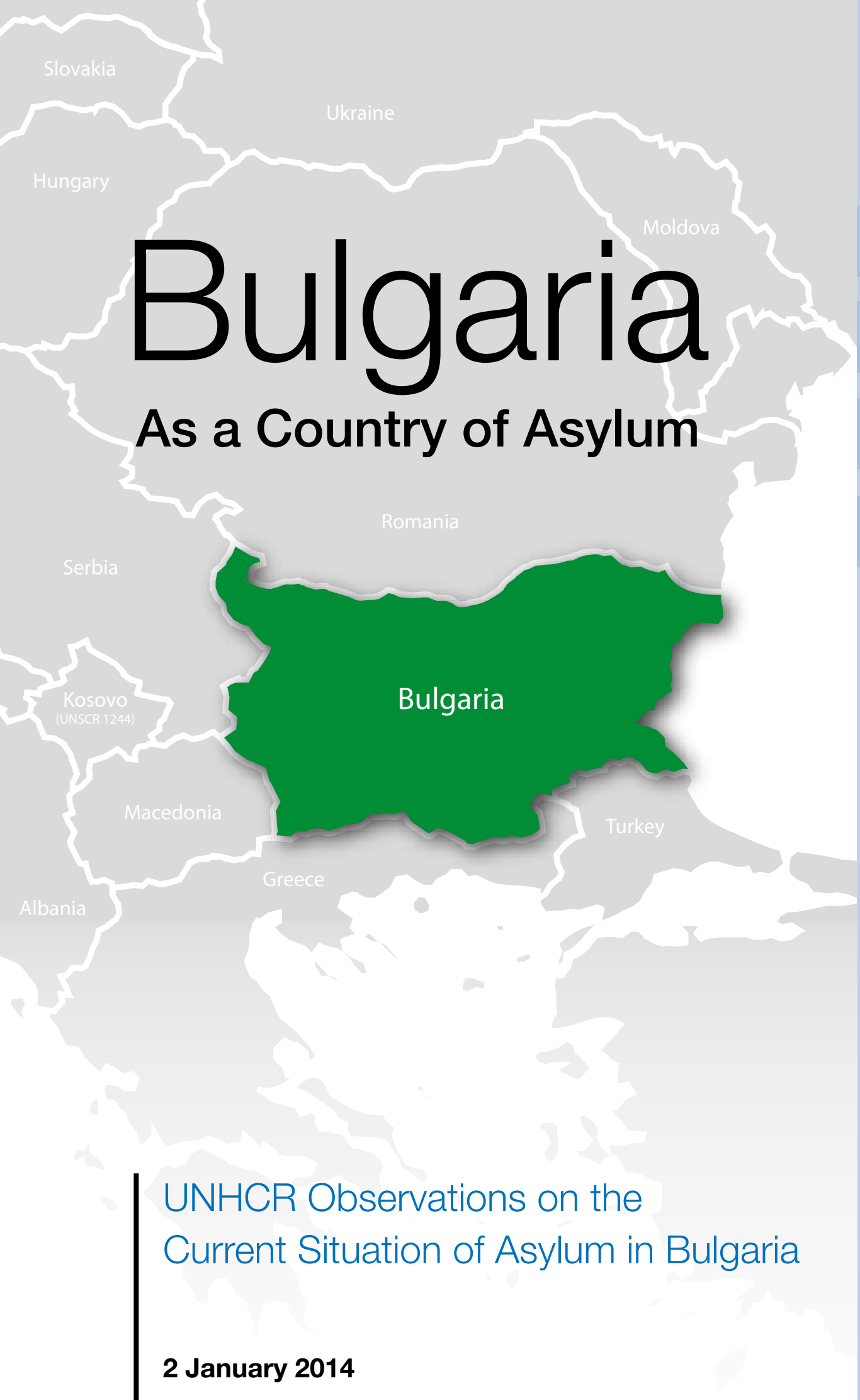

UNHCR
The UN Refugee Agency

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Bulgaria

As a Country of Asylum

UNHCR Observations on the Current Situation of Asylum in Bulgaria

2 January 2014

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1. Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to monitor the implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as the Refugee Convention) under its Statute in conjunction with Article 35 of the Refugee Convention and Article II of the 1967 Protocol.

