

Questions for UNHCR Bulgaria regarding the situation for asylum seekers and refugees in Bulgaria

UNHCR Response

- **In the opinion of UNHCR, does the information contained in UNHCR's 2014 report on "Bulgaria as a country of asylum" provide a reasonably accurate picture of the status quo in Bulgaria, which competent authorities can reasonably base their decisions on, e.g. related to Dublin-transfers?**

UNHCR has not changed its conclusions and recommendation that States conduct an individual assessment as to whether a Dublin transfer would be compatible with States' obligations to protect an individual's fundamental rights under EU and international law, in particular with regard to asylum-seekers who have specific needs or vulnerabilities.

- **What is the current position of UNHCR on the access to, and quality of, the asylum procedure in Bulgaria?**

Regarding applicants returned under Dublin, where the applicant has previously not applied for international protection in Bulgaria or where the examination of their application has been terminated prior or after the departure of the asylum-seeker, a decision on its re-opening is issued together with the decision to take back the applicant, which ensures immediate access to the procedure. [An asylum application is terminated (Law on Asylum and Refugees, Article 15 (1), p. 7) within three months of the suspension of the procedure if the applicant fails to appear before the authorities and provide a reasonable explanation for his absence or non-cooperation. Initially, a procedure is suspended if the applicant does not attend an interview within 10 working days, changes his/her address without informing SAR, refuses to cooperate with the authorities or does not comply with the measures that apply as part of an alternative to detention (LAR, Article 14). Upon return under Dublin, however, the procedure is re-opened (LAR, Article 77 (4)).]

If, on the other hand, the asylum-seeker's claim has been finally rejected following an examination on the merits prior to or after the departure of the applicant, and the person is placed in immigration detention (SCTAF) after his/her return to Bulgaria, s/he may submit a new application, which will be considered a subsequent application, and s/he will be subject to an admissibility procedure. [The request is deemed inadmissible if the applicant cannot present any new circumstances relevant to his/her individual situation or country of origin. The decision on the admissibility of the request should be issued within 14 days of the submission of the claim; if no decision is issued within this period the claim is to be assessed in the general procedure. Asylum-seekers may be kept in immigration detention during the admissibility procedure (Article 44 (12) of the Law on Foreigners).]

Sub-questions

Quality of the Asylum procedure in Bulgaria for Afghan asylum seekers

- **DRC understands that there is a fast track procedure in place for Afghan asylum seekers and that there is a very low recognition rate. What is UNHCR's assessment of the quality of the asylum procedure, specifically for Afghan nationals.**

Bulgarian legislation provides for the possibility of assessing a claim in accelerated proceedings within the general procedure. The grounds upon which an application may be rejected as manifestly unfounded under accelerated procedures are specified under Article 13 (1) of the LAR and are largely consistent with those envisaged under Article 31 (8) of the EU Asylum Procedures Directive. A decision in an accelerated procedure must be issued within 10 working days of registration. This creates the risk that applicants with specific needs do not have sufficient time to collect and present evidence or undergo additional interviews. Apart

from unaccompanied children, all other applicants may be subject to accelerated procedures, including victims of torture.

Some applications of Afghan nationals have been assessed under accelerated proceedings but there is no specific policy requiring it and the procedure is in principle applicable to all nationalities.

• Considering the very low recognition rate for Afghan asylum seekers is UNHCR concerned that rejected Afghan asylum seekers might be subjected to refoulement?

The decision on the application for international protection is made by the State Agency for Refugees. The negative decision is subject to judicial review at two courts instances in the general procedure and one under the accelerated proceedings. Upon final rejection, the person is treated as irregular third country national. The return order and its execution is a separate process within the competence of Directorate "Migration".

