

# The Detention of Asylum-Seekers in Bulgaria

Collaborative Project of  
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## Foreword

*As the number of refugees arriving by sea and land in the European Union has steadily grown in recent years, the EU has endeavored to gradually institute a uniform approach to international protection by all member states, known as the Common European Asylum System (CEAS). While a work in progress, particularly in terms of implementation, the CEAS provides guidelines and standards for the treatment of asylum<sup>1</sup> applications, including a legal framework that provides standards for the assessment of claims and the determination of the European state responsible for the processing of such asylum applications.*

*By design or accident, CEAS has, in practice, created a containment paradigm whereby refugees are held in states in the Southeastern periphery of the EU (notably Greece and Italy), creating a disproportionate burden on this region. The Mediterranean EU members are not the only ones overwhelmed by migrant arrivals. Countries without prior experience in processing significant numbers of asylum seekers, such as Bulgaria, have in recent years experienced significant increases in refugee and migrant entries. Interviews with Bulgarian officials and research into Bulgaria's legal framework demonstrated alarming limitations in capacity, resources, experience, and desire to receive refugees in accordance with EU legal standards. Bulgarian authorities appear unable to maintain adequate and fair international protection procedures in line with the CEAS. This report focuses on detention, as one of the first and most pervasive obstacles refugees face when trying to obtain international protection in Bulgaria. Site visits and interviews identified several discrepancies between Bulgaria's legal obligations and the practices on the ground, including inhumane conditions in closed detention centers and the detention of unaccompanied minors.*

*This report is the product of research and fieldwork conducted between the fall of 2016 and the summer of 2017. It analyzes the obstacles to accessing asylum and freedom of movement facing protection-seekers in Bulgaria and provides a snapshot of Bulgarian institutions' treatment of protection-seekers at a critical juncture. Developments since 2017 are not included in this paper but the authors are hopeful that continued attention to this topic, particularly through sustainable support for national Bulgarian NGOs, allows for consistent monitoring and improvements to these practices.*

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## **Introduction**

The surge of entries without inspection into the European Union (EU) between 2014 and 2015 challenged the bloc's existing policy under the (recast) Dublin Regulation, which called for returning asylum seekers to the country of their original entry into the EU. Effective implementation of the Dublin Regulation—at the time still suspended to Greece due to a court decision but technically in force in other border countries—would have led to massive warehousing of asylum seekers on the EU's Mediterranean and Southeastern land borders, where conditions for asylum seekers had been poor even prior to the spike in arrivals during and after 2014.<sup>2</sup> In response, the EU attempted to institute relocation plans to relieve the burden from frontier states, but Member States (MSs) have not agreed on an internal relocation system. Many countries closed their borders, leaving refugees stuck in frontier states not equipped to handle the number of asylum applications being filed. Serious problems with the processing and treatment of refugees ensued—issues particularly visible in Bulgaria, the EU's poorest member state<sup>3</sup> and the focus of this report.

### **1. Problem Statement**

The Dublin Regulation's underlying principle, that protection-seekers<sup>4</sup> should lodge asylum applications in the EU countries that they first entered, entrenches a containment paradigm-- confining the overwhelming number of refugees to an EU region without resilient refugee protection institutions and the public resources to fund them. This containment paradigm operates in two concentric circles. The first peripheries of containment are outside the bloc in Turkey, Jordan, and Lebanon, which host the vast majority of the 4 million refugees from Syria, stretching limited resources beyond capacity. The second EU periphery are its members bordering Turkey and the Mediterranean. Bulgaria, Greece, Italy and Spain all share a dubious track record when it comes to the protection of the rights of refugees.<sup>5</sup> The relatively weaker economies of

Southern and Southeastern EU MSs, combined with an environment of social hostility, drive the majority of protection seekers to leave and attempt to seek asylum elsewhere.

Bulgaria, more so than all other states in the EU's periphery, lacks experience in large-scale asylum processing. Bulgaria's relative impoverishment and the country's relative racial and ethnic homogeneity have further fostered increased hostility toward protection-seekers as their numbers grew in 2015-2016. The existing protection system is poorly administered, and protection-seekers face harsh treatment and sub-standard accommodations while the government adjudicates their claims. While problems with Bulgaria's international protection system abound, this report focuses primarily on the standards for and over-reliance on detention of migrants and refugees, including unaccompanied minors; the conditions in detention; and the lack of access to due process while in detention.

## **2. Methodology**

Information for this report was gathered through legal and factual research, as well as interviews with government officials, local non-profit stakeholders, and protection-seekers. The authors conducted in-depth research on the relevant legal frameworks and reviewed reports from human rights organizations and legal service providers to understand the migration and international protection system in Bulgaria. The authors then carried out fieldwork in Bulgaria between January 22 and 29, 2017, primarily supported by Center for Legal Aid – Voice in Bulgaria, a national NGO operating in the country. During this fieldwork, researchers conducted interviews with a range of stakeholders: immigration and refugee legal service providers, government officials from the State Agency for Refugees (SAR) and the Migration Directorate, representatives from the office of the United Nations High Commissioner for Refugees (UNCHR) and the International Organization for Migration (IOM), and protection-seekers.<sup>6</sup> The interviews were transcribed and follow-up information was collected from interviewees where necessary.

Additional desk research extended into the summer of 2017 and has been supplemented with updates as of June 2018.

## **A. Applicable Legal Framework**

Bulgaria is bound by three separate but inter-related legal regimes in its reception of refugees entering the country: the 1951 Convention Relating to the Status of Refugees (“1951 Refugee Convention” or “PSR51”)<sup>7</sup> and its 1967 Protocol Relating to the Status of Refugees (1967 Protocol);<sup>8</sup> the directives and regulations underlying the Common European Asylum System (CEAS),<sup>9</sup> and Bulgaria’s Asylum and Refugees Act (ARA), which is based on both the international and EU standards.<sup>10</sup> The following section offers a brief summary of the key relevant provisions of this inter-related legal framework.

### **1. International Law**

Bulgaria, like all EU member states, is bound by the 1951 Refugee Convention and the 1967 Protocol provisions that entitle refugees to rights and protections, including due process, with regard to detention and freedom of movement. The core obligations under the Refugee Convention and Protocol are the non-derogable provisions of *non-refoulement*,<sup>11</sup> the prohibition against expelling a refugee except on grounds of national security or public order,<sup>12</sup> and non-discrimination in applying the Convention provisions.<sup>13</sup> Among other important provisions in the Refugee Convention are Article 26, guaranteeing freedom of movement to refugees within the host state,<sup>14</sup> and Article 16, guaranteeing refugees free access to the courts and the same rights to legal assistance as are given to citizens of the host country.<sup>15</sup>

## **2. European Union Law**

### a. Common European Asylum System (CEAS)

#### *i. Overview*

As a member state of the EU, Bulgaria is also bound by EU law.<sup>16</sup> The EU has implemented the relevant provisions of the European Convention on Human Rights (ECHR) across its member states through the Common European Asylum System (CEAS). The stated purpose of the CEAS is to set “common high standards” and create cooperation among EU member states to ensure equal and fair treatment of asylum-seekers across the EU.<sup>17</sup>

Three directives and two regulations form the core of CEAS. While EU regulations are automatically binding on all EU member states, the legal effect of directives is more ambiguous, as they have to be incorporated (or “transposed”) into the domestic laws of member states through legislative action.<sup>18</sup> A directive’s principles are thus not immediately binding on a member state during the period allowed for transposition, and the achievement of the results desired by the directive can vary significantly from one member state to the next.

At the core of the CEAS framework is the Dublin Regulation, which was first adopted in 2003 and has been recast twice since then. The latest version of the regulation, often referred to as “Dublin III Regulation” entered into force in 2013.<sup>19</sup> Dublin III dictates that, in most cases, the EU member state through which a third country national first enters the EU is responsible for adjudicating that third country national’s asylum application. The ostensible goal of this approach is to ensure that all asylum applications have a member state responsible for them and to prevent multiple asylum applications. The Qualification Directive specifies the grounds for granting international protection to asylum-seekers.<sup>20</sup> The Asylum Procedures Directive (APD) establishes the rights of asylum-seekers and the procedures for granting and withdrawing protection.<sup>21</sup> The Reception Conditions Directive (RCD) establishes minimum standards for asylum-seekers’ access

to services such as healthcare, education and employment, and determines when they can be detained.<sup>22</sup> The Eurodac Regulation establishes the EU-wide fingerprinting database, so that asylum-seekers' country of first entry can be identified according to the requirements of the Dublin Regulation.<sup>23</sup>

*ii. Asylum Seekers' Freedom of Movement and Detention*

The Qualification Directive, APD, RCD, and Dublin Regulation each have provisions that address asylum-seekers' detention and freedom of movement. The APD, RCD, and Dublin Regulation prohibit detaining a person solely for being an asylum-seeker or subject to the Dublin Regulation.<sup>24</sup> The Dublin Regulation permits detaining asylum-seekers only when there is a "significant risk of absconding."<sup>25</sup> Under the Regulation, detention may only be imposed "to secure transfer procedures," if less coercive measures are not available and detention is proportional to the situation.<sup>26</sup>

Most EU standards on asylum-seeker detention are found in the RCD. Article 7(2) allows member states to determine the residence of an asylum-seeker "for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection."<sup>27</sup> Under Article 8, an asylum-seeker may be detained for the following reasons: to determine the applicant's identity or nationality; to verify information for an asylum application; to decide whether an applicant has the right to enter the territory; where the applicant is subject to a return procedure and has already had the opportunity to apply for asylum or appears to have applied for asylum to frustrate enforcement of the return procedure; for reasons of national security or public interest; and in accordance with transfer under the Dublin Regulation.<sup>28</sup> Article 8 also states that an asylum-seeker may only be detained if less coercive measures are not available.<sup>29</sup> Article 9 of the RCD provides certain guarantees for detained asylum-seekers, including that detention should be pursuant to an order from judicial or



administrative authorities, subject to judicial review, and for as short a period as possible.<sup>30</sup>

Detained asylum-seekers must be informed of the reasons for their detention, as well as the procedures for challenging a detention order.<sup>31</sup> Article 9 also requires member states to provide free legal assistance to asylum-seekers for purposes of judicial review, at least for the preparation of procedural documents and for a hearing before authorities.<sup>32</sup>

Under the RCD, Bulgaria must provide applicants an adequate standard of living in its reception centers that guarantees their subsistence needs and protects their physical and mental health.<sup>33</sup> Bulgaria must also provide specialized detention facilities for asylum-seekers, or, at the very least, keep asylum-seekers separate from ordinary prisoners and other detained third-country nationals who have not applied for asylum.<sup>34</sup> Detained asylum-seekers must have access to open-air spaces. Furthermore, the UNHCR, legal representatives, and family members must be allowed to visit detention facilities.<sup>35</sup> The only permissible limits on access to detention facilities are those necessary for protecting national security or public order, or for managing the facilities.<sup>36</sup> The RCD requires that authorities provide detained applicants information explaining the rules of the facility and their rights and obligations in a language that the applicants understand.<sup>37</sup> The RCD also sets out standards to address the needs of particularly vulnerable asylum-seekers. Minors, for example, may only be detained as a measure of last resort and only after establishing that other less coercive measures are ineffective.<sup>38</sup> The physical and mental health of asylum-seekers in detention is another focus of the RCD, which requires regular monitoring and adequate support to vulnerable asylum-seekers.<sup>39</sup> Female asylum-seekers must be accommodated separately from males unless they belong to the same family, and all concerned individuals must consent to co-accommodation.<sup>40</sup>

The Qualification Directive requires that states permit beneficiaries of international protection to move freely within the territory of the asylum state, subject to the same rights and

restrictions as other third-country nationals who are legal residents of the state.<sup>41</sup> The rules for asylum-seekers are more restrictive; the RCD permits the state to establish zones in which asylum-seekers can be confined. However, these “zones of movement” are not supposed to affect asylum-seekers’ private lives nor impede access to any benefits guaranteed by the RCD, including education, employment, and healthcare.<sup>42</sup>