This paper assesses the prevailing reception conditions and asylum procedures in Bulgaria, including the situation for people transferred to Bulgaria under the Dublin Regulation.[1] It identifies areas where the Bulgarian authorities are required to take urgent steps to effect improvements, in order to ensure respect for the rights of asylum-seekers and people in need of international protection. Despite measurable progress in establishment of laws, policies and practices on international protection over recent years, there are a number of gaps in implementation which mean that Bulgaria still requires fundamental improvements in order to comply with international and EU standards. With the exponential rise in the numbers of people arriving in Bulgaria in recent months, these gaps have worsened, with serious impact on affected people.

Based on the analysis below, UNHCR concludes that asylum-seekers in Bulgaria face a real risk of inhuman or degrading treatment, due to systemic deficiencies in the reception conditions and asylum procedures. UNHCR thus considers that transfers to Bulgaria should be halted, pursuant to the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights, and the Recast Dublin Regulation where it applies. UNHCR proposes to re-assess the situation as of 1 April 2014.

[1] Responsibility for applications for asylum in a Member State before 1 January 2014 are governed by *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national,* OJ L 50/1, 25 February 2003. Applications lodged after 1 January 2014 are governed by *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person,* OJ L 180/31, 29 June 2013 (hereafter 'Recast Dublin Regulation 'or 'Recast').

2. Key features of the current situation

2.1 Asylum claims: selected statistics

Between 1 January and the beginning of December 2013, based on the data available to UNHCR, approximately 9,100 people had applied for international protection in Bulgaria. Just over 4,000 of those applicants are, or claim to be, Syrians. A significant proportion of all those who have applied have done so since August 2013, and some 2,500 asylum applicants were awaiting formal registration of their applications of 1 December.[2]

The increased overall number of claims represents a significant increase for Bulgaria, which has received an average of around 1,000 asylum-seekers annually since its accession to the EU in 2007.

It must be noted however that precise and updated figures for asylum-seekers are not available, including disaggregated data reflecting age, gender or specific needs, nor indicating the stage to which the applicant's asylum claim has progressed. UNHCR believes that the numbers of people who have requested or would like to request asylum in Bulgaria may be higher than the above official figures. At the same time, some people may have left Bulgaria, including due to the dire reception conditions and delays and other difficulties with claim processing.

UNHCR is working with the Bulgarian State Agency for Refugees (SAR) to seek to improve information-gathering and coordination arrangements, including through collection and publication by SAR of systematic, accurate and disaggregated weekly data on asylum-seekers and refugees.

[2] The Asylum Procedures Directive (2005/85/EC) defines 'application for asylum' in Art. 2(b) as an application made by a third country national or stateless person which can be understood as a request for international protection'. The current Directive does not distinguish between such applications and formal registration or lodging of those applications. While the asylum procedure is considered officially to begin in many Member States, including Bulgaria, only upon formal lodging of an application, the entitlements of asylum-seekers under the Reception Conditions Directive and Asylum Procedures Directive apply from the point at which a request or application is made, regardless of when it is formally registered or lodged. It is noteworthy that the Recast Asylum Procedures Directive (2013/32/EU) requires that when an application is made to a competent authority, the application shall be registered within three days (Art 6(1)) and the applicant shall have an opportunity to 'lodge' the application formally as soon as possible. During the period after a new Directive comes into force, but before it has been transposed in national law, jurisprudence of the Court of Justice of the EU establishes that states must refrain from taking measures liable seriously to compromise the result prescribed, which in this case involves swift access to the means formally to register a claim.

2.2 Treatment of people transferred to Bulgaria under 'take back' provisions in the Dublin Regulation

Persons who have claimed asylum previously in Bulgaria and who are returned to Bulgaria under the 'take back' or 'take charge' provisions of the Dublin Regulation are not assured of guaranteed access to an examination in substance of their claims.

If an asylum-seeker has failed to appear for an interview within ten days of being invited to do so by the SAR, including because she or he has left Bulgaria, his or her claim will be 'suspended'. If s/he is returned to Bulgaria within three months of the suspension of his or her claim, the file can be reopened and the claim examined in substance. S/he will be admitted, if a place is available, to an open reception centre to await a decision. As documented below, UNHCR considers that conditions at present in open centres are inadequate.

