

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 36th Session

BULGARIA

I. BACKGROUND INFORMATION

Bulgaria ratified the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* on 22 April 1992. In addition, Bulgaria ratified the *1954 Convention relating to the Status of Stateless Persons* (with reservations) and the *1961 Convention on the Reduction of Statelessness* in 2012. The *European Convention on Human Rights and Fundamental Freedoms* is incorporated into the domestic legislation. Bulgaria is also a State party to most international human rights instruments and has transposed EU asylum legislation. The State Agency for Refugees (SAR) is responsible for registering and examining applications for protection. The *Law for the Asylum and Refugees* (LAR) regulates the reception of asylum-seekers, the assessment of their claims and their rights upon recognition as international protection beneficiaries.

In 2018, a total of 2,536 applications for international protection were registered by the SAR, of which 481 unaccompanied and separated¹ children (UASC).² During the same period, refugee status was granted to 804 persons and 900 persons were granted subsidiary protection (humanitarian status), with an overall recognition rate of 35 per cent. In the first five months of 2019, 685 applications for international protection were registered, 163 of them were UASC. The lack of adequate reception conditions and integration prospects compel many applicants to leave the country before their claims have been processed or shortly after they have been granted asylum. In 2018, 860 decisions on terminating the asylum procedure were issued.

The political environment in Bulgaria with respect to refugees and migrants is unpredictable and complex. Since 2014, the Bulgarian authorities have enhanced their capacity at the borders to discourage irregular movements both at entry and exit. In 2017, there was a significant decrease (84 per cent) of the number of persons apprehended upon irregular entry, exit or stay inside the country compared to 2016. In 2018, the trend continued and there was a further decrease as compared to 2017. In the first five months of 2019, there was a further decrease of the numbers on entry by a little over 8 per cent.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 123.171 supported by the Government: "Adopt the draft law on asylum and refugees, which is to ensure, inter alia, unhindered access to primary education for refugee children" (Germany)

¹ Bulgarian legislation does not explicitly recognize separated children.

² The statistics are provided by the State Agency for Refugees.

Recent legislative and policy changes, as well as concerted efforts by the authorities, including awareness-raising, have contributed to a significant increase in the number of asylum-seeking and refugee children enrolled in schools - from 10 per cent in 2016-2017 to 60 per cent for 2018-2019. These changes include amendments to the LAR (2015) stipulating that access to the educational system cannot be postponed by more than three months following the submission of the asylum application and an *Ordinance* on the terms of asylum-seeking and refugee children's admission to state and municipal schools in Bulgaria (2017), as well as provisions in the *Law on pre-school and School Education*³ on, among others, providing intensive training in Bulgarian language to such children.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Combatting racism, xenophobia and intolerance

Linked to 2nd cycle UPR recommendation no. 123.70 supported by the Government: “Strengthen the measures to fight hate speech, targeting of persons on the ground of their ethnicity, religion or sexual orientation, particularly Roma, Muslim and lesbian, gay, bisexual, transgender and intersex persons, as well as asylum seekers and migrants” (France)

Especially since 2013, refugee issues have continued to receive wide media coverage and are being used in the political discourse, frequently in a negative and biased manner. Numerous incidents of violence based on anti-foreigner and anti-refugee sentiments, including serious violent acts, have occurred.⁴ Such incidents can have a long-lasting impact on the victims and risk impairing the ability of asylum-seekers and refugees to access their rights.⁵ Some of the media information on the influx of refugees and migrants is deliberately incorrect and misleading which further contributes to xenophobia. In its *Concluding Observations on Bulgaria*, para. 11, the Committee on the Elimination of Racial Discrimination expressed its deep concern over the reported increase in incidents of hate speech and hate crime, specifically targeting minority groups including refugees and asylum seekers.

Recommendations:

UNHCR recommends that the Government of Bulgaria:

- a) Reinforce measures aimed at preventing and responding to incidents of racial discrimination, xenophobia and related intolerance against asylum-seekers and refugees; and
- b) Undertake public education campaigns and ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the national or ethnic identity of refugees or asylum-seekers.

³ *Law on Pre-school and School Education*, promulgated in the State Gazette No. 79 of October 2015, as amended.

⁴ BBC “*Bulgaria’s vigilante migrant hunter*”, available at: <http://www.bbc.com/news/magazine-35919068>. In addition, in August 2017, an Afghan national reported physical abuse by five Bulgarian males at a bus stop near the reception centre where he was residing. Further, in December 2017, a 13 year old Syrian refugee, was attacked and severely beaten by two masked older boys in the school yard of his school in Varna. See: <https://btvnovinite.bg/videos/tazi-sutrin/koi-sa-maskiranite-napadateli-prebili-sirijsko-dete.html>. In March 2018, 3 Iraqi asylum-seekers were attacked near the centre where they were accommodated.

