

ANNUAL REPORT ON STATUS DETERMINATION PROCEDURE IN BULGARIA 2023

**Bulgarian
Helsinki
Committee**

**Refugees and Migrants Legal
Programme**

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БЪЛГАРСКИ
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METHODOLOGY

Introduction

This annual report is based on monitoring with a focus on the institutional framework and effective interaction among the various state authorities, as well as on the legal and practical standards for conducting the procedures for granting asylum, international protection and refugee or humanitarian status (RSD), as they are regulated in the Law on Asylum and Refugees, and the compliance thereof with the principles of international protection and the general legal standards in the asylum acquis of the European Union (acquis communautaire).

Scope

Pursuant to the Law on Asylum and Refugees (LAR)¹, the State Agency for Refugees with the Council of Ministers (SAR) is the competent national authority which carries out the registration, examination of individual applications for international protection lodged in the Republic of Bulgaria, and the takes decisions on these applications.

The Bulgarian Helsinki Committee (BHC) monitors the procedures conducted by SAR at all its registration and reception centers in Sofia, Harmanli, Banya, and Pastrogor. The monitoring encompasses all the phases of the administrative procedure at SAR. It is carried out on a weekly ad hoc basis, and consists of gathering data about the ways, means and practices of conducting the SDR, which is entered in standard forms for interview evaluation, decision evaluation, and the monitoring of court proceedings.

In order to ensure statistical comparability, as agreed with SAR and UNHCR in 2020, the monitored procedures encompass 100 registrations, 250 interviews within the status determination procedure, 100 decisions issued by SAR, and 50 court hearings related to cases against decisions refusing international protection or a total of 500 procedural actions. The cases are selected at random with the aim to reflect as diverse as possible cases and cover all specific groups based on age, gender, vulnerabilities, etc.

¹ Art. 2(3) of the Law on Asylum and Refugees (LAR).

The monitoring conducted in 2021, 2022 and 2023 met the targeted numbers, thus ensuring the comparability of the findings. In 2023 the SAR registered 22,518 asylum seekers and issued 8,738 decisions on the merits, of which 106 refugee statuses 5682 humanitarian statuses, 376 refusals in general procedures and 2,574 refusals in accelerated procedure as well as 16,211 terminations of the procedure due to absconding.

In 2023 the monitoring covered 346 men, 61 women, 11 accompanied children (5 boys and 6 girls) and 82 unaccompanied children (81 boys and 1 girl) from the persons seeking international protection in Bulgaria.

Temporary protection of persons from Ukraine

The monitoring report does not include cases of refugees from Ukraine under the Temporary Protection. Pursuant to the national legislation, temporary protection shall be granted by means of a general administrative act - a government (COM) decision - after this protection has been triggered by the Council of the European Union in conformity with Directive 2001/55/EC. On 10 March 2022 the Bulgarian government adopted Decision No 144 on granting temporary protection to displaced persons from Ukraine, which became effective upon its promulgation on 14 March 2022. Hence, all refugees from Ukraine who have entered the country and have declared their wish to seek protection before the authorities receive, without delay and any additional procedures, a document certifying their legal status as foreigners under temporary protection in Bulgaria. As a result of this, 173,709 displaced persons from Ukraine had received temporary protection by 31 December 2023. As this type of protection is without conducting an individual administrative procedure for each person, this report does not take into consideration the issues related to the access to temporary protection, the granting thereof or its scope.

I. PROCEDURE

1.1. ACCESS TO THE PROCEDURE AND REGISTRATION

1.1.1. Time limit for registration

By way of rule, any individual lodging an application for international protection before an official of the State Agency for Refugees shall be registered as an asylum seeker within 3 working days² from the date of lodging the claim. When the application has been lodged before another state authority³ - in most cases, the bodies of the Ministry of Interior, General Directorate Border Police (GDBP) or Migration Directorate (MD) - the registration shall be carried out by SAR within 6 working days from the lodging of the application.

2022 is yet another consecutive year which marks improvement in terms of SAR observing the time limit for the personal registration of asylum seekers who have been detained for illegal entry or stay at the of detention center of MD-MOI and who have lodged their application for international protection via the immigration police authorities. The average detention duration has decreased from 7 calendar days in 2021 to 6 calendar days in 2022, but in 2023 it has increased again to 7 calendar days, which implies an **average duration of 5 working days for detention and registration**. Therefore, out of all the foreigners lodging an application for international protection at a detention center Migration Directorate-MOI, 82%⁴ were released 1 working day on average before the expiry of the legal time limit, no instances of unlawful detention for more than 6 months is reported. This is slight deterioration compared to 2022, when 87% were released within the legal time limit.

Registration <6 working days:

82%

Average duration of detention:

5 working days

² Art. 61 (2) of LAR in conj. with Art. 6 (1) of Directive 2013/32/EU (Procedure Directive).

³ Art. 58 (4) of LAR.

⁴ 13,152 persons out of a total of 16,075 asylum seekers lodging an application in detention at SHTAF-Busmantsi and SHTAF-Lyubimets of MD-MOI (2021: 86% or 7,382 persons out of a total of 8,528 asylum seekers / 2020: 55% or 1,533 out of a total of 2,781 asylum seekers).

1.1.2. Procedure at the police detention centres

The law allows the State Agency for Refugees to detain asylum seekers during the status determination procedure for the sole purpose of their identification or in the event of evidence of a risk to the national security or public order, only for the shortest possible period of time and only in closed asylum reception centres or premises.

SAR, however, shall not conduct the procedure at the detention centres (SHTAF), notwithstanding that the applications for international protection was lodged by detainees. The law obliges SAR to ensure that the asylum seekers are released from SHTAF, registered within 6 working days, and accommodated at one of its Registration-and-Reception Centres (RRC) where the procedure is conducted and a decision is made.

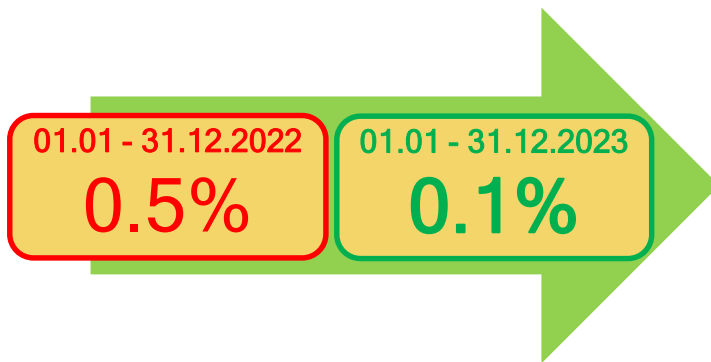
In 2015, SAR introduced an unlawful practice whereby it not only registered asylum seekers in the police detention centres of MOI's Migration Directorate (SHTAF-Burmantzi/SHTAF-Lyubimets) in order to observe the time limit for registration, but also conducted the whole procedure and served decisions in these detention facilities in breach of all of the above legal provisions - grounds, time limit and place of detention in the course of the procedure. The national courts considered this practice as a minor violation of procedural rules, and refused to sanction it. In 2022 SAR almost entirely discontinued this unlawful practice, carrying out only 1 procedure on the premises of Busmantsi detention center with a first-time applicant for international protection. In 2023 SAR carried out once again only 1 procedure in breach of the law on the premises of Lyubimets detention center.