This timeframe of three months is exceeded in many transfers under the Dublin Regulation. As a result, only a very limited number of people who could be transferred to Bulgaria under Dublin are likely to fall into this category and have the opportunity to receive a substantive examination of their original application.

If the application has been suspended and the applicant fails to appear before the SAR within three months, the applicant's claim may be rejected in absentia, and the applicant will be subject to removal. Alternatively, the claim determination process will be terminated, unless the applicant can show objective reasons for failing to appear and/or changing address without notice to the SAR. In such cases, the applicant is considered to be irregularly present and transferred to a detention centre to await removal. This is likely to be the case for many Dublin transferees, where the transfer occurs more than three months after the claim process has been suspended.

In principle, it is possible for a person whose claim has been terminated or rejected *in absentia* to lodge a subsequent application. In such cases, the SAR will examine the claim only for the purpose of determining if there are new elements which were not put forward in the original claim. If there are no new elements, the claim will be rejected as manifestly unfounded without a substantive examination. During the subsequent application process, no State support is provided, unless the applicant is considered vulnerable.

As described below, release from detention is possible only if an asylum applicant secures a place in a SAR centre, which are not available at present; or if s/he can produce proof of an external address, and is ready to waive his/her entitlement to State support. Detention for Dublin transferees in this category may thus continue for extended periods, with inadequate legal safeguards (see further below).

2.3 Border management, access to territory and registration of applications

Between 1 January and 18 November 2013, a total of 12,176 non-EU Member State nationals have been apprehended for irregular entry into or exit from Bulgaria.[3] Bulgaria has recently sought to reinforce its external borders, notably the southern frontier with Turkey, and has taken a combination of measures to prevent crossings, which have the potential to affect people who may be in need of international protection. These measures include the erection of a 32 km fence, and the deployment since October of approximately 1,500 police personnel along the Bulgarian-Turkish border, posted at intervals of several hundred metres. The additional personnel are not permanent border officials, and thus not all have been trained to identify and respond appropriately and in line with European law to a person seeking asylum, by admitting him or her to the territory and referring the person to the competent asylum authority.[4]

Border personnel are required to record applications for asylum and notify the SAR. The initial process of recording an application for asylum at a border, prior to referral to and formal registration by the SAR, is significantly hindered by inadequate interpretation services at border points. While information brochures about the asylum process, in Farsi, Dari, Arabic, English and Kurdish languages, are in principle provided at border points, it is not apparent that this is available or accessible in practice for most applicants. This means that those wishing to seek asylum do not have access to adequate information regarding the means of doing so.

An official ordinance provides that asylum-seekers should thereafter be transferred within 24 hours to reception centres run by the SAR for formal registration and commencement of the processing of their asylum claims. However, the serious lack of reception places in SAR centres and extremely limited registration capacity of the SAR means that in practice transfers, registration and asylum claim processing are significantly delayed in many cases. In the interim, asylum-seekers are not being accorded the rights and treatment to which they are entitled under the EU asylum *acquis,* including notably under the Reception Conditions and Asylum Procedures Directives.

Those who apply for protection at the border or in detention, but whose applications are not formally registered by the SAR, are not treated as asylum-seekers and are not accorded the entitlements under the Reception Conditions Directive. In law, they are considered as irregularly present, and subject to removal and/or prosecution. While in practice they are not being forcibly removed at present, they are not receiving swift access to the means to register an asylum claim, to the formal authorization to stay that the Reception Conditions Directive requires, or to a swift and effective asylum determination procedure.

UNHCR is concerned that people who could be in need of international protection are at risk of being denied entry to Bulgaria, of being detained and prosecuted for irregular entry or presence or not holding valid documentation, and of not receiving access to effective registration and assessment of their asylum claims. This could create a risk of *refoulement,* even in the absence of information in UNHCR's possession of forced removals to date.

[3] Official Bulgarian government figures.

