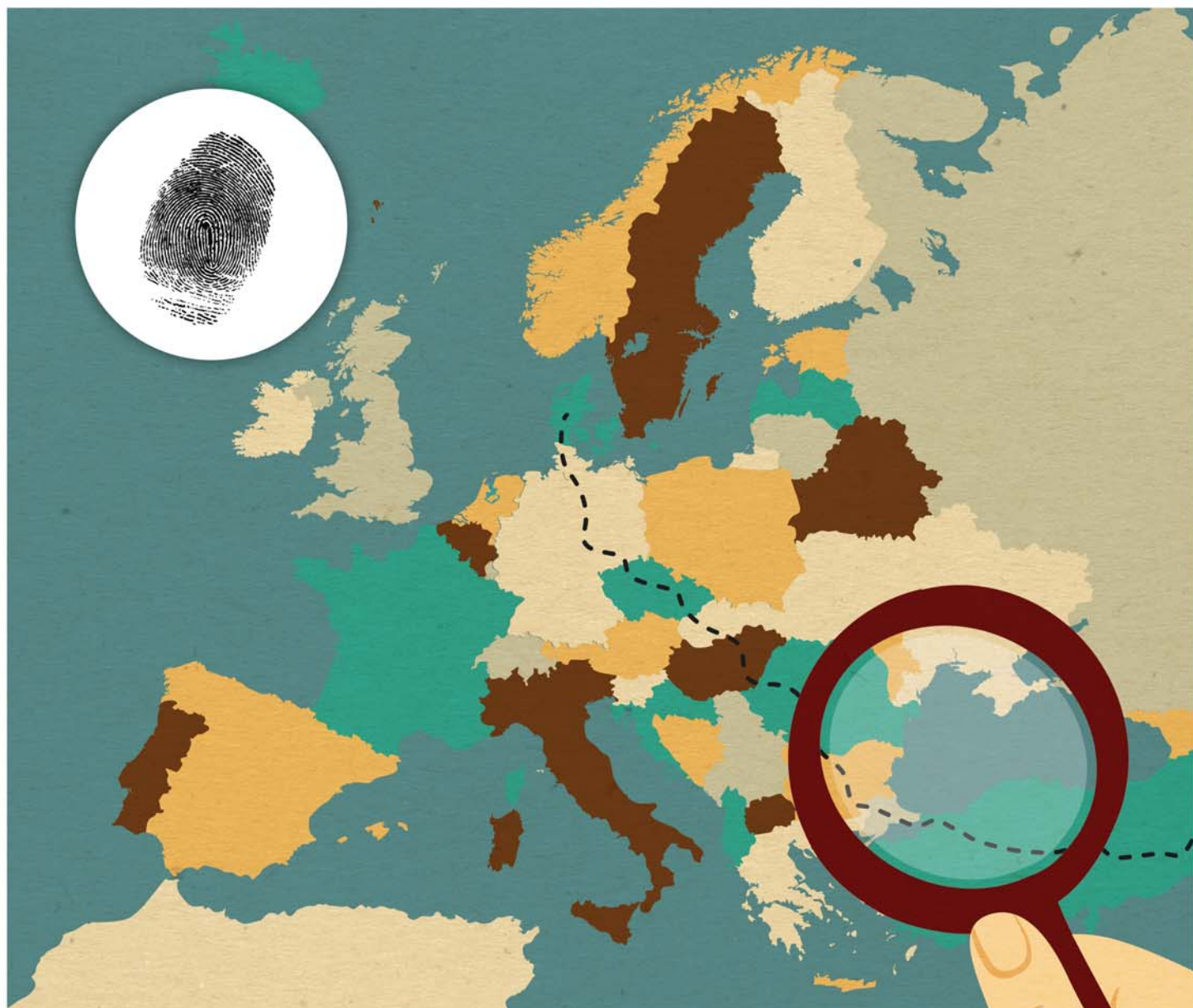




Bulgarien

Oversigt over asylsystemet, modtageforholdene og andre forhold af relevans for spørgsmålet om Dublin-overførsel

BULGARIEN

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Dansk Flygtningehjælps oversigt over asylsystemet, modtageforholdene og andre forhold af relevans for spørgsmålet om Dublin-overførsel er et uddrag af aktuelle relevante baggrundsoplysninger om det enkelte land. Oversigten er baseret på oplysninger indsamlet af andre aktører og er således ikke et udtryk for Dansk Flygtningehjælps egne oplysninger eller holdninger. Dansk Flygtningehjælp er en privat, humanitær organisation, der arbejder med flygtninge og fordrevne i mere end tredive lande samt med rådgivning af asylansøgere i Danmark.

Indhentelse af oplysninger afsluttet 12. december 2013. Dog er UNHCR rapporten "Bulgaria as a Country of Asylum", af 2. januar 2014 inddraget i oversigten

1. Generelle oplysninger

Tidligere modtog Bulgarien i gennemsnit 1000 migranter og asylansøgere om året, men landets indenrigsminister estimerer, at Bulgarien vil have modtaget mellem 11.000-15.000 ved udgangen af 2013, hvoraf langt hovedparten er syrere.¹ UNHCR skriver: *"Although overall numbers are low relative to some other European countries Bulgaria's asylum system cannot keep pace with the new arrivals."*² Den store stigning i antallet af tilrejsende migranter og asylansøgere har fået regeringen til at tage hårde midler i brug. Et 170 km langt hegn er under opførsel langs den bulgarske grænse til Tyrkiet. *"The government hopes the fence will ensure the points of entry are places where migrants can be more easily detected and apprehended. Where officials find no basis for asylum or protection, people have been jailed or deported,"* skriver IRIN (Integrated Regional Information Networks, som leverer internationale nyheder og analyser på det humanitære område).³ 22. oktober 2013.⁴ 15. november 2013 fremgår det af en artikel fra UNHCR:

*"UNHCR is greatly concerned over reports of some EU countries placing barriers to entry or forcibly returning asylum-seekers including people who have fled the conflict in Syria.[...]. If practices to prevent asylum-seekers from accessing territory and procedures are taking place, UNHCR calls on states to cease them immediately. Push-backs and prevention of entry can put asylum-seekers at further risk and expose them to additional trauma. [...] Media reports say Bulgaria turned back 100 migrants at the border over the weekend and deployed some 1,200 police officers to the border region. Introducing barriers, like fences or other deterrents, may lead people to undertake more dangerous crossings and further place refugees at the mercy of smugglers."*⁵

FN's Torturkomité fremfører i sin rapport til sin *forty-seventh session (31 October - 25 November 2011): forty-eighth session (7 May - 1 June 2012)*, at der i Bulgarien er mangel på lige adgang til retssystemet for asylansøgere, manglende sikring af en fair procedure for asylansøgere (pkt. 53,9), manglende opretholdelse af institutioner til beskyttelse af menneskerettighederne (pkt. 53, 13), mangel på respekt for princippet om non-refoulement (pkt. 53, 16) og utilstrækkelige forhold under frihedsberøvelser (pkt. 53, 21).⁶

1.1 UNHCR's anbefalinger af 2. januar 2014

UNHCR udsendte d. 2. januar 2014 en rapport vedrørende forholdene i Bulgarien for asylansøgere, hvori de anbefaler, at man stopper udsendelser til Bulgarien, idet forholdene i Bulgarien på nuværende tidspunkt ville udgøre en krænkelse af asylansøgernes rettigheder:

"UNHCR considers that asylum-seekers in Bulgaria face a real risk of inhuman or degrading treatment, due to systemic deficiencies in reception conditions and asylum procedures in the country. The primary basis for this conclusion is the deplorable reception conditions, which, in addition to amounting to inhuman or degrading treatment, are also at variance with

¹ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

² UNHCR. Bulgaria's asylum centres bursting at the seams as Syrian refugees enter Europe, UNHCR news, 17. september 2013

³ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

⁴ Ibid.

