

ECRE/ELENA Research Note: Reception conditions, detention and procedural safeguards for asylum seekers and content of international protection status in Bulgaria

February 2016

Introduction and methodology

1. The material contained within this research note relates to information on the asylum system and treatment of those granted international protection in Bulgaria, published by non-governmental organisations, practitioners, international institutions and governmental agencies. The material focuses specifically upon the procedural, reception and detention system in Bulgaria for those seeking protection and most notably its impact on certain categories of asylum seekers.
2. The factual findings have been reified with reference to the EU Member States jurisprudence, provided by the asylum law practitioners from the ELENA network. The research in no way purports to be a fully comprehensive review of Member State practice and the jurisprudence included has principally been taken from the information exchange between ELENA practitioners. It will be noted that there is a specific accent placed on certain jurisdictions given that transfer requests to Bulgaria under the Dublin III Regulation¹ are significantly higher in some countries than others. To illustrate, out of the 6,963 incoming requests to Bulgaria from January to September 2015, over half were made from the German authorities.² This, naturally, results in a significant amount of litigation and, therefore, case law in the country.
3. The research is divided into sections on access to the asylum procedure, reception, detention and conditions for beneficiaries of international protection in Bulgaria.

Access to the asylum procedure

4. Considerable hurdles to effectively accessing the asylum procedure in Bulgaria have been observed at every stage of the process, most patently documented by reports citing numerous instances of push-backs at the Bulgarian - Turkish border.³ Recourse to summary expulsions coupled with violence and brutality triggered an initiation of infringement proceedings by the Commission against Bulgaria⁴, however

¹ 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 (recast).

² AIDA Bulgaria Country Report: Fourth Update, October 2015, <http://bit.ly/1QiksZN>, 27.

³ Belgrade Centre for Human Rights, Safe Passage Testimony of people arriving in Dimitrovgrad, Serbia from Bulgaria, November 2015, accessible at: <http://bit.ly/1O18VXh>, 3.

⁴ European Council on Refugees and Exiles, 4 April 2014, accessible at: <http://bit.ly/1Qp0CX7>. In March 2015 two Iraqi nationals died after attempting to cross into Bulgaria from Turkey after being beaten by Bulgarian border patrol officers; 'UNHCR concerned by border practices after deaths of two Iraqis at the Bulgaria-Turkey border', March 2015, accessible at: <http://bit.ly/1CsEzZA>.

¹ *With financial support from the Fundamental Rights and Citizenship Programme of the European Union*



reports as recent as December 2015 continue to detail collective expulsions.⁵ In breach of international refugee law, EU law and the EU asylum *acquis*⁶, these unlawful actions have been referred to by certain national courts as a governmental strategy to counter the renewed surge in numbers in 2015 and resultant deterioration of procedural and reception conditions.⁷

5. Upon entry, usually after several consecutive attempts, individuals are apprehended and are either presented with removal orders on grounds of irregular entry, followed by detention in a pre-removal centre (Busmantsi or Lyubimets, which are known as “special homes for temporary accommodation of foreigners”), or, where they apply for asylum before the Border Police, are transferred to Elhovo Allocation centre, the third closed centre in Bulgaria (see below). As of 30 September 2015 97% of applicants who made their application at the border were transferred to Elhovo. Such referral is done without a detention order, therefore constituting an unlawful deprivation of liberty.⁸ The only case where detention is not imposed is where the applicants have family members already within the reception system or where applicants are visibly vulnerable.⁹
6. Detention for first time applicants is, therefore, systematically applied in Bulgaria.¹⁰ To illustrate, 9,530 out of the 12,738 asylum applications lodged from January to the end of September 2015 were made in detention and a significant proportion of these in pre-removal detention.¹¹ As the AIDA report notes, late registration of asylum applications is often due to the absence of 24 hours interpretation services at the border.¹² As a consequence, Bulgarian Border Police issue deportation and detention orders frequently, often with the consequence that individuals are unaware of their most basic rights.¹³
7. The frequency by which detention is meted out to applicants serves to demonstrate that access to the asylum procedures in Bulgaria is not automatic upon submitting an asylum application.¹⁴ Indeed, there is no time limit for the application to be forwarded to the State Agency for Refugees (SAR), the body responsible for registering the asylum application, and the average duration of detention in 2015 in all centres for asylum applicants amounted to fourteen days. However, for certain nationalities

⁵ Human Rights Watch, Bulgaria: Pushbacks, Abuse at Borders, January 2016, accessible at: <http://bit.ly/1PggxWg>.

⁶ Articles 31 and 33 of the 1951 Convention relating to the status of refugees, Article 3 and Article 4 of Protocol 4 of the European Convention on Human Rights, Articles 4, 18 and 19 of the Charter of Fundamental Rights of the European Union and recital 25, Articles 6,8 and 9 of the recast Asylum Procedures Directive 2013/32/EU.