[4] The reinforcement action has taken place alongside the continued deployment of border guards from other Member States under Frontex's coordination as part of Joint Operation Poseidon. According to an undated situational update on Frontex's website as of 12 December, 'At the land border between Turkey and Bulgaria the numbers of illegal border crossing have also risen since August and vary between 40 and 70 a week. Frontex JO Poseidon Land at this border is ongoing and supports the Bulgarian authorities with the screening and debriefing of irregular migrants.' http://frontex.europa.eu/news/situational-update-migratory-situation-at-the-greek-turkish-border-bvud4C

2.4 Detention

Under Bulgarian law, border or immigration police may detain people on grounds of unauthorised entry, irregular residence or a lack of valid identity documents, who in law are subject to removal. Bulgarian law provides that detention at border facilities should be less than 24 hours, while in practice, following increased arrivals in recent months, it has lasted up to four days. After this initial period in detention, people may be transferred to an open reception facility for asylum-seekers, or to pre-removal detention if they have not requested asylum. For people who are subject to removal, the maximum duration of pre-removal detention, including extensions, is 18 months.

These provisions are applied in practice to also detain people who have applied for asylum, but who have not been transferred to the SAR for formal registration of their applications. This occurs despite the fact that, after applying for protection, asylum-seekers are no longer illegally present, but have, under the EU Reception Conditions Directive, a right to remain in the Member State pending a decision on their claims. In practice, the lack of capacity at the SAR centres mean that their access to registration and to the asylum procedures is significantly delayed.[5] As a result, some asylum-seekers may remain in detention for several months.

Two detention centres (Special Centres for Temporary Accommodation of Foreigners or 'SCTAFs') are operated by the Migration Directorate (at Busmantsi and Lyubimets). Those held at SCTAFs include people awaiting removal, as well as asylum-seekers whose claims have yet formally to be registered. People who have applied for asylum in a SCTAF must wait for an uncertain period for a decision by the SAR to transfer them to an open reception centre, once a place is available, where their claims will be registered and the claim determination process will begin. In addition, the Migration Directorate runs a closed Transit Detention Facility at Elhovo, where third country nationals are in general held for a short period of time.[6]

In all of the detention centres, food is provided regularly to the detainees, as well as access to medical care where needed, and access to basic recreational activities (which includes television and access to outdoor recreation areas; while books in Arabic, Dari, Farsi and French have been provided by UNHCR).

The services of qualified interpreters are not available in the detention centres, which prevents effective communication with medical personnel, as well as with detention centre staff. In Lyubimets, communication is dependent upon the ability of individual staff members in English or Turkish languages, or the assistance of some detainees with language skills; use is made also of an Arabic language interpreter who accompanies visiting lawyers from the Bulgarian Helsinki Committee. In Busmantsi, students from Sofia University provide interpretation on a voluntary basis from time to time. While EU-funded projects have provided for interpretation services for limited periods, no permanent arrangements or qualified personnel are available to provide interpretation of an appropriate standard.

[5] At the beginning of December 2013, it was planned that a number of experts from other Member States would be deployed under EASO coordination to work on pre-registration of asylum claimants in detention centres, with the aim of reducing delays. This pre-registration does not, however, constitute full registration and the commencement of the asylum procedure.

[6] In Elhovo, people are detained while their legal status is clarified, after which asylum-seekers should be transferred to an open centre (places permitting) for registration; while others with no legal grounds to stay are sent to pre-removal detention.

Legal advisers are entitled to gain access to detainees in the SCTAFs. The only service provider offering legal counseling free of charge is the Bulgarian Helsinki Committee, a UNHCR implementing partner.

While awaiting transfer to a SAR centre, persons in detention have the option of release if they are able to prove that they have an external address in Bulgaria. If asylum-seekers do produce evidence of an external address, they are required to sign a waiver, in Bulgarian, which may not be fully understood, renouncing their entitlement to support from the State. Recent reports indicate that outside persons have been offering to arrange external addresses for asylum-seekers in exchange for payment.[7] The existence and availability of accommodation at these external addresses is not checked by SAR, and it would appear that in many cases they are fictitious, leading to the risk that asylum-seekers will be homeless and destitute, with no State support.[8]

There is at present no legal basis in Bulgarian legislation for detaining asylum-seekers (as distinct from the grounds related to irregular entry, presence or documentation mentioned above). However, an amendment to the Law on Asylum and Refugees was proposed in November 2013 which would authorize detention of asylum-seekers in closed centres. UNHCR recalls that jurisprudence of the European Court of Human Rights has confirmed that detention should be proportionate and based on grounds articulated in law, which are limited in scope.[9] Article 5(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR) also provides that detention must not be arbitrary, requiring that among other things, it is based on lawful grounds; it occurs in appropriate conditions; and its length must not exceed that which is reasonably required to serve the purpose pursued by detention.

