BULGARIAN COUNCIL ON REFUGEES AND MIGRANTS

ACCESS TO INTERNATIONAL PROTECTION IN BULGARIA

ADVOCACY PAPER

SAFEGUARDING REFUGEE PROTECTION IN BULGARIA

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INTRODUCTION

The Advocacy papers on access to international protection, reception and integration of refugees in Bulgaria (Advocacy papers) have been developed by the Bulgarian Council on Refugees and Migrants within the framework of “Safeguarding Refugee Protection in Bulgaria” Project, financed by the Dutch Ministry of Foreign Affairs under the Social Transformation Programme (MATRA) with the support of the Dutch Council for Refugees..

The Bulgarian Council on Refugees and Migrants (BCRM) is a civil society organization acting in the field of asylum and migration in Bulgaria.

The BCRM was founded in 2005 by the Bulgarian Red Cross, the Bulgarian Helsinki Committee and Caritas-Bulgaria as a platform of their activities related to the refugee and migration policy, protection and integration of refugees and migrants. The Association for Integration of Refugees and Migrants joined the BCRM in 2007.

The BCRM is a platform for advocacy, lobbying and fundraising for the protection, reception and integration of refugees and migrants. The BCRM aims to further develop the relations among the nongovernmental organizations, based on common principles and values, division of functions and responsibilities. The BCRM objective is to enhance the role of the civil society in the formulation of a fair and just national and European asylum, migration, and integration policy and practice.

The vision of the BCRM is aimed at a fair and efficient asylum and migration system, with the active role of the civil society. The policy and practice for protection, reception and integration of refugees and migrants in Bulgaria to include and apply the internationally recognized principles and standards based on respect for human rights and human dignity.

The Mission of the BCRM is to ensure the sustainable role of the civil society organisations in the system for protection, reception and integration of refugees. It is focused on building a system where every person may freely participate in all spheres of activities of the Bulgarian society, based on the principles of equality, non-discrimination and tolerance. The BCRM works to develop and strengthen the cooperation and partnership between the state institutions, local authorities and non-governmental organizations for legal and social protection to refugees, and encourages intercultural
dialogue, tolerance and non-discrimination towards refugees and migrants.

The BCRM, as an association of organisations of longstanding experience and professional competency has the capacity to influence and support the social transformation towards efficient protection and integration of refugees and migrants.

The development of these advocacy papers shall further enhance the role of BCRM in the formulation and implementation of the national policy and practice on access to international protection, reception and integration of refugees in compliance with international and European legal instruments and standards.

The advocacy papers were prepared on the basis of:

- The ideas and principles laid down in the BCRM Common Vision paper on protection, reception and integration of refugees in Bulgaria;
- The valuable expertise and support of the Dutch Council for Refugees;
- The knowledge and skills gained by BCRM and member organizations experts during the trainings and workshops on advocacy and lobbying under the Safeguarding Refugee Protection in Bulgaria Project:
  - Advocacy and Lobby Training, 13-14 November 2008, Sofia
  - Advocacy and Lobby Workshop on Access to Territory and Refugees Status Determination Procedure, 26-27 February 2009, Svilengrad
  - Advocacy Workshop on Integration of Refugees in Bulgaria, 10-11 March 2010, Sofia

The advocacy papers present three main areas of advocacy:

1. Advocacy on access to international protection
2. Advocacy on reception of asylum seekers, and
3. Advocacy on integration of refugees.
ACCESS TO INTERNATIONAL PROTECTION IN BULGARIA

I. INTRODUCTION

Over the last twenty years of Bulgaria's modern history, the country's position on the geopolitical map of Europe has considerably changed in terms of migration processes. Being initially a country of origin for refugees and, later on, for emigrants – as a result of the political transformations in the early 90's of the 20th century – Bulgaria has gradually evolved to become a transit country, and recently a country of destination. The latest trend emerged after Bulgaria's accession to the European Union in 2007.

This phenomenon, however, can hardly be explained by means of the attractiveness of the country itself, as it still stands far from the socio-political and economic standards of West European states, whereby the individual is ensured the full range of freedoms and security. An appropriate interpretation of this phenomenon would take into account the possibility for asylum-seekers who have been granted protection and a status in Bulgaria to subsequently head for other European states within the framework of the EU regime of free movement of goods, capital, services and people.