1.1.3. Refusal of registration at SAR's territorial units

In 2016, in breach of the law, SAR initiated a practice of refusing the registration of asylum seekers in cases where the latter turned up on their own at one of its territorial units and declared their wish to seek protection (the so-called “self-reported” persons). Instead, SAR's staff alerted the local police department, as a result of which the asylum seekers were detained and taken to a police detention center (SHTAF).

In 2022 this practice of SAR affected a total of 94 persons or 0,5% of all 20,407 persons who had lodged an application for international protection in 2022. In 2023 this practice affected a total of 48 persons or 0,2% of all 22,518 persons who had lodged an application for international protection during that period.

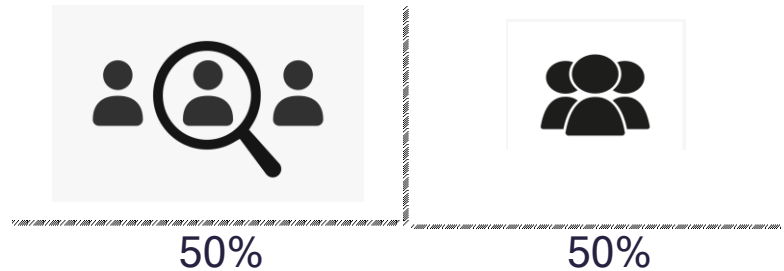


1.2. VULNERABILITY IDENTIFICATION AND ASSESSMENT

SAR's regulations require that the registration shall be attended by a social worker who establishes if the asylum seekers belong to a vulnerable group and if they have special needs. According to the definition set out in the Law on Asylum and Refugees, “persons belonging to a vulnerable group” are children, in particular unaccompanied children, persons with disabilities, elderly, pregnant women, single parents with underage children, victims of trafficking, persons with serious health problems, mental disorders, and victims of torture, rape or other serious forms of mental, physical or sexual violence.

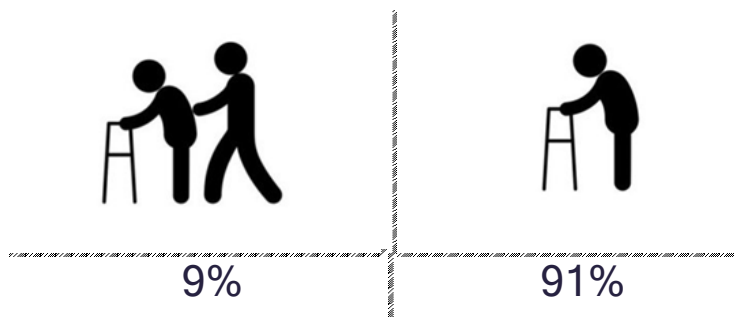
The monitoring has found that in 2023 SAR's social workers attended 50% (50 out of 100 cases) of the registrations of asylum seekers. Out of these 24% (12 out of 50) of the cases concerned unaccompanied children.

In the remaining 50% of the cases, however, the registration was carried out in the absence of a social worker and without ensuring early identification of potential vulnerability, given that 7 of the latter cases concerned unaccompanied children.



This is deterioration of the practice compared to 2022, when social workers attended 67% of the registrations and only 33% of the cases did not have such a guarantee.

An amendment to the LAR adopted in 2020 lays down a rule requiring that in the event of identified vulnerability or special needs, SAR must carry out a needs assessment for the asylum seeker concerned, and, if necessary, draw up an individual support plan. Both the assessment and the plan must be attached to the personal file of the vulnerable individual in order for them to be taken into consideration by SAR in its decision on international protection. In 2023 monitoring has found that only one out of 18 monitored cases of vulnerable people of the files of vulnerable asylum seekers contain documents with vulnerability identification and needs assessment and in this case an individual support plan has been drawn up and the vulnerability has been taken into account in the decision. It has to be noted, however, that in 9 out of 17 cases, where no vulnerability identification has been carried out, the asylum seekers have left SAR's reception center at a very early stage of the procedure. Therefore, in 2023 this standard was effectively met in 9% (1 out of 11 cases of vulnerable persons), and failed to be met in 91%. This is deterioration of the practice compared to 2022, when the standard was observed in 18% of the monitored cases and failed to be observed in 82% of them.



1.3. UNACCOMPANIED CHILDREN

1.3.1. Representation of unaccompanied children

Since October 2020 the representation of unaccompanied children in the course of the procedure has been provided by the National Legal Aid Bureau (NLAB). As LAR regulates this representation in article 25, the lawyers providing legal aid for unaccompanied children are known as “Article 25 lawyer”.

In 2023, NLAB appointed a legal aid representative for 3,081 out of all 3,843 unaccompanied children who lodged an application for international protection (80%) in that year, as well as for another 413 unaccompanied children who had lodged their application at the end of 2022. As the representation of 3,868 of these children was discontinued early due to the children leaving the country, just 388 unaccompanied asylum-seeking children received representation in practice.

1.3.2. Special conditions for unaccompanied children

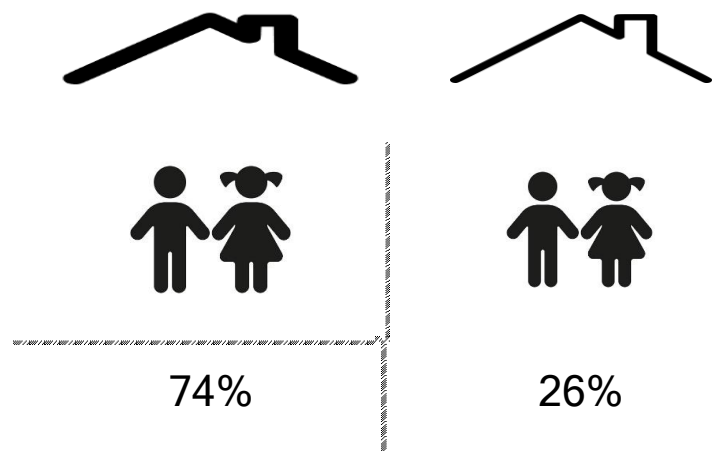
The law stipulates⁵ that SAR’s territorial units shall ensure the necessary adequate reception conditions for asylum-seeking children.