UNHCR takes the view that detention should be used as a last resort, and recalls that the recast Reception Conditions Directive prohibits detention on the sole ground that the applicant had claimed asylum, establishes a limited set of grounds where detention can lawfully be used, and provides for specific safeguards and conditions for vulnerable people.

[7] Amnesty International, *Refugees in Bulgaria: Trapped in substandard conditions,* 13 December 2013, p 6.

[8] See also Amnesty International, op cit, p 6.

2.5 Reception facilities, basic and specific needs

Official figures indicate total reception capacity for asylum-seekers in Bulgaria, as of 6 December 2013, stood at 4,060, but total occupancy was 4,325. Most centres were over capacity, with one being 198% occupied. As of the date of writing, there were seven reception facilities in Bulgaria,[10] estimated to host approximately half of the asylum-seekers in the country. One of these centres, at Harmanli, operates as a closed facility, notwithstanding the absence of a legal basis for detention of asylum-seekers in Bulgarian law.

Just under 5,000 asylum-seekers are registered as living at 'external addresses', involving rented accommodation at their own expense, with a very small number reported to be hosted privately. The State provides no financial or material support to those living outside the facilities, except for a medical insurance card, often issued after some delay, which provides access to basic medical care. This creates a strong risk that some are homeless and destitute. This may be a problem particularly for those who arranged external addresses through intermediaries in order to secure release from detention (in the absence of places in open centres), as at least some of those addresses may be fictitious. Some of those outside the open centres are likely to have moved on to other countries, including due to the absence of adequate reception conditions or prospects of a swift examination of their claims.

Conditions in the reception centres are deplorable. Food is not provided by the State, and, in general, there is no access to cooking facilities, adequate heating (including hot water), medical assistance, or water and sanitary facilities of an acceptable standard. Some centres are frequently overcrowded, and privacy is not ensured for families. Laundry facilities are not available in most of the facilities, and there is generally no access to child-specific facilities, education, recreational or leisure activities. While social workers sometimes assist unaccompanied children in the asylum claim determination process, the system of appointing guardians for unaccompanied children – estimated at 148 by end of October among the asylum-seeker population - does not function effectively, such that guardians are not appointed in practice. Efforts have been made, and are ongoing as of December 2013, to expand and improve the available facilities overall, but these remain far from adequate.

Upon registration, asylum-seekers accommodated in reception centres receive financial support of BGN 65 (approx. EUR 33) per month per person. Upon arrival at the centre, they receive an initial five-day food package, the value of which is deducted from the monthly allowance. Beyond this, minimal and irregular food rations from private donors have been provided to the inhabitants of the reception facilities in recent times, but they are irregular, unpredictable and insufficient for subsistence.[11]

In UNHCR's view, conditions in the Harmanli closed centre are the worst of all facilities in Bulgaria. The situation of asylum-seekers therein is exacerbated by the absence of free movement. Food is not provided by the State in the centre, and people are not authorized to leave the centre for the purpose of buying food with their limited monthly allowance. Recent efforts have been made by the Bulgarian Red Cross to centralize the *ad hoc* donations provided from private sources at a distribution point within the centre, but they remain inadequate to ensure access to sufficient food. The official capacity of the Harmanli centre is 1,450, and as of early December, was over capacity.

[9] *Saadi v UK,* Application no. 12339/03, para 74. See Article 5(1)(f) of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which foresees that detention might be used only to prevent unauthorised entry to the country or prior to deportation. Article 8(3) of the recast EU Reception Conditions Directive (2013/34/EU) provides for additional grounds on which detention might be authorised, but stipulates that asylum-seekers cannot be detained simply for the reason that they have sought asylum.

[10] These are the transit centre at Pastrogor; open reception centres where claim registration takes place, at Ovcha Kupel'Banya; Voenna Rampa, Vrazhdebna and Kovachevtzi. Harmanli is a closed reception facility, where registration of claims has recently begun.

[11] The absence of State-funded rations has prompted UNHCR to begin providing one hot meal a day in Harmanli centre, for a limited period of time.