Regarding access to information and adequate translation, Article 8 of the APD gives applicants the right to receive information about applying for international protection in detention facilities and at border crossing points.<sup>43</sup> Article 12 requires state authorities to inform individuals of application procedures and their rights in a language they understand,<sup>44</sup> and to provide an interpreter for any interview with authorities.<sup>45</sup> Article 12 also requires states to inform applicants of any decisions regarding their applications within a reasonable time.<sup>46</sup>

The APD entitles protection applicants to legal assistance. Under Article 12, a state must give applicants the opportunity to speak with the UNHCR or any other organization that provides legal services.<sup>47</sup> Free legal aid must be given to any protection-seeker who requests it for an appeal.<sup>48</sup> At a minimum, it must include preparation of appellate documents and participation in the court hearing.<sup>49</sup> States may only deny legal representation when “the applicant’s appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.”<sup>50</sup> States must ensure that legal assistance providers have free access to closed areas, such as detention centers or transit zones,<sup>51</sup> and that applicants can bring a legal representative to their personal interviews.<sup>52</sup>

b. European Convention on Human Rights (ECHR)

Bulgaria is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which all EU law must conform.<sup>53</sup> ECHR, Article 5 guarantees the right to liberty to “everyone.” It prohibits the deprivation of liberty except after a

lawful arrest, to prevent unauthorized entry into the country, or to effectuate deportation.<sup>54</sup> It also gives detainees the right to be informed of the reasons for their detention in a language they understand; the right to challenge the lawfulness of their detention; and the right to compensation for unlawful detention.<sup>55</sup> Article 3 categorically prohibits torture, cruel, inhuman, and degrading treatment or punishment.<sup>56</sup>

The European Court of Human Rights (ECtHR) has issued numerous decisions on the rights of migrants and refugees in detention. Although ECtHR decisions are only binding on the state party to the litigation, ECtHR caselaw is indicative of how receptive the Court will be to specific arguments.

*i. Relevant Article 3 Caselaw*

In several cases, the Court has ruled that the detention of migrants and asylum seekers in unsanitary or overcrowded detention facilities violated Article 3's prohibition on cruel, inhuman, and degrading treatment.<sup>57</sup> The ECtHR has taken into consideration both the amount of time spent in detention and the vulnerabilities of the detained person in finding that a state violated its obligations under Article 3. In *Dougoz v. Greece*, the plaintiff, after receiving an expulsion order, was detained in an overcrowded center in Greece that only offered two small meals a day, did not offer access to medical care, and did not allow visitors or outside food.<sup>58</sup> In a decision from 2001, the Court held that the conditions at the detention center violated the plaintiff's rights under Article 3 of the ECHR, particularly because of the length of time that the plaintiff was subjected to them.<sup>59</sup>

Ten years later, in *M.S.S. v. Belgium and Greece*, the named party was an asylum-seeker detained in overcrowded and unsanitary conditions, which including poor bedding, and limited access to restroom facilities.<sup>60</sup> The Court held that, because an asylum-seeker is a person in a fundamentally vulnerable position, it did not matter how long the plaintiff spent in appalling

conditions, but the simple fact that an asylum-seeker was detained in these conditions at all. Thus, detaining asylum-seekers in centers with *inter alia* restricted access to restrooms and insufficient and filthy bedding amounted to a violation of Article 3 of the ECHR.<sup>61</sup> In *A.A. v. Greece*, the Court held that it was a violation of Article 3 to hold asylum-seekers in virtually uninhabitable detention conditions, including filthy sleeping areas, sanitation facilities in such poor condition they are not functional, and an absence of kitchen facilities.<sup>62</sup> In *S.D. v. Greece*, the Court held that Greece was still in violation of Article 3 for detaining migrants in conditions superior to those in *A.A. v. Greece* but nevertheless lacking hygiene products and clean bedding.<sup>63</sup>

*ii. Article 5 Caselaw*

Article 5 of the ECHR guarantees “the right to liberty and security of the person,” and imposes limits on governments in restricting this right through detention. Article 5 applies to both criminal and administrative cases, with certain provisions applicable specifically to non-criminal, immigration detention. Article 5, Section 1. lists six situations in which a government’s restriction of personal liberty is permissible, while Sections 2. through 5. provide certain guarantees to detained individuals.

As a general principle, the ECtHR has distinguished between “mere restrictions of liberty,” which fall under the ambit of Article 2<sup>64</sup> of Protocol No. 4 to the ECHR, and “deprivation of liberty,” which is the subject of ECHR’s Article 5(1).<sup>65</sup> The Court has held that the question of whether a certain type of restriction falls under Article 2 of Protocol No. 4 or Article 5 of the ECHR is “one of degree or intensity, and not one of nature or substance.”<sup>66</sup>

A second principle inherent in Article 5 is that any detention must be “lawful.” This requires that the detention is effected pursuant to a procedure mandated by the national or international law,<sup>67</sup> and that any such procedure complies with the ECHR.<sup>68</sup> Further, detention cannot be considered lawful if the official record lacks information on the justifications for the

detention, its location, date and time, as well as the names of the person detained and the official executing the order.<sup>69</sup>

Another set of general principles applicable to Article 5(1) of the ECHR are those of legal certainty, proportionality, and protection from arbitrariness.<sup>70</sup> “Legal certainty” entails both a clear definition of the conditions for detention in the national law and foreseeability in how the law is applied.<sup>71</sup> This ensures that the detainee has full notice of what to expect in terms of the deprivation of his/her liberty.<sup>72</sup>

Like the “lawfulness” standard, the prohibition of arbitrariness in detention cases requires that the detention conforms both to the national law and the ECHR.<sup>73</sup> Additionally, it must be proportionate to the reason for which it is imposed.<sup>74</sup> The *Guide on Article 5* explains that the application of the arbitrariness standard somewhat depends on the kind of detention under review.<sup>75</sup> The Court has found arbitrariness in cases of “bad faith or deception” by the authorities, as well as where the detention order and its application deviated from the reasoning behind the limitation on freedom allowed by the Article 5(1) provision on which the order was based.<sup>76</sup> The Court has also characterized detention as arbitrary where the stated reasons for the detention did not correspond, or were disproportionate, to the location and conditions in which the detention took place.<sup>77</sup> Finally, the Court has scrutinized the reasoning in the detention order when examining the lawfulness and arbitrariness of the detention.<sup>78</sup> If the state’s judicial organs provide no specific legal grounds for approving prolonged detention and place no time limit on the deprivation of liberty, their decision might be seen as arbitrary.<sup>79</sup> The Court has also required the authorities to take into consideration lighter alternatives to detention.<sup>80</sup>

One public health and safety justification for detaining migrants and protection-seekers is found in Article 5(1)(e). This provision allows for the detention of individuals, pursuant to a valid

order, to prevent the spread of contagious illnesses, or of people who are alcoholics, drug addicts, “vagrants,” or mentally unsound.<sup>81</sup>

To deem detention for the prevention of infectious illnesses lawful, the Court has required state authorities to demonstrate it was put in place due to a real threat to public health, and because detention was the last possible resort to prevent the contagion, after less restrictive options were found insufficient.<sup>82</sup>

While ECHR provisions such as Article 5(1)(e) are potentially applicable to protection-seekers, the provision most relevant to them is Article 5(1)(f).<sup>83</sup> It authorizes “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”<sup>84</sup> The general principles of lawfulness, proportionality, and protection from arbitrariness apply to both parts of the provision.<sup>85</sup>

The lawfulness of the detention under the first part of Article 5(1)(f)—“to prevent . . . an unauthorised entry into the country”—is partially determined by national law.<sup>86</sup> According to the Court in *Suso Musa v. Malta*, the issue of when this provision no longer applies due to the foreigner receiving official authorization to be in the country mostly depends on the domestic law in question.<sup>87</sup>

The second limb of Article 5(1)(f), “detention with a view to deportation or extradition,” does not require the detention to be reasonably necessary to stop the foreigner from fleeing the country, for instance.<sup>88</sup> All it demands is that the authorities are taking ongoing actions to remove the person from the country.<sup>89</sup> Thus, whether the removal order itself is justified under the ECHR or domestic law is irrelevant to the question of whether the detention is in conformity with Article 5(1)(f).<sup>90</sup> Further, in *X. v. Switzerland*, the Commission held that detention for the purpose of removal from the country can be justified under Article 5(1)(f) even in the absence of a formal

extradition order, as long as the authorities are sending “enquiries” to the government of the foreigner’s home country.<sup>91</sup> However, if the authorities do not prosecute the removal proceedings “with due diligence,” detaining the foreigner under Article 5(1)(f) will no longer be permissible.<sup>92</sup>

In the context of Article 5(1)(f), freedom from arbitrariness means that the detention must be executed “in good faith” and in a manner conforming to the justification given by the government.<sup>93</sup> In addition, the conditions, location, and length of the detention must be appropriate with regard to any special vulnerabilities of the detainee,<sup>94</sup> and the time in detention must not be longer than what is reasonably necessary to achieve the goal sought (i.e., prevention of unauthorized entry or the foreigner’s removal, depending on the applicable limb of Article 5(1)(f)).<sup>95</sup>

As it concerns detention of foreigners deemed a threat to national security, “Article 5 § 1 (f) [5(1)(f)] or other sub-paragraphs do not permit a balance to be struck between the individual’s right to liberty and the State’s interest in protecting its population from terrorist threat.”<sup>96</sup> The Court has allowed for certain derogations from the states’ Article 5(1) obligations; however, these are subject to the Court’s oversight, and are permissible only so far as

the emergency [is] actual or imminent; . . . it . . . affect[s] the whole nation to the extent that the continuance of the organised life of the community [is] threatened; and . . . the crisis or danger [is] exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, [are] plainly inadequate.<sup>97</sup>

This rule does not seem to leave national governments much room for secrecy when it comes to their reasons for detaining foreigners solely on national security grounds. Thus, the Bulgarian government’s current practice with regard to some national security cases might not conform to the Court’s standard.

In contrast to Article 5(1), which includes the situations where restrictions of freedom are allowable, Article 5(2) through Article 5(4) sets out the basic guarantees that a detainee is entitled to under the ECHR. Article 5(2) aims to ensure that detainees know the reasons for their arrest; 5(3) guarantees prompt judicial review and trial for arrests and detention in criminal cases; 5(4) safeguards the right to a judicial review of all types of detention; and 5(5) entitles detainees to compensation if their arrest and/or detention is proven unlawful.<sup>98</sup> The following section discusses Article 5(2) and 5(4) in more detail as the provisions most applicable to immigration detention.

Article 5(2) requires everyone arrested to “be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”<sup>99</sup> The Court has clarified that the language of Article 5(2) applies both to the reasons for arrest and detention, as 5(2) should be interpreted in conjunction with Article 5(4)<sup>100, 101</sup>.