⁷ Administrative Court Arnsberg, Decision of 6 January 2016, 13 L 1692/15.A and Administrative Court Cologne, K 5432/14.A, Decision of 18 June 2015.

⁸ Up until 31 December 2015 asylum seekers could and were regularly detained as irregular migrants under the Return Directive 2008/115/EC. The arbitrary manner in which the grounds for detention under the Return Directive have been interpreted by Bulgarian officials has been documented extensively by Centre for Legal Aid – Voice in Bulgaria, “Who gets detained? Increasing the transparency and accountability of Bulgaria’s detention practices of asylum seekers and migrants”, January 2016: accessible at <http://bit.ly/1PiSzgK>. AIDA Bulgaria Country Report: Fourth Update, October 2015, 20 and 52

⁹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 52.

¹⁰ See The Cordelia Foundation, From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, January 2016, accessible at: <http://bit.ly/1mrWopA>, 8 “Detention is often ordered as an automatism, with no individualised justification.”

¹¹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 53.

¹² Ibid, 55.

¹³ Reasons for Detaining Migrants Easy to Find, Study of Court Decisions Shows, February 2016, accessible at: <http://bit.ly/1PiSzgK>.

¹⁴ See V. Ilareva, Detention of asylum seekers: interaction between the Return and Reception Conditions Directives in Bulgaria, 25 November 2015, accessible at: <http://bit.ly/1nVGZi9>.

(from the Maghreb region, sub-Saharan Africa, Pakistan and Bangladesh)¹⁵ this totalled 6 and a half months where both registration and determination were conducted in pre-removal detention.¹⁶ Profiling of specific nationalities has been done on the back of recommendations from the National Security Agency who advise vigilance towards certain nationalities on account of the risk to security that they may pose.¹⁷

8. In Elhovo the average duration of detention is twelve days, which have been attributed to the need to undertake security screening as well as a lack of co-ordination between the border police and the SAR.¹⁸ Since 1 January 2016 Bulgaria has amended its national legislation in order to transpose the grounds for detaining asylum seekers listed in the Recast Reception Conditions Directive.¹⁹ Whilst the latter allows detention for the purposes of verification of identity, an order in writing must be provided stating said reasons. As outlined above, no such order is furnished to asylum applicants. Moreover, Article 9(1) of the Directive prescribes that delays in administrative procedures, not attributed to the applicant shall not justify the continuation of detention. Thus, in additional dereliction of the metrics of necessity and proportionality, as well as Article 6 of the Recast Asylum Procedures Directive, detention which is seemingly imposed for administrative convenience without any requisite safeguards is untenable on a legal grounds basis.
9. For those applying for asylum in detention, specifically in relation to those placed in the pre-removal centres, there are no interpretation services available, rendering any access to information on asylum processes practically impossible.²⁰ This is made worse by the absence of a translated detention order for those in pre-removal detention. With a time limit to appeal the order, which is immediately effective, of 14 days, detained individuals, including asylum seekers, are usually unable to adhere to this timetable.²¹ Given that automatic judicial review of an order is then only assessed in periods of 6 months, a violation of a right to an effective remedy, arbitrary detention and even *non-refoulement*, could easily ensue.²²
10. This has considerable consequences for individuals belonging to nationalities that are detained throughout the whole procedure, including determination of the asylum claim. Indeed, not only does this manifest itself as a discriminatory practice it is unlawful on a domestic legislative basis.²³ In addition, since 1 July 2015 there is no State funded legal aid for the first instance of status determination for any asylum applicant and whilst legal aid is provided for appeals under the budget, access to the courts to lodge such an appeal turns heavily on the provision of legal assistance and representation during the eligibility interview and upon receipt of a negative first

¹⁵ It is worth bearing in mind that these nationalities figure in the top 10 countries of origin, AIDA Bulgaria Country Report: Fourth Update, October 2015, 6.

¹⁶ AIDA Bulgaria Country Report: Fourth Update, October 2015, 11-13.

¹⁷ Ibid 20.

¹⁸ Ibid 52-53.

¹⁹ For more information see Changes in Bulgaria's Detention and Deportation System, accessible at: <http://bit.ly/1QfAkwg>.

²⁰ The Cordelia Foundation, From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, January 2016, accessible at: <http://bit.ly/1mrWopA>, 19.

²¹ AIDA Bulgaria Country Report: Third Update, January 2015, 52.

²² See AIDA Bulgaria Country Report: Fourth Update, October 2015, 13 where a group of asylum seekers from the Cote d'Ivoire, who still had status determination court procedures pending, were deported back to the country.

