugee status or subsidiary protection (humanitarian) status. The decision should be issued in 4 months from the registration of the asylum application but this deadline is indicative not mandatory. Therefore, this deadline is rarely observed by the SAR and asylum procedures in most cases take much longer than 4 months.

The appeal procedure mirrors the phases of the administrative stage of status determination, namely: (1) an appeal procedure against Dublin decisions, heard by the Administrative Court in Sofia only; (2) an appeal procedure against the decisions rejecting asylum applications as inadmissible or manifestly unfounded, heard by the administrative court from the relevant district where the appellant is residing and (3) an appeal procedure against decisions rejecting the asylum application on its merits, heard on two court instances by the Administrative Court in Sofia (1st instance) and the Supreme administrative court (2nd instance). All appeals have suspensive effect, except in Dublin cases unless the Dublin

appellant asked the court explicitly to suspend the transfer to the other EU Member State concerned. Legal aid can be granted by the court, if requested.

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

B. Procedures

1. Registration of the Asylum Application

Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?
☒ Yes No
- If so, and if available specify
 - o the time limit at the border:
 - reasonable time, if arriving legally;
 - immediately, if the entry was irregular;
 - o the time limit on the territory:
 - reasonable time, if stay or residence is legal;
 - immediately, if asylum seeker stays irregularly;
 - o the time limit in detention:
 - immediately, detention applies to irregular migrants

An asylum application may be lodged either before the specialised asylum administration, the State Agency for Refugees (SAR), or before any other administration, which will be obligated to refer it immediately to the SAR⁴. 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). The asylum application should be made within a reasonable time after entering the country⁵, except in cases of irregular entry or residence when it ought to be made immediately, otherwise it could be rejected as inadmissible⁶. If the asylum application was made before an administration, different than the asylum one (i.e. SAR), then status determination procedures could not legally start until the asylum seeker was transferred from the border/detention centre to any of the SAR's premises for a registration of the individual in person. Under the law, all asylum seekers have the right to be accommodated in transit/reception centres. However, in practice, the current national reception capacity is highly insufficient (places for 805 individuals in total). Therefore, in 2007 in view of EU accession and owing to the expectation that the number of new arrivals would grow exponentially, the law was amended so as to distinguish between the moment of lodging the asylum application and the moment status determination begins. The latter was conditioned by the so called "registration in person of the asylum seeker" in any of the SAR's offices. NGO reports⁷ indicated that it resulted in a situation, where asylum seekers lodged a first asylum application legally before the detention administration but had to wait for months before being released and taken to any of the SAR's offices in order to be registered, documented, accommodated, etc.

From January until May 2012 the border police registered only 1 asylum application. Only after the opening of the first border transit center in May 2012, the border police started again to register asylum applications. However, the number remained quite low and until the end of 2012 the border police registered only 64 asylum applications on behalf of 80 individuals (60 adults, 16 children and 4 separated children). In comparison, for the same period in the Lubimets detention centre, where the arrested asylum seekers were mainly transferred, in total 776 individuals (649 adults, 90 children and 37 separated children) applied for asylum. Thus, from all new arrivals at the national borders only 9% were registered by the border police and admitted directly to status determination procedures without detention, 91% of the newly arrived asylum seekers were in practice denied registration and detained. It marked a significant 12% decrease in the number of registrations in comparison with 2011, when 21% (66 asylum applications of all 305 arrivals at the border were registered by the border police and directly admitted to the status determination procedures.

⁴ Law on Asylum and Refugees, Article 58, Para 4.

⁵ Law on Asylum and Refugees, Article 13, Para1, item 11.

⁶ Law on Asylum and Refugees, Article 13, Para 1, item 12.

⁷ Bulgarian Helsinki Committee, *Bi-Annual Status Determination Procedure Monitoring Report*, July 2010, par.2.1.

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 3
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
- As of 31st December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered Not available

The national authority, competent to take decisions on asylum applications at first instance - the State Agency for Refugees (SAR)- is an administration with a rank of a Ministry, responsible directly to the government alone. Its only competence is to decide on individual applications for international protection by recognising or refusing refugee status, or, granting or refusing humanitarian status (subsidiary protection). SAR also has an advisory role to the government when it decides whether to apply temporary protection on a group basis in cases of a mass influx of asylum seekers who flee from a war like situation, gross abuse of human rights or indiscriminate violence.

The Law on Asylum and Refugees (LAR) sets a 3 month time-limit⁸ for deciding on an asylum application, which has been admitted to a regular procedure. The LAR requires that within 2 months from the beginning of the regular procedure at least one eligibility interview is conducted with the asylum seeker to allow the interviewer to draft a proposal for a decision on the asylum application concerned. The asylum application should firstly be assessed on its eligibility for refugee status. If the answer is negative, the need for subsidiary protection on account of a general risk to the applicant's human rights should be also considered and decided upon. The interviewer's position is reported to the decision-maker, who has another month for consideration and decision. If evidence is insufficient for taking a decision the law allows for the 3 months deadline to be extended for another 3 months at most, thus providing the SAR with a possibility to take 6 months in total to decide in the regular procedure.

However, all deadlines are not mandatory, but only indicative. Therefore if these deadlines are exceeded, this does not affect the validity of the decision. In practice, the asylum procedure usually lasts between 4 to 6 months approximately, but in some cases it can last up to 12 months. However, the latter happens not only in serious individual cases with complex grounds and criteria involved, but also in *prima facie* cases of applicants coming from countries of origin in a situation of war or indiscriminate violence - when the government tends to re-shape, i.e. adopt a more restrictive asylum policy towards the country in question.

If the decision is negative, the appeal and court proceedings can add up to 12 more months in case the decisions in the regular procedure are reviewed by the courts on 2 instances. If the court finally reverts the first instance decision, the determining authority SAR has 14 days to issue a new decision, complying with the court's instructions on the application of the law. However, during the last 4 years, not only did the decision-maker not respect this 14 days deadline, but in the majority of the cases the SAR once again rejected the asylum application concerned despite the court's instructions. As a result, including repeated appeal procedures against the second negative decision, the asylum procedure can extend over 2 years.

⁸ Law on Asylum and Refugees, Article 75, Para 1.

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure: ☒ Yes ☐ No
 - o if yes, is the appeal ☒ judicial ☐ administrative
 - o If yes, is it suspensive ☒ Yes ☐ No
- Average delay for the appeal body to make a decision: 12 months

The negative decision taken in the regular procedure on the substance (merits) of the asylum application can be appealed within 14 days from its notification. In general, this time-limit proved sufficient for rejected asylum seekers to get legal advice, prepare and submit the appeal within the deadline. The decision-maker (SAR) is obligated to, and actually does, provide information to rejected asylum seekers as to where and how they can receive legal aid (see below, Legal assistance) when serving a negative decision. The law establishes two appeal instances in the regular procedure⁹ - in contrast to appeal procedures for contesting decisions taken in Dublin and accelerated procedures, where first instance decisions are reviewed in only one appeal instance¹⁰. Appeal procedures are judicial only, the law does not envisage an administrative review of asylum determination decisions, at all. Both appeals before the 1st and 2nd appeal courts have suspensive effect. The first appeal is held before the Administrative court of Sofia, where the respondent party (the decision-maker SAR) has its headquarters. 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 on the reasons they applied for asylum. Decisions are published, but also served personally to the appellant. If the first instance appeal decision is negative, the asylum seekers can bring their case to the second (final) appeal court, the Supreme administrative court, 3rd Department, but only with regard to points of law. Both appeal courts have to issue their decisions within one month. However this deadline is indicative, not mandatory and therefore regularly not respected. Average duration of an appeal procedure before the court at both judicial instances is 12 months, although in more complex cases it can be extended up to 18 months.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the regular procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
- Are interviews ever conducted through video conferencing? ☒ Yes ☐ No

The law requires¹¹ that asylum seekers, whose applications were admitted to the regular procedure, should be interviewed at least once with regard to the facts and circumstances of their applications. Decisions cannot be considered in accordance with the law, if the interview was omitted, unless it concerns a medically established case of insanity or other mental disorder. In practice, all asylum seekers are interviewed at least once in order to determine their eligibility for refugee or humanitarian

⁹ Law on Asylum and Refugees, Article 90, Para 3.