This conclusion is further supported by the fact that since the status determination procedure was implemented in Bulgaria in 1993, over 36% of asylum-seekers have left the country prior to the issuance of the decision on their application. There are no official or statistical data about the number of refugees who leave Bulgaria after being granted a status; based on the observations of the UN High Commissioner for Refugees and non-governmental organizations providing legal representation and social assistance, this number is substantial and amounts to almost half of the individuals who have been granted a certain type of protection. By way of explanation, the following reasons may be invoked: the lack of migrants' communities and of traditions in terms of receiving aliens in our country,

3 As of 31 May 2010 there are 6,730 persons in respect of whom the procedure has been terminated, out of a total of 18,378 applications for international protection filed since 1 January 1993: Source: State Agency for Refugee with the Council of Ministers.
and the lack of an effective national system for the integration of refugee or humanitarian status holders.

Nevertheless, due to its geographic location and being an external border of the European Union, Bulgaria is a peculiar gate towards Europe. The country's territory is crossed by the so-called southeastern route which is used as an entry route for the migration flows into the Community's territory. This explains why, in spite of the above circumstances which make aliens reluctant to seek protection in Bulgaria, there is a relatively substantial number of individuals – at the background of the national specifics – who enter into the country's territory on an annual basis and lodge applications for refugee status and international protection.

Irrespective of the ratio of the number of such individuals on a European or world scale, however, Bulgaria is obliged, by virtue of the commitments assumed under international acts, to provide these individuals with an effective, efficient and fair national protection system whose first and foremost functions should be to ensure:

- Unhindered access to the territory of the country for asylum seekers, irrespective of their nationality, valid documents and method of entry;
- Unconditional respect of the non-refoulement principle, whereby such individuals shall not be returned to a state that is lacking safeguards for protection against violation for their life, safety and security;
- Immediate provision of access to the national administrative and court procedures for status determination with a view to determine the need for international protection by means of the instruments and standards established by law.
II. INTERNATIONAL, EUROPEAN AND NATIONAL LEGAL STANDARDS FOR REFUGEES’ ACCESS TO PROTECTION

2.1. 1951 UN Convention Relating to the Status of Refugees

The foundation for the international protection of refugees was laid in 1951 by means of the United Nations Geneva Convention Relating to the Status of Refugees. The provisions of the Convention determine the scope of international protection as an obligation of the Parties to the Convention to grant protection by ensuring the right to enter and stay on their territory and within the boundaries of the jurisdiction recognized by public law for individuals who are not their nationals but, generally speaking, do not receive the protection due in their country of origin or, when such individuals are stateless persons, in the country of their permanent residence on the ground of a specific inherent status, the non-observance of which amounts to violation of fundamental human rights of theirs, as defined by the international community.

The Convention lays down two principles which serve as safeguards for ensuring the access to protection:

- The prohibition of expulsion or deportation, the so-called non-refoulement principle (Art. 33, paragraph 1 of the Convention), whereby no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

- Administrative assistance (Art. 25 of the Convention), whereby when the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

These two principles determine the obligation of Bulgaria and its relevant agencies to ensure access to the territory to any alien seeking protection and provide him/her with assistance by putting in place administrative institutions, procedures and mechanisms, which will enable such an alien to exercise his/her right to file an application for international protection.
2.2. UN Universal Declaration of Human Rights

The Convention Relating to the Status of Refugees of 1951 and the Protocol to it of 1967 refer to persecution for specific reasons – race, religion, nationality, membership of a particular social group or political opinion. Even before the Convention, Article 14 of the Universal Declaration of Human Rights proclaims the principle of everyone having the right to seek and to enjoy in other countries asylum from persecution.

2.3. UN International Covenant on Civil and Political Rights

Article 2, item 3 of the International Covenant on Civil and Political Rights regulates the obligation for each State Party to the Covenant to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

2.4. UN International Covenant on Economic, Social and Cultural Rights

Article 2, item 2 of the International Covenant on Economic, Social and Cultural Rights stipulates the obligation for the State Parties to the Covenant to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.5. European legal instruments for refugee protection

The framework within which regional legal instruments in the area of refugee protection are drafted and adopted in Europe as set by the European Union. The main goals, principles and time frames of the EU legislative policy were coordinated among the Member States in October 1999 at the European Council in Tampere. It is after 1999 that the majority of the elements of the legislative measures were adopted. This initial phase was followed by a second one, the phase of the so-called Hague Programme adopted by the Council on 5 November 2004. This Programme provides for the legal regulation and development of a Common European Asylum System which will be adopted by the year 2010.