The first so-called safe zone in SAR’s Voenna rampa Centre in Sofia, with accommodation capacity for 150 children, was opened in 2019. The safe zone provides 24-hour care, accommodation and specialized services for unaccompanied children. As Voenna rampa is designated for asylum seekers from Afghanistan, Pakistan and Iran, it is only children from these countries of origin that are accommodated there, mostly from Afghanistan. Unaccompanied children of from Syria and other Arab speaking countries of origin are in accommodation units referred to as "safe zone" of Ovcha Kupel territorial unit in Sofia which was opened in January 2020 and has accommodation capacity for 138 children. The safe zones on the premises of these two territorial units of SAR in Sofia are financed from the EU Asylum, Migration and Integration Fund (AMIF), and are managed by the International Organization for Migration (IOM).

⁵ Art.25a of LAR.

As 2023 was yet another year with a considerable number of unaccompanied children registered as asylum seekers in Bulgaria - 3,843 children, these two safe zones at SAR's territorial units in Sofia proved insufficient to accommodate all of them. Hence, in 2023 unaccompanied children - those who remained in the country - continued to be accommodated in zones with mixed adult men in SAR's Vrazhdebna Centre in Sofia and the RRC in Harmanli.

As of 31 December 2023, 26% of the unaccompanied children were accommodated in territorial units in areas shared with adults, compared to 39% in 2022.



In 2023, a residential care facility for unaccompanied children was opened by Oborishte District of Sofia Municipality with the cooperation with UNHCR and its partner Bulgarian Red Cross, with the capacity to accommodate 10 children seeking or having been granted international protection. 6 more residential care facilities for unaccompanied children will be set up in 2024, 4 of which will be based in Sofia City, while the other two will be in the towns of Rousse and Montana.

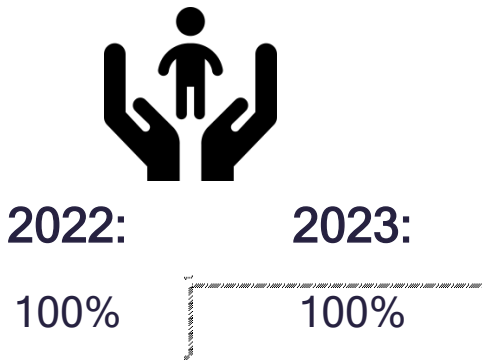
1.3.3. Legal aid for unaccompanied children

The representatives appointed in the procedure with unaccompanied children are lawyers registered with the National Bureau for Legal Aid (NLAB).

The representatives appointed in the procedure with unaccompanied children are lawyers registered with the National Bureau for Legal Aid (NLAB); therefore, by virtue of their profession, they have the right to provide legal aid to the children they represent, which

includes the obligation to ensure clarifications about the procedure and the children's rights, counselling and representation before SAR, the other government authorities and the courts.

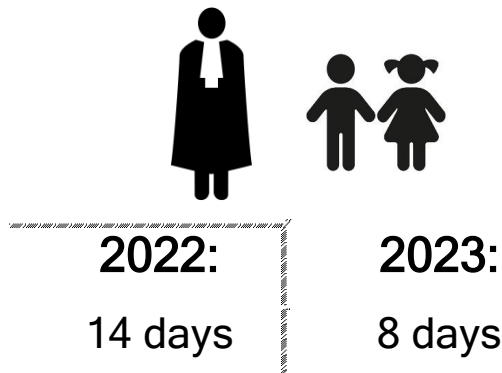
The monitoring has found that in 2023, too, 100% or all the monitored interviews with unaccompanied children (47 out of 250) were attended by a representative, Article 25 lawyer, who provided children with support and legal assistance.



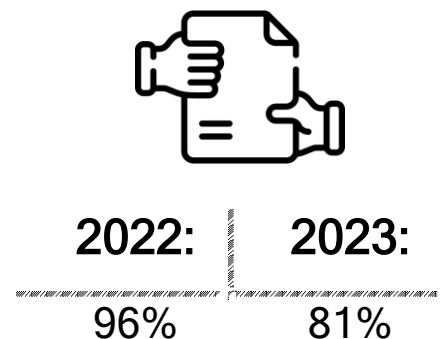
Apart from designating a representative of the unaccompanied child in general, the timely appointment of the latter is also crucial, as it ensures that children have access to qualified legal assistance in the refugee procedure and support to exercise their rights, including access to medical assistance and treatment, if necessary. The monitoring has established that in 2023, in 46% of the cases (21 cases out of 46 monitored cases of unaccompanied children) the request for the appointment of a representative for the unaccompanied child was sent by SAR to NLAB within 1 week from the child's registration. In 22% (10 out of 46) of the cases, the request was sent within 2 weeks from the registration. In 1 of the cases, there was no information in the file whether and when a request for the appointment of a representative was sent by SAR to NLAB. In the remaining 30% of the cases (14 cases out of 46), this obligation was fulfilled after more than two weeks from the unaccompanied child's registration, which is serious setback from the practice in 2022, when in 100% of the monitored cases SAR sent the request within two weeks.

In 82% of the cases (28 cases out of 34 relevant cases), after receiving the request from SAR for appointing a representative for an unaccompanied child, NLAB has designated a representative and has notified thereof the territorial unit where the child is accommodated within 7 calendar days. In 4 of the monitored cases, the representative was appointed after more than two weeks and in 2 of these cases the appointment of a representative took 1 month and only in 1 of these cases the appointment took more than 2 months. In 13 of the

monitored cases, no data has been established in the file about the date of appointment of a representative of the unaccompanied child. Therefore, the appointment of a representative of unaccompanied children by NLAB in 2023 took 8 calendar days on average from the receiving of the request from SAR.



However, the monitoring has established some deficiencies in terms of SAR observing its obligation to inform, without delay, the unaccompanied children about the lawyers appointed as their representatives by giving the child a copy of the decision on that appointment. The decision provides the child with information about the name of the lawyer in charge of his/her case, as well as contact data in case the child wishes to get in touch with the lawyer, if the need be. While in 2022 this obligation was not fulfilled only in one of the monitored cases, in 2023, failure to meet this obligation by SAR was established in 19% of the monitored cases (9 out of 47 cases). All cases of failure to meet this obligation were established at SAR's Registration-and-Reception Centre in Ovcha Kupel District in Sofia City.