The purpose of 5(2) is to protect the detainee from arbitrary treatment.<sup>102</sup> Further, an individual entitled to initiate a speedy judicial review of his detention’s lawfulness “cannot make effective use of this right unless he is promptly and adequately informed of the reasons why he has been deprived of his liberty.”<sup>103</sup> Being “promptly and adequately informed” entails being told “in a simple, non-technical language that [the detainee] can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness.”<sup>104</sup>

Article 5(4) of the ECHR gives “[e]veryone who is deprived of his liberty by arrest or detention” the right “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”<sup>105</sup>

Even where the national law provides an official procedure for challenging one’s detention, a detainee’s rights under 5(4) will be violated if he/she is not given a meaningful opportunity to exercise them. With regard to the “speediness” of the judicial review, the Court has



emphasized that “[p]roceedings concerning issues of deprivation of liberty require particular expedition. . . . [S]ince the liberty of the individual is at stake, the State must ensure that the proceedings are conducted as soon as possible.”<sup>106</sup>

In general, proceedings constituting “automatic periodic review of judicial character” must conform to “both the substantive and procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5 . . . : to protect the individual against arbitrariness.”<sup>107</sup>

While Article 5 § 4 [5(4)] of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant’s submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting into doubt the existence of the conditions essential for the “lawfulness”, in the sense of the Convention, of the deprivation of liberty.<sup>108</sup>

### **3. Bulgarian Law**

#### **a. Access to International Protection**

The LAR, consistent with the CEAS, provides for two main types of international protection: refugee and humanitarian status.<sup>109</sup> Individuals who meet the refugee definition in the 1951 Refugee Convention qualify for refugee status under the LAR.<sup>110</sup> Those who cannot be classified as refugees but who were nevertheless forced to leave their countries of origin under threat of execution, torture, or cruel, inhuman, or degrading treatment or punishment, or risk to life due to armed conflict are eligible for humanitarian status under the Bulgarian law.<sup>111</sup> Applicants for international protection are automatically considered for both refugee and humanitarian status.<sup>112</sup>

Persons in need of international protection may submit an application to the State Agency for Refugees (SAR) if they are on the territory of Bulgaria, or to the border police if they find themselves at a border crossing.<sup>113</sup> Detained foreigners in the custody of the Ministry of Interior's Migration Directorate may submit an application for international protection to the detention center authorities. Upon the submission of an application for international protection, the receiving authorities are to forward it to the SAR within six days.<sup>114</sup>

If, at the time of making an application, the protection-seeker is detained and in the custody of the Directorate of Migration in one of the "Special Home for Temporary Placement of Foreigners" ("SHTPF"), the Directorate may release the applicant from detention if the application for protection is believed to be non-frivolous.<sup>115</sup>

b. Protection-Seekers' Freedom of Movement and Detention

Bulgaria's Law on Asylum and Refugees (LAR) codifies the country's regulations regarding the detention, accommodation, and freedom of movement of applicants for international protection.<sup>116</sup> As a general rule, registered protection-seekers in Bulgaria have a right to reside within a designated zone on Bulgarian territory for the duration of their proceedings and may not be deported while their applications are pending.<sup>117</sup> Amendments to the LAR from 2015 and 2016 resulted in the creation of "zones of movement," or designated areas in Bulgaria in which applicants for international protection are allowed to move freely, but may not leave without permission from the State Agency for Refugees (SAR).<sup>118</sup> Applicants may leave their assigned zones without permission only to attend appointments with a court or an administrative body, or to receive specialized medical care.<sup>119</sup> A Council of Ministers' decision from September 2017 designated four "zones of movement" each of which comprises the territory of the city or town where an applicant is currently housed.<sup>120</sup>

SAR administers protection-seekers' state-provided accommodations, called "Registration and Reception Centers," (or "open centers"), whose inhabitants are generally free to come and go at will.<sup>121</sup> In contrast, most of the closed<sup>122</sup> detention centers are run by the Migration Directorate of the Ministry of Interior, which is generally responsible for providing services to foreigners who are not seeking international protection in Bulgaria, or whose claims have not yet been registered by the SAR.<sup>123</sup> However, 2015 amendments to the LAR authorize the SAR to also operate closed detention centers specifically for housing registered protection-seekers.<sup>124</sup> Yet, the law envisions this measure only under several specific conditions;<sup>125</sup> thus, applicants for international protection are generally accommodated in one of the SAR-administered *open* centers.<sup>126</sup>

The LAR prohibits detention of registered protection-seekers in closed SAR centers solely because the individual has filed an application for international protection.<sup>127</sup> However, an applicant may be held in a closed center to determine or verify his identity, when there is a risk the applicant will abscond, on national security/public order grounds, or to determine the state responsible for processing the application.<sup>128</sup> Before an applicant can be detained in a closed center, a detention order must be issued in writing, stating the grounds for the detention and giving instructions for filing an appeal, including the possibility to receive free legal assistance.<sup>129</sup> Minors can only be detained in closed centers as a measure of last resort, and any such detention must be for the shortest possible period of time.<sup>130</sup>

The LAR grants detainees in closed centers certain rights: access to open spaces, family visits, privacy, meetings with legal aid organizations, legal representatives and other non-profit or international organizations, and information about their rights and the rules of the center in a language they understand.<sup>131</sup> For open centers, the LAR mandates on-site medical units, which must provide initial medical screenings, ongoing medical treatment and monitoring of both the

individual hygiene of the applicants and the hygienic standards of the center, and maintain medical records for all applicants.<sup>132</sup>

## **C. Fieldwork Findings – the Law in Practice in early 2017**

### **1. Protection Seekers’ Initial Registration and Accommodation**

Upon first lodging an application for international protection, applicants provide essential information concerning their claim, as well as their fingerprints, and must surrender their identity documents to the SAR.<sup>133</sup> While SAR processes the application for international protection the applicant is required to remain within the geographical confines of the “zone of movement” she is assigned to, which roughly corresponds to the perimeter of the city or town of the applicant’s residence.<sup>134</sup> Most protection-seekers in Bulgaria primarily reside in state-run “reception” or “open” centers, because residence in these centers is a precondition to receiving any material assistance from the state.<sup>135</sup> SAR determines eligibility for accommodation in the reception centers on the basis of each applicant’s material resources and vulnerabilities, but applicants are free to elect to reside outside of the reception centers.<sup>136</sup> In practice, in order to be released into the “open” centers, protection-seekers typically first spend some time detained, as the discussion below shows.

### **2. Barriers to Freedom of Movement and Placement in Open Centers**

There are currently six open centers in Bulgaria run by the SAR.<sup>137</sup> Three are in Sofia—Vrazhdebna, Voenna Rampa, and Ovcha Kupel.<sup>138</sup> Technically, the three open centers in Sofia are considered one center with three separate divisions.<sup>139</sup> While each division has its own director, there is an overarching director of all the open centers in Sofia.<sup>140</sup> The remaining three open centers are located in more rural areas of Bulgaria: Banya, Pastrogor, and Harmanli.<sup>141</sup> Banya is in central Bulgaria, Harmanli is in southeastern Bulgaria, and Pastrogor is in the southeast close to the Bulgarian-Turkish border.<sup>142</sup> There are two closed centers, called Special Homes for

Temporary Placement of Foreigners (SHTPF), run by the Migration Directorate: Busmantsi, on the outskirts of Sofia, and Lyubimets, near the town of Svilengrad and the Bulgarian-Turkish border.<sup>143</sup> Part of Busmantsi was recently designated as a closed center for protection-seekers, run by the SAR.<sup>144</sup> The third center operated by the Migration Directorate is a distribution center named Elhovo near Bulgaria's border with Turkey.<sup>145</sup>

Migrants are typically first apprehended by the border police and sent to a SHTPF.<sup>146</sup> According to the Migration Directorate, where migrants are placed depends on the location at which they were caught by the authorities.<sup>147</sup> At the SHTPF, staff conduct initial medical screening and collect personal data, while National Security Agency staff conduct interviews with migrants.<sup>148</sup> If migrants express the desire to apply for international protection, they are registered as protection-seekers and transferred from the authority of the Migration Directorate to the SAR.<sup>149</sup> Under the law, applications for international protection must be registered within three working days.<sup>150</sup> The Migration Directorate must transfer a protection-seeker to the SAR within six days after registering the protection claim,<sup>151</sup> although this timeframe is often not followed in reality, as subsequent discussion explains.

Legal aid providers reported that protection-seekers can wait three to four months, and sometimes even six months, for their applications to be registered.<sup>152</sup> Valeria Ilareva, the lead attorney at FAR, stated her clients who are held in the SHTPF-Busmantsi have a lot of difficulty getting their protection claims registered.<sup>153</sup>

The majority of registered protection-seekers are housed at the SAR open centers, where they usually remain for the duration of their application processing.<sup>154</sup> Unofficially, the SAR assigns protection-seekers to centers based on nationality, in an attempt to avoid inter-ethnic conflict.<sup>155</sup> For example, Voenna Rampa's resident population is about 97% Afghan.<sup>156</sup> Pastrogor houses mostly Pakistanis, while Vrazhdebna mostly houses Iraqis and Syrians.<sup>157</sup> All applicants

are given a choice of living in one of the open centers or at an external address, but to live outside the center, a protection-seeker must have a sponsor.<sup>158</sup> It is very difficult for most protection-seekers to find sponsors, so the majority of them live in the centers for the duration of processing of their claims.<sup>159</sup> About half of the residents in Voenna Rampa are minors.<sup>160</sup> Under the Bulgarian law, unaccompanied minors—both protection-seekers and those granted international protection—must be placed in “special accommodation” suitable to their age and needs,<sup>161</sup> but instead, the minors are housed in Voenna Rampa for a lack of child-appropriate alternatives.<sup>162</sup>

The SAR is not involved with foreigners until they have applied for international protection.<sup>163</sup> After registering their applications, the SAR conducts an initial interview and determines whether a protection-seeker’s application will be evaluated under the expedited or regular procedure.<sup>164</sup> If protection-seekers are granted international protection, they have fourteen days to obtain their documents and find their own housing.<sup>165</sup> If they receive a final rejection after exhausting their opportunities to appeal, they are transferred back to the authority of the Migration Directorate and placed in a SHTPF to await deportation.<sup>166</sup>

### **3. Detention of Protection-Seekers in Closed Centers**

The United Nations’ Committee on the Elimination of Racial Discrimination (CERD) has noted that first-time applicants for international protection in Bulgaria are systematically detained and held in pre-removal detention centers for irregular migrants, and recommended that Bulgaria terminate this policy.<sup>167</sup>

The Chairpersons or Directors of the Migration Directorate, Border Police, Border Police Regional Directorates of the Ministry of Interior, National Police, Combat Against Organized Crime Directorates General, State Agency for National Security, and Sofia Directorate and Regional Directorates, as well as officials authorized by them, each have the authority to decide to place an individual in a SHTPF.<sup>168</sup> Any of these agencies can make the determination and issue an

order of detention.<sup>169</sup> Consensus among the agencies is not required.<sup>170</sup> The Migration Directorate stated that placing someone in a SHTPF is a measure of last resort for those who have undetermined identities, pose a risk of absconding, or of committing crimes in Bulgaria.<sup>171</sup> The Migration Directorate added that individuals detained in SHTPF have either crossed the border illegally or have entered the country legally, but did not leave within the lawfully permitted period of time. Alternatively, people are held in SHTPF if there is no information in the national database as to whether or not they have entered the country legally, or the authorities are unable to ascertain their identities because they have fraudulent or no documents.<sup>172</sup> An estimated 95% of individuals detained in the Busmantsi SHTPF are protection-seekers waiting for the SAR to register their claims and transfer them to an open center.<sup>173</sup> Protection-seekers can be detained in SHTPF for several reasons, but the most common ones articulated by individual protection-seekers, government officials, and NGOs are described in sections four and five below.

#### **4. Delays in Transferring Protection-Seekers to Open Centers**

While the Migration Directorate is responsible for transferring an individual to an open SAR center after he/she expresses the desire to apply for international protection,<sup>174</sup> if there are complications in determining a protection-seeker's identity or finding a translator for his/her initial registration, the protection-seeker remains in a SHTPF until these issues are resolved.<sup>175</sup> FAR mentioned it is witnessing a new type of short-term detention of protection-seekers for up to thirty days on the grounds of identity verification.<sup>176</sup> Similarly, at the time the field research for this paper was conducted,<sup>177</sup> there was a group of Sri Lankan protection-seekers in Busmantsi's SHTPF because the Sri Lankans only spoke Tamil, and there were no Tamil translators available to assist with their registration.<sup>178</sup> The Sri Lankans were kept in Busmantsi for an average of six months until the translators arrived and the SAR completed the registration of their protection

claims.<sup>179</sup> Even after this occurred, however, most Sri Lankan applicants were not transferred to open centers, but had their claims reviewed while in Busmantsi.<sup>180</sup>

Representatives from the UNHCR claimed that Afghan protection-seekers are spending the most time in detention before being released to the SAR, often because there are insufficient interpreters.<sup>181</sup> It is important to note that a lack of interpreters is *not* a lawful ground for holding protection-seekers in SHTPF. The LAR requires that each protection-seeker who needs it “receive[s] a translator or interpreter” “[f]or the duration of the procedure,” without exceptions.<sup>182</sup> Thus, the SAR has a duty to find translators, and is violating the law when it keeps protection-seekers in SHTPF based on a lack of translators.