The following norms are relevant to the access to international protection:

- The obligation to examine the application for protection of any third-country national who applies at the border or in their territory of a Member State (Art. 3 o0f Council Regulation (EC) No 343/2003, Commission
Regulation (EC) No 1560/2003

- The access to the procedure (Art. 6 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status)

- The right to remain in the Member State pending the examination of the application for international protection (Art. 7 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status)

- The right to be issued a document certifying the special status and the right to remain in the Member State (Art. 6 of Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers)

2.6. National law

The now effective Law on Asylum and Refugees (LAR) was promulgated in SG No 54 of 2002 and came into force on 1 December 2002; it repealed the previous Law on Refugees (SG No 53 of 1999, effective as from 1 August 1999).

The new Law introduces a classification of the types of the so-called “special protection”, i.e. the residence permits for aliens in the Republic of Bulgaria which, in terms of their types and the grounds for issuing, differ from the ones regulated under the general regime in respect of aliens. Based on this prerequisite, the following conclusions may be drawn:

- Art. 4, paragraph 1 of LAR revokes the application of Art. 8 of the Aliens in the Republic of Bulgaria Act (ARBA) with regard to asylum-seekers, which means that any alien, irrespective of whether he/she possesses a valid travel document or another equivalent document, and an entry visa, may file an application and, respectively, be granted permission to reside in Bulgaria on the grounds of any of the types of special protection.

- Art. 4, paragraph 4 of LAR revokes the application of Art. 16, paragraphs 2 and 3 of ARBA with regard to asylum-seekers, and the border police authorities shall not refuse entry into the country in the cases under Articles 10 and 11 of ARBA.

- Art. 58, paragraph 4 of LAR stipulates that when the application is filed with another state authority, the latter must forthwith forward it to the competent authority, the State Agency for Refugees.

- Art. 67, paragraph 1 of LAR stipulates that coercive administrative
measures of "deprivation of the right of residence", "forced transfer to the border", "expulsion" and "prohibition to enter the country" shall not be enforced with respect to asylum-seekers until proceedings have been completed by a decision which has come into effect.

In conformity with the international norms, the Law explicitly stipulates that an alien who has entered the Republic of Bulgaria to seek protection or who has been granted protection may not be returned to the territory of a country where his/her life or freedom is threatened due to his/her race, religion, nationality, membership of a specific social group or political opinion and/or belief, or where he/she faces a threat of torture or other forms of cruel, inhuman or degrading treatment or punishment. There are derogations from this principle, which can, however, be applied only if and to the extent admitted by law.

The actions that are not admitted by law and shall not be enforced are any measures for forced return of asylum-seekers, namely:

- Implementing official orders for expulsion or deportation (Art. 67 of LAR)
- Any acts of informal deportation (Art. 4, paragraph 3 of LAR)
- Refusing entry at the state border, which will result in returning the person into the country where he/she was persecuted or into a third unsafe country (Art. 33, paragraph 1 of the Convention Relating to the Status of Refugees).

In terms of the territory, this prohibition means prohibition for returning the person to the territory of any state where the asylum-seeker may be subject to persecution. This state may be:

- The country of origin/permanent residence;

Any third unsafe country, i.e. a country where the alien would not be subject to persecution but from which he/she might be transferred to a country where he/she will be persecuted or where he/she will not receive adequate and efficient protection.

In relation to the standards for access to territory of asylum seekers in Bulgaria the Council stands for:

- Comprehensive revision of entire national asylum legislation involving the UNHCR, NGOs and all relevant agencies and institutions, more specially the Chief Directorate of the Border Police,
Migration Directorate and State Agency for National Security in order to put the local law into conformity with international protection standards and the EU acquis on asylum to meet the legal safeguards for asylum seekers' access to the territory in Bulgaria.

- Full and unconditional respect of the *non-refoulement principle* by all agencies and institutions from the very moment of asylum application's lodging as a generally recognised standard.