⁵ In February and March 2017, two refugee families were expelled by Elin Pelin and Belene municipalities after refusals of the Mayors to provide address registration and protests by the local population.

Issue 2: Integration of persons granted international protection

Linked to 2nd cycle UPR recommendation no. 123.182 supported by the Government: “Effectively implement the National Integration Strategy for Individuals Granted International Protection in Bulgaria (2014–2020) with particular focus on the needs of children” (Slovakia)

Since 2014, there is no functioning refugee integration mechanism in place. A *National Strategy on Migration, Asylum and Integration* (NSAMI) was adopted in 2015 but without a budgetary framework. The revised *Ordinance* regulating the conclusion of an Integration Agreement between beneficiaries of international protection and municipalities, participating on a voluntary basis, was adopted in 2017. It does not foresee financial support for integration, or provision of Bulgarian language classes for adults. So far, integration agreements have been concluded only with resettled refugees,⁶ where EU funds for their integration are available. No state funds have been or are planned to be allocated for implementation of the Ordinance.

There are no targeted support measures for integration, nor measures for persons with specific needs, and refugees face a number of legal and practical barriers in accessing specific rights, notably in housing and social assistance. Once granted status, they may be allowed to remain in SAR centres, on a discretionary basis for a period of up to six months but are not entitled to food. There is real risk of homelessness. Access to social housing is difficult, as available houses are limited and legal provisions⁷ require the person to have resided in a particular area for an extended period and one of the family members having to be a Bulgarian citizen. Beneficiaries of international protection do not have access to all benefits granted to Bulgarian nationals.⁸

Recommendations:

UNHCR recommends that the Government of Bulgaria:

- a) Facilitate the implementation of the current *National Strategy on Migration, Asylum and Integration* (NSMAI) 2015-2020 and work closely with UNHCR to draft the new NSMAI;
- b) Take measures to implement the Ordinance, including by appointing a Deputy Prime Minister responsible for integration as required by the Ordinance; and
- c) Take measures to provide the necessary resources, including administrative and financial resources, to ensure that beneficiaries of international protection, in particular vulnerable persons, have full and effective access to their rights, including an adequate standard of living, food, housing and social assistance.

Issue 3: Reception and care of unaccompanied and separated children

Linked to 2nd cycle UPR recommendation no. 123.177 supported by the Government: “Take immediate action to ensure that legal guardians are appointed for unaccompanied minors and that proper accommodation and education are provided” (Denmark)

While the legislation exempts unaccompanied children from immigration detention, gaps in their initial identification and referral upon first contact with the Border or National Police may result in their being denied this safeguard in practice. Upon UNHCR advocacy, the

⁶ In one case, after the resettled family left, the municipality agreed to sign a contract with another family granted protection in Bulgaria, thereby providing them with housing for the remaining duration of the contract.

⁷ Usually regulated at the municipal level. Each municipality has its own *Ordinance on the Conditions for Assessing Housing Needs, Rent and Sale of Municipal Housing*. The condition of a family member to be a Bulgarian citizen is common to all of them while required length of residence in particular municipality varies (e.g. 10 years in Sofia), while in some municipalities outside Sofia it may be shorter (e.g. 5 years).

⁸ E.g., they are not able to receive assistance under the *Law on Family Benefits for Children* which provides assistance to pregnant women and families with children.

Government has agreed to set up an interim care facility for unaccompanied and separated migrant and asylum-seeking children for which external funds have been obtained, but the project's implementation is severely delayed due to, in particular, resistance from local municipalities.

The *Law on Asylum and Refugees* (LAR) provides that unaccompanied and separated asylum-seeking children can be accommodated with relatives, foster families, in residential care or specialized institutions, in accordance with the *Law on Child Protection*.⁹ In practice, however, due to a lack of administrative, residential and financial capacity of the national social services, including lack of specialized centres for children, language training and lack of experience with unaccompanied and separated children, they are accommodated at the SAR centres. They receive the same monthly financial allowance as adults, amounting to 20 BGN (10 EUR) which is insufficient to cover basic needs. Apart from security guards, there are no employees of SAR present at reception centres outside working hours. IOM is currently managing a 'safe zone' within one of the centres where 24/7 care and adequate reception conditions are provided. However, children still have to share some premises with adults accommodated at the centre (e.g. rooms for leisure activities and education). Moreover, the sustainability of the 'safe zone' beyond its initial first year is not ensured.