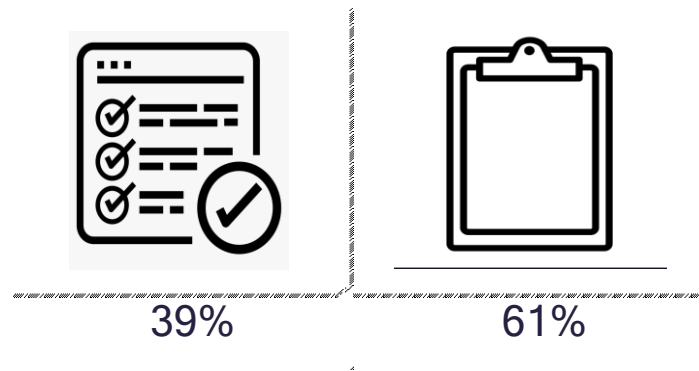


Under the law, ex-officio lawyers from NLAB who represent unaccompanied children are required to have special qualifications, which is a safeguard for their capacity to defend the best interest of the child. In 2023, NLAB, together with UNHCR and BHC, organized 1 training for ex-officio lawyers representing unaccompanied children in the asylum procedures in Sofia City. The lawyers working in the town of Harmanli did not have a training, the lawyers were given the opportunity to join online, as agreed with NLAB.

1.3.4. Best interest determination

SAR has two types of forms approved for best interest assessment (BIA). An initial BIA is carried out within 3 days from registration with respect to all children - accompanied and unaccompanied. A full BID is carried out within 10 days from registration in the event of a high or medium risk identified in respect of the child. The 2023 monitoring has established that in 39% of the cases (7 out of 18 monitored decisions of children, of which 15 unaccompanied and 3 accompanied children), an initial BID form was present in the file but the required subsequent full BID was absent from all of the cases. In more than half of the monitored cases of children, i.e., in 61% of the cases (11 out of 18 cases), neither an initial, nor a full best interest determination has been carried out.

BEST INTEREST ASSESMENT IN STATE AGENCY FOR REFUGEES



The main issue, however, which persists in the procedures with all asylum-seeking children in 2023 is **the absence of any interest and commitment on behalf of the statutory child protection workers from the Child Protection Departments (CPD) with the Social Assistance Directorates of the Agency for Social Assistance (SAD - ASA).** The law obliges them to participate in all administrative procedures involving children and to ensure respect for their best interest.

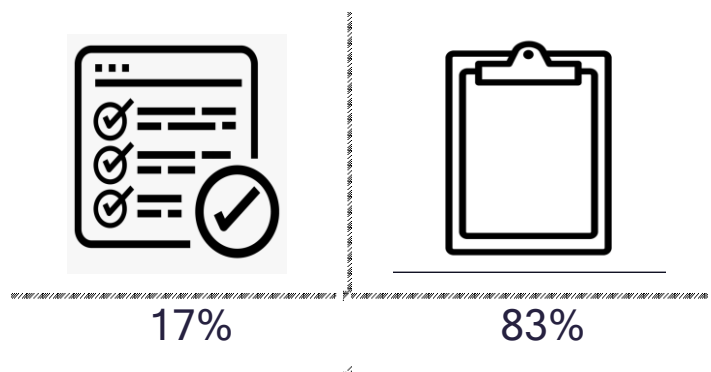
The statutory child protection workers from ASA have been involved in asylum procedures by attending the interviews conducted with unaccompanied children since 1996. However, with the exception of the statutory child protection worker from Serdica CPD with Sofia City Regional Social Assistance Directorate, the participation of all the other ASA child protection workers has been just a formal one, without any actions being taken to support the child or meaningful participation of the child and protect their best interest in the procedures and

decision taken by SAR on the respective case. The monitoring carried out during all previous years since 2012 has not established any concern or intervention by these child protection workers even in cases of obvious needs such as clothes and shoes or medical assistance.

Under the law⁶, statutory child protection workers from ASA are obliged to collect initial information about the cases of unaccompanied children, who meet the legal definition of “children at risk”, within 10 days and prepare a report with an assessment and a plan for measures within 4 weeks (one month) from receiving information from SAR about the registration of an unaccompanied child.

In 2023, 15 decisions of unaccompanied children were monitored and examined. 8 of them concerned cases of children who left RRCs prior to having the interview under the procedure carried out by SAR, these children were not traced and deemed to have abandoned their procedures. Monitoring has established that the child protection workers from ASA submitted a social report with a risk assessment for the child concerned in 86% of the monitored procedures (6 out of 7 cases). However, at the same time 83% (5 out of 6 cases) of these reports were entirely formulaic and only 1 case contained a real risk assessment for the child concerned. No report was submitted in one of the cases.

AGENCY FOR SOCIAL ASSISTANCE



1.3.5. Age assessment examinations

In 2023 SAR ordered 31 age assessment examinations in procedures for unaccompanied children due to doubts in terms of minority/underage claims by them. As a result of the examinations, 12 asylum seekers were determined to be adults.

⁶ Articles 16 - 18 of the Rules for the implementation of the Child Protection Act.

In 2023, SAR set up an interdepartmental working group with the participation of the State Agency for Child Protection (SACP), the Agency for Social Assistance (ASA), the Ministry of Interior (Mol), the Medical Institute of Mol, UNICEF, UNHCR, BHC, which developed guidelines for an interdisciplinary age assessment and determination based on a set of non-medical and medical examinations. The guidelines have been endorsed by SAR and SACP and shall become effective as of 1 March 2024. A unit with SACP will be set up to carry out the age assessment examination and issue conclusions on age determination that shall be considered in the decisions issued by SAR as the decision-making authority.

1.4. PROVISION OF INFORMATION ABOUT THE RIGHTS AND THE PROCEDURE

1.4.1. Introductory information

In 2023, SAR staff provided asylum seekers with introductory information in the respective language in relation to their procedures, and their rights and obligations in 94% (329 out of 350 cases) of the monitored procedures. In 88% (309 out of 350 cases) of the monitored procedures the asylum seekers were duly notified that the information gathered in the course of their registration and during the interviews would be treated as confidential and would be used only for the purpose of the procedure.



94%



6%

1.4.2. Specific gender-related information

The monitoring has established that only in 9% (15 out of 162 cases) of the monitored procedures in which the interviewer and the asylum seeker were not of the same gender the asylum seeker was informed about the possibility to request that the interview be conducted by an **interviewer of the same gender**. In 91% (147 out of 162) of the cases this obligation was not met. Out of the asylum seekers who were not informed about this right, 10% (14 out

of 147 cases) are women (12 women and 2 girls), and the interviews of all of them were conducted by a male interviewer. This indicates continuing deterioration of the practice under this standard compared to the previous years, where failure to meet this obligation was 82% in 2022 and 70% in 2021.



