

SUBMISSION

**by Center for Legal Aid – Voice in Bulgaria
to the**

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Regarding the State Report on BULGARIA

11 February 2019



Introduction

The **Center for Legal Aid – Voice in Bulgaria (CLA)** is a Sofia-based NGO founded in the public interest in 2009, with the mission to promote the rights of asylum seekers, refugees and migrants on the territory of Bulgaria and regionally. Its main activity is to provide *pro bono* legal aid in the form of consultations and representation before national and European courts and administrative authorities. The CLA has regular presence in the immigration detention centres in Bulgaria, providing consultations and delivering information sessions to the detainees. We also engage actively in advocacy for progressive legislative reform and respect of the human rights of migrants. The CLA is a member of a number of international networks, including the International Detention Coalition (IDC), EuroMed Rights, the European Alternatives to Detention Network and the Platform for International Cooperation on Undocumented Migrants (PICUM).

In view of the specialized mandate of the Center for Legal Aid – Voice in Bulgaria and its mission focusing on the rights of migrants, the comments below refer to the issues listed by the Committee that concern the social and economic rights of that particular group, and especially in relation to persons with precarious status and/or in pre-removal detention.

- **Poor quality of refugee determination procedure and evident policy bias:** both in absolute and relative terms, Bulgaria has a very low refugee recognition rate. In 2018, out of a total of 1470 decision made on the substance¹, excluding Syrian nationals, only 119 decisions were positive – granting of refugee or humanitarian status.² Afghani nationals are an example of a group with a very low recognition rate compared to the European average – 2.5% in 2016 compared to an average of 56% for Europe, for which Bulgaria has been criticized by the European Commission.³ The result is that persons with genuine protection needs are forcefully returned to their countries of origin, are pushed to leave Bulgaria irregularly in order to seek protection elsewhere, or remain in the country undocumented and without access to any social supports, including to healthcare, housing and education.
- **No vulnerability identification by Border or Migration police authorities:** the first contact of asylum seekers in Bulgaria is with Border Police or an official from another police unit, such as the Migration Directorate. There is neither a formal requirement, nor a practice to conduct identification of vulnerable persons among them, as, at the initial stage, they are considered irregular migrants and are subject to police custody for 24 hours and subsequent pre-removal detention for varied periods of time. Vulnerability assessment is not conducted either at the moment when, after a final negative decision in the asylum proceedings comes into force, a detention order is issued in view of executing the re-activated return order. Among the persons detained are thus many with special needs such as victims of domestic and

¹ Excluding “terminated” procedures – a final decision to close the file due to the claimant’s failure to appear for an interview or not being found at the declared address.

² Statistics published by the State Agency for the Refugees at <https://aref.government.bg/bg/node/238>.

³ The Balkan Insight, EU Letter Highlights Failings in Bulgaria’s Asylum Policy, 16 November 2017, available at <https://balkaninsight.com/2017/11/16/eu-letter-highlights-failings-in-bulgaria-s-asylum-policy-11-16-2017/>

gender-based violence, persons with serious mental health conditions and torture survivors, who do not have access to the needed health and social services.

- **Arbitrary and widespread detention practices persist:** according to statistics provided by the MoI to a 2018 mission of the LIBE Committee of the European Parliament, in 2017 there was 84% decrease in the number of persons detained for reasons of irregular entry in the country. The 2017 update of the AIDA report for Bulgaria⁴ cites 2,989 persons detained that year, compared to over 11,000 in each 2016 and 2015. As a share of applications for asylum (relevant since almost all claims are filed from within pre-removal detention), however, this is a significant increase: 80% in 2017 as opposed to around 58% in each 2015 and 2016, based on statistics of the State Agency for the Refugees (SAR) on the number of asylum claims filed. The average length of detention also increased: according to the 2017 AIDA report, it was 19 days in 2017, compared to 9 in 2016 and 10 in 2015. This is not evenly applied across nationalities: on the basis of our observations (since statistics are not collected/provided regarding length of detention by nationality), persons from North Africa,⁵ Sub-Saharan Africa, Afghanistan, Pakistan, Bangladesh and Sri Lanka are being detained for extended periods of time, and sometimes (unlawfully) have their entire procedures conducted from within pre-removal detention.
- **Restricted access to judicial review of detention:** amendments to the Law on Foreigners in R. Bulgaria (LFRB) from December 2017 cancelled the provisions for ex-officio judicial review of the orders to continue the detention of foreign nationals in return proceedings in the so-called Special Homes for the Temporary Accommodation of Foreigners (SHTAF). There is no automatic judicial review of the initial detention order either. Thus, the responsibility to appeal their detention is entirely left to the detainees themselves. Legal aid (consultations) is available at the point of initial placement in detention soon after the first arrival in the country, funded by the UNHCR and thus focused primarily on applying for asylum. Access to free legal aid on an ongoing basis, including for the appeal of prolongation of detention or in relation to the conditions in the SHTAF, is dependent on the capacity of NGOs to provide such service pro bono. In addition, the requirement to pay a state fee when filing an appeal with the court makes it practically impossible for a detained person to do so personally. Private lawyers can have access to the centres and provide consultations as well as file appeals, but since detainees do not have an income, the payment of fees is an obstacle to accessing legal aid. In addition, in many cases the two levels of prescribed judicial review last

⁴ European Council on Refugees and Exiles (ECRE), Asylum Information Database (AIDA), Country Report – Bulgaria – 2017 Update, February 2018, available at: https://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2017update.pdf.

⁵ Algerian detainees, for example have shared on multiple occasions that they are told by the police in the Busmantsi detention centre that all Algerians have to “serve their 18 months” – including in cases of first-time asylum application filed from within the detention centre.

longer than the term in the detention order (6 months), which makes the appeal process ineffective.

- **No housing options for persons in return proceedings:** the LFRB provides for three alternatives to pre-removal detention: weekly reporting to police, money bond, and submission of passport to the Bulgarian authorities. In practice, only the first one has been applied so far, and in every case a notarized guarantor's (Bulgarian citizen or legal resident) declaration is required, stating that s/he will provide accommodation and will cover the living expenses of the foreign national.⁶ For many of the detained persons this is not possible to obtain, thus they remain in detention when they might otherwise be eligible for a community-based alternative (e.g., if there is no risk of absconding, they are vulnerable persons, or there is no reasonable prospect to carry out the return order). Detainees completing the maximum period of pre-removal detention of 18 months are released in the street without documents for legal status or any supports available, and end up destitute and homeless. They are not allowed to work and cannot receive social assistance.
- **No paths to regularizing one's legal status from within Bulgaria:** Bulgaria has a growing population of third-country nationals residing long-term in the country without any legal status. This group of people includes persons with final refusals of refugee or humanitarian status who nevertheless cannot return to their country of origin and may be too vulnerable (e.g., serious illness, small children) to travel irregularly to another country, and foreign nationals in return proceedings freed from detention on court order or for reason of reaching the maximum period of 18 months, who cannot be returned. Unlike many European countries, Bulgaria has no legal provisions for granting a tolerance status nor mechanisms for regularization on the basis of employment, integration or health grounds, for example. It is also legally impossible to change one's status from within the country, for instance, from asylum seeker, to student, worker or family member. There is no access whatsoever to employment, housing, healthcare, social services or education for these persons.

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⁶ It is also a criminal offence (Criminal Code, Art. 281, para. 1) to aid a foreign national to reside unlawfully on the territory of R. Bulgaria, when this is done for profit, i.e., renting an apartment to a foreign national in return proceedings could pose a risk of criminal liability.