¹⁰ Law on Asylum and Refugees, Article 85, Para 4.

¹¹ Law on Asylum and Refugees, Article 63a, Para 3.

(subsidiary protection) status. Second or more interviews are usually conducted only if there are contradictions in the statements or if some facts need to be clarified.

Presence of an interpreter ensuring interpretation into a language that the asylum seeker understands is mandatory according to the national legislation. The law provides for a gender sensitive approach as interviews can be conducted by an interviewer and interpreter of the same sex as the asylum seeker interviewed, upon their request. In practice, all asylum seekers are indeed asked explicitly whether they would like to have an interviewer or interpreter of the same sex in the beginning of each interview. Interpreters from key languages such as Arabic, Dari, Farsi, Pashto, Urdu, Kurdish, English, French and Russian are available. Problems to provide interpretation in practice arise in cases of rare languages such as Tamil and Somali. In these cases videoconference interpretation is used, however, due to financial constraints, interviewers are encouraged¹² to convince asylum seekers to agree to be interviewed in another language spoken by the asylum seeker, even though their level of knowledge of this second language is poor or close to non-existent.

Training of interpreters is provided, though this is sporadic rather than on a regular basis. Most of the interpreters used by the State Agency for Refugees (SAR) did agree on and signed the Interpreter's Code of Conduct adopted in 2009, however its rules, are not followed strictly in practice. For example, quite often the statements are summarised or the interpreters provide comments on their authenticity or likelihood. Lawyers representing asylum seekers during the interviews reported that burnout is a serious problem not only among interviewers, but also among interpreters as often impatience and irritation is being demonstrated by both, which finally results in issues only being addressed vaguely or summarised interpretations¹³.

All interviews are conducted by staff members of the SAR, whose competences include interviewing, case assessment and preparing a draft decision on the claim. Audio recording is possible and equipment is available in all interviewing rooms, however in practice the interviewers opt not to use it and systematically try quite hard to convince¹⁴ asylum seekers that it is not necessary. As a result, audio recording has not been used in practice at all, despite the fact that UNHCR and NGOs repeatedly insisted on it as a solid safeguard against malpractice and corruption and despite the fact that the SAR included audio recording as a priority in its strategic objectives.¹⁵ Therefore, almost all interviews are recorded in writing by the interviewers, many of them verbatim by typing questions/answers on a computer. In this way a proper interview report is created, printed immediately after the end of the interview, checked with the asylum seeker and corrected, if necessary. However, some of the interviewers continue to write down the interviews by hand and transcribe them at a later stage, which creates concerns about protocol's accuracy. It has to be noted that in practice most of the protocols, even if properly recorded are not read and interpreted to the asylum seeker, but simply presented for signing.

¹² Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2013, par. 3.2.2.

¹³ Bulgarian Council on Refugees and Migrants, *Advocacy Paper on Access to Territory and Procedure*, 2010, par.3.1.4.

¹⁴ Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2013, par. 3.2.4.

¹⁵ State Agency for Refugees, *Strategic objectives*, 2012, <http://www.aref.government.bg/?cat=12>.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision? ☒ Yes ☐ not always/with difficulty ☐ No
- In the first instance procedure, does free legal assistance cover:
☐ representation during the personal interview ☐ legal advice ☒ both ☐ Not applicable
- In the appeal against a negative decision, does free legal assistance cover
☒ representation in courts ☐ legal advice ☐ both ☐ Not applicable

The national Law on Legal Aid (LLA) provides for state funded representation only at the stage of a court hearing for individuals who do not have sufficient means, except in criminal cases, where it is mandatory and available during the pre-trial investigation. Thus, legal aid through the State budget is unavailable to asylum seekers during the first instance of the regular procedure, but it can be granted by the court at the stage of an appeal procedure at the 1st or the 2nd instance. Therefore, the Law on Asylum (LAR) guarantees only the right to engage a lawyer at the asylum seeker's own cost during the administrative stage of the asylum procedure (Dublin, accelerated and regular procedure), but not the right to enjoy legal advice and representation free of charge at this stage. Nevertheless, the State Agency for Refugees (SAR) recognised¹⁶ the provision of legal aid during status determination at the first (administrative) instance as an important guarantee to ensure the effectiveness of the right to legal assistance and representation as laid down in Article 15 of the Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards and Procedures for Granting and Withdrawing Refugee Status in Member States (Asylum Procedures Directive). In order to address the issue, SAR included in all annual programmes implementing the European Refugee Fund (ERF) resources for legal aid funding, provided to asylum seekers in terms of legal advice and representation during the eligibility interviews. However, the provision of legal aid through ERF projects proved not to be systematic and inconsistent as there were gaps consisting of long periods between the projects, sometimes lasting for more than 18 months (e.g. between 2008 and 2009 Annual Programmes, the latter awarded as late as in June 2011). Otherwise, if available, the legal aid at first instance is accessible to all asylum seekers, including those submitting a subsequent asylum application. Legal aid, provided under ERF projects, usually consists of legal advice and representation during eligibility interviews as well as assistance to appeal negative decisions before the court. Interpretation costs are also covered as a part of legal aid projects to facilitate the communication between lawyers and asylum seekers. Remuneration for both lawyers and interpreters is calculated in accordance with the generally applicable official rates for the respective professions. Legal aid before the court at both judicial instances (Administrative court of Sofia and Supreme administrative court) is funded under the State budget and is systematically granted to asylum seekers, unless the asylum application was a subsequent one without new evidence or facts involved. It has been criticised only with relation to the quality of the legal representation, which however is a general flaw of the legal aid system in Bulgaria¹⁷.

3. Dublin

Indicators:

- Number of outgoing requests in the previous year: 39
- Number of incoming requests in the previous year: 315
- Number of outgoing transfers carried out effectively in the previous year: 34
- Number of incoming transfers carried out effectively in the previous year: 62

¹⁶ State Agency for Refugees, *ERF Multi-Annual Programme 2008-2013*, par.2.1.2.

¹⁷ Open Society Institute-Sofia, *Implementation Evaluation of the Law on Legal Aid 2007-2011*, par.8.

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? 2 months (60 days) approximately

EURODAC has been used as an instrument for checking the identity of all irregular migrants. Fingerprints taken by the border or immigration police are uploaded automatically in the SIS system 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 asylum authority (State Agency for Refugees - SAR) for technical reasons.

Under the law and in practice the Dublin procedure is applied systematically to all asylum applications, except in the case of subsequent applications.¹⁸ The law does not establish criteria to determine the state responsible, but simply refers to the criteria listed in the Dublin Regulation. Most common criteria applied in both taking charge and taking back cases are previously issued documents and the Member state where the asylum seeker first entered. Bulgaria accepts responsibility for examination of the asylum application based on the humanitarian clause and mostly vis-à-vis document and entry reasons.¹⁹ The sovereignty clause in the Dublin Regulation is increasingly being used since 1 August 2011 when the government decided²⁰ to accept on the basis of this clause the responsibility for examining applications of all asylum seekers, who otherwise should be returned to Greece. The sovereignty clause is also used in few other cases in combination with the humanitarian clause, mainly for family reasons. In cases where another Member state accepts the responsibility to examine the application of an asylum seeker who is in Bulgaria, the transfer is implemented within 2 months on average.