²³ The legal ground for examining asylum applications in detention centres was abolished in May 2012, AIDA Bulgaria Country Report: Third Update, January 2015, 52.

decision.²⁴ Consequently, effective access to the procedure for applicants is negated. In light of the consistent failings identified in status determination proceedings,²⁵ such curtailment of procedural rights is particularly dramatic for those nationalities detained given the extremely low recognition rates for these individuals.²⁶

11. For persons who apply for asylum on the territory delays beyond what is stipulated in the recast Asylum Procedures Directive have been noted with regards to registration and documentation and are, therefore, often the cause for onward movement.²⁷
12. As specified in paragraph 10 of the note, domestic legislation does not provide for mechanisms by which to identify vulnerable persons. Whilst training to case workers is supposedly provided solely with regards to the treatment of victims of sexual violence, actual implementation of said training has been pending since 2008.²⁸

Access to the asylum procedure- Dublin returnees

13. As of 30 September 2015 the number of actual transfers carried out to Bulgaria under the Dublin Regulation was relatively low (178 out of 6,963 take back or take charge requests).²⁹ The status of those returned under the Regulation remains unclear. For those who have applied for asylum in Bulgaria but have then been absent from the territory for more than three months the procedure will be terminated, but is, in theory, accessible upon return.³⁰ However, there is a high risk that upon return the right to reception has been rescinded, either because the asylum seeker has left the reception centre for more than three days without prior notice or because they had previously opted to reside in an external address and, thus, forfeited their right to accommodation, which is still applicable upon return. The only exception to this is where the returnee is a vulnerable applicant. However as there is no identification of vulnerability in Bulgaria in practice this means that persons with visible vulnerabilities, i.e. families with children, are the only category to be provided with reception.³¹ As has been confirmed by **Belgian** courts in cases concerning single males with psychological vulnerabilities; *“there are no assurances that Dublin returnees will be guaranteed access to the asylum procedure or that they will not be exposed to extremely difficult reception conditions during the examination of the claim.”*³² Returns to Bulgaria in all of these cases were subsequently suspended.
14. For those Dublin returnees who have had a final decision rejecting their claim either before leaving Bulgaria or whose application was rejected, served *in absentia* and not appealed, thus becoming final, the returnee is considered as an irregular migrant and placed immediately in detention within one of the pre-removal detention centres.³³ This applies to all persons, including families with children.³⁴

²⁴ Note that even where legal aid was provided under the European Refugee Fund for the first instance determinations this was sporadic to the point that only one reception centre was able to furnish legal representation. See AIDA Bulgaria Country Report: Fourth Update, October 2015, 26.

²⁵ See Bulgarian Helsinki Committee, Mid-Year Project Performance Report, 15 July 2015 for further details.
²⁶ AIDA Bulgaria Country Report: Fourth Update, October 2015, 6.

²⁷ Ibid 19.

²⁸ Ibid 38.

²⁹ Ibid, 29.

³⁰ Applicable to 88% of non-Syrian nationals in the first half of 2015, AIDA Bulgaria Country Report: Fourth Update, October 2015, 42.

³¹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 38 and 30.

³² Council of Alien Law Litigation, Decision of 14 October 2015, 154 479; Decision of 22 September 2015 153 091; Decision of 3 January 2014, 116 471.

³³ AIDA Bulgaria Country Report: Fourth Update, October 2015, 30.

15. Problematic when read in light of Article 18(2) of the Dublin Regulation III with regards to an effective remedy, concerns also stem from the status of the individual, who is regarded as a subsequent applicant and required to bring forth new evidence to the protection claim.³⁵ Detention is likely to last a significant period of time in these cases given that release is often conditional upon evidence of a place of residence.³⁶ Indeed, release of subsequent applicants is highly unlikely since these applicants are not entitled to reception provided by the State during the admissibility assessment.³⁷
16. Following on from legislation which came into force in January 2016, during the admissibility assessment of the subsequent application, for those who have not already been detained, the core group of material rights including food, shelter, social support, medical insurance, free health care, psychological assistance and a registration card will not be provided. Moreover, the applicant is not entitled to the right to be heard and, therefore, inadmissibility continues to be systematically ruled out for subsequent applications. Where this is the case the applicant is not registered or documented, the right to remain on the territory is lost and any following application will not be given suspensive effect where the previous one has been deemed inadmissible or has been rejected on its substance.³⁸
17. A core element of domestic case law examined during this research which has either suspended or prevented transfers to Bulgaria on the basis of an unlawful return decision under Article 3(2) of the Dublin III Regulation has been the risk presented to Dublin returnees. As stated above, and according to which stage of the asylum procedure the individuals are at, courts have confirmed that they can be viewed as irregular migrants upon return, subject to prolonged periods of detention and treated as subsequent applicants with the procedural failings that this entails.³⁹
18. In instances where the Dublin returnee is accepted back into the procedure it is worth highlighting that the substantive status determination assessment for all applicants in Bulgaria is marred with procedural failings which have been exacerbated by a complete absence of interpretation services outside the eligibility interview, in violation of Article 12(b) of the recast Asylum Procedures Directive.⁴⁰ Since September 2015 and due to accumulated debts by SAR to interpreters, even the

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Ibid.