UNHCR has long raised concerns over the low recognition rates of certain nationalities, including Afghans, compared to the EU average. UNHCR's regular review of asylum-seekers' case files, including those of Afghan nationals – in exercise of its supervisory mandate - has identified a number of concerns, in particular in relation to establishing all relevant facts; in the analysis and establishment of relevant grounds for granting international protection, particularly as regards the excessive focus on past persecution, rather than future risks; the use of general country of origin information that is not relevant to the specific circumstances of the case; a reliance on the internal flight alternative concept that is not fully consistent with relevant international and EU standards and jurisprudence; and the conflation between the credibility assessment and the legal analysis. Relevant jurisprudence from the European Court of Human Rights and the Court of Justice of the European Union is not always consistently, correctly and comprehensively referred to.

Risk of detention and ill-treatment

• Is there individual access to complain about ill-treatment committed by officials (or private persons) at the border or during detention. In case there is access to complaint, what is the quality of the processing of complaints?

Yes, such access is available. However, no assessment on the processing of the complaints can be made due to the very low number of submissions of such complaints.

• How widespread is the use of detention vis-à-vis asylum seekers? Are vulnerable individuals, e.g. unaccompanied minors, subject to the same detention practices as other asylum seekers and how are the conditions for those subject to detention?

Detention of persons who have submitted applications for international protection and transferred to the State Agency for Refugees is not widespread.

The State Agency for Refugees also manages closed centres where asylum-seekers can be placed on grounds outlined in Article 45b of the LAR, which are generally consistent with those enumerated under Article 8 (3) of the EU Reception Conditions Directive, with the exception of Art. 95a as outlined below.

Asylum-seekers accommodated at SAR open centres are subject to limitations on their freedom of movement. They may leave the administrative zone assigned to the reception centres in which they are accommodated only if they obtain permission from the authorities. However, they do not require permission to appear before a court or an administrative authority or to seek medical treatment (LAR, Article 30 (11)). If they leave the assigned zone without prior permission twice, they may be placed in a closed centre (LAR, Article 95a).

The law (LAR, Article 45c (2)) requires that the decision on the applicant's detention is made after assessing their belonging to a vulnerable group. Children may be placed in closed centres for the shortest possible period for the purpose of family unity or ensuring their safety. In practice, such placements are generally not common.

- **To the knowledge of UNHCR, do asylum seekers who are transferred to Bulgaria under the Dublin Regulation risk being detained upon or after arrival?**

If a person received a final rejection on his/her application before leaving Bulgaria, or the decision was served in absentia and therefore became final, s/he is transferred upon arrival in Bulgaria to one of the immigration detention facilities (Special Centre for the Temporary Accommodation of Foreigners, SCTAF) managed by the Ministry of the Interior for the purpose of removal. All persons placed in SCTAF may submit a new application, which will be considered a subsequent application, and the applicant will be subject to an admissibility procedure.

Unaccompanied children cannot be placed in SCTAF. Accompanied children may be accommodated there, in separate premises, for up to three months.

Persons whose application for international protection is still pending or who have never lodged such an application have access to reception assistance. They are entitled to all rights enumerated under Article 29 (1) of the LAR, including food, shelter, social assistance, medical and psychological care and a registration card. In most cases, they are placed in open centres managed by SAR.

In some cases such applicant may be placed in a closed centre managed by SAR under the conditions enumerated in the legislation (see above).

Conditions for beneficiaries of international protection in Bulgaria

Regarding the situation of beneficiaries of international protection, we wish to mention that the Bulgarian authorities suspended their integration programme for refugees in 2014. The limited integration opportunities and the lack of support from the Government is a primary challenge for refugees. Two integration centres in Sofia provide some assistance and advice; they are run by Caritas and UNHCR/Bulgarian Red Cross respectively.

A national Ordinance on the conclusion, implementation and termination of an integration agreement was rescinded by the interim government in March 2017, and while its replacement was adopted in August 2017, it lacks an associated budget. The Ordinance regulates the conclusion of an integration agreement, envisaged under Article 37a of the LAR, between the asylum-seeker and a municipality, participating on a voluntary basis. So far, integration agreements have been concluded only with two families of resettled refugees.