Asylum seekers are usually not detained in practice upon the notification of the transfer. However in a few cases transferred asylum seekers can be detained up to 5 days prior the transfer itself as a precautionary measure to ensure their timely boarding on the plane. However, in all cases the transfer is carried out without an escort. It should be noted that in practice sometimes asylum seekers 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 are made for taking back/taking charge to the Member State deemed responsible nor of any progress made with regard to such requests, unless the applicant themselves requested the transfer and/or provided due evidence in this respect.

Asylum seekers who are returned from other Member States in principle do not have any obstacles to access the asylum procedure in Bulgaria upon their return. However, if the status determination at the first instance has been already made *in absentia* and became final, asylum seekers are considered finally rejected and are detained upon arrival in deportation centres for irregular migrants.

¹⁸ Article 67a, Para 3 of the Law on Asylum and Refugees.

¹⁹ State Agency for Refugees, 2012 *National EUROSTAT Report*, Dublin Chapter, Annex 1 and 2.

²⁰ Order №419 from 19 July 2011 of the Chairperson of the State Agency for Refugees (SAR).

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
☒ Yes ☐ No
 - o if yes, is the appeal ☒ judicial ☐ administrative
 - o If yes, is it suspensive ☐ Yes ☒ No
- Average delay for the appeal body to make a decision: Not available

Appeals against decisions in the Dublin procedure are heard only before the Administrative court of Sofia and only at one instance. All the rest of the first instance decisions (in accelerated and regular procedures) are heard before the respective administrative court from the region where the asylum seeker has a residence as a first appeal. Dublin appeals do not have a suspensive effect, but it can be awarded by the court upon an explicit request from the asylum seeker.

The time-limit for lodging the appeal is 7 calendar days, which is equal to the time-limit for appeal in the accelerated procedure. Appeal procedures are held in an open hearing, legal aid can also be awarded. 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, which was the case for all Dublin transfers to Greece until they were discontinued under the sovereignty clause in 2011.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the Dublin procedure? ☒ Yes ☐ No
- If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

The law²¹ does not require the organisation of a personal interview in the Dublin procedure, rather it gives an opportunity to the interviewer to decide whether the interview is necessary or not in light of all other related circumstances and evidence. In practice, the decision-maker in State Agency for Refugees (SAR) conducts an interview only in cases when it is established from other statements (during the registration) or already collected evidence (e.g. documents, tickets, visas, EURODAC hits) that it is likely that another Member State would be responsible for the examination of the asylum application. If an interview is conducted it is not different than any other eligibility interviews in the asylum procedure except relating to the type of questions asked in order to verify and apply the Dublin criteria. Similar to the regular procedure, an audio recording is possible and equipment is available in all interviewing rooms, however in practice, the interviewers opt not to use it and systematically strive to convince asylum seekers that it is not necessary. As a result, the audio recording has not been used in practice in Dublin procedures either.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? ☐ Yes ☒ always/with difficulty ☐ No

²¹ Article 67b, para 2 of the Law on Asylum and Refugees.

The national law (Law on Legal Aid) does not provide in general for state funded representation in procedures before the administration. As a result, free legal aid through the State budget is not available to asylum seekers during the Dublin procedure either. Similar to the arrangements in the regular procedure, in Dublin procedures free legal aid is guaranteed and provided only during an appeal procedure before the court. Prior to the appeal, legal aid in the Dublin procedure can be accessible, if it is provided under projects funded by the European Refugee Fund. The same conditions and the same problems as for legal aid during the regular procedure apply for legal aid during the Dublin procedure.

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? ☒ Yes ☐ No
 - o If yes, to which country/countries? Greece

Bulgaria suspended all Dublin transfers to Greece in 2011, thereby assuming responsibility for examining the asylum applications of the asylum seekers concerned. The suspension of Dublin transfers to Greece was decided by the State Agency for Refugees (SAR)²² as a matter of overall policy and was based on the UNHCR's position related to the matter. As a result, all asylum seekers who otherwise should be returned to Greece on the basis of the Dublin Regulation were admitted to the next stages of the status determination procedure (accelerated and, after, regular procedure) with full access to all available rights and entitlements. This policy is presently applied in practice since 1st August 2011 but it has been reported that for some months after the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights, until August 2011 Dublin transfers to Greece were still carried out.²³

4. Admissibility procedures

General (scope, criteria, time limits)

National legislation provides for a combined initial examination of the asylum application on both admissibility and manifestly unfounded grounds, which is to be distinguished from the regular procedure, where the examination is focused on the merits of the asylum application. The initial examination can result in finding the asylum application inadmissible, if the applicant is already granted protection in another EU state or safe third country,²⁴ or if the application is a subsequent asylum application without any new facts or evidence submitted.²⁵ The first ground is rarely applied due to lack of such hypotheses, but inadmissibility is systematically ruled out in practice on subsequent applications. However, during the initial examination the asylum application could be found admissible, but manifestly unfounded, if the applicant did not state any grounds for persecution at all, or, if their statements were unspecified, implausible or highly unlikely. This combined initial stage of the examination of the asylum application is according to the law considered as an "accelerated procedure". Therefore all issues related to the admissibility assessment are discussed under the section 6 below dealing with the analysis of the accelerated procedure in this report.

²² State Agency for Refugees, Order №419 from 29 July 2011.

²³ See [European network for technical cooperation on the application of the Dublin II Regulation. Bulgaria, p. 42.](#)

²⁴ Article 13, Para 2 of the Law on Asylum and Refugees (LAR).

²⁵ Article 13, Para 1, item 5 of the Law on Asylum and refugees (LAR).

Appeal

As described above in the section appeal under regular procedures.

Personal Interview

As described above in the section personal interview under regular procedures.

Legal assistance

As described above in the section legal assistance under regular procedures.

5. Border procedure (border and transit zones)

There is no border procedure in Bulgaria.

6. Accelerated procedures

General (scope, grounds for accelerated procedures, time limits)

The accelerated procedure is designed to examine the admissibility of the asylum application, but also the likelihood of the application being fraudulent or manifestly unfounded²⁶. All grounds are applied in practice. The examination can result in finding the asylum application inadmissible, in case the applicant is already granted protection or a permanent residence permit in another EU state or safe third country, or, if it concerns a subsequent asylum application without any new facts or evidence being submitted. The asylum application can also be found manifestly unfounded, if the applicant did not state any reasons for applying for asylum related to grounds of persecution at all, or, if their statements were unspecified, implausible or highly unlikely. The decision within an accelerated procedure should be issued within 3 days from the decision that Bulgaria is responsible to examine the asylum application concerned.²⁷ If the decision is not taken within this time-frame, the asylum application is automatically transferred for examination in a regular procedure on the merits.

The authority responsible for taking decisions at first instance on asylum applications in the accelerated procedure is the State Agency for Refugees (SAR), through case workers specially appointed for taking decisions in this procedure. In practice all asylum applications are channelled first in the accelerated procedure as a mandatory phase of the status determination, except the claims of separated children, unaccompanied child or adolescent asylum seekers who are explicitly exempt from the accelerated procedure under the law²⁸ and have immediate access to an in-depth assessment of the substance of their asylum application in the regular procedure.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
 - ☒ Yes ☐ No
 - if yes, is the appeal: ☒ judicial ☐ administrative
 - If yes, is it suspensive? ☒ Yes ☐ No

²⁶ Article 13, Para 1, items 1-4 and 6-14 of the Law on Asylum and Refugees (LAR).