³⁵

ECRE Comments on 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 (recast), March 2015, accessible at: <http://bit.ly/1SQf2Gf>, 23.

³⁶

Centre for Legal Aid – Voice in Bulgaria, “Who gets detained? Increasing the transparency and accountability of Bulgaria’s detention practices of asylum seekers and migrants”, January 2016, 22 ‘Presenting evidence of an external address is often a condition for being released from the closed centre, when there is no reason to be detained longer, often after filing an asylum claim but not having the right to be accommodated at a reception centre, which is the case for subsequent applicants.’

³⁷

Centre for Legal Aid – Voice in Bulgaria, “Who gets detained? Increasing the transparency and accountability of Bulgaria’s detention practices of asylum seekers and migrants”, January 2016, 12.

³⁸

See AIDA Bulgaria Country Report: Fourth Update, October 2015, 33, 37 and 44 and R. Pavlova, NGOs in Bulgaria Get Access to Border Points, But Harder Now to Stay Legal for Failed Asylum Seekers, December 2015, accessible at: <http://bit.ly/1QrqAJi>.

³⁹

Cologne Administrative Court, Decision of 4 December 2015, 20 K 1706/15.A 4 Dec 2015; Aachen Administrative Court, Decision of 17 November 2015, Az. 8 L 325 / 15.A; Oldenburg Administrative Court, Decision of June 24 2015, Az. 12 B 2278/15; Cologne Administrative Court, Decision of June 18 2015, Az. 20 K 4052 / 14.A; Arnsberg Administrative Court, Decision of 6 January 2016, 13 L 1692/15.A; Arnsberg Administrative Court, Decision of 4 September 2015.

⁴⁰

See AIDA Bulgaria Country Report: Fourth Update, October 2015, 13 and Fundamental Rights Agency, Weekly data collection on the situation of persons in need of international protection, Update 5, 26 October – 30 October 2015, accessible at : <http://bit.ly/1KQWp1S>, 11.

maintenance of interpretation during interviews has been irregular leading to an increase in the delays of registration.⁴¹ Where interpretation is provided reports have highlighted that 'interpreters do not interpret in full what has been said during interviews,⁴² interpreters have been used which do not speak the language of the applicants and protocols from the eligibility interviews have been requested for signature without actual communication of the content to the applicant being undertaken.⁴³

19. These procedural failings had been identified in 2014, for example by the European Asylum Support Office (EASO) Operating Plan, which highlighted a complete absence of induction training or information materials for interpreters.⁴⁴ Yet any real improvement remains stagnant and despite considerable funding from the European Commission's Urgent Measures Agreement fundamental shortcomings such as non-adherence to the Interpreters Code of Conduct still prevail. Indeed, somewhat of a U-turn on proposed improvements is apparent in the country as staff competencies and expertise has deteriorated even further with the recent firing and replacement by SAR of status determination staff appointed and trained with the support of UNHCR Emergency Measures Scheme and EASO Operating Plan.⁴⁵ Symptomatic of this renegading on planned and financed developments is the Bulgarian government's decision to re-appoint the asylum agency's former management who were fired 'on account of congested determination procedures and deplorable reception conditions.'⁴⁶
20. Faults within the determination procedure remain untouched with the monitoring of cases and status decisions showing a low number of interviews being recorded, as well as reliance on out-dated country of origin information, irrelevant reasoning and a lack of legal representation during court hearings.⁴⁷

Detention

21. Bulgaria has three detention centres with a capacity of approximately 1,000 places (Busmantsi (400 places), Lyubimets (300 places) and Elhovo (240 places)). This is set to increase in light of legislative amendments providing a legal basis for the detention of asylum seekers. Therefore, as of 1 January 2016, legislation prescribes that there are 'closed departments' within the existing reception centres.⁴⁸ It is worth stating that prior to this amendment, and as stated above, asylum seekers were regularly detained as irregular migrants in pre-removal centres under the Return Directive.⁴⁹ However, unlike the preceding legislative regime the current legislation allows for the detention of unaccompanied minor asylum seekers. Additionally, there

⁴¹ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 23.