In 20% (20 out of 101 cases) of the monitored procedures in which SAR's interpreter and the asylum seeker were not of the same gender, the asylum seeker was informed about the possibility to request that the interview be conducted with the assistance of an **interpreter of the same gender**. In 80% (81 out of 101) of the cases this obligation was not met. Out of the asylum seekers who were not informed about this right, 23% (19 out of 81 cases) are women, who were interviewed with the assistance of a male interpreter. This is improvement compared to 2022, when 77% of the asylum seekers who were not informed about this right were women, and 2021, when women accounted for 60% of all asylum seekers not informed about this right.

1.4.3. Written information

The monitoring has found that the obligation to serve asylum seekers with written instructions about their rights and obligations in their respective language upon registration was fulfilled in 82% (82 out of 100 cases) of the procedural actions monitored.

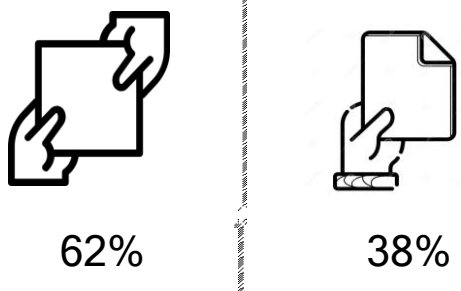
However, in 41% (34 out of 82) of the cases, when written instructions about the rights and obligations were served upon registration, the instructions were not in a language that the asylum speaker commands or understands. In the remaining 18% (18 out of 100) of the cases, such written instructions about the rights and obligations were not served to the asylum seekers.

The content of the written instructions continues to be unclear, expressed in technical terms and incomprehensible for a person without a degree in law. In addition, there are no written instructions that have been adapted to the needs of unaccompanied children.

1.5. EVIDENCE

1.5.1. Evidence gathering

In 2023, in 53% (53 out of 100 cases) of the monitored decisions on applications for international protection the asylum seekers submitted documents in support of their refugee story. In 62% of these (33 out of 53 cases) an intake certificate was drawn up by SAR's interviewer, which served as a safeguard that the relevant documents would be taken into consideration in the decision on the application for international protection. Such a take-over certificate was not drawn up in the remaining 38% (20 out of 53 cases), which is an improvement compared to 2022, when a take-over certificate was not drawn up in 50% (34 out of 67 cases).



1.5.2. Instructions in the event of lack of documentary evidence

The monitoring in 2023 has established improvement in meeting the obligation to inform the asylum seekers that they need to submit all the evidence available in support of the statements made by them.

This obligation was fulfilled in 94% (94 out of 100 cases) of the monitored registrations, while in 2022 it was met in 56% of all monitored cases.

In 4% (4 out of 100) of the cases, the asylum seekers were not informed that they needed to submit all the evidence available and one of these cases involved an unaccompanied child.

When the case concerns children, it is particularly important to explain to them, in a child-friendly manner, during the registration, when their representative has not yet been appointed, how important it is for them to submit accurate data and documents especially with a view to future family reunification and protection of the best interest of the child.

1.5.3. Translation of the evidence submitted

In 96% of the cases when the asylum seekers submitted evidence (51 out of 53 cases), the documents were translated into Bulgarian. In 4% (2 out of 53 cases), the submitted evidence was not translated at all and therefore could not have been taken into consideration when making the decision about the application for international protection. One of these cases was a Dublin procedure and the other one was a refusal to grant international protection.

In 76% (39 out of 51) of the cases when the evidence submitted was translated into Bulgarian, SAR carried out and paid for the translation, while in 24% (12 out of 51) of the cases, the evidence was submitted translated into Bulgarian by the asylum seekers. In 2022, 100% of the evidence submitted was translated by the State Agency for Refugees.

1.5.4. Provision of evidence gathered by other authorities

In all the monitored cases when an application for international protection was lodged before another authority - Border Police or Migration Directorate - the documents taken from the asylum seeker were sent in due time to SAR so that the latter could use them in the procedure.

1.6. INTERVIEW

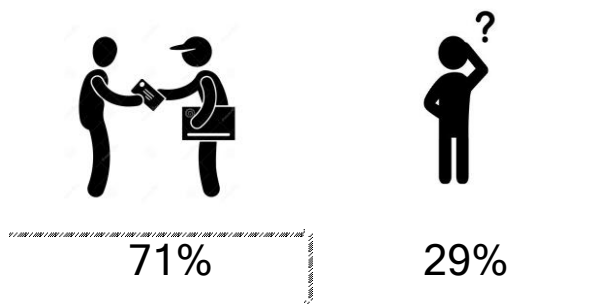
1.6.1. Arrangements and notification

The law stipulates⁷, that a date for the interview shall be fixed right after registration, and the asylum seeker shall be notified thereof in a timely manner. Delayed serving of **an invitation for the interview** or serving it during the interview constitutes a breach of the asylum seeker's right to prepare for the interview and to engage a lawyer or legal aid, if the applicant wishes

⁷ Art. 63a (1) et al. of LAR.

so. If the asylum seekers have not been informed about the date and time of the interview, they will in no way know when to appear for their hearings. The failure to appear at the interview, however, is interpreted by SAR as withdrawal from the procedure, and hence as grounds for terminating it.

The monitoring has found that in 2023 an invitation for the interview was served only in 37% (37 out of 100) of the cases. In 15% (15 out of 100) of the cases, the asylum seekers signed the invitation for the interview without being given a copy thereof; instead, the signed invitation was attached to their personal file. 3 of these cases concern unaccompanied children. In 48% (48 out of 100) of the cases, no interview was scheduled as of the time of monitoring. Thus, in 2023, in 29% (15 out of 52 relevant cases) of the cases, the asylum seekers were not served an invitation for the upcoming interview with them. Even though some improvement has been registered compared to 2022 (51% without an invitation for an interview), the practice under this indicator is still far from meeting the legal safeguard for notification. A slight improvement has been also observed in the practice of caseworkers in RRC in Banya, where in 2023 an invitation for an interview was served in 10% (2 out of 20 cases) of the monitored procedures, while in 2022 no invitation was served.



1.6.2. Interpretation

The interview shall be conducted⁸ in the language declared by the asylum seekers, and when this is not possible, in another language that they understand.

In 2023 this rule was not violated and only in 2% (6 out of 350 cases) the registration or the interview were conducted without an interpreter. 3 of these cases concerned citizens of Ukraine who registered/reregistered for temporary protection and the other 3 cases

⁸ Art. 63a (8) of LAR.

concerned nationals of the Russian Federation. In 4 of these cases, the registration officer used his/her own command of Russian. In 2 of these cases (1 registration and 1 interview) the asylum seekers declared that they spoke Bulgarian.