## **5. Grounds for Detaining Protection-Seekers**

Many protection-seekers are detained in closed centers if they attempt to leave Bulgaria before the completion of their procedures.<sup>183</sup> Typically, these individuals are registered in Bulgaria, apply for international protection, are transferred to open centers, and then leave Bulgaria in hopes of making it to Western Europe.<sup>184</sup> Once protection-seekers leave the open center, their procedures are suspended if, without valid reasons and after proper notice, they fail to attend their interviews with the SAR and to appear before the SAR within ten business days of the interview date.<sup>185</sup> If they are caught, either at the border or in another country, they are brought back to Bulgaria under the Dublin Regulation, and placed in a SHTPF.<sup>186</sup> Individuals returned to Bulgaria under the Regulation have a right to start a claim for international protection<sup>187</sup> if they had not done so previously, or reopen their procedures if they have not yet received a final decision and if they provide the SAR, within three months of the date on which their procedures were suspended, with a valid explanation as to their failure to appear for an interview.<sup>188</sup> If they fail to satisfy these conditions, the SAR discontinues their procedures.<sup>189</sup> If the SAR reopens the review of their applications for international protection, the applicants are usually placed in open



centers.<sup>190</sup> In the case of those who have received final rejections of their asylum claims by the time they are returned to Bulgaria, the SAR contacts the Migration Directorate, which transfers them to one of its SHTPF to await deportation.<sup>191</sup> The Migration Directorate issues deportation orders, pursuant to the Returns Directive and Bulgarian law, for all migrants who cross into Bulgaria irregularly.<sup>192</sup> The orders are temporarily suspended after the migrants apply for international protection, because protection-seekers are allowed to stay on the territory while the authorities consider their applications.<sup>193</sup> However, once the applicants receive final status rejections, their deportation orders are executed.<sup>194</sup>

Individuals whose protection claims have been rejected have the option to file subsequent claims.<sup>195</sup> Yet, the SAR will refuse to register these claims and to review them on the merits unless the applicants allege that, since their previous applications, new conditions of “fundamental importance for [their] personal circumstances or country of origin” have arisen.<sup>196</sup> Even if the protection-seekers list such circumstances, however, the SAR has the discretion to decide whether they are sufficiently new and “fundamentally” important. An official in Voenna Rampa stated he had not seen any successful subsequent claims.<sup>197</sup>

Protection-seekers can also be detained in closed centers on public order or national security grounds.<sup>198</sup> Many protection-seekers were detained on such bases after a riot broke out at the Harmanli open center in December 2016.<sup>199</sup> The UNHCR estimated that about 400 Afghans were detained as a result of the riot; public officials stated they would be deported from Bulgaria as criminals.<sup>200</sup>

Bulgarian administrative courts have justified the detention of first-time protection-seekers in Busmantsi’s Migration Directorate on the ground that the protection-seekers applied for international protection solely as a tactic to secure their release.<sup>201</sup> While this may be true for some applicants, it is not a valid basis for holding any first-time protection-seeker in detention. The

Bulgarian law clearly states that the ground applies to those filing *subsequent* protection claims.<sup>202</sup> In addition, CLA's experience shows that the court often fails to provide any evidence for this allegation in its decisions.<sup>203</sup>

Protection-seekers can be further detained in a closed center to determine the elements of their asylum applications if these cannot be obtained in the absence of detention, in particular if there is a risk of absconding.<sup>204</sup> According to BHC, now that the SAR is authorized to operate closed centers, the main challenges for BHC and similar organizations will be to help establish standards for who will be detained there, how the detainees will access the courts to challenge their detention orders, and whether detention will be for as short a period as possible, as mandated by the amended law.<sup>205</sup>

Attorneys at Bulgarian Lawyers for Human Rights (BLHR) also stated that the government abuses the "national security" basis for detaining foreigners in the Migration Directorate's SHTPF.<sup>206</sup> The authorities often rely on this ground without offering any evidence that the detainee poses a risk to national security.<sup>207</sup> In doing so, the authorities point to Article 29a.1. of the LAR, which gives the foreigners or their representatives

the right to file a request for access to the information gathered upon the basis of which a decision will be made *except* in cases where: . . . disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person to whom the information relates.<sup>208</sup>

The government uses the provision to justify its often-complete lack of disclosure of any evidence on which it is relying.<sup>209</sup>

Government officials pointed out that there are alternatives to detention if the individual is not a flight risk,<sup>210</sup> but various stakeholders in Bulgaria characterized these alternatives as superficial in practice. Rather than being detained, a foreigner can leave the country within seven to thirty days with a valid passport or another travel document.<sup>211</sup> Registered protection-seekers

with sufficient means can reside at an external address instead of in a SAR open center,<sup>212</sup> while migrants with active deportation or expulsion orders can avoid detention if they have sponsors and check in weekly at their local police station.<sup>213</sup> Yet, as noted previously, most protection-seekers and migrants are unable to get sponsors.<sup>214</sup> In addition, courts have not allowed protection-seekers who have obtained sponsors to be released from detention.<sup>215</sup> Individuals who want to opt for lighter measures must challenge their detention orders first.<sup>216</sup> They have fourteen days from the date on which the order was served on them to challenge their detention.<sup>217</sup> According to BLHR, challenging detention through this mechanism is futile because individuals are being detained without orders as required under the law and thus cannot challenge their detention.<sup>218</sup> From July to December 2016, there were seven cases of people placed in closed centers who filed a request challenging their detention and asking for a lighter measure.<sup>219</sup> In all seven cases, the administrative court ruled in their favor, indicating that the authorities' default approach restricts the basic rights of protection seekers.<sup>220</sup>

Under the law, migrants can be detained in a closed center for a maximum of eighteen months: the standard length of detention is six months, but it can be extended by another twelve months in cases where the detainees have refused to cooperate on the issuance of travel documents, or if there is a delay in getting their home consulates to issue the documents.<sup>221</sup> According to Ivan Sharenkov, Expert in Operating Activities with the IOM's Voluntary Returns and Integration Division, most individuals in the closed centers know their chances of being deported are extremely high, so they often request Assisted Voluntary Return (AVR).<sup>222</sup> However, their time in detention can be extended if their home countries' consulates in Bulgaria are not cooperative in issuing the travel documents for their return to their countries of origin.<sup>223</sup> Government officials stated that neither the Afghan nor the Pakistani embassy in Bulgaria cooperates in issuing the necessary documents for its citizens' deportation or voluntary return.<sup>224</sup>

As a result, after reaching the maximum amount of time in detention, the Migration Directorate issues an official statement and the individual is released, but “he continues to live life in the shadows.”<sup>225</sup> The Migration Directorate made it clear that individuals who are released because they have reached the maximum allowed amount of time in SHTPF are not in Bulgaria lawfully.<sup>226</sup> They do not have documents and cannot legally work.<sup>227</sup> Often, migrants in this situation ask to be voluntarily returned to their countries of origin.<sup>228</sup>

## **6. Detention of Minors**

Under the Foreigners in the Republic of Bulgaria Act, unaccompanied minors cannot be detained in closed centers.<sup>229</sup> However, accompanied minors can spend up to six months in closed centers.<sup>230</sup> While the “Foreigners in the Republic of Bulgaria Act” does not enunciate this, a careful reading of its Article 44 implies that if an accompanied minor (and or her accompanying adult) require detention beyond 3 months, such detention can be extended but in no case can it exceed six months.<sup>231</sup> Several legal aid organizations in Bulgaria have asserted that, even though detaining unaccompanied minors is specifically outlawed in Bulgaria, they still end up in closed centers.<sup>232</sup> Sometimes unaccompanied minors pair with adults they do not know but who perhaps accompanied them on their travels to Bulgaria.<sup>233</sup> The government officials do not check their relation and list the minors as “accompanied.”<sup>234</sup> Government authorities also appoint unrelated adults as guardians of unaccompanied minors.<sup>235</sup> Sometimes, the adult and the minor do not even speak the same language.<sup>236</sup> The Bulgarian Helsinki Committee (BHC) noted that border police who apprehend unaccompanied minors assign the minors to an adult in the group even if the minor does not know the adult, because the authorities are not permitted to detain unaccompanied minors, but they also do not want to set them free in the woods.<sup>237</sup> Whether the government lists an adult as a legal guardian or the unaccompanied minor chooses to pair with an adult, the minor is considered “accompanied” and can be legally detained for a maximum of six months.<sup>238</sup> BHC

also indicated that identifying unaccompanied minors in detention centers and instituting measures to protect them is a challenge.<sup>239</sup>

## **7. Reception and Detention Conditions**

### **a. The Official Version**

#### *i. SHTPF Run by the Migration Directorate*

According to the Migration Directorate, migrants and protection-seekers in Busmantsi are fed three times a day, taking into account dietary needs such as diabetes.<sup>240</sup> There are open spaces for playing sports.<sup>241</sup> There used to be a fitness center in Busmantsi, but the detainees destroyed it over time.<sup>242</sup> Detainees can engage in various activities sponsored by the Bulgarian Red Cross and the UNHCR, such as language classes.<sup>243</sup> Social and psychological services are provided, and there is a group of medical experts available around the clock.<sup>244</sup> BHC comes to all the SHTPF three times a week to provide free legal aid and help detainees file asylum claims.<sup>245</sup> Detainees either call their lawyers from personal phones or make an appointment to see a lawyer when legal services are available at the center.<sup>246</sup>

Information is provided to detainees through reading materials and a television in the building, where messages are displayed in various languages.<sup>247</sup> The SHTPF in Busmantsi does not have translators on site because all the informational materials are written in Pashtu, Farsi, Arabic, Urdu, Armenian, Turkish, and English.<sup>248</sup> The Director of Busmantsi revealed that there is a need for translators from rare languages with many dialects, such as Kurdish.<sup>249</sup> Frontex, an EU agency that coordinates border control activities for EU member states,<sup>250</sup> provides translators for the Migration Directorate.<sup>251</sup> In addition, staff at the centers who have undergone training in basic Arabic and Farsi serve as translators.<sup>252</sup>

As of the spring of 2017, SHTPFs were filled at their maximum capacity, and the Migration Directorate's biggest concern was expanding their capacity, or building more SHTPF if possible.<sup>253</sup> Busmantsi's capacity was recently enlarged to fit 500 individuals.<sup>254</sup>

*iii. Open Centers Run by the SAR*

In the open centers, protection-seekers are fed three times a day, and the food is adjusted to an individual's dietary and religious needs.<sup>255</sup> Food is funded by the state, which allots 4.20 BGN<sup>256</sup> a day per person for food.<sup>257</sup> The Director at Pastrogor stated that the center's residents often walk to the nearby village to buy additional food.<sup>258</sup> Protection-seekers also receive state-funded healthcare pursuant to the LAR, which entitles them to "health care, access to medical help, and gratuitous medical services according to requirements and procedures applicable to Bulgarian nationals." <sup>259</sup>

BHC, the IOM, the UNHCR, and the Bulgarian Red Cross all send representatives to the open centers according to agreements with the SAR.<sup>260</sup> There are also social workers on site.<sup>261</sup> At Pastrogor, there is a room designated for legal aid, a medical office, a multifunctional room, and free internet access.<sup>262</sup> Pastrogor also has radiators for heat and a laundry room with twelve washing machines and two washing machines for bedding.<sup>263</sup> At Voenna Rampa, there is no internet.<sup>264</sup> However, the residents can play sports and have access to language and art classes, games, and a computer club.<sup>265</sup> Extracurricular activities are provided by NGOs such as Caritas, Medics of the World, Council of Women Refugees, and the Bulgarian Red Cross.<sup>266</sup> Caritas puts on activities for children.<sup>267</sup>

Protection-seekers and protection recipients can be "offered an opportunity for vocational training and work,"<sup>268</sup> and, according to the most recent changes in the LAR, the applicants qualify for work permits after three months with no decision on a claim for international protection, as long as the delay is not caused by their own actions.<sup>269</sup> There are about thirty

residents in Voenna Rampa with work permits, but it is unclear how many of them are actually employed.<sup>270</sup> Only one individual at Pastrogor works by volunteering at a local Christian Orthodox church.<sup>271</sup>