⁴² Fundamental Rights Agency, Weekly data collection on the situation of persons in need of international protection, Update 2, 5 October – 9 October, accessible at: <http://bit.ly/1mCqhnZ>, 11.

⁴³ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 24.

⁴⁴ EASO Special Support Plan To Bulgaria, 5 December 2014, accessible at: <http://bit.ly/1KPAkk5>.

⁴⁵ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 12.

⁴⁶ Ibid.

⁴⁷ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 24-26. The quality of the recognition process was further referred to by the Cologne Administrative Court, Decision of 12 December 2014 Az 16 L 2408/14.A.

⁴⁸ V. Ilareva, Detention of asylum seekers: interaction between the Return and Reception Conditions Directives in Bulgaria, 25 November 2015, accessible at: <http://bit.ly/1nVGZi9>.

⁴⁹ Return Directive 2008/115/EC.

is no time limit for detaining an asylum seeker in a closed centre.⁵⁰ Concerns have also been raised on the discretionary interpretation which could be given to the grounds of detention for asylum seekers since no definition or indicators have been attributed to key terms such as “public order.”⁵¹

22. The systematic imposition of detention to those seeking asylum has been criticised by national judges from a number of EU Member States who, in support of their findings that flaws within the reception and procedural system exist in Bulgaria, cite that detention for those entering the country is the rule instead of the exception.⁵²

Detention conditions

23. Towards the end of last year, overpopulation in all of the detention centres has been consistently documented by the Fundamental Rights Agency of the European Union (FRA). Updates in October noted that Lyubimets centre was over 40 % above the occupancy rate and that persons were forced to sleep in corridors in Busmantsi.⁵³
24. Detention conditions amounting to ill-treatment have been widely and consistently documented through credible international channels. The **Committee for the Prevention of Torture and the Council of Europe Commissioner for Human Rights** have all asserted poor hygiene conditions, abusive and violent treatment by guards, overcrowding, poor nutrition, no provision of education for children, substandard and insalubrious material conditions, as well as a lack of medical care, interpreters and information on asylum procedures.⁵⁴ In one report findings demonstrated that in Busmantsi facilities are often limited more than the purpose of detention requires with detainees unable to leave their room to use the bathroom facilities at night since bedrooms are locked at 10PM.⁵⁵
25. In the latest country updates on Bulgaria these findings still ring true and are specifically raised in jurisprudence to confirm that detention conditions give rise to inhumane and degrading treatment, of which the Bulgarian Government has done nothing to remedy.⁵⁶

Detention – vulnerable persons

26. Torture victims, traumatised persons, families with minor children, unaccompanied children and other vulnerable asylum seekers continue to be held in detention as there is neither a mechanism to identify their vulnerability in detention (further

⁵⁰ Centre for Legal Aid – Voice in Bulgaria, “Who gets detained? Increasing the transparency and accountability of Bulgaria’s detention practices of asylum seekers and migrants”, January 2016, 13.

⁵¹ Ibid, 13 R. Pavlova, Law Allows Detention of Asylum Seekers in Bulgaria, December 2015, accessible at: <http://bit.ly/1PP38JT>.

⁵² Cologne Administrative Court, Decision of 18 June 2015, Az 20 K 4052/14.A.

⁵³ Fundamental Rights Agency, Weekly data collection on the situation of persons in need of international protection, Update 3, 12 October – 18 October, accessible at: <http://bit.ly/1mCqhn7>, 9.

⁵⁴ See CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010, Strasbourg, 15 March 2012, 24-30; Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Bulgaria, from 9 to 11 February 2015, <http://bit.ly/1GHj8EN>.

⁵⁵ The Cordelia Foundation, From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, January 2016, accessible at: <http://bit.ly/1mrWopA>, 28.

⁵⁶ AIDA Bulgaria Country Report: Fourth Update, October 2015, 55 and Oldenburg Administrative Court, Decision of June 24 2015, Az. 12 B 2278/15; Cologne Administrative Court, Decision of 18 June 2015, Az. 20 K 4052 / 14.A

exacerbated by the lack of interpretation to enable effective communication) nor a means to release them, other than the 6 month judicial review period. According to the Cordelia Foundation “persons suffering from post-traumatic stress disorder, including primary torture victims, can be found in detention in the same proportions as in open facilities” with approximately only half of those identified as torture survivors receiving legal representation to challenge the detention order.⁵⁷

27. Whilst domestic legislation does not provide for detention of unaccompanied minors with a view to removal, there are instances where these minors are attached to unrelated adults in order to enable this.⁵⁸ Indeed, all vulnerable persons, apart from families and single women, are detained with all other detainees. Extremely disconcerting in this regard has been a report from FRA documenting the harassment of an unaccompanied minor in Busmantsi.⁵⁹