⁵ UNHCR. Denied entry and pushed back: Syrian refugees trying to reach the EU. Nyhed 15. november 2013

⁶ UN General Assembly. Report of the Committee against Torture, Forty-seventh session (31 October - 25 November 2011): Forty-eighth session (7 May - 1 June 2012), 12 November 2012

*the right to human dignity and respect for privacy. Moreover, asylum-seekers in Bulgaria are currently at risk of arbitrary detention, given the absence of a clear legal basis for detention in Bulgarian law, and given the delays, which can mean that detention continues for uncertain and often lengthy periods. In addition, while according to UNHCR's information, asylum-seekers are not at this time returned forcibly in practice from within Bulgaria to other countries where they could be at risk of persecution or serious harm, they are denied access to a fair and effective asylum determination procedure, which is at variance with the right to asylum and to numerous provisions of the acquis. These are problems, which affect people transferred to Bulgaria under the Dublin Regulation. Return to these conditions could create a risk of refoulement.”*⁷

UNHCR konkluderer således, at asylansøgere i Bulgarien er i risiko for umenneskelig og nedværdigende behandling på grund af systematiske mangler i modtageforholdene og asylproceduren.

2. Modtageforhold

Det bulgarske indenrigsministerium skriver i sin strategirapport om migration, asyl og integration for 2011-2020:

*“Currently Bulgaria lacks an operational practical mechanism and institutional capacity to fulfill the basic standards for receiving asylum seekers in accordance with European legal norms, in particular Directive 2003/9/EC laying down minimum standards for reception of asylum seekers. There is also absence of a legal mechanism for providing medical services to refugees as stipulated in the Law on Asylum and Refugees.”*⁸

Mens denne rapport skrives, er Bulgariens modtageforhold under hastige forandringer pga. den store tilstrømning af asylansøgere i 2013. Indtil for nylig var der 3 åbne centre i Bulgarien, ét i Sofia og ét i Banya med henholdsvis 450 senge og 80 senge og et transitcenter med 300 senge i Pastrogor, som er særligt indrettet til indkvartering af asylansøgere, som ansøger ved grænsen og undergår Dublin- eller den fremskyndede procedure.⁹ Allerede før den nylige udvikling var centrenes kapacitet ”highly insufficient” ifølge Asylum Informations Databases’s (AIDA) landerapport om Bulgarien:

*“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 law, 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.”*¹⁰

UNHCR’s ledende talsmand, Melissa Fleming, udtalte i september 2013, at de tre eksisterende modtagecentre i Bulgarien er “overflowing and both unsafe and dire”. 17. september 2013, fremgår det om disse centre:

⁷ UNHCR. Bulgaria as a Country of Asylum, 2. Januar 2014, s. 16.

⁸ Bulgarian Ministry of the Interior. National Strategy on Migration, Asylum and Integration (2011-2020), s. 30

⁹ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.10

¹⁰ AIDA. Country Report – Bulgaria, 25. april 2013, s. 29

*“People sleep in corridors and cook on flimsy burners in crowded dormitories. TV, internet rooms and child care spaces have been hastily turned into makeshift bedrooms accommodating as many as seven families together. [...] Up to 100 people share a single bathroom, with no separate facilities for men, women and children. Education and recreational activities are scant, and several hundred children are missing out entirely on school.”*¹¹

Det fremgår endvidere, at “[t]he overcrowding is straining relations among asylum-seekers, who in normal circumstances have to make ends meet on the equivalent of just over one euro a day for food, clothes, medicine and other necessities.”¹² Det fremgår af en artikel fra IRIN 22. oktober 2013:

*“But the country's current capacity of just 3,350 beds at state-run detention and reception centres is stretched to the limit, exacerbated by the sluggish processing time for registering and processing asylum applications. As a result, more than 900 people are currently living in the main reception centre in Sofia at the State Agency for Refugees, which was built with a 600-person capacity. "For the last two months, all the rooms have been filled, and people have been sleeping on cots set up in the corridors," said Elena Dimitrova, spokesperson for the State Agency for Refugees. "Unfortunately," she said, "there are too many of them. There is not enough money, food and no administration capacity.”*¹³

Det fremgår af samme artikel, at 380 migranter og asylansøgere bor i en forladt skole uden for Sofia i ”squalid conditions”. Faciliteten, som er kendt som Vrazhdebna, er ifølge artiklen én ud af tre modtagecentre, som er åbnet for at imødekomme den store tilstrømning af ansøgere. Tidligere klasseværelser deles af adskillige familier, og fødevarerforsyninger doneres kun sporadisk af Bulgariens Røde Kors, mens staten ikke yder noget, fremgår det.¹⁴ The Bulgarian Helsinki Committee (BHC) beskriver ifølge artiklen stedet som “an abandoned for years, crumbling building, without heating, with broken windows, mold, lack of hot water or no water at all, an entire floor without electricity, non-functioning sewage, beds in the form of just mattress with one blanket for three people, complete lack of personnel, medical care, medications and even food.”¹⁵ Det fremgår endvidere af en udtalelse fra BHC:

*“BHC expresses its definite opinion that such treatment of refugees is not only an emblematic example of the red tape and indifference to the needs of people typical for Bulgarian State institutions, but also constitute inhuman and degrading treatment and display of white-collar cruelty of the highest order.”*¹⁶

EU har valgt at understøtte det bulgarske indkvarterings- og asylsystem.¹⁷ Med denne støtte vil regeringen opgradere faciliteterne og åbne nye modtagecentre. En af de nye faciliteter, som er åbnet som følge af denne støtte, er Harmanli-lejren.¹⁸ En lignende midlertidig, og ifølge Bulgarian Helsinki Committee

¹¹ UN News service. UN welcomes Bulgaria's commitment to improve conditions for asylum-seekers, 17. september 2013

¹² UNHCR. Bulgaria's asylum centres bursting at the seams as Syrian refugees enter Europe, UNHCR news, 17. september 2013

¹³ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

¹⁴ Ibid.

¹⁵ Sofia News Agency. Bulgarian NGO Blasts State Body over Refugee Treatment, 26. september 2013

¹⁶ Sofia News Agency. Bulgarian NGO Blasts State Body over Refugee Treatment, 26. September 2013

¹⁷ EASO. EASO to Provide Support to Bulgaria. Pressemeddelelse, 17. oktober 2013

¹⁸ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

utilstrækkelig, lejr er åbnet ved Elhovo ved den tyrkisk-bulgarske grænse.¹⁹ Af UNHCR's hjemmeside fra 15. november 2013 fremgår det:

*“The Bulgarian government has housed around half its 8.000 asylum-seekers in seven state-sponsored accommodation centres. But these centres, filled beyond capacity with people from Mali, Iraq, Afghanistan as well as Syria, are able to provide only basic services. The most problematic facility may be Harmanli, a squalid border camp where several hundred families – 1,100 people in total, including 300 children – languish in containers and tents.”*²⁰

Den forladte militærbase Harmanli, som ligger 50 km fra den tyrkiske grænse, åbnede i oktober 2013 og huser næsten udelukkende (98 %) syrere. I begyndelsen blev containere til 450 personer etableret, men siden de blev fyldt, har asylansøgere været nødt til at søge tilflugt i telte, som ikke er beregnet til vintervejr. UNHCR rapporterer om mangel på opvarmning og varmt vand, og familier der fryser om natten.²¹

*“Of Harmanli's 300 children, many are feverish and coughing. Despite this epidemic of illnesses, there is no doctor in the enclosed and guarded camp, although it is reported that the most seriously ill have been allowed to leave to seek medical care. But without funds to buy medicine, these people remain at risk, particularly those suffering from serious ailments like diabetes, tuberculosis, and Hepatitis A.”*²²

Harmanlis affalds- og sanitetsfaciliteter er ifølge UNHCR belastet til det yderste, og *“the camp's grounds are carpeted in litter.”* 10 fælles badeværelsesbåse betjener de omkring 500 mennesker, som lever i telte og fælles sovesale, mens dem som ankom tidligere og bor i containere, har deres egne toiletter. *“Facilities are unclean, poorly maintained, and problematic for the camp's vulnerable population,”* skriver UNHCR og tilføjer, at der er flere babyer undervejs:²³