- Interpretation at every stage of the asylum procedure, including when the asylum application is being lodged before a government agency or administration different from the competent asylum authority.

- Introduction into the legislation of an opportunity the asylum application to be submitted by a proxy or an advocate in cases where the asylum seeker is not able to do that him/herself due to illness, dissability, age, detention or other objective reasons.

- Ongoing trainings provided to criminal investigation officials and more specifically, to those from prosecution's office in border areas where most asylum seekers do enter the country's territory in order to ensure the application of Section 279, Para 5 of the national Criminal Code and protection from criminal prosecution on account of their illegal entry to those aliens who crossed the national borders and exercised their right to apply for asylum.
Asylum-seekers in the Republic of Bulgaria go through a procedure consisting of several stages before they are accommodated at the registration-and-reception centres where the procedure for the examination and determination of their applications is conducted.

3.1. Detention

Right after being detained by the relevant border guard units, any alien who has illegally entered into the territory of the Republic of Bulgaria is detained for the initial 24 hours with a view to establishing his/her identity in conformity with the Ministry of Interior Act (MIA), and a police check is opened in respect of him/her.

3.1.1. Coercive administrative measures

After the initial 24 hours have expired, the alien detained is transferred and accommodated at a detention center by virtue of an order issued for imposing a coercive administrative measure pursuant to Articles 40 – 44 of the Aliens in the Republic of Bulgaria Act. The accommodation of any alien may be enforced by virtue of such an order, otherwise there will be no grounds for the detention of the alien, the measure being effective till the obstacles to the enforcement thereof have dropped. Within the above procedure, an order for imposing coercive administrative measures is issued with respect to the alien. Pursuant to Art. 67, paragraph of LAR, however, the coercive administrative measures "residence cancellation", "deportation", "expulsion" and "entry ban" shall not be enforced to an asylum seekers until the refugee status determination proceedings have been completed by a final decision.

3.1.2. Criminal procedural actions under Article 279 of the Criminal Code

As from the 24-hour detention, a police check is opened and carried out in respect of the detainee under MIA, the purpose being to establish if there are sufficient data for the perpetration of a general crime. As a rule, the accommodation at a detention center is enforced by virtue of an administrative order, not detention on remand. The latter cannot be imposed unless there are criminal proceedings instituted against the respective person; when such a measure is imposed the detainee is transferred to an criminal investigation penitentiary. The persons detained for 72 hours are also transferred to a penitentiary by virtue of a warrant issued by a prosecutor. Practical experience shows that in the course of the
detention the first meeting with representatives of an NGO takes place after the investigating officer has held the initial interview with the detainee. In case an asylum application is submitted during the investigation, the application shall be registered with an incoming reference number at the record-keeping department of the relevant border police station and forwarded by fax or with a cover letter to SAR.

As from the submission of the asylum application, the prosecutor's office and the investigation service are obliged to apply the provision of Art. 279, paragraph 5 of the Criminal Code which stipulates that a person who has entered into the territory of Bulgaria with a view to avail himself/herself of the right to asylum shall not be prosecuted for the crime “illegal entry in Bulgaria”. Therefore, the criminal proceedings shall be terminated or in case the proceedings have reached the trial stage, the asylum seeker shall be acquitted.

3.1.3. The right to information

The application of the provision of Art. 58, paragraph 6 of LAR has to be ensured with respect to aliens who have filed asylum applications. Pursuant to this provision the state bears the responsibility for ensuring that the applicant is given instruction and guidance, in a language he/she understands, as to the procedure for filing the application, the procedures to be followed and his/her rights and obligations, and as to organisations providing legal and social assistance to aliens not later than 15 days after filing the application.