Reception

28. There are four reception centres in Bulgaria with a total capacity of 5,130 places (Banya 70; Pastrogor 320; Harmanli 2,710 and three shelters in Sofia - Ovcha Kupel 860; Vrazhdebna 370; and Voenna Rampa 800). Referral to a reception centre usually follows from registration and screening in Elhovo “triage” centre. The feasibility of the SARs claims’ that they have capacity to accommodate 7000 persons and 800 in emergency mobile units are questionable given that these units are yet to be purchased.⁶⁰ Indeed, to claim that Bulgaria has sufficient reception capacity would be disingenuous in light of the number of asylum applicants in Bulgaria from 1 January 2015 to 31 December 2015 totalling 20, 391 as well as an emergency measure which has been put in place for those newly recognised as status holders, allocating spaces within the reception centre for a period of three months.⁶¹

Reception conditions

29. The worsening of reception since 2014 has been relied upon by domestic courts in their findings of a lack of humane reception conditions in the country. Whilst the **Belgian** and **German** judiciary noted improvements in 2014 following UNHCR and EASO support they have confirmed that the reception system has been radically modified over the summer of 2015 and is again pushed to its limits with deteriorating conditions, including over-crowding, food shortages, ill-treatment by the authorities, catastrophic hygiene conditions and denial of necessary healthcare.⁶²
30. Equally, degrading reception conditions have been reported by FRA who documented a complete absence of water and central heating in Ovcha Kupel

⁵⁷ The Cordelia Foundation, From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, January 2016, accessible at: <http://bit.ly/1mrWopA>, 16-17

⁵⁸ AIDA Bulgaria Country Report: Fourth Update, October 2015, 21 and 57.

⁵⁹ Fundamental Rights Agency, Weekly data collection on the situation of persons in need of international protection, Update 5, 26 October – 30 October, accessible at: <http://bit.ly/1KQWp1S>, 13.

⁶⁰ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 19.

⁶¹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 13.

⁶² Council of Alien Law Litigation, Decision of 14 October 2015, 154 479; Oldenburg Administrative Court, Decision of June 24 2015, Az. 12 B 2278/15; Cologne Administrative Court, Decision of 18 June 2015, Az. 20 K 4052 / 14.A; Cologne Administrative Court, Decision of 12 December 2014, Az. 16 L 2408 / 14.A and Decision of 10 December 2014, 20 L 1831 / 14.Q; Meiningen Administrative Court, Decision of 7 January 2015, 1 E 20242/14 Me; Oldenburg Administrative Court, Decision of 18 February 2015, 12 B 609/15

reception centre for the period of November 2015 as well as an ongoing and consistent lack of medical care and supplies in all reception centres. Accounts of scabies, lice and bedbugs prevail in reports as does the detention of unaccompanied children and their placement in rooms with unrelated families or adults.⁶³

31. On the basis of ongoing substandard material conditions for asylum seekers in Bulgaria, ECRE has consistently maintained its call for suspending transfers to the country.⁶⁴ Reliance on the UNHCR lifting of the temporary general ban on transfers to Bulgaria on grounds that reception conditions had improved⁶⁵ merits renewed attention especially since the SAR has retroactively ceased the provision of a monthly financial allowance to asylum seekers in reception centres.⁶⁶ Set against a reception matrix whereby food does not meet nutritional guidance and is provided irregularly with recorded gaps lasting months in its provision due to managerial errors and failure to secure funding, arguments relating to the lack of sustainability of improvements and degrading treatment have abounded in more recent jurisprudence.⁶⁷ Indeed, during these periods of time the responsibility to furnish sustenance has been squarely placed upon the shoulders of charities and NGOs, in contradiction to the obligation of States under European Social Charter as confirmed by the European Committee of Social Rights and domestic jurisprudence.⁶⁸
32. Arguably, returnees under Dublin and who are readmitted into the asylum procedure are either faced with a risk of destitution where the applicant is outside the State reception system or are at a risk of degrading treatment if access to a reception centre is permitted. Moreover, a heightened risk that Convention violations will subsist is grounded in the increasingly lengthy determination times.⁶⁹

Reception – Vulnerable persons

33. The definition of vulnerability codified in Article 21 of the recast Reception Conditions Directive has not been transposed into Bulgarian domestic legislation. The delimited definition of vulnerability in Bulgaria is further circumscribed by the lack of legal or practical mechanisms to identify vulnerable persons, rendering provisions on tailored procedures and reception conditions within EU asylum legislation completely null. In the sole instance where domestic legislation requires that vulnerability be taken into account (when deciding upon accommodation), limited reception as well as documented reception conditions means that, in practice, no special reception needs

⁶³ For an overview see FRA, Regular overviews of migration-related fundamental rights concerns, Monthly Data Collection, December 2015, accessible at: <http://bit.ly/1PalFzW>.