*“About a dozen women in Harmanli are pregnant, and are in need of nutrition. But food is scarce. Every five days, each asylum-seeker receives a loaf of bread, one jar of a locally produced salsa, a can of pate, and canned fish in tomato sauce.”*²⁴

UNHCR oplyser, at før nogen kan forlade Harmanli-lejren, skal beboerne have deres asylansøgninger registeret, hvilket i betragtning af lejrens store beboerantal kan tage tid. *“With winter approaching, food scarce, and people ailing, registration will be a race. And sadly, due to staff shortages in the camp, time is not on their side,”* skriver UNHCR,²⁵ som 6. december har startet en akut operation for at forbedre forholdene for asylansøgere og flygtninge i Bulgarien.²⁶

Ifølge en UNHCR-baggrundsrapport om hjemløshed blandt flygtninge og asylansøgere i Bulgarien fra 2013 er hjemløshed og faren for hjemløshed to af de mest alvorlige forhold, som påvirker flygtninge og

¹⁹ BHC. On the fringes of Europe, no warm welcome for refugees in Bulgaria. BHC nyhedsartikel 14. november 2013

²⁰ UNHCR. Syrians face tough conditions in Bulgaria's makeshift camps, UNHCR news 15. november 2013

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ UNHCR. Syrians face tough conditions in Bulgaria's makeshift camps, UNHCR news 15. november 2013

²⁶ UNHCR. UNHCR launches emergency operation to improve conditions for refugees and asylum seekers in Bulgaria, nyhedsartikel 6. December 2013

asylansøgere i Bulgarien.²⁷ ”*Asylum-seekers, refugees and humanitarian status holders are all faced with the risk of homelessness; They are vulnerable at both the beginning and the end of the Refugee Status Determination (RSD) procedure.*”²⁸

Et stigende antal asylansøgere bor på gaden eller i improviseret indkvartering. Det fremgår af IRIN's artikel fra 22. oktober, at “UNHCR's Cheshirkov says many of the 2,500 people now living on their own "are at risk of becoming homeless if they run out of money." [...] "African immigrants are in the worst situation," explained Bulgarian journalist Dimiter Kenarov. "They are discriminated against and feel increasingly isolated and left behind because all the aid is going to the Syrians," he said.”²⁹

Samtidig er den indledende frihedsberøvelse af asylansøgere (jf. afsnit 2.1.) afgørende for risikoen for hjemløshed, skriver UNHCR:

*“The detention of asylum-seekers in Special Centres for Temporary Accommodation of Foreigners (SCTAF) is a factor determining the life course of many interviewees and is one of the major factors that contributes to homelessness at the beginning of the RSD procedure. Due to the sometimes prolonged detention in SCTAF, some asylum-seekers declare that they have accommodation and provide a fictitious external address. They do so in order to be released from detention, which directly results either in homelessness or in dire living conditions below the poverty line.”*³⁰

Det fremgår af en udtalelse fra BHC til IRIN, at “[p]eople desperate to get out of overcrowded reception centres often buy such documents [proof of external address] on the black market.”³¹ Asylansøgere, som løslades fra frihedsberøvelse til en ekstern adresse har ikke ret til indkvartering i et åbent center, og har heller ikke ret til økonomisk støtte eller deltagelse i bulgarske sprogkurser. UNHCR skriver, at asylansøgerne på den måde “become entrapped in a vicious circle”.³² “The research data reveals that detention in SCTAF predetermines to a large extent the subsequent fate of asylum-seekers and influences the decisions they make about staying in Bulgaria and integrating,” skriver UNHCR.³³

Asylansøgere indkvarteret i åbne centre er i risiko for at blive hjemløse ved afslutningen på asylproceduren, og i tilfælde af en gentagen ansøgning, mistes retten til både indkvartering i et åbent center og statsfinansieret understøttelse.³⁴ UNHCR skriver:

“Data from SAR [State Agency for Refugees] shows that the majority of asylum-seekers in Bulgaria are denied refugee status, which in most cases results in an appeal against SAR's decision. During that time, they experience extreme

²⁷ UN News Service. Homelessness serious threat to refugees in Poland, Bulgaria and Slovakia – UN report, 7. juni 2013

²⁸ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.5

²⁹ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

³⁰ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.5

³¹ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

³² UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.5

³³ Ibid.

³⁴ Ibid.

*marginalization and social exclusion as they have minimal chances of finding a job legally, have no permanent income and housing and live below the poverty line.”*³⁵

Årligt fastsættes størrelsen på den finansielle støtte til asylansøgere på basis af den minimale sociale ydelse, som er tilgængelig for bulgarere, hvilket i øjeblikket beløber sig til 33 euro om måneden.³⁶ Beløbet kritiseres i AIDA's landerapport for at være ”*fully insufficient to meet even the most basic needs for nutrition.*”³⁷ Det fremgår endvidere, at “[i]n 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.”³⁸

De åbne centre fungerer som hostels, og beboerne skal derfor selv købe mad inden for rammerne af de 33 euro, som ydes til dem om måneden. UNHCR skriver: “*As these funds are totally insufficient, the inhabitants are forced to constantly ask for help from the other inhabitants in the centre or to rely on funds sent from time to time by relatives. They have to look for the cheapest shops and markets and often starve for days until the next payment in the beginning of the month.*”³⁹

De hjemløse forlader sig hovedsageligt på hjælp fra bekendte blandt deres landsmænd og fra NGO'er. Bulgariens Røde Kors yder finansiell støtte til såvel husly og medicin som fødevarerpakker med dåsemad, olie, sukker og te. Med disse penge til husly finder nogen midlertidig indkvartering på et hostel, eller de lejer et værelse i en lejlighed. Røde Kors hjælper også hjemløse asylansøgere, som er blevet løsladt fra frihedsberøvelse efter at have oplyst en ekstern adresse i Sofia, og en anden NGO kan anmodes om hjælp til tøj, rådgivning og støtte.⁴⁰ Om forholdene for de hjemløse asylansøgere og flygtninge skriver UNHCR:

*“The interviewed homeless respondents seeking asylum or with international protection assess their situation as extremely difficult. They are not able to maintain minimum personal hygiene and suffer from malnutrition. Their situation is further aggravated by the fact that winter is coming and they cannot afford any shelter. One of the respondents has only one blanket which he takes with himself wherever he goes in order to have something to keep him warm during the night. Besides having health problems and feeling physically unwell, the respondents are also in a very bad emotional condition. Most of them have lost any hope of improving their situation because they have almost no funds to get on their feet.”*⁴¹

Asylansøgere har ret til de samme sundhedsydelser som bulgarske statsborgere. Af AIDA's landerapport fremgår det:

³⁵ Ibid., s.6

³⁶ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.11

³⁷ AIDA. Country Report – Bulgaria, 25. april 2013, s. 29

³⁸ Ibid.

³⁹ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.24

⁴⁰ Ibid.s.32

⁴¹ Ibid., s.32

“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 deficiencies. In this situation special conditions for treatment of torture victims and persons suffering mental health problems are not available.”⁴²

Ifølge UNHCR er beboerne på de åbne centre (i Banya og Sofia) ofte ikke opmærksomme på deres rettigheder og muligheder i forhold til sundhedsydelser.⁴³ Om adgangen til sundhedsydelser her skriver UNHCR yderligere:

“RRC Banya has arranged for regular visits by a female doctor practicing in Sliven. Furthermore, one of the social mediators working for BRC also carries out, as part of his responsibilities at BRC, medical checks of the inhabitants who are ill. Patients are sent as necessary to the nearby hospitals in Sliven and Stara Zagora where they undergo medical tests. In this respect, there are no complaints about the access to medical services. Only the purchase of medicine for the inhabitants, who benefit from free medical care but have to pay for the medicine necessary for their treatment, is problematic. The access to medical care in RRC Sofia follows the same logic – the individuals have the same rights as insured Bulgarians, which do not cover the costs of medicine. This is a serious problem for the refugees who have only minimal resources, in particular in cases of chronic illnesses which require the purchase of medicine on a regular basis.”⁴⁴