While unaccompanied and separated children seeking international protection are assigned representatives from the municipality, the latter's function is still unclear, the representatives' necessary training and skills are often lacking and their role in the asylum procedure is in most cases a mere formality. Age is not established in a multi-disciplinary nor child- or gender-sensitive manner, taking into consideration the physical and psychological development of the child, but is limited to a medical assessment (wrist X-ray). The Government is currently in the process of establishing an age assessment procedure and formalizing it in a secondary piece of legislation. No best interests procedure is in place to ensure all decisions affecting children are in line with their best interests, from the moment of their arrival until a durable solution is found.

Recommendations:

UNHCR recommends that the Government of Bulgaria:

- a) Ensure that unaccompanied and separated children have effective and full access to safe, age and gender-appropriate care arrangements within the national child protection system and to services, adapted to their needs; and
- b) Ensure unaccompanied and separated children have access to a procedure to assess their best interests as well as the appointment of qualified and trained representatives.

Issue 4: Detention

Linked to 2nd cycle UPR recommendation no. 123.174 supported by the Government: "Review and reform its legislation allowing for the detention of asylum seekers on the basis of illegal entry, and ensure that the detention of asylum seekers, particularly of children, be applied only in exceptional circumstances after due diligence" (Brazil)

While the detention of unaccompanied children is not permitted, UNHCR is concerned that the *Law on Foreigners* allows the immigration detention of accompanied children with their parent(s) -short-term for up to 30 days or pending removal for up to three months- in Special Centres for the Temporary Accommodation of Foreigners. Such detention is in contravention with the authoritative views of international human rights treaty bodies and UNHCR, which consider that children should not be detained for immigration related purposes, irrespective

⁹ *Law on Child Protection*, Promulgated in the State Gazette N. 48, 13 June 2000, as amended

of their legal/migratory status or that of their parents, and detention is never in their best interests.¹⁰

The submission of a request for international protection whilst in SCTAF does not result in the immediate transfer to a SAR open centre. This practice is in contravention with international standards which require that applicants are entitled to their rights as asylum-seekers, including guarantees related to detention, from the moment of making of their claim.¹¹ In addition, in some cases the entire status determination procedure is conducted in immigration detention, which may be at variance with EU and national law.

While Bulgaria introduced additional alternatives to detention in its legislation in 2016, detention is not regarded as a measure of last resort only, nor is each detention decision preceded by an individual assessment of necessity and proportionality and applicability of alternatives.

Recommendations:

UNHCR recommends that the Government of Bulgaria:

- a) Ensure the detention of asylum-seekers is used only as a measure of last resort, for as short a period as possible, and only after conducting an individual assessment of its reasonableness, necessity and proportionality, as well as assessing all available alternatives to detention; and
- b) Consider ending the detention of all children by amending the legislation and establishing alternative care arrangements for the whole family.

Additional protection challenges

Issue 5: Access to the territory and non-refoulement

Bulgaria started building a fence along its border with Turkey in 2014 and used additional police reinforcements, in an effort to address increased mixed migration flows. The measures have contributed to a reduction in the number of asylum-seekers. In its Concluding Observations, para. 11, the Human Rights Committee expressed concern about “reliable reports from multiple sources indicating that persons who may be in need of international protection have been prevented from entering Bulgarian territory or expelled, at times with force, without an opportunity to apply for asylum or an individualized assessment. The Human Rights Committee also expressed concern that prompt identification of persons in need of international protection is not always ensured, at the lack of qualified interpreters, including at the border, and that vulnerable persons are not promptly identified” (para. 20).

Since 2015, several reports¹² allege ill-treatment and physical abuse of asylum-seekers by the Border Police. UNHCR has called upon the authorities to investigate these allegations also in light of the fact that fear of repercussion prevents asylum-seekers from filing complaints to the authorities.

Recommendations:

UNHCR recommends that the Government of Bulgaria:

¹⁰ UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <https://www.refworld.org/docid/5885c2434.html>

¹¹ UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>

¹² See Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria from 9 to 11 February 2015*, available at: <http://www.refworld.org/docid/55afb4814.html>

Ensure access to the territory and the procedure for granting international protection and full respect for the principle of *non-refoulement*, by *inter alia*:

- a) Establishing easily accessible and protection sensitive entry systems at border crossing points, where persons who may be in need of international protection can be individually assessed, including with respect to any specific needs, and be referred to fair and efficient asylum procedures;
- b) Providing the personnel engaged in border management with training on basic principles of international refugee law, in particular the principle of *non-refoulement*, and on the identification of asylum-seekers with specific needs;
- c) Providing qualified interpreters at border crossing points, 24-hours detention facilities of the Border Police and of the National Police to facilitate communication; and improving the conditions at these facilities; and
- d) Preventing and combatting the ill-treatment of asylum-seekers by the police by effectively prosecuting such acts and punishing those responsible, by establishing a monitoring mechanism and enhancing the existing mechanism within the Ministry of Interior dealing with complaints of violent incidents.

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