⁶⁴ European Council on Refugees and Exiles, ECRE reaffirms its call for the suspension of transfers of asylum seekers to Bulgaria under the recast Dublin Regulation, 7 April 2014, accessible at: <http://bit.ly/1ofZVZb>.

⁶⁵ UN High Commissioner for Refugees (UNHCR), UNHCR observations on the current asylum system in Bulgaria, April 2014, accessible at: <http://bit.ly/1eJxjfn>.

⁶⁶ See AIDA Bulgaria Country Report: Fourth Update, October 2015, 46.

⁶⁷ Aachen Administrative Court, Decision of 3 February 2016, 8 K 377/15.A; Arnsberg Administrative Court, Decision of 6 January 2016, 13 L 1692/15.A; Cologne Administrative Court, Decision of 4 December 2015, 20 K 1706/15.A 4 Dec 2015; Aachen Administrative Court, Decision of 19 November 2015, 8 L 907/16.A

⁶⁸ European Committee of Social Rights, Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, 1 July 2014; Dutch High Court (Hoge Raad der Nederlanden), 21 September 2012, LJN BW5328; Defence for Children International (DCI) v The Netherlands, Case no 47/2008, 20 October 2009.

⁶⁹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 12.

are provided to vulnerable persons.⁷⁰ The only case where there seems to be some consideration of special reception needs are in the efforts to place families together, however separate facilities for this group, similarly to unaccompanied minors or traumatised asylum seekers, do not exist.⁷¹

34. Failings in SAR management has meant that health care was not provided for four months in 2015 to asylum seekers and since September 2015 care remains divergent amongst reception centres with one or two health care staff present on a daily basis. Moreover, special conditions for the treatment of torture victims and persons suffering mental health problems are not available.⁷²
35. Much domestic jurisprudence converges on the treatment of vulnerable persons in Bulgaria. In a ruling given by the Council of Alien Law Litigation in **Belgium** the court confirmed that Bulgaria is not able to offer specific assistance to traumatised persons. Similarly the **German** administrative courts state that the return of vulnerable persons gives rise to a real risk of inhumane treatment and that the requirements of Articles 21-25 of the recast reception conditions Directive are not met, especially with regards to access to medical care.⁷³ In a very recent **German** decision concerning the proposed return of a single Iraqi male with a psychological illness the Court confirmed that medical staff are not paid, there is a shortage of the most basic medicines, special medical care or treatment is not available, there is no systematic identification of people with special needs and, indeed, there is no system to care for their specific vulnerabilities.⁷⁴
36. In **Austria, Switzerland, and the Czech Republic** a *Tarakhel* line of reasoning has been advanced.⁷⁵ On the basis of country of origin material and the UNHCR's qualified statement on transfers to Bulgaria which contains considerable reservations on durable improvements to reception centres and specific procedural considerations for vulnerable persons, the courts have suspended returns and overturned the administrative authorities' decisions. In **Denmark**, the Refugee Appeals Board has advised the authorities in two cases concerning a family and a vulnerable single man to refrain from transfers to Bulgaria out of humanitarian concerns. Similarly, a case concerning a single man ill-treated in detention in Bulgaria was considered in principle by the Appeals Board but later withdrawn by the administrative authority who allowed the applicant's asylum claim to be processed in Denmark.⁷⁶ In **the Netherlands**, special attention is paid to proposed transfers to Bulgaria of vulnerable asylum seekers, such as pregnant women and persons with serious illnesses. The length of the stay in Bulgaria as well as the circumstances of that stay and the phase

⁷⁰ Ibid 48.

⁷¹ Ibid 46.

⁷² Ibid 51.

⁷³ Council of Alien Law Litigation, Decision of 14 October 2015, 154 479; Council of Alien Law Litigation, Decision of 22 September 2015, 153 091; Council of Alien Law Litigation, Decision of 3 January 2014, Decision of 116471; Aachen Administrative Court, Decision of 26 May 2015, Az. 8 L 181 / 15.A; Minden Administrative Court, Decision of 25 February 2015, 3 K 1477/14.A; Magdeburg Administrative Court, Decision of 5 October 2015, 9 A 372.14.MD; Cottbus Administrative Court, Decision of 19 August 2015, 1 L 241.15.A; Bayreuth Administrative Court, Decision of 29 July 2015, B_3_K_15.30280

⁷⁴ Aachen Administrative Court, Decision of 3 February 2016, 8 K 377/15.A.