The control over interpreters was considerably strengthened in 2023 and the interviewer managed to keep the interpreter's behavior under control in the monitored cases where an interpreter was involved (344 out of 350 cases).

1.6.3. Interviewing children

At the end of 2022 SAR introduced the use of a form which is adapted to take into account the children's age and development.

However, in 2023, the forms adapted for children were used only in 6% of the 47 monitored interviews with unaccompanied children (3 out of 47 cases), which impedes or in certain cases makes it **impossible or unlikely to collect full and objective data or obtain reliable information from the child about his/her fears, circumstances, experiences and reasons for seeking asylum.**

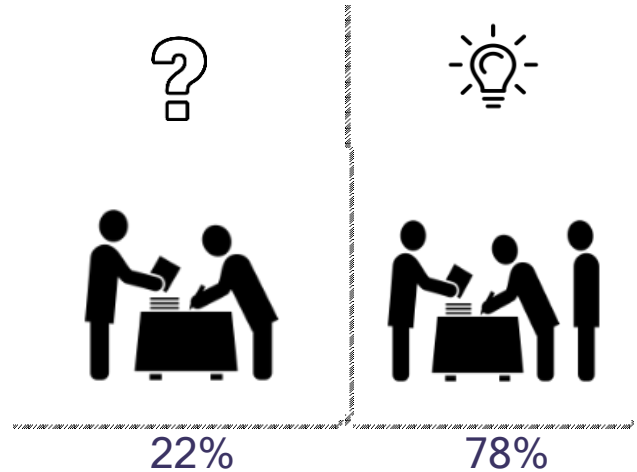
1.6.4. Safeguards for a fair recording of statements

The law requires⁹ audio or audio-visual recording in the course of the interview, and a record from the interview based on that recording. In 2023, audio recording was carried out in 100% of the monitored cases, which constitutes full compliance with the legal standard.

The registration form and the record from the interview shall be read back to the asylum seeker before being signed by him/her¹⁰. The registration forms or the records from the interviews were not read back to the asylum seeker before being signed by him/her in 22% (78 out of 350 cases) of the monitored actions, 24% of which (19 out of 78 cases) involved unaccompanied children (11 children or 58% of the cases during the registration, and 8 children or 42% of the cases during the interview). In 59% of the cases (46 out of 78) the information entered in the registration form which contains initial data regarding the asylum seeker's identity and his/her story was not read, which deprived the asylum seekers of their

⁹ Art. 63a (3) of LAR.
¹⁰ Art.63a (9) of LAR.

right to acquaint themselves with the interpretation of the data they submitted and to correct possible inaccuracies in the record. This constitutes deterioration of the practice compared to the previous 2022, when this obligation was not met in 18% of the cases but the standard was complied with in 81% of them.



It has to be noted that in 10% (25 out of 250) of the cases, discrepancies were detected between the asylum seeker’s statement at his/her registration or the previous interview (15% in 2022), of which 17% (4 out of 25 cases) involved unaccompanied children (13%). While the asylum seekers were given an opportunity to clarify apparent discrepancies between their statements, in the case of their personal data or identity, their clarifications were not taken into account. The problem arises from the fact that SAR’s information system “AIS Bezhantsi” allows corrections in the personal data that was initially entered only if an original identity document is presented, a requirement that cannot always be met by asylum seekers.

1.6.5. Establishing the facts

The fears stated by the asylum seeker and the circumstances in his/her country of origin were examined in 88% (220 out of 250) of the monitored cases. 10% (24 out of 250 cases) of the monitored interviews are related to applications for family reunification by beneficiaries of international protection, where these circumstances are not considered. The interview was interrupted in 1 of the cases due to the asylum seeker not feeling well and the circumstances and fears stated by the asylum seeker were not examined only in 1% (3 cases) of the cases. Therefore, it can be concluded that in 99% of the cases (218 out of 221 relevant cases), SAR caseworkers asked questions in an effort to examine the facts pertaining to the fears of persecution expressed by the asylum seeker as well as the grounds for granting refugee status as well as subsidiary protection in the form of humanitarian status.

What continues to be unsatisfactory, however, is exploring internal alternatives. In 2023, 21% (38 out of 185 relevant cases) of the interviews conducted, where such an alternative in view of the individual circumstances of the applicant was relevant, did not consider and clarify either the objective feasibility of such an alternative or the stability of the situation in the respective part of the country or the reasons why the asylum seeker had fled his/her country of origin.

1.7. LEGAL ASSISTANCE IN ADMINISTRATIVE PROCEDURES

1.7.1. Access to legal assistance

The state shall ensure conditions¹¹ for asylum seekers in Bulgaria to receive legal assistance. The state provides legal aid via the National Bureau for Legal Aid (NLAB). Since March 2013 asylum seekers have been entitled to explicitly entitled access¹² to legal aid financed by the state. In 2023, legal aid at the administrative stage was provided to 388 unaccompanied children but no adults with special needs belonging to vulnerable groups requested or were provided with legal aid.

1.7.2. Legal aid for vulnerable persons

The monitoring of the interviews has found that in 2023 legal aid was not appointed by NLAB in any of the examined 9 cases of vulnerable adults at the administrative phase of the procedure for granting international protection. These cases involve women who are victims of violence, women who are single parents and single women. The latter suggests that these women have been neither explained the right to request free legal aid nor have been referred by SAR to organizations that can help them lodge such a request to the National Bureau for Legal Aid.

The monitoring of the decisions issued by SAR on applications for international protection has identified 3 cases of vulnerable adults who also did not receive legal aid and did not have an ex-officio other lawyer appointed.

On the issue of legal aid for unaccompanied children as a vulnerable group, see **1.3.3.**

¹¹ Art. 23 (2) of LAR.

¹² Art. 22 (8) of the Legal Aid Act.

II. DECISIONS

The 2023 monitoring covered 100 decisions issued by SAR, of which: 15 granting humanitarian status, 9 termination of the procedure, 74 refusals to grant international protection (37 decisions in accelerated and 37 in general procedure), 1 family reunification, 1 Dublin procedure.

2.1. TIMELY DELIVERY OF DECISIONS

The law stipulates ¹³ that, within 4 months from initiating a general procedure, the interviewing authority shall draft an opinion which, together with the personal file, shall be submitted to the Chairperson of the State Agency for Refugees with a view to a decision to be issued within another 2 months or **within a total of 6 months from the registration** of the asylum seeker. Making a decision on the application for international protection in a timely manner is a fundamental procedural safeguard for asylum seekers, as it precludes legal uncertainty in terms of their status and prospects, as well as conditions for irregularities and risk of corruption in the course of the asylum procedure.