²⁷ Article 70, Para 1 of the Law on Asylum and Refugees.

²⁸ Article 71, Para 1 of the Law on Asylum and Refugees.

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 days deadline in the regular procedure. Another major difference with the regular asylum procedure is related to the number of judicial appeal instances. In the accelerated procedure there is only one judicial appeal possible, whereas in the regular procedure there are two appeal instances (a 1st instance appeal to the Court competent to review both to facts and legality of the first instance decision and an onward appeal in which only points of law are considered).

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

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

Personal Interview

As described above in the section legal assistance under regular procedures.

Legal assistance

As described above in the section legal assistance under regular procedures.

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

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- 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 ☐ not always/with difficulty ☐ No

The law²⁹ explicitly mentions the obligation of the asylum administration to provide information to asylum seekers within 15 days from the submission of the application. The information should cover both rights and obligations of asylum seekers and the procedures that will follow. Information on existing organisations that provide social and legal assistance has to be given as well. The information has to be provided in a language the asylum seeker declared that he understands or, when it is impossible - in a language the asylum seeker may be reasonably supposed to understand. The law does not specify whether the information should be provided orally or in writing, but in practice the information is always provided to asylum seekers in writing in the form of a leaflet translated in the languages spoken by the main nationalities seeking asylum in Bulgaria.

However, leaflets are quite long and the explanations are deemed by most of the asylum seekers to be complex and difficult to understand. NGOs,³⁰ particularly those which are UNHCR's implementing partners, develop and distribute other leaflets 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. In addition, all European Refugee Fund projects for legal aid so far included the provision of oral legal consultations on the rights, obligations and procedures pending each type of the status determination procedure at the first instance. The most pressing problems in practice related to this approach are the time gaps in between the different projects which sometimes can last for months, during which period the consultations are not available for asylum seekers. Among all types of different status determination procedures, the Dublin procedure proved to be the most difficult for asylum seekers to comprehend despite the considerable amount of written materials produced in practice to inform them about it. Another difficult issue is detention and the reasons why a person who applied for asylum can remain detained without a transparent and fixed maximum period of detention. NGOs, lawyers and UNHCR staff have unhindered access³¹ to all border and inland detention centres and try to provide as much information as possible related to detention grounds and conditions. Despite that, the subject of detention remains hard to explain as an extremely high percentage of asylum seekers claim that they do not understand reasons why they are kept in detention in principle as all other irregular migrants³²

D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?
☐ Yes ☒ No
- Is a removal order suspended during the examination of a first subsequent application?
☒ Yes ☐ No
- Is a removal order suspended during the examination of a second, third, subsequent application?
☒ Yes ☐ No

The law³³ deals with subsequent asylum applications within the context of the accelerated procedure. Such applications are considered inadmissible, if the asylum seeker did not state in their subsequent asylum application any new facts or circumstances or did not provide new evidence. Within calendar 3 days (excluding public holidays) after lodging the subsequent asylum application the decision-maker

²⁹ Article 58, Para 6 of the Law on Asylum and Refugees.

³⁰ Red Cross, Helsinki Committee, Association for Integration of Refugees and Migrants, Caritas, ACET, Center Nadya.

³¹ For more information, see: 2012 Tri-Partite Annual Border Monitoring Report by UNHCR, General Directorate Border Police and Bulgarian Helsinki Committee.

³² JRS Europe, *Becoming Vulnerable in Detention (Detention of Vulnerable Asylum Seekers - DEVAS Project)*, 2010, National Chapter on Bulgaria, p.147 - points. 3.1 and 3.2.

³³ Article 13, Para 5 of the Law on Asylum and Refugees.

(State Agency for Refugees - SAR) has to establish these facts and if this deadline is not being met, the subsequent application could be automatically referred to a regular procedure. Automatic referral of the asylum application to a regular procedure is regulated in the law³⁴ to encourage SAR's interviewers to make a decision within the 3-days deadline. Thus, a subsequent application can be examined in the regular procedure, but not because it was considered admissible, but because the case worker missed the deadline to declare it inadmissible within the strict terms of the accelerated procedure. The same rules apply regardless of the actual number of subsequent applications that have been submitted (first, second or more) or the time that lapsed between the submission of the subsequent application and the first or any other previous status determination procedures. Usually, subsequent asylum applications are being rejected in the accelerated procedure within the 3 day deadline. In case the SAR decides not to refer the subsequent asylum application to the regular procedure, it will have to prove before the court that the stated facts are not new but were already examined in the previous asylum procedure.

It is mandatory by law to organise an interview in the case of a subsequent asylum application and this is strictly applied in practice. However, when there are no new statements, facts or evidence provided by the asylum seeker, the interviews are just a formality. Decisions on subsequent asylum applications can be appealed under the same terms as any other decision made in the accelerated procedure, i.e. – within the 7 days deadline and before the respective county court in the area of residence of the asylum seeker. The Court's decision is final. Legal aid can be requested, but it is rarely provided by the court to asylum seekers lodging a subsequent asylum application, unless there are new facts and circumstances related to the subsequent asylum application.

Lodging an appeal against a negative decision on a subsequent asylum application has an automatic suspensive effect. From the moment of registration of the subsequent asylum application until the moment when the negative decision on such application becomes final (i.e. when there are no more possibilities to appeal before the court, meaning one court instance in case the subsequent application is processed in the accelerated procedure, two court instances when the subsequent application is processed in the regular procedure), the removal order is also automatically suspended under the law³⁵. In this respect, subsequent asylum applications are not treated any different from first asylum applications, except in relation to the initial moment of the suspension, which in the case of a first asylum applications is the moment of submission, whereas this is the moment of registration in the case of subsequent asylum applications (see above, Asylum Procedure, B 1.Registration of asylum application).

It should be noted that the main obstacles for asylum seekers who lodge a subsequent application relates to the lack of a right to be accommodated as well as the considerably delayed registration of all subsequent asylum applications, which can be postponed by months by the SAR. These obstacles are a matter of policy, not law and are applied by the SAR in order to discourage the applicants to carry on their subsequent application. During this period of time asylum seekers remain undocumented and under a risk of detention and deportation.

³⁴ Article 70, Para 2 of the Law on Asylum and Refugees.

³⁵ Article 67, Para 1 of the Law on Asylum and Refugees.

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

1. Special Procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ No ☐ Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ No ☐ Yes, but only for some categories

The law does not envisage any specific identification mechanisms for vulnerable categories of asylum seekers, except for children. Neither guidelines, nor practice exist to accommodate the specific need of these groups. Identification is mainstreamed in the training of caseworkers, and special trainings are rarely provided.

NGOs are very concerned by the lack of procedural guarantees for vulnerable asylum seekers in the Bulgarian asylum procedure. Most worrying is the situation of separated asylum seeking children who are not appointed legal guardians during the examination of their asylum application. The law allows³⁶ a social worker to be appointed instead to assist the child during the examination. However, the law does not provide for any mandatory training of these social workers relating to the special situation of separated asylum seeking children or even relating to the aim and modalities of the asylum procedure in general. Lacking basic skills and knowledge the social workers cannot and do not assist and advise properly the separated asylum-seeking children, especially in a situation where legal aid is not secured (as described above in the section legal assistance under regular procedures). UNHCR and NGO reports raised concerns related to cases where the lack of training of the social workers assisting separated children impacted negatively on the outcome of their asylum procedures³⁷.