Protection-seekers have access to language classes in the open centers. According to the Director at Pastrogor, the Pakistani and Afghan residents at Pastrogor have not shown interest in such classes because they do not want to integrate into Bulgarian society.<sup>272</sup> Their main goal, as expressed in their interviews, is to migrate to western Europe.<sup>273</sup> The Director of Pastrogor added that the majority of applicants disappear before their procedures are completed, and attempt to cross the border to interior states.<sup>274</sup>

Minors only receive access to education if they or their parents request it.<sup>275</sup> In such cases, teachers from local schools come to the centers to teach them Bulgarian for two hours every day.<sup>276</sup> Minors cannot go to Bulgarian schools until they know the language.<sup>277</sup> The Director of Pastrogor was aware of minors in Sofia's open centers who learned enough Bulgarian to be able to attend Bulgarian schools.<sup>278</sup> In contrast, Pastrogor has not seen such cases because it is resource-limited due to its remote location near the border.<sup>279</sup> For these reasons, there is an established practice not to place minors at the Pastrogor transit center and to instead house them in the open centers near Sofia.<sup>280</sup>

b. The Perspectives of Protection-Seekers and Civil Society Stakeholders

Piruz, an Iranian protection-seeker, spent a total of five months in a SHTPF and in an open center in Bulgaria.<sup>281</sup> He described the conditions there as inhumane.<sup>282</sup> During his time at the SHTPF in Busmantsi, the Migration Directorate would respond to his complaints about the conditions by saying, "We didn't ask you to come to Bulgaria. If it's so bad, then leave."<sup>283</sup> Piruz said the conditions at Busmantsi were terrible.<sup>284</sup> His cell was locked at midnight and he was not allowed to go to the bathroom afterwards.<sup>285</sup> At one point, he caught a bad cold which he thought

might have been the flu.<sup>286</sup> He saw a doctor in Busmantsi who did an inefficient exam and Piruz had to beg the doctor for medicine.<sup>287</sup> He said that there were essentially no services at Busmantsi.<sup>288</sup> Detainees would have to ask the guard if they needed something, and it was within the guard's discretion whether or not to respond to the request.<sup>289</sup> Often, the guards did not respond.<sup>290</sup>

Piruz said that no information was provided to him when he arrived at Busmantsi and no one helped him.<sup>291</sup> He was eventually able to talk to an Iranian administrative official after getting permission from the guards to see the doctor and instead going to meet with other Iranians from his church.<sup>292</sup> Piruz consulted with another Iranian because no one was helping him and he had neither received an interview nor started an application for asylum.<sup>293</sup> He was told to go back to Busmantsi and that they would help him to get out.<sup>294</sup> When no one came for him, Piruz went to his fellow Iranian a second time and soon after was released.<sup>295</sup> Piruz had one interview at Busmantsi for his asylum application, but was not given any formal explanation of the speedy denial that followed.<sup>296</sup> Piruz is currently residing at Voenna Rampa while he awaits a final decision on his appeal from his initial application denial.<sup>297</sup> Despite the fact that the SHTPF-Busmantsi was similar to a prison, Piruz stated it was a better place compared to Voenna Rampa in terms of the food and conditions.<sup>298</sup> He described the bathrooms and showers at Voenna Rampa as filthy.<sup>299</sup> The "shower" is a small spigot and residents use buckets to wash themselves in an overall filthy area.<sup>300</sup> At Voenna Rampa, he receives two small meals a day as opposed to the three meals he received at Busmantsi.<sup>301</sup> Piruz said he gets answers to some of his questions with great difficulty, but no one really tells him what is going on.<sup>302</sup> When he complains about the conditions, he gets several responses from officials at Voenna Rampa.<sup>303</sup> Sometimes they say it is the Afghans' fault, and sometimes that they do not have the money to fix things.<sup>304</sup>



Omar, an Iraqi protection-seeker, was in the Ovcha Kupel open center in Sofia. He described the conditions in the center as very bad. He said there are bugs in the rooms and bed bugs in the mattresses. Omar stated that no one sleeps until about five or six in the morning because of all the bugs. Omar also complained that the toilets in the bathrooms leak into the bedrooms through holes in the ceiling. Omar is not able to do anything he wants to in Bulgaria. He can neither work nor study. He stated that employers in Bulgaria have not accepted the work authorization he received.<sup>305</sup>

FAR and BLHR confirmed that the conditions in Busmantsi's SHTPF were deteriorating and inhumane.<sup>306</sup> Residents complain that it is cold, the food is bad, and they cannot go to the bathroom at night after their cells are locked.<sup>307</sup> The mattresses and blankets are not washed and are infested with bed bugs, resulting in skin irritation.<sup>308</sup> Often, residents sleep on the floor or with two or three others on a bed that is not infested.<sup>309</sup> FAR had a client in Busmantsi who was seven months pregnant and whose skin was completely irritated from bed bugs.<sup>310</sup> Attorneys at FAR consulted a midwife and coordinated the transfer of this client to an open center.<sup>311</sup> However, according to FAR, the situation in those centers is the same.<sup>312</sup> Based on information from the UNHCR, Elhovo<sup>313</sup> is currently being emptied and will be closed for two months for renovations because the conditions were inhumane.<sup>314</sup> There have been renovation efforts in some of the centers in the last few years, but several months after the completion of the work, the conditions had deteriorated again.<sup>315</sup>

According to the UNHCR, one of the contributing factors to the riot in SAR's open center in Harmanli were the poor conditions in the center.<sup>316</sup> After reports circulated in the local media that refugees and migrants were bringing diseases into the country, and under pressure from Bulgarian residents of the town of Harmanli, the SAR imposed restrictions on movement for the people in the Harmanli center.<sup>317</sup> Authorities did not communicate what was happening to those

housed in the center, and people did not understand why they were suddenly not allowed to leave the center.<sup>318</sup> No one could leave for three days, and conditions had already been deteriorating.<sup>319</sup> On the third day, there was a gathering in an open space and violence erupted.<sup>320</sup> Tires were burned and there was minor damage to structures.<sup>321</sup> According to the UNHCR, the security response to the incident was heavy.<sup>322</sup> Shortly after the first riot, the SAR reported that the situation had diffused, but that same night there was another eruption of violence and an indiscriminate use of force against protection-seekers at the center.<sup>323</sup> The authorities blamed the Afghans for the riot, and around 400 of them were rounded up and set to be deported from Bulgaria as criminals.<sup>324</sup> Several were subsequently transferred to the new closed SAR center in Busmantsi, to which most NGOs and legal aid providers serving protection-seekers have still not been granted access. CLA recently obtained information that at least four protection-seekers in the closed SAR Busmantsi center have returned to their home countries under the Voluntary Return Program, after discussing this option with IOM officials at the center.

#### **D. Conclusions and Subsequent Developments as of June 2018**

Since the fieldwork for this report was conducted, the Bulgarian authorities' provision of international protection and the state's practices have been censured by the European Court of Human Rights through a decision from December 2017 finding a violation of Art. 3 of the European Convention on Human Rights.<sup>325</sup>

In the meantime, the dismal conditions of detention of asylum seekers have been recognized by the courts of several European countries as constituting a sufficient reason to suspend Dublin returns to Bulgaria for certain vulnerable cases.<sup>326</sup> Meanwhile, entries into the European Union through Bulgaria have decreased, depriving Bulgarian authorities of the ability to assert the state's limited capacity as an excuse to adequately accommodate protection seekers. Despite the decrease in the number of arrivals to Bulgaria in recent months, the structural issues

affecting the rights of asylum seekers in the country remain formidable. While this study has provided a general overview of the issues in this context and presented the perspectives of actors working to address them at a specific time, the principle take-aways remain very much the same: civil society requires active support to continue strategic approaches to service delivery and systematic change. Further studies on the Bulgarian context should not only provide updates on the information gathered herein, but also gather a broader set of potential innovative practices to defend the rights of asylum seekers. The challenges faced by Bulgarian refugee actors in the protection space should serve as an opportunity for stakeholders to improve relevant systems and institutions to serve refugee populations and movements in line with domestic obligations and international standards, steps that will serve as preparation for future refugee influxes.

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<sup>1</sup> Bulgarian law's equivalents to the terms "asylum" and "asylum-seeker" differ from the definitions of these terms under EU law. "Asylum" in Bulgaria is a special status which only the President of Bulgaria can extend on political grounds in response to a direct request. It is almost never granted in practice. The term "international protection" includes refugee and humanitarian status and is granted by the State Agency for Refugees (SAR). In this sense, the international protection granted by the Bulgarian state is the equivalent of "asylum" elsewhere in the EU. Former "protection-seekers," once *granted* refugee status, are referred to as "refugees." This report uses the terms "international protection" and "protection-seekers" when referring to Bulgarian law and procedure, and the terms "asylum" and "asylum-seekers" when discussing provisions of EU law.

<sup>2</sup> See *supra* 57 and page 11 of this report for a more in-depth discussion of relevant caselaw.

<sup>3</sup> EU Referendum, *Reality Check: How much EU money goes to poorer countries?*, BBC NEWS, (June 1, 2016) <http://www.bbc.com/news/uk-politics-eu-referendum-36322484> .

<sup>4</sup> See *supra* note 1 regarding the Bulgarian law's use of the term "asylum."

<sup>5</sup> Amnesty International, *The human cost of Fortress Europe: human rights violations against migrants and refugees at Europe's borders*, EUR 05/001/2014, 9 July 2014.

<sup>6</sup> A full list of the 12 interviews conducted as basis for this report is available in the appendix to this report.

<sup>7</sup> Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 *entered into force* Apr. 22, 1954 [hereinafter 1951 Refugee Convention].

<sup>8</sup> Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, *entered into force* Oct. 4 1967 [hereinafter 1967 Protocol].

<sup>9</sup> Migration and Home Affairs, *Common European Asylum System*, EUROPEAN COMMISSION, (Apr. 19, 2017) [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en).

<sup>10</sup> Law on Asylum and Refugees, SG No. 103/27.12.2016 (Bulgaria) (English Translation) [hereinafter LAR].

<sup>11</sup> *Id.* at Art. 33.

<sup>12</sup> *Id.* at Art. 32(1).

<sup>13</sup> *Id.* at Art. 3.

<sup>14</sup> 1951 Refugee Convention, *supra* note 7, at Art. 26. ("Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances").

<sup>15</sup> *Id.* at Art. 16(1). Article 16(2) states that a refugee shall enjoy "the same treatment as a national in matters pertaining to access to the Courts, including legal assistance."

<sup>16</sup> Treaty on the Functioning of the European Union, C 326/49, Art. 288 (Oct. 26, 2012).

<sup>17</sup> Migration and Home Affairs, *supra* note 9.

<sup>18</sup> Treaty on the Functioning of the European Union, *supra* note 16 at Art. 288; *see also* European Council on Refugees and Exiles, Guidance Note on the Transposition and Implementation of the EU Asylum *Acquis*, at 1 (Feb. 2014), [https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Guidance-Note-on-the-transposition-and-implementation-of-the-EU-asylum-acquis\\_February-2014.pdf](https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Guidance-Note-on-the-transposition-and-implementation-of-the-EU-asylum-acquis_February-2014.pdf) [hereinafter ECRE Note] ("EU Directives lay down certain end results that must be achieved by Member States leaving it to national authorities as to how to adapt their laws to meet these goals....[they] may only be transposed in national law by means of national provisions of a binding nature which have the same legal force as those which must be amended.")

<sup>19</sup> 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

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Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or Stateless Person (recast) 604/2013 (EU), 2013 O.J. (L 180) 31 [hereinafter Dublin Regulation].

<sup>20</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast), 2011/95/EU, 2011 O.J. (L 337) 9 [hereinafter Qualification Directive].

<sup>21</sup> 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) 2013/32/EU, 2013 O.J. (L 180) 60 [hereinafter Asylum Procedures Directive].

<sup>22</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection, 2013/33/EU, 2013 O.J. (L 180) 96 [hereinafter Reception Conditions Directive].