Accommodation in Harmanli is a combination of prefabricated cabins and unrenovated buildings which do not meet adequate standards. People who were housed in tents until the end of November were recently moved into the unfinished building. In case of new arrivals beyond existing capacity, UNHCR is concerned that tents may be brought back into use. In prefabricated cabins, UNHCR observed some 21-22 people living in an area of approximately 6x3m, with temporary partitioning, one toilet and a wash basin.

To date, there have been no medical facilities, treatment or supplies provided by the State in the centres. While asylum-seekers in several cases have been taken by ambulance to local hospitals, where they can obtain a prescription for medicine, they have lacked the means to buy medicine and State assistance is not available to cover the cost. Médecins Sans Frontieres (MSF) has established an outpatient facility in the Harmanli centre, and has been present in Voenna Rampa and Vrazhdebna centres for several days per week from late November 2013.[12] This assistance will be available only for a limited period of time; but the needs continue to exceed the available support. In Harmanli, cases of hepatitis A among the asylum-seeker population have been reported.

In Voenna Rampa, problems include dire sanitary conditions. Toilets and bathrooms are drastically insufficient in number and blockages in the sewerage system are constant. Heating and hot water in the centre are also inadequate. The building was originally designed as a school rather than a 24-hour residence for large numbers of people, and the heat exchanger's capacity is far from sufficient.

Some aspects of the conditions in other centres are less extreme, but problems of a similar nature - including overcrowding, inadequate sanitation, inadequate food and other support, insufficient heating, lack of sufficient access to medical care, absence of provision for people with specific needs - and other problems are seen in all centres.

With temperatures dropping below zero and the onset of frost and snow, the absence of heating, insulation and of hot water in these facilities mean they pose a significant risk to health. Bedding and mattresses, cooking areas, cooking equipment, and bathroom facilities are of a low standard and vastly overstretched by the numbers of people requiring them. In addition, there are no dining rooms or child-friendly spaces, nor any provision for recreational activities. Planned improvements as of the date of writing do not seem likely to be sufficient to meet the needs in the immediate future.

Reception facility staff and management are overstretched, untrained and inadequately resourced to meet the needs. Effective communication between SAR personnel and asylum-seekers, which could enable other arising needs to be addressed on an ongoing basis, is not in place, due in part to the lack of adequate interpretation services. The absence of staff trained to fulfill reception functions fails to meet the requirements of the Reception Conditions Directive.

Effective systems for identifying people with special reception needs, and provisions to address those needs, are not in place in reception facilities managed by SAR or detention facilities managed by the Migration Directorate. While social workers are available on a limited basis in some SAR centres, and psychologists can be consulted on some occasions in the Migration Directorate's detention centres, the effectiveness of both services is greatly limited by the absence of qualified interpretation.

There is a potential for civil society to provide some services and play a role in meeting some of these needs, in partnership with the State and with adequate resources. However, this potential is not currently being utilized to its full capacity.

[12] Medécins sans Frontières, *Bulgaria: Syrian refugees face appalling conditions,* Press Release, 21 November 2013

2.6 Registration of asylum claims

Under Bulgarian law, the asylum process begins only after the asylum claim is registered formally by the SAR, after an individual has been received in a SAR reception centre. Currently, UNHCR observes that access to the asylum procedure is significantly delayed in many cases. There are waiting periods of over six months for registration of claims in some cases. The numbers of registration staff at the SAR is insufficient to clear the backlog and to register new claims in a timely fashion.

While awaiting registration, asylum applicants remain in law subject to removal. Although, according to information currently available to UNHCR, forced removal does not occur in practice, this nonetheless represents a denial of access to the protections afforded by the Reception Conditions Directive, including a document confirming the applicant's right to remain lawfully in the country during the asylum procedure. It is also a denial of speedy access to a fair and effective asylum claim determination under the Asylum Procedures Directive.

The registration process takes place at the SAR facilities at Banya (Sofia) and Pastrogor, and has commenced in early December 2013 at Harmanli. To make this possible, registration personnel have been transferred from the other locations, resulting in further delays for applicants in other centres. This results in an overall lack of access to timely registration and subsequently to examination of asylum claims. As of mid-December 2013, plans have been made for EASO teams to provide training to new registration personnel.

With support from the European Commission, from UNHCR and EASO, SAR plans to increase or start registration of asylum applications in the other reception centres, with the aim of reducing the duration of the process. EASO support is also foreseen to further enhance registration.