In 2023, this time limit was observed in 95% (95 out of 100 cases) of the monitored decisions. The time limit was not observed in 5% of them (5 out of 100 cases), which constitutes minor deterioration compared to 2022, when the time limit was met in 97% of the examined decisions.



¹³ Art. 75 of LAR (version prom. SG, issue 52/2007).

2.2. COUNTRY OF ORIGIN INFORMATION

In 2023, 90% (82 out of 91 cases) of the examined decisions on applications for international protection cited country of origin information. 10% (9 out of 91 cases) of the decisions did not cite any country of origin information. In the remaining 9% (9 out of 100 cases) of the examined decisions, citing country of origin information was not relevant, as in 8 of the cases, the asylum seekers had left in an arbitrary manner the Registration-and-Reception Centres, abandoned their status determination procedure in Bulgaria, as a result of which the procedure was terminated, and 1 of these cases concerned a Dublin procedure.

In 89% (73 out of 82 cases) of the examined decisions, citing country of origin information, the information was up-to-date, made correct referral to the sources therefor, and relevant to the applicant's individual circumstances or experiences. In 11% (9 out of 82 cases) the enclosed and cited country of origin information was not current. Including current and verifiable country of origin information, which can be disproved, in the reasons of the decisions on applications for international protection is an essential safeguard for assessing the validity and lawfulness of the decision, not only of decisions refusing international protection, but also of decisions granting humanitarian status but refusing refugee status.

In 79% (65 out of 82 cases) of the decisions citing country of origin information, the monitoring has found conformity between that information and the operative part of the decision. 21% (17 out of 82) of the cases lack such conformity, 70% of which (12 out of 17) concern asylum seekers from the Russian Federation.

2.3. FACTUAL FINDINGS

2.3.1. Establishing the facts

Overall improvement compared to the previous year 2022 has been observed in terms of clearly indicating which circumstances have been accepted as established.

In 2023, this was done in 68% of the relevant cases (62 out of 91 decisions) and the decisions indicated which of the circumstances were not accepted as established and for what reason. In 2022, this was done in 61% of the examined decisions. This issue was

not relevant for 9 of the 100 decisions monitored in 2023 because 8 of them concerned a terminated procedure, and 1 case a Dublin procedure.

In 82% (54 out of 66) of the relevant cases, SAR's decisions set out reasons why the asylum seeker's statements have not been accepted as credible, while the remaining 18% (12 out of 66 cases) neither set out the reasons therefor, nor specify which of the facts and circumstances stated by the asylum seekers were not established, for instance, because the relevant statements were not accepted to be credible.

2.3.2. Causal link

The monitoring has established that in 2023 the grounds for granting international protection were correctly identified in compliance with the legal definitions laid down in the law¹⁴ in 95% (95 out of 100) of the decisions. The monitoring has found improvement on this indicator compared to 2022, when this obligation was met in 81% of the examined decisions. However, it has also been found that 85% (85 out of 100) of the decisions were in line with the facts and circumstances presented therein compared to 2022, when 97% (97 of the 100 decisions) were in line.

In 79% (71 out of 90) of the decisions all the relevant substantive legal issues had been considered. There is slight improvement compared to 2022, when in 74% (74 out of 100) of the decisions all the relevant substantive legal issues had been considered. In the remaining 21% (19 out of 90) decisions, the ruling used repetitive standard paragraphs, without any conformity whatsoever to the individual story, the facts and circumstances gathered in the relevance file or other data relevant to the asylum seeker's personal circumstances or fears. In the remaining 10 of the 100 examined decisions, the issue about considering all facts and circumstances was not relevant, as these decisions concerned termination of the procedure, a decision in a Dublin procedure and a decision on a request for family reunification.

¹⁴

Articles 8 and 9 of LAR.

2.3.3. The burden of proof

In 2023, monitoring has found deterioration compared to the previous year¹⁵ in terms of sharing the burden of proof in asylum procedures. While in 2022, the burden of proof was shared in 94% (94 out of 100) of the cases, in 2023 the burden of proof was properly shared in 85% (85 out of 100) of the monitored cases.

2.3.4. *In dubio pro fugitivo* principle

In 2023, the *in dubio pro fugitivo* principle was applied in practice in 81% (81 out of 100) of the cases.

2.4. LEGAL RULING

The monitoring has established deterioration of the practice of identification of the grounds for granting international protection in 2023. 72% (65 out of 90 decisions) of the relevant cases were based on correct identification and classification of the legal grounds for granting refugee or humanitarian status. By way of comparison, this requirement was met in 95% of the examined decisions in 2022. Such classification was not relevant and required in the remaining 10 out of a total of 100 examined decisions (family reunification, termination, Dublin procedure).

The exclusion clause was applied in 5% (5 out of 100) decisions and it has been established that the exclusion clause was applied correctly in 40% (2 out of 5) decisions and incorrectly in 60% (3 out of 5) decisions. By way of comparison, the exclusion clause was applied in 1% (1 out of 100) of the decisions in 2022, and this has been assessed in the monitoring exercise as correct and in conformity with the Convention and LAR.

2.5. LEGAL ASSISTANCE IN CASES OF REFUSED PROTECTION

The cases monitored in 2023 include 2 positive decisions served on an individual belonging to a vulnerable group. None of these individuals had received legal assistance and an ex-officio lawyer appointed by NLAB and none of them had been assessed for vulnerability or special needs.

¹⁵ 88% in 2021, 69% in 2020, 75% in 2019.

In 2023, in 93% (14 out of 15) of the monitored cases where decisions were served on unaccompanied children, these decisions were served in the presence of the ex-officio representatives appointed for them - Article 25 lawyers. The case, where the decision was served on an unaccompanied child in the absence of the ex-officio representative appointed for the child, Article 25 lawyer, was identified in the RRC in Harmanli. The argument put forward to justify this violation is that when the decision was served, the child's father, who was living outside of Bulgaria at that time, had been contacted by phone; without, however, explaining how the father had been identified in this situation.

III. JUDICIAL REVIEW

In 2023 monitoring of judicial review related to appeals against negative decisions on applications for international protection issued by the State Agency for Refugees was conducted in 50 judicial proceedings, of which 41 involved men, 8 women and 1 an unaccompanied boy.

3.1. EQUAL TREATMENT AND NON-DISCRIMINATION

In none of the monitored 50 judicial proceedings has discriminatory or unequal treatment of asylum seekers by the court been observed.