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? ☐ Yes ☐ Yes, but not in all cases ☒ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

The legislation does not explicitly provide for the possibility of proving past persecution or harm by medical reports specifically, but neither prohibits any type of any expert opinion, written or oral evidence in this respect. Therefore medical reports can be and, in practice, are used to support the assessment of the asylum application. However, such reports are only exceptionally commissioned by the case worker of the decision making authority (State Agency for Refugees – SAR). In most if not all of the cases where medical reports were provided, this was at the initiative of the asylum seeker or their legal representative. The costs for such medical report are covered by legal aid where it is awarded and legal aid is awarded in the majority of cases. However, in case no legal aid is awarded, the costs related to the medical report are at the asylum seeker's own cost. Even if a medical report is submitted, case workers only rarely take them into account, particularly if these are medical assessments related to torture, trauma or sexual violence, provided by NGOs notwithstanding their specialisation or expert

³⁶ Article 25, Para 5 of the Law on Asylum and Refugees.

³⁷ Bulgarian Helsinki Committee, *Annual Status Determination Procedure Monitoring Report*, January 2013, par. 3.2.5.

quality (e.g. specialised associations for torture survivors³⁸, which apply the Istanbul Protocol). The law only in one particular case³⁹ mandatorily requires the case worker to order a medical examination, i.e. if there are indications that the asylum seeker might be mentally ill. In this case, if the result of the medical examination report shows that the asylum seeker suffers from disease mental illness, the case worker 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.

3. Age assessment and legal representation of unaccompanied children

Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?
☒ Yes ☐ No
- Does the law provide for the appointment of a representative to all unaccompanied children?
☐ Yes ☒ No

Under the law⁴⁰ an age assessment should be requested by the caseworker in the case of an asylum application of an unaccompanied child, but the provision requires this only if there are doubts that the applicant is not actually a child. However, the law, does not state the method of the age assessment. In practice, 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 court,⁴¹ however, considers this test as non-binding and applies the benefit of the doubt principle, which is also explicitly laid down in the national legislation.⁴² According to the law⁴³ unaccompanied children seeking asylum should be appointed legal guardians following the provisions, conditions and procedures of the national Family Code. At the same time, the Law on Asylum and Refugees⁴⁴ stipulates the right of the administration (State Agency for Refugees) to disregard this standard and obligation and to determine the child's asylum application without a guardian, if the interviews are conducted in the presence of a social worker. In practice, this legal opportunity is applied extensively by the asylum administration and in all cases status determination is carried out without appointed guardians. Social workers however cannot legally replace guardians and the latter's functions. The special Law on Child Protection explicitly envisages⁴⁵ that any administration conducting any type of hearing with a child should do so in the presence of a parent, guardian or other person who provides direct care and who is familiar with the child concerned. Notwithstanding, in addition the law also requires⁴⁶ the assistance of a social worker during the hearing. Thus, the law itself explicitly distinguishes the functions of guardians and social workers⁴⁷ who cannot replace each other. Social workers have an obligation to provide a social report with an opinion on the best interest of the child concerned in every individual case. The legal guardians have the right and obligation to represent the children during their status determination procedure and actively support the establishment of facts and circumstances, ask questions, appeal negative decisions, and ensure that a lawyer is appointed for all these activities. Recent jurisprudence of the national court ruled that status

³⁸ ACET Center for Torture Survivors, Nadya Center.

³⁹ Law on Asylum and Refugees, Article 61, Para 4.

⁴⁰ Law on Asylum and Refugees, Article 61, Para 3.

⁴¹ Supreme administrative court, *Nuokedi Michael Oniebuchi*, Case №7749/2009, 3rd department, Decision №13298 from 9 November 2009.

⁴² Law on Asylum and Refugees, Article 75, Para 2.

⁴³ Law on Asylum and Refugees, Article 25, Para 1.

⁴⁴ Law on Asylum and Refugees, Article 25, Para 5.

⁴⁵ Law on Child Protection, Article 15, Para 5.

⁴⁶ Law on Child Protection, Article 15, Para 4.

⁴⁷ Law on Child Protection, Article 3, Para 3.

determinations, in absence of an appointed guardian are unlawful, but this has had no impact yet on the practice.⁴⁸

F. The safe country concepts (if applicable)

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? ☐ Yes ☒ No
- Is there a list of safe countries of origin? ☐ Yes ☒ No
- Is the safe country of origin concept used in practice? ☐ Yes ☒ No
- Is the safe third country concept used in practice? ☐ Yes ☒ No

National legislation⁴⁹ allows for the use of a safe country of origin and safe third country concept in the asylum procedure. Prior to the EU accession, national lists of safe countries of origin and third safe countries were adopted annually by the asylum administration (State Agency for Refugees -SAR) and applied extensively to substantiate negative first instance decisions.

However, the national court considered that the safe country of origin and safe third country concept can only be applied as a rebuttable presumption⁵⁰ that could be contested by the asylum seeker in each and every individual case. In 2007, the national law was amended⁵¹ to introduce explicitly the right for the asylum seeker to rebut the safe country presumption. The amendment also referred to the EU common list of safe countries of origin that was supposed to be adopted according to Article 29 2005 Asylum Procedures Directive as the only source applicable for considering a country of origin as safe. As a result, ever since the adoption of this amendment, the safe country of origin concept became inapplicable in practice as far as such a common EU list has never been adopted. The 2007 amendment makes the same reference to the Asylum Procedures Directive with regard to the adoption of the national safe third countries list, apparently based on an erroneous reading of the Asylum Procedures Directive. For this reason, there is no safe third countries list and the safe third country is not applied as a concept.

G. Treatment of specific nationalities

There is no particular practice to report relating to the treatment of specific nationalities in the Bulgarian asylum procedure.

⁴⁸ Administrative Court Sofia City, *Omar Jumaa Hadji*, Case N7294/2012, Section 42, Decision N5882 from 5 November 2012; Administrative Court Sofia City, *Jaqueline Almasa Planic*, Case N8251/2012, Section 42, Decision N6063 from 12 November 2012; Administrative Court Sofia City, *Mohammed Sabar Khalaf*, Case N7342/2012, Section 3, Decision N6297 from 23 November 2012; Administrative Court Sofia City, *Anuar Bedar Naso*, Case N9090/2012, Section 16, Decision N6737 from 10 December 2012.

⁴⁹ Law on Asylum and Refugees, Article 13, Para 1, item 13.

⁵⁰ Supreme administrative court, *Bekka Aley Bakari*, Case N646/2002, Five members Session, Decision № 4854 from 21 May 2002, and others.

⁵¹ Law on Asylum and Refugees, Articles 96 – 98.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
 - o During the accelerated procedure?
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
 - o During admissibility procedures:
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
 - o During the regular procedure:
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
 - o during the Dublin procedure:
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
 - o During the appeal procedure (first appeal and onward appeal):
☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
 - o In case of a subsequent application:
☐ Yes ☐ Yes, but limited to reduced material conditions ☒ No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers are entitled to material reception conditions according to national legislation⁵² during all types of asylum procedures. Rights provided include food, accommodation, social assistance, health care and psychological assistance. The sole category of asylum seekers that is excluded from these material reception conditions are asylum seekers who have lodged a subsequent asylum application. However if they fall under one of the categories of vulnerable asylum seekers they can enjoy these entitlements without restrictions. Competence to decide on vulnerability in such cases lies with the head of the respective reception unit. Notwithstanding asylum seekers have the right to withdraw from these benefits, if their application is pending in the regular procedure and they declare that they are in possession of means and resources to support themselves.