Det fremgår af AIDA's landerapport, at manglen på midler til at købe medicin også er et problem for personer med beskyttelsesstatus.⁴⁵

2.1. Frihedsberøvelser

Der er to fængsler til frihedsberøvelse af migranter i Bulgarien, Bousmantsi nær Sofia og Lyubimets ved den bulgarsk-tyrkisk/græske grænse. Den formelle titel på disse fængsler, som har plads til 700 indsatte, er ifølge bulgarsk lov ‘*Special Centres for Temporary Accommodation of Foreigners*’ (SCATF) og bruges også til at frihedsberøve asylansøgere, som fængsles sammen med andre indsatte.⁴⁶ For at løse manglen på indkvartering har de bulgarske myndigheder indkvarteret nyankomne asylansøgere i disse to fængsler indrettet til irregulære immigranter, som venter på udsendelse.⁴⁷ UNHCR skriver 17. september 2013:

“In Lyubimets, close to the Turkish border, and Busmantsi on the outskirts of Sofia, asylum-seekers stay behind bars for up to three months waiting for the authorities to move them to an open centre. These detention centres are hosting numbers way beyond their capacity.”⁴⁸

Det fremgår tilsvarende af AIDA's landerapport om Bulgarien, at disse fængsler de seneste år ofte har været overbelagte på grund af den gradvise stigning i antallet af asylansøgninger samt forsinkelsen i registreringen af ansøgninger og løsladelsen af asylansøgere. UNHCR skriver, at “*According to official statements of the Chairperson of SAR, the delay is due to the Agency not having adequate capacity to accommodate all*

⁴² AIDA. Country Report – Bulgaria, 25. april 2013, s. 32-33

⁴³ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.33

⁴⁴ Ibid. s.24

⁴⁵ AIDA. Country Report – Bulgaria, 25. april 2013, s. 31

⁴⁶ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 38; AIDA. Country Report – Bulgaria, 25. april 2013, s. 37

⁴⁷ UNHCR. Bulgaria's asylum centres bursting at the seams as Syrian refugees enter Europe, UNHCR news, 17. september 2013

⁴⁸ Ibid.

*asylum seekers. For that reason, detained foreigners give an external address they can go to, so that SAR registers their application faster.”*⁴⁹

Ud af de 1261 asylansøgninger, som blev registreret i 2012 i de to fængsler, blev 776 ansøgninger (61%) indgivet af ansøgere, som blev overført til frihedsberøvelse ved de nationale grænser.⁵⁰ Den bulgarske lovgivning fritager asylansøgere fra strafansvar, men selvom en person indgiver en asylansøgning, anses vedkommende ikke for at være asylansøger, før ansøgningen er officielt registreret, og personen kan derfor straffes indtil da. I 2012 blev kun 9% af de asylansøgere, som blev modtaget af grænsepolitiet, registreret som asylansøgere, efter de havde bedt om asyl. De resterende 91% blev derimod nægtet registrering og først frihedsberøvet som irregulære migranter, før deres ansøgning blev registreret.⁵¹ Dette skyldes overvejende manglen på tolkeservice på døgnbasis ved grænserne.⁵² Det fremgår endvidere:

*“In 2012 the majority of asylum seekers – (...) 66% of the 365 cases that were monitored – were sentenced for illegal border crossing. An ex officio examination by the Prosecution Office of the Republic of Bulgaria revealed that the only objective criterion as to whether to prosecute the person has been the presence of a valid identity document as criminal proceedings can be carried out only with regard to persons whose identity is established beyond doubt. Therefore the submitted asylum applications have not been taken into account at all by the organs of the investigation and the prosecution in contradiction with Article 279 (5) of the Penal Code and Article 31 of the Geneva Convention on the Status of Refugees.”*⁵³

Af US State Departments rapport fra 2012 fremgår det:

*“The law requires that persons seeking refugee status file an application within "a reasonable time" after entering the country. Even though by regulation border police are no longer required to detain asylum seekers who enter the country illegally in a temporary center, that practice continued. The low institutional capacity of the government to process requests and transfer applicants to shelters became even more evident with the increased inflow of refugees from Syria. In August, 25 Syrian refugees, including children, who had been held for months in the detention center in Lyubimets went on a hunger strike to demand expeditious resolution of their cases.”*⁵⁴

Det fremgår endvidere af US State Departments rapport, at “[a]lthough the law sets a maximum six-month period of detention for illegal immigrants and asylum seekers, there were reports of detentions exceeding six months.”⁵⁵

Frihedsberøvelser af udlændinge kan pålægges af grænse- eller immigrationspolitiet på grundlag af uautoriseret indrejse, irregulært ophold eller manglen på gyldige identitetsdokumenter.⁵⁶ Som én af få EU-medlemsstater findes der i Bulgarien ingen automatisk domstolsprøvelse af legaliteten af

⁴⁹ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.10

⁵⁰ AIDA. Country Report – Bulgaria, 25. april 2013, s. 34

⁵¹ AIDA. Country Report – Bulgaria, 25. april 2013, s. 35; Dr. Valeria Ilareva. Criminalization of Refugees in Bulgaria - Information Note, 13. juni 2013, s. 1-2

⁵² AIDA. Country Report – Bulgaria, 25. april 2013, s. 34

⁵³ Ilareva, Valeria Dr. Criminalization of Refugees in Bulgaria - Information Note, 13. juni 2013, s. 1, citatet er oversat fra bulgarsk af Valeria Ilareva fra BHC's årlige rapport *Human Rights in Bulgaria in 2012*

⁵⁴ United States Department of State. 2012 Country Reports on Human Rights Practices - Bulgaria, 19. april 2013

⁵⁵ Ibid.

⁵⁶ AIDA. Country Report – Bulgaria, 25. april 2013, s. 35

frihedsberøvelsen, når den er pålagt. Frihedsberøvelsen kan appelleres inden for 14 dage (dog 7 dage ifølge ECRE's landerapport⁵⁷) fra den faktuelle frihedsberøvelse, og pga. den korte tidsfrist, er det svært for udlændinge at udøve den i praksis.⁵⁸ Af AIDA's landerapport fremgår det: *"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."*⁵⁹

Lykkes det at indgive en appel har den ikke opsættende virkning og under de månedlange retslige procedurer forbliver personen derfor frihedsberøvet. Normalt tager det 3-4 måneder at nå til afgørelse i en sådan appsag.⁶⁰ Efter 6 måneders frihedsberøvelse kan kun retten afbryde eller udvide den med yderligere 6 måneder eller iværksætte en mindre indgribende foranstaltning.⁶¹

13. november 2013 fremlagde den bulgarske regering et lovforslag⁶², som giver grundlag for systematiske frihedsberøvelser af asylansøgere, som ankommer irregulært til Bulgariens territorium. Sårbare personer og uledsagede mindreårige er ikke undtaget fra ordningen, og kun varigheden, ikke lovligheden, af frihedsberøvelsen vil kunne prøves ved en domstol. BHC udtaler, at lovforslaget, hvis det bliver vedtaget af parlamentet *"would be a blatant violation of the recast Reception Conditions and Asylum Procedures Directives, as well as a number of international, European and national human rights standards, including Article 5 of the European Convention on Human Rights (protection against arbitrary deprivation of liberty)."*⁶³

UNHCR har ligeledes afgivet et kritisk høringssvar om den foreslåede lovændring.⁶⁴ I en pressemeddelelse fra 11. december 2013 skriver udtaler UNHCRs repræsentant i Bulgarien, Roland Weil blandt andet, at *"The new law foresees a strict detention regime with few legal safeguards for people seeking international protection. If adopted, it will drag down Bulgaria's refugee and asylum law well below compliance with international and EU norms and standards"*⁶⁵

Lovforslaget indeholder endvidere en udvidelse af flygtningekonventionens udelukkelsesgrunde til også at omfatte personer, der betragtes som en trussel mod den nationale sikkerhed og familie til personer, der er dømt for alvorlige forbrydelser samt indførelse af et nyt registreringskort, der ikke sikrer asylansøgerne andre rettigheder end retten til processuelt ophold. BHC har d. 3. januar 2014 oplyst til Dansk Flygtningehjælp, at lovforslaget var til udvalgsbehandling i det stående parlamentsudvalg d. 18. december 2013, men at parlamentet valgte at udsætte det videre arbejde med henvisning til de kritiske høringssvar.