<sup>23</sup> Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the Establishment of ‘Eurodac’ for the Comparison of Fingerprints for the Effective Application of Regulation (EU) No. 604/2013 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 and on Requests for the Comparison with Eurodac Data by Member States’ Law Enforcement Authorities and Europol for Law Enforcement Purposes, and Amending Regulation (EU) No. 1077/2011 Establishing a European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (recast) 602/2013 (EU), 2013 O.J. (L180) 1 [hereinafter Eurodac Regulation].

<sup>24</sup> Dublin Regulation, *supra* note 19 at Art. 28(1); APD, *supra* note 19 at Art. 26; Reception Condition Directive, *supra* note 22 at Art. 8(1).

<sup>25</sup> Dublin Regulation, *supra* note 19 at Art. 28(2).

<sup>26</sup> *Id.*

<sup>27</sup> Reception Conditions Directive, *supra* note 22 at Art. 7(2).

<sup>28</sup> *Id.* at Art. 8(3).

<sup>29</sup> *Id.* at Art. 8(2).

<sup>30</sup> *Id.* at Art. 9.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at Art. 17(2).

<sup>34</sup> *Id.* at Art. 10.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at Art. 10(5).

<sup>38</sup> *Id.* at Art. 11(2) – (3) (noting that accompanied minors can be detained in prison-like accommodation, but unaccompanied minors can never be detained in such conditions).

<sup>39</sup> *Id.* at Art.11(1).

<sup>40</sup> *Id.* at Art. 11(5).

<sup>41</sup> Qualification Directive, *supra* note 20 at Art. 33.

<sup>42</sup> Reception Conditions Directive, *supra* note 22 at Art. 7(1).

<sup>43</sup> APD, *supra* note 21 at Art. 8.

<sup>44</sup> *Id.* at Art. 12(1)(a).

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<sup>45</sup> *Id.* at Art. 12(1)(b).

<sup>46</sup> *Id.* at Art. 12(1)(f).

<sup>47</sup> *Id.* at Art. 12(1)(c).

<sup>48</sup> *Id.* at Art. 20(1).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at Art. 20(3).

<sup>51</sup> *Id.* at Art. 23(2).

<sup>52</sup> *Id.* at Art. 23(3).

<sup>53</sup> [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 22 *entered into force* Sept. 3, 1953 [hereinafter European Convention for Human Rights].

<sup>54</sup> *Id.* at Art. 5.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at Art. 3.

<sup>57</sup> See *Dougoz v. Greece*, No. 40907/98, ECHR 2001-II (holding that detention facilities with dirty, overcrowded cells and a lack of sufficient sanitary facilities violate the Article 3 prohibition on cruel, inhuman, and degrading treatment); *S.D. v. Greece*, No. 5354107, ECHR 2009 (holding that detaining migrants in facilities without access to clean sheets or sufficient hygiene products violates the Article 3 prohibition on cruel, inhuman, and degrading treatment); *A.A. v. Greece*, No. 12186/08, ECHR 2010 (holding that detaining migrants in facilities with extremely cramped and dirty conditions, bathroom facilities in disrepair, bad smells, and infectious skin diseases violates the Article 3 prohibition on cruel, inhuman, and degrading treatment); *M.S.S. v. Belgium and Greece*, No. 30696/09 ECHR 2011 (holding that detaining migrants in facilities that are overcrowded, with restricted toilet access, lack of sufficient food, and dirty mattresses violates the Article 3 prohibition on cruel, inhuman and degrading treatment); *R.U. v. Greece*, No. 2237/08 ECHR 2011 (holding that detention facilities with dirty, overcrowded cells and lack of sufficient sanitary facilities violate the Article 3 prohibition on cruel, inhuman, and degrading treatment, and that the lack of mechanisms enabling migrants to complain about detention conditions violates the Article 13 right to an effective remedy).

<sup>58</sup> *Dougoz*, No. 40907/98 at para. 21.

<sup>59</sup> *Dougoz*, No. 40907/98 at para. 48.

<sup>60</sup> *M.S.S.*, No. 30696/09 at para. 230 (“Detainees’ access to the toilets was severely restricted and they complained that the police would not let them out into the corridors”).

<sup>61</sup> *M.S.S.*, No. 30696/09 at para. 234.

<sup>62</sup> *A.A.*, No. 12186/08.

<sup>63</sup> *S.D.*, No. 5354107.

<sup>64</sup> Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46, available at: <http://www.refworld.org/docid/3ae6b3780.html> [accessed 31 July 2017], Article 2(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”).

<sup>65</sup> Council of Europe/European Court of Human Rights, *Guide on Article 5 of the Convention: Right to Liberty and Security*, 2014, available at: [http://www.echr.coe.int/Documents/Guide\\_Art\\_5\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf) [accessed 31 July 2017], 5.

<sup>66</sup> *Id.* at 7; *Guzzardi v. Italy*, No. 7367/76 ECHR 1980, para. 93; *Rantsev v. Cyprus and Russia*, No. 25965/04 ECHR 2010, para. 314 (“In order to determine whether someone has been ‘deprived

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of his liberty’ within the meaning of Article 5, the starting point must be her concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question”); *Stanev v. Bulgaria*, No. 36760/06 ECHR 2012 [GC], para. 115.

<sup>67</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 7; *Del Rio Prada v. Spain*, No. 42750/09 ECHR 2013 [GC], para. 125 (“Where the ‘lawfulness’ of detention is in issue, including the question whether ‘a procedure prescribed by law’ has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention”).

<sup>68</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 8; *Pleso v. Hungary*, No. 41242/08 ECHR 2012, para. 59.

<sup>69</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 7; *Anguelova v. Bulgaria*, No. 38361/97 ECHR 2002, para. 154.

<sup>70</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 8.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*; *see, e.g., Del Río Prada*, No. 42750/09 at para. 125; *Creangă v. Romania*, No. 29226/03 ECHR 2012, para. 120; and *Medvedyev and Others v. France*, No. 3394/03 ECHR 2010 [GC], para. 80.

<sup>73</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 9; *Creangă*, No. 29226/03 at para. 84; *A. and Others v. the United Kingdom*, No. 3455/05 ECHR 2009 [GC], para. 164.

<sup>74</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 9.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*; for a detailed overview of the key principles *see James, Wells and Lee v. the United Kingdom*, Nos. 25119/09, 57715/09 and 57877/09 ECHR 2013, paras. 191 – 95; and *Saadi v. the United Kingdom*, No. 13229/03 ECHR 2008 [GC], paras. 68 – 74.

<sup>78</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 10.

<sup>79</sup> *Id.*; *Stašaitis v. Lithuania*, No. 47679/99 ECHR 2002, paras. 66 – 67; and *Khudoyorov v. Russia*, No. 6847/02 ECHR 2005, para. 157 (finding the decision of the Regional Court unlawful and arbitrary because it “was extremely laconic with regard to the issue of detention and made no reference to any legal provision which would have permitted the applicant's further detention”).

<sup>80</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 10.

<sup>81</sup> European Convention on Human Rights, *supra* note 53 at Art. 5(1)(e).

<sup>82</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 17.

<sup>83</sup> European Convention on Human Rights, *supra* note 53 at Art. 5(1)(f).

<sup>84</sup> *Id.*

<sup>85</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 19.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*; *Suso Musa v. Malta*, No. 42337/12 ECHR 2013, para. 97 (“Indeed, where a State which has gone beyond its obligations in creating further rights or a more favourable position—a possibility open to it under Article 53 of the Convention—enacts legislation (of its own motion or pursuant to European Union law) explicitly authorising the entry or stay of immigrants pending an asylum application . . . , an ensuing detention for the purpose of preventing an unauthorised entry may raise an issue as to the lawfulness of detention under Article 5 § 1 (f). Indeed, in such circumstances it would be hard to consider the measure as being closely connected to the purpose

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of the detention and to regard the situation as being in accordance with domestic law. In fact, it would be arbitrary and thus run counter to the purpose of Article 5 § 1 (f) of the Convention to interpret clear and precise domestic law provisions in a manner contrary to their meaning”).

<sup>88</sup> Guide on Article 5 of the Convention, *supra* note 65 at 20.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*; *Chahal v. the United Kingdom*, No. 22414/93 ECHR 1996, para. 112; *Čonka v. Belgium*, No. 51564/99 ECHR 2002, para. 38 (applying this rule to deportation); *Nasrulloev v. Russia*, No. 656/06 ECHR 2008, para. 69 (applying the holding to extradition); and *Soldatenko v. Ukraine*, No. 2440/07 ECHR 2009, para. 109.

<sup>91</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 20; *X. v. Switzerland*, Commission decision of 9 December 1980.

<sup>92</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 20; *A. and Others*, No. 3455/05 [GC], para. 164; *Amie and Others v. Bulgaria*, No. 58149/08 ECHR 2013, para. 72.

<sup>93</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 20.

<sup>94</sup> *Id.* at 19 – 20 (“When reviewing the manner in which the detention order was implemented the Court must have regard to the particular situation of would-be immigrants (*Kanagaratnam v. Belgium*, [No. 15297/09 ECHR 2012, para.] 80, where the applicant and her three children were kept in a closed facility designed for adults; *Rahimi v. Greece*, [No. 8687/08 ECHR 2011, para.] 108, concerning the automatic application of detention to an unaccompanied minor”); *Saadi*, No. 13229/03 [GC], para. 74 (“the place and conditions of detention should be appropriate, bearing in mind that ‘the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country’”).

<sup>95</sup> *Guide on Article 5 of the Convention*, *supra* note 65 at 20.

<sup>96</sup> *Id.* at 21; *A. and Others*, No. 3455/05 [GC], para. 171 (holding that, while state governments should be given much deference when it comes to determining what is dangerous to national security and how to deal with such threats, the ECHR does not allow governments limitless discretion:

It is for the Court to rule whether, inter alia, the States have gone beyond the “extent strictly required by the exigencies” of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. In exercising this supervision, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation).

<sup>97</sup> *A. and Others*, No. 3455/05 [GC], para. 176.

<sup>98</sup> European Convention on Human Rights, *supra* note 53 at Art. 5(2) – (5).

<sup>99</sup> *Id.* at Art. 5(2).

<sup>100</sup> “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.” European Convention on Human Rights, *supra* note 53 at Art. 5(4).

<sup>101</sup> *See Van der Leer v. the Netherlands*, No. 12/1988/156/210 ECHR 1990, paras. 27 – 28.

<sup>102</sup> *Van der Leer*, No. 12/1988/156/210 at para. 27.

<sup>103</sup> *Id.* at para. 28; *Shamayev and Others v. Georgia and Russia*, No. 36378/02 ECHR 2005, para. 413.

<sup>104</sup> *Khlaifia and Others v. Italy*, No. 16483/12 ECHR 2016, para. 115.

<sup>105</sup> European Convention on Human Rights, *supra* note 53 at Art. 5(4).

<sup>106</sup> *Id.* at para. 131.



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<sup>107</sup> *Koendjibiharie v. the Netherlands*, No. 11487/85 ECHR 1990, para. 27.

<sup>108</sup> *Ilijkov v. Bulgaria*, No. 33977/96, ECHR 2001, para. 94.

<sup>109</sup> LAR *supra* note 10 at Arts. 8 – 9. The LAR also allows for the provision of Temporary Protected Status (TPS) and asylum granted by the Bulgarian President, but these types of protection require their own separate applications and are rarely used. *See supra* note 10.

<sup>110</sup> *Id.* at Art. 8(1) (“Refugee status in the Republic of Bulgaria shall be granted to an alien who for reasons of a well-founded fear of persecution due to his/her race, religion, nationality, political opinion or membership of a specific social group is outside his/her country of origin and who, for those reasons, is unable or unwilling to avail himself/herself of the protection of that country or return thereto”).

<sup>111</sup> *Id.* at Art. 9(1).

<sup>112</sup> *Id.* at Art. 73.