The Law sets some limitations in terms of the points in time for filing the asylum application under Art. 58 of LAR and for registering the application under Art. 61, paragraph 2 in relation to Art. 59 of LAR. These two points do not coincide in time in respect of aliens who filed an asylum application before the border police authorities at the border. This is the point in time as from which the asylum application is considered as validly filed before a Bulgarian government agency. Hence, as from this point the “non-refoulement” principle under Art. 33, paragraph 1 of the Convention Relating to the Status of Refugees applies with respect to the asylum seeker; this principle is incorporated in the Bulgarian legislation in Art. 4, paragraph 3 of LAR and is further regulated in the detailed provision of Art. 67 of LAR, which stipulates that the coercive administrative measures imposed shall not be enforced until determination proceedings have been completed by a decision which has come into effect.
This point in time, however, differs from the point of registering the asylum application at the SAR under the terms of Art. 61, paragraph 2 in relation to Art. 59 of LAR; pursuant to Art. 58, paragraph 3 of LAE, this registration shall be done only in person by the applicant before an official at the SAR. Such statement in person is possible after some time has elapsed since the filing of the application at the border police station, i.e. after the application has been forwarded to the SAR under the terms of Art. 58, paragraph 4 and the alien has been handed over either to the Migration Directorate or directly to the registration-and-reception centre at the SAR in the cases provided for in the Law. As for the time being the SAR does not have a functioning territorial unit at the border, the obligation for providing guidance within the time limit under Art. 58, paragraph 6 of LAR generally is not observed.

3.1.2. The right to use an interpreter

A fundamental right of each detained alien is that any procedure which addresses or concerns him/her be conducted in a language he/she can communicate in. On the other hand, this is a safeguard for the legality of the way in which the procedure is carried out. This is why Art. 29, item 7 of LAR explicitly stipulates that in the course of the proceedings the asylum seeker is entitled to an interpreter/translator. This right is enjoyed by asylum seekers in respect of whom proceedings under Art. 67a, paragraph 2, items 1 and 2 of LAR have been instituted for determining the state responsible for the examination of the status determination application, and by aliens in respect of whom the Republic of Bulgaria has been determined as the state responsible for the examination of the application in an accelerated or, respectively, a general procedure.

Practical experience, however, has revealed numerous problems which can be grouped into the following areas and which relate to several factors:

- Difficulties in finding translators with rare languages;
- Inaccuracies in the translation both into and from the foreign language;
- Objective impossibility to exercise control over the translation;
- Interpreters offering advice and consultations to asylum seekers.

Bearing in mind that, as a rule, detained asylum seekers do not speak Bulgarian and this puts them in a vulnerable situation, the meeting with the interpreter creates an environment of confidence, which sometimes
encourages those who render the translation service to go beyond the limits of the unbiased position of experts in the discharge of their duty by providing advice or by interpreting the information translated by them. Under such circumstances, both asylum seekers and the interviewers may be misled in their subsequent actions.

This is why a system of trained interpreters should be put in place; when there is a need for translation from a rare language, modern communication facilities should be used in order to avoid any unjustified prolonged detention of asylum seekers or objective impediments to the procedure for determination of asylum applications.

3.1.3. **The right to medical care**

In parallel with the other rights of asylum seekers laid down in the legislation, there is an explicit regulation of the right to receive medical and psychological assistance (Art. 29 of LAR).

It is established, however, that before the registration of the asylum application at the SAR, asylum seekers do not have a health insurance status, which once again raises the issue about the relevance of the point as from which the procedure for examining the asylum application is underway. Therefore, irrespective of the measures taken by the border police authorities to ensure medical care by approaching the relevant institutions, the main issue stems from the lack of funding earmarked for the provision of medical care even in emergency cases. As a rule, emergency medical care is free-of-charge in Bulgaria; such care, however, is ensured only in extreme cases when there is a direct and imminent threat to the life, for example, of an injured person. In any other case, where medical care is needed, for example for pregnant women at delivery, the costs for the medical aid provided are born usually by non-governmental organizations.

3.1.4. **Legal aid**

The access to information regarding the legal status and the procedures to be followed is crucial in terms of the access of detained asylum seekers to the territory and the procedure. Asylum seekers should be able to receive such information not only from the state authorities but also from lawyers under the terms and procedure of legal aid.