Considering the criteria in ExCom Conclusion no. 58, how would UNHCR describe the situation for refugees and asylum-seekers who have moved onwards in an irregular manner from Bulgaria, with regards to:

- **Protection against refoulement**

Bulgarian legislation (Article 4 (3)) of the LAR provides for protection against *refoulement* in relation to asylum-seekers as well as persons granted international protection.

- **Access to health**

According to Article 29 (1), p. 5 of the LAR, asylum-seekers are entitled to medical care under the same conditions as Bulgarian nationals. During the asylum procedure health insurance is

covered by the State. Some asylum-seekers face obstacles to effectively access medical care due to the absence of interpreters and the unwillingness of some general practitioners to register them as patients. It should be noted that the coverage of basic health insurance does not include all medical treatments and medicines, and some treatment for serious and chronic conditions may only be partially reimbursed. In the absence of any financial assistance, asylum-seekers may encounter difficulties covering these additional costs and receiving the necessary treatment.

The Bulgarian Red Cross has a small fund, mainly financed by UNHCR, to cover the cost of medical care and medicines for a limited number of extremely vulnerable asylum-seekers.

Beneficiaries of international protection have the right to free emergency medical aid. However, for regular medical care, they are obliged to pay their health insurance from the moment they are granted international protection. Currently, the monthly health insurance amounts to 10.20 EUR. Some NGOs cover part of the expenses of medical care for very vulnerable individuals.

Additional obstacles may hinder access to regular health care. According to Bulgarian legislation, if a person does not pay his/her health insurance for 3 months within a period of 36 months, he/she loses access to the national healthcare system except in emergency situations. Access can only be restored by ensuring full health insurance payments for the previous 5 years, which most refugees cannot afford. In practice, the coverage is shared between the employer and the employee; however, if not employed, refugees must make the monthly payments themselves, unless they are admitted to a homeless shelter. UNHCR is unable to confirm whether any refugees may have been exposed to a life or health threatening situation due to lack of medical care.

Children's health insurance, regardless of whether they are accompanied or not, is paid for by the state but their access to health care cannot be ensured immediately as certain administrative steps need to be taken to ensure any gaps in the health care coverage, due to their absence from the country if they travelled onwards, are accounted for.

- **Access to the labour market**

Asylum-seekers have unlimited access to the labour market three months after submitting their application for international protection if not decision on it has been made (LAR, Article 29 (3)). However, in practice, they face difficulties when entering the job market (see below).

Beneficiaries of international protection have access to the labour market without any limitations. However, in practice, they face obstacles in obtaining employment.

Since knowing Bulgarian is indispensable for entering the labour market and most refugees do not know it, they are facing difficulties in entering the job market as would be the case in many EU countries. Since February 2018, SAR has resumed the provision of language classes at reception centres. Outside these centres, however, the provision is limited to classes offered by NGOs on a project basis. Refugees are also faced with complicated recognition of skills procedures. Lack of job matching services with the private sector is another major challenge.

Bulgaria's governmental Employment Agency does not proactively facilitate such processes. In 2017, 22 refugees were registered with the Employment Agency's Labour Bureaus. Of these, 13 were assisted and signed employment contracts through the Agency. Although the Agency also manages a dedicated Programme for Employment and Training of Refugees, in 2017 no refugees benefited from it as employers appeared unwilling to participate in the programme. However, there has been some limited progress in this regard in 2018.

Some refugees find employment through NGOs, online job searches, word of mouth, or with support from refugee communities. Some are also 'informally' employed without work contracts.

- **Access to accommodation**

Asylum-seekers returned under Dublin whose application for international protection is still pending or who have never lodged such an application have access to reception assistance. They are entitled to all rights enumerated under Article 29 (1) of the LAR, including food, shelter, social assistance, medical and psychological care and a registration card.