⁵⁷ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 38;

⁵⁸ AIDA. Country Report – Bulgaria, 25. april 2013, s. 37

⁵⁹ Ibid.

⁶⁰ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 38; AIDA. Country Report – Bulgaria, 25. april 2013, s. 37

⁶¹ Ibid.

⁶² Kan findes på bulgarsk på <http://parliament.bg/bills/42/302-01-42.pdf>. Se endvidere nærmere om vedtagelsesprocedurer for lovforslag i Bulgarien her (engelsk) <http://www.parliament.bg/en/billbecomeact>

⁶³ BHC. BHC: Position on the Law on Asylum and Refugees Draft Amendments, nyhedsartikel 28. November 2013

⁶⁴ UNHCR, Provisional Comments and Recommendations On the Draft Amendments to the Law on Asylum and Refugees, 4. December 2013

⁶⁵ UNHCR urges Bulgarian parliamentary committee to uphold human rights of refugees, UNHCR, 11. december 2013

Parlamentsudvalget vil i løbet af januar 2014 beslutte, om der skal nedsættes en særlig arbejdsgruppe der inkluderer UNCHR og BHC, til at udarbejde nødvendige ændringer til lovforslaget.⁶⁶

I en rapport fra marts 2012 fra Europarådets Torturkomité (CPT) beskrives forholdene i Bousmatsi. CPT's betænkeligheder går overvejende på fængslingen af asylansøgere sammen med irregulære migranter, som står til udsendelse; mangel på privatliv, dårlig hygiejne og mangel på tøj egnet til årstiden.⁶⁷ Om adgangen til sundhedsydelser skriver Komitéen: "*Detained persons could be transferred to the hospital of the Ministry of Internal Affairs for dental, psychiatric or other specialised care; further, in case of an emergency, outside medical specialists could be called in. There appeared to be a sufficient supply of medication.*"⁶⁸

M. and others v. Bulgaria ved den Europæiske Menneskerettighedsdomstol⁶⁹ drejede sig om den 2 år og 8 ½ måned lange frihedsberøvelse af en afghansk statsborger, som havde fået flygtningestatus i Bulgarien, men hvis opholdstilladelse blev trukket tilbage, fordi han ansås for at udgøre en trussel mod den nationale sikkerhed. Han forblev frihedsberøvet på trods af, at EMD havde udstedt midlertidige foranstaltninger under *rule 39*. EMD statuerede, at frihedsberøvelsen var ulovlig under EMRK's artikel 5, stk. 1, idet Bulgarien ikke effektuerede M's udsendelse med rettidig omhu. Ansøgeren blev løsladt ved domstolskendelse efter mere end 2 ½ års frihedsberøvelse. Idet der ikke havde fundet rettidig domstolsprøvelse sted, statuerede EMD krænkelse af EMRK's artikel 5, stk. 4. Ligeledes fandt Domstolen, at udsendelsen ville udgøre et brud på artikel 8 (retten til familieliv). Domstolen fandt yderligere, at Den Administrative Højesteret ikke havde undersøgt politiets erklæring ordentligt om, at M. udgjorde en trussel mod den nationale sikkerhed, og heller ikke havde taget i betragtning, at han risikerede mishandling eller død, hvis han blev udsendt til Afghanistan. Yderligere havde appellen mod udsendelsen ingen opsættende virkning, og M's anmodning om opsættende virkning blev ikke behandlet. Domstolen statuerede derfor, at den bulgarske lovgivning og praksis i relation til retsmidler mod udsendelse udgjorde et brud på artikel 13. Se endvidere sagerne ved Menneskerettighedsdomstolen *Auad v. Bulgaria* og *Djalti v. Bulgaria*.⁷⁰

2.2. Særligt om forholdene for sårbare grupper

Den bulgarske lovgivning foreskriver ingen specifikke identifikationsmekanismer for sårbare kategorier af asylansøgere. Af AIDA's landerapport fremgår det: "*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.*"⁷¹ Det fremgår endvidere:

⁶⁶ Email til Dansk Flygtningehjælp fra Iliana Savova, Director, Refugee and Migrant Program, Bulgarian Helsinki Committee

⁶⁷ European Council. 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, pkt. 35, 40

⁶⁸ Ibid. pkt. 45

⁶⁹ Den Europæiske Menneskerettighedsdomstol. *M. and others v. Bulgaria*, Application no. 41416/08, Council of Europe: European Court of Human Rights, 26. juli 2011.

⁷⁰ Ibid. *Auad v. Bulgaria*, application no. 46390/10, Council of Europe: European Court of Human Rights, 11. oktober 2011; *Djalti c. Bulgarie*, application no. 31206/05, Council of Europe: European Court of Human Rights, 12. marts 2013

⁷¹ AIDA. Country Report – Bulgaria, 25. april 2013, s. 25

*“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.”*⁷²

Ifølge UNHCR gør de to åbne centre i Sofia og Banya brug af et princip om, at hver familie indkvarteres separat, og at enlige beboere indkvarteres kønsopdelt.⁷³ Om indkvarteringen af sårbare personer fremgår det af AIDA's landerapport:

*“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 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.”*⁷⁴

Sårbare personer, som indgiver en anmodning om genoptagelse har ifølge lovgivningen samme rettigheder som førstegangsansøgere m.h.t indkvartering og sociale ydelser. Af AIDA's landerapport fremgår det imidlertid, at *“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.”*⁷⁵

Ifølge AIDA's landerapport er NGO'er meget bekymrede over manglen på proceduregarantier for sårbare asylansøgere. Det fremgår:

*“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 allows 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 procedures.”*⁷⁶

⁷² Ibid., s. 31

⁷³ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.23

⁷⁴ AIDA. Country Report – Bulgaria, 25. april 2013, s. 29-30

⁷⁵ Ibid., s. 30

⁷⁶ AIDA. Country Report – Bulgaria, 25. april 2013, s. 25

Den generelle mangel på tildeling af juridiske værger bekræftes af ECRE's landerapport.⁷⁷ Ifølge AIDA's landerapport fremgår det endvidere: *"Recent jurisprudence of the national court ruled that status determinations, in absence of an appointed guardian are unlawful, but this has had no impact yet on the practice."*⁷⁸ Om den økonomiske støtte til uledsagede mindreårige fremgår det af AIDA's landerapport:

*"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."*⁷⁹

I marts 2013 blev udlændingelovgivningen ifølge AIDA's rapport ændret med henblik på at forbyde frihedsberøvelser af uledsagede mindreårige og introducere en maksimumperiode på 3 måneder for fængslingen af ledsagede børn, som frihedsberøves sammen med deres forældre. *"In practice, however as of April 2013 unaccompanied children continue to be detained, both asylum seeking and migrant children,"* fremgår det af rapporten.⁸⁰ Om forholdene for sårbare personer i fængslerne fremgår det endvidere:

*"Children in detention centres are using the common outdoor recreational facilities. Separate wings are provided for families, single women and 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."*⁸¹

Vedrørende LGBTI-personers stilling trykte Forced Migration Review i april 2013 en artikel 'LGBTI asylum claims: the Central and Eastern European perspective', hvorefter det fremgår: *"In Bulgaria the marital or parental status of LGBTI applicants is sufficient to deny granting refugee protection. Bulgarian asylum authorities also ask intrusive questions concerning the number of sex partners, favourite sexual positions or sexual contacts with persons of the opposite sex."*⁸² Det fremgår endvidere af forskning udgivet i 2011, at myndighederne i Central og Østeuropa kun lejlighedsvis behandler LGBTI-ansøgninger. Siden 1997 der registreret 2 ansøgninger af denne karakter om året i Bulgarien. Til sammenligning var der 1100 LGBTI-ansøgninger i Belgien mellem 2008 og 2010.⁸³ Det fremgår endvidere:

*"The low number of LGBTI asylum claims in the region may therefore be attributed to the general homophobic and transphobic climate, which makes it far from a dream destination for those persecuted on the basis of their sexual orientation or gender identity."*⁸⁴

⁷⁷ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 26

⁷⁸ AIDA. Country Report – Bulgaria, 25. april 2013, s. 26

⁷⁹ Ibid., s. 29

⁸⁰ Ibid., s. 35

⁸¹ Ibid., s. 37

⁸² Refugee Studies Centre. LGBTI asylum claims: The Central and Eastern European perspective, Forced Migration Review, Issue 42, April 2013, s. 16-18, s. 18

⁸³ Ibid., s. 16

⁸⁴ Ibid.