<sup>113</sup> *Id.* at Art. 58. For review of the procedure of applying for international protection and up-to-date overview of the status of processing applications, see the reports published by the Asylum Information Database and drafted by the Bulgarian Helsinki Committee, e.g. Bulgarian Helsinki Committee, Country Report: Bulgaria, 2017 Update, AIDA, <http://www.asylumineurope.org/reports/country/bulgaria> (last updated on Jun. 11, 2018) [hereinafter AIDA report].

<sup>114</sup> LAR, *supra* note 10 at Art. 58.

<sup>115</sup> Foreigners in the Republic of Bulgaria Act, SG No. 103/27.12.2016 (Bulgaria) (English Translation) at Art. 44(12); Ministry of Interior of Bulgaria, Regulation No. Ih-1201 from June 1 2010 concerning the conditions of temporary accommodation of foreigners and concerning the organization and activities of the special homes for the temporary placement of foreigners, Art. 20(2).

<sup>116</sup> The LAR uses different terms for the various types of international protection. Asylum under the LAR is granted by the President of Bulgaria. LAR, *supra* note 10 at Art. 2. Refugee status is granted to those who apply through the SAR and meet the definition of a refugee under the 1951 Refugee Convention. *Id.* at Art. 8. Refugee status, under the LAR, is what is commonly known as asylum. *See supra* note 10.

<sup>117</sup> *Id.* at Art. 29.

<sup>118</sup> *Id.* at Art. 30(2); for the definition of “zone of movement,” see LAR, Additional Provisions, no. 14.

<sup>119</sup> *Id.* at Art. 30(3).

<sup>120</sup> Council of Ministers, Decision No. 550 of Sept. 27, 2017 on the determination of “zones of movement” in accordance with the Asylum and Refugees Act. The Decision is accompanied by maps showing the designated zones of movement.

<sup>121</sup> SAR is a specialized agency by the Council of Ministers financed by the state and chaired by an appointed representative of the executive branch. <http://www.aref.government.bg/index.php/en/>

<sup>122</sup> In this paper, the term “closed centers” generally describes facilities where the detainees’ freedom of movement is limited in a significant way, similarly to the limitations imposed in prison. However, the Bulgarian law uses “closed centers” to denote only the closed facilities for protection-seekers, run by the SAR which LAR authorizes since 2015. LAR, *supra* note 10 at Art. It refers to the closed centers run by the Migration Directorate as Special Homes for Temporary Placement of Foreigners (SHTPF).

<sup>123</sup> Ministry of Interior Act, SG No. 17/24.2.2006 (Bulgaria) ([English Translation](#)) at Art. 9 [hereinafter MOI Act].

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<sup>124</sup> LAR, *supra* note 10 at Art. 47(2) and (4), added through amendment SG No. 80/2015, in force from Oct. 16, 2015.

<sup>125</sup> *Id.* at Art. 45b (short-term detention in a closed center is justified only for the purposes of (1) determining the identity and nationality of the protection-seeker; (2) determining the basis for seeking international protection when there is a flight risk; (3) national security and public safety; and (4) determining the member state competent to consider the protection-seeker's application for international protection in accordance with European Union legislation).

<sup>126</sup> *Id.* at Art. 45c-45d (listing the administrative steps which must be taken to determine that detention in a closed center is required).

<sup>127</sup> *Id.* at Art. 45b(2).

<sup>128</sup> *Id.* at Art. 45b.

<sup>129</sup> *Id.* at Art. 45c.(3).

<sup>130</sup> *Id.* at Art. 45f.

<sup>131</sup> *Id.* at Art. 45e.

<sup>132</sup> *Id.* at Art. 29(6).

<sup>133</sup> *Id.* at Art. 30.

<sup>134</sup> *Id.*; Council of Ministers, Decision No. 550, *supra* note 120.

<sup>135</sup> AIDA report, *supra* note 113 at 44.

<sup>136</sup> *Id.*

<sup>137</sup> Interview with Toma Zafirov, Head of the Dublin Directorate KPM3, State Agency for Refugees and Izabela Stoyanova, Legal Consultant at the Quality of the International Protection Procedure Directorate, State Agency for Refugees (Jan. 24, 2017).

<sup>138</sup> *Id.*

<sup>139</sup> Interview with Violeta Haralampieva, Legal Fellow at Refugee Solidarity Network (Jan. 27, 2017).

<sup>140</sup> *Id.*

<sup>141</sup> Interview with Toma Zafirov and Izabela Stoyanova *supra* note 137.

<sup>142</sup> *Id.*

<sup>143</sup> Boris Cheshirkov, *Bulgaria's Asylum Centres Bursting at the Seam as Syrian Refugees Enter Europe*, UNHCR (Sept. 17, 2013), <http://www.unhcr.org/en-us/news/latest/2013/9/52384d359/bulgarias-asylum-centres-bursting-seams-syrian-refugees-enter-europe.html>.

<sup>144</sup> Violeta Haralampieva, *supra* note 139; as of June 2018, the part of Busmantsi designated as closed center for asylum seekers remains the only closed-type center run by SAR. AIDA Report, *supra* note 113.

<sup>145</sup> Elhovo is a center where migrants are initially registered after crossing the border. The center is gated and migrants remain there for 3 to 5 days. *See* Press Office and Public Relations Directorate, Republic of Bulgaria's Ministry of Interior, [http://press.mvr.bg/en/News/news130917\\_02.htm](http://press.mvr.bg/en/News/news130917_02.htm).

<sup>146</sup> Interview with Boris Petkov, Director of Busmantsi Pre-removal Center, Migration Directorate (Jan. 25, 2017).

<sup>147</sup> *Id.*

<sup>148</sup> Interview with Spasimir Penev, Deputy Director of Placement and Social Activities and Acting Deputy Director of Pastrogor Transit Center (Jan. 26, 2017).

<sup>149</sup> Interview with Toma Zafirov and Izabela Stoyanova, *supra* note 137 (stating that migrants must express out of their own volition a desire to apply for international protection before they are brought under the SAR's authority).

<sup>150</sup> LAR, *supra* note 10 at Art. 61(2).

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- <sup>151</sup> Interview with Boris Petkov, *supra* note 146.
- <sup>152</sup> Interview with Dilyana Giteva and Sofia Razboinikova, Bulgarian Lawyers for Human Rights (Jan. 24, 2017).
- <sup>153</sup> Interview with Valeria Ilareva, Lead Attorney, Foundation for Access to Rights (Jan. 25, 2017).
- <sup>154</sup> Interview with Official at Voenna Rampa Reception Center, State Agency for Refugees (Jan. 23, 2017).
- <sup>155</sup> *Id.*
- <sup>156</sup> *Id.*
- <sup>157</sup> *Id.* (noting that this has been a good policy for the SAR).
- <sup>158</sup> LAR, *supra* note 10 at Art. 29(9) (stating that, if applicants have financial means to provide for their basic needs, they may get permission to live in Bulgaria at their own expense, and will not receive financial or any other assistance from the SAR); Interview with Official at Voenna Rampa Reception Center, *supra* note 154.
- <sup>159</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154.
- <sup>160</sup> *Id.*
- <sup>161</sup> LAR, *supra* note 10 at Art. 33.
- <sup>162</sup> LAR, *supra* note 10 at Art. 29(10); Interview with Official at Voenna Rampa Reception Center, *supra* note 154.
- <sup>163</sup> Interview with Toma Zafirov and Izabela Stoyanova, *supra* note 137.
- <sup>164</sup> Interview with Spasimir Penev, *supra* note 148.
- <sup>165</sup> *Id.*
- <sup>166</sup> *Id.*
- <sup>167</sup> CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports to Bulgaria*, CERD/C/BGR/CO/20-22, 31 May 2017, available at: <http://bit.ly/2wSzIpq>, para 21(e), 22(e) [*hereinafter* CERD Concluding Observations]
- <sup>168</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 Art. 44(1); Interview with Boris Petkov, *supra* note 146.
- <sup>169</sup> *Id.*
- <sup>170</sup> *Id.*
- <sup>171</sup> *Id.*; *compare with*, Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 44(6) (“Where the identity of the foreigner whereon a coercive administrative measure has been imposed under Article 39a(1), items 2 and 3, is unknown, or the foreigner is impeding the enforcement of the order, or there is a risk that the foreigner might go into hiding, the authority which issued the order or the Director of the Migration Directorate may issue an order for forcible placement of the foreigner at a special facility for temporary placement of foreigners for the purpose of organising the foreigner’s return or expulsion”).
- <sup>172</sup> *Id.*
- <sup>173</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.
- <sup>174</sup> Interview with Spasimir Penev, *supra* note 148.
- <sup>175</sup> *Id.*
- <sup>176</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 44(13); Interview with Valeria Ilareva, *supra* note 153.
- <sup>177</sup> The authors visited Bulgaria from January 22 to 29, 2017.
- <sup>178</sup> Interview with Spasimir Penev, *supra* note 148.
- <sup>179</sup> Translators were found with the assistance of EASO and only after significant pressure from legal aid organizations and the UNHCR.
- <sup>180</sup> Interview with Spasimir Penev, *supra* note 148.

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<sup>181</sup> Interview with Officials at UNHCR, UNHCR Field Office in Sofia (Jan. 27, 2017).

<sup>182</sup> LAR, *supra* note 10 at Art. 29(1)8.

<sup>183</sup> Overall, about 70-80% of people at Pastrogor disappear from the center and have their procedures terminated as a result. There are plenty of cases of people coming back after multiple attempts at crossing the border. Technically, the SAR should not accept them back, but it does when weather conditions are unfavorable, such as in winter. Interview with Spasimir Penev, *supra* note 148.

<sup>184</sup> Interview with Toma Zafirov and Izabela Stoyanova, *supra* note 135; Interview with Boris Petkov, *supra* note 146. *See* Interview with Official at Voenna Rampa Reception Center, *supra* note 154 (stating that, when people leave the open centers, they are usually trying to get to Serbia and continue into Western Europe).

<sup>185</sup> LAR, *supra* note 10 at Art. 14.1.; Interview with Official at Voenna Rampa Reception Center, *supra* note 154; Interview with Spasimir Penev, *supra* note 148 (stating that, most often, migrants disappear during the procedure and try to cross the border into Serbia, aiming for Western Europe).

<sup>186</sup> Dublin Regulation, *supra* note 19; Interview with Official at Voenna Rampa Reception Center, *supra* note 154; Interview with Toma Zafirov and Izabela Stoyanova, *supra* note 137 (noting that slightly over 600 people were returned to Bulgaria under the Dublin Regulation in 2016).

<sup>187</sup> LAR, *supra* note 10 at Art. 67e.(2).

<sup>188</sup> LAR, *supra* note 10 at Art. 15(1)7. (“The procedure for granting international protection shall be discontinued, where the alien: . . . fails to appear before the relevant official of the State Agency for Refugees within three months after the procedure has been suspended as per Article 14 concerning the provision of evidence that he/she had objective reasons to change his/her address or objective difficulty preventing him/her from appearing before or cooperating with the relevant officials”). An example of what the SAR might consider an objective reason is the case of a CLA client sentenced to serve time in prison after a second attempted illegal crossing of the Bulgarian border while trying to enter Serbia. CLA successfully argued that his detention in prison was a valid reason for his inability to appear before the SAR within the statutory period. Based on this explanation, the SAR reopened his protection application. *See also* Interview with Toma Zafirov and Izabela Stoyanova, *supra* note 137.

<sup>189</sup> *Id.*

<sup>190</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 152; Interview with Spasimir Penev, *supra* note 148.

<sup>191</sup> Interview with Spasimir Penev, *supra* note 148.

<sup>192</sup> *Id.*; Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 41.1. Note that the Act refers to deportation as “return.” *Id.* at Art. 39a(1)2.

<sup>193</sup> LAR, *supra* note 10 at Art. 29(1)1.

<sup>194</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 41.4.

<sup>195</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>196</sup> LAR, *supra* note 10 at Art. 13(2)4.

<sup>197</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154. On the other hand, a CLA client’s subsequent claim was registered by the SAR solely on the ground of presenting a letter of support from his Christian Orthodox church community in Bulgaria, which testified to his successful integration into Bulgarian society since the filing of his initial protection application. In contrast, the SAR refused to register the subsequent claim of another CLA client, finding that a recent order for his arrest that his family received in his home country did not constitute a ground of “fundamental importance” to his circumstances.