If, on the other hand, the asylum-seeker's claim has been finally rejected following an examination on the merits prior to or after the departure of the applicant, and the person is placed in immigration detention (SCTAF) after his/her return to Bulgaria, s/he may submit a new application, which will be considered a subsequent application, and s/he will be subject to an admissibility procedure. The request is deemed inadmissible if the applicant cannot present any new circumstances relevant to his/her individual situation or country of origin. The decision on the admissibility of the request should be issued within 14 days of the submission of the claim; if no decision is issued within this period the claim is to be assessed in the general procedure. Asylum-seekers may be kept in immigration detention during the admissibility procedure (Article 44 (12) of the Law on Foreigners). If not in detention, they are not entitled to food, shelter or social assistance (LAR, Article 29 (7)). If the subsequent application is deemed admissible, the applicant will be admitted to the general procedure where the claim is examined on the merits, and the applicant should be released. However, they will not be entitled to food and accommodation at a reception centre if they belong to a vulnerable group.

Asylum-seekers may also opt to live outside the centres but in such case, they are not entitled to material assistance, apart from payment of the medical insurance (LAR, Article 29 (9)).

Beneficiaries of international protection face a number of legal and practical barriers to accessing housing, thereby exposing them to a risk of homelessness. According to the LAR, refugees must vacate the reception facilities within 14 days of being notified of a positive decision, as they are no longer entitled to reception assistance, including accommodation at SAR centres. Within this period, they have to find an external address where they can be registered, which is also necessary to obtain their IDs. This, in turn, requires finding private housing with a landlord with whom a contract is concluded and who is willing to submit a declaration to the municipality certifying his/her agreement for the person to be registered at the address. Landlords are generally reluctant to rent to refugees. Anti-refugee and xenophobic rhetoric by politicians and media coverage have resulted in the general public's often negative attitude towards refugees.

There are no government programmes to help refugees find accommodation. In some cases, SAR tolerates on an ad hoc basis the stay in reception facilities for up to 6 months of vulnerable refugees who lack alternative options. However, they are not entitled to food. Moreover, beneficiaries of international protection returned to Bulgaria are not eligible for stay at SAR's reception facilities even on such ad hoc basis.

Access to social housing is governed by municipal legislation which imposes conditions that beneficiaries of international protection cannot fulfil, including one of the spouses having to be a Bulgarian national and having resided in the municipality for a certain period (in Sofia, it is 10 years without interruption). In addition, the social housing available is insufficient to meet the demand.

A prerequisite for being admitted to homeless shelters is that refugees possess documentation, such as an identity card or a travel document issued by the Bulgarian authorities, which many of the beneficiaries of international protection returned from other EU Member States no longer possess. The process of re-issuing the identity document includes filing a request with SAR for a copy of the decision by which international protection was granted and finding an official address at which they can be registered. The authorities do not accept the address of the homeless shelter for the purpose of registration and issuance of an identity document. People who are returned to Bulgaria may need time to readjust to the situation by (re-)establishing community links and social ties as well as fulfilling administrative formalities, which may deprive them of immediate access to their rights.

Moreover, the capacity of homeless shelters is insufficient as they house also Bulgarian nationals (there are 3 such centres in Sofia, with a total capacity of 510 beds). The conditions there are not suitable for children. According to the Implementing Regulation of the Law on Social Assistance, placement at such centres should not exceed 3 months, with an extension possible for up to 6 months. Although UNHCR has observed that stay of families or adults is normally extended after the expiry of this period, the temporary and precarious nature of the arrangement creates anxiety.

- **Access to education**

Pursuant to Article 26 (1) of the LAR, asylum-seeking and refugee children are entitled to education under the same conditions as Bulgarian nationals. Some recent measures have contributed to a substantial increase in school enrolment, the most important of which are amendments to primary and secondary legislation, including the adoption of an Ordinance on School Admission of asylum-seekers and persons granted international protection, the provision of additional Bulgarian language support at schools, and awareness-raising among the parents of asylum-seeking and refugee children, as well as the parents of local children.