2.7 Assessment and decision-making on asylum claims

UNHCR welcomed Bulgaria's participation in quality projects in recent years involving various Member States. However, further investment is needed to reinforce the quality of Bulgaria's asylum procedure. The 2012 recognition rate for refugees was extremely low, by comparison with EU averages.[13] UNHCR is concerned that humanitarian status under Bulgarian law (corresponding to subsidiary protection under the EU Qualification Directive) may have been granted in many cases to people who would have qualified for refugee status, should their claims have received a fair and effective assessment on the merits.

UNHCR is particularly concerned by the frequent failure of SAR interviewers to assess evidence correctly, including failing to examine perceived contradictions in evidence through questions. Identified contradictions and inconsistencies appear exclusively in the record of interview or draft or final decision, without any indication of whether such contradictions and inconsistencies were discussed during the interviews.

Furthermore, UNHCR observes that written decisions in general fail to make the link between statements made during interviews and the reasoning for decisions. This can render an effective remedy difficult to pursue, in case of an appeal against a negative decision.

Asylum-seekers do not have guaranteed access to legal advice and representation to support them during the asylum procedure. Despite efforts by the Bulgarian Helsinki Committee and other civil society organisations to provide some free-of-charge advice and counseling to asylum-seekers, increased numbers of new arrivals mean that these services are insufficient to meet the demand. While some Bulgarian lawyers are available for asylum-seekers to engage at their own expense, very few have the resources to make use of these services. The right of asylum-seekers under the Asylum Procedures Directive to State-funded legal assistance at second instance is thus apparently not observed in practice.

At present, asylum claims are not processed in a timely and efficient manner, with most decisions taking well over the six months prescribed by Bulgarian law. UNHCR considers that SAR staff numbers need to be reinforced, a step that is currently foreseen with the assistance of forthcoming EU funding. Both new and current staff members require training in international, European and Bulgarian asylum law, as well as relevant skills such as interview techniques, working with interpreters, preparation of written decisions and others; training support from EASO and UNHCR experts is taking place to help address these needs. In addition, the availability of updated COI, as well as its appropriate use by asylum decision-makers, must also be improved.

[13] UNHCR, *Global Trends Report 2012,* table 10, available at: http://www.refworld.org/docid/522f0efe4.html

2.8 Protection and other rights of those qualifying for refugee or subsidiary protection status

Bulgaria operates a National Programme for the Integration of Refugees (NPIR), providing a very limited amount of financial assistance for housing, local travel, and language classes for people who are granted refugee status or subsidiary protection. In 2012 SAR, together with the national employment agency, organized an employment fair for refugees (resulting in job offers being made to 15 refugees). It is planned to hold this event annually.

Unfortunately the NPIR has places for only 60 people per year, which is far less than the number of protection beneficiaries recognized annually in recent years. The programme is also not available outside Sofia, and newly-recognized refugees have not received timely information which would enable them to participate in it. The financial and travel allowances are very low, and linked to attendance at language classes, which is difficult or impossible for those protection beneficiaries who work.

Concerning medical care, arrangements are needed to ensure no gap occurs in practice in the coverage and services available upon recognition as a refugee or subsidiary protection holder.

The integration process would also be greatly facilitated by greater access to counseling and other forms of support, as well as to interpretation services, and access to vocational and other forms of training.

Many refugees have difficulties securing stable employment due to the adverse economic situation generally in Bulgaria, as well as obstacles created by difficulties in securing recognition of their qualifications. Many are at risk of homelessness. Although the law stipulates that recognized refugees or subsidiary protection beneficiaries should leave the reception centre 14 days after being granted status, many are asked to leave earlier due to demands created by rising numbers of asylum-seekers.

Access to the Bulgarian educational curriculum for children remains challenging because language support classes provided to children are insufficient, and are available for time periods that are too short. In addition the classes are not available outside Sofia.

2.9 Anti-foreigner and anti-refugee sentiment

Numerous incidents of violence based on anti-foreigner and specifically anti-refugee sentiment, including very serious violent acts, have occurred in Sofia over recent months. On November 4, a 17 year old Syrian boy was stabbed and beaten by unknown men. On December 1, three asylum-seekers, including two Syrians, were brutally attacked by more than 20 youths who had organized themselves on Facebook. These and other attacks have occurred with impunity.