Ingen af disse lande har nogen officielle guidelines om, hvordan LGBTI-ansøgninger skal behandles, og der er ingen specialiserede NGO'er, som yder juridisk og social hjælp til disse ansøgere i regionen.⁸⁵ Det fremgår af artiklen:

*“CEE national asylum authorities often use the argument of being able to conceal one’s sexual orientation or gender identity in the country of origin in order to judge claims to be unfounded.[...]In contrast, UNHCR’s guidelines emphasise that LGBTI people should be equally entitled to enjoy their right to express their identity and associate with others, and that concealment of sexual orientation and/or gender identity should not be required to prevent the risk of persecution.”*⁸⁶

3. Særligt om personer overført via Dublin-proceduren

Det fremgår af ECRE’s rapport, at “[i]n cases where Bulgaria takes charge of an asylum seeker from another Member State, he is admitted in the asylum procedure carried out by the State Agency for Refugees. The general procedural rules for examining the asylum application apply”.⁸⁷ En tilbageforhandlingsprocedure for en ansøger, som har søgt om asyl i Bulgarien, garanterer imidlertid principielt ikke, at vedkommende igen får adgang til proceduren. Det afhænger af, hvilken procedurefase ansøgeren forlod Bulgarien i og den aktuelle status på ansøgningen:

*“In case of taking back of an asylum seeker, if his/her application has already been decided on the substance by the State Agency for Refugees or the asylum seeker has been absent for over three months and ten days, the asylum procedure is discontinued. The foreign national will be treated as an irregular immigrant that should return to his/her country of origin. The asylum seeker has a right to reapply for asylum if there are new substantial circumstances related to his need for international protection. However the consecutive asylum application should be made as soon as possible.”*⁸⁸

Ovenstående bekræftes af AIDA’s landerapport.⁸⁹ Det fremgår af ECRE’s rapport, at hvis der allerede er givet afslag på ansøgningen frihedsberøves den tilbagesendte person sædvanligvis, indtil udsendelsen kan effektueres.⁹⁰ En genoptagelsessag (gentagen ansøgning) har opsættende virkning på udsendelsen, fra den bliver registreret, ikke fra den indgives. Det fremgår af AIDA’s rapport, at asylansøgere i genoptagelsessager ikke har ret til indkvartering, og at der er en ”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.”⁹¹ Det fremgår endvidere:

*“The law deals with subsequent asylum applications within the context of the accelerated procedure. Such applications are considered inadmissible, if the asylum seeker did not state in their subsequent asylum application any new facts or circumstances or did not provide new evidence.”*⁹²

⁸⁵ Ibid.

⁸⁶ Ibid., s. 17

⁸⁷ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 16

⁸⁸ Ibid., s. 7

⁸⁹ AIDA. Country Report – Bulgaria, 25. april 2013, s. 11, 18

⁹⁰ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 16

⁹¹ AIDA. Country Report – Bulgaria, 25. april 2013, s. 24

⁹² Ibid., s. 23

Hvis en asylansøgning fra en Dublin-overført person endnu ikke er blevet realitetsbehandlet (eller afbrudt), overføres personen sædvanligvis til et åbent modtagecenter og afventer afgørelsen.⁹³ (Hvor en person med denne status overføres til i lyset af de aktuelle problemer med modtageforholdene, vides ikke under udarbejdelsen af denne rapport.) Hvis den Dublin-overførte endnu ikke har søgt om asyl i Bulgarien, og der altså er tale om en overtagelsesprocedure, behandles vedkommende som en irregulær migrant og frihedsberøves med henblik på udsendelse. Fra fængslet har personen ret til at indgive en asylansøgning, som de relevante myndigheder er forpligtet til hurtigst muligt at videresendes til SAR.⁹⁴ Det fremgår af ECRE's rapport:

*"Access to the asylum procedure in Bulgaria in general might be arbitrary. In practice there is a gap of time between the submission and the registration of the asylum application. Even if the person has submitted the asylum application, he/she is not regarded as an asylum seeker until he/she is registered as such by the State Agency for Refugees. In case there is a removal order against the foreign national, it can be executed in the meantime. This issue is of relevance if the transferred asylum seeker has not applied for asylum in Bulgaria before or wants to submit a consecutive asylum application."*⁹⁵

Om modtageforhold for Dublin returnees fremgår det af ECRE's rapport:

*"With regard to receptions conditions for asylum seekers returned under Dublin to Bulgaria, from the wording of Article 29 (2) LAR which clarifies which rights apply to respective categories of persons in a Dublin procedure, it is clear that no rights are explicitly recognized to Dublin returnees until they are admitted in the next phase of the asylum procedure (and issued the corresponding registration card), neither following a procedure for taking back, nor following a procedure for taking charge."*⁹⁶

4. Asylsystemet i Bulgarien

4.1. Kort gennemgang af Bulgariens asylprocedure

I Bulgarien er det SAR (the State Agency for Refugees), der træffer afgørelse i asylsager i 1. instans. Det fremgår af AIDA's landerapport om Bulgarien, at "[t]he asylum application should be made within a reasonable time after entering the country, except in cases of irregular entry or residence when it ought to be made immediately, otherwise it could be rejected as inadmissible. 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."⁹⁷

Førsteinstansproceduren starter obligatorisk med en fremskyndet procedure, undtagen når ansøgeren er uledsaget mindreårig og derfor henvises direkte til normalproceduren. I den fremskyndede procedure tages der stilling til såvel åbenbart grundløshed som beskyttelsesstatus eller opholdstilladelse i andre lande.

⁹³ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 16, 35

⁹⁴ Ibid., s. 16

⁹⁵ Ibid., s. 29-30

⁹⁶ Ibid., s. 35

⁹⁷ AIDA. Country Report – Bulgaria, 25. april 2013, s. 13

Afgørelsen i denne procedure skal træffes inden for 3 dage fra registreringen af ansøgningen. Hvis fristen ikke overholdes, henvises ansøgningen automatisk til normalproceduren.⁹⁸

Et afslag i første instans kan appelleres inden for 14 dage fra meddelelse. Det fremgår af AIDA's rapport, at denne frist generelt er tilstrækkelig til, at afviste asylansøgere kan få retshjælp, forberede og indgive en klage. Appelpcedurene er alene juridiske, og appeller ved såvel den 1. (the Administrative court of Sofia) som den 2. appeldomstol (the Supreme administrative court) har opsættende virkning. Retshjælp kan tildeles af retten efter anmodning. Den første appelinstans foretager en fuldstændig gennemgang af sagen, både med hensyn til fakta og retsspørgsmål, og asylansøgeren indkaldes til mundtlig høring.⁹⁹ Retten kan ikke selv tildele beskyttelsesstatus, men kan give bindende instruks til SAR om, hvordan sagen skal afgøres i første instans. Domstolen har imidlertid ikke nogen sanktionsmuligheder, hvis SAR ikke følger instruksen, og ifølge AIDA's rapport har SAR i størstedelen af sagerne ikke rettet sig efter den. Hvis retten omgør afgørelsen i første instans har SAR 14 dage til at træffe en ny afgørelse.¹⁰⁰