⁷⁵ Federal Administrative Court Austria, Decision of 22 December 2015, W205 2116364-1; Switzerland - Federal Administrative Court, Decision of 2 December 2015, E-7365/2015; Prague Regional Court, Decision of 1 July 2015, 49Az 56/2015-41

⁷⁶ Information furnished by the Danish Refugee Council on 12 February 2016. Email and decisions on file with the author.

in which the asylum application was left in Bulgaria are taken into account when deciding upon the use of the humanitarian clause under Dublin III.⁷⁷

Beneficiaries of international protection

37. The overall recognition rate for asylum applicants has decreased from 55% in January to September 2014 to 40% for the same period in 2015. The top three countries of origin are Syria, Afghanistan and Iraq. Whilst there is an 84% refugee status recognition rate for Syrians, in only 4% of decisions has refugee status been granted to non-Syrians.⁷⁸
38. The granting of refugee or subsidiary protection status in Bulgaria must be set against a backdrop of the diminution, if not entire eradication, of all social and material benefits for those with recognised status. There is no integration support, a status quo which has lasted for two years. Temporary accommodation in the reception centres is only for a duration of three months and does not include the most basic amenities. Any form of budget for integration has been consistently delayed and as a consequence recognised status holders find themselves without accommodation, social support, medical insurance and vocational training.⁷⁹
39. It is the risk of homelessness and destitution for beneficiaries of status which much jurisprudence turns upon. In particular **German** courts frequently rule that Bulgaria is not safe for status holders and return to Bulgaria for individuals with international protection would be unlawful given that it would amount to inhumane treatment.⁸⁰
40. The Courts rely upon a statement from the German Federal Foreign Office from July 2015, expert practitioner evidence confirming that persons with at least subsidiary protection status become homeless upon return to Bulgaria and UNHCRs bracketing out of these groups in their statement on returns.⁸¹ Confirming that this group of persons are, therefore, subject to abject poverty the courts have ruled that given the high risk of exploitation by landlords, unemployment, zero provision of language courses, and no will to improve by the Bulgarian government in sight, return would lead to a real risk of a violation of Article 3 ECHR or Article 4 Charter of Fundamental Rights.⁸²

⁷⁷ Letter from the Dutch Government to the Dutch Parliament, 15 May 2014, accessible at: <http://bit.ly/1PwMZ56>.

⁷⁸ AIDA Bulgaria Country Report: Fourth Update, October 2015, 12.

⁷⁹ AIDA Bulgaria Country Report: Fourth Update, October 2015, 13.

⁸⁰ For further information on the Safe Country Concept, please see ECRE, Information Note, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, accessible at: <http://bit.ly/1MRKWjC>. See for example Osnabrück Administrative Court, Decision of 4 January 2016, Az.5 A 83/15.

⁸¹ See Annex Auswärtiges Amt, Amtshilfeersuchen in Asyl und Rückführungsangelegenheiten, 508-9-516,80 / 48488, 23 July 2015; Dr. V. Ilareva, Bericht über die derzeitige rechtliche, wirtschaftliche und soziale Lage anerkannter Flüchtlinge und subsidiär Schutzberechtigter in Bulgarien Erstellt, 27 August 2015.

⁸² See for example Saarland Administrative Court, Decision of 4 January 2016, Az. 3K 86/ 15; Oldenburg Administrative Court, Decision of 4 November 2015, 12 A 498/15; Osnabrück Administrative Court, Decision of 17 December 2015, 5 B 432/15; Münster Administrative Court, Decision of 22 October 2015, Az. 8 K 436 / 15.A; Darmstadt Administrative Court, Decision of 30 July 2015, 4 K 1035 14.DA.A; Administrative Court of Meiningen, Decision of 26 January 2015, 1 E 20386/14 Me; Oldenburg Administrative Court, Decision of 27 January 2015, 12 B 245/15; Meiningen Administrative Court, Decision of 25 November 2014, 1 K 20146/14 Me; Kassel Administrative Court, Decision of 8 September 2014, 5 L 1415/14.KS.A; Meiningen Administrative Court, 25 November 2014, 1 K 20120/14 Me and 1 K 20122/14 Me

41. In a similar vein of argumentation **Denmark** has also followed the German courts lead in several recent cases whereby the Refugee Appeals Board have found that Bulgaria cannot be considered as a safe country for persons with status in Bulgaria who were vulnerable or had families in spite of their protection status in the country. Concerted attention is paid to those suffering from mental health illnesses as a result of treatment in their country of origin and in Bulgaria. In one case concerning a single male with PTSD as a result of physical violence in Bulgaria and his home country the Appeals Board found that access to seek protection from the authorities in Bulgaria was limited and necessary medical treatment unobtainable.⁸³

⁸³ Information furnished by the Danish Refugee Council on 12 February 2016. Email and decisions on file with the author.