2. Forms and levels of material reception conditions

Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): BGN 65.00 / EUR 33.23

The forms of material support include accommodation in reception centres and social assistance in cash. The law does not limit the length of stay in a reception centre. Asylum seekers can remain in the centre pending the appeal procedure against a negative decision issued in any of the existing status determination procedures. Asylum seekers have access to labour market if no final decision (including the appeal procedure in case of a negative decision at first instance) has been taken within 1 year since the registration.

⁵² Law on Asylum and Refugees, Article 29, Para 1, items 2 and 3.

Recognised refugees do also have the right to remain in reception centres up to 6 months after the positive decision as a part of the initial integration support.

The amount of the cash assistance is not provided in the law, but it is equal to the minimum social aid , granted to nationals on the basis of monthly minimum wages, which is BGN 65 monthly (adult or child). The amount is unanimously criticised by UNHCR and refugee assisting NGOs⁵³ as fully insufficient to meet even the most basic needs for nutrition. The situation is particularly serious for unaccompanied children who are not accommodated in specialised children facilities, but in common asylum reception centres, where they have to manage on their own and take care of shopping, cooking, cleaning, etc. Very few unaccompanied children manage to cover their expenses with the cash provided and many reports to be undernourished. In general, asylum seekers are not treated less favourably than nationals with regard to the social assistance available, however the reception arrangements do not take into account the fact that asylum seekers do not have any other means of support which are at the disposal of nationals, such as savings, property, family/relative networks, etc.

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 805
- Number of places in private accommodation: 0
- Number of reception centres: 3
- Are there any problems of overcrowding in the reception centres? ☒ Yes ☐ No
- What is, if available, the average length of stay of asylum seekers in the reception centres? 2 years
- Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

805 places in reception centres are available nationally in total. The breakdown of the total number of 805 places is as follows: 425 places in the reception centre in Sofia, 80 places in the reception centre in Banya (Central Bulgaria) and 300 places in the transit centre in Pastrogor (border area with Turkey and Greece). Under the law the transit centres are specially designed to accommodate asylum seekers applying at the border undergoing a Dublin and accelerated procedure. However, those centres do not differ in any way from the conditions in other reception centres, except for their remote location. Reception centres are managed by the State Agency for Refugees (SAR).

In 2012 the number of new arrivals was 1387 individuals. Reception capacity proved highly insufficient particularly as the SAR stopped since 2005 to accommodate asylum seekers in private lodgings. Therefore quite often medical premises or common rooms in the reception centres are used to accommodate new arrivals that go beyond the reception capacity. As a result, asylum seekers either are kept in detention centres for irregular migrants until rooms in reception centres are vacated, or, asylum seekers opt to declare that they do not need accommodation in order to be released from detention centres, but afterwards remain homeless. Alternative accommodation outside the reception centres is allowed under the law⁵⁴, but only if it is paid by the asylum seekers themselves and if they have consented to abandon their right to the monthly social allowance.

Separate facilities for families, single women, unaccompanied children or traumatised asylum seekers do not exist. However, when possible, single women and unaccompanied children are accommodated on a separate floor of the reception centre in Sofia. This, however, is not possible in the other two

⁵³ Bulgarian Council on Refugees and Exiles, *Advocacy Paper: Reception of Asylum Seekers in Bulgaria*, September 2011, Chapter 5: Social Assistance.

⁵⁴ Law on Asylum and Refugees, Article 29, Para 6.

centres of the SAR. Unaccompanied children up to 14 years of age are accommodated in orphanages. At the end of 2012 refugee assisting NGOs reported complaints from teenage unaccompanied (age between 15-17) children for being accommodated in the same room with adult asylum seekers⁵⁵. After an intervention of the NGOs (in particular the Red Cross) this practice was discontinued, but there are no legal safeguards to avoid it happening again.

4. Reduction or withdrawal of reception conditions

Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?
☐ Yes ☒ No
- Does the legislation provide for the possibility to withdraw material reception conditions?
☒ Yes ☐ No

Reduction of material reception conditions is not possible under the law. Withdrawal is admissible under the law⁵⁶ in cases of disappearance of the asylum seeker and subsequent asylum applications. However, the latter cannot be a ground for withdrawal if the asylum seeker lodging a subsequent application could be considered to be vulnerable. Under the law⁵⁷, as vulnerable categories are considered: children, pregnant women, elderly, single parents, if accompanied by their children, people with disabilities and those, who suffered severe forms of physical or psychological harm or sexual abuse. In this case, the asylum seeker lodging a subsequent application should be granted all reception conditions available. However, because of the limited national reception capacity this does not happen in practice. As a result, asylum seekers lodging a subsequent application, including those that are vulnerable do not get any reception conditions in practice until the State Agency for Refugees decides that there are new facts or evidence and that their asylum application must be examined on the merits in a regular procedure.

In case accommodation in a reception centre is refused, this can be appealed before the court. Under the law⁵⁸, the directors of transit/reception centres are competent to decide on accommodation. These decisions should be issued in writing as all other acts of administration.⁵⁹ However, in practice asylum seekers are informed orally. Nonetheless, the refusal still can be appealed before the relevant regional administrative court in 7 days from its communication to the respective asylum seeker. In this case, however, asylum seekers are having difficulties to prove before the court when they have been informed about the accommodation refusal, which may result in cessation of the court proceedings.

5. Access to reception centres by third parties

Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☒ Yes ☐ with limitations ☐ No

The law does not provide explicitly for access to reception centres for family members, legal advisers, UNHCR and NGOs, but no limitations are applied in practice. Lately, however, the management of Banya reception centre (Central Bulgaria) has been reported to obstruct the access to NGOs and

⁵⁵ UNHCR, AGDM Report, Sofia, November 2012.

⁵⁶ Law on Asylum and Refugees, Article 29, Para 5.

⁵⁷ Law on Asylum and Refugees, Article 30a.

⁵⁸ Law on Asylum and Refugees, Article 51, Para 2.

⁵⁹ Administrative Procedure Code, Article 59, Para2.

lawyers to the premises of the reception centre without any explanation in which cases access was granted only after an intervention before the State Agency for Refugees' chairperson.⁶⁰ NGOs and social mediators from refugee community organisations are allowed to operate advice centres within the reception premises in all national reception centres. Access to reception centres is limited only during the night.

6. Addressing special reception needs of vulnerable persons

Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice? ☒ Yes ☐ No

The law provides a definition⁶¹ of vulnerability. According to the provision, the following categories of asylum seekers are considered as vulnerable: unaccompanied children, pregnant women, elderly people, single parents, if accompanied by their underage children, individuals with disabilities and those who have been subjected to severe forms of psychological, physical or sexual abuse.

There are no specific measures neither in law nor in practice to address the specific needs of these vulnerable categories. The law only requires that vulnerability is taken into account when deciding on accommodation, but due to restricted reception capacity and poor material conditions, when it is applied, if at all, it is as an exception rather than as a rule.

7. Provision of information

There are no specific rules for information provided on rights and obligations relating to reception conditions. Asylum seekers obtain the necessary information on their legal status and the access to the labour market from the information sources relating their right and obligations in general (see Asylum Procedures, section C).

8. Freedom of movement

Asylum seekers are not restricted in their freedom of movement to any particular area within Bulgaria. Restrictions apply only in relation to the requirement for the asylum administration (SAR) to be duly notified⁶² in advance with regard to any change of the address of residence of asylum seekers.