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<sup>198</sup> LAR, *supra* note 8 at Art. 45b.(1)3.; Reception Conditions Directive, *supra* note 22 at Art. 7(2).

<sup>199</sup> Interview with Valeria Ilareva, *supra* note 153.

<sup>200</sup> Interview with Officials at UNHCR, *supra* note 181.

<sup>201</sup> CERD Concluding Observations, *supra* note 167 at 6.

<sup>202</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 44(12) (“Placement of foreigners in a special facility for temporary placement of foreigners shall not be terminated if there are serious grounds to presume that the foreigner has filed a subsequent application for international protection with the sole purpose of delaying or complicating the execution of a coercive administrative measure of expulsion under Art. 39a(1), item 2 or 3. The continuation of placement may be appealed against in accordance with the procedure provided for in Article 46a (1)-(5)”).

<sup>203</sup> Interview with Violeta Haralampieva, *supra* note 139 (relying on a review of relevant court decisions available in Bulgarian only conducted by Haralampieva).

<sup>204</sup> LAR, *supra* note 10 at Art. 45b.(1)2.; Reception Conditions Directive, *supra* note 20 at Art. 8(3)(b).

<sup>205</sup> Interview with Iliana Savova, Attorney and Director of the Refugee and Migrant Program, Bulgarian Helsinki Committee (Jan. 27, 2017); *See* LAR, *supra* note 10 at Art. 45b.(1) (stating that, in the presence of one or more statutory grounds for the detention, a protection-seeker may be detained in a SAR closed center “temporarily and for the shortest period possible”).

<sup>206</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 150; *see* Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 42(1)1. (“Expulsion of a foreigner shall be imposed where: . . . the presence thereof in Bulgaria poses a serious risk to national security or to public order”).

<sup>207</sup> Interview with Valeria Ilareva, *supra* note 153; Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>208</sup> LAR, *supra* note 10 at Art. 29a.1. (emphasis added).

<sup>209</sup> Interview with Valeria Ilareva, *supra* note 153; Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>210</sup> Interview with Boris Petkov, *supra* note 146; Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>211</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 39b(1) (“The order imposing the coercive administrative measure under Article 39a, paragraph 1, items 1 and 2, shall specify a period of between 7 and 30 days wherein the foreigner is to fulfill voluntarily his/her obligation to return”). This provision, however, does not apply to foreigners deemed “a threat to national security or public order.” *Id.* at Art. 39b(4).

<sup>212</sup> LAR, *supra* note 10 at Art. 29(9) (“When the alien has financial means to provide for his/her basic needs, in the course of the general procedure he/she may obtain permission to be accommodated at his/her expense at an address of his/her choice and will not receive financial and in-kind assistance from the State Agency for Refugees”). As many protection-seekers do not personally have the financial means, they need sponsors who are willing to certify they will house them and cover their living expenses. Violeta Haralampieva, *supra* note 137.

<sup>213</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 Art. 44(5) (“Where there are obstacles to a foreigner leaving Bulgaria immediately or to entering another country, any such foreigner shall be obligated by an order issued by the authority who issued the order imposing the coercive administrative measure to report weekly at the territorial structure of the Ministry of Interior exercising jurisdiction over the place of residence thereof according to a procedure

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established by the Rules on the Implementation of this Act, unless the obstacles for the return or expulsion are no longer in place and the foreigner’s escort has been scheduled”).

<sup>214</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>215</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>216</sup> Interview with Boris Petkov, *supra* note 146.

<sup>217</sup> *Id.*

<sup>218</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>219</sup> Interview with Boris Petkov, *supra* note 146.

<sup>220</sup> *Id.*

<sup>221</sup> Interview with Boris Petkov, *supra* note 146; *see* Interview with Iliana Savova, *supra* note 205 (stating that, every six months of a migrant’s detention, the court automatically reviews the basis for the detention, determining whether to extend detention for another six months). Foreigners in the Republic of Bulgaria Act, *supra* note 115 at Art. 44(8) (“Such placement [in closed Migration Directorate centers] shall last until the circumstances referred to in paragraph 6 last, but for no longer than 6 months. Official inspections shall be conducted on a monthly basis by the Director of the Migration Directorate, in order to ascertain the existence of grounds for forcible placement in special facilities. As an exception, when the person concerned refuses to cooperate with the competent authorities or when obtaining of the documents needed for the return or expulsion is delayed, the period of placement may be additionally extended up to 12 months. When, given the case-specific circumstances, it is found that a reasonable possibility for the deportation of a foreign national no longer exists for legal or technical reasons, the person concerned shall be released immediately”).

<sup>222</sup> The IOM runs the AVR program in Bulgaria. AVR pays for the migrants’ flight back to their countries of origin and gives them reintegration assistance. In contrast, if a person is deported, he/she does not receive any financial assistance, and gets a 5-year bar to reentry into Bulgaria. Interview with Ivan Sharenkov, Expert in Operating Activities at the International Organization for Migration’s Voluntary Returns and Integration Division (Jan. 25, 2017).

<sup>223</sup> *See* Interview with Spasimir Penev, *supra* note 148.

<sup>224</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154 (reporting that the Afghan embassy does not want to issue the necessary documents to deport Afghan nationals from Bulgaria); Interview with Spasimir Penev, *supra* note 148 (stating that the Ambassador to Pakistan in Bulgaria is not cooperative in issuing documents for individuals who opt to voluntarily return to their country of origin).

<sup>225</sup> Interview with Boris Petkov, *supra* note 146.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 Art. 44(9).

<sup>230</sup> Interview with Boris Petkov, *supra* note 146.

<sup>231</sup> Foreigners in the Republic of Bulgaria Act, *supra* note 115 Art. 44(9).

<sup>232</sup> Interview with Diana Radoslavova, Attorney at Center for Legal Aid – Voice in Bulgaria (Jan. 23, 2017); Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152; Interview with Iliana Savova, *supra* note 205.

<sup>233</sup> Interview with Diana Radoslavova, *supra* note 232.

<sup>234</sup> *Id.*

<sup>235</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152; Interview with Iliana Savova, *supra* note 205.

<sup>236</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

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<sup>237</sup> This is because Bulgaria lacks age-appropriate facilities for the accommodation of unaccompanied minors who have not (or not yet) applied for international protection. Once they apply and the SAR registers their claims, they can be released into the SAR open centers, which, however, do not meet the standards for housing unaccompanied minors, either. Interview with Iliana Savova, *supra* note 205.

<sup>238</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 150; Interview with Diana Radoslavova, *supra* note 232.

<sup>239</sup> Interview with Iliana Savova, *supra* note 205.

<sup>240</sup> Interview with Boris Petkov, *supra* note 146.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> Frontex, European Border and Coast Guard Agency, <http://frontex.europa.eu/operations/roles-and-responsibilities/>.

<sup>251</sup> Interview with Boris Petkov, *supra* note 146.

<sup>252</sup> *Id.* (The Director of Busmantsi stated that the staff are trained at the conversational level A2).

<sup>253</sup> *Id.* Reports as of June 2018 indicate that one of the SHTPFs (Elhovo) has been closed and the other two left in operation, Busmantsi and Lyubimets, housed less than half of their joint occupancy of 700 at the end of 2017. AIDA Report, *supra* note 113 at 60.

<sup>254</sup> Interview with Boris Petkov, *supra* note 146.

<sup>255</sup> Interview with Spasimir Penev, *supra* note 148.

<sup>256</sup> *Id.* Approximately \$2.45 USD.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> LAR, *supra* note 10 at Art. 29(1)5.; Interview with Spasimir Penev, *supra* note 146; Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>260</sup> Interview with Spasimir Penev, *supra* note 148.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>268</sup> LAR, *supra* note 10 at Art. 56(1) (“The State Agency for Refugees may, independently or jointly with the bodies of the local government and local administration, the Bulgarian Red Cross and other non-governmental organizations, organize auxiliary economic activities whereby the aliens seeking or granted protection shall be offered an opportunity for vocational training and work”).

<sup>269</sup> LAR, *supra* note 10 at Art. 29(3). Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

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<sup>270</sup> Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>271</sup> Foreigners who want to establish themselves want to go to larger towns, because there are not many opportunities in the village of Pastrogor. *See* Interview with Spasimir Penev, *supra* note 148.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*; Interview with Official at Voenna Rampa Reception Center, *supra* note 154.

<sup>274</sup> Interview with Spasimir Penev, *supra* note 148.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.* Pastrogor is a village, and the resources available at its transit center are much more limited than in the centers around Sofia. *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> Interview with “Piruz”, Iranian protection-seeker, at a café in Sofia (Jan. 24, 2017) (translated from the Farsi, Piruz is the name used here to protect the interviewee’s identity).

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* Valeria Ilareva, the head lawyer for Foundation for Access to Rights, described the situation at the open centers as dynamic, but based on her most recent recollection, residents get fed twice a day and a third meal every other day. Interview with Valeria Ilareva, *supra* note 153.

<sup>302</sup> Interview with Piruz, *supra* note 281.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> Interview with “Omar”, Iraqi protection-seeker, at a café in Sofia (Jan. 26, 2017) (translated from the Arabic, the real name of the interviewee has been replaced with “Omar” to protect his identity). According to Violeta Haralampieva, Legal Fellow with the Refugee Solidarity Network, many employers are reluctant to accept protection-seekers’ work permits because they are afraid their holders will leave Bulgaria soon, they are prejudiced, or they incorrectly believe that the



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work permits are an insufficient proof of employability. CLA had several clients who were able to work with these permits, but had also heard that some employers do not accept the permits.

<sup>306</sup> Interview with Valeria Ilareva, *supra* note 153; Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>307</sup> Interview with Dilyana Giteva and Sofia Razboinikova, *supra* note 152.

<sup>308</sup> Interview with Valeria Ilareva, *supra* note 153.

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> Elhovo is a SHTPF run by the Migration Directorate. It is located near the border with Turkey.

<sup>314</sup> Interview with Officials at UNHCR, *supra* note 181.

<sup>315</sup> Interview with Ivan Sharenkov, *supra* note 222. Mr. Sharenkov believes that the property at the centers falls into disrepair quickly because the residents do not know how to take care of it. *Id.*

<sup>316</sup> Interview with Officials at UNHCR, *supra* note 181.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> S.F. and others v. Bulgaria (application no. 8138/16) [Article 3 ECHR], 7 December 2017

<sup>326</sup> See *supra* note 59.

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## Appendix A: Interviews

1. *Anonymous Official at Voenna Rampa*, interviewed on 1/23/17 in Sofia, Bulgaria.
2. Asylum-Seeker “Omar,” interviewed on 1/24/17 in Sofia, Bulgaria.
3. Asylum-Seeker “Piruz,” interviewed on 1/24/17 in Sofia, Bulgaria.
4. Iliana Savova, Director of the Bulgarian Helsinki Committee, interviewed on 1/27/17 in Sofia, Bulgaria.
5. Spasimir Petrov, Deputy Director of Placement and Social Activities at Pastrogor center; interviewed on 1/26/17 in Pastrogor, Bulgaria.
6. Valeria Ilareva, director of Foundation for Access to Rights, interviewed on 1/25/17 in Sofia, Bulgaria.
7. Yvan Shzenkov, Legal Adviser at IOM interviewed on 1/25/17 in Sofia, Bulgaria.
8. Director of Special Home for the Temporary Placement of Foreigners in Busmantsi, interviewed on 1/25/17 in the office of the Migration Directorate of the Ministry of Interior in Sofia, Bulgaria.
9. Dimitrov Kirov, State Agency for Refugees, interviewed on 1/24/17 in Sofia, Bulgaria.
10. Ogniana Vasileva, State Agency for Refugees, interviewed on 1/26/17 in Pastrogor, Bulgaria.
11. UNHCR officer in Sofia, interviewed on 1/27/17 in Sofia, Bulgaria.
12. Diliansa Giteva-Gancheva and Sofia Razboynikova, Attorneys at the Bulgarian Lawyers for Human Rights, interviewed on 1/24/2017 in Sofia, Bulgaria.