Pursuant to Article 21 of the Legal Aid Act, however, the types of legal services funded by the National Bureau for Legal Aid are: 1) Consultation with the purpose to achieve a settlement before initiation of court procedures or filing a case; 2) Preparation of documents for filing a case; 3) Litigation; 4) Litigation in the event of detention under Art. 63, paragraph 1 of the Ministry of Interior Act.
None of the first three assumptions covers the case of aliens who have been accommodated at a detention center by virtue of a coercive measure for illegal entry or residence in the country. The fourth assumption, litigation in the event of detention under Art. 63, paragraph 1 of the Ministry of Interior Act, refers to the following cases where the police authorities detain a person: 1) if there are data that the person has committed a crime; 2) who, following due warning, consciously deters the police from meeting its obligation on duty; 3) who shows serious psychic deviations and by his/her behaviour violates the public order or puts to obvious danger his/her life or the life of other persons; 4) a juvenile breaker who has left his/her home, guardian, trustee or specialized institution, in which such minor has been accommodated; 5) if it is impossible to establish the person's identity in the cases and manners established in Art. 61, Para 2; 6) who deviated from serving his/her term of punishment “detention under custody" or in places, where the person has been detained as an accused, in compliance with a police or judicial body's instruction; 7) the person is declared for international search on the request of another state in connection with the person's extradition or in compliance with European order of arrest; 8) in other cases as provided by law.

3.1.5. Responsibilities and coordination among state authorities in relation to a asylum application

The assumptions with regard to the further development of the cases of detained at the border asylum seekers are, as follows:

A) In case evidence of the perpetration of a crime is established and there are other legal grounds, the so-called accelerated procedure is instituted against the perpetrator. Irrespective of the coercive administrative measure imposed, other measures may have been imposed on the relevant person, such as daily reporting or bail; the person may remain in custody until the completion of the proceedings if a pretrial procedure has been instituted against him/her for committing a crime. There is yet another option, however: individuals who have illegally entered into the country, even though they come from high-risk countries, do not apply for international protection and declare their will to return to their country of origin. Given that, paragraph 5 of Article 279 of the Criminal Code cannot be applied; hence, pretrial proceedings are instituted against such persons. After the prosecutor's office has issued its decision – which must be awaited within the one-month term for the issuance thereof – the person will either be returned to the border authorities of the state from which he/she entered
into our territory on the basis of a readmission agreement or, if this is not possible, the person will be transported to a detention center in order further actions for deportation to be carried out.

B) In case it is established, however, that the person seeks asylum, the results from the check will be dispatched to the relevant district prosecutor's office with an opinion for the termination thereof and the application of Art. 279, paragraph 5 of the Criminal Code, i.e. not instituting pretrial proceedings. After the prosecutor's office has issued its decision – which must be awaited within the one-month term for its issuance – the alien will be transported to the Registration-and-Reception Centre at the SAR or, in most cases, to the detention center, runned by the Migration Directorate at the MOI.

Paragraph 5 of the Transitional and Final Provisions of LAR (the version prom. in the SG No 52 of 2007) explicitly stipulates that pending the opening of transit centres, the proceedings provided for in Chapter Six, Sections Ia. and II. (Dublin procedure for determining the state responsible for examining the status determination application, and the transfer of the relevant individual to the responsible state) shall be conducted at registration-and-admission centres or places designated by the Chairperson of the State Agency for Refugees.

As a result of the amendments to LAR in 2007, the scope of this provision was limited and the now effective law stipulates that the SAR officials may carry out actions outside the Agency's territorial units only in the so-called Dublin procedure. This implies that in case the Dublin procedure has determined Bulgaria as the state responsible for examining the application, and, therefore, either an accelerated or a general procedure shall be opened, the asylum-seeker shall be transferred to a transit centre or a registration-and-reception one for the purpose of the procedure. For that purpose the State Agency for Refugees sends a letter to Border Police DG or Migration Directorate, whereby indicates the persons to released from the detention center and transported to registration-and-reception centres.

The overall activity related to the discharge of the obligations under the so-called Dublin procedure is carried out on the basis of an Ordinance adopted by a COM Decree No 332/2007 (SG No 3 of 11 Jan 2008) on the grounds of Art. 67k of LAR, which regulates the coordination of actions among SAR, Border Police DG, Migration Directorate and the Research Institute of Criminal Studies and Criminology (the last three institutions being with the Ministry of Interior).
The purpose of this approach in the law is unclear and unjustified.

The idea behind the accommodation at detention centers ensues the provision of Art. 67 of LAR which does not allow the implementation of deportation orders to asylum seekers with pending RSD procedure. The purpose of the Ordinance is the development of a functioning system which will be applied by the various state agencies involved in the implementation of the relevant European asylum regulations concerning the rules and procedures for aliens who have filed for asylum to be transferred by MOI to SAR in implementation of Art. 58, paragraph 4 of LAR, i.e. where the application is filed with another state authority, the latter must forthwith forward it to the State Agency for Refugees.