4.2. Retssikkerhedsproblematikker i asylproceduren

I det bulgarske asylsystem betragtes en person først som asylansøger, når dennes asylansøgning er registreret hos SAR, de bulgarske udlændingemyndigheder. Og som beskrevet nedenfor er det ikke ualmindeligt, at der går en del tid – i visse tilfælde op til 6 måneder – mellem indgivelse af asylansøgning og registrering som asylansøger. I den mellemliggende periode er ansøgerne ikke beskyttet mod udsendelse som illegal migrant. Risikoen for refolement fremgår af Bulgariens indenrigsministeriums rapport om strategien på asylområdet frem til 2020:

“[...] there is a need to introduce explicit rules for ensuring access to territory and to a procedure for persons seeking international protection and for distinguishing them from the illegally residing migrants—third country nationals. This is necessary in order to provide legal guarantees for abidance by the principle of non-refoulement and non-penalization laid down in the Geneva Convention relating to the status of refugees and in the national legislation.”¹⁰¹

Såvel ECRE's landerapport som Dr. Valeria Ilareva fra ”the Legal Clinic for Refugees and Migrants” i Bulgarien fremhæver, at adgangen til asylproceduren er arbitrær.¹⁰² For at en person kan blive anset som en asylansøger og ikke en illegal immigrant, skal asylansøgeren registreres hos SAR. Den bulgarske lovgivning angiver ikke en tidsgrænse for dette, og eftersom størstedelen af flygtningene rejser ind på territoriet illegalt, har de mange problemer med at registrere deres ansøgning. Af ECRE-rapporten fremgår det i den forbindelse, at *”[i]n case there is a removal order against the foreign national, it can be executed in the*

⁹⁸ Ibid., s. 11

⁹⁹ Ibid., s. 15

¹⁰⁰ Ibid., s. 11-12, 14

¹⁰¹ Bulgarian Ministry of the Interior. National Strategy on Migration, Asylum and Integration (2011-2020), s. 31

¹⁰² ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 9; Dr. Valeria Ilareva. Criminalization of Refugees in Bulgaria - Information Note, 13. juni 2013, s. 2

¹⁰² AIDA. Country Report – Bulgaria, 25. april 2013, s. 16

meantime.”¹⁰³ Ilareva skriver, at “[w]ith regard to non-registration of a submitted asylum application, the Bulgarian Law on Asylum and Refugees does not envisage any remedies and the general law on administrative procedure does not offer effective remedies.”¹⁰⁴ Det fremgår endvidere af hendes notat fra juni 2013:

*“In reality, it can take over half a year to register the asylum seeker. In the meantime, this person is treated as an irregular immigrant. Apart from being criminally sanctioned for illegal entry, asylum seekers also face the risk of return (refoulement) prior to their registration. The 2012 information note presenting the facts in a number of court cases of non-registration stated that “in spite of the court judgments in their favour, 20 % of the asylum seekers in these cases were removed from Bulgaria as irregular immigrants before the State Agency for Refugees came to register them.”*¹⁰⁵

Af US State Departments rapport fra 2012 fremgår det:

*“Refoulement: The government provided some protection against the expulsion or return of refugees to countries where their lives or freedoms would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The UNHCR stated the risk of genuine refugees receiving a rejection was limited. However, some exceptions occurred. In September the Veliko Turnovo Appellate Court granted extradition to Russia for Chechen citizen Mohamad Gadamauri, detained earlier in July at the border on an Interpol red notice, disregarding that he was a recognized refugee in both Germany and Poland and possibly at risk in Russia. The ECHR froze the extradition until it reviewed the case. The review had not been completed, and Gadamauri remained in jail at year's end.”*¹⁰⁶

Ifølge AIDA's rapport er tolke fra centrale sprog som arabisk, dari, farsi, pashto, urdu, kurdisk, engelsk, fransk og russisk tilgængelige, men problemer opstår i praksis med hensyn til sprog som tamilsk og somali. Det fremgår, at i disse sager *“videoconference interpretation is used, however, due to financial constraints, interviewers are encouraged 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.”*¹⁰⁷ Det fremgår endvidere:

*“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 interpretations.”*¹⁰⁸

Der er i slutningen af oktober offentliggjort indikationer på, at de bulgarske myndigheder videregiver biometrisk information, f.eks. fingeraftryk, til den syriske ambassade med henblik på at verificere ansøgernes identitet. Det fremgår af en nyhed 31. oktober 2013 på Asylum Information Database's hjemmeside. Det fremgår af artiklen:

“Svetlana Baeva, from BHC told the ECRE Weekly Bulletin that every refugee in the country is being monitored in the same way as other people who represent a possible security risk. Biometric data is being collected from asylum seekers and

¹⁰³ ECRE. Dublin II Regulation: National Report: European network for technical cooperation on the application of the Dublin II Regulation – Bulgaria, maj 2012, s. 9

¹⁰⁴ Dr. Valeria Ilareva. Criminalization of Refugees in Bulgaria - Information Note, 13. juni 2013, s. 2

¹⁰⁵ Ibid.

¹⁰⁶ United States Department of State. 2012 Country Reports on Human Rights Practices - Bulgaria, 19. april 2013

¹⁰⁷ AIDA. Country Report – Bulgaria, 25. april 2013, s. 16

¹⁰⁸ Ibid.

*passed on to Interpol for confirmation. The State Agency for Refugees (SAR) is also sending the biography, fingerprints and other biometric data of asylum seekers to the Syrian Embassy in Sofia reportedly to confirm the identity of people who claim they are Syrian.”*¹⁰⁹

Om brugen af lægeerklæringer, som kan bidrage til at bevise tidligere overlast, som har relevans for asylmotivet, fremgår det af AIDA's rapport:

*“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 quality (e.g. specialised associations for torture survivors, which apply the Istanbul Protocol).”*¹¹⁰

Ifølge AIDA's rapport er det kun i ét tilfælde, at lovgivningen foreskriver, at en sagsbehandler skal iværksætte en lægeundersøgelse, nemlig hvis der er indikationer på, at asylansøgeren er psykisk syg. Hvis det viser sig at være tilfældet kan sagen visiteres til retten med henblik på udpegelse af en juridisk værge til asylproceduren.¹¹¹

5. Mulighederne for integration i det bulgarske samfund

Asylansøgere har adgang til arbejdsmarkedet, hvis asylproceduren (inklusive appelfasen i 2. instans) ikke er afsluttet inden for et år fra indgivelsen af ansøgningen.¹¹² Når en tilladelse er udstedt giver den adgang til alle typer beskæftigelse og sociale ydelser inklusiv arbejdsløshedsunderstøttelse. I praksis er det svært for asylansøgere at finde job pga. sprogproblemer og den høje nationale arbejdsløshed. Asylansøgende børn har ret til gratis uddannelse. I praksis kan der dog være forhindringer for adgangen til skolegang, bl.a. i det afsidesliggende Pastrogor transit-center.¹¹³

UNHCR oplyser, at i følge Bulgariens nationale integrationsprogram i 2011-2013 har enhver udlændig med flygtninge- eller humanitær status adgang til økonomisk støtte til bolig, sociale ydelser, sundhedsforsikring, sprogtræning, medborgerskabstræning mm.¹¹⁴ I praksis er der dog problemer med at yde disse rettigheder. Ifølge lovgivningen kan anerkendte flygtninge som udgangspunkt blive i modtagecentre i op til 6 måneder efter tildelingen af beskyttelsesstatus, men UNHCR oplyser, at denne ret i praksis kun ydes til et begrænset antal sårbare flygtninge.¹¹⁵ Ifølge UNHCR skal flygtningene derfor forlade de åbne centre senest 14 dage efter meddelelse af ophold, hvilket *“places great stress on the newly recognised refugees, who in most cases seek help from compatriots and friends. This is an insecure and temporary solution. The trajectory of housing in these cases follows the principle of a temporary short-term solution and cannot guarantee normal*

¹⁰⁹AIDA. Bulgaria accused of putting asylum seekers at risk by providing information on Syrians to Syrian embassy, AIDA news 31. oktober 2013