B. Employment and education

1. Access to the labour market

⁶⁰ Bulgarian Helsinki Committee, *Monthly RSD Monitoring Report*, 31 March 2013.

⁶¹ Law on Asylum and Refugees, Article 30a.

⁶² Law on Asylum and Refugees, Article 30, item 5.

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
- If applicable, what is the time limit after which asylum seekers can access the labour market: 1 year from the registration as asylum seeker
- Are there restrictions to access employment in practice ? ☐ Yes ☒ No

National legislation allows for access to the labour market for asylum seekers,⁶³ if the determination procedure takes longer than 1 year from the submission of the asylum application. The permit is issued by the asylum administration (State Refugee Agency -SAR) itself in a simple procedure that verifies only the duration of the status determination procedure and whether It is still pending.

Once issued the permit allows access to all types of employment and social benefits, including assistance when unemployed. In practice, however it is difficult for asylum seekers to find a job, due to the general difficulties resulting from their language skills, the recession and high national rates of unemployment.

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children? ☒ Yes ☐ No
- Are children able to access education in practice? ☒ Yes ☐ No

Access to education for asylum seeking children is provided explicitly by the national legislation. The provision sets not only full access to free of charge education in regular schools, but also for vocational training under the rules and conditions applicable to Bulgarian children. In practice there were some obstacles related to the methodology used to identify the particular school grade that the child should be directed to, but this problem should be solved by appointment of special commissions by the Educational Inspectorate with the Ministry of Education and Science. Presently, asylum seeking children accommodated in Pastrogor transit centre are deprived in practice from this right as the SAR did not provided the necessary school arrangements in this remote area. Adult refugees have a right to a vocational training.

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation? ☒ Yes ☐ No
- In practice, do asylum seekers have adequate access to health care? ☐ Yes ☒ with limitations ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☐ Yes ☒ No

Asylum seekers are entitled to same health care as nationals. Under the law, the asylum administration (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 generally deteriorated national health care system that suffers great material and financial

⁶³ Law on Asylum and Refugees, Article 29, Para 3.

deficiencies⁶⁴. In this situation special conditions for treatment of torture victims and persons suffering mental health problems are not available.

⁶⁴ Open Society Institute, *Legal Standards and Arrangements for the Protection of Individual Health Rights and Entitlements*, Sofia, October 2011.

Detention of Asylum Seekers

A. General

Indicators:

- Number of asylum seekers who entered detention in the previous year: 1261
- Number of asylum seekers detained or an estimation at the end of the previous year: 418
- Number of detention centres: 2
- Total capacity: 700

There are 2 detention centres for irregular migrants in the country - Busmantsi and Lubimets detention centres. The Busmantsi centre is near the capital, Sofia, the Lubimets centre is located in the border area with Turkey and Greece. Although designed for the return of irregular migrants, the centres are also used for detention of undocumented asylum seekers, who crossed the border irregularly, but were unable to apply for asylum before the border police officers and therefore apply for asylum only when they are already in the detention centres. Most common reason for these late asylum applications is the lack of 24 hours interpretation services from all languages at national borders. Out of all 1261 asylum applications registered in 2012 by the Migration Directorate, Ministry of Interior (DM-MOI) in Lubimets and Busmantsi detention centres, 776 applications, or 61% were submitted by applicants transferred to detention centres from the national borders. In 2012 altogether 824 asylum seekers were released from both detention centres (Lubimets and Busmantsi) and accommodated in asylum centres, but another 418 asylum seekers were still in detention as of 31st December 2012. The total capacity of both detention centres is 700 places. In recent years the detention centres were quite often overcrowded⁶⁵ due to the gradual increase of the number of asylum applications on the one hand and, on the other hand, the delayed release for registration of detained asylum. It motivated the government to consider and start the preparation of emergency plans for tent camps in several cities around the country in the villages of Harmanli, Ohrid, Boyanovo, Slivnitsa and Senovo. So far these tent camps have not been established and it is unclear at the time of writing whether these tent camps would be detention facilities or open accommodation facilities.

B. Grounds for detention

Indicators:

- In practice, are asylum seekers automatically detained
 - o on the territory: ☐ Yes ☒ No
 - o at the border: ☐ Yes ☒ No
- Are asylum seekers detained in practice during the Dublin procedure? ☒ Yes ☐ No
- Are asylum seekers ever detained during a regular procedure? ☐ Yes ☒ No
- Are unaccompanied asylum-seeking children ever detained?
☐ Yes ☒ Yes, but only in border/transit zones ☐ No
- Are asylum seeking children in families ever detained?
☒ Yes ☐ Yes, but rarely ☐ No
- What is the maximum detention period set in the legislation (inc extensions): 18 months
- In practice, how long in average are asylum seekers detained? 33 days

⁶⁵ JRS Europe, *Becoming Vulnerable in Detention*, Detention of Vulnerable Asylum Seekers - DEVAS Project, 2010, National Chapter on Bulgaria; Open Society Institute, *Civil Monitoring in Detention centers*, Sofia, February 2012.

In general, detention of third country nationals can be ordered by the border or immigration police on account of their unauthorised entry, irregular residence or lack of valid identity documents. The maximum detention period is 18 months including extensions. Extensions after 6 months can be ordered only by the court. Presently, the law does not include specific provisions on the detention of asylum seekers. In the end of 2011, after 4 years of strategic litigation, the secondary legislation⁶⁶ that was providing a legal basis for detention of asylum seekers was amended to prohibit the border police from detaining undocumented asylum seekers, arrested at the national borders in detention centres for irregular third country nationals. Although it was seen as a major success in terms of national legislation in practice it resulted in a drastic decrease of asylum applications registered at the borders.

Until May 2012 the border police registered only 1 asylum application. Only after the opening of the first border transit centre in May 2012, the border police started again to register asylum applications. However, the number remained quite low and until the end of 2012 the border police registered only 64 asylum applications on behalf of 80 individuals (60 adults, 16 children and 4 separated children). In comparison, for the same period in the Lubimets detention centre, where the arrested asylum seekers were mainly transferred, in total 776 individuals (649 adults, 90 children and 37 separated children) applied for asylum. Thus, from all new arrivals at the national borders only 9% were registered by the border police and admitted directly to status determination procedures without detention, 91% of the newly arrived asylum seekers were in practice denied registration and detained. It marked a significant 12% decrease in the number of registrations in comparison with 2011, when 21% (66 asylum applications of all 305 border applicants) were registered by the border police and directly admitted to the status determination procedures.

Therefore, detention is implemented prior the registration of the asylum seeker in person by the State Agency for Refugees (SAR). The law allowed⁶⁷ the SAR to conduct the Dublin and accelerated procedures in the detention centres, but only until the opening of transit centres in border areas. In May 2012, Pastrogor transit centre started to function, however the asylum administration (SAR) continued to conduct, in violation of the law, EURODAC fingerprinting in detention centres and to release asylum seekers with a delay.

As an alternative to detention the legislation envisages daily reporting to the police, but it is not specifically targeting asylum seekers, rather all irregular third country nationals. In 2012 altogether 824 asylum seekers were released from both detention centres (Lubimets and Busmantsi) and accommodated in asylum centres, but another 418 asylum seekers were still in detention on 31 December 2012. The average detention of asylum seekers was 33 days.

In March 2013 the Law on Aliens was amended⁶⁸ to prohibit the detention of unaccompanied children in general and to introduce a maximum period of 3 months for the detention of accompanied children who are detained with their parents. In practice, however as of April 2013 unaccompanied children continue to be detained, both asylum seeking and migrant children.