The adoption of the above Ordinance, however, in particular Art. 16, paragraph 2 thereof, introduces a change by means of a rule which stipulates that any alien who has filed an asylum application shall not be transferred to the SAR, but to the detention centers, except for unaccompanied minors, pregnant women and mentally and physically disabled persons.

The above rule results in the detention of asylum seekers at a detention center without any legal grounds for the actual implementation of such deportation, i.e. the prohibition to deport asylum seekers outlined in Art. 67 LAR. Thus, asylum seekers may end up in a situation of undue accommodation at a detention center for deportation of illegal aliens; moreover, the Dublin procedure is not conducted during their stay there. This implies that asylum seekers are de facto detained, without being in any procedure, simply awaiting a vacancy in one of the reception-and-registration centres in order to be transferred there for accommodation. Furthermore, irrespective of the provision of Art. 16, paragraph 2 of the Ordinance, practical experience shows that there are cases where asylum seeking families with minor children are accommodated at these detention centers.

The detention centers are used for both asylum seekers and illegal aliens who violated the residence regulations in Bulgaria; or if they applied for asylum, the status determination procedure was completed with a final refusal on the grounds of an unfounded claim. Hence, these detention centers accommodate both persons seeking protection who cannot be deported and illegally residing aliens awaiting their deportation from Bulgaria, which is absolutely unacceptable.
3.2. Access to the status determination procedure

The asylum application lodged and registered at the Border Police is dispatched to the SAR either with the applicant when he/she is transferred to SAR or by fax or with a cover letter.

Pursuant to Art. 30, item 4 of LAR, the next step is the accommodation of the asylum seeker at a transit centre, a registration-and-reception centre or at another shelter facility.

The law explicitly stipulates that over the course of the procedure any asylum seeker shall have the right to food and shelter (Art. 29, paragraph 1, item 2 of LAR), accommodation at a transit, registration-and-reception centre or another shelter facility with the State Agency for Refugees based on an assessment of the alien's health status, family and material status under the terms and conditions determined by the Chairperson of the State Agency for Refugees.

The norm of Art. 30a of LAR explicitly stipulates that the application of the legal provisions regarding the accommodation of asylum seekers should take into account the particular state of aliens belonging to vulnerable groups, such as minors, pregnant women, elderly people, single parents accompanied by their minor children, persons with disabilities or victims of serious forms of psychological, physical or sexual violence.

The practice of the SAR in this respect is controversial and does not follow clear-cut criteria. The limited accommodation at the registration-and-reception centres results in a situation of competition among asylum seekers in terms of the decisions about which of them will be accommodated at one of the centres and the access to the other social rights to which asylum seekers are entitled during the procedure. On the other hand, this contributes to delays in the release of asylum-seeker from police detention centers for the purpose of registration and accommodation.

The lack of vacancies for accommodation at the registration-and-reception centres was used as an excuse and a reason for the adoption of Ordinance No 332/2007 (SG No 3 of 11 Jan 2008) on detention of asylum seekers who filed an application at the border, which is inadmissible in view of the international protection standards and the prohibition of return before the completion of the procedure under Art. 67, paragraph of LAR.

In relation to the standards for access to procedure of asylum seekers in Bulgaria the Council stands for:
- Full and unconditional abrogation of the present legal arrangement to allow detention of asylum seekers who applied at national borders.

- Introduction in the national legislation of explicit rules for inter-agency communication and interaction in order to secure the immediate transport of asylum seekers who applied at national borders to the specialised asylum reception centers where refugee status determination can be commenced and implemented.

- Enforcement of a legal obligation for the national asylum administration to provide 24 hours registration of asylum applications in order to guarantee to asylum seekers an automatic access to all status determination procedures and to the related individual rights, namely – accommodation, medical care, health insurance, legal and social aid, etc. in reasonable time after the submission of the asylum application.

- Implementation of legal and practical measures for use of videoconference interpretation in all agencies and places where asylum registration is being done – police, criminal prosecution offices and the court.

- Putting into practice of the financial measures for accommodation of new arrivals outside of the asylum centers if and when their capacity proved insufficient and the individuals failed to meet the selection criteria to be placed in.
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