¹¹⁰ AIDA. Country Report – Bulgaria, 25. April 2013, s. 25-26

¹¹¹ Ibid., s. 25-26

¹¹² UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.11

¹¹³ AIDA. Country Report – Bulgaria, 25. april 2013, s. 32

¹¹⁴ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.11

¹¹⁵ AIDA. Country Report – Bulgaria, 25. april 2013, s. 29

housing conditions.”¹¹⁶ Fra IRIN’s artikel fra 22. Oktober 2013 fremgår følgende oplysninger baseret på udtalelser fra Deniza Georgieva fra the Bulgarian Helsinki Committee:

*“In addition, recognized refugees have only a matter of days to move out of reception centres once their applications are successful, at which time they stop receiving monthly stipends and risk becoming destitute. They are entitled to receive a housing allowance for up to six months after they move out, but Georgieva said the State Agency for Refugees stopped paying for housing assistance last June, since it had run out of funds. “We have many families on the street because they don't have alternatives,” she explained.”*¹¹⁷

Det fremgår af UNHCR’s 2013-rapport om hjemløshed i Bulgarien, at en permanent adresse er en vigtig betingelse for at kunne opnå civil registrering, identitetsdokumenter, sociale ydelser og for at kunne blive registreret ved arbejdsformidlingen.¹¹⁸ Ifølge UNHCR er kvaliteten af indkvarteringen for asylansøgere og personer med beskyttelsesstatus, efter de forlader de åbne centre, direkte afhængig af deres beskæftigelsessituation og indkomst. Også familiestatus er vigtig i den forbindelse. Ifølge UNHCR er der ikke registreret nogen sager om familier, der er blevet tvunget til at forlade de åbne centre uden at have fået indkvartering eller i det mindste økonomisk støtte til at leje et sted at bo.¹¹⁹ Om det stadig er tilfældet i lyset af udviklingen i modtageforholdene i 2013 vides ikke. Hjemløse udlændinge med beskyttelsesstatus kan indkvarteres i midlertidige shelters i Sofia, men UNHCR skriver, at “[t]hese municipal centres fail to offer real opportunities for temporary accommodation and short-term solutions to the issue of homelessness, in particular in the winter months, due to regulatory obstacles.”¹²⁰ Det fremgår endvidere af UNHCR’s rapport: “Serious problems with keeping a job or staying at the same address for a long period are identified even in the case of individuals staying for a long time in separate homes and this gets them back to the starting position in terms of their housing conditions – being dependent on the government housing policy.”¹²¹ Det fremgår af UNHCR’s rapport:

*“The lack of state or municipal policy for tackling homelessness among asylum-seekers and refugees adds to their vulnerability. The municipal crisis centres place barriers to access to destitute foreigners who do not have protection status, by requiring a criminal record certificate and identification. Municipalities create regulatory obstacles for any foreigner to access municipal housing, while the lack of housing policy with regard to refugees after they leave SAR facilities makes them vulnerable to fraud and unfair treatment from landlords. Under these circumstances, asylum-seekers and protection status holders rely mainly on the support of non-governmental organisations (NGOs) and church organisations.”*¹²²

Om mulighederne for at få plads i sociale boligbyggerier skriver UNHCR:

¹¹⁶ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.25

¹¹⁷ IRIN. Syrians face bleak time in Bulgaria's broken asylum system, 22. oktober 2013

¹¹⁸ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.11

¹¹⁹ Ibid., s.6

¹²⁰ UNHCR. Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria, 2013, s.13-14

¹²¹ Ibid., s.27

¹²² Ibid., s.6

*”In the big cities, municipal housing stock is limited and access to such accommodation is very difficult for Bulgarian nationals as well as for persons granted protection (Radeva and Donova 2010: 20). Furthermore, due to the discriminatory provisions of the ordinances of most big cities, municipal housing is actually not possible for persons with granted status.”*¹²³

UNHCR tilføjer endvidere, at et krav om permanent bopæl på samme adresse i mere end 10 år samt manglende bulgarsk statsborgerskab kan udgøre forhindringer for at få plads i de kommunale boligbyggerier – det kan især være et problem for familier, som har brug for mere plads, end andre typer boliger tillader.¹²⁴

Et integrationscenter i Sofia yder bulgarsk sprogundervisning, erhvervsfaglige kvalifikationskurser og andre aktiviteter, til asylansøgere, anerkendte flygtninge og personer med beskyttelsesstatus. De, som er indkvarteret i Banya, får først denne mulighed, når de er blevet meddelt ophold, hvorefter de er nødt til at flytte til Sofia for at få adgang til det nationale integrationsprogram. UNHCR bemærker, at dette øger risikoen for hjemløshed blandt flygtninge herfra pga. udgifterne til transport, og problemer med at finde bolig i Sofia. Samtidig er disse flygtninge sat tilbage i forhold til andre med hensyn til at lære sproget, som er nødvendigt for at finde job og bolig.¹²⁵ På trods af de muligheder, der gives i det nationale integrationsprogram, er dets kapacitet meget begrænset, skriver UNHCR: *“SAR includes 60 individuals per year in the programme. In fact, in 2011, out of 192 foreigners granted refugee or humanitarian status, only 83 (44%) were included in the programme, of whom 37 (19%) completed the programme partially and only 26 (14%) continued to benefit from its opportunities in 2012.”*¹²⁶ UNHCR skriver endvidere:

*“The risk of homelessness amongst those granted protection is also a result of integration measures that are insufficient in their scope and duration. The six-month language training course, the limited choice of vocational training courses and the lack of targeted housing policy are some of the key factors for unemployment amongst refugees, resulting in a lack of appropriate accommodation and homelessness. This situation is exacerbated by the ongoing financial and economic crisis.”*¹²⁷

Der har været flere rapporter om xenofobiske hadforbrydelser – 7 hændelser er blevet rapporteret mellem november og begyndelsen af december 2013. Bl.a. er en 18-årig dreng fra Mali og en 17-årig dreng fra Syrien blevet stukket ned i november 2013, og to syriske mænd blev såret i et voldeligt angreb 2. december 2013.¹²⁸ Barbora Cernusakova fra Amnesty International udtaler 12. november 2013: *“There is an alarming and dangerous rise in xenophobic feeling in Bulgaria and the onus is on the authorities to prevent it, but instead many recent government statements risk inflaming the situation.”*¹²⁹ Det fremgår endvidere af en artikel fra BHC 3. december 2013:

¹²³ Ibid., s.13

¹²⁴ Ibid., s.27

¹²⁵ Ibid., s. 5,10, 25

¹²⁶ Ibid.s.13

¹²⁷ Ibid., s.5

¹²⁸ Amnesty International. Bulgaria: Migrants 'living in fear' after xenophobic attacks, nyhedsartikel 12. november 2013; BHC. Amnesty International: Bulgaria must rein in xenophobic and racist violence after seven attacks in a month” BHC nyhedsartikel 3. december 2013

¹²⁹ Amnesty International. Bulgaria: Migrants 'living in fear' after xenophobic attacks, nyhedsartikel 12. november 2013

*“The attacks have sown widespread fear amongst Sofia’s refugee and migrant community, who have also reported a rising tide of harassment and intimidation against them as vigilantes patrolled in Pirozka Boulevard and other streets in the city.”*¹³⁰

Amnesty International beskylder de bulgarske myndigheder for at nedtone og ikke i tilstrækkelig grad at undersøge de voldelige angreb.¹³¹ I de seneste måneder har de bulgarske medier beskyldt flygtninge for at være medlemmer af terrororganisationer, og protester har fundet sted i områder, hvor regeringen planlægger at åbne nye modtagecentre.¹³² Ifølge en meningsmåling offentliggjort i The Economist ser 83% af bulgarerne tilstrømningen af flygtninge som en risiko for den nationale sikkerhed.¹³³

¹³⁰ BHC. Amnesty International: Bulgaria must rein in xenophobic and racist violence after seven attacks in a month” BHC nyhedsartikel 3. december 2013

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¹³² Time Magazine. Syrian Refugees Find Discomfort and Unrest in Bulgaria, nyhedsartikel af Charlotte McDonald-Gibson 16. november 2013

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