⁶⁶ State Gazette, issue N91 from 18 November 2011 amending the Ordinance on the Responsibility and Coordination of the State Bodies.

⁶⁷ Law on Asylum and Refugees, §5 of the Transitional Clauses.

⁶⁸ Law on Aliens, Article 44, para 9.

C. Detention conditions

Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? ☐ Yes ☒ No
- Do detainees have access to health care in practice? ☒ Yes ☐ No
- Is access to detention centres allowed to
 - o Lawyers: ☒ Yes ☐ Yes, but with some limitations ☐ No
 - o NGOs: ☒ Yes ☐ Yes, but with some limitations ☐ No
 - o UNHCR: ☒ Yes ☐ Yes, but with some limitations ☐ No

If detained, asylum seekers are sent to detention centres for irregular third country nationals. Detention centres do not have separate wings for asylum seekers and they are detained together with other detainees. A 2010 report⁶⁹ by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended an extensive list of improvements and adjustments that ought to be made with respect to cell occupancy, access to light, toilets, showers and personal hygiene products, quantity and quality of food and appropriate and sufficient medication. The 2010 study on vulnerability in detention conducted by Jesuit Refugee Service (JRS) Europe includes the following information on access to medical care and services in detention centres in Bulgaria⁷⁰:

"In terms of medical services - detention centres' medical staff (doctors and a nurse) are seen less than once a month (62.7%), although 27% of detainees who report health problems see them once per week. All detainees report to have had medical examinations upon arrival in detention centre. Most of detained asylum seekers reported that they can understand the language that the medical care is in, however 30% cannot and feel that the staff should speak more languages to solve this problem. It could be explained by the fact that large percentage of the detainees have spent long time in the country prior detention and had learned Bulgarian. Therefore, the complaint that the medical personnel do not speak any foreign languages should be assessed higher in the problem chart reported, in terms of meeting the communication need of immigrants who were detained short after or upon their arrival in the country. 93.1% of detainees report that they have had their physical health affected (only 6.9% have not). Physical health has on average dropped from 8.45 to 3.17. According to the detainees interviewed, this has almost nothing to do with availability of medical facilities, but is psychological (76.2%), followed by being affected physically by poor living conditions (19%). This finding demonstrate clearly that the mere fact of detention and being detained situation make people vulnerable *per se* resulting in immediate negative consequences on physical, but more significantly on the mental health of detainees (see below). 73% are negative about the quality of provided medical care, and 65.5% have specific medical needs that are not being met and need access to appropriate care for this. In terms of mental health - 96.3% of people report that their mental health has been affected. Mental health has dropped on average 9.21 to 2.68. The fact of being behind bars is the most given factor (46.7%) and the effect of it is very negative. As for other reasons for deterioration, living conditions are negligible (3.3%), while 33% say the deterioration of their mental health is because of stress and worries, 30% are specifically worried about their mental health."

Access to open-air spaces is provided twice a day. Children in detention centres are using the common outdoor recreational facilities. Separate wings are provided for families, single women and

⁶⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [Report](#) Bulgaria, 18 to 29 October 2010.

⁷⁰ JRS Europe, *Becoming Vulnerable in Detention*, Detention of Vulnerable Asylum Seekers - DEVAS Project, 2010, National Chapter on Bulgaria.

unaccompanied children. Other vulnerable persons are detained together with all other detainees. National legislation does not provide for access to education for children in detention centres. Lawyers as well as representatives of NGOs and UNHCR do have access under the law and in practice to the detention centres during visiting hours but also *ad hoc* without prior permission when necessary or requested by asylum seekers. Some NGOs⁷¹ signed official agreements with the Migration Directorate and do visit detention centres for monitoring and assistance once a week.

Asylum seekers are never detained in prisons.

A report of the CPT published in March 2012 included specific recommendations to the Bulgarian Government to improve the conditions in the Busmantsi detention centre. The CPT concerns related in particular to the detention of asylum seekers together with irregular migrants awaiting removal, poor hygiene conditions, lack of interpreters which complicated communication between staff and detainees and insufficient psychological care for those detained in the Busmantsi centre.⁷² NGOs are not aware of any specific measures taken to implement the CPT's recommendations so far.

D. Judicial Review of the detention order

Indicators:

- Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No

Bulgaria was one of the few EU member states not providing the legal safeguard of an automatic judicial review of the detention order. After the amendment of the law in 2009 the automatic judicial review was introduced, but not before 6 months of detention. This safeguard was available in national criminal proceedings for all individuals, irrespective of their nationality or origin, if accused of committing a crime, but it was not guaranteed for those immigrants who were subjected to administrative detention for violation of the national immigration regime for the purpose of securing their deportation.

Presently, the law does not provide for automatic judicial review of detention orders before 6 months of detention. However, detention orders can be appealed within 14 calendar days⁷³ of the actual detention before the administrative court in the area of the headquarters of the authority which has issued the contested administrative act. The appeal does not suspend the execution of the order⁷⁴. The submission of the appeal is additionally hindered by the fact that the detention orders are not interpreted or translated. In view of the fact that deportation orders in principle are always issued for immediate implementation, the short deadline for lodging an appeal proved to be highly disproportionate and usually not respected by detained individuals, including asylum seekers.

Under the law, an automatic judicial revision is provided only after 6 months from the beginning of the detention. The management of the detention centre has the obligation to submit to the court a list of the individuals who have remained in detention for a period longer than 6 months. The administrative court

⁷¹ Bulgarian Helsinki Committee, Bulgarian Red Cross, ACET Center for Torture Victims.

⁷² See CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010*, Strasbourg, 15 March 2012, p.24-30. The Government's response published on 4 December 2012 does not address the issues raised with regard to the Busmantsi detention center. A report by the Open Society Institute Sofia raised similar concerns about the lack of professional interpreters in the detention centers in Bulgaria resulting in asylum seekers and irregular migrants not being properly informed about their rights. See Open Society Institute, *Civil Monitoring in Detention Centers*, Sofia, February 2012 (only available in Bulgarian).

⁷³ Law on Aliens, Article 46, as amended in State Gazette №23/2013.

⁷⁴ Law on Aliens, Article 46a.

decides for extension, termination or substitution of detention with an alternative measure in a session behind closed doors.

The Law on Asylum and Refugees when adopted allowed for examination of asylum applications in detention centres until the opening of transit centres which was a condition, regulated in §5 of the Additional Clauses.

In May 2012 however, the legal ground for examining asylum applications in detention centres was abolished by the fact of the opening of the first transit asylum centre in Pastrogor, i.e. the condition of §5 of the Additional Clauses of the law became a fact, making examinations of asylum applications in detention centres unlawful. Thus, the period when an asylum application was examined in detention cannot be considered as a period during which a person is held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers and to be disregarded as detention for the purpose of removal within the meaning of Article 15 of Decision 2008/115. Therefore national courts should consider any detention of asylum seekers, disregarding the actual period of the detention as illegal, not only those which are extending the 18 months maximum duration of Article 15 (5) and (6). It should be reflected also in the law, providing general rules and criteria for detention.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
☐ Yes ☒ No
- Do asylum seekers have effective access to free legal assistance in practice? ☒ Yes ☐ No

As the Law on Legal Aid provided for means of state sponsored legal aid and representation solely at the court stage, detained asylum seekers are not provided with legal aid while in detention. In practice, legal assistance is provided by NGOs; however this is conditional on how successful they are in fundraising for such activity.