These developments are of grave concern to UNHCR, as they have the potential to create or fuel a climate of hostility towards asylum-seekers and people in need of protection, along with other third country nationals. Recent polls suggest that up to 62% of Bulgarians are not in favour of refugees arriving in the country. Almost three quarters of the population would not accept refugees in their town or village. The troubling statistics come after four months of anti-refugee rhetoric from opinion shapers and politicians with ideas such as sealing off the border and detaining asylum-seekers for the length of their procedure becoming mainstream.

This renders more difficult the challenge of integrating in and contributing to Bulgarian society for those who receive protection; and for asylum-seekers, of residing in safety and security in accordance with their rights whilst awaiting a decision on their claims.

National legislation criminalizes bias-based crimes and Bulgarian authorities are obliged to investigate every possible discrimination motive behind such crimes. It is not clear that legislation penalizing crimes based on racist or anti-foreigner motives is used to the extent possible or necessary to combat such tendencies and acts. While UNHCR welcomes initiatives such as a recent joint declaration against xenophobia of the President and Prime Minister, more political leadership should be shown in calling on the public to show tolerance, understanding and respect for the rights of people who have fled to Bulgaria in search of protection, along with other third nationals coming to the country who are entitled to humane and dignified treatment.

3. Engagement to improve and reinforce the response: Bulgaria, UNHCR, EU bodies, civil society and others

On 21-22 November 2013, the UN High Commissioner for Refugees visited Bulgaria and met with the Prime Minister and Interior Minister, among others. He offered assistance from UNHCR to supplement the government's support to asylum-seekers in reception centres and outside, to help ensure basic needs are met in specific areas. He also proposed to lend support to reinforce the capacity of the SAR, including in registration and claim assessment; with a view to reducing the current backlog of applications; and potential support to integration following recognition of those in need of protection. Bulgaria expressed appreciation for these offers.

UNHCR has subsequently undertaken an assessment mission, and is coordinating preparation and delivery of its foreseen support with the competent Bulgarian authorities and other concerned bodies, including the European Commission and EASO, which are also taking steps to assist. UNHCR is also coordinating with national and international civil society partners who have expertise and capacity to contribute constructively to the situation.

UNHCR acknowledges Bulgaria's positive statements and expressions of intent to improve the situation, strengthen its capacity to provide protection and fulfill its obligations in the short and longer term. This is particularly welcome, as it represents an acknowledgement of the responsibility that Bulgaria bears to afford protection and access to rights under international, European and national legal instruments.

UNHCR also welcomes the contributions made and proposed by EU bodies, including notably the European Commission with significant financial support and other measures; the European Asylum Support Office in leading Asylum Support Teams consisting of Member States experts; as well as other foreshadowed forms of support.

Other Member States have also made and are continuing to offer important contributions, in the spirit of solidarity and in recognition of the pressing needs of affected individuals. Civil society is already engaged and there is scope for it to contribute more, if given means and the scope to work. Time and further resources will be needed before the impact of these and other contributions can be measured, but they have the potential to ensure that asylum-seekers have access to conditions and other rights to which they are entitled.

4. Conclusion

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 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.*

UNHCR thus considers that transfers to Bulgaria should be halted under these circumstances. This requirement arises from the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights; and under Article 3(2) the Recast Dublin Regulation for asylum claims to which the Recast applies.

UNHCR also recalls the principle of solidarity, to which the EU and Member States have underlined their commitment, and notes that refraining from transfer and assuming responsibility for asylum claims in this connection would represent an important demonstration of that solidarity. At the same time, it affords Bulgaria an opportunity to acknowledge its clear legal obligations, and take steps to ensure that it is able to fulfill them at the earliest possible stage.

UNHCR also notes there may be other circumstances in which transfer to a Dublin State may be precluded, because of a real risk that an individual's rights will be violated, even in the absence of systemic deficiencies.

UNHCR proposes to re-examine the situation and the above assessment as of 1 April 2014. This should provide an opportunity to Bulgaria and its partners, including EASO and UNHCR, to work towards improving the reception conditions and asylum situation, and reinforce the capacity of the SAR and other competent bodies to fulfil their obligations. It also allows the opportunity to ensure, with the cooperation of other European states, that people potentially in need of protection can gain access to adequate treatment and conditions, as well as to a fair and effective asylum determination, in line with their entitlements under international and EU law.