3.2. INTERPRETATION

100% (25 cases) of the monitored court hearings, when the asylum seeker appeared before the court (25 cases), were conducted with the participation and assistance of interpreter from/into the language spoken by the asylum seeker. This is an improvement compared to 2022, when in 65% of the cases interpretation was provided but in 35% of the cases the asylum seekers did not have any interpretation provided when they appeared before the court. In the remaining monitored court hearings (25 out of 50 cases) an interpreter was not appointed due to the asylum seeker's failure to appear before the court.

In 2023, in 32% (8 out of 25 cases) of the monitored judicial proceedings at Administrative Court - Haskovo, the asylum seekers appeared before the court and there was an interpreter in all cases. In the remaining monitored judicial proceedings (17 out of 25 cases) an interpreter was not appointed due to the asylum seeker's failure to appear before the court. The latter constitutes an improvement of the practice regarding judicial proceedings at Administrative Court - Haskovo compared to 2022, when as a rule an interpreter was not summoned for the first court hearing scheduled in the relevant case and it was only after the claimant had already appeared in the court room that the interpreter was summoned by telephone and the court rescheduled the hearing for a later hour, which in certain cases prevented the asylum seeker from *habeas corpus* in the proceedings.

3.3. INVOLVEMENT OF THE PROSECUTOR'S OFFICE

The monitoring has established participation of the prosecutor's office in the court hearings related to refugee judicial proceedings in 72% (36 out of 50 court cases) of the procedures. It is only in 36% of them (13 out of 36 cases), however, that the prosecutor's office submitted a reasoned, and not formulaic, opinion on the appeal lodged against SAR's refusal to grant international protection. In comparison, in 2022 the prosecutor's office had been prepared in 35% of the refugee judicial proceedings.

3.4. PROCEDURAL REPRESENTATION

In 98% (49 out of 50) of the cases, the asylum seekers participating in the monitored judicial proceedings were assisted by a procedural representative, a lawyer, and in 33% of the cases (16 out of 49) the representative was an ex-officio lawyer appointed by the court at the asylum seeker's request. In 51% (25 out of 49) of the court cases, excluding those with unaccompanied children, the asylum seekers were represented in the proceedings by a lawyer from a non-governmental organization.

In 14% (7 out of 49) of the court cases, the asylum seekers were represented by a hired lawyer. In 29% (2 out of 7) of the court cases, however, the hired lawyer did not appear at the court hearing. By way of comparison, in 2022, 25% of the hired lawyers did not appear and did not fulfill themselves the engagement taken for the procedural representation of the asylum seekers.

In 6% (1 out of 16) of the court cases the ex-officio lawyers from NLAB demonstrated a torpid attitude, and were not prepared to defend the claimant, which indicates slight, though minimum, improvement compared to 2022, when the latter was established in 7% (3 out of 13) of the cases.

IV. RECOMMENDATIONS

- Provide free access of all asylum seekers to registration in SAR's territorial units and ensure constant presence of interpreters from/into the main languages to provide for at least basic communication between SAR's officials and asylum seekers.
- Eliminate fully the unlawful practice of refusing the registration of asylum seekers, who turned up on their own in SAR's territorial units by alerting the local police department to detain and take the asylum seekers to Mol's Migration Directorate deportation centres (SHTAFs).
- Train registration officers in communication skills and working with people from different ethnic and cultural background as well as dealing with the symptoms of professional burnout.
- Revise the initial information provided to the asylum seekers about their rights and the procedure to make it more comprehensible and simplified without any complicated legal jargon. Make the adapted information available, including in different format such as video in all languages and on SAR's website.
- Take measures to ensure that vulnerabilities are identified at each registration of an asylum seeker, regardless whether preliminary data indicating vulnerability at any stage of the procedure or special needs is available or not, in order for asylum seekers belonging to a vulnerable group to receive due care.
- Introduce a requirement for SAR's social workers to carry out a needs assessment and implement the requirement an individual support plan in all cases when asylum seekers are identified as vulnerable or with special needs. These documents must be attached to the asylum seeker's personal file.

- Have invitations for the interview translated into relevant languages and discuss the opportunity to send them not only in writing but also in an electronic way, including via existing telecommunication applications (WhatsApp, Viber, Telegram, etc.).
- Take measures to ensure observance of the rule that the asylum seeker has to be informed about their right to ask for an interviewer and an interpreter of the same gender.
- Ensure meeting the obligation to inform immediately unaccompanied children about their representative appointed by the National Bureau for Legal Aid (NLAB).
- Discuss bilateral measures with the NLAB about having the lawyers carry out a preparatory meeting between unaccompanied children and their appointed representatives in a timely manner before the first interview takes place and have SAR provide interpretation at this preparatory meeting.
- Ensure that in all the interviews held with accompanied and unaccompanied children the specially adapted form is used, which is adapted to take into account the children's age characteristics, their ability to perceive and convey information, their specific needs, and development.
- Introduce measures, including legislative ones, to engage Child Protection Departments with the Agency for Social Assistance to fulfill their obligation to carry out an initial assessment of cases of unaccompanied children and draw up an adequate report with a plan for measures in line with the provisions and the time limits of the Child Protection Act and the Rules for its implementation.
- Initiate the implementation of the adopted instruction for complex age assessment based on cognitive and socio-psychological markers and non-invasive medical examinations in compliance with all procedural standards and rules for carrying out such examinations.

- Seek for institutional safeguards provided by the respective statutory child care services to engage alternative care arrangements for UASC with priority given to minor unaccompanied children between 0 to 14 years of age.
- Discuss and consider the forms for assessment of cases of vulnerable persons enclosed in the file, including best interest assessment reports for unaccompanied children, in the reasons of the decision on the application for granting international protection.
- Reintroduce the open questions concept as a generally applied interviewing technique to allow asylum seekers to freely provide their own accounts of the events which led them to fear persecution and seek asylum as well as to compel more active approach of the case workers such as to seek clarification for any contradictions in statements and opportunity for asylum seekers to explain inconsistencies and provide further details or evidence.
- Carry out trainings of interviewers about the methods of analysis of facts, credibility assessment, including relating to memory processes and biases, and relating them to the legal definitions of a refugee status and a humanitarian status, internal flight alternative, etc. including by engaging teachers at the National Institute of Justice and the Center for Continuing Education of the national Bar Association.
- Ensure that the country-of-origin information generated by the International Affairs Directorate is made available via SAR's website to the other participants in the administrative procedure, namely Article 25 representatives, social workers, lawyers, including legal aid ones, judges, and prosecutors.
- Introduce measures to provide legal assistance at the administrative stage of the procedure to all applicants for international protection who belong